

Via email: LCMSFversion4@ato.gov.au

LCMSF Version 4 Implementation Team  
International Risk and Projects | Public Groups  
Australian Taxation Office

13 September 2024

Dear Sir/Madam

## **LOCAL FILE/MASTER FILE SCHEMA VERSION 4.0 - JULY 2024**

BDO Services Pty Ltd (BDO, We) welcomes the opportunity provided by the Australian Taxation Office (ATO) to share feedback following the release of the *Local File/Master File (LCMSF) Schema Version 4.0 short form local file instructions* (Draft Instructions). BDO lodges Full Australian Local Files and/or Short Form Local Files on behalf of many clients and therefore we are well placed to provide you with feedback in relation to the proposed changes. We have summarised our comments below and provided some practical examples of the challenges that arise from the proposed changes to the Draft Instructions in the Appendices to this letter.

At the outset, we observe that the proposed changes in the Draft Instructions seem overly burdensome when uniformly applied to a broad range of Country-by-Country (CbC) reporting entities. The extensive level of detail required is likely to increase overall compliance costs for Australian taxpayers who happen to be Significant Global Enterprises, regardless of the size of their local activities.

### **1. Local File tiers and materiality**

The ATO designed Local File details two tiers of Local File, with the first tier being the Short Form Local File only and the second tier being the 'full' Local File (including Part A, Part B, and the Short Form). Specifically, the first tier was carved out to provide an administrative concession to reporting entities which met the relevant materiality criteria outlined by the ATO, i.e. no international related party dealings on the short form exceptions list and the value of the dealings were less than AUD 2 million.

BDO notes that the currently published Short Form Local File instructions (updated 5 July 2023) specifies under the [general principles](#) that the "*Short Form Local File requires high level disclosures about five aspects of your local Australian entities and operations*". However, the changes to the disclosures proposed in the Draft Instructions go well beyond these general principles, the proposed disclosures are no longer high level in nature, the 'five aspects' are expanded, and do not pertain to local Australian entities and operations only.

The proposed changes therefore impose a significant and costly administrative burden on taxpayers, particularly those eligible to lodge only the Short Form Local File.

## **2. Proposed changes to reporting line related disclosures<sup>1</sup>**

The information being requested in the Draft Instructions is not consistent with the ATO's currently published [specific guidance](#). In particular, the ATO's currently published specific guidance does not request full names or the country of residence of the overseas personnel to whom the most senior Australian individuals report to.

BDO notes that the introduction of these additional disclosures will create a significant and costly information gathering exercise as this information is not typically available, even to HR professionals within a business. Typically, the information that would be available to preparers of the Short Form Local File primarily includes an organisational structure chart that can be used to identify key employees. These organisational structure charts are supplemented by a manual fact-finding process to capture the role descriptions and reporting lines of key individuals. In this context, we observe that:

- The requirement to provide information regarding tax residency of the individual overseas personnel to whom Australian senior most individuals report to, will create an obligation that most businesses will not be able to address, as that information is a personal matter for the individual employees and is not typically requested by their employers.
- The requirement to provide individual names within a business creates genuine privacy concerns with respect to gathering this sensitive information, not only from an Australian perspective but particularly from an international perspective where countries have strict data privacy laws.
- The requirement to disclose all reporting lines, across multiple projects, including changes in personnel within the reporting period, with no limitations to the number or seniority of reporting lines to be captured is likely to create an exceptionally complex matrix reporting structure, particularly in the current environment of hybrid/agile working environments, informal working structures, limitations of ERP/HR systems, etc.

### ***BDO recommendation***

We recommend that these proposed changes be reconsidered with our recommendation being to eliminate the requirements regarding individual names and tax residency, and to significantly mitigate the reporting line related obligations, for example by introducing thresholds such as limiting the disclosures regarding reporting lines to up to the five most senior Australian employees. Additionally, we recommend that only the final year-end position be considered, rather than the changes made in the reporting lines throughout the income year.

Alternatively, we recommend connecting the reporting line disclosures to the main business and functions now required to be disclosed in LCMSF250-254, whereby only the most senior Australian employees of the reported main business and functions are disclosed.

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<sup>1</sup> BDO has outlined examples of practical challenges of the proposed changes to reporting line related disclosures, in Appendix 1.

### 3. Proposed changes to restructure related disclosures<sup>2</sup>

Similarly, the changes to the restructure related disclosures proposed in the Draft Instructions are not consistent with the ATO's currently published specific guidance. In particular, the Draft Instructions require the following disclosures that the ATO's currently published specific guidance does not request:

- Changes in tax residency or entity classification of the reporting entity, their offshore related counterparties, their controlled entities, or of entities that control the reporting entity.
- Changes in the reporting entity's related counterparties' operations, transactions or structures that may impact the nature or character of the reporting entity's payments or operations.
- Commencement, cessation or relocation of the reporting entity's business lines or that of their branches or controlled foreign entities or the relocation of the reporting entity's business operations or that of their branches or controlled foreign entities.<sup>3</sup>
- Transactions between overseas members of the reporting entity's global group or other associates connected to the above changes or effective taxation of their payments to overseas related parties.
- '*Connected Steps*' related to any arrangements involving transfer, license, or creation of intangibles with overseas related parties, and including the lodgement of step plans (where available).
- Disclosure of new arrangements involving the transfer, licence, or creation of intangibles by the reporting entity's '*Australian control group*', as well as any indirect transfer or licensing of intangibles by transfer or assignment of interests they directly or indirectly hold in entities which hold intangibles.
- Any transactions or changes involving the assessment of Australian tax impact or tax risks by internal or external tax advisers to the global group regardless of whether it was determined or opined by advisors there would not be any Australian tax adjustment or tax impact from such changes.

Our view is that the Draft Instructions are too ambiguous with respect to the restructure definition. This will likely result in inconsistent disclosure and reporting of information by taxpayers. Further, the proposed information gathering requirements are onerous, require the capture of information that is not readily available to the local Australian business, and will require broader tax expertise across multiple stakeholders/subject matter experts at an international level to collate, sort and provide the required information.

In our view the Draft Instructions further create an element of subjectivity in respect of the definition of a 'significant' restructure, which will create additional difficulties for taxpayers trying to accurately and consistently capture relevant transactions, for example in respect of overseas transactions that may require disclosure but where there has been limited interaction with Australia.

BDO notes that based on the Draft Instructions, the information reportable in the Short Form Local File now extends beyond that of the "local Australian entities and operations" and to their offshore related

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<sup>2</sup> BDO has outlined examples of practical challenges of the proposed changes to restructure related disclosures, in Appendix 1.

<sup>3</sup> BDO notes that the restructure codes in Appendix 1 of the Draft Instructions does not refer to relocations or business lines. Further details are provided in Section 5 of this letter.

counterparties, controlled entities, or of entities which control them. This will require a significant and costly information gathering exercise, broadly outside of the control of local management, with a concomitant risk of obtaining inaccurate or incomplete information.

#### ***BDO recommendation***

BDO appreciates that the ATO intends to collate information that has a material Australian tax impact and poses significant domestic tax risk. As described by ATO representatives in the consultation, the Draft Instructions expand the remit of the Short Form Local File so that it is no longer limited to identifying transfer pricing issues and is now extended to identifying broader ‘tax structuring’ issues.

However, given the significant difficulties and inconsistencies that the Draft Instructions will raise, BDO recommends that the ATO amends the Draft Instructions to:

- Limit the information to be provided under the Short Form Local File to transfer pricing, or ‘business restructure<sup>4</sup>’ related disclosures, i.e. setting out the changes to the local profile of functions assets and risks in respect of a restructure, rather than the attendant international tax implications.
- Limit restructure related disclosures to a high level and request information regarding the “Connected Steps” at a subsequent review stage.
- Limit the requirement for providing any anticipated global tax or Australian tax impact at the compliance stage and request additional information at a subsequent review stage.
- Provide concessions/ exemptions for certain categories of taxpayers (such as banking) and introduce thresholds and exemptions to avoid requiring taxpayers to provide duplicative information (see below for further details).

#### **4. Duplication of information provided in relation to restructures, as well as new arrangements involving transfer, licence, or creation of intangibles**

BDO notes that under the Draft Instructions there will be duplication of information provided in relation to restructures, as well as new arrangements involving transfer, license, or creation of intangibles. We have summarised below the scenarios whereby duplication would occur:

- International Dealings Schedule - Section A, Question 17: Disclosure of restructuring events consistent with TR 2011/1.
- Reportable tax position schedule - PCG 2024/1: Intangibles migration and disclosure of outcomes.
- International Dealings Schedule - Section G on Hybrid Mismatches: Disclosure of restructures that would have been subject to any of the hybrid mismatch rules.
- Master File: Reporting and description of important restructuring transactions, acquisitions and divestitures during the year. Furthermore, the Master File is updated annually to provide information in relation to a CbC group’s intangible arrangements.
- CbC Report: High-level disclosure of functions performed by group entities.

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<sup>4</sup> As defined under the OECD Chapter IX – Transfer Pricing aspects of business restructuring

- **Intercompany agreements:** Submission of underlying and/or amended intercompany agreements in Local File Part B in relation to loans and intangible arrangements.
- **FIRB:** Provision of loan information to FIRB in relation to any new and or amended loan arrangements.

### **BDO recommendation**

BDO recommends that further disclosures in relation to restructuring events (other than the changes to the profile of functions, assets and risks in Australia) should not be required on the basis that disclosures are already required in respect of business restructures in the existing Short Form Local File instructions, the International Dealings Schedule and certain restructures should be disclosed as part of the Reportable Tax Position Schedule (RTPS).

To the extent that the ATO requires additional information regarding business restructures, we recommend that the ATO consider issuing tax alerts regarding the arrangements that give them concern and incorporating a self-assessment against those tax alerts as part of the RTPS.

This would expand the base of taxpayers who are required to self-assess against these criteria to entities beyond CbC entities, but better focus on the specific risks identified by the ATO in the examples to the Draft Instructions. We also recommend that the ATO consider providing administrative concessions to eliminate the requirement to make duplicate disclosures.<sup>5</sup>

Furthermore, in our view, ATO reviews and/or audits can be considered an appropriate forum from which to obtain further detail in respect of restructuring events from certain taxpayers, without subjecting the significant majority of compliant taxpayers to the compliance burden arising from these additional compliance obligations.

### **5. Errors in the Draft Instructions**

BDO outlines the following errors in the Draft Instructions to assist the ATO in making updates before finalisation:

- **Restructure codes** - The Draft Instructions' updated definition of restructures now includes any arrangements involving the commencement, cessation or relocation of business lines, as well as relocation of business operations. However, BDO notes that the restructure codes provided in Appendix 1 do not reflect this. In particular, the description provided for 'RCB' is more aligned to the restructure definition in the current published Short Form instructions (i.e., the commencement or cessation of operations only).
- **Restructure Example 2** - This example scenario gives 5 steps on page 52, however, Question 10 on page 54 mistakenly says there are only 4 connected steps.

### **Conclusion**

We understand that the ATO has experienced inconsistent levels of disclosures under current instructions. However, we do not think that the proposed changes to the Short Form Local File will

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<sup>5</sup> BDO provides an example of an administrative concession in Appendix 2 of this Letter.

achieve the goal of improving consistency and transparency, particularly with respect to the business restructure related questions, given the subjectivity regarding what would constitute a significant restructure.

We also anticipate that if the proposed changes were to be introduced 'as is', while consistency of disclosures may not materially increase, the costs of compliance for all taxpayers would significantly increase.

Therefore, while we understand the intention of the ATO in seeking this information, the proposed approach will penalise the significant majority of compliant taxpayers as the ATO seeks to address the concerns they have experienced with a small number of taxpayers by implementing onerous requirements on all.

We further note that the proposed changes to the Short Form Local File are in addition to the already new Public CbC Reporting rules that apply to years beginning on or after 1 July 2024 which require Australian CBC reporting entities to incur additional time and compliance cost in overlapping cycles.

Finally, we recommend that the ATO should consider alternative approaches to obtain tax structuring related information where they perceive material risks. For example, the ten high-risk restructuring examples included in the Draft Instructions changes could be addressed via issuing a tax alert and incorporating that tax alert into the RTPS.

Should you have any questions or wish to discuss any of the comments made in our submission, please do not hesitate to contact me on 02 9240 9736 or via email ([lance.cunningham@bdo.com.au](mailto:lance.cunningham@bdo.com.au)).

Yours sincerely

**BDO Services Pty Ltd**

Lance Cunningham

BDO National Tax Technical Leader

*Attachments:*

- Appendix 1 - Examples of practical challenges
- Appendix 2 - Example of administrative concession

## Appendix 1 Examples of practical challenges

In line with considerations outlined in the attached Letter, BDO provides examples of the practical challenges which result from the proposed changes outlined in the Draft Instructions.

### 1. Practical challenges of the proposed changes to reporting line related disclosures

- Interim roles - The disclosure of full names of local personnel reporting overseas and the overseas personnel to whom they report creates increased reporting requirements, particularly for large companies where there may be multiple cases of an individual stepping in to an interim role during a reporting year on behalf of another individual, whereby the function of the role does not change but the change in the individual themselves now triggers reporting requirement (e.g., during instances maternity leave, secondments, etc).
- Country of an overseas individual's tax residence - There are multiple factors which need to be considered and assessed for this disclosure, which will likely result in incomplete information being provided. For instance, an individual may primarily work and live in an overseas jurisdiction during a reporting period, however, if they have a sufficient connection with Australia, such as spouse and assets in Australia (e.g., a house which the spouse continues to reside in) during that same reporting year, then their country of residence for Australian tax purpose may be Australia, rather than the overseas jurisdiction they primarily work and live in. Furthermore, it's not uncommon for individuals residing within the European Union to commute to and work in a neighbouring country.
- Sensitive information gathering - Companies do not keep record of an employee's personal tax residency information, and collating this information alongside the full name of the employee creates the risk for a breach of personal data.

### 2. Practical challenges of the proposed changes to restructure related disclosures

BDO highlights that the general and ambiguous nature of the proposed changes to the restructure related disclosures will have unforeseen impacts on certain industries.

For instance, Offshore banking units (OBUs) enter into and amend a significant number of financing arrangements which would require disclosure in the Short Form. These financing arrangements would be considered as part of the OBUs primary business activities and would not be considered restructure a of functions, assets or risks.

## Appendix 2 Example of administrative concession

### Disclosure of a restructure event subject to hybrid mismatch in the International Dealings Schedule

- An Australian subsidiary (Aus Co) of a CbC multinational group is required to prepare and lodge a full Local File (i.e., Part A, Part B, and Short Form), as well as the International Dealings Schedule with the ATO.
- During the relevant income year, it has been identified and disclosed in Question 49 of the International Dealings Schedule that a restructuring event had occurred which would be subject to the hybrid mismatch rules.
- As part of the International Dealings Schedule disclosure in Question 49, Aus Co has provided the following high-level description in relation to the most material restructured/replacement/alternative arrangements:
  - each prior hybrid mismatch arrangement including the nature of the hybrid mismatch and how the tax laws of relevant counterparty jurisdictions operated to produce the mismatch, and;
  - each of the steps in each of the restructured/replacement/alternative arrangements, including the steps involving other members of your global group occurring in connection with the transactions involving you, including any steps that are in addition to the removal of a hybrid mismatch outcome.
- Furthermore, Aus Co has disclosed the corresponding tax impact (i.e., taxable income has remained the same or decreased).

Following from the above, this scenario would also have to be included in the Short Form Local File resulting in a duplication of information disclosed to the ATO and would be considered an unreasonable compliance burden. Where a duplication of the above type is identified, BDO recommends a corresponding administrative concession is incorporated in the Short Form Local File to avoid duplication.