

Financial Reporting and Accounting Guide

July 2019

Financial reporting relief for foreign controlled small proprietary companies

This publication provides a high-level summary of ASIC Corporations (Foreign-Controlled Company Reports) Instrument 2017/204, which provides relief to foreign controlled small proprietary companies from the annual financial reporting requirements of the *Corporations Act 2001*, subject to the conditions specified in the instrument being satisfied.

What is a foreign controlled small proprietary company?

A 'foreign controlled small proprietary company' is a small proprietary company (as defined by the *Corporations Act 2001*) that is controlled by a foreign company for all or part of the financial year.

A foreign controlled small proprietary company is required to prepare, audit and lodge an annual financial report under the *Corporations Act 2001* unless:

- the company is consolidated (for all or part of the financial year during which the company is controlled by a foreign company) in financial statements that are lodged with ASIC for the financial year by a registered foreign company, company, registered scheme or disclosing entity; or
- the company is granted relief from the financial reporting requirements of the *Corporations Act 2001* (e.g., under a legislative instrument, such as ASIC Corporations (Foreign-Controlled Company Reports) Instrument 2017/204)).

What are the key conditions that must be satisfied in order to obtain financial reporting relief?

In order for a foreign controlled small proprietary company to obtain financial reporting relief under ASIC Corporations (Foreign-Controlled Company Reports) Instrument 2017/204, there are a number of conditions that must be satisfied, including:

- The foreign controlled small proprietary company is not part of a 'large group' (see below).
- The directors of the foreign controlled small proprietary company have resolved (for each year of financial reporting relief), no earlier than 3 months before the start of the financial year, that the relief available under the instrument be relied on by the company for the financial year.

What is the deadline for notifying ASIC?

As a condition for obtaining financial reporting relief under ASIC Corporations (Foreign-Controlled Company Reports) Instrument 2017/204, the foreign controlled small proprietary company must lodge notice of the directors' resolution [that the relief available under the instrument be relied on by the company] with ASIC (using Form 384). This 'opt-in' notice must be lodged with ASIC within the period commencing 3 months before the start of the financial year and ending 4 months after the end of the financial year, in relation to the first year of relief.

What is a 'large group'?

For the purposes of determining whether a foreign controlled small proprietary company is part of a 'large group' for the financial year:

'Group' means, the foreign controlled small proprietary company together with all of the following entities:

- (a) any other entity which controlled the foreign controlled small proprietary company at any time during, or at the end of, the financial year and which was registered or formed in Australia or carries on business in Australia;
- (b) any other entity (a corresponding entity) which is:
 - (i) controlled at any time during, or at the end of, the financial year by any foreign company which at the same time controls the foreign controlled small proprietary company; and
 - (ii) incorporated or formed in Australia or carries on business in Australia during that part of the financial year when it is controlled by the same foreign company as controls the foreign controlled small proprietary company;
- (c) any entity which is controlled at any time during, or at the end of, the financial year by the foreign controlled small proprietary company; and
- (d) any entity which is controlled by a corresponding entity (see paragraph (b), above) during that part of the financial year when the corresponding entity is controlled by the same foreign company as controls the foreign controlled small proprietary company.

'Large group' means a 'group' (see above) which, for a financial year (commencing on or after 1 July 2019), satisfies at least 2 of the following 3 criteria:

- (a) the combined revenue of the group for the financial year is \$50 million or more;
- (b) the combined value of gross assets of the group at the end of the financial year is \$25 million or more;
- (c) the group has 100 or more employees (part-time employees being counted as an appropriate fraction of a full-time equivalent) at the end of the financial year.

Further information and assistance

Contact Pitcher Partners for further information and assistance on the availability of financial reporting relief under ASIC Corporations (Foreign-Controlled Company Reports) Instrument 2017/204.

Contact us



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