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## Pricing

Detailed information about pricing as it relates to international tax for business.

### **Advance pricing arrangements**



An overview of advance pricing arrangements (APAs) and specific information for taxpayers.

### **Findings report APA program review**



See the key findings and observations from the advance pricing arrangement (APA) program review and consultation.

### **GST-free supplies for non-residents**



Find out about GST-free supplies (sales) for non-residents.

### **GST obligations for Pine Gap contractors**



How GST applies in Australia to prime contractors and subcontractors that supply goods or services at Pine Gap.

### **Pharmaceuticals Cluster**



We are monitoring tax performance and practices within the pharmaceuticals industry.

## Transfer pricing



Detailed information about international tax for business and transfer pricing.

QC 76120

# Findings report APA program review

See the key findings and observations from the advance pricing arrangement (APA) program review and consultation.

**Last updated** 30 June 2023

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## About the APA program

The advance pricing arrangement (APA) program is an important part of our compliance and assurance strategy. It is a critical element in achieving voluntary and cooperative compliance and, in turn, building trust and confidence in the tax system.

At the core of the APA program, we focus on the client experience. We do this by:

- providing greater certainty on a prospective basis for transfer pricing outcomes
- fostering a cooperative relationship with clients.

## **Background and context of the APA review**

This APA review ('the review') stemmed from our continual commitment to improve the client and staff experience in the APA program. To facilitate this, the review was conducted with a focus on how to best invest ATO resources in the delivery of the APA program to provide certainty to clients and encourage cooperative compliance, while supporting our efforts to assure tax risks across the large market and reduce the risk of transfer pricing disputes and double taxation.

This report:

- outlines our review methodology and consultation process
- sets out our key findings and observations.

## **Objective of the review**

The review sought to address:

- whether the APA program continues to meet the needs of clients and the ATO, and, whether it delivers an excellent experience for all clients and ATO staff
- how the APA program proactively prevents transfer pricing disputes and manages double taxation risk in the most effective and efficient manner possible.

The scope of the review included consideration of the management of technical transfer pricing issues and collateral risks, the nature of substantive issues that are best suited for the APA program, and how the APA program complements other ATO compliance programs.

A review of these areas was required to ensure the APA program continues to meet the needs of the community as well as the ATO.

## **Terms of reference**

The review involved a formal consultation process with key internal and external stakeholders on the following topics:

- market perspective of the APA program, including the value drivers of the APA program
- type of clients and transactions that should be prioritised for the APA program, including the APA program's entry criteria and the interactions with other ATO guidance
- tailoring the APA experience, including the
  - appropriateness of guidance and processes to ensure a consistent approach in tailoring the APA experience to individual client circumstances
  - effectiveness and efficiency by which transfer pricing and other collateral risks are managed and mitigated in the APA program
- communications to market, including the appropriateness of communications to market on key messages of the APA program.

## **Review methodology and consultation process**

This section describes the approach taken by the APA review team, including the category of stakeholders that were invited for consultation, the data evaluated, and the analysis conducted.

Stage 1: Define and scope the issues the APA program review is set up to address, including:

- collate and review APA program review background materials to date
- consultation with internal and external stakeholders to confirm scope of review
- prepare consultation framing questions and APA program review project.

Stage 2: Capture APA program data and consult with key stakeholders internally and externally, including:

- internal APA program data review
- formal invitation for submission to the consultation questions
  - one-on-one consultation with clients and advisors

- consult with other jurisdictions and understand best practices
- consultation with internal stakeholders.

Stage 3: Review and evaluate data and consultation responses, including:

- collating APA program data review outputs and responses to consultation questions
- review and evaluate APA program data review outputs
- review and evaluate feedback in response to consultation questions.

Stage 4: Develop recommendations informed by data and feedback, including:

- develop recommendations informed by APA program data and feedback responses to the consultation questions
- prepare APA program review recommendations
- implementation plan.

External stakeholders who participated in the consultation for the review included:

- key clients
- advisors
- other tax administrations
- an academic representative.

## Findings

This section provides a summary of the feedback from the consultation process and our response on these 4 aspects.

### Market perspective of the APA program

Consultation feedback:

- Bilateral APAs (BAPAs) provide tax certainty for material, new, and significant transactions, and mitigate the risk of double taxation.

- APAs are most suitable for clients seeking certainty for transfer pricing, particularly for significant transactions or where there is greater level of potential uncertainty.
- In some instances, it is perceived that a signed APA is considered implied endorsement of the underlying structure by the ATO. This may have arisen due to isolated cases where a substantial focus was placed on collateral issues.

Our response:

- We agree that BAPAs offer a greater degree of tax certainty and are therefore preferable. We intend to have a greater focus on dedicating resources to BAPAs. We recognise there are circumstances where unilateral APAs (UAPAs) are appropriate and UAPAs will remain available to clients under certain circumstances. This approach closely aligns with the Organisation for Economic Co-operation and Development (OECD) and global best practices.
- We agree that the APA product is best suited to significant transactions with greater level of potential uncertainty or double taxation or both.
- We note there is mixed feedback regarding whether the APA program can endorse underlying tax structures and we agree that it is important to clarify what the program is intended to address. The purpose of an APA is to achieve prospective certainty over the transfer pricing outcomes of related party transactions.

## **Types of clients and transactions that should be prioritised for the APA program**

Consultation feedback:

- We should re-shift the focus of APAs to transfer pricing issues.
- Streamlined APAs should be offered to a wider group.
- The current entry criteria are unclear and inconsistent.

Our response:

- We agree with the market view to refocus the scope of the APA program to transfer pricing issues.
- We understand the market's needs for a streamlined product where the transactions are less significant. For such transactions, there

are alternate avenues outside of the APA program which allow taxpayers to assure themselves they are reporting the right amount of tax.

- We acknowledge that the APA program entry criteria needs to be clearer and applied more consistently.

## **Tailoring the APA experience**

Consultation feedback:

- In some instances, consultees suggested the APA experience is akin to an audit.
- Some consultees noted a perceived lack of transparency in our process and improvements could be made to provide clearer and prompt communication.

Our response:

- We acknowledge the market feedback around current client experiences. Through our recommendations, we are seeking to address the perceived 'audit environment' and improve APA cycle times.
- We acknowledge the comments suggesting we provide clearer and prompt communication, and this will be reflected by the recommendations on improvements to processes and communication.

## **Communications to the market**

Consultation feedback:

- Guidance on our website would help with setting expectations upfront and cater to a variety of users.
- Consultees would like additional insight for the published APA statistics and clarity on when an APA would be accepted or rejected.
- Greater opportunity for market participants to interact with us through structured forums.

Our response:

- We acknowledge the market feedback and we are directly addressing this through the recommendations to update APA

guidance and published statistics.

## Recommendations

Following the consultation process, we developed the following set of recommendations:

1. [re-focusing the scope](#)
2. [setting out clearer APA program entry criteria](#)
3. [better defining collateral issues](#)
4. [outlining how to address collateral issues](#)
5. [resolving collateral issues](#)
6. [clarifying when an APA would be exited](#)
7. [setting out mutual obligations](#)
8. [delivering governance improvements](#).

Together, the recommendations aim to achieve:

- improved client and staff experience
- increased mutual understanding across the ATO and market regarding the scope of the APA program and the processes involved
- increased effectiveness of our resource allocation
- stronger APA program performance by:
  - increasing tax certainty through the prioritisation of significant transactions that have a higher risk of double taxation
  - improved cycle times
  - enhanced governance measures.

### 1. Re-focussed scope

The core objectives of the APA program are to provide:

- tax certainty for clients with respect to their transfer pricing arrangements for future international related party dealings



- certainty with respect to the transfer pricing outcomes on significant cross border dealings where the double taxation risk is high
- an efficient voluntary and cooperative program to clients who are willing to comply and is highly valued by clients.

For clients, the ATO and their treaty partners, APAs provide practical prospective certainty for tax outcomes to:

- assist business planning
- reduce compliance cost
- address double tax risk (in the case of BAPAs and multilateral APAs (MAPAs)).

Transfer pricing issues are resolved in a collaborative and transparent manner.

The APA process aims to:

- facilitate principled, practical, and cooperative negotiations
- resolve transfer pricing issues expeditiously and prospectively
- use resources of the client and the tax administration efficiently
- provide a measure of predictability for the client.

As the APA is a voluntary and discretionary engagement product, it is consistent with our strategic direction to promote early engagement and self-compliance.

The APA program does not intend to directly deal with taxation matters (both domestic and international) that are outside of transfer pricing. Where an arrangement involves collateral issues that can directly impact on the pricing or characterisation of the international party dealing, those collateral issues must be resolved and addressed as a precondition for entry into the APA program.

### **Intended outcome of the recommendation**

Re-focussing the scope of the APA program ensures that the product efficiently delivers prospective transfer pricing certainty and assurance, improving the APA experience for both clients and the ATO.

## **2. Better defining entry criteria**

The below characteristics have been identified to ensure that the clients and transactions that are being accepted into the APA program align closely with the program's re-focussed scope.

### **Positive Indicators**

Positive indicators as to whether an APA application will be accepted into the program include:

- significant dealings where there is tax uncertainty
- a prioritisation of BAPAs and MAPAs to focus on the elimination of double tax
- materiality considerations with a minimum threshold calculated as a per annum average of at least
  - \$5mil of covered transactions, or
  - 80% of assessable income or deductible expenses
- cooperative clients displaying open and transparent behaviour, and with a willingness to comply with their tax obligations
- renewals are generally welcomed and represent an efficient use of resources to provide certainty given legacy knowledge of the client and historical arrangements
- to develop treaty partner relationships, address emerging trends, or transactions that are of economic significance to Australia's economy.

### **Negative Indicators**

Negative indicators as to whether an APA application will be accepted into the program include:

- taxpayers who are engaging in tax avoidance activities or schemes
- the presence of collateral issues that impact on the transfer pricing outcome
- UAPAs are permissible but deprioritised
- where there are significant differences in views on the transfer pricing approach which cannot be reconciled

- where alternate avenues are available to provide tax certainty which represent a better use of resources or is more suitable or both than an APA.

No one indicator is determinative and there is no defined weighting of the indicators. All entry criteria indicators are considered collectively through the early engagement panel process. More information on how collateral issues are considered as an entry criterion is provided in [recommendation 4](#).

The decision on whether we will invite the taxpayer to submit a formal APA application is made through the early engagement panel process. Ultimately, the decision rests with the Senior Executive Services (SES) Officer responsible for the APA Program Management Unit, who serves as the Chair to the panel.

### **Intended outcome of the recommendation**

The recommendation:

- provides clearer entry criteria which was consistently requested by external consultees
- provides an improved client experience
- ensures our resources are focussed on the cases which best align with the scope of the APA program.

See examples of how this recommendation would be applied in the [appendix](#).

## **3. Better defining collateral issues**

This recommendation intends to extend the guidance in the *PSLA 2015/4* to identify and distinguish specific types of collateral issues.

### **Intended outcome of the recommendation**

With clearer definitions, we anticipate:

- a more coherent response to collateral issue resolution
- an increased mutual understanding of collateral issues within the ATO and with the broader market.

## **4. Approach to collateral issues**

This recommendation sets out principles on how to address collateral issues that have been identified during various stages in the APA process.

The key consideration when it comes to deciding how collateral issues are addressed is whether they impact on the transfer pricing outcome of the covered transaction.

### **Collateral issue identified during the early engagement stage (Stage 1)**

1. The client is unlikely to be accepted into the APA program until the collateral issue is resolved if the issue identified
  - has features that are subject to an ATO view as defined by *PSLA 2003/3*, and
  - has a direct or indirect impact on the covered transaction.
2. If the collateral issue identified has features where we are still developing a view on the issue
  - the client is notified of the potential issue
  - the collateral issue itself will generally not prevent entry to the APA program, unless the issue directly impacts on the transfer pricing outcome
  - a resolution agreement with mutual obligations to address the issue is agreed (per recommendation 5).

### **Collateral issue identified during the APA application stage (Stage 2)**

Where a collateral issue is identified during the APA application stage, the APA may be paused for up to 6 months to reach agreement on a resolution pathway between the ATO, client and treaty partner.

1. The client is likely to be exited from the APA program if there are features of the collateral issue where there is
  - an ATO view, as defined by *PSLA 2003/3*; and
  - a direct or indirect impact on the covered transaction.

2. If there are features of the collateral issue where we are still developing a view on the issue, there will be best endeavours for the APA negotiations to continue, likely
- with the inclusion of critical assumptions
  - to address the issue in accordance with a resolution agreement.

### **Issue identified during the monitoring compliance stage (Stage 3)**

If a collateral issue is identified during the monitoring compliance stage, consideration will be given to whether the collateral issue triggers a critical assumption:

- If no critical assumption is triggered, then the terms of the APA will not be disturbed.
- If a critical assumption is triggered, the client and treaty partner will be consulted to agree on a resolution pathway.

### **Intended outcome of the recommendation**

The current process to resolve collateral issues can create lengthy delays in the early engagement and APA application stages.

This recommendation intends to set clear pathways for progression through the APA stages where a collateral issue is identified. This change is intended to reduce delays and ensure the client experience of the APA program is a cooperative one.

See examples of how this recommendation would be applied in the [appendix](#).

## **5. Resolving collateral issues**

### **General process where a collateral issue is identified during Stage 1 and 2**

- The client must be informed about the collateral issue within 3 months of the risk being identified. They must be provided with sufficient time to address questions before a decision is made by the APA panel.
- There must be an agreement, with mutual obligations for both the ATO and the client, on how to deal with the collateral issue,

including

- setting out expectations on timeframes
  - broadly describing the type of information that is expected to be provided by the client
- 
- We will work with the client to identify the appropriate information relating to the collateral issue so that we can come to a view if the APA application can be accepted or, if the application stage has already started, whether it can continue. This decision is to be made by the APA panel within 6 months of the client agreeing to the resolution pathway for the collateral issue.
  - If the client does not agree to a resolution pathway, or if they are not adhering to the resolution pathway agreement, the APA will be exited consistent with the principles under recommendation 4.
  - If a collateral issue is carved-out of the APA process, the timeframes for the completion of an APA may be extended accordingly and a separate compliance product for the collateral issue will be initiated. The timing of the separate compliance product will be subject to our internal considerations.
  - If the collateral issue is to be resolved as part of the APA process, there may be a provision to extend APA timeframes, which is subject to agreement with the client and treaty partner.

### **General process where a collateral issue is identified during Stage 3**

- We will consider how to resolve the collateral issue in-line with existing critical assumptions in the APA.

### **Intended outcome of the recommendation**

This recommendation introduces a uniform process with established and mutually agreed timeframes to resolve collateral issues. This is intended to improve the governance and transparency of the program, which in turn improves the client experience.

This recommendation addresses:

- market feedback around transparency of the program
- timeliness

- the impact of collateral issues in delaying a pricing agreement.

## **6. Principles for APA exits**

We have outlined clearer guidance that can result in the exit of an APA, other than collateral issues, to address the feedback received during the consultation period.

APAs can be exited where a viable resolution pathway cannot be agreed with the client or treaty partner that would result in finalising the APA within a reasonable timeframe. Examples include where:

- there is untimely or incomplete provision of information necessary to inform the resolution of the APA or associated collateral issues
- the client is uncooperative or there is significant disengagement with the agreed process
- the APA or associated collateral issue milestones are not met or substantially behind schedule
- there is significant divergence in the pricing outcome and the prospects of closing that gap within a reasonable timeframe is unachievable.

APAs can also be exited where there are concerns that there is a tax avoidance scheme or similar schemes are proliferating such that a consistent ATO approach is required, rather than undertaking separate agreements with individual clients under the APA process.

If during the negotiation phase, it becomes apparent that the client is engaging in tax avoidance activities or schemes, consistent with recommendation 2, the client is considered not an appropriate client for the APA program.

The general approach for such high-risk arrangements will apply, that is, the arrangement will be prioritised for review or audit.

APAs can also be exited when cases have aged beyond 3 years of their commencement period. This is to:

- align with the OECD's best practices of at least 2 prospective years for a typical 5-year APA
- ensure APAs deal with prospective covered transactions rather than covering retrospective years.

We are committed to transparent, regular, and timely communication with clients where there are concerns that an APA exit principle may be activated. The decision to exit is made through the APA panel process and ultimately by the Chair of the panel.

### **Intended outcome of the recommendation**

Clarifying principles for when an APA will be exited responds to consultation feedback on:

- long cycle times
- factors that can lead to an exit.

It reinforces the principle that the APA program is a voluntary compliance option for cooperative clients.

## **7. Mutual obligations while in the APA program**

Setting out the mutual obligations for both the ATO and clients helps ensure:

- the APA application process is efficient and effective
- interactions are professional, respectful, and timely
- future tax certainty is maximised.

### **Expectations for the ATO**

We are expected to:

- ensure the APA program timeframes are adhered to
- facilitate regular and timely communication with clients
- facilitate regular and timely communication with treaty partner competent authorities
- where practicable, competent authorities should coordinate the information gathering process with treaty partners to limit duplication
- ensure all requested information is relevant to the proposed covered transactions or associated collateral issues
- handle provided information with appropriate discretion and limit access based on our privacy principles



- ensure an efficient review of information is provided, with ongoing client engagement to ensure mutual understanding
- ensure adherence to APA program scope, including providing clear and timely communication around concerns that may require the application of the exit principles
- clients are not directly involved in the preparation of position papers, interactions with the APA panel, or in competent authority negotiations
- maintain mutual trust through full and frank disclosure and negotiate in a cooperative environment
- apply principles consistently to ensure fair and reasonable outcomes while also considering each APA application on its merits according to its own facts.

## **Expectations for clients**

Clients are expected to:

- ensure the APA program timeframes are adhered to
- maintain regular, open communication with us
- ensure requested information is provided with an appropriate level of quality, relevancy, and timeliness. Responses to information requests should be open and transparent
- ensure responses to information requests are complete, with explanatory narrative where required and all relevant supporting source documents – documents should meet the appropriate standard of evidence to substantiate transfer pricing analysis
- provide information to both treaty partners at the same time where appropriate for BAPAs and MAPAs
- proactively disclose any change in circumstances during the APA program
- clients are not directly involved in preparing position papers, interactions with the APA panel or in competent authority negotiations
- maintain mutual trust through full and frank disclosure and negotiate in a cooperative environment

- understand that each APA application will be considered on its merits according to its own facts, and that we will apply principles consistently to ensure fair and reasonable outcomes.

### **Intended outcome of the recommendation**

Clarifying the mutual obligations for both the ATO and clients in the APA program addresses feedback around:

- client uncertainty about what is expected of them
- how transparent we are regarding client requirements
- improvements to our communication during the APA term
- staff experience and the level of information required for an APA.

## **8. Governance improvements**

To both address some of the consultation feedback and facilitate the implementation of other recommendations, a series of governance improvements is also required, including updating our related public guidance materials and website guidance by:

- incorporating the review recommendations into *PSLA 2015/4*
- updating *PCG 2019/1* to ensure consistency with the APA review recommendations, including removal of references to the pre-qualified APAs
- integrating subsequent process improvements, including
  - re-evaluating the APA panel composition and meeting frequency
  - setting out entry criteria clearly in guidance materials and consistently evaluating it across all APA applications
  - updating internal APA guidance materials.

Updates to our other public guidance materials will be moderated for consistency and the scope will be re-focussed on the APA program and the APA review recommendations. While materials are being updated, any inconsistencies will be disregarded, and the APA review recommendations will be applied.

The enhanced program governance removes the need for clients to request a review of decisions on entry criteria and application

requests.

## Operation of the APA panel

As part of our processes, there will be 2 panels dealing with APAs as follows:

- The **pre-engagement panel** will determine if the
  - application fits within the scope of the APA program
  - entry criteria are applied appropriately
  - collateral issues are managed and treated in accordance with the principles developed.
- The **APA panel** will convene at appropriate junctures to consider the negotiation parameters to be finalised by the Competent Authority and ATO APA case team.

Members of each panel will be adapted depending on panel needs.

The Chair of the panel has delegated decision-making authority to the panel but is responsible for ensuring the delegated powers and functions are exercised in accordance with the scope and objectives of the APA program. The delegation may be revoked or varied at any time.

The SES responsible for the APA Program Management Unit (PMU) is the Chair of the above panels and has ultimate decision-making authority for entry and exit decisions.

The APA PMU will be responsible for:

- monitoring APA applications
- ensuring the program is being administered in line with the APA review recommendations.

## Other improvements

More detailed annual APA program statistics and insights will be published. This includes enhanced program metrics in addition to the pre-existing internet statistics, trend analysis and background insights to the statistics.

Progress has already been made on our website for the **2022 financial year APA program statistics**.

Other improvements include:

- external stakeholder information sessions through various forums
- routine governance and maintenance
- avenues for participants to discuss market observations on the APA program.

### **Intended outcome of the recommendation**

This recommendation:

- directly improves the governance and transparency of the APA program
- allows the implementation of previous recommendations
- addresses market feedback requesting clearer guidance, additional transparency, and more detailed insights and statistics
- addresses feedback on clarification of the roles of our staff involved in the APA program.

## **Monitoring and evaluation**

We will monitor and evaluate the performance of the APA program through various measures, including:

- annual published statistics
- quarterly internal reporting
- ongoing feedback from APA participants.

## **Appendix**

### **Principles to deal with entry criteria: low risk or insignificant dealings**

There are circumstances where an APA would not be a good use of both our and the client's compliance resources.

In such circumstances, we are comfortable that the tested transactions would be unlikely to attract compliance resources for transfer pricing.

Example: principles to deal with entry criteria – low risk or insignificant dealings

Taxpayer 1 Pty Ltd (TP1) is wholly owned subsidiary of Parentco International AG, a company in Switzerland. It contributes approximately 2.6% of the Parentco Group revenue. Its principal activities include re-selling books in Australia.

TP1 is a distributor and retailer that bears some risk in relation to market risk and inventory risk. It purchases products from a related party for resale to local retail end-customers.

The purchase of related party transactions historically has been approximately \$1 million per annum and is expected to be stable in the next 5 years. TP1 reports an operating margin within the green zone of *PCG 2019/1* and has applied for a renewal of a unilateral APA.

TP1 would likely not be considered suitable for the APA program.

Positive features:

- significant dealings where there is tax uncertainty **(NO)**
- BAPAs or MAPAs to focus on the elimination of double tax **(NO)**
- materiality
  - higher of an absolute annual average of \$5mil, or
  - 80% of total assessable income or total deductible expenses **(NO)**
- cooperative taxpayers with a good compliance record **(YES)**
- renewal **(YES)**
- to develop treaty partner relationships, address emerging trends and transactions are of economic significance to Australis's economy **(NO)**

Negative features:

- taxpayers who are engaging in profit shifting or tax avoidance schemes **(NO)**

- the presence of collateral issues that directly or indirectly impact upon the pricing of the transaction in question **(NO)**
- UAPAs (permissible but deprioritised) **(YES)**
- where there are significant differences in views on the transfer pricing approach that cannot be reconciled **(NO)**
- where alternate products are available and represent a better use of resources or is more cost effective than an APA **(YES)**

## Principles to deal with entry criteria: significant difference in views

There may be circumstances where there are significance differences in ATO and taxpayer views on the transfer pricing approach.

Where the taxpayer is open to other methods and is generally cooperative, differences can be resolved during the APA. This is a good use of ATO and taxpayer resources.

If the difference cannot be reconciled, the impacts on the APA program can be detrimental with respect to cycle times and client experience.

### Example: principles to deal with entry criteria – significant difference in views

Taxpayer 2 Pty Ltd (TP2) was an outbound commodity exporter with over \$2 billion in related party sales. It was seeking a BAPA over the sale of commodity exports.

Originally TP2 proposed a transfer pricing method that was novel for the transaction and not a recognised transfer pricing method in the OECD Transfer Pricing Guidelines. However, it was open to amending the transfer pricing method in discussions with the APA case team and cooperative through the APA process.

TP2 would likely be considered suitable for the APA program.

Positive features:

- significant dealings where there is tax uncertainty **(YES)**
- BAPAs or MAPAs to focus on the elimination of double tax **(YES)**

- materiality
  - higher of an absolute annual average of \$5mil, or
  - 80% of total assessable income or total deductible expenses **(YES)**
- cooperative taxpayers with a good compliance record **(YES)**
- renewal **(NO)**
- to develop treaty partner relationships, address emerging trends, and transactions are of economic significance to Australis's economy **(YES)**

Negative features:

- taxpayers who are engaging in profit shifting or tax avoidance schemes **(NO)**
- the presence of collateral issues that directly or indirectly impact upon the pricing of the transaction in question **(NO)**
- UAPAs (permissible but deprioritised) **(NO)**
- where there are significance differences in views on the transfer pricing approach that cannot be reconciled **(NO)**
- where alternate products are available and represent a better use of resources or is more cost effective than an APA **(NO)**

## Principles to treat collateral issues: early engagement

### Example: principles to treat collateral issues – early engagement and entry not allowed

Taxpayer 3 Pty Ltd (TP3) is launching a new business involving international related party transactions with Singapore. There is a commercial rationale for launching into Singapore as it is a financial hub for the region.

There is no suggestion of tax avoidance. The dealings are significant. TP3 wants tax certainty on both sides and requests a BAPA.

TP3 has taken a view on a collateral issues contrary to a published ATO Taxation Ruling. The collateral issue will directly have an impact on the transfer pricing outcomes of the APA's covered transactions.

TP3 is not suitable for the APA program until the ATO is satisfied that there is a resolution pathway for the collateral issue.

This next example illustrates where an APA may be accepted into the APA program when a collateral issue is identified during early engagement.

Example: principles to treat collateral issues – early engagement and entry allowed

Taxpayer 4 Pty Ltd (TP4) is the Australian subsidiary of a global group with its ultimate parent entity based in France.

There is no suggestion of tax avoidance. The dealings are significant.

The taxpayer wants tax certainty on both sides and requests a BAPA.

During early engagement, it is clear that some of the taxpayer's arrangements involve a collateral issue where we are still developing a view, but the collateral issue will not have an impact on the transfer pricing outcomes for TP4.

TP4 will be notified of the potential issue and allowed into the APA program unless the collateral issue directly impacts on the transfer pricing outcome.

## **Principles to treat collateral issues: during the APA application stage**

This next example illustrates where a collateral issue may be resolved concurrently with the APA progressing.

Example: principles to treat collateral issues – in conjunction with the APA



Taxpayer 5 Pty Ltd (TP5) is the Australian subsidiary of a global group with its ultimate parent entity based in the UK.

There is no suggestion of tax avoidance. The dealings are significant.

The taxpayer wants tax certainty on both sides and requests a BAPA

Through the APA application stage, it is uncovered that some of the taxpayer's arrangements involve a collateral issue we are still developing a view on.

We may attempt to manage the collateral issue via critical assumptions or carve out the transactions potentially impacted by the collateral issue and examine them separately to the covered transactions.

QC 72947

## GST-free supplies for non-residents

Find out about GST-free supplies (sales) for non-residents.

**Last updated** 24 February 2021

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Under Australian GST law some sales are **GST-free**. This term is generally the same as:

- zero rated (in other countries with VAT/GST systems)
- exempt (in countries with sales tax systems).

## **Food and beverages**

Most basic food and beverage items are GST-free. This includes some food and beverage ingredients. Non-essential food and beverage items are taxable – for example, confectionery or savoury snacks.

### **See also**

- GST and food

## **Medical services**

Medical services are GST-free if either:

- a benefit is payable for the services under the Australian Medicare legislation
- the service is both
  - provided by or on behalf of a medical practitioner registered under a law of a State or Territory of Australia
  - generally accepted as being necessary for the appropriate treatment of the recipient.

This is subject to some exceptions, such as cosmetic procedures, which are taxable.

### **See also**

- GST and medical services

## **Medical aids and appliances**

Medical aids and appliances (including spare parts for medical aids and appliances) are GST-free if the items are all of the following:

- specifically listed in the GST legislation

- specifically designed for people with an illness or disability
- not widely used by people without an illness or disability.

Goods that assist in medical research or the manufacture of medical aids and appliances are not included, for example 3D printers and related software.

**See also**

- GST and medical aids and appliances

## **Education courses and materials**

Generally, an education course is GST-free if the course or institution providing the course is accredited either:

- under the relevant law of a state or territory of Australia
- by the Education Minister.

Education course materials are GST-free when provided by the entity supplying the GST-free education course. The materials used by the students doing the course for the purpose of the course, for example, photocopied or printed course notes for a GST-free education course, are GST-free.

However, some materials, used in education courses are not GST-free, for example textbooks.

## **Cars and car parts for eligible people**

The purchase or lease of a car and certain car parts can be GST-free when made by an eligible:

- disabled veteran
- person with a disability who is gainfully employed.

To receive car or car parts GST-free, a declaration for exemption must be completed and presented to the car or car parts supplier.

**See also**

- Declaration for an exemption of GST on a car or car parts – person with a disability who is gainfully employed

- Declaration for an exemption of GST on a car or car parts – disabled veterans

## Help

If you still have questions after reading this information, you can:

- visit [GST-free supplies](#)
- email [AustraliaGST@ato.gov.au](mailto:AustraliaGST@ato.gov.au)

QC 52379

# GST obligations for Pine Gap contractors

How GST applies in Australia to prime contractors and subcontractors that supply goods or services at Pine Gap.

**Last updated** 15 September 2022

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## GST obligations for resident or non-resident entities

You may have GST obligations if you are a resident or non-resident entity who is a:

- prime contractor who has entered into a contract with the US Government to supply goods or services related to the Joint Defence Facility Pine Gap (Pine Gap)
- subcontractor who has entered into a contract with a prime contractor to supply goods or services related to Pine Gap.

The goods and services you supply related to Pine Gap will generally be connected with Australia and meet the other requirements to be **taxable supplies**. However, in some cases they may be GST-free or not connected with Australia.

You should consider **registering for GST** before commencing the contract in Australia.

## **Supplies connected with Australia**

### **Goods**

A sale of goods related to Pine Gap is connected with Australia if the goods are any of the following:

- delivered or made available in Australia to the purchaser
- removed from Australia
- brought to Australia – provided the seller either imports the goods or installs or assembles the goods in Australia.

If you need more information, our ruling **GSTR 2018/2** explains when supplies of goods are connected with Australia.

#### **Example: supply of goods**

ABC Ltd is contracted by the United States (US) Government as a non-resident prime contractor to supply goods to be delivered to Pine Gap for A\$1,000,000. The supply of goods in question is not GST-free.

ABC Ltd purchases the goods from OZ Pty Ltd, a resident business for \$800,000 to fulfill the prime contract with the US Government.

OZ Pty Ltd supplies the goods to ABC Ltd by delivering the goods in Australia and making them available to the US

Government representative at Pine Gap.

This transaction involves two supplies of the goods - ABC Ltd's supply to the US Government and OZ Ltd's supply of the goods to ABC Ltd.

Both ABC Ltd's supply to the US Government and OZ Pty Ltd's supply to ABC Ltd are connected with Australia and subject to GST as the other requirements to be a taxable supply are satisfied. This is because the goods that are the subject of both supplies are delivered in Australia (Pine Gap).

Both ABC Ltd and OZ Pty Ltd must register for GST to meet their obligations.

## Services

A supply of a service related to Pine Gap is generally connected with Australia if *any* of the following applies:

- the service is done in Australia
- the seller makes the sale through an enterprise they carry on in Australia.

An exception applies for supplies of services by a non-resident subcontractor to the non-resident prime contractor where:

- the supplies are done in Australia
- the prime contractor makes the acquisition in carrying on their enterprise outside Australia.

Therefore, supplies done in Australia (that is, performed in Australia) by the non-resident sub-contractor to the non-resident prime contractor may not be connected with Australia. If so, they will not be subject to GST.

However, supplies of services done in Australia by a non-resident prime contractor to the US Government are connected with Australia. The exception does not apply as in these specific circumstances the US Government will not be making the acquisition in carrying on an enterprise. The definition of enterprise under the GST law specifically includes the activities of Australian government related entities but not non-commercial activities of foreign government entities.

If you need more information, our ruling **GSTR 2019/1** explains whether *supply of anything other than goods or real property are connected with Australia*.

## **GST-free supplies**

Even if a supply is connected with Australia, it will not be subject to GST if it is GST-free.

The supply of services to a non-resident who is not in Australia is GST-free if either of the following applies:

- the service is not
  - work physically performed on goods situated in Australia when the work is done, or
  - directly connected with real property
- the service is acquired in the course of an enterprise by the non-resident who is not registered or required to be registered for GST.

Whilst the US Government is a non-resident, in these specific circumstances the US Government will not be making the acquisition in carrying on an enterprise. Therefore, supplies to the US Government of work physically performed on goods situated at Pine Gap will not satisfy either requirement to be GST-free.

For more information about supplies of services to non-residents outside Australia, and supplies used or enjoyed outside Australia, see:

- **GSTR 2004/7** *Goods and services tax: in the application of items 2 and 3 and paragraph (b) of item 4 in the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999*
  - *when is a 'non-resident' or other 'recipient' of a supply 'not in Australia*
  - *when the thing supplied is done'?*
  - *when is 'an entity that is not an Australian resident' 'outside Australia when the thing supplied is done'?*
- **GSTR 2005/6** *Goods and services tax: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or*

*real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999.*

Example: supply of services

ABC Ltd is contracted by the US Government as a non-resident prime contractor to provide services, consisting of the repair and maintenance of goods held by the US Government at Pine Gap, for \$1,000,000. ABC Ltd subcontracts this supply to XYZ Pty Ltd, a resident company, for \$800,000.

There are 2 supplies being made under this example:

1. ABC Ltd's supply to the US Government
2. XYZ Pty Ltd's supply to ABC Ltd.

Supply by ABC Ltd

The services supplied by ABC Ltd are done in Australia by XYZ Pty Ltd and as a result are connected with Australia. The US Government does not acquire the service for the purpose of their enterprise therefore the exception to when supplies of services are connected with Australia does not apply.

ABC Ltd's supply is not GST-free as the services are:

- physically performed on goods situated in Australia when the work is done, and
- not acquired by the US Government for the purpose of an enterprise.

ABC Ltd must register for GST to meet their obligations.

Supply by XYZ Pty Ltd

XYZ Pty Ltd's supply of services to ABC Ltd of repairing the goods at Pine Gap owned by the US Government is connected with Australia because the services are supplied through an enterprise XYZ Pty Ltd carries on in Australia.

XYZ Pty Ltd's supply is not GST-free as:

- the services are physically performed on goods situated in Australia when the work is done, and



- ABC Ltd is required to be registered for GST.

XYZ Pty Ltd must register for GST to meet their obligations.

## Registration for non-resident contractors

It is likely as a non-resident Pine Gap contractor you will need to register for **standard GST registration**.

For more information on working out your GST turnover and how to register for GST see **GST-for-non-residents and non-resident businesses and GST**.

For the duration of your contract, you will also need to lodge a **business activity statement (BAS)** to report your GST and claim **GST credits** if applicable.

As you cannot lodge your BAS electronically from outside Australia, you may need to engage an Australian registered tax agent.

## Registration for resident contractors

Registering for GST provides further information for resident prime contractors and subcontractors to meet their GST obligations including working out your GST turnover and claiming GST credits.

## Contact us

If you're a non-resident contractor, and you don't use a resident tax agent, you can contact us using our **Individuals - complex advice request form**.

If you're a contractor and you're a resident or use a resident tax agent, you can contact us using **Online services for business** or **Online services for agents** and selecting:

- **Communication tab** and the either **Secure mail** or **Practice mail**
- then select **New**
- in the **Topic field**, select **View more topics** from the dropdown list
- in the **Other topics** list, select **GST**

- Complete all the required details and click submit.

QC 68277

## Review of pharmaceutical companies

We are monitoring tax performance and practices within the pharmaceuticals industry.

**Last updated** 5 April 2019

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[What you should do](#)

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The pharmaceutical industry is strategically significant to the Australian economy and tax base. Its size, with annual sales of approximately \$42 billion, and the diverse nature of companies operating in it make it an important area of focus for the ATO.

As a result, we have a team of senior officers reviewing the tax performance and transfer pricing practices of the industry. This review seeks to ensure the pharmaceuticals sector is meeting their tax obligations under Australian law.

We are also assessing a range of domestic and international tax risks associated with related party financing, thin capitalisation, intellectual property migration, consolidation, business restructures and research and development.

## Review of transfer pricing practices

We are conducting a broad review of transfer pricing practices of Australian-based multinational subsidiaries in the industry. This is being achieved through a series of reviews and audits, as well as cooperative compliance approaches through advanced pricing arrangements.

Of particular concern to us are non-arm's length conditions operating between entities in connection with their cross-border commercial and financial relations, resulting in the amount brought to tax in Australia not reflecting the contribution made by the Australian operations through functions performed, assets used and risks assumed. That is, the non-arm's length conditions don't reflect the economic contribution and value creation of Australian activities.

## **What we are doing**

We are conducting the reviews to gain a detailed understanding of the pharmaceuticals industry and ensure the industry pays the right amount of tax.

We continue to consult widely in our review of industry practices. This includes regular meetings with relevant government departments, advisory firms, industry associations, contract research organisations, industry experts and overseas tax administrations.

## **What you should do**

In order to reduce exposure to future compliance activity, we encourage you to:

- review your business structures and transfer pricing practices
- seek certainty from us through our Advance Pricing Arrangement program, see PS LA 2015/4 for further details
- seek independent professional advice or discuss your situation with us by emailing [Grant.Leader@ato.gov.au](mailto:Grant.Leader@ato.gov.au) or [Ernest.Lui@ato.gov.au](mailto:Ernest.Lui@ato.gov.au)

## **More information**

- Inbound supply chain strategy
- Tax Avoidance Taskforce

- Justified trust

QC 53236

## **Our commitment to you**

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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