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Public advice and guidance compendium – PCG 2017/1

This is a compendium of responses to the issues raised by external parties to the draft amendment to Schedule 2 of PCG 2017/1 *ATO compliance approach to transfer pricing issues related to centralised operating models involving procurement, marketing, sales and distribution functions*.

This compendium of comments has been edited to maintain the anonymity of entities that have commented.

Summary of issues raised and responses

Issue No.	Issue raised	ATO response / action taken
1	We understand that one of Schedule 2's aims is to distinguish between service providers and risk takers hubs. Therefore the low risk benchmark should be set to capture entities earning a profit consistent with a service provider to minimise compliance costs for these low risk offshore hubs.	The definition of non-core procurement hubs in Schedule 2 is intentionally broad. The low risk benchmark is to be used to test the pricing outcomes of all non-core procurement hubs, notwithstanding that they may have varying functional profiles that can also change over time. We expect that different hubs will have profit outcomes along a spectrum. The guidance on record keeping is provided in the final Guideline to assist taxpayers to manage their cost of compliance.
2	The exclusion test in paragraph 180 should be removed as: 1. The description of 'non-core items' and in particular the exclusion for 'items required to perform the core operations', does not provide clarity and makes the guidelines difficult to interpret. 2. It is submitted that there is no economic difference in the procurement function for core and non-core products to justify the distinction.	The exclusion test recognises that a relevant deliberation in determining the arms' length conditions of the procurement function such as the importance of the product to the taxpayer's business operations. The operational context in which fuel is purchased is used to provide a practical example of what are pertinent facts and circumstances to be taken into account.
3	To account for the volatility of sales volumes with	The low risk benchmark takes into account all the information

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	constant hub operating costs causing an offshore procurement hub to move outside of the green zone, an option be provided for taxpayers to use a weighted average basis of the low risk benchmark, for example over a three to five year period.	available to the ATO. It can be used to test the pricing outcomes of non-core procurement hubs with varying functional profiles. As profit outcomes along a spectrum are expected, and we will monitor the results of a taxpayer's arrangements each year and the trend over time in prioritising the allocation of compliance resources, the option of a weighted average to accommodate for volatility of sales is not considered to be necessary. Paragraphs 30 to 37 of the final Guideline also recognise certain circumstances where it is not necessary to self-assess the risk rating of your hub.
4	The ATO should consider increasing the values attached to the tax impact zone bands as they are too narrow. Very few taxpayers outside of the green zone would fall within the blue and yellow zones and too many would fall within the red zone. In these cases, it would be difficult for the ATO to allocate compliance resources appropriately.	The non-core procurement hub risk assessment framework in Schedule 2 takes into account all the information available to the ATO including data collected during compliance activities. To assist taxpayers understand how they can structure their arrangements to willingly comply with the ATO's approach to administering Australia's transfer pricing rules and reduce their costs of compliance, the guidance in the finalised schedule outlines our likely compliance approach to each risk zone. Where a taxpayer's arrangements are outside of the green zone, their risk rating can be mitigated by having transfer pricing documentation that supports the hub's profit outcome as being consistent with comparable arm's length outcomes. Further, paragraphs 30 to 37 of the final Guideline also recognise certain circumstances where it is not necessary to self-assess the risk rating of your hub. Paragraph 15 acknowledges that the use and application of the Guideline will be under continuous review and where necessary, revisions made at the end of that review.

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5	As Australia is yet to adopt the 2017 OECD Transfer Pricing Guidelines (2017 TPG), the schedule should reference the 2010 OECD Guidelines and 2015 OECD Action Items 8-10 report.	The finalised schedule references the latest OECD Transfer Pricing guidelines incorporated in Division 815 of the ITAA 1997 at the time of publication.
6	Remove the footnote reference to TR 1999/1 <i>Income tax: international transfer pricing for intra-group services</i> as it only applies to income years commenced before 29 June 2013.	The reference has been removed.
7	Paragraph 198 of draft Schedule 2 can be read as it being a requirement to contact the ATO where the hub makes a loss.	Paragraph 199 has been amended to make it clear that contacting the ATO is a service option available to taxpayers who may want assistance with applying the risk assessment framework.
8	Paragraph 200 of draft Schedule 2 indicates that the hub's cost base only include costs an independent party in comparable circumstances would be willing to incur. It should be made clear that this benefit test only applies to amounts paid to related parties and not third parties.	Paragraph 201 has been amended to make it clear that the benefit test only applies to related party costs.
9	The definition of 'pass through costs' is already widely understood and the reference to 'value add' in paragraph 203 of draft Schedule 2 may lead to some taxpayers to incur unnecessary analysis and costs of compliance.	The definition in paragraph 204 of the final Guideline is consistent with the definition in paragraph 151 of the Guideline. Paragraphs 55 to 59 provide guidance to taxpayers regarding the transfer pricing analysis and supporting documentation.