

Practical compliance guideline compendium – PCG 2025/2

❶ Relying on this Compendium

This Compendium of comments provides responses to comments received on draft Practical Compliance Guideline PCG 2024/D3 *Restructures and the thin capitalisation and debt deduction creation rules – ATO compliance approach*. It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Summary of issues raised and responses

All legislative references in this Compendium are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Issue number	Issue raised	ATO response
1	Changes are needed in the final Guideline to the risk zones, in particular the delineation of white and green zones: • restructures which have been assured by the ATO in reviews or audits should be in the white zone, rather than the green zone • where total debt deductions do not exceed \$2 million, taxpayers should fit into the white or green zone.	The final Guideline has been updated to expand the white zone to include: • restructures which have been reviewed in an audit or review and determined to be low risk or high assurance • for any year in which section 820-35 applies to a taxpayer, restructures for that year are also now in the white zone.
2	To aid in clarity, the examples in the Schedules to the Guideline should be reordered in the final Guideline to have low-risk and high-risk examples sorted by topic.	In the final Guideline, Schedules 1 and 2 have been amended to emphasise the connection between the examples in Schedule 1 and restructures in Schedule 2. To assist in clarity, the example titles also now include whether an example is low risk or high risk. Reordering the examples was considered and, on balance, not preferred.
3	The final Guideline should include a list of features, indicia or criteria for whether a restructure is low risk or high risk rather than relying on examples in Schedule 2.	The term 'restructure' is used broadly to include a wide range of arrangements or refinancings. The way in which the current thin capitalisation and debt deduction creation rules (DDCR) impact the affairs of a taxpayer will differ, as will the nature of any restructures in response. The low-risk zones include general characteristics that need to be present in all low-risk restructures (such as that Part IVA of the <i>Income Tax Assessment Act 1936</i> (ITAA 1936) would not otherwise apply). The examples are then

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		used to demonstrate circumstances the Commissioner would apply resources to investigate, distilled from stakeholder engagements. This approach is designed for taxpayers to self-assess using the examples provided in the Guideline. The examples are based on stakeholder submissions of realistic and expected restructures.
4	The final Guideline should provide further risk zones to differentiate further gradients of risk.	The risk assessment framework includes high-risk and low-risk restructures, with the remainder not assessed (yellow risk zone). Given the recent enactment of the DDCR and the third party debt test (TPDT) rules, the Guideline focuses on maximising certainty, in particular permissive certainty of low-risk zones, for taxpayers to consider in responding to the new laws. Further gradients of risk at this stage would not meaningfully assist in this task.
5	Schedule 1 of the final Guideline should provide guidance on the overlap between Type 1 (subsection 820-423A(2)) and Type 2 (subsection 820-423A(5)) DDCR arrangements.	Where possible, examples in the Guideline identify whether the DDCR will apply (including both Type 1 and Type 2 arrangements). However, the Guideline is not intended to provide interpretive guidance and this interaction may be considered for further guidance in the future.
6	The final Guideline should provide guidance on the operation of the 'associate pair' definition to unincorporated joint ventures (for example, in Example 1).	In the final Guideline, Example 1 has been clarified to highlight that it is focused on the timing of when 2 entities are associate pairs. For the purposes of the Example, it is assumed that the entities become associate pairs. Further guidance on joint ventures is beyond the scope of the Guideline.
7	Example 1 of Schedule 1 of the final Guideline should clarify the timing of when the associate pairs test in paragraph 820-423A(2)(b) is applied.	In the final Guideline, Example 1 has been updated to clarify that the associate pair condition in paragraph 820-423A(2)(b) is tested at the time of the acquisition referred to in paragraph 820-423A(2)(a).
8	Further information is needed in Example 2 of the draft Guideline which explains the ATO's compliance approach after the project has completed development and begins to generate profits.	Example 3 has been added to the final Guideline which demonstrates the ATO's compliance approach once the development is complete and the debt is being repaid.
9	The final Guideline should provide interpretive guidance on the term 'facilitate the funding' in paragraph 820-423A(5)(b).	Examples 2 and 3 of the final Guideline consider the application of paragraph 820-423A(5)(b) to an arrangement.

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		The Guideline is not intended to provide interpretive guidance and this request may be considered for further guidance in the future.
10	Schedule 2 of the final Guideline should clarify whether there are any circumstances in which the Commissioner would consider it low risk to restructure related party debt that attracts the operation of the DDCR with third party debt.	Examples 20 and 21 involving the replacement of related party debt with third party debt have been added to the final Guideline. Generally, these examples illustrate that the introduction of third party debt is a commercial necessity based on the circumstances of the taxpayers (as loss-making). The inclusion of low-risk and high risk restructuring examples is intended to clarify that arrangements would be considered by us to be on a spectrum of risk. The introduction of third party debt will be one feature to which we have regard. We have also included Example 9 in Schedule 1 (replacement of third party debt with related party debt) to demonstrate the inverse scenario would attract our attention.
11	Schedules 1 and 2 of the final Guideline should provide further examples for middle market taxpayers (for example, on the interaction of the DDCR and Division 7A of the ITAA 1936).	In the final Guideline, Example 21 has been added to Schedule 2, to outline a situation where a privately owned Australian group replaces a Division 7A loan with third party debt in circumstances, where the Australian group does not have the financial capacity to otherwise terminate the related party (Division 7A) loan.
12	The final Guideline should provide further interpretive guidance on when costs incurred under an interest rate swap are in relation to the acquisition of a CGT asset or legal or equitable obligation under section 820-423B.	Schedule 1 of the Guideline includes examples where costs incurred under interest rate swaps are in relation to the acquisition of CGT assets. The Guideline is not intended to provide interpretive guidance.
13	The final Guideline should provide a ' <i>de minimis</i> ' threshold under which the DDCR will not apply (in lieu of tracing and apportionment and record-keeping compliance).	Guidance on record keeping, tracing and apportionment is included in the Guideline to assist taxpayers to demonstrate whether the DDCR apply to their affairs (including with regard to the examples in Schedule 1). While a ' <i>de minimis</i> ' threshold is included in the white zone (aligned to the legislative threshold in section 820-35), we have not sought to provide any additional ' <i>de minimis</i> ' threshold in the context of this record-keeping guidance.
14	The final Guideline should provide guidance for taxpayers that are unable to provide evidence to determine whether the DDCR operates to disallow debt deductions.	The Guideline does not provide prescriptive guidance on the nature of the documentation required in order to determine the use of financial arrangements relevant to the operation of the DDCR.

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		The guidance is intended to assist taxpayers considering what records they may have to rely on and, in their circumstances, whether it is appropriate to disallow debt deductions in proportion to identifiable transactions to which the DDCR applies. In addition, where taxpayers consider their records indicate that it would be more appropriate to restructure their arrangements, the Guideline provides guidance on the Commissioner's compliance approach to that restructuring. This request may be considered for further guidance in the future.
15	The final Guidelines should provide further examples illustrating when the Commissioner will apply compliance resources to determine the application of the DDCR where a debt interest has been refinanced.	In the final Guideline, Example 8 has been added to Schedule 1 to demonstrate the operation of the DDCR to the refinancing of a debt interest. New Examples 15, 16 and 17, regarding record keeping, tracing and apportionment also include refinancing and illustrate the need to identify the original use of refinanced funds.
16	Further examples are needed in the final Guideline on tracing and apportionment and which methodologies the ATO will deem to be fair and reasonable. Further, the final Guideline should provide circumstances in which a 'first in – first out' or 'last in – first out' methodology may be used.	The final Guideline includes 3 new examples (Examples 15, 16 and 17) of fair and reasonable identification of disallowed debt deductions through tracing and apportionment. These examples include scenarios involving cash pooling, refinancing or debts used for multiples purposes showing that, generally, if it is not possible to trace based on the purpose of the borrowings and the contemporaneous documentation, apportionment may be the appropriate approach. We have not provided any mandatory methodologies in the final Guideline. Whether a particular methodology is appropriate will depend on what is fair and reasonable based on the facts and circumstances of the taxpayer.
17	The ATO should reconsider whether historical transactions should be grandfathered from the operation of the DDCR.	Grandfathering historical transactions from the operation of the DDCR is not an appropriate or available administrative position for the Commissioner. The Guideline is intended to assist taxpayers to comply with the DDCR in its context as new law. It is anticipated that taxpayers may restructure their arrangements rather than incur disallowed debt deductions.
18	Schedule 2 of the final Guideline should provide a low-risk restructuring example that includes the replacement of related party debt with interest-free debt.	Schedule 2 of the Guideline includes examples where related party debt is replaced with equity interests. Replacing related party debt with interest-free debt will not be considered to fall in the green zone.

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19	Schedule 2 of the final Guideline should provide a low-risk restructuring category where an Australian group uses a conduit financing entity to pass through third party debt costs to operating and asset entities in circumstances where the TPDT choice is not made.	No examples have been included in Schedule 2 of the final Guideline to address an internal reorganisation of an Australian group to move third party debt within the group where the DDCR may apply to the related party conduit debt. Where such arrangements are adopted, they will not be considered to fall in the green zone. We will monitor these arrangements to consider whether we are able to publish guidance on low-risk scenarios in the future.
20	Schedule 2 of the final Guideline should clarify, for high risk restructures in Schedule 2, whether Pt IVA of the ITAA 1936 or section 820-324D is the risk in question.	Schedule 2 identifies low-risk and high-risk restructures. Where high-risk restructures are identified, the Guideline does not pre-empt the application of section 820-324D or Part IVA of the ITAA 1936 to the circumstances. The intention of the Guideline is to provide taxpayers certainty about circumstances that will attract the Commissioner's compliance resources.
21	The final Guideline should provide further explanation of the high risk rating on Example 19 of the draft Guideline.	In the final Guideline, this Example (now Example 27) has been expanded to provide further explanation of the characteristics that elevate its risk and, as a consequence, we would prioritise further investigation. The final Guideline retains statements from the draft Guideline that characterisation as low risk or high risk does not presuppose the application of any particular tax provision (including anti-avoidance provisions) to the restructure. It is intended as a guide as to the allocation of resources by the Commissioner, including the intensity of those resources (in the context of high-risk restructures).
22	The final Guideline should clarify whether cash held in a non-Australian bank account must be repatriated in order to use the TPDT, having regard to Example 22 of the draft Guideline.	The final Guideline no longer includes former Example 22. Taxation Ruling TR 2025/2 <i>Income tax: aspects of the third-party debt test in Subdivision 820-EAB of the Income Tax Assessment Act 1997</i> provides guidance on when an asset may be characterised as an Australian asset.
23	The final Guideline should expand Example 23 of the draft Guideline to include a restructure.	In the final Guideline, an additional paragraph has been added to this example (now Example 32) to demonstrate how the taxpayer may restructure to comply with the TPDT.
24	The final Guideline should provide additional information regarding the consequences of Example 26 of the draft Guideline where the swap and a loan are modified such that the amended loan satisfies the conduit financing conditions.	It is beyond the scope of a practical compliance guideline to provide interpretive guidance. In the final Guideline, Example 37 has been revised to reflect stakeholder feedback and now provides further clarity as to the circumstances in which

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	The final Guideline should provide further interpretive guidance on the operation of the taxation of financial arrangements.	we will not apply compliance resources to the arrangement, including what actions by the taxpayer we will seek to verify.
25	The final Guideline should extend the compliance approach regarding minor or insignificant assets beyond its current limitations (both the \$1 million monetary threshold and the time limitation of income years starting on or after 1 July 2023 and ending on or before 1 January 2027).	This compliance approach is intended to accommodate historical arrangements and afford taxpayers time to consider whether to restructure to ensure they comply with the recourse condition prospectively. It is not intended to apply on an ongoing basis. At the end of the compliance period, we will consider if this approach needs to be extended.
26	The final Guideline should provide a compliance approach relating to credit support rights and subsection 820-427A(5), so that taxpayers may restructure to limit credit support rights to satisfy subsection 820-427A(5) without increasing the amount of debt – for example, limiting credit support to the phase of a project corresponding to the development of a CGT asset, with no such rights arising for the operational phase (that is, overall project financing restructured into staged financing).	In the final Guideline, a new example (Example 31) has been added where the terms of a credit support agreement are amended to satisfy subsection 820-427A(5).
27	The final Guideline should provide a compliance approach relating to the meaning of 'commercial activities' in Schedule 3.	TR 2025/2 contains the ATO view on the meaning of 'commercial activities' in the context of paragraph 820-427A(3)(d). In the final Guideline, a targeted compliance approach has been included at Example 34 to accommodate circumstances where trust distributions have been funded by third party debt, however, repayments towards the debt facility are made prior to or during the compliance period that equal or exceed those trust distributions. At the end of the compliance period, we will consider if this approach needs to be extended.