PCG 2017/2 - Simplified Transfer Pricing Record Keeping Options

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Simplified Transfer Pricing Record Keeping Options

Relying on this Guideline

This Practical Compliance Guideline sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow this guideline in good faith, the Commissioner will administer the law in accordance with this approach.

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What this Guideline is about

1. Documenting your transfer pricing to meet all of the requirements of Subdivision 284-E of Schedule 1 to the *Taxation Administration Act 1953* (TAA) may impose an administrative burden disproportionate to your risk of not complying with the transfer pricing rules. Simplified transfer pricing record keeping options have been developed to minimise the record-keeping for eligible taxpayers.

2. By reducing the record-keeping requirements, we have reduced the cost of compliance and compliance burden for eligible taxpayers. Offering an administrative safe harbour also allows us to better manage risks associated with international related party dealings by directing resources to transactions and activities that we deem to be higher risk. This administrative safe harbour is an important part of administering the law in relation to international related party dealings and transfer pricing.

3. The options contained in this Guideline reflect the types of transactions or activities we believe are low risk in the context of international related party dealings. This Guideline specifies the criteria for you to self-assess your eligibility to use one or more of the eight simplification options.

Options available

4. There are eight simplified transfer pricing record keeping options available:

- small taxpayers
- distributors
- intra-group services
- low-level inbound loans
- materiality
- management and administration services
- technical services, and

- low-level outbound loans.

Date of effect

5. Please refer to the table below.

Simplification option	Available from	For taxpayers with substituted accounting periods
Small taxpayers	1 July 2013	1 January 2013
Distributors	1 July 2013	1 January 2013
Intra-group services	1 July 2013	1 January 2013
Low-level inbound loans	1 July 2013	1 January 2013
Materiality	1 July 2015	1 January 2015
Management and administration services	1 July 2015	1 January 2015
Technical services	1 July 2015	1 January 2015
Low-level outbound loans	1 July 2015	1 January 2015

Review of the simplified transfer pricing record keeping options

6. The transfer pricing simplification options contained in this Guideline will be available on an on-going basis subject to review, which will be finalised in September 2017. Should any changes to a simplification option occur as a result of the review, they will take effect on a prospective basis.

Taxpayers eligible to use the options in this Guideline

7. The options in this Guideline are available to companies, trusts and partnerships where they meet the eligibility criteria.

What you need to do if you meet the eligibility criteria of an option in this Guideline

8. Where you choose to use a simplified record keeping option you need to inform us of your election through a disclosure in your International Dealings Schedule (IDS). Include code 7 at the percentage of documentation label field for relevant categories of transactions on the IDS. This confirms you have assessed your situation as complying with the transfer pricing rules and advised us that a simplification option has been applied to your record keeping.

9. This code was not available for the 2014 year. If the ATO contacts you in relation to your transfer pricing documentation for the 2014 income year you will need to inform us that you have applied one of the options in this Guideline.

10. When you apply an option in this Guideline, you are still required to meet the general record-keeping requirements in section 262A of *the Income Tax Assessment Act 1936* (ITAA 1936).

Compliance assurance when using an option in this Guideline

11. If you apply one or more of the options in this Guideline, we will not allocate compliance resources to review the covered transactions or arrangements specified in that option for transfer pricing purposes, beyond reviewing your eligibility to use the option you have applied.

12. You need to keep contemporaneous documentation substantiating your eligibility for the option you have applied. This documentation should simply and sensibly explain how you met the relevant eligibility criteria.

13. Applying an option in this Guideline does not, of itself, meet the requirements of Subdivision 284-E of Schedule 1 to the TAA and Subdivisions 815-B, 815-C or 815-D of the *Income Tax Assessment Act 1997* (ITAA 1997). Applying an option also does not limit or waive how the law operates, but demonstrates you have self-assessed your relevant transactions for compliance with the transfer pricing rules.

The transfer pricing simplified record keeping options

14. If you meet the criteria for one or more of the eight simplification options you will be eligible to apply that option to your international related party dealings. All amounts referred to below are in Australian dollars. All examples below assume the taxpayers have self-assessed that their relevant transactions have complied with the transfer pricing rules.

Small taxpayers

Eligibility criteria

15. Your Turnover for the year is under $25 million for your Australian economic group, and you:

- have not made Sustained losses
- do not have related-party dealings with entities in the specified countries
- have not undergone a restructure within the year
- do not have related-party dealings involving royalties, licence fees, or research and development arrangements
- do not have specified service related-party dealings (either as expenses or as income) greater than 15% of your turnover
- are not a distributor (if you are, refer to the distributors' section to determine if you are eligible), and
- have assessed your compliance with the transfer pricing rules.

Exclusions

16. This option does not reduce the documentation requirements for the following transactions:

- international related-party financial transactions (for example, loans and guarantees) and associated charges, and
- international related-party dealings of a capital nature.

Example 1: meeting the small taxpayer eligibility criteria

17. Australco is a subsidiary of HeadCo, a UK company. For the 2015 financial year, Australco has a turnover of $17 million and total expenses of $15.9 million. It did not undergo any restructures and has not made sustained losses. Australco is the only member of the Australian economic group. Australco paid HeadCo $2 million for administrative support and has no other international related-party dealings.

18. Australco meets the eligibility criteria for the small taxpayers' record-keeping option and can elect to apply it to the administrative support services received from HeadCo.

Example 2: not meeting the small taxpayer eligibility criteria

19. Australco is a subsidiary of HeadCo, a UK company. For the 2015 financial year, Australco has a turnover of $17 million and total expenses of $15.9 million. It did not undergo any restructures and has not made sustained losses. Australco is the only member of the Australian economic group. Australco paid HeadCo $3 million for marketing and media strategies and also paid $1 million in royalties to Manx, another subsidiary of HeadCo, registered in the Isle of Man.

20. Australco neither meets the specified countries nor the specific international related-party dealings criteria. All criteria need to be met to be eligible to apply the option. Therefore Australco cannot use the small taxpayers simplified record-keeping option.

Distributors

Eligibility criteria

21. You are a distributor with Turnover under $50 million for your Australian economic group, and you:

- do not have a profit-before-tax ratio of less than 3%
- have not made sustained losses
- do not have related-party dealings with entities in specified countries
- have not undergone a restructure within the year
- do not have related-party dealings involving royalties, licence fees or research and development arrangements, and
- have assessed your compliance with the transfer pricing rules.

Exclusions

22. This option does not reduce the documentation requirements for the following transactions:

- international related-party financial transactions (for example, loans and guarantees) and associated charges, and
- international related-party dealings of a capital nature.

Example 3: meeting the distributor eligibility criteria

23. Gustal Co is a wholesale business and an Australian subsidiary of MunichCo, a German company. For the 2015 financial year, Gustal Co has a turnover of $47 million and total expenses of $44.4 million. Its weighted average profit before tax ratio over the last three years was 6%. Gustal Co purchased $38 million of stock from MunichCo and has no other related-party dealings. Gustal Co did not undergo any restructures and has not made sustained losses. It is the only member of the Australian economic group.

24. Gustal Co meets all of the eligibility criteria for the distributors' record-keeping option and can elect to apply it to its purchases from MunichCo.

Example 4: not meeting the distributor eligibility criteria

25. Keltali Co is an Australian subsidiary of Britai, a UK company. For the 2015 financial year, Keltali Co has a turnover of $49 million and total expenses of $47.9 million. Its weighted average profit before tax ratio over the last three years was 2.6%. It paid $1 million in royalties to Jerri, another subsidiary of Britai, registered in Jersey. Keltali Co did not undergo any restructures and have not made sustained losses. It is the only member of the Australian economic group.

26. Keltali Co does not meet the specified countries, the specific related-party dealings or the profit-before-tax ratio criteria. All criteria must be met to be eligible to apply the option. Therefore Keltali Co cannot use the distributors' simplified record-keeping option.

Intra-group services

Eligibility criteria

27. You have international related-party service dealings of either:

- $1 million or less combined value of services received and provided – the *de minimis* rule
- greater than $1 million, but:
  - for services you receive – the total amount charged to you must not be more than 15% of the total expenses of your Australian economic group,
  - for services you provide – the total amount derived by you must not be more than 15% of the total revenue of your Australian economic group

and you:

- have a mark-up on costs of the relevant services of:
  - 7.5% or less for services you receive
  - 7.5% or more for services you provide
- have not made sustained losses
- do not have related-party dealings with entities in specified countries
- have not undergone a restructure within the year
- do not have specified service related-party dealings, and
- have assessed your compliance with the transfer pricing rules.

Exclusions

28. This option does not reduce the documentation requirements for the following transactions:

- other international related-party dealings
- international related-party financial transactions (for example, loans and guarantees) and associated charges, and
- international related-party dealings of a capital nature.

Example 5: meeting the de minimis rule in the intra-group services option

29. Victasubb is a subsidiary of Nevadaplus, an American company. In 2015 Victasubb paid Nevadaplus $850,000 for management and administration services and $20 million for stock purchases. Victasubb was charged a 7.1% mark-up for the management and administration services it received. In the 2015 year, it had a turnover of $53 million and total expenses of $42 million. Victasubb had no other related-party dealings, did not undergo any restructures and has not made sustained losses. Victasubb is the only member of the Australian economic group.

30. Victasubb meets the eligibility criteria for the intra-group services simplified record-keeping option (because total services satisfy the *de minimis* rule and the other criteria) and can elect to apply it to its management and administration services from Nevadaplus.

Example 6: meeting the 15% of dealings rule in the intra-group services option

31. Victasubb is a subsidiary of Nevadaplus, an American company. In 2015 Victasubb paid Nevadaplus:

- $850,000 in management and administration services
- $970,000 for training services, and
- $20 million for stock purchases.

32. Victasubb was charged on a 7.1% mark-up for the services from Nevadaplus.

33. In 2015 Victasubb had a turnover of $53 million and total expenses of $42 million. Victasubb had no other related-party dealings and did not undertake any restructures in 2015. It has not made sustained losses and is the only member of the Australian economic group.

34. Whilst Victasubb does not satisfy the *de minimis* rule (because total services are $1.82 million), the services are less than 15% of its total expenses (being 4.3%). As all the other eligibility criteria for the intra group services simplified record keeping option have been met, Victasubb can elect to apply the option to its services from Nevadaplus.

Example 7: not meeting either the de minimis rule or the 15% of dealings rules in the intra-group services option

35. SubCo is the only Australian subsidiary of Gottlund, a Swedish company. In 2014 SubCo paid Gottlund:

- $8 million in management and administration services
- $1 million for training services, and
- $23 million for stock purchases.

36. SubCo's payment included a 7.4% mark-up on the services from Gottlund. In 2014, SubCo had a turnover of $65 million and total expenses of $50 million. SubCo had no other related-party dealings and there were no restructures for the year. It has not made sustained losses and is the only member of the Australian economic group.

37. SubCo did not satisfy the *de minimis* rule in 2014, as the value of services received exceeded $1 million (they were $9 million) and 15% of total expenses (they were 18%). Therefore, it cannot elect to apply the intra-group services simplified record-keeping option.

Example 8: not meeting the specific services rule in the intra-group services option

38. Richoil is the only Australian subsidiary of MapleCoy, a Canadian company. In 2015 Richoil paid MapleCoy:

- $6.2 million in management and administration services, and
- $1.7 million for research and development services.

39. Richoil was charged a 7.4% mark-up for its services from MapleCoy.

40. In 2015, Richoil had a turnover of $100 million and total expenses of $80 million. Richoil had no other related-party dealings and did not undergo any restructures in 2015. It did not make sustained losses and is the only member of the Australian economic group.

41. Richoil does not satisfy the *de minimis* rule, as the value of services received exceeded $1 million (they were $7.9 million). The services were 9.88% of total expenses so they meet the second criteria (less than 15% of total expenses) and may still be able to apply the intra-group services record-keeping option.

42. However, Richoil does not meet the specific services related-party dealings criterion because it has research and development services expenses. All criteria need to be met to be eligible to apply the option. Therefore, Richoil cannot apply the intra-group services simplified record-keeping option.

Low-level inbound loans

Eligibility criteria

43. You have a combined cross-border loan balance of $50 million or less for your Australian economic group at all times throughout the financial year, and:

- for your inbound loans
  - your interest rate is no more than the Reserve Bank of Australia (RBA) indicator lending rate for 'small business; variable; residential-secured term'
  - the funds actually provided to you under the loan are Australian dollar funds and this is reflected in your loan agreements, and
  - your associated expenses are paid in Australian dollars

and you:

- have not made sustained losses
- do not have related-party dealings with entities in specified countries
- have not undergone a restructure within the year, and
- have assessed your compliance with the transfer pricing rules.

Exclusions

44. This option does not reduce the documentation requirements for the following transactions:

- outbound related-party interest-bearing loans and associated charges (see the low-level outbound loans option for eligibility)
- other international related-party financial transactions (for example, guarantees) and associated charges
- other international related-party dealings, and
- international related-party dealings of a capital nature.

Example 9: meeting the low-level inbound loan eligibility criteria

45. Victasubb is an Australian subsidiary of Nevadaplus, an American company. Victasubb borrowed A$10 million from Nevadaplus at interest of 3.5% or A$350,000 per year. For the 2015 financial year, Victasubb had no other related-party dealings and did not undergo any restructures. It has not made sustained losses and is the only member of the Australian economic group.

46. The RBA published a 'small business; variable; residential-secured term' indicator rate of 7.1%, which is the maximum rate to be eligible to use the low-level inbound loans simplified record-keeping option.

47. Victas meets all of the eligibility criteria for this simplified record-keeping option and can elect to apply it to its interest-bearing loan and interest paid to Nevadaplus.

Example 10: not meeting the low-level inbound loan eligibility criteria

48. BettillaCo is an Australian subsidiary of HeadCo, a UK company. BettillaCo borrowed A$11 million at an interest rate of 8.5% or A$935,000 per year. It also made an interest-free loan of $40 million to Choc, a Swiss entity. For the 2015 financial year, BettillaCo had a turnover of $85 million and total expenses of $82.6 million. Other than stock purchases of $38 million from HeadCo, BettillaCo has no other related-party dealings. BettillaCo has not undergone any restructures, has not made sustained losses and is the only member of the Australian economic group.

49. The relevant indicator interest rate published by the RBA is 7.1%, which is the maximum rate to be eligible to use the low-level inbound loans simplified record-keeping option.

50. BettillaCo neither meets the combined cross-border loan balance nor the interest rate criterion. All criteria need to be met to be eligible to apply the option. Therefore BettillaCo cannot use the low-level inbound loans simplified record-keeping option.

Example 11: not meeting the specified interest rate criterion for the low-level inbound loan option

51. Victasubb is an Australian subsidiary of Nevadaplus, an American company. Victasubb borrowed $10 million at an annual interest rate of BBSW +5%. This equated to 7.6% or an interest payment of $760,000 in 2015. For the 2015 financial year, Victasubb had a turnover of $17 million and total expenses of $16 million and no other related-party dealings. Victasubb has not undergone any restructures or made sustained losses and is the only member of the Australian economic group.

52. The relevant indicator interest rate published by the RBA is 7.1%, which is the maximum rate to be eligible to use the low-level inbound loans simplified record-keeping option.

53. Given the effective interest rate paid in 2015 was higher than 7.1%, Victasubb does not meet the specified interest rate criterion. All criteria need to be met to be eligible to apply the option. Therefore, Victasubb cannot apply the low-level inbound loans simplified record-keeping option.

Materiality

Eligibility criteria

54. Your total international related-party dealings represent less than or equal to 2.5% of total turnover for your Australian economic group, and you:

- do not have related-party dealings with entities in the specified countries
- do not have related-party dealings involving royalties, licence fees, or research and development arrangements, and
- have assessed your compliance with the transfer pricing rules.

Exclusions

55. This option does not reduce the documentation requirements for international related-party dealings of a capital nature.

Example 12: meeting the materiality eligibility criteria

56. Darioco is a subsidiary of Cornishire, a UK company. Darioco is the only member of the Australian economic group. For the 2016 financial year, Darioco has a turnover of $89 million. The only international related-party dealings are $350,000 paid by Cornishire to Darioco for travel expenses and $1.8 million for marketing support paid by Darioco to Cornishire. Darioco's total international related-party dealings are $2.15 million or 2.42% of its total turnover.

57. Darioco meets the eligibility criteria for the materiality record-keeping option and can elect to apply it to the dealings with Cornishire.

Example 13: not meeting the materiality eligibility criteria

58. Darioco is a subsidiary of Cornishire, a UK company. Darioco is the only member of the Australian economic group. For the 2016 financial year, Darioco has a turnover of $67 million. Cornishire paid $250,000 to Darioco for travel expenses and Darioco paid Cornishire $1 million for marketing support and $500,000 in royalties.

59. Darioco neither meets the 2.5% threshold nor the specific international related-party dealings criteria. All criteria need to be met to be eligible to apply the option. Therefore Darioco cannot use the materiality simplified record-keeping option.

Management and administration services

Eligibility criteria

60. Your income from and expenditure on management and administration services must not be more than 50% of the total international related party dealings of your Australian economic group, and you:

- have a mark-up on costs of the relevant services of
  - 5% or less for services you receive
  - 5% or more for services you provide

- do not have related-party dealings with entities in specified countries, and
- have assessed your compliance with the transfer pricing rules.

Exclusions

61. This option does not reduce the documentation requirements for the following transactions:

- other international related-party dealings
- international related-party financial transactions (for example, loans and guarantees) and associated charges, and
- international related-party dealings of a capital nature.

Example 14: meeting the management and administration services eligibility criteria

62. SubCo is the only Australian subsidiary of Gottlund, a Swedish company, and the only member of the Australian economic group. In the 2016 financial year, SubCo paid Gottlund:

- $8 million in management and administration services
- $1 million for training, and
- $23 million for stock purchases.

63. SubCo had no other related-party dealings and its payments included a 4.7% mark-up on the management and administration services from Gottlund. Its management and administration services were 25.0% of its total international related-party dealings.

64. SubCo meets the eligibility criteria for the management and administration services simplified record-keeping option and can elect to apply it to its management and administration services from Gottlund.

Example 15: not meeting the management and administration services eligibility criteria

65. Richoil is the only Australian subsidiary of MapleCoy, a Canadian company. In the 2016 financial year Richoil paid MapleCoy:

- $6.2 million in management and administration services, and
- $1.7 million for research and development services.

66. Richoil was charged a 7.4% mark-up for its services from MapleCoy.

67. Richoil had no other related-party dealings and is the only member of the Australian economic group.

68. However, Richoil does not meet the mark-up criterion. Its management and administration services expenses are also more than 50% of its total international related-party dealings. All criteria need to be met to be eligible to apply the option. Therefore Richoil cannot apply the management and administration services simplified record-keeping option.

Technical services

Eligibility criteria

69. Your income from and expenditure on technical services must not be more than 50% of the total international related-party dealings of your Australian economic group, and you:

- have a mark-up on costs of the relevant services of
  - 10% or less for services you receive
  - 10% or more for services you provide
- do not have related-party dealings with entities in specified countries, and
- have assessed your compliance with the transfer pricing rules.

Exclusions

70. This option does not reduce the documentation requirements for the following transactions:

- other international related-party dealings
- international related-party financial transactions (for example, loans and guarantees) and associated charges, and
- international related-party dealings of a capital nature.

Example 16: meeting the technical services eligibility criteria

71. Atkins is a subsidiary of Grande Inc, an American company. In the 2016 financial year Atkins paid Grande Inc $1.7 million for technical services and $20 million for stock purchases. Atkins was charged a 7.4% mark-up for the technical services it received. Atkins had no other related-party dealings and is the only member of the Australian economic group.

72. Atkins meets all of the eligibility criteria for the technical services simplified record-keeping option and can elect to apply it to its technical services from Grande Inc.

Example 17: not meeting the technical services eligibility criteria

73. Condole is an Australian subsidiary of Globalbrit, a UK company, and is the only member of the Australian economic group. For the 2016 financial year, Condole sold stock to Globalbrit of $32 million and provided technical services of $2.6 million (with a 9% mark-up on cost). Condole also paid $1 million to GlobalCI, a company registered in Guernsey, and a subsidiary of Globalbrit.

74. Condole does not meet the specified countries criterion nor the 10% mark-up on costs of technical services provided. All criteria need to be met to be eligible to apply the option. Therefore Condole cannot use the technical services simplified record-keeping option.

Low level outbound loans

Eligibility criteria

75. You have a combined cross-border loan balance of $50 million or less for your Australian economic group at all times throughout the financial year, and:

- for each of your outbound loans
  - your interest rate is no less than the following rate for each of the income years which the loan is in effect
    - 4.91% in your 2015 income year
    - 4.37% in your 2016 income year
    - 4.34% in your 2017 income year

- 3.79% in your 2018 income year

- the funds actually provided by you under the loan are Australian dollar funds and this is reflected in your loan agreements
- your associated expenses are paid in Australian dollars

and you:

- have not made sustained losses
- do not have related-party dealings with entities in specified countries
- have not undergone a restructure within the year, and
- have assessed your compliance with the transfer pricing rules.

Exclusions

76. This option does not reduce the documentation requirements for the following transactions:

- inbound related-party interest-bearing loans and associated charges (see the low-level inbound loans option for eligibility)
- other international related-party financial transactions (for example, guarantees) and associated charges
- other international related-party dealings, and
- international related-party dealings of a capital nature.

Example 18: meeting the low-level outbound loans eligibility criteria

77. GrangeCo is an Australian subsidiary of MauiCo, an American company. GrangeCo lent MauiCo A$10 million in the 2015 financial year with an interest rate of 5.5% or A$550,000 per year. For the 2015 financial year, GrangeCo had no other related-party dealings, did not undergo any restructures, and has not made sustained losses. GrangeCo is the only member of the Australian economic group.

78. The 5.5% interest charge exceeds the minimum interest rate of 4.91% required for the 2015 income year to be eligible to use the low-level outbound loan simplified record-keeping option.

79. GrangeCo meets all of the eligibility criteria for this simplified record-keeping option and can elect to apply it to its interest-bearing loan to MauiCo.

Example 19: not meeting the low-level outbound loans eligibility criteria

80. AustralCo is an Australian subsidiary of HeadCo, a UK company. AustralCo lent HeadCo A$11 million in the 2015 financial year with an interest rate of 8.5% or A$935,000 per year. It also made an interest-free loan of A$40 million to Choc, a Swiss entity. For the 2015 financial year, AustralCo had no other related-party dealings and did not undergo any restructures. AustralCo did not make sustained losses and is the only member of the Australian economic group.

81. The 8.5% interest rate charged on the loan to HeadCo exceeds the minimum interest rate of 4.91% to be eligible to use the low-level outbound loans simplified record-keeping option. But, AustralCo does not meet the interest rate criterion on the loan to Choc or the combined cross-border loan balance criterion. All criteria need to be met to be eligible to apply the option. Therefore AustralCo cannot use the low-level outbound loans simplified record-keeping option.

Example 20: not meeting the specified interest rate criterion for the low-level outbound loans option

82. DustieCo is the Australian parent of ForCo, an American company. DustieCo lent ForCo A$10 million in the 2015 financial year with an interest rate of 3% or A$300,000 per year. For the 2015 financial year, DustieCo had no other related-party dealings and did not undergo any restructures. It has not made sustained losses and this is the only cross-border loan in DustieCo's Australian economic group.

83. The interest rate of 3% for this loan is less than the minimum interest rate of 4.91% required for the 2015 income year to be eligible to use the low-level outbound loans simplified record-keeping option.

84. DustieCo does not meet the specified interest rate criterion in the 2015 income year. All criteria need to be met to be eligible to apply the option. Therefore DustieCo cannot apply the low-level outbound loans simplified record-keeping option.

More information

85. For more information, refer to *Simplified transfer pricing record keeping – frequently asked questions*.

Appendix 1: Glossary of terms

Australian economic group

86. For the purposes of the simplified record-keeping options for transfer pricing, an Australian economic group consists of an entity together with all the entities it is required by the Australian Accounting Standard AASB10 to include in its consolidated financial statements.

87. An entity can be a company, partnership, superannuation fund, or trust.

Combined cross-border loan balance

88. To determine your combined cross-border loan balance:

- you include all interest-bearing and interest-free loan average balances for amounts borrowed and loaned (labels 11a and 11b of the IDS)
- if you have branch operations, you include the average balances for amounts claimed or returned for internally recorded dealings as amounts borrowed or loaned, interest-bearing and interest-free (labels 18aI, 18aK, 18bI and 18bK of the IDS), and
- you do not net off the amounts borrowed or loaned but include both totals.

Costs

89. The cost base used for the service options (intra-group, management and administration, and technical) should reflect all relevant costs (direct and indirect) associated with the services.

90. Pass through costs should not be included in the cost base. Pass through costs are those where the service provider merely acts as an agent facilitating the provision of the services as an intermediary but does not actually provide the services itself.

Distributor

91. You are a distributor if your main business activity is recorded on your tax return using the Australian and New Zealand Standard Industrial Classification (ANZSIC) Wholesale Trade code.

92. ANZSIC, 2006 (Revision 1.0) Chapter 8 Division F – The Wholesale Trade Division covers units mainly engaged in the purchase and on-selling, the commission based buying, and/or the commission based selling of goods, without significant transformation, to businesses. Units are classified within the Wholesale Trade Division in the first instance if they buy finished goods and then on-sell them (including on a commission basis) to businesses.

Inbound loan interest rate

93. The applicable RBA indicator rate – ‘small business, variable, residential-secured, term’ – is a column in ‘Indicator lending rates – F5’, one of a series of interest rates published on the RBA website (search Statistics >Economic and Financial Statistics/Interest Rates and select the Excel spreadsheet). The rates are set monthly.

See also:

- Reserve Bank of Australia External Link

International related-party dealings

94. You have international related-party dealings if you have international commercial or financial dealings or relations between related parties, for example, an agreement with your foreign subsidiary.

International related parties

95. An international related party includes any of the following:

- an overseas entity or person who participates directly or indirectly in your management, control or capital
- an overseas entity that you participate (directly or indirectly) in their management, control or capital, and
- an overseas entity or person that has the same entity or person participating (directly or indirectly) in their management, control or capital as you do.

Loan

96. To be classified as a loan for the purposes of these options, the instrument must be a debt interest under Division 974 of the ITAA 1997.

Management and administration services

97. Management and administration services are activities that:

- involve or relate to the control, facilitation, and monitoring of your business's human (staffing) and financial resources (assets)
- relate to administering your day to day business operations usually including but not limited to:
  - back office services
  - administrative services associated with employee share-based plans/recharge amounts, and
  - accounting services.

98. Management and administration services exclude activities integral to financing, marketing or production.

Profit-before-tax ratio

Profit-before-tax ratio = (total income – total expenses) / turnover

99. Total income and total expenses are as reported on your income tax return.

100. For the purposes of using these options, the ratio is to be calculated as a weighted average of three consecutive years, including the year for which you are considering applying the option.

Restructure

101. A restructure event for the purposes of these options, consistent with the definition in TR 2011/1 *Income tax: application of the transfer pricing provisions to business restructuring by multinational enterprises*, refers to arrangements in which the assets, functions or risks of a business are transferred between you and your international related parties or your branch operations. Such arrangements may include:

- reorganisation of your structure resulting in the disposal or acquisition of entities or the change of ownership of entities
- establishment, expansion, reduction, liquidation or relocation of business operations or business lines, resulting in the:
  - acquisition or disposal of assets or liabilities (tangible or intangible)
  - transfer of functions or the significant modification of service arrangements between yourself and international related parties (for example, transfer of agency, distribution, finance, information technology, insurance, logistics, marketing, sales, shared services, shipping, trading, transport and treasury functions)
  - transfer of risks between yourself and international related parties
  - increase or decrease of rights or obligations, and
- a change in the nature of the business carried on through your branch operations (for example, you have commenced or ceased to use your property in, or to perform functions or services through, your branch operations).

See also:

- TR 2011/1.

Specified service related-party dealings

102. A specified service between related parties is any service that contributes significantly to the creation, enhancement or maintenance of value in the Australian economic group.

103. These services include:

- development of various forms of intellectual property and know how
- financial trading and execution activities
- insurance activities
- investment and asset management activities
- research and development activities
- software development activities, and
- strategic sales, marketing and relationship management and related activities.

Sustained losses

104. Sustained losses occur where you have incurred losses for three consecutive years, including the year for which you are considering applying the option.

105. For the purposes of these options, a loss is made when you report a negative amount on your income tax return after subtracting the sum of the total expenses labels from the sum of the total income labels.

Technical services

106. Technical services are advice and/or assistance or support provided by persons with relevant technical expertise for activities associated with engineering, architecture and industrial design.

107. Technical services exclude advice or assistance associated with:

- the use of IP, know-how, processes, systems or other like intangibles or rights
- provision or acquisition of goods, commodities, other services (including financial services) or financial accommodation, and
- the provision or acquisition of marketing or other activities associated with engagement with customers or potential customers.

Total international related party dealings

108. The calculation takes into account the following expense and revenue amounts (descriptions and labels based on the 2016 IDS), but does not include the balance of any loans recognised in your accounting records:

- tangible property of a revenue nature (label 5)
- royalties or licence fees (labels 6a and 6b)
- rent or leasing (label 7)
- services (labels 8a to 8k)
- derivatives (label 9)
- financial dealings excluding loan balances (label 11 excluding 11a and 11b)
- other revenue dealings (label 12)
- branch operation dealings excluding loan balances:
  - interest (labels 18aJ and 18bJ)
  - internal trading stock transfers (label 18c), and
  - other dealings (label 18d).

109. The calculation differs from that used in determining the IDS lodgment threshold of A$2 million as it does not include loan balances and needs to consider the relevant dealings for all entities within your Australian economic group.

Turnover

110. For the purposes of these options, turnover is the total ordinary income you derive in the ordinary course of carrying on a business. It includes income sourced from sales, rent, dividends, interest, distributions etc. For example, a company would use the amount reported at the total income label on its tax return.

Appendix 2: List of specified countries

111. Specified countries referred to in the Guideline are the tax jurisdictions listed in the table below:

Andorra	Anguilla	Antigua & Barbuda	Aruba
Bahamas	Bahrain	Belize	Bermuda
British Virgin Islands	Cayman Islands	Cook Islands	Curacao
Cyprus	Dominica	Gibraltar	Grenada
Guernsey	Isle of Man	Jersey	Liberia
Liechtenstein	Marshall Islands	Mauritius	Monaco
Montserrat	Nauru	Niue	Panama
Saint Kitts and Nevis	Saint Lucia	Saint Martin (Dutch Part)	Saint Vincent & the Grenadines
Samoa	San Marino	Seychelles	Turks and Caicos Islands
US Virgin Islands	Vanuatu		

Commissioner of Taxation
22 February 2017

Feedback

112. If you have comments or feedback relating to this Practical Compliance Guideline, please email TPsafeharbours@ato.gov.au

Amendment history

Date of Amendment	Part	Comment
4 April 2018	Paragraph 75	To provide the minimum interest rate for small related party outbound loans for the 2018 year.

References

ATOlaw topic(s)	International issues ~~ Transfer pricing ~~ Documentation
Legislative references	ITAA 1936 ITAA 1936 262A TAA 1953 TAA 1953 Sch 1 Subdiv 284-E ITAA 1997 ITAA 1997 Subdiv815-B ITAA 1997 Subdiv815-C ITAA 1997 Subdiv815-D ITAA 1997 Div 974
Related Rulings/Determinations	TR 2011/1
Other references	Simplified transfer pricing record keeping – frequently asked questions
BSL	Public Groups & International

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