

PCG 2020/5EC - Compendium



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Public advice and guidance compendium – PCG 2020/5

❶ Relying on this Compendium

This Compendium of comments provides responses to comments received on draft Practical Compliance Guideline PCG 2019/D6 *Compliance approach for complying superannuation funds in respect of applying the non-arm's length income provisions to 'non-arm's length expenditure'*. 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

Issue number	Issue raised	ATO response
1	The final Guideline should extend the practical administration approach by adopting a <i>de minimis</i> rule regarding materiality or a safe harbour rule.	The final Guideline includes the 2018–19; 2019–20 and 2020–21 income years to provide certainty for taxpayers. We are also considering a further practical compliance guideline for later income years as part of the finalisation of draft Law Companion Ruling LCR 2019/D3 <i>Non-arm's length income – expenditure incurred under a non-arm's length arrangement</i> .
2	It is not clear what will follow after the expiration of the period covered under the draft Guideline.	The final Guideline includes the 2018–19; 2019–20 and 2020–21 income years to provide certainty for taxpayers. We are also considering a further practical compliance guideline for later income years as part of the finalisation of LCR 2019/D3.
3	The final Guideline should include guidance on how trustees can avoid breaches of the trustee remuneration provisions in the <i>Superannuation Industry (Supervision) Act 1993</i> .	Consideration is being given to this as part of the process to finalise LCR 2019/D3.
4	The final Guideline should provide clearer details on documentation needed to substantiate expenditure incurred by trustees of a complying superannuation fund.	This is outside the intended scope of this Guideline.
5	This Guideline should not be limited to providing relief for general expenses in the 2018–19 and 2019–20 income years.	The transitional compliance approach will not be extended beyond that outlined paragraph 10 of the final Guideline. Paragraph 11 of the final Guideline confirms that the transitional compliance approach will not apply where the fund incurred non-arm's

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		length expenditure that directly related to the fund deriving particular ordinary or statutory income.
6	The final Guideline should accommodate for more non-arm's length borrowing situations – for example, annual interest payments as opposed to monthly interest payments.	This is outside the intended scope of this Guideline.