


PCG 2021/4EC - Compendium

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Public advice and guidance compendium – PCG 2021/4

❶ Relying on this Compendium

This Compendium of comments provides responses to comments received on draft PCG 2021/D2 *Allocation of professional firm profits – 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

Issue number	Issue raised	ATO response
General comments		
1	<p>Guideline should provide safe harbours</p> <p>The shift away from the safe harbours is unexplained and unwelcome.</p> <p>The draft Guideline provides little practical protection to individual professional practitioners (IPPs). It uses vague language and the ATO retains plenty of options to go on the offensive where it sees behaviour it does not like.</p> <p>The draft Guideline does not provide safe harbours, <i>de minimis</i> rules or any assurance to many IPPs given the current settings of the scoring model.</p>	<p>We disagree. The General Anti-Avoidance Rules (GAAR) Panel confirmed Part IVA of the <i>Income Tax Assessment Act 1936</i>¹ could apply to a number of professional firm arrangements despite technically qualifying as low risk under the suspended guidelines², causing these arrangements to be high risk. The 'bright line' test adopted in the suspended guidelines meant that, as a matter of administrative practice, the ATO was precluded from applying Part IVA to these types of arrangements.</p> <p>The final Guideline was specifically designed to address these high-risk IPP arrangements. The application of Part IVA is based on the individual facts and circumstances of a case and does not lend itself to a bright line test resulting in a set safe harbour.</p> <p>The bright line test under the suspended guidelines demonstrated IPPs' ability to reorganise or construct their arrangements to meet the singular benchmarks regardless of whether they were commercially driven. As a result, the final Guideline is designed to provide a matrix where IPPs can</p>

¹ All legislative references in this Compendium are to the *Income Tax Assessment Act 1936*.

² 'Suspended guidelines' refer to the *Assessing the risk: allocation of profits within professional firms* guidelines, which were published on ato.gov.au in 2015 and suspended on 14 December 2017.

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		self-assess their risk and discuss their arrangement with the ATO if they do not consider the assessment aligns to their level of risk.
2	<p>More complex and costly, without providing certainty</p> <p>Given the risk rating may not equate to the existence of any Part IVA factors, the draft Guideline can lead to unnecessary compliance activity and costs.</p> <p>The abstract, generalised tests (the Gateways) and the specific risk assessment factors create uncertainty for taxpayers and impose an unnecessary administrative burden and compliance cost, without having a proper basis in law.</p>	<p>The final Guideline is designed to provide certainty on the ATO's risk assessment framework and potential areas of compliance focus. This allows IPPs to self-assess the ATO's risk rating of their arrangement.</p> <p>The two Gateways determine whether an IPP undertaking a self-assessment should apply the risk assessment framework. This approach, combined with the application of three risk assessment factors (though it is only necessary to apply the first two factors), was necessary to overcome the shortfalls of the suspended guidelines.</p> <p>The three risk factors were co-designed during initial consultation on the suspended guidelines and have not changed in order to maintain certainty. The difference is the need to apply the first two risk factors (or all three risk assessment factors where appropriate), rather than just one. This is paramount to ensure we focus our compliance activities on arrangements that demonstrate a spectrum of risk and was the main reason for suspending the original guidelines.</p> <p>Where an IPP self-assesses against the risk assessment framework and considers their risk rating is not commensurate with their arrangement, they are encouraged to contact the ATO to discuss.</p>
3	<p>Support for ATO's effort to address artificial and contrived arrangements</p> <p>Support for ATO's effort to address artificial and contrived arrangements that seek to inappropriately alter taxpayers' tax liabilities.</p>	Noted.
4	<p>Reinstate earlier compliance approach</p> <p>Reinstate the suspended guidelines.</p> <p>The high-risk features in Gateway 2 should be dealt with under existing tax laws rather than through the imposition of arbitrary guidelines in the draft Guideline.</p>	We disagree. The old guidelines were suspended after the ATO identified some arrangements that were high risk qualified as low risk under the guidelines. See our response to Issue 1 of this Compendium.

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5	Could the suspended guidelines be reinstated in relation to transitional arrangements (even if archived on the Legal database)?	The suspended guidelines will be published to the ATO's Legal database so they can be accessed during the transitional period and archived once withdrawn.
6	The suspended guidelines could have been retained and supplemented by the two Gateways.	See response to Issue 1 of this Compendium for reasons why the earlier guidelines were suspended.
7	<p>No legal basis underscoring the approach in the draft Guideline</p> <p>Concern around the lack of both legislation and recent precedential decisions to support the ATO's line of reasoning in the draft Guideline.</p> <ul style="list-style-type: none"> • There is an absence of any legal foundation for the risk assessment factors. • There is no general principle of taxation law dealing with, or prescribing, the so-called 'alienation of income'. • The ATO recognises that the income of a professional services business is business income but suggests that at the same time a portion of that income can also be personal exertion income. There is no authority for this position. <p>If the ATO or Treasury are not happy with the outcomes this provides, consider a legislative fix rather than traffic light system with grey areas.</p> <p>Consider eventually running test cases.</p>	<p>The final Guideline provides a risk assessment framework to determine the investment of compliance resources. It does not set out the Commissioner's interpretation on the application of relevant laws.</p> <p>The approach in the final Guideline dates back to the original <i>Everett</i>³ assignments which may be distinguishable from certain contemporary professional practices.</p> <p>In summary, the <i>Everett</i> matter concerned a goodwill practice and Mr Everett paid market value to buy his equity share. Although there are still some goodwill practices operating today, most are no-goodwill. More importantly, Mr Everett was entitled to his proportionate share of the partnership profits, however much or little energy he devoted to the practice, so long as the partnership remained on foot.</p> <p>We consider that a partner or equity holder's right to participate in the profit of a contemporary professional firm will be determined by the constituent documents or any other relevant agreements between the equity holder and the firm. Commonly, such terms include that the IPP:</p> <ul style="list-style-type: none"> • must attend the office and perform professional duties for 46 weeks of the year • must fulfill obligations such as meeting key performance indicators and other aspects of personal conduct, and • has rights to leave replicating the leave entitlement of employees, such as annual leave, long service leave and maternity/paternity leave. <p>While it seems unlikely an interposed entity could fulfill such obligations, the existence and prevalence of personal obligations on the individual indicates the derivation of a substantial part of the profit entitlement is generated by the</p>

³ *Taxation, Commissioner of (Cth) v Everett* [1980] HCA 6 (*Everett*).

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		<p>individual and, therefore, should be declared and assessed in their own personal income tax return.</p> <p>It is relevant to note that when the suspended guidelines were issued, the ATO published that test case funding would be available for a suitable case in order to obtain judicial guidance on these issues. The ATO remains committed to finding a suitable test case.</p>
8	The draft Guideline fails to connect existing rules, such as personal services income and Part IVA, to the Gateways and risk assessment framework.	<p>The final Guideline's purpose is to provide a risk assessment framework to identify high-risk arrangements for compliance focus. It is not intended to explain the application of Part IVA to specific examples.</p> <p>This is because the application of Part IVA requires consideration of certain matters (refer to subsection 177D(2)). The issues considered under the Gateways would form part of any Part IVA analysis, as would the risk assessment factors, but Part IVA analysis is not limited to these matters alone.</p> <p>Paragraph 28 of the final Guideline confirms that it does not apply if the income of the professional firm is subject to the personal services income rules.</p>
9	Accounting practices have evolved. Rather than generating all of their income through the provision of advice, their services are diversified resulting in a substantial proportion of their income being generated from software and automated processes.	The final Guideline recognises that the income of a professional firm may comprise different components reflecting a mixture of income of personal exertion of the firm's IPPs and income generated by the business structure.
Application date		
10	Consider deferring the 1 July 2021 application date.	The final Guideline's application date has been extended to 1 July 2022, as has the transitional period for IPPs rated low risk under the suspended guidelines.
Scope – arrangements covered by the draft Guideline		
11	<p>Discrimination against professionals</p> <p>The ATO should provide evidence of widespread tax avoidance or the quantum of revenue at risk.</p>	<p>The Commissioner is taking the same approach which existed under the suspended guidelines.</p> <p>It is not unusual to develop guidance for a specific group of the taxpayer population where behaviours of concern have been identified or where perceived uncertainty continues to exist. Since the suspension of the original</p>

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	<p>The draft Guideline should not be applied to a subset of the population as this results in inconsistent administration of the law.</p> <p>Why does it apply to IPPs given other business have the same business investment and risk?</p> <p>No proper justification for singling out the services provided by 'professional firms'.</p> <p>Is it appropriate or fair that professionals are targeted separately and differently by the ATO in relation to income splitting compared to other forms of income derivation from personal exertion?</p>	<p>guidelines, the ATO has received repeated submissions stressing the need for guidance.</p>
12	<p>Definition of a professional should be revisited and more clearly articulated.</p>	<p>We agree. The definition of 'professional firms' has been expanded to include management consulting. The final Guideline also qualifies that it does not apply to professions where the IPP is not permitted to provide services through an entity but must provide those services directly. See paragraphs 20 and 30 to 33 of the final Guideline.</p>
13	<p>No clear distinction between equity and non-equity holders</p> <p>The ATO makes a binary distinction between equity and non-equity holders. In practice, the distinction is not that clear.</p> <p>Practitioners within a professional services business will often progress through stages of equity, with their involvement and rights changing in each stage. To suggest that they are non-equity holders until some arbitrary set of criteria is met is simply not reflective of the commercial reality.</p>	<p>We disagree. The issue of equity versus non-equity arose after the issue of the suspended guidelines where the ATO identified cases of non-equity partners making assignments and alienating income. This became one of the high-risk features.</p> <p>When this issue became known in the market previously, we began to receive a number of requests about 'classes' of partners who were 'hybrid' or somewhere between non-equity and full equity with full rights.</p> <p>The ATO does not want to attempt to define the factual issue of equity versus non-equity. There were also part equity/hybrid partners identified prior to the suspended guidelines.</p> <p>The risk is these arrangements are a reaction to the suspended guidelines with a view to those who previously could not alienate any income being able to access the suspended guidelines resulting in 'low-risk' or 'permissible' alienation.</p> <p>If an IPP or firm has bespoke arrangements of this nature, they should seek assurance on a case-by-case basis.</p>

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14	<p>Different classes of IPPs are excluded from the draft Guideline as a result of it only applying to an IPP with full rights to participate in the voting, management and income of the firm.</p> <p>An IPP also may not have information to assess whether the gateway criteria are satisfied.</p>	<p>Whether an IPP holds an equity or non-equity interest in a professional firm is a question of fact.</p> <p>The Commissioner considers the allocation of professional firms profits to a non-equity holder are derived through the IPP's personal exertion and therefore should be returned in the IPP's individual income tax return.</p>
15	<p>Consider all operating structures in case studies, not just partnership structures</p> <p>The final Guideline should cover more examples of current IPP arrangements, including professional firms running through a common corporate structure or a unit trust.</p> <p>Clarify whether franking credits and related offsets are to be considered for the purposes of the risk assessment factors.</p>	<p>We agree. The final Guideline seeks to provide certainty to the maximum number of IPPs. However, as with most matrices that consider a number of different factors in arriving at a risk assessment, it may not apply perfectly to every given scenario.</p> <p>The ATO will take a practical administrative approach and encourages IPPs to engage with us if they think their self-assessed risk rating is not appropriate.</p> <p>The final Guideline applies to all professional firms irrespective of the structure used. Feedback suggests there is a misunderstanding that corporate structures and trusts are not covered by the final Guideline, and that the ATO is under the impression that most professional firms are still conducted via partnerships. The draft Guideline contained 18 examples, which included trusts and companies; however, the examples were reduced as it was considered excessive.</p> <p>The final Guideline now provides additional case studies to address these issues.</p>
16	<p>The application of Part IVA to an IPP who joins a large professional firm is dubious. Unlike the taxpayer in the <i>Hart</i>⁴ case, the IPP makes no decision on the structure and does nothing more than accept an invitation to join a pre-existing firm structure. The IPP should therefore be immune from any application of Part IVA.</p>	<p>We disagree. Where an IPP acquires an equity interest in a professional firm, an IPP should consider all relevant circumstances and all elements of this transaction, including but not limited to, the effectiveness and legal validity of the structure.</p> <p>Where considering the commercial imperatives and tax consequences, due regard should be paid to the application of Part IVA.</p>

⁴ *Hart v Commissioner of Taxation* [2018] FCAFC 61.

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Gateways		
17	<p>Remove the Gateways Remove Gateways 1 and 2 because:</p> <ul style="list-style-type: none"> the commercial rationale will be subjective and may be impracticable for the IPP of a large firm to apply when they are not in possession of the qualitative information the draft Guideline's risk rating relates only to the core concern and does not affect the ATO's ability to take action in relation to other tax issues. 	<p>We disagree. The Gateways provide a number of examples which demonstrate their application to assist IPPs.</p> <p>The application of Part IVA requires consideration of certain matters (refer to subsection 177D(2)). The issues considered under the Gateways would be part of any Part IVA analysis, as would the risk assessment factors. For this reason, the final Guideline is used to understand the risk of Part IVA applying to the individual facts and circumstances of a case.</p> <p>The final Guideline includes a risk assessment framework used to allocate compliance resources; however, a full consideration of Part IVA would go beyond consideration of the Gateways and the risk assessment factors.</p> <p>Paragraph 60 of the final Guideline further clarifies that where an IPP has any of the risk features outlined within Gateway 2, we would expect the IPP to engage with the ATO.</p>
18	Why is the risk assessment framework necessary if you pass Gateways 1 and 2?	<p>Gateways 1 and 2 are qualitative factors relevant to considering the risk of an arrangement, whereas the risk assessment framework is more quantitative.</p> <p>Gateway 1 requires a self-assessment of whether the arrangement is commercially driven. There may be circumstances, when looking at the individual facts and circumstances of a case, where the IPP and ATO disagree the arrangement is commercial.</p> <p>Gateway 2 is based on observed structures and is not an exhaustive list of high-risk features. There may be existing and/or 'next generation' arrangements that the final Guideline does not currently contemplate.</p> <p>One difficulty in relying solely on Gateways is that it would provide insufficient certainty to IPPs of the ATO's level of concern in relation to an arrangement. For example, it would be possible for an IPP to self-assess as satisfying both Gateways 1 and 2, yet still be considered high risk by the ATO.</p> <p>From the ATO's perspective, a difficulty in relying solely on the Gateways is that it would require a case-specific exploration of commercial considerations prior to determining whether a case needs further investigation. For both the ATO and IPPs, there is additional importance in having a quantitative risk assessment framework underpinning case selection, in that it supports consistency across the ATO of determining cases for further investigation.</p>

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19	Gateway 1 – documentation The draft Guideline is unclear regarding the requirement to document the commercial rationale for an IPP's arrangement and how it operates and appears to mandate such documentation.	Paragraph 41 of the final Guideline has been updated to clarify that the ATO considers it best practice to document the reasons for the implementation and operation of an IPP's arrangement.
20	'Multiple classes of shares or units held by non-equity holders' should be removed as a high-risk feature. <ul style="list-style-type: none"> It is common for professional services firms to issue different classes of equity to IPP segments. There are many instances where there are valid commercial reasons for a company or trust to have multiple classes of shares or units on issue. Potentially serious retrospective taxation issue for taxpayers that held classed shares and genuinely considered they met the requirements of the suspended guidelines by meeting at least one safe harbour test, but now may have a heightened audit risk for the years 2018 to 2021.	The Commissioner considers the allocation of professional firms profits to a non-equity holder is derived through the IPP's personal exertion and therefore should be returned in the IPP's individual income tax return. Therefore, where a non-equity IPP's group features multiple share classes, the Commissioner will consider the arrangement to be high risk. Non-equity partners whose interests have these features can engage directly with the ATO to ascertain their level of risk. The suspended guidelines did not provide safe harbours to non-equity IPPs who sought to alienate income derived through their personal exertion.
21	Dividend access shares should not cause you to fail Gateway 2. An IPP could very easily pay those dividends to themselves, either directly or through trust distributions.	We disagree. Note our response to Issue 20 of this Compendium.
22	For ease of use, consider adding an addendum listing Taxpayer Alerts referred to in paragraph 61 of the draft Guideline.	Paragraph 61 of the final Guideline provides a link to all of the Taxpayer Alerts listed in the ATO Legal database, ensuring a contemporary listing of Taxpayer Alerts whenever accessed.
Risk assessment framework		
23	The risk factors should allow for adjustments for IPPs who are part-time IPPs (or those who take sabbatical).	We agree. See paragraph 71 of the final Guideline which addresses part-time arrangements.
24	Fringe benefits tax and superannuation The final Guideline should include guidance on: <ul style="list-style-type: none"> whether fringe benefits and superannuation contributions should be taken into account as 	We agree. Paragraphs 72 and 73 of the final Guideline now address these points. Any additional taxes paid in respect of an IPP's remuneration, including additional tax paid on superannuation contributions, will form part of the effective tax rate calculation.

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	<p>remuneration received by the IPP (risk assessment factor 1)</p> <ul style="list-style-type: none"> • whether fringe benefits tax paid by an employer or tax paid by a superannuation fund should be included in calculating the effective tax rate (risk assessment factor 2), and • how additional tax on superannuation contributions are accounted for in the risk assessment factors. 	
25	<p>Timing differences between profit measured from a commercial standpoint and tax rules</p> <p>Many IPPs will not know their incomes or profits by 30 June each year. How are they required to pay dividends and wages and make effective trust distribution resolutions by this time, which take into account the risk factors?</p>	<p>We agree. Paragraph 74 has been added to the final Guideline to address this under 'Other Considerations'.</p> <p>The Commissioner recognises there may be a number of other relevant factors pertaining to individual arrangements which will affect an IPP's self-assessed risk rating. These may include timing differences, retention of income within a firm in a particular year for commercial purposes, access to tax concessions and provisions including accelerated depreciation and instant asset write off, and other extraordinary business factors.</p>
26	<p>The draft Guideline fails to recognise an economic return on an IPPs contribution.</p>	<p>We disagree. The issue is based on the premise that an IPP should receive a return on their investment. For IPPs who have equity in a no-goodwill firm, as they make no capital contribution, there will be no return on capital contributed. For IPPs in a goodwill firm where their equity share has been purchased at a market value, there may be a case to argue that some portion of their profit entitlement could be attributed to their capital contribution.</p> <p>However, the final Guideline allows for a return of income generated by the business structure to be returned and assessed in income tax returns other than the IPP's personal return. This recognises that a portion of the profit entitlement is generated by elements other than the personal exertion of the IPP, being income generated from and by a business structure which includes employees and other business assets, including goodwill (which is attached to the individual in the case of professional practitioners).</p>

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27	Failure to adjust for service entity return The final Guideline should more appropriately address income derived through service trusts.	<p>We disagree. The ATO accepts service trust income is generated by a business structure, as per the judgment in <i>Phillips</i>⁵, but this income is related to an IPP's equity in the firm, albeit in a discrete entity and usually held by way of an associated entity (most commonly a discretionary trust).</p> <p>This facilitates a certain proportion of alienation of the overall firm's income, which is accepted to be a part of the overall profit entitlement which is generated by a business structure. This income, along with the other income generated by a business structure from the professional partnership, company or trust, is the overall proportion of a partner's entitlement.</p> <p>The Commissioner considers this amount to be generated by the entities which form part of the broader business structure. Therefore, the Commissioner considers this appropriately forms part of the profit entitlement of an IPP which is to be assessed against the scoring matrix.</p>
28	The draft Guideline compels an IPP to pay more tax than legally necessary Where an IPP adopts low-risk commercially-driven arrangements and the draft Guideline deems these arrangements to be moderate or high risk, a change in the IPP's arrangement to result in low risk pursuant to the draft Guideline will result in an increased tax liability.	<p>The final Guideline provides a risk assessment framework to inform appropriate allocation of compliance resources. It is recognised that many professional firms may have arrangements which have unusual or unique features. Where IPPs self-assess their level of risk and do not feel that their risk rating is commensurate with the arrangement implemented, they are encouraged to approach the ATO to discuss and obtain certainty of their risk rating.</p>
29	Rationale for the change in metrics contained in the risk assessment are arbitrary The risk assessment framework does not reflect the correct ratings for commercial, low risk arrangements and therefore should be recalibrated.	<p>We disagree. The ATO has taken on board feedback from public consultation and has further revised the metrics used in the risk rating:</p> <ul style="list-style-type: none"> • Risk assessment factor 1: Proportion of profit entitlement from the whole of firm group returned in the hands of the IPP – score 4 has changed from 50% to 'equal to or above 50%'. • Risk assessment factor 2: Total effective rate for income received from the firm by the IPP and associated entities – score 3 has changed from 30% to 'equal to or above 30%'. <p>The risk ratings form a matrix of risk which seeks to overcome the consequence of the bright line test adopted in the suspended guidelines. As</p>

⁵ *The Commissioner of Taxation of the Commonwealth of Australia v. Phillips, Ian Richard* [1978] FCA 60.

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		noted in our response to Issue 1 of this Compendium, the ATO was (as a matter of administrative practice) precluded from applying Part IVA to some professional firm arrangements that were considered high risk but technically qualified as low risk under the suspended guidelines.
30	<p>Risk assessment framework fails to reflect the base rate entity company rates</p> <p>Suggest a different score for firms with a turnover of less than \$50 million which are subject to 25% corporate rate.</p> <p>The effective tax rate thresholds do not factor in the legislated reductions in corporate and individual tax rates.</p> <p>Was the ATO cognisant of the declining base rate entity company tax rate when framing the risk assessment factors OR does the favourable score afforded to IPPs with an effective tax rate around the 30% mark reflect instead the resident individual marginal rate scale?</p> <p>As corporate tax rates are being constantly reduced, it will be more difficult to meet the guidelines to qualify as 'low risk'.</p>	<p>The final Guideline provides a risk assessment framework to identify allocation of compliance resources. IPPs are encouraged to self-assess and to approach the ATO if they do not feel that their risk rating is commensurate with the arrangement implemented.</p> <p>A simple measure such as tying arrangements to the current corporate tax rate does not address the range and complexity of arrangements. Further, when assessing income returned in the hands of the IPP, it would be the IPP's marginal tax rates that would be applicable not the corporate tax rate.</p>
31	Risk assessment framework could be simplified by using only the third factor (remuneration returned by the IPP expressed as percentage of the commercial benchmark).	<p>We disagree. Three risk assessment factors were deliberately inserted into the draft Guideline to overcome shortfalls with the suspended guidelines as noted in the response to Issue 1 of this Compendium.</p> <p>The final Guideline has been updated to clarify it is only necessary to consider the first two risk assessment factors but, in some cases, it may be appropriate to consider all three. The approach recognises that it may be impractical to determine an appropriate commercial remuneration against which to benchmark.</p>
32	The draft Guideline unfairly targets smaller firms and relatively newly-established professional firms.	<p>It is correct that the current scoring matrix will result in those IPPs with lower incomes having to return a higher proportion of their profit allocation in order to achieve low risk status.</p> <p>The ATO accepts the final Guideline cannot provide a 'one size fits all' model; however, it is designed to cover the maximum number of IPPs in the most consistent manner.</p>

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		<p>Most importantly, the final Guideline is a risk framework which acts as an indication of risk only. Where the scoring matrix results in anomalies, additional ATO profiling work will rule out compliance action.</p> <p>Alternatively, IPPs can contact the ATO directly if they consider their risk assessment rating is not reflective of their arrangement.</p>
33	<p>Criticism for stating that those IPPs who fall within the red zone would be audited.</p>	<p>We agree. The language in the final Guideline has been changed to highlight that IPPs should contact the ATO if they consider application of the final Guideline is not reflective of the risk rating of their arrangement.</p> <p>Further, it removes references to being directly audited and instead states at paragraph 37 of the final Guideline:</p> <p style="padding-left: 40px;">The relevance of failing a Gateway, or being in the red zone (or the amber zone), is that the Commissioner is likely to give closer attention to the individual facts and circumstances of the arrangement, including a deeper consideration of whether anti-avoidance provisions apply.</p> <p>It is considered this is better aligned with the intent of the final Guideline as a risk assessment tool based on the individual facts and circumstances of an arrangement.</p>
34	<p>The final Guideline should state the ATO's expectation in terms of substantiation where a taxpayer is rated moderate risk (amber zone) or high risk (red zone).</p>	<p>The final Guideline provides a risk assessment framework for an IPP to self-assess. The number and variations of arrangements would not lend themselves to prescribed substantiation in the final Guideline.</p> <p>The ATO considers IPPs keeping relevant records to support their self-assessment represents best practice.</p>
35	<p>Inconsistencies</p> <p>We acknowledge that the ATO has redefined the risk parameters based on their concerns (about arrangements involving taxpayers redirecting their income to associated entities where it has the effect of altering their tax liability); however, we are concerned that the difference in risk rating of an IPP can vary from low to high based on a minuscule difference in the commercial and taxation outcomes.</p>	<p>The final Guideline is a risk framework which acts as an indication of risk only. Where the scoring matrix results in anomalies, additional ATO profiling work will rule out compliance action.</p> <p>Alternatively, IPPs can contact the ATO directly if their risk assessment is not aligned to their arrangement.</p>

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Transitional arrangements		
36	<p>Clarification on transitional arrangements</p> <p>The transitional arrangements are well-intentioned but unclear. Further clarification is needed to provide certainty to compliant IPPs who entered professional firms:</p> <ul style="list-style-type: none"> • post-December 2017, and • whose arrangements are low risk. <p>'Grandfathering' should be provided to existing IPPs who are rated as low risk.</p> <p>The ATO should provide further guidance and clarity on whether the transitional grace period will apply on a firm-wide basis or on an IPP basis. For example, how does the draft Guideline apply if a firm put in place a structure before 14 December 2017 that complied with the suspended guidelines and admitted new IPPs into the firm after that date?</p> <p>The draft Guideline is unclear whether IPPs whose arrangements are flexible and can adopt low-risk arrangements immediately by varying their distributions must do so immediately or whether they are required to do so for the year ended 30 June 2024.</p>	<p>We agree. Paragraph 113 of the final Guideline no longer limits the ability to rely on the suspended guidelines for earlier periods, or during the transition period, to taxpayers whose arrangements were entered into before 14 December 2017 (noting that to qualify for the transitional treatment, IPP arrangements must be commercially driven and not exhibit any high-risk features outlined in paragraph 47 of the final Guideline).</p> <p>Paragraph 118 of the final Guideline also clarifies that all IPPs who qualify for the transitional treatment may continue to rely on the suspended guidelines until 30 June 2025.</p>
37	Need a longer transition period for IPP and businesses to consider rules, restructure, etcetera.	We agree. The application date of the final Guideline has been extended to 1 July 2022, with a corresponding extension to the two-year transitional period for those IPPs who were low risk under the suspended guidelines and rate as moderate or high risk under the final Guideline.
Case studies and examples		
38	<p>Consider including additional examples and case studies that cover the following:</p> <ul style="list-style-type: none"> • losses incurred by a unit trust • losses incurred by a discretionary trust • using profit or taxable income 	We agree. Additional case studies have now been included in the final Guideline. See case studies 8 to 12 (at paragraphs 159 to 181) in the final Guideline.

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	<ul style="list-style-type: none"> • comparable remuneration • company profits and dividends • mitigating factors. 	
39	Clarify the tax rates used to perform calculations of the effective tax rate in the examples and cases studies	The final Guideline has been updated to clarify that 2021 income tax rates are used in the calculations.
40	Insertion of a flowchart. Proposed flow chart provided.	We are considering the development of a flowchart or other tool to assist readers to navigate the final Guideline.
41	IPPs without client-facing roles There are many professional firms with IPPs whose roles do not involve the provision of professional advice directly to clients. For example, IPPs whose roles involve management of the firm's business functions.	This was previously raised during the consultations leading up to the publication of the suspended guidelines; however, it was not considered significant enough to create a carve out or other adjustment. We accept that some IPPs who have management and other firm responsibilities may not have client-facing and/or external fee-charging roles. However, the number of these IPPs is small as a proportion of the total number of IPPs in any firm. Many have dual roles (that is, firm responsibilities while still performing client-facing roles) and many rotate through these roles for a limited/set period, after which they revert to their client-facing role. IPPs without client-facing roles are contemplated in the definition of an IPP at paragraph 20 of the final Guideline, which includes individuals who provide services to the firm, as well as to clients of the firm.
Other		
42	Open, broad and transparent consultation has not been undertaken. References to the professional bodies having been consulted should be deleted from the final Guideline.	The references to consultation have been removed from the final Guideline.
43	The ATO should develop a holistic support package to assist IPPs in understanding how to apply the final Guideline and raise awareness of concerns.	In response to the feedback, the ATO is developing a support package which includes a considered communication strategy and the option to work with the joint bodies and other professional groups to deliver digital events, such as webinars and online presentations. We will also be providing targeted messaging to different professions to raise awareness across industries.