PS LA 2014/3 - Simplifying Transfer Pricing Record Keeping

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PS LA 2014/3
Simplifying Transfer Pricing Record Keeping

This Law Administration Practice Statement provides guidance on the application of the transfer pricing record keeping simplification options

This practice statement is an internal ATO document, and is an instruction to ATO staff.

Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

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1. What is this practice statement about?

This practice statement provides guidance when considering whether to undertake compliance action with respect to cross border conditions between entities (CBCBE) for the purposes of Subdivisions 815-B and 815-C of the *Income Tax Assessment Act 1997* where entities have applied one or more online guidance *Simplifying Transfer Pricing Record Keeping* options (STPRKO).

2. What is the context behind this practice statement?

For income years commencing on or after 29 June 2013, Australia's modernised transfer pricing rules apply to CBCBE, including Subdivision 284-E of Schedule 1 to the *Taxation Administration Act 1953* (TAA)[1] which deals with transfer pricing documentation.

Subdivision 284-E does not mandate the preparation or keeping of documentation. However, if the requirements in section 284-255 are not met it is presumed that the entity does not have a reasonably arguable position. As a direct result, a higher base penalty amount will apply.

Documentation that satisfies the requirements of Subdivision 284-E can impose an administrative burden on an entity disproportionate to their risk of not complying with the transfer pricing rules. The ATO has developed some STPRKO that eligible businesses can elect to apply to them to minimise their record keeping costs.

The application of these options to CBCBE does not limit or waive the operation of the law, but acknowledges that the entity has demonstrated a willingness to comply by choosing to apply and disclose an option.

The Commissioner has provided an assurance in the online guide that if an entity has elected to apply a STPRKO the ATO will not allocate compliance resources or take other compliance action to examine the transfer pricing records relevant to the STPRKO selected.

The Commissioner's assurance applies for three consecutive income years, which commence:

- On or after 29 June 2013 for small taxpayers, distributors, intra-group services and low level loans (inbound) options
- On or after 1 July 2015 for materiality, management & administration services, technical services and outbound loans options.

3. How do you tell when a taxpayer has elected to apply a STPRKO?

You can ascertain whether an entity has elected to apply one of the record keeping options by checking whether code 7 is shown for the 'percentage of dealings with documentation code' within the relevant label(s) on the entity's International Dealings Schedule.

This code was unavailable for the 2014 income year. If you are considering reviewing an entity's CBCBE for the 2014 income year, you will be notified by the entity of their eligibility when you initiate contact.

4. What do you do when a taxpayer has elected to apply a STPRKO?

If an entity has elected to apply one or more STPRKO, then you are not to review the records that relate to the relevant CBCBE's of that entity for the income years that fall within the assurance given by the Commissioner beyond conducting a check to confirm an entity's eligibility to elect the option(s) they have.

[1] All legislative references in this practice statement are to Schedule 1 of the TAA unless otherwise indicated.

An entity is expected to have kept contemporaneous documents that corroborate their eligibility as mere assertion will not suffice. They do not have to be comprehensive, but should simply and sensibly explain how and why the entity was eligible to apply an option or options.

You should refer to the online guide for details as to the relevant options, the eligibility requirements and their conditions of operation.

5. More information

For more information, see:

- Simplifying Transfer Pricing Record Keeping

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