



TDP 2019/1 - Proposed compliance framework - liquidity management

 This cover sheet is provided for information only. It does not form part of *TDP 2019/1 - Proposed compliance framework - liquidity management*

 This document has changed over time. This is a consolidated version of the ruling which was published on *30 July 2019*



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6 April 2018

Proposed Compliance Framework | Liquidity Management

Dear Rob

We refer to our recent discussions regarding the provision of Australian Taxation Office (ATO) guidance in relation to liquidity management.

In our most recent Australian Financial Markets Association (AFMA) liaison meeting, it was agreed that a draft “scaffolding” document in relation to liquidity management would be prepared by the ATO and distributed to AFMA. In this regard, please find a more detailed discussion paper attached to this letter.

Scope

1. This discussion paper applies to:
 - Australian resident banks with foreign branches; and
 - Foreign banks that carry on business in Australia through a permanent establishment.

This discussion paper does not address liquidity charges between separate legal entities.

2. This discussion paper is intended to apply only to liquidity charges that seek to allocate the funding costs associated with managing liquidity.

Overview

This discussion paper seeks to provide indicative guidance on the Commissioner’s compliance expectations in relation to the deductibility of funding costs associated with liquidity management by banks. In particular, this is illustrated through:

- An overview of the ATO’s understanding of different centralised and decentralised liquidity management frameworks employed by banks.
- An explanation of the “red flags”, whose presence in a liquidity management framework would indicate a high risk that the liquidity adjustments themselves are not a reasonable proxy for the actual costs incurred. This has been supported with relevant examples.
- The provision of “green zone” examples where the Commissioner accepts that no “red flags” are present.

It is noted that there are some concepts included in the paper for discussion purposes only (e.g. at paragraph 52, the use of average cost of external funds for the purposes of providing an example of a model with no management inputs). Please note that such concepts are included for discussion

purposes only and do not necessarily reflect the ATO view of the law. Similarly, to the extent that the document includes comments concerning the cost of funds, these should be understood as referring to the cost of funds associated with liquidity management and not the cost of funds to the bank more broadly.

Next steps

We would like to allow AFMA and its members an opportunity to review the discussion paper and to provide the ATO with feedback. Specifically, we would like AFMA and its members to provide:

- Additional examples of liquidity management models they consider to fit within the “green zone” as outlined in the discussion paper.
- Feedback on the particular format and structure of the final guidance to be provided, e.g. Practical Compliance Guideline (PCG) or other relevant format.
- Feedback in relation to the ATO’s understanding of industry practice in relation to this matter.

Please provide feedback to James Campbell by Monday 14 May 2018. If AFMA and its members would like further time to provide feedback then please let us know and we can discuss an alternative date.

We will now be opening the matter to public consultation with AFMA and its members and our view is that a joint ATO / industry working group would best facilitate progressing this matter. From an ATO perspective, the following people can contribute to the working group:

Anna-Maria Stephens (Senior Tax Counsel)
Justen Nixon (Tax Counsel Network)
James Campbell (Banking and Finance – Director)
Phil Daniel (Banking and Finance)
Vasuki Seemampillai (Banking and Finance)
Lindy Tan (Banking and Finance)

It will be appreciated if AFMA can coordinate industry representation on the working group. Can you please work with your members to confirm a representative group of 8-10 members across the foreign and domestic banks?

In terms of initial meetings, the ATO is available to meet with the working group to step through the paper. If you would like to do this between now and 14 May 2018 please let me know and we can make appropriate arrangements. In addition it may be beneficial to have a meeting following the due date for responses to discuss some of the feedback obtained from industry.

The ATO is welcome to obtaining coordinated industry level feedback from AFMA. However individual banks are more than welcome to provide their own individual feedback if they prefer.

Should you have any queries in relation to the above, please contact James Campbell on (02) 9374 8867.

Yours sincerely

Jeremy Hirschhorn
Deputy Commissioner of Taxation
Per James Campbell

Attachment