PCG 2017/2 - Simplified transfer pricing record-keeping options

Practical Compliance Guideline

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.

Table of Contents **Paragraph**

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 7 simplification options.

Options available

4. There are 7 simplified transfer pricing record-keeping options available:

- small taxpayers
- distributors
- low value adding intra-group services
- low-level inbound loans
- materiality
- technical services, and
- low-level outbound loans.

Date of effect

5. A review of the simplified transfer pricing record-keeping options has been completed and the eligibility criteria for each option have been updated. The simplified transfer pricing record-keeping options contained in this version of the Guideline are available for taxpayers to apply to income years commencing on or after 1 July 2018 (or substituted accounting period).

6. In order to ensure that these changes do not have a negative effect on taxpayers who have already arranged their affairs to take advantage of the options as they existed in the previous version of this Guideline, taxpayers are able to apply the options as they existed in that previous version for their first income year commencing on or after 1 July 2018 (or substituted accounting period) only.

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 either through a disclosure in your International Dealings Schedule (IDS) or in your country-by-country (CBC) statements if applicable.

9. If you are making a disclosure in your IDS, include code 7 at the percentage of documentation label field for relevant categories of transactions on the IDS. This code was not available for the 2013–14 income year. If we contact you in relation to your transfer pricing documentation for the 2013–14 income year, you will need to inform us that you have applied one of the options in this Guideline.

10. Refer to Country-by-country reporting for further information on how to make a disclosure of your election in your CBC statements.

11. Both forms of disclosure confirm you have assessed your situation as complying with the transfer pricing rules and your eligibility to apply the relevant options. 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

12. If you apply one or more of the options in this Guideline, we will generally 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.

13. 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.

14. 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 simplified transfer pricing record-keeping options

15. If you meet the criteria for one or more of the 7 simplification options, you will be eligible to apply that option to your relevant international related-party dealings. All amounts are in Australian dollars. All examples in this Guideline assume the taxpayers have self-assessed that their relevant transactions have complied with the transfer pricing rules. If you have CBC reporting obligations and choose to take up the administrative

solution, all references in this Guideline to amounts reported in IDS labels include what you would have disclosed if you had completed those labels in the IDS.

Small taxpayers

Eligibility criteria

16. The annual turnover of your Australian economic group is under $50 million and you:

- have not made sustained losses
- have not undergone a restructure within the year
- do not have related-party dealings (either as expenses or as income) involving royalties, licence fees, or research and development (R&D) arrangements totalling greater than $500,000 combined
- do not have specified service related-party dealings (either as expenses or as income) greater than 15% of your turnover
- are not a distributor, and
- have assessed your compliance with the transfer pricing rules.

Exclusions

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

- international related-party dealings involving royalties, licence fees or R&D arrangements
- international related-party financial transactions (for example, loans and guarantees) and associated charges
- international related-party dealings of a capital nature.

Example 1 – meeting the small taxpayer eligibility criteria

18. *Australco is a subsidiary of HeadCo, a United Kingdom (UK) company. For the 2018–19 financial year, Australco had 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 paid $100,000 in royalties.*

19. *Australco meets the eligibility criteria for the small taxpayers' simplified record-keeping option and can elect to apply it to the administrative support services received from HeadCo. However, it cannot apply the small taxpayers' option to its royalty transactions. Australco is still required to have an appropriate level of transfer pricing documentation for its royalty transactions.*

Example 2 – not meeting the small taxpayer eligibility criteria

20. *Australco is a distributor and is a subsidiary of HeadCo, a UK company. For the 2018–19 financial year, Australco had 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.

21. *As Australco is a distributor and has international related-party dealings involving royalties, licence fees or research and development arrangements greater than $500,000, Australco does not meet all the criteria to be eligible to apply the option. Therefore, Australco cannot use the small taxpayers' simplified record-keeping option.*

Distributors

Eligibility criteria

22. You are a distributor, the annual turnover of your Australian economic group is under $50 million and you:

- do not have a profit-before-tax ratio of less than 3%
- have not undergone a restructure within the year
- do not have related-party dealings (either as expenses or as income) involving royalties, licence fees or R&D arrangements totalling greater than $500,000 combined, and
- have assessed your compliance with the transfer pricing rules.

Exclusions

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

- international related-party dealings involving royalties, licence fees or R&D arrangements
- international related-party financial transactions (for example, loans and guarantees) and associated charges
- international related-party dealings of a capital nature.

Example 3 – meeting the distributor eligibility criteria

24. *Gustal Co is a wholesale business and an Australian subsidiary of MunichCo, a German company. For the 2018–19 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 3 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.*

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

Example 4 – not meeting the distributor eligibility criteria

26. *Keltali Co is an Australian subsidiary of Britai, a UK company. For the 2018–19 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 3 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 has not made sustained losses. It is the only member of the Australian economic group.*

27. *Keltali Co does not meet the criterion that international related-party dealings involving royalties, licence fees or R&D arrangements must not be greater than $500,000, or the profit-before-tax ratio criterion. All criteria must be met to be eligible to apply the option. Therefore, Keltali Co cannot use the distributors' simplified record-keeping option.*

Low value adding intra-group services

Eligibility criteria

28. You have international related-party low value adding intra-group service dealings of either:

- $2 million or less combined value of services received and provided – the *de minimis* rule
- greater than $2 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:

- low value adding intra-group services expenses of not more than 25% of your pre-intra-group services charges profit
- a mark-up on costs of the relevant services of
  - 5% or less for services you receive
  - 5% or more for services you provide
- not made sustained losses
- not undergone a restructure within the year, and
- assessed your compliance with the transfer pricing rules.

Exclusions

29. This option does not reduce the documentation requirements for international related-party dealings that are not low value adding intra-group services.

Example 5 – meeting the de minimis rule and the 25% of pre-intra-group services charges profit rule in the low value adding intra-group services option

30. *Victasubb is a subsidiary of Nevadaplus, an American company. In the 2018–19 financial year, Victasubb paid Nevadaplus $850,000 for management and administration services and $20 million for stock purchases. Victasubb was charged a 4.7% mark-up for the management and administration services it received. 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.*

31. *Victasubb meets the eligibility criteria for the low value adding intra-group services simplified record-keeping option (because total services satisfy the de minimis rule and the other criteria (including only having low value adding services expenses as 7.17% of its pre-intra-group services charges profit)) and can elect to apply it to its management and administration services from Nevadaplus.*

Example 6 – meeting the 15% of dealings rule and 25% of pre-intra-group services charges profit rule in the low value adding intra-group services option

32. *Victasubb is a subsidiary of Nevadaplus, an American company. In the 2018–19 financial year, Victasubb paid Nevadaplus:*

- *$1.2 million for management and administration services*
- *$970,000 for training services, and*
- *$20 million for stock purchases.*

33. *Victasubb was charged a 4.7% mark-up for the services from Nevadaplus.*

34. *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 2018–19. It has not made sustained losses and is the only member of the Australian economic group.*

35. *While Victasubb does not satisfy the de minimis rule (because total low value adding services are $2.17 million), the amount paid for services is less than 15% of its total expenses (being 5.17%). Victasubb's services expense is also less than 25% of its pre-intra-group services charges profit (being 16.48%). As all the other eligibility criteria for the low value adding 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 low value adding intra-group services option

36. *SubCo is the only Australian subsidiary of Gottlund, a Swedish company. In the 2018–19 financial year, SubCo paid Gottlund:*

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

37. *SubCo's payment included a 4.2% mark-up on the services from Gottlund. 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.*

38. *SubCo did not satisfy the de minimis rule in 2018–19, as the value of low value adding intra-group services received exceeded $2 million (they were $9 million) and 15% of total expenses (they were 18%). All criteria must be met to be eligible to apply the option. Therefore, it cannot elect to apply the low value adding intra-group services simplified record-keeping option.*

Example 8 – not meeting the 25% of pre-intra-group services charges profit rule in the low value adding intra-group services option

39. *Richoil is the only Australian subsidiary of MapleCoy, a Canadian company. In the 2018–19 financial year, Richoil paid MapleCoy:*

- *$8 million for management and administration services, and*
- *$1.7 million for R&D services.*

40. *Richoil was charged a 4.3% mark-up for its services from MapleCoy.*

41. *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 2018–19. It did not make sustained losses and is the only member of the Australian economic group.*

42. *Richoil does not satisfy the de minimis rule, as its low value adding intra-group services received exceeded $2 million (they were $8 million). The services were 10% of total expenses so they meet the second criteria (less than 15% of total expenses) and may still be able to apply the low value adding intra-group services simplified record-keeping option.*

43. *However, Richoil's low value adding intra-group services expenses ($8 million) represents 26.94% of its pre-intra-group services charges profit ($29.7 million), therefore exceeding the 25% threshold. All criteria need to be met to be eligible to apply the option. Therefore, Richoil cannot apply the low value adding intra-group services simplified record-keeping option.*

Low-level inbound loans

Eligibility criteria

44. 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 inbound loans
  - your interest rate is no more than the following rate for each of the income years which the loan is in effect
    - 5.65% in your 2022–23 income year
    - 5.81% in your 2023–24 income year
  - 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
- not undergone a restructure within the year, and
- assessed your compliance with the transfer pricing rules.

Exclusions

45. This option only applies to eligible inbound loans and does not reduce the documentation requirements for other international related-party dealings including:

- 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.

Example 9 – meeting the low-level inbound loans eligibility criteria

46. *Victasubb is an Australian subsidiary of Nevadaplus, an American company. In the 2023–24 income year, Victasubb borrowed A$10 million from Nevadaplus at an interest rate of 1.5% or A$150,000 per 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.*

47. *The 1.5% interest charge does not exceed the maximum interest rate of 5.81% required for the 2023–24 income year to be eligible to use the low-level inbound loans simplified record-keeping option.*

48. *Victasubb 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 loans eligibility criteria

49. *BettillaCo is an Australian subsidiary of HeadCo, a UK company. In the 2023–24 income year, 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 A$40 million to Choc, a Swiss entity. 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.*

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 loans option

51. *Victasubb is an Australian subsidiary of Nevadaplus, an American company. In the 2023–24 income year, Victasubb borrowed A$10 million at an annual interest rate of 7.1% or an interest payment of A$710,000. Victasubb had a turnover of $17 million, total expenses of $16 million and no other related-party dealings. Victasubb has not undergone any restructures nor made sustained losses and is the only member of the Australian economic group.*

52. *Given the interest rate paid in 2023–24 was higher than 5.81%, 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

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

- the total turnover for your Australian economic group is not more than $100 million
- you do not have related-party dealings (either as expenses or as income) involving royalties, licence fees, or research and development arrangements totalling greater than $500,000 combined
- you have not made sustained losses
- you have not undergone a restructure within the year, and
- you have assessed your compliance with the transfer pricing rules.

Exclusions

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

- international related-party dealings involving royalties, licence fees, or research and development arrangements
- international related-party financial transactions (for example, loans and guarantees) and associated charges
- international related-party dealings of a capital nature.

Example 12 – meeting the materiality eligibility criteria

55. *Darioco is a subsidiary of Cornishire, a UK company. Darioco is the only member of the Australian economic group. For the 2018–19 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.*

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

Example 13 – not meeting the materiality eligibility criteria

57. *Darioco is a subsidiary of Cornishire, a UK company. Darioco is the only member of the Australian economic group. For the 2018–19 financial year, Darioco has a turnover of $110 million. Cornishire paid $250,000 to Darioco for travel expenses and Darioco paid Cornishire $3 million for marketing support and $500,000 in royalties.*

58. *Darioco neither meets the 2.5% threshold nor the Australian economic group total turnover threshold criteria. All criteria need to be met to be eligible to apply the option. Therefore, Darioco cannot use the materiality simplified record-keeping option.*

Technical services

Eligibility criteria

59. 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
- not made sustained losses
- not undergone a restructure within the year, and
- assessed your compliance with the transfer pricing rules.

Exclusions

60. This option does not reduce the documentation requirements for international related-party dealings that are not technical services dealings.

Example 14 – meeting the technical services eligibility criteria

61. *Atkins is a subsidiary of Grande Inc, an American company. In the 2018–19 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 did not undergo any restructures, nor did it have sustained losses. It is the only member of the Australian economic group.*

62. *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 15 – not meeting the technical services eligibility criteria

63. *Condole is an Australian subsidiary of Globalbrit, a UK company, and is the only member of the Australian economic group. For the 2018–19 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). It had no other related-party dealings, did not undergo any restructures nor made sustained losses.*

64. *Condole does not meet the 10% mark-up on costs criterion for 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

65. 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
    - 5.65% in your 2022–23 income year
    - 5.81% in your 2023–24 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
- not undergone a restructure within the year, and
- assessed your compliance with the transfer pricing rules.

Exclusions

66. This option only applies to eligible outbound loans and does not reduce the documentation requirements for other international related-party dealings, including:

- 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.

Example 16 – meeting the low-level outbound loans eligibility criteria

67. *GrangeCo is an Australian subsidiary of MauiCo, an American company. In the 2023–24 income year, GrangeCo lent MauiCo A$10 million with an interest rate of 6.0% or A$600,000 per 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.*

68. *The 6.0% interest charge exceeds the minimum interest rate of 5.81% required for the 2023–24 income year to be eligible to use the low-level outbound loans simplified record-keeping option.*

69. *GrangeCo meets all of the eligibility criteria for the low-level outbound loans simplified record-keeping option and can elect to apply it to its interest-bearing loan to MauiCo.*

Example 17 – not meeting the low-level outbound loans eligibility criteria

70. *AustralCo is an Australian subsidiary of HeadCo, a UK company. In the 2023–24 income year, AustralCo lent HeadCo A$11 million 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. 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.

71. *The 8.5% interest rate charged on the loan to HeadCo exceeds the minimum interest rate of 5.81% to be eligible to use the low-level outbound loans simplified record-keeping option. However, 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 18 – not meeting the specified interest rate criterion for the low-level outbound loans option

72. *DustieCo is the Australian parent of ForCo, an American company. DustieCo lent ForCo A$10 million in the 2023–24 income year, with an interest rate of 1% or A$100,000 per 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.*

73. *The interest rate of 1% for this loan is less than the minimum interest rate of 5.81% required for the 2023–24 income year to be eligible to use the low-level outbound loans simplified record-keeping option.*

74. *DustieCo does not meet the specified interest rate criterion in the 2023–24 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

75. For more information, refer to Simplifying transfer pricing record-keeping.

Glossary of terms

Australian economic group

76. 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.

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

Combined cross-border loan balance

78. 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

79. The cost base used for the service options (low value adding intra-group and technical) should reflect all relevant costs (direct and indirect) associated with the services.

80. 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

81. 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.

82. 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.

International related-party dealings

83. 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

84. 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

85. 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.

Low value adding intra-group services

86. Low value adding intra-group services are services between related parties that satisfy the definition outlined in paragraphs 7.43 to 7.63 of Section D of Chapter VII of the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2010* (OECD TP Guidelines) and other documents covered by section 815-135 of the ITAA 1997[1], including services that:

- are supportive in nature
- do not constitute your core business or that of your related party
- are not specified service dealings.

87. Examples of low value adding intra-group services include:

- management and administration services; for example, activities that involve or relate to the control, facilitation and monitoring of your business' human (staffing) and financial resources (assets), back-office services or administrative services associated with employee share-based plans/recharge amounts – activities integral to financing, marketing or production are excluded
- information technology (IT) services that are not part of the principal activity of the group; for example, installing, maintaining and updating IT systems used in the business, training on the use or application of information systems or developing IT guidelines
- accounting, auditing, processing and management of accounts activities, and
- other general services of an administrative or clerical nature.

Pre-intra-group services charges profit

88. Pre-intra-group services charges profit

= total income − (total expenses − intra-group services expenses)

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

90. For the purposes of using these options, intra-group services expenses are all services expenses between related parties as reported in labels 8aC, 8bC, 8cC, 8dC, 8eC, 8fC, 8gC, 8hC, 8iC, 8jC and 8kC of your IDS.

Profit-before-tax ratio

91. Profit-before-tax ratio = (total income − total expenses) ÷ total income.

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

93. For the purposes of using these options, the ratio is to be calculated as a weighted average of 3 consecutive years, including the year for which you are considering applying the option.

[1] These documents include OECD, 2015, *Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 – 2015 Final Reports, OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris (2015 OECD Report).

Restructure

94. A restructure event for the purposes of these options, consistent with the definition in Taxation Ruling 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).

Specified service related-party dealings

95. A specified service between related parties is any service that is not a low value adding intra-group service and:

- is not of a merely supportive nature
- contributes significantly to the creation, enhancement or maintenance of value in the multinational economic group
- requires the use of unique and valuable intangibles or leads to the creation of unique and valuable intangibles, or
- involves the assumption of control of substantial or significant risk by, or gives rise to the creation of significant risk for, the service provider.

96. These services[2] include:

- services constituting the core business of the multinational group
- R&D activities (including software development unless falling within the scope of information technology services that are low value adding intra-group services)
- manufacturing and production services
- purchasing activities relating to raw materials or other materials that are used in the manufacturing or production process

[2] Consistent with paragraph 7.47 of Section D of Chapter VII of OECD, 2010, *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2010*, OECD Publishing, Paris, read together with the 2015 OECD Report.

- sales, marketing and distribution activities
- financial transactions
- extraction, exploration, or processing of natural resources
- insurance and reinsurance activities
- services of corporate senior management (other than management supervision of services that qualify as low value adding intra-group services).

Sustained losses

97. Sustained losses occur where you have incurred losses for 3 consecutive years, including the year for which you are considering applying the option.

98. 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

99. 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.

100. 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

101. The calculation takes into account the following expense and revenue amounts (descriptions and labels based on the 2018 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).

102. The calculation differs from that used in determining the IDS lodgment threshold of A$2 million as it does not include loan balances. For the technical services simplified record-keeping option, you also need to consider the relevant dealings for all entities within your Australian economic group.

Turnover

103. 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 and so on. For example, a company would use the amount reported at the total income label on its tax return.

Feedback

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

Commissioner of Taxation
22 February 2017

Amendment history

8 November 2023

Part	Comment
Paragraphs 44 and 65	To provide the: – maximum interest rate for low-level inbound loans for the 2023–24 year, and – - minimum interest rate for low-level outbound loans for the 2023–24 year.
Paragraphs 46, 47, 49, 51, 52, 67, 68, 70, 71, 72, 73 and 74	Minor updates to examples for low-level inbound and outbound loans using the 2023–24 interest rates.

17 November 2022

Part	Comment
Paragraphs 44 and 65	To provide the: – maximum interest rate for low-level inbound loans for the 2022–23 year, and – minimum interest rate for low-level outbound loans for the 2022–23 year.
Paragraphs 46, 47, 49, 51, 52, 67, 68, 70, 71, 72, 73 and 74	Minor updates to examples for low-level inbound and outbound loans using the 2022–23 interest rates.
Whole document	Moved to current template. Updates to stylistic issues, such as reference to income years.

11 November 2021

Part	Comment
Paragraphs 44 and 65	To provide the: – maximum interest rate for low-level inbound loans for the 2021–22 year – minimum interest rate for low-level outbound loans for the 2021–22 year.
Paragraphs 46, 47, 49, 51, 52, 67, 68, 70, 71, 72, 73 and 74	Minor updates to examples for low-level inbound and outbound loans using the 2021–22 interest rates.
Whole document	Updates to stylistic issues such as margins and spacing.

17 December 2020

Part	Comment
Paragraphs 44 and 65	To provide the: – maximum interest rate for small related-party inbound loans for the 2020–21 year – minimum interest rate for small related-party outbound loans for the 2020–21 year.

11 September 2019

Part	Comment
Paragraphs 44 and 65	To provide the: – maximum interest rate for small related-party inbound loans for the 2019–20 year – minimum interest rate for small related-party outbound loans for the 2019–20 year.
All	Minor formatting style update

9 January 2019

Part	Comment
All paragraphs	Following a review of the simplified transfer pricing record-keeping options, the eligibility criteria for each option have been amended including: – removal of dealings with specified countries criterion – new combined $500,000 threshold criterion for royalties, licence fees or R&D arrangements – changes to the turnover thresholds for the small taxpayers and materiality options – removal of the management and administration services option – now consolidated into the new low value adding intra-group services option – low-level inbound loans: same interest rate methodology as low-level outbound loans.

25 July 2018

Part	Comment
Paragraph 75	To provide the minimum interest rate for small related-party outbound loans for the 2018–19 year.

4 April 2018

Part	Comment
Paragraph 75	To provide the minimum interest rate for small related-party outbound loans for the 2017–18 year.

References

Related Rulings/Determinations:

TR 2011/1

Legislative references:

- ITAA 1936 262A
- ITAA 1997 Subdiv 815-B
- ITAA 1997 Subdiv 815-C
- ITAA 1997 Subdiv 815-D
- ITAA 1997 815-135
- ITAA 1997 Div 974
- TAA 1953 Sch 1 Subdiv 284-E

Other references:

OECD, 2010, OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2010, OECD Publishing, Paris

OECD, 2015, Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 – 2015 Final Reports, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris

Simplifying transfer pricing record-keeping

ATO references

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