

# ***PS LA 2014/3 - Simplifying transfer pricing record-keeping***

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 This document has changed over time. This version was published on *16 January 2019*



This Law Administration Practice Statement provides guidance on the application of the simplified transfer pricing record-keeping 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.*

### 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 of the simplified transfer pricing record-keeping options (simplification options) in Practical Compliance Guideline PCG 2017/2 *Simplified transfer pricing record-keeping options*.

### 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)<sup>1</sup> 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. We have developed some simplification options that eligible entities can elect to apply to their relevant CBCBE 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.

PCG 2017/2 provides assurance that if an entity has elected to apply a simplification option we will generally not allocate compliance resources or take other compliance action to review the covered transactions or arrangements that a simplification option is applied to for transfer pricing purposes, beyond confirming the entity's eligibility to elect to apply an option.

This assurance applies for income years commencing:

- on or after 29 June 2013 for the small taxpayers, distributors, intra-group services and low-level inbound loans options
- on or after 1 July 2015 for the materiality, technical services and low-level outbound loans options
- on or after 1 July 2015 to the end of an entity's 2019 income year for the management and administration services option.

### 3. How do you tell when a taxpayer has elected to apply a simplification option?

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

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.

Entities can also elect to apply a simplification option in their Country-by-Country (CbC) statements, where applicable.

Entities may still have an opportunity to elect to apply the simplification options after lodging their IDS or CbC

<sup>1</sup> All legislative references in this practice statement are to Schedule 1 of the TAA unless otherwise indicated.

statements, as long as they meet the eligibility criteria for the options for the relevant income year.

#### **4. What do you do when a taxpayer has elected to apply a simplification option?**

If an entity has elected to apply one or more simplification options (whether in the IDS, CbC statements or post lodgment), then you are generally not to review the relevant CBCBE's for the relevant covered transactions or arrangements for the income years that fall within the assurance for transfer pricing purposes, beyond conducting a check to confirm that entity's eligibility to elect the options they have.

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 they were eligible to apply an option or options.

You should refer to PCG 2017/2 for details as to the relevant options, the eligibility requirements and their conditions of operation.

#### **5. More information**

For more information, see:

- Practical Compliance Guideline [PCG 2017/2 Simplified transfer pricing record-keeping options](#)
- [Simplifying transfer pricing record-keeping – frequently asked questions](#)

**Date issued** 17 December 2014

**Date of effect** 1 July 2013