International transactions

Failure to report or incorrect reporting of international transactions attracts our attention.

Related party financing

Cross-border financing arrangements involving non-arm's length terms or conditions attract our attention.

Intangible assets

International arrangements that don't recognise or incorrectly characterise intangible assets attract our attention.

Controlled foreign entities

Australian entities who fail to report or incorrectly report attributable foreign income attract our attention.

Thin capitalisation

Entities that do not comply with or incorrectly apply the thin capitalisation rules attract our attention.

Transfer pricing - services and other dealings

Income not subjected to domestic tax due to non-arm's length

Non-resident withholding tax interest, dividend or royalty

Entities that fail to withhold tax on interest, dividend or royalty payments to foreign residents attract our attention.

Income from overseas branches

Overseas branch or permanent establishment income incorrectly recognised as NANE branch income attracts our attention.

Mischaracterisation of inbound foreign funds

Cross-border arrangements that mischaracterise inbound foreign funds attract our attention.

Foreign residents disposing of taxable Australian property

Learn how disposals of taxable Australian property by foreign residents attract our attention.

Other issues or arrangements that attract our attention

Understand what other issues or arrangements attract our attention.

Hybrid mismatch rules

Hybrid mismatch arrangements which exploit differences in the laws of 2 or more tax jurisdictions attract our attention.

SGE and CBC reporting entities

Entities that met the definition of SGE or CBC reporting entity but failed to self-assess as one attract our attention.

QC 69437

Related party financing

Cross-border financing arrangements involving non-arm's length terms or conditions attract our attention.

Last updated 24 February 2025

What attracts our attention

Entities engaged in cross-border non-commercial financing arrangements and related party financing arrangements involving non-arm's length terms or conditions that result in the reduction or elimination of Australian tax (known as a transfer pricing benefit) attract our attention. The transfer pricing rules also apply to cross-border dealings with unrelated parties that are not acting at arm's length.

Non-commercial financing arrangements

We are seeing instances of entities using or entering financing arrangements with international parties on non-commercial terms that cause excessive interest deductions or non-recognition of income in

Australia. Such arrangements may not take place between related parties or associates.

Related-party financing arrangements

We are seeing instances of related party funding arrangements where the terms and conditions are non-arm's length that result in:

- higher interest rates
- excessive debt deductions.

They include **inbound financing for investments and projects in the property and construction industry** and may create **transfer pricing** benefits. We review them on the facts and circumstances including:

- the features of the financing arrangements and other factors
- the conduct of the parties
- options realistically available to the entities at the time.

We are encouraging taxpayers to improve their compliance approach by:

- adopting behaviours consistent with keeping their cost of capital as low as possible having regard to the commercial objectives
- paying attention to income tax compliance, including transfer pricing by adopting arm's length terms and conditions and documenting the substance of their related party financing arrangements
- monitoring funding arrangements including when circumstances change
- ensuring interest withholding tax obligations are met and reported on a timely basis including **annual reporting**
- paying greater attention to lodgement and disclosures required in the International Dealings Schedule on an annual basis, including those for thin capitalisation
- continue to monitor developments in the law and public advice and guidance to ensure ongoing compliance.

We also focus on outbound funding when on non-arm's length terms, such as outbound interest free loans.

For information on our compliance approach, see **PCG 2017/4** *ATO compliance approach to taxation issues associated with cross-border related party financing arrangements and related transactions*.

QC 103185

Intangible assets for privately owned and wealthy groups

International arrangements that don't recognise or incorrectly characterise intangible assets attract our attention.

Last updated 17 October 2024

Intangible asset arrangements we review

We review international arrangements that:

- don't recognise intangible assets developed in Australia or
- incorrectly characterise either;
  - intangible assets,
  - activities or conditions connected with intangible assets.

Taxpayers may engage in operations that require the use or enjoyment of intangible assets developed, maintained, protected or owned in a foreign jurisdiction. We're concerned when these taxpayers fail to pay, or recognise payment of, a royalty under Australia’s tax treaties and laws.

We're also concerned with migration of intangible assets. Migration refers to any transactions that allows an offshore party to access, hold, use, transfer, or obtain benefits in connection with, Australian intangible assets or associated rights.

In these circumstances, there is typically a significant mismatch between the substance of the relevant parties' operations and the form of their legal agreements. There is also generally an incorrect characterisation of the relevant assets and activities performed in connection with such assets.

Our concerns

We're concerned that:

- parties to arrangements of this type may not comply with Australian royalty withholding tax obligations associated with consideration for the use of intangible assets, under Subdivision 12-F of Schedule 1 to the *Taxation Administration Act 1953*
- the analysis or methodology used to determine the arm's length conditions or profits connected with these arrangements may result in parties getting a transfer pricing benefit for the purposes of Division 815 of the ITAA 1997
- the Australian entity disposes of their intangible assets to the offshore related party or the Australian associate of the offshore related party for nil or low consideration on non-arm’s length terms, minimising its CGT liability – the Australian entity may have also inappropriately utilised other CGT concessions, such as the rollover in subdivision 126-B ITAA 1997
- such arrangements may be entered into or carried out for the dominant or principal purpose of obtaining a tax benefit – this may attract the application of Part IVA of the ITAA 1936 or the diverted profits tax or both
- intellectual property arrangements involving inadequate reward for either
  - value contributed by the Australian entity

  - non-arm's length migration of rights in property created by the Australian entity.

Guidance on activities and non-arm's length arrangements

For more information on mischaracterisation of activities and non-arm's length arrangements, see:

- PCG 2024/1 *Intangibles migration arrangements*
- TA 2018/2 *Mischaracterisation of activities or payments in connection with intangible assets*
- TA 2020/1 *Non-arm's length arrangements and schemes connected with the development, enhancement, maintenance, protection and exploitation (DEMPE) of intangible assets.*
- Draft Taxation Ruling TR 2024/D1 *Income tax: royalties – character of payments in respect of software and intellectual property rights.*

QC 69443

Controlled foreign entities for privately owned and wealthy groups

Australian entities who fail to report or incorrectly report attributable foreign income attract our attention.

Last updated 17 October 2024

On this page

What we focus on

We focus on Australian entities that have failed to report or incorrectly reported attributable foreign income from controlled foreign entities. See the **Foreign income return form guide** for how tax applies to foreign income derived by or attributed to Australian residents. This includes Australian corporate tax entities with offshore activities that have repatriated their income as a foreign equity distribution that is non-assessable non-exempt income (NANE). See **section 768-5** of the ITAA 1997.

Our concerns with reporting attributable foreign income

Situations that attract our attention include where:

- the controlled foreign company (CFC) or transferor trust (TT) is in an unlisted country
- there is a failure to disclose all interests in CFCs, TTs or other foreign entities
- there is a failure to lodge an international dealings schedule, despite disclosing an interest in a CFC, TT or another foreign entity in the tax return
- there is inconsistent or incomplete information disclosed regarding CFCs and details of CFC attribution and calculation amounts in the tax return, the international dealings schedule and other tax return schedules
- the income being generated through a CFC is tainted
- fund movements are contrary to where the CFC or TT is located
- there is a sudden drop in attributable foreign income without a change in the number of CFCs or TTs
- the amount of NANE income reported has increased from the previous year but no attributable foreign income has been reported for the current and prior years
- entities have large claims for deductions, under **section 25-90** of the ITAA 1997, for outgoings incurred in deriving NANE income

- a CFC in an unlisted country provides benefits (including non-arm's length loans or waiver of a debt) to its shareholders or associates in a form other than dividends. Section 47A of ITAA 1936 may apply to deem these benefits as dividends.

QC 69445

Thin capitalisation for privately owned and wealthy groups

Entities that do not comply with or incorrectly apply the thin capitalisation rules attract our attention.

Last updated 17 October 2024

New thin capitalisation rules contained in the Treasury Law Amendment (Making Multinationals Pay Their Fair Share – Integrity and Transparency) Act 2024 apply to income years commencing on or after 1 July 2023, except for the debt deduction creation rules which apply for income years starting on or after 1 July 2024.

The thin capitalisation rules apply to most multinational businesses operating in Australia. This includes privately owned entities that are foreign controlled or have overseas entities, with more than $2 million in debt deductions, on an associate inclusive basis. The old thin capitalisation rules continue to apply to Australian plantation forestry entities.

For more information on the new thin capitalisation rules, see **Thin capitalisation**.

See how the debt deduction creation rules apply for private groups at **Debt deduction creation rules and Division 7A**.

An entity attracts our attention if it has:

- failed to lodge the international dealings schedule (IDS) when required

- reported a large amount of overseas interest expense on the tax return and hasn't completed the thin capitalisation section of the IDS
- applied the $2 million threshold without due consideration for the total quantum of debt deductions including those of associate entities for that year
- overlooked or incorrectly applied the thin capitalisation rules
- failed the relevant thin capitalisation test and hasn't declared the debt deduction disallowed
- relied on the arm's length debt test for 2023 or earlier income years without due consideration of the Commissioner's view in **TR 2020/4** *Income Tax: Thin Capitalisation – the arm's length debt test*
- determined the value of its assets and liabilities inappropriately for thin capitalisation purposes
- revalued assets for **thin capitalisation** purposes.

For information on the arm's length debt test prior to its removal, see **PCG 2020/7** *ATO compliance approach to the arm's length debt test*.

To access the latest information on the IDS form, see **What's new for the international dealings schedule** and **Instructions to complete the international dealings schedule**.

QC 69452

Transfer pricing - services and other dealings

Income not subjected to domestic tax due to non-arm's length conditions of international related party dealings.

Last updated 17 October 2024

On this page

Our focus

We focus on non-arm's length conditions in connection with cross-border dealings and arrangements that allow an Australian entity to gain a transfer pricing benefit. For information on the basic concepts of international transfer pricing and risks, see International transfer pricing – concepts and risk assessment.

Related party service arrangements

We are seeing instances of related-party service fees being paid offshore that don't meet the benefits tests required for deductibility in accordance with TR 1999/1 concerning transfer pricing for intra-group services.

Mischaracterisation of management services

We are concerned with arrangements that mischaracterise transactions as the provision of management services where all functions in relation to the offshore entity are either performed by staff in Australia or outsourced to third party providers that are directed by the Australian employees. These arrangements may cause a transfer pricing benefit to arise and may trigger other anti-avoidance provisions.

Customer and supplier contracts or relationships moved offshore

We are concerned with arrangements where pre-existing customer and supplier contracts or relationships are moved from an Australian entity to an offshore entity creating a transfer pricing benefit. We will seek to understand the commercial rationale for the change and seek evidence to support the arm's length nature of the transaction.

Shifting Australian assets or operations offshore

We are concerned about business restructures that shift Australian assets or operations offshore without arm's length compensation or appropriate recognition for their inherent underlying commercial value.

Offshore hubs that derive high profits

We are concerned about offshore hubs that derive high profits from marketing or procuring goods or services for Australian operations.

PCG 2017/1 *ATO compliance approach to transfer pricing issues related to centralised operation models involving procurement, marketing, sales and distribution functions* sets out our compliance approach to transfer pricing issues related to the location and relocation of certain business activities and operating risks into a centralised operating model.

For information on record keeping see PCG 2017/2 *Simplified transfer pricing record-keeping options*.

QC 69453

Non-resident withholding tax for interest, dividend or royalty for privately owned and wealthy groups

Entities that fail to withhold tax on interest, dividend or royalty payments to foreign residents attract our attention.

Last updated 17 October 2024

What we focus on

Situations that attract our attention include where:

- withholding tax hasn't been withheld or paid, or an incorrect amount is withheld or paid
- deductions for interest or royalty payments to an offshore entity are incorrectly claimed or misclassified on tax returns
- withholding tax exemption and tax treaty relief are incorrectly claimed
- inappropriate reliance on the exemption in section 128F or section 128FA of the ITAA 1936 to avoid liability to interest withholding tax, including where there was already an arrangement, agreement or understanding, that the debenture or debt interest would be issued to particular parties such that the offer is not truly available to the public
- uncommercial arrangements where entities defer interest to avoid or defer withholding tax and claim deductions on an accrual basis
- artificial structuring used to obtain a reduced withholding tax rate under a double-tax agreement
- artificial structuring or interposed offshore entities used to get a refund (in full or in part) of the withholding tax already withheld in Australia
- an entity pays interest, dividends or a royalty to a non-resident and fails to lodge, by 31 October, either
  - a PAYG withholding from interest, dividend and royalty payments paid to non-residents – annual report
  - an annual investment income report.

Additional guidance

Additional guidance on areas that attract our attention can be found in our Taxpayer Alerts:

- TA 2018/4 *Accrual deductions and deferral or avoidance of withholding tax*
- TA 2020/3 *Arrangements involving interposed offshore entities to avoid interest withholding tax*
- TA 2022/2*Treaty shopping arrangements to obtain reduced withholding tax rates*

QC 69446

Income from overseas branches for privately owned and wealthy groups

Overseas branch or permanent establishment income incorrectly recognised as NANE branch income attracts our attention.

Last updated 17 October 2024

We focus on an Australian company's overseas branch or permanent establishment income that has been incorrectly recognised as non-assessable non-exempt (NANE) branch income under section 23AH of the ITAA 1936. We also focus on the deductions being claimed to have been incurred by the Australian company in deriving section 23AH NANE branch income for which no deduction is available.

Situations that attract our attention include where:

- there is no permanent establishment but section 23AH NANE income is declared
- a permanent establishment may not have passed the active income test and the income is both

  - adjusted tainted income
  - eligible designated concession income (this applies to permanent establishments in listed countries only)
- there are low non-deductible expenses but section 23AH NANE income is declared.

For information on foreign branch income, see **Taxation of foreign dividends and branch profits**.

QC 69451

Mischaracterisation of inbound foreign funds for privately owned and wealthy groups

Cross-border arrangements that mischaracterise inbound foreign funds attract our attention.

Last updated 17 October 2024

On this page

Our focus

Cross-border arrangements that mischaracterise inbound foreign funds received by Australian taxpayers including disguising foreign sourced income as a loan, gift or other capital investment, attract our attention.

Inbound foreign funds of interest

We review cross-border arrangements that mischaracterise inbound foreign funds received by Australian taxpayers.

Inbound foreign funds need to comply with relevant tax laws, applicable tax treaties and the factual circumstances such as the underlying transaction, the structure used and the relationship between the relevant parties.

We are concerned that such arrangements may be contrived and unnecessarily complex to reduce or disguise the amount of income tax or withholding tax payable.

Foreign investors investing directly into businesses

Cross-border arrangements mischaracterising the structure used by foreign investors to invest directly into Australian businesses can attract our attention. They typically display one or more of the following features:

- The Australian resident entities are unable to obtain capital from traditional external debt finance sources on commercial terms.
- The foreign investor either already participates in the management, control or capital of the Australian entity at the time of investment, or starts to participate in the management, control or capital as part of the investment.
- Financial dealings between resident and foreign resident related parties that do not intend to create legally enforceable obligations or proceed on the basis indicated by the form of the arrangement.
- The investment has features not consistent with commercial debt or equity investments.
- The investment may provide the foreign investor with direct exposure to the economic return from a particular Australian business or asset portfolio (whether via trading activities or from the proceeds on disposal).

Loans and gifts

Situations that attract our attention include where there is insufficient substantiation and mischaracterisation of funds received from offshore family and related parties in the form of loans or gifts, see **gifts or loans from related overseas entities**. We focus on arrangements where Australian resident taxpayers derive income or capital gains offshore and either:

- fail to declare the foreign income in their tax return
- conceal the character of the funds upon repatriation to Australia as a purported 'gift' or 'loan' from a related overseas entity.

Guidance on inbound foreign funds

For more information on mischaracterisation and disguising undeclared foreign income, see:

- TA 2020/2 *Mischaracterised arrangements and schemes connected with foreign investment into Australian entities*
- **Division 974** ITAA 1997 *Debt and Equity interests*
- TA 2021/2 *Disguising undeclared foreign income as gifts or loans from related overseas entities.*

QC 69440

Foreign residents disposing of taxable Australian property

Learn how disposals of taxable Australian property by foreign residents attract our attention.

Last updated 23 December 2024

On this page

> Foreign residents disposing of taxable Australian property

Our focus

Foreign residents disposing of taxable Australian property who fail to lodge returns correctly advising of any gain or loss attract our attention. Purchasers who fail to withhold and pay the withholding on purchase from foreign residents also attract our attention.

Foreign residents disposing of taxable Australian property

Foreign residents are subject to capital gains tax (CGT) on the disposal of taxable Australian property (TAP). In contrast, foreign residents (except beneficiaries of resident non-fixed trusts) can generally disregard a capital gain or loss from a CGT event (such as a disposal) relating to non-TAP assets.

TAP comprises of:

- taxable Australian real property (TARP)
- **indirect interests in Australian real property**
- assets used in carrying on a business through a permanent establishment in Australia
- an option, or right, to acquire any of the above assets.

Foreign residents disposing of TAP are expected to lodge returns advising of any gain or loss.

Purchasers may be required to **withhold foreign resident capital gains tax** (FRCGW) from the sale price and remit this to us. FRCGW must be withheld unless the foreign resident vendor has a variation notice specifying a reduced rate of FRCGW.

Foreign residents attract our attention if they:

- hold significant direct or indirect interests in TAP assets – for example, shares in mining companies and interests in commercial properties
- dispose of TARP or indirect interests but do not meet their CGT obligations in relation to the disposal

- characterise or value assets in a way to come within the CGT exclusion
- enter into a series of transactions such as 'staggered sell-down' arrangements that attempt to come within the CGT exclusion
- lodge returns that are not in accordance with new associate inclusive test in determining total participation interests
- fail the principal asset test by inappropriately allocating significant market value to non-TARP assets
- are unlikely to have sufficient funds or assets remaining in Australia to meet their tax obligation relating to a disposal of a TARP.

For information on staggered sell-down arrangements and exploiting asset valuations to avoid capital gains tax, see:

- TA 2008/19 *Foreign residents attempting to avoid Australian capital gains tax by certain 'staggered sell down' arrangements*
- TA 2008/20 *Foreign residents exploiting asset valuations to avoid capital gains tax.*

QC 69441

Other issues or arrangements that attract our attention in privately owned and wealthy groups

Understand what other issues or arrangements attract our attention.

Last updated 17 October 2024

> **On this page**
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Non-lodgment of international dealings schedule

We focus on entities that fail to lodge the international dealing schedule (IDS) where tax returns and other information indicate that the IDS may be required but has not been lodged.

You are required to complete an IDS and lodge it with your income tax return for that year, if:

- the aggregate amount of the transactions or dealings with international related parties (including the value of property transferred or the balance outstanding on any loans) greater than $2 million
- you have overseas branch operations or a direct or indirect interest in a foreign trust, foreign company, controlled foreign entity or transferor trust
- the thin capitalisation provisions affect you, or
- any other requirement set out in the income tax return.

The IDS forms part of the entity's tax return. Not lodging an IDS where required may result in the tax return being considered as incomplete and **failure to lodge on time penalty** may apply.

The **International dealings schedule instructions 2024** will help you complete the International dealings schedule 2024 (PDF 2.2MB, NAT 73345). Instructions and forms for earlier years can be found on **Forms and instructions**.

Residency

Our focus

Entities that fail to declare as a tax resident where Australian tax residence tests are satisfied attract our attention. We also focus on entities that shift tax residency to another jurisdiction in conjunction with restructures, asset disposals or a significant increase in worldwide income.

Residency status

Residency is a foundation on which the Australian tax system determines how an individual or an entity will be taxed. An Australian tax resident is assessable on their worldwide income derived from all sources. However, a non-resident is only taxed on their Australian sourced income.

The tax residency status of individuals is explained at Your tax residency and in TR 2023/1 *Income tax: residency tests for individuals*.

The tax residency status of business entities such as companies, corporate limited partnerships and trusts is explained at Working out your residency.

If a company carries on business and has its central management and control in Australia, it will carry on business in Australia within the meaning of the central management and control test of residency. For more information see TR 2018/5 *Income tax: central management and control test of residency*. Practical Compliance Guideline PCG 2018/9 *Central management and control test of residency: identifying where a company's central management and control is located* provides practical guidance, including a risk assessment framework, to help foreign-incorporated companies determine their residency position.

Incorrect assessment of tax residency attracts our attention.

Change in tax residency

We focus on wealthy individuals who change their Australian residency status commensurate with a significant income event occurring in their personal lives or in relation to their family group.

We also focus on individuals, companies and trusts shifting their tax residency to another jurisdiction before or during restructures or asset disposals within their family group with the aim of:

- affecting the location of central management and control through artificial or contrived arrangements
- avoiding an Australian tax liability
- obtaining tax benefits on the disposal of CGT assets
- making tax-free distributions to associates.

Other situations that attract our attention include when tax has not been paid on:

- an entity's assets when ceasing to be an Australian resident
- a resident entity's worldwide income.

QC 69444

Hybrid mismatch rules for privately owned and wealthy groups

Hybrid mismatch arrangements which exploit differences in the laws of 2 or more tax jurisdictions attract our attention.

Last updated 17 October 2024

Enacted in 2018, the **hybrid mismatch rules** aim to prevent multinational companies and privately owned groups from gaining an unfair competitive advantage by avoiding income tax or obtaining double tax benefits through hybrid mismatch arrangements. These arrangements exploit differences in the tax treatment of an entity or instrument under the laws of 2 or more tax jurisdictions.

The hybrid mismatch rules apply to payments that result in hybrid mismatch outcomes such as where:

- a payment is deductible in one jurisdiction and non-assessable in the other jurisdiction
- one payment qualifies for a tax deduction in 2 jurisdictions
- a payment indirectly funds a hybrid mismatch in another jurisdiction
- the routing of investment or financing into Australia including via an entity located in a no- or low-tax (10% or less) jurisdiction.

These rules will neutralise hybrid mismatches by cancelling deductions or including amounts in assessable income.

Practical Compliance Guideline **PCG 2018/7** *Part IVA of the Income Tax Assessment Act 1936 and restructures of hybrid mismatch* *arrangements* provides guidance on when restructures may attract our attention.

Law Companion Ruling **LCR 2021/1** *OECD hybrid mismatch rules – targeted integrity rule* outlines the ATO's interpretation of the targeted integrity rule resulting in the denial of interest deductions set out in Subdivision 832-J of ITAA 1997.

Find out more about how the **hybrid mismatch rules** work and when they apply, including links to other published guidance.

QC 69442

Significant global entities and country-by-country reporting entities for privately owned and wealthy groups

Entities that met the definition of SGE or CBC reporting entity but failed to self-assess as one attract our attention.

Last updated 17 October 2024

On this page

What we focus on

We focus on significant global entities (SGEs) and country-by-country (CBC) reporting entities that:

- meet the definition but do not identify as such on their tax returns, and

- fail to complete and lodge relevant returns and reports as required.

Entities should check their status each income year to ensure they correctly self-assess their SGE and CBC reporting entity status, and any reporting obligations are met when due.

Significant global entity

Certain measures only apply to entities that meet the definition of a **significant global entity**. Subdivision 960-U of ITAA 1997 defines an SGE as a global parent entity or member of that global parent entity's group with annual global income of $1 billion or more. The SGE concept is not limited to entities that are members of a multinational group. An SGE can also be an entity in a group that only operates in Australia and from 1 July 2019, includes groups headed by individuals, trusts, partnerships, and private companies.

SGEs may be subject to **increased penalties** and the following integrity measures:

- **multinational anti-avoidance law** (MAAL), and
- **diverted profits tax** (DPT).

Country-by-country reporting entity

If an entity is an SGE, it needs to determine whether it may also be a **country-by-country reporting entity**. Subdivision 815-E of ITAA 1997 defines an entity as a CBC reporting entity if it is a CBC reporting parent or is a member of a CBC reporting group that includes a CBC reporting parent. When working out the annual global income of a CBC reporting parent under the notional listed company group rules, specific consideration must be given to the rules that modify the accounting standards for the purposes of determining an entity's CBC reporting entity status. These are distinct from the rules that modify the accounting standards for the purposes of determining an entity's SGE status. For more information see **Country-by-country reporting entities**.

All SGEs are subject to increased penalties and integrity measures, however, CBC reporting entities have additional reporting requirements and may be required to produce and report the following:

- CBC reporting statements, and

- **general purpose financial statements** (GPFS) if they are a corporate tax entity.

QC 69448

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.