

## Australian Taxation Office releases final guidance on outbound interest-free loans between related parties

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On 10 December 2020, the Australian Taxation Office (ATO) released the final version of Schedule 3 to its Practical Compliance Guideline PCG 2017/4 ([PCG 2017/4C5](#)) in relation to outbound interest-free loans between related parties. There are also minor updates to the PCG's other Schedules, reflecting the latest version of the ATO's Reportable Tax Position (RTP) Schedule.

The final Schedule applies from 1 January 2020 to both new and existing instruments and outlines the ATO's views on factors that taxpayers are required to consider in risk scoring an outbound interest-free loan arrangement.

The guidance in the Schedule is potentially complex, subjective and places a significant focus on taxpayers being able to "evidence" their self-assessed position.

An earlier detailed EY Global Tax Alert ([link](#)) released in August 2020 in relation to the draft Schedule includes detailed discussions on:

- ▶ Risk zone scoring outcomes as well as a summary of the ATO's compliance activity per risk zone
- ▶ Scoring modifications and "pricing" risk scoring factors
- ▶ Self-assessing a reduced pricing score, which includes covering:
  - Framing considerations and the ATO's two-step approach
  - Examples of the application of the draft Schedule
  - Reportable Tax Positions
- ▶ Interaction of the draft Schedule with other relevant provisions/guidance

## Changes adopted against the August 2020 draft Schedule

The final Schedule is largely unchanged from the draft Schedule. The ATO maintains the presumption that interest-free loans between related parties are high risk (amber risk zone), before consideration of any other characteristics of the financing arrangement.

We confirm however that the ATO has made four notable and important changes in the final Schedule:

- ▶ The final Schedule applies from 1 January 2020. However, it applies to both new and existing instruments.
- ▶ The sovereign risk factor that operated to increase the risk where the borrower was in a less risky jurisdiction, has been removed. As a result, the potential total "pricing" risk scoring is lower (a positive outcome) for a number of taxpayers.
- ▶ References to section 815-130 (reconstruction provisions in the transfer pricing legislation) in paragraphs 197 and 212 of the draft Schedule have been removed but the legal position will remain relevant for taxpayers even though it is not overtly included in the risk scoring exercise.

- ▶ Paragraph 220 of the draft Schedule has been re-worded and confirms that the characterization of an interest-free outbound loan should not change over the life of the transaction without a material change to either the arrangement or the borrower's circumstances.

Unfortunately, the Commissioner has not included further guidance in relation to inbound interest-free loans.

## Implications

The analysis to satisfy the requirements in the final PCG are potentially complex and subjective. It will require taxpayers to devote significant time to gather "evidence" that supports their position. Accordingly, taxpayers should consider these issues for new and existing arrangements well ahead of tax return filings; particularly, if a PCG/RTP Schedule disclosure will be required.

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