

# Australia

## Transfer Pricing Country Profile

Updated February 2018

		SUMMARY	REFERENCE
<b>The Arm's Length Principle</b>			
1	Does your domestic legislation or regulation make reference to the Arm's Length Principle?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Division 815 of the <a href="#">Income Tax Assessment Act 1997</a>  <a href="#">Division 815 Explanatory Memorandum</a>
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	Australia's transfer pricing legislation specifically makes reference to the OECD Transfer Pricing Guidelines (TPG). It provides that for the purposes of determining the effect the legislation has in relation to an entity, the arm's length conditions should be identified so as best to achieve consistency with the following relevant guidance materials: <ul style="list-style-type: none"> <li>the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, as approved by the Council of the Organisation for Economic Cooperation and Development and last amended on 22 July 2010</li> <li>the Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 - 2015 Final Reports, of the Organisation for Economic Cooperation and Development, published on 5 October 2015. View history reference.</li> </ul>	Sections 815-135 and 815-235 of the <a href="#">Income Tax Assessment Act 1997</a>
3	Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the definition contained under your domestic law or regulation.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  Australia's transfer pricing legislation does not provide a definition of related parties. Australia's transfer pricing legislation is applicable if an Australian entity gets a tax benefit in Australia from non-arm's length cross-border conditions, regardless of whether the parties are related to one another. There are no control or ownership thresholds for the legislation to apply.  However, a definition of international related parties is contained in the ATO's instructions for completing the International Dealings Schedule (IDS). An IDS is required to be lodged where a taxpayer has entered into certain international	<a href="#">International Dealings Schedule Instructions 2017</a>

dealings or arrangements.  
 The term as per the IDS instructions includes:

- any overseas entity or person who participates directly or indirectly in your management, control or capital
- any overseas entity or person in respect of which you participate directly or indirectly in the management, control or capital
- any overseas entity or person in respect of which persons who participate directly or indirectly in its management, control or capital are the same persons who participate directly or indirectly in your management, control or capital.

**Transfer Pricing Methods**

4 **Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?**

Yes  
 No

If affirmative, please check those provided for in your legislation:

CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Australia’s legislation does not specify any particular method to be used in respect of transactions between related parties. Paragraph 815-125 (2) Income Tax Assessment Act 1997 (ITAA 1997) states that “in identifying the arms-length conditions use the method or combination of methods that is the most appropriate and reliable having regard to all relevant factors”.

The paragraph notes that possible methods include the methods set out in the documents in section 815-135 ITAA1997 i.e. OECD TPG (see reference above at question 2 to relevant guidance materials). Therefore, the methods outlined in the OECD TPG are used.

5 **Which criterion is used in your jurisdiction for the application of transfer pricing methods?**

Please check all that apply:

Hierarchy of methods  
 Most appropriate method  
 Other (if so, please explain)

Australia seeks to adopt the method that is the most appropriate and reliable or best suited to the circumstances of each particular case. Australia’s legislation states “

Division 815 of the [Income Tax Assessment Act 1997](#)

		<p>In identifying the *arm's length conditions, use the method, or the combination of methods, that is the most appropriate and reliable, having regard to all relevant factors, including the following:</p> <ul style="list-style-type: none"> <li>a) the respective strengths and weaknesses of the possible methods in their application to the actual conditions;</li> <li>b) the circumstances, including the functions performed, assets used and risks borne by the entities;</li> <li>c) the availability of reliable information required to apply a particular method;</li> <li>d) the degree of comparability between the actual circumstances and the comparable circumstances, including the reliability of any adjustments to eliminate the effect of material differences between those circumstances.</li> </ul> <p>The Australian legislation also references the TPG with respect to selecting and applying the most appropriate method (see also reference above at question 2 to relevant guidance materials).</p>	
6	<p><b>If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.</b></p>	<p><input type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.</p> <p><input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (<i>if so, please explain</i>)</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p>	N/A
		<p>Australia's legislation does not provide specific guidance on commodity transactions.</p>	
<b>Comparability Analysis</b>			
7	<p><b>Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?</b></p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Australia adopts the guidance on comparability analysis in its transfer pricing legislation. Australia's legislation states:</p> <p>“In identifying comparable circumstances for the purpose of this section, regard must be had to all relevant factors, including the following:</p> <ul style="list-style-type: none"> <li>(a) the functions performed, assets used and risks borne by the entities;</li> <li>(b) the characteristics of any property or services transferred;</li> <li>(c) the terms of any relevant contracts between the entities;</li> <li>(d) the economic circumstances;</li> <li>(e) the business strategies of the entities.</li> </ul> <p>See also reference above at question 2 to relevant guidance materials.</p>	<p>Division 815 of the <a href="#">Income Tax Assessment Act 1997</a></p>

8	<p><b>Is there a preference in your jurisdiction for domestic comparables over foreign comparables?</b></p>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	
		<p>All things being equal, the ATO prefers to use domestic comparables as these would generally provide closer comparability especially in terms of economic circumstances but this all depends on the particular facts and circumstances and the availability of reliable data.</p>	
9	<p><b>Does your tax administration use secret comparables for transfer pricing assessment purposes?</b></p>	<input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	
10	<p><b>Does your legislation allow or require the use of an arm’s length range and/or statistical measure for determining arm’s length remuneration?</b></p>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<p>Paragraph 815-125 (2) of the <a href="#">Income Tax Assessment Act 1997</a></p>
		<p>Australia domestic legislation at paragraph 815-125 (2) provides that “in identifying the arms-length conditions use the method or combination of methods that is the most appropriate and reliable having regard to all relevant factors.” Where appropriate the use of an arm’s length range and/or statistical measure for determining arm’s length remuneration may be used.</p> <p>See also reference above at question 2 to relevant guidance materials.</p>	
11	<p><b>Are comparability adjustments required under your domestic legislation or regulations?</b></p>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<p>Paragraph 815-125 (4) of the <a href="#">Income Tax Assessment Act 1997</a></p>
		<p>Australia’s domestic legislation does not mandate quantitative comparability adjustments. The legislation provides in paragraph 815-125 (4) ITAA 1997 that where there are material differences between actual and comparable circumstances, it will be sufficient for the purposes of comparability if reasonably accurate adjustments can be made to eliminate the effect of the difference.</p> <p>See also reference above at question 2 to relevant guidance materials.</p>	

## Intangible Property

12	<p><b>Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?</b></p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
		<p>There is no specific guidance in Australia’s transfer pricing legislation in respect to the pricing of controlled transactions involving intangibles.</p> <p>However, as Australia’s transfer pricing legislation incorporates the TPG through section 815-135 ITAA 1997, Guidance contained in the TPG relating to the pricing of controlled transactions involving intangibles will be applicable. See reference above at question 2 to relevant guidance materials.</p>	
13	<p><b>Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard to value intangibles (HTVI)?</b></p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
		<p>Australia’s domestic legislation does not specifically provide for transfer pricing rules or special measures regarding hard to value intangibles.</p> <p>However, as Australia’s transfer pricing legislation incorporates the TPG through section 815-135 ITAA 1997, guidance contained in the TPG relating to hard to value intangibles would be relevant. See reference above at question 2 to relevant guidance materials.</p>	
14	<p><b>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?</b></p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	<p>Division 40, Part 3-90, Part 3-1, Division 355 and Division 820 of the <a href="#">Income Tax Assessment Act 1997</a></p>
		<p>Key Australian income tax rules relating to the tax treatment of intangibles (both specifically and more generally) include:</p> <ul style="list-style-type: none"> <li>• rules relating to uniform capital allowances (depreciation) – Division 40 ITAA 1997</li> <li>• tax consolidation rules – Part 3-90 ITAA 1997</li> <li>• capital gains tax rules – Part 3-1 ITAA 1997</li> <li>• research and development rules – Division 355 ITAA 1997</li> <li>• thin capitalisation rules – Division 820 ITAA 1997.</li> </ul>	

## Intra-group Services

15	<p><b>Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?</b></p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
		<p>Australia's domestic transfer pricing legislation does not provide specific guidance on intra-group services transactions.</p> <p>However, as Australia's transfer pricing legislation incorporates the TPG through section 815-135 ITAA 1997, guidance contained in the TPG relating intra-group services would be relevant. See reference above at question 2 to relevant guidance materials.</p>	
16	<p><b>Do you have any simplified approach for low value-adding intra-group services?</b></p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p><a href="#">Simplified transfer pricing record keeping options practical compliance guideline</a></p>
		<p>Australia's transfer pricing rules are self-executing and the Tax Commissioner in Australia does not have a general power to waive the operation of the underlying statutory test. However, the Commissioner's 'general power of administration' can be applied to inform the Commissioner's approach to compliance.</p> <p>Australia already has a number of transfer pricing simplification measures that are subject to various thresholds, however the simplification measures do not constitute literal 'safe harbours' to the extent that they do not waive the application of the underlying statutory test. Intra-group services is one of the eight available simplified transfer pricing keeping options.</p>	
17	<p><b>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?</b></p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
		<p>Australia's income tax rules (outside transfer pricing rules) would contain a number of provisions that are relevant for the tax treatment of transactions involving services.</p>	

## Cost Contribution Agreements

18	<p><b>Does your jurisdiction have legislation or regulations on cost contribution agreements?</b></p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
		<p>Australia's domestic legislation does not specifically provide for transfer pricing rules or special measures regarding cost contribution agreements.</p> <p>However, as Australia's transfer pricing legislation incorporates the TPG through section 815-135 ITAA 1997, guidance contained in the TPG relating to cost contribution agreements would be relevant. See reference above at question 2 to relevant guidance materials.</p>	

## Transfer Pricing Documentation

19	<p><b>Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?</b></p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><i>If affirmative, please check all that apply:</i></p> <p><input checked="" type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG</p> <p><input checked="" type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG</p> <p><input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG</p> <p><input checked="" type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return)</p> <p><input type="checkbox"/> Other (specify):</p>	<p>Subdivision 815-E of the <a href="#">Income Tax Assessment Act 1997</a></p> <p>Subdivision 284-E of Schedule 1 to the <a href="#">Taxation Administration Act 1953</a> (TAA 1953)</p> <p><a href="#">TR 2014/8 - Income tax: transfer pricing documentation and Subdivision 284-E</a></p>
		<p>Taxpayers may on a voluntary basis prepare transfer pricing documentation (with details of comparables and transfer pricing policies) to argue they have a Reasonably Arguable Position (RAP) and mitigate any administrative penalties that may apply in the event the Commissioner amends an assessment. Subdivision 284E of Schedule 1 to the Tax Administration Act 1953 sets out the transfer pricing documentation requirements an entity would need to meet. The taxpayer does not lodge these documents but is required to prepare these by the time of lodging of the relevant Australian income tax return.</p> <p>Administrative guidance, TR 2014/8 - Income tax: transfer pricing documentation and Subdivision 284-E of the Taxation Administration Act 1953, sets the ATO's views about how the provisions apply.</p> <p>Additionally, Subdivision 815-E ITAA 1997 sets out Australia's Country-by-Country (CbC) reporting provisions for significant global entities.</p>	

20	<p><b>Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)</b></p>	<p>Australia's CbC reporting provisions are contained in Subdivision 815-E ITAA 1997.</p> <p>All CbC reporting statements, including the master file, the local file, and the CbC report, must be lodged within 12 months after the end of the reporting period to which they relate. The statements need to be lodged electronically in an XML Schema format.</p> <p>The International Dealings Schedule forms part of the income tax return and must be lodged together with the income tax return when it falls due.</p> <p>Additionally, taxpayers may on a voluntary basis prepare transfer pricing documentation to substantiate their compliance with the arm's length principle (including details of comparables and transfer pricing policies) beyond the minimum statutory requirements.</p>	<p>Subdivision 815-E of the <a href="#">Income Tax Assessment Act 1997</a></p> <p><a href="#">CbC Reporting ATO Web Site</a></p>
21	<p><b>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</b></p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>There are no specific sanctions for not preparing/ not filing Transfer Pricing documentation, but the general provisions in the tax law for not keeping, filing, and submitting documentation applies. See response to question 19 above. Administrative statement penalties are doubled in the case of Significant Global Entities (Annual Income of AUD 1 billion and above).</p>	<p>Section 288-25 of Schedule 1 of the Taxation Administration Act 1953 (TAA 1953)</p>
22	<p><b>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</b></p>	<p>No, Subdivision 284E of Schedule 1 to the Tax Administration Act 1953 applies (see response to question 19 above).</p> <p>However, documenting transfer pricing arrangements to meet all of the requirements of Subdivision 284-E of Schedule 1 to the <i>Taxation Administration Act 1953</i> (TAA) may impose an administrative burden for some taxpayers exhibiting low risk arrangements. Simplified transfer pricing record keeping options have been developed to minimise the record-keeping for eligible taxpayers. See response to question 24 for further details.</p>	<p>Subdivision 284-E of Schedule 1 to the <a href="#">Taxation Administration Act 1953</a> (TAA 1953)</p> <p><a href="#">PCG 2017/2 Simplified Transfer Pricing Record Keeping Options</a>.</p>



## Administrative Approaches to Avoiding and Resolving Disputes

23	<b>Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?</b>	<p>Please check those that apply:</p> <p><input checked="" type="checkbox"/> Rulings</p> <p><input type="checkbox"/> Enhanced engagement programs</p> <p><input checked="" type="checkbox"/> Advance Pricing Agreements (APA)</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Unilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Bilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Multilateral APAs</p> <p><input checked="" type="checkbox"/> Mutual Agreement Procedures</p> <p><input type="checkbox"/> Other (<i>please specify</i>):</p>	<p>Division 357 and Division 359 of Schedule 1 of the Taxation Administration Act 1953 (TTA 1953).</p> <p>The Commissioner can enter into an unilateral APA by virtue of section 1-7 of the Income Tax Assessment Act 1997 (ITAA 1997).</p> <p>An authorised Competent Authority can enter into a bilateral or multilateral APA under the MAP Article of the relevant tax treaty.</p>
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## Safe Harbours and Other Simplification Measures

24	<b>Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?</b>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Australia’s transfer pricing rules are self-executing and the Tax Commissioner in Australia does not have a general power to waive the operation of the underlying statutory test. However, the Commissioner’s ‘general power of administration’ can be applied to inform the Commissioner’s approach to compliance.</p> <p>Australia already has a number of transfer pricing simplification measures that are subject to various thresholds, however the simplification measures do not constitute literal ‘safe harbours’ to the extent that they do not waive the application of the underlying statutory test. There are eight available simplified transfer pricing keeping options:</p> <ul style="list-style-type: none"> <li>• small taxpayers</li> <li>• distributors</li> <li>• intra-group services</li> <li>• low-level inbound loans</li> <li>• materiality</li> <li>• management and administration services</li> <li>• technical services</li> <li>• low-level outbound loans.</li> </ul>	<p><a href="#">PCG 2017/2 Simplified Transfer Pricing Record Keeping Options.</a></p>
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25	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	No.	
<b>Other Legislative Aspects or Administrative Procedures</b>			
26	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		<p>There is no specific legislative requirement to make year-end adjustments.</p> <p>However this may be an appropriate action for a taxpayer to ensure that profit arising from an international related party transactions or arrangements meet what would be expected if arms-length conditions. Taxpayers may make these types of adjustments if they have entered into advance pricing arrangements.</p>	
27	Does your jurisdiction make secondary adjustments?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Other Relevant Information</b>			
28	Other legislative aspects or administrative procedures regarding transfer pricing		
29	Other relevant information (e.g. whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire)		