

Transfer Pricing rules

	UN draft (April 2019)	OECD draft (July 2018)	UK Practice	Australian Practice
The applicability of ALP	YES The UN draft emphasizes the applicability of ALP to intercompany financial transactions as other intercompany transactions.	Not decided The OECD draft left a question mark where there is role for ALP to assess intracompany financial transactions. The OECD TP Guidelines (2017) affirms the applicability of ALP to financial transitions.	YES	YES 'Arm's length consideration' applies by Australia is modeled on the arm's length principle. (Division 13)
Interest reclassification	YES The UN draft provides 3 perspectives to be conducted to analyze the arm's length nature of financial transactions, so that the transaction would be entirely or partially disqualified as a loan, whereas, the draft also addresses that it is not necessary that the transaction would be recognized as equity.	YES Economically related characteristics should be considered in accurately delineating the arm's length nature of the transaction.	NO The UK practice used to provide instructions on interest re-characterized as a distribution based on the ownership or association between two parties. The rules have been abolished since March 2004.	YES Austrian transfer pricing rules follow OECD TPG requiring to consider economically related characteristics to determine the nature of the transitions. Also, ATO provides instruction on debt and equity tests for the purpose of Thin capitalization, consolidation measure, WHT. (Division 974 of ITA)
Debt capacity analysis	YES The UN draft stresses that the debt capacity analysis from both sides are required, while it has not provided further comments on this aspect.	YES The OECD debt capacity analysis is concluded in credit ranking assessment.	YES Interest cover test and Debt-based ratio test are applied for debt capacity analysis.	YES D/E is used as a factor considered in determining whether a loan should be treated as equivalent to a contribution to equity.

Transfer Pricing rules

	UN draft (April 2019)	OECD draft (July 2018)	UK Practice	Australian Practice
Credit ranking assessment of the borrower	<p>YES</p> <p>The UN draft provides 2 methodologies: Top-down approach and Bottom-up approach</p>	<p>YES</p> <p>The OECD draft provide only the Top-down approach, where the credit ranking of the borrower results in adjustments based on credit ranking of MNE.</p>	<p>YES</p> <p>The taxpayer may use a credit rating to support the proposition that the amount of inter-group debt is equivalent to what could be borrowed at arm's length.</p>	<p>YES</p> <p>Credit ranking assessment of the borrower is applied in ATO guidance in PCG 2017/4</p>
Implicit support	<p>YES</p> <p>The UN draft recognizes the positive and negative effects of implicit supports, while providing instruction based on strategic importance of the associated enterprises in the MNE</p>	<p>YES</p> <p>The OECD draft address that notches should be applied to credit ranking of the entity based on the strategic importance when the group's credit ranking is higher than the entity's.</p> <p>When the stand-alone credit ranking of the entity is higher than that of the group, the ranking at group level would be considered as a cap ranking.</p>	<p>NO</p> <p>In determining borrowing capacity, the "separate entity basis" means no account is taken of any guarantees, explicit or implicit, from connected companies.</p>	<p>YES</p> <p>ATO TR 2010/7 addresses the implicit support from parent company in identifying an appropriate interest rate at arm's length.</p> <p>The <i>Chevron</i> case reinforces the new OECD guidelines on the need to consider the interdependence between the parent and the subsidiary in relation to intra-group funding.</p>

Transfer Pricing rules

	UN draft (April 2019)	OECD draft (July 2018)	UK Practice	Australian Practice
Method	<ul style="list-style-type: none"> The CUP method is accepted by UN draft, where internal CUP, external CUP, Alternative external CUP. Alternative external CUP is proposed by the UN draft by seeking for comparables among alternative financial instruments (e.g. corporate bonds); Where there is limited treasury function, TNMM, cost plus method may also be used; Profit split method may be considered in global funding scenario. 	<ul style="list-style-type: none"> CUP method is accepted by OECD draft, where internal CUP, external CUP may be considered; The OECD draft proposes a scheme where the arm's length interest rate can be accessible by using the risk-free rate of return with adjustments; Realistic alternative transactions are considered as appropriate method to determine arm's length interest rate. (pending provision) Cost of fund is addressed as a method for financial transactions. 	<p>UK accepts the 'most appropriate' method among the following method for financial transactions:</p> <ul style="list-style-type: none"> Cost plus method- provision of service only CUP Profit split method. 	<ul style="list-style-type: none"> CUP method is usually preferred method. (TR 92/11) LIBOR and SIBOR are considered as generally indicative of basic interest rates. A margin maybe added to reflect the credit ranking of the borrower. The practical compliance guideline (PCG 2017/4), which deals with party debt financing, looks at internal comparables of the global group whereas the court's approach in <i>Chevron</i> tested the arm's length conditions by reference to third party observations.

Other legislation regarding financial transactions

	UN draft (April 2019)	OECD draft (July 2018)	UK Practice	Australian Practice
Anti-avoidance rules	NO	NO	GAAR: <ul style="list-style-type: none"> Arbitrage provisions - see INTM590000 Unallowable purpose legislation - CTA09/S441-442 	Part IVA: <ul style="list-style-type: none"> MAAL Diverted profits tax (DPT) Anti-hybrid (PCG 2018/7) The application of Anti-avoidance rules parallels application of transfer pricing rules.
Thin capitalization	NO	NO	Thin capitalization rules: For thin cap purposes, D/E is the ratio of total interest-bearing debt to shareholders' funds. No threshold is provided, the rule of thumb is 1:1; Besides, the Debt/EBITDA ratio measures the link between debt and profitability; The ceiling of interest deduction is the highest among: <ul style="list-style-type: none"> 30% of its UK EBITDA; the group ratio; £2m De Minimis (Corporate interest restriction) 	Thin capitalization rules: The maximum allowable debt is the greatest of the <ul style="list-style-type: none"> safe harbor debt amount (asset-based) the arm's length debt amount worldwide gearing debt amount, The context of categories above differs between inward and outward investing entities.
Safe harbor	YES The UN draft recognizes countries' freedom to set safe harbor rules and simplification measures on financial transactions.	NO The OECD TP Guidelines state concerns about divergence of safe harbor from ALP, double taxation, etc.	NO UK does not operate a safe harbor regime. SME exemption: small and medium sized enterprises exemption on transfer pricing legislation, which is applicable for eligible UK entities and the ones from countries who have signed a treaty with non-discrimination provisions. (INTM412080)	YES The ATO provides safe harbor arm's length interest rate — General interest charge rates for low level inward and outward loans.

Other legislation regarding financial transactions

	UN draft (April 2019)	OECD draft (July 2018)	UK Practice	Australian Practice
<p>The order of precedence of transfer pricing rules and other legislations</p>	<p>The UN draft recognizes domestic jurisprudence on the nature of transactions. (<i>"The conclusion does not necessarily affect the civil law or common law denomination of the financial transaction. It only affects the transfer pricing analysis, B 9.2.1.3)</i></p> <p>It grants the priority to domestic jurisprudence to some extent. (<i>"Domestic jurisprudence will generally be relevant or even determinative for the characterization of an intracompany financial transaction." B 9.2.1.8)</i></p>	<p>The OECD draft recognizes domestic jurisprudence on the nature of transactions. (<i>"This Guidance is not intended to prevent countries from implementing approaches to address capital structure and interest deductibility under domestic legislation", B.1.10)</i></p>	<p>Transfer pricing concerns may sit alongside avoidance concerns.</p> <p>The thin cap rules shall be disregarded when calculating the transfer pricing tax advantage. The debt cap applies after any transfer pricing adjustment has been made.</p> <p>The corporate interest restriction is conducted after application of other rules which may restrict interest deductibility such as transfer pricing, unallowable purpose, etc..</p>	<p>Transfer pricing rules applies before thin capitalization rules. In the case of tax payers falling into safe harbor of thin capitalization rules, transfer pricing can still make adjustment on the transactions. (TR 2010/7)</p> <p>Debt and equity tests do not affect the application of transfer pricing rules in determining the nature of the transactions. (TD 2019/10)</p>