



# Additional taxation questions fact sheet

You may be prompted to complete the additional taxation questions during the submission or assessment process in the Foreign Investment Portal.

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## Key information

The Treasury may ask you to provide additional taxation information when you submit a proposal in the portal.

Alternatively, you may be asked via the portal to provide this information during the assessment process.

If you're prompted to complete the additional taxation questions, you will need to copy the questions, complete and save them in a document outside of the portal.

- When lodging a submission in the portal, you will be required to upload the completed document into the **Financing Questionnaire** section.
- If you have lodged your submission and receive a portal message to complete the questions, you will be required to attach the completed document to your reply message in the portal.
- You will receive a confirmation message via the portal that your financing questionnaire response was successfully received.

## Additional taxation questions

1. Provide the name, position and firm of any tax advisers who advised you on Australian tax matters in relation to this transaction, submission or request for information.
2. Provide an overview of the acquisition/restructure (Transaction) step plan including a diagram of the pre- and post-Transaction organisational structures of the Target that includes the flow of funds used to finance the Transaction, as well as the legal form and tax residency of the ultimate investor(s) or shareholder(s) ('Investors') and all of the entities interposed between them and the Target.

Where relevant, the diagram must include:

- Australian tax consolidation status (for example, identify head company of the group and subsidiary members)

- Australian tax characterisation of trust (for example, flow-through trust, public trading trust, managed investment trust, non-resident beneficiary that is assessed under section 98A of the *Income Tax Assessment Act 1936*)
  - role of the entities (for example, holding entity, finance entity, SPV, operating entity) and
  - a description of the income producing assets of the entities (what is/ or will be its main source of income).
3. State if the ultimate unitholders or shareholders (either directly or indirectly via a wholly owned subsidiary or associate) propose to borrow from a third party for the purpose of financing part or all of the proposed acquisition.
- If yes, provide the following information for each third-party loan:
    - : lender's name
    - : amount
    - : currency used and
    - : rate of interest (including AUD equivalent interest rate).
4. Using the below table, provide details of the existing and/or proposed debt and equity arrangements of Australian entities, including Australian Bid/Hold Co(s) used for the purpose of acquiring Target Co/Group and/or interest in Australian land/assets. To avoid doubt, this table should be completed for both new (including proposed) and existing debt of Australian entities.

Provide details of existing and/or proposed debt and equity arrangements of any non-resident direct beneficiaries/unitholders of Division 6 trusts, to the extent that they are expected to give rise to deductible amounts against the distributions from Division 6 trusts.

Key terms	
Legal characterisation (for example, loan, note, ordinary shares, preference shares and so on)	
Tax Treatment (per Division 974 <i>Income Tax Assessment Act 1997</i> (ITAA 1997))	
Tax Treatment for counterparty in foreign jurisdiction	
Confirm whether treatment is different for income tax purposes and accounting purposes	
Borrower	
Tax residency of Borrower	
Lender (Clearly state if the Lender/s are a related party or not)	
Tax residency of Lender	
Amount	

Tenor	
Ranking (that is, senior, subordinate, mezzanine)	
Currency	
Interest rate (if currency is not AUD, also equivalent AUD rate)	
Credit rating of the Borrower	
Other features (security, restrictive covenants, guarantees, guarantee fee, contingencies, payment in kind, convertibility, options, and so on)	

5. For any related party debt disclosed at question 4, whether or not cross-border, having regard to Schedule 1 of the *Practical Compliance Guideline 2017/4* (PCG 2017/4), advise for each:
  - the risk rating
  - how each price and behavioural indicator was scored, and
  - which of the comparison options at paragraph 61 of Schedule 1 of PCG 2017/4 was used and the key terms of the debt (as set out in the table at question 4).
6. Advise if any part of your Transaction has features or an arrangement covered by one or more of the following Taxpayer Alerts:
  - **TA 2020/4** – Multiple entry consolidated groups avoiding capital gains tax through the transfer of assets to an eligible tier-1 company prior to divestment
  - **TA 2020/3** – Arrangements involving interposed offshore entities to avoid interest withholding tax
  - **TA 2020/2** – Mischaracterised arrangements and schemes connected with foreign investment into Australian entities
  - **TA 2020/1** – Non-arm's length arrangements and schemes connected with development, enhancement, maintenance, protection and exploitation of intangible assets
  - **TA 2019/2** – Trusts avoiding CGT by exploiting restructure rollover
  - **TA 2019/1** – Multiple entry consolidated (MEC) groups avoiding CGT through intra-group debt
  - **TA 2018/4** – Accrual deductions and deferral or avoidance of withholding tax
  - **TA 2018/2** – Mischaracterisation of activities or payments in connection with intangible assets
  - **TA 2017/1** – Re-characterisation of income from trading businesses
  - **TA 2016/10** – Cross - Border Round Robin Financing Arrangements
  - **TA 2016/7** – Arrangements involving offshore permanent establishments, and
  - **TA 2016/3** – Arrangements involving related party foreign currency denominated finance with related party cross currency interest rate swaps.
7. Provide for each distribution expected to be made by an Australian entity to an offshore recipient after the Transaction's completion:
  - the tax treatment of the payment for the Australian entity making the distribution
  - the tax treatment of the receipt for the non-resident entity receiving the distribution
  - the proportion of the payment subject to withholding tax, and

- if the withholding tax rate is less than 10 per cent or the payment is not subject to withholding tax, the reason(s) why.
8. Provide for each arrangement where an interest payment is expected to be made to any overseas recipient (excluding a foreign bank) after the Transaction's completion:
- the name and tax residency of the recipient
  - the proportion of the payment subject to Australian interest withholding tax
  - if the Australian interest withholding tax rate is less than 10 per cent or the payment is not subject to withholding tax, the reason(s) why
  - a description of the payment's characterisation for tax purposes in the hands of the recipient
  - the tax treatment of the receipt of interest for the recipient, including the effective tax rate it will be subject to
  - if the interest payment is subject to a foreign tax rate of 10 per cent or less, confirm if the hybrid integrity rule in Subdivision 832-J of the ITAA 1997 applies, and
  - if deductions were not denied under Subdivision 832-J of the ITAA 1997, advise the reason for this. Reasons may include:
    - o principal purpose test is not satisfied
    - o same or lower rate of tax would have been paid by ultimate parent
    - o it is reasonable to conclude that the amount of the payment has been taken into account under the controlled foreign company (CFC) provisions (*Part X of the ITAA 1936*) and the sum of the attribution percentages of each attributable taxpayer in relation to the interposed foreign entity is at least 100 per cent, or the payment has been taken into account under the law of a foreign country with substantially the same effect as the CFC provisions in Part X, and
    - o the payment has given rise to a mismatch in an earlier Subdivision of 832.
9. Confirm which (if any) entities in the post-acquisition structure will be members of a 'Tax Consolidated Group' in accordance with the consolidation rules contained in the ITAA 1997 and provide the name of the head entity for each tax consolidated group.
10. For each entity that will be required to lodge an Australian income tax return:
- will it be subject to the Thin Capitalisation rules in Division 820 of the ITAA 1997
  - the method it will apply to determine their respective maximum allowable debt amount post the completion of the Transaction 7, and
  - if it will rely on any exemption from the Thin Capitalisation rules, which exemption(s) are to be relied on and the reasons why they apply.