



Foreign Investment Tax Checklist

- This Tax Checklist outlines information required by the Australian Taxation Office (ATO) to support Treasury in its review of foreign investment proposals.
- When completing your submission form in the Foreign Investment Portal (the **Portal**) you will be advised whether you need to complete the Tax Checklist.
 - The 'Overview' section outlines the sections of the Tax Checklist which are mandatory and also outlines sections which may be applicable based on the transaction/s.
- There are sections of the Tax Checklist which may not apply to your transaction. If the section is not relevant, please confirm in writing or by ticking the N/A box in the 'Overview' section that it does not apply to the transaction/s.
- If you cannot provide certain information because it will only become available after lodgement, then you should provide a timeframe for when that information will be available. When it becomes available, please provide it as soon as possible via the Portal.
- If the required information is not provided at the time of lodgement this may cause delays in the assessment of your application. Treasury will request any missing information during the assessment process.
- If you cannot provide the requested information prior to your application being finalised, the ATO may recommend that the decision maker impose conditions on the transaction requiring that the investor provide the information.

Overview

Section	Questions	Criteria for completion	Status
Mandatory sections			
Tax character and step plan	1-4	You must complete each of these sections when completing the Tax Checklist.	<input type="checkbox"/> Completed
Cross-border restructuring	5-7		<input type="checkbox"/> Completed
Taxpayer Alerts	8		<input type="checkbox"/> Completed
Funding and financing – General	9-11		<input type="checkbox"/> Completed
Funding and financing – Related party financing	12-13		<input type="checkbox"/> Completed
Funding and financing – Thin capitalisation	14		<input type="checkbox"/> Completed
Funding and financing – Debt deduction creation rules	15		<input type="checkbox"/> Completed
Sections to be completed if applicable to your transaction			
Funding and financing – Interest withholding tax exemption and the public offer test	16	Complete this section only if the public offer test exemption for interest withholding tax is being relied upon.	<input type="checkbox"/> Completed <input type="checkbox"/> N/A
Private capital considerations	17-21	Complete this section only if private equity, venture capital, or private capital funds (including infrastructure funds) are participating in the transaction (whether directly or indirectly).	<input type="checkbox"/> Completed <input type="checkbox"/> N/A
Intangible asset migration	22-23	Complete this section only if the transaction includes targets that have intangible assets or agreements related to intangibles.	<input type="checkbox"/> Completed <input type="checkbox"/> N/A
Managed Investment Trusts	24	Complete this section only if the Transaction involves managed investment trusts.	<input type="checkbox"/> Completed <input type="checkbox"/> N/A
Non-concessional Managed Investment Trust income	25	Complete this section only if the transaction involves stapled structures or asset/operating entity arrangements that share common ownership but are not part of a tax consolidated group.	<input type="checkbox"/> Completed <input type="checkbox"/> N/A
Hybrid mismatches	26-27	Complete this section only if entities are involved in hybrid mismatch arrangements.	<input type="checkbox"/> Completed <input type="checkbox"/> N/A

Mandatory questions

Tax character and step plan

You must complete this section for all submissions that require completion of the Tax Checklist.

1. Provide the name, position and firm of any tax advisers who provided advice on Australian tax matters for the acquisition or restructure (the **Transaction**), the foreign investment submission for the Transaction, or related requests for information.
2. Provide a step plan of the Transaction, including:
 - a. a diagram of the pre-Transaction and post-Transaction organisational structures of the target(s), and, where relevant, identifying the members of a tax consolidated group/multiple entry consolidated group (**MEC group**),
 - b. the flow of funds,
 - c. the debt or equity characterisation of funds used to finance the Transaction,
 - d. the legal form and tax residency of the ultimate investor(s) or shareholder(s) (the **Investors**) and all the entities interposed between them and the target(s),
 - e. the Australian and foreign tax implications of the steps of the Transaction, and
 - f. indicate if any exemption or relief applies to each step of the Transaction.
3. For each entity in the post-Transaction structure diagram, provide the following details using the table format below:

Full legal name of the entity	
Country/Seat of Incorporation	
Name of all directors and public officers (or equivalent) (entities not incorporated in Australia only)	
Tax residence	
Australian tax character, e.g. <ul style="list-style-type: none"> – Head entity of a tax consolidated group – Member of a tax consolidated group – Flow-through trust – Public trading trust – Managed investment trust (MIT) – Complying superannuation fund – Foreign pension fund that is withholding tax exempt under subsection 128B(3) of the <i>Income Tax Assessment Act 1936</i> (Cth) (ITAA 1936) – Non-resident beneficiary that is assessed under section 98A of the ITAA 1936 	
Tax character of foreign entities in their jurisdiction of residence and incorporation. If the entity is not subject to tax on certain income or gains in its residence jurisdiction, please provide details.	

The key role of the entity (e.g. holding entity, finance entity, special purpose vehicle, operating entity)	
Description of their income producing assets	

4. Confirm which entities (if any) in the post-Transaction structure will be members of a tax consolidated group or MEC group in accordance with the consolidation rules in the *Income Tax Assessment Act 1997* (Cth) (**ITAA 1997**) and provide the name of the head entity/provisional head company for each tax consolidated group.

Cross-border restructuring

You must complete this section for all submissions that require completion of the Tax Checklist.

5. Confirm whether there is an expected change to the tax residency of an ultimate head company (**UHC**) of an Australian entity as a result of the Transaction. If so, then you must provide details of:
 - a. jurisdiction of new tax residency of the UHC,
 - b. existing business presence and operations in the proposed new tax residency jurisdiction, and
 - c. alternative jurisdictions considered to locate the new UHC and why each alternative jurisdiction was not chosen/preferred.
6. Confirm whether any restructuring was undertaken prior to, or is expected to be undertaken following, the Transaction. If so, then you must provide the following information:
 - a. the reason(s) for the restructure,
 - b. a description of the restructuring steps,
 - c. any known or anticipated Australian and foreign tax implications of each step, and
 - d. a step plan (if available).
7. Confirm whether any distributions are expected to be made by an Australian entity to an offshore recipient after the Transaction's completion. If so, then for each distribution, you must provide the following information:
 - a. the tax treatment of the payment for the Australian entity making the distribution,
 - b. the tax treatment of the receipt for the non-resident entity receiving the distribution,
 - c. the proportion of the payment subject to withholding tax, and
 - d. if the withholding tax rate is less than 10 per cent or the payment is not subject to withholding tax, the reason(s) why.

Taxpayer Alerts

You must complete this section for all submissions that require completion of the Tax Checklist.

8. Confirm whether any part of the Transaction has features or an arrangement covered by one or more of the following Taxpayer Alerts (**TAs**):

- a. *TA 2025/1: Managed investment trusts: restructures to access the managed investment trust withholding regime,*
- b. *TA 2022/2: Treaty shopping arrangements to obtain reduced withholding tax rates,*
- c. *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*
- d. *TA 2020/3: Arrangements involving interposed offshore entities to avoid interest withholding tax,*
- e. *TA 2020/2: Mischaracterised arrangements and schemes connected with foreign investment into Australian entities,*
- f. *TA 2020/1: Non-arm's length arrangements and schemes connected with development, enhancement, maintenance, protection and exploitation of intangible assets,*
- g. *TA 2019/2: Trusts avoiding CGT by exploiting restructure rollover,*
- h. *TA 2019/1: Multiple entry consolidated (MEC) groups avoiding CGT through intra-group debt,*
- i. *TA 2018/4: Accrual deductions and deferral or avoidance of withholding tax,*
- j. *TA 2018/2: Mischaracterisation of activities or payments in connection with intangible assets,*
- k. *TA 2017/1: Re-characterisation of income from trading businesses,*
- l. *TA 2016/10: Cross-Border Round Robin Financing Arrangements,*
- m. *TA 2016/7: Arrangements involving offshore permanent establishments, and*
- n. *TA 2016/3: Arrangements involving related party foreign currency denominated finance with related party cross currency interest rate swaps.*

Funding and financing

You must complete this section for all submissions that require completion of the Tax Checklist, except for *Interest withholding tax exemption and the public offer test* which only needs to be completed if the public offer test for the interest withholding tax exemption is relied upon.

General

9. Provide details of any existing and proposed equity and debt instruments of Australian entities (including any Australian acquirers or their Australian holding companies used for the acquisition of the target(s)). If there are no such instruments, then you must confirm this. To avoid doubt, this includes instruments that are not classified under Division 974 of the ITAA 1997.
10. Confirm whether the ultimate unitholders or shareholders of the acquiring party or parties propose to borrow (either directly or indirectly via a wholly owned subsidiary or associate) from a third party for the purpose of financing part or all the Transaction. If so, then you must provide the following information for each third-party loan:
 - a. the lender's name,
 - b. the amount,
 - c. the currency used, and

- d. the rate of interest (including AUD equivalent interest rate).
11. Using the table format below, provide details of the existing and proposed debt and equity arrangements of Australian entities (including any Australian acquirers or their Australian holding companies used for the acquisition of the target(s)). If there are no such arrangements, then you must confirm this. When completing this table,
- include the details of existing and 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, and
 - regarding debt instalments, attach any relevant registrations under the *Personal Property Securities Act 2009* (Cth).

Legal characterisation (e.g. loan, note, ordinary shares, preference shares etc.)	
Tax Treatment	
Tax Treatment for counterparty in foreign jurisdiction	
Confirm whether treatment is different for income tax purposes and accounting purposes	
Recipient of Funds (Borrower, Issuer)	
Tax residency of Recipient	
Provider of Funds (Lender, Holder) (clearly state if the Provider/s are a related party or not)	
Tax residency of Provider	
Amount	
Tenor	
Ranking (i.e. senior, subordinate, mezzanine)	
Currency	
Interest rate (<i>if currency is not AUD, then provide the equivalent AUD rate</i>)	
Credit rating of the Borrower	
Other features (security including copies of <i>Personal Property Securities Act 2009</i> (Cth) registration, restrictive covenants, guarantees, guarantee fee, contingencies, payment in kind, convertibility, options, withholding tax gross-up clause etc).	

Related party financing (RPF)

12. For any related party debt disclosed at Question 11 above, whether or not cross-border, having regard to Schedule 1 of the Practical Compliance Guideline 2017/4 (PCG 2017/4), you must advise for each:
 - a. the risk rating,
 - b. how each price and behavioural indicator was scored, and
 - c. 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 8) and where the global cost of funds options is used, include the working papers created to calculate the cost.
13. Confirm whether there are any arrangements where a payment is expected to be made to the Investors or a non-resident associate of the Investors after the Transaction's completion. If yes, then for each such arrangement, you must provide:
 - a. the name and residency of the recipient,
 - b. description of the payment's characterisation for tax purposes in the hands of the recipient,
 - c. the proportion of the payment subject to withholding tax,
 - d. if the withholding tax rate is less than 10% or the payment is not subject to withholding tax, the reason(s) why,
 - e. confirmation of whether the arrangement was entered into on a back-to-back basis, and if so, details of the other loan or similar arrangement that provided the original funding, including the name and residency of the entities involved, a description of the tax and accounting characterisation of the arrangement and the associated payments in the relevant jurisdictions and the cumulative total tax rate the interest/distribution will be subject to,
 - f. the tax treatment of the receipt for the non-resident entity receiving the distribution, including the effective tax rate it will be subject to,
 - g. analysis of the application of Subdivision 832-C of the ITAA 1997 to the arrangement,
 - h. if the payment is in the nature of interest or an amount under a derivative financial arrangement and the payment is subject to a foreign tax rate of 10 per cent or less, confirm if the integrity rule in Subdivision 832-J of the ITAA 1997 applies, and
 - i. if the payment is in the nature of interest or an amount under a derivative financial arrangement and deductions were not denied under Subdivision 832-J of the ITAA 1997, advise the reason(s) for this and provide all the relevant details. The reason(s) may include:
 - i. Principal purpose test is not satisfied.
 - ii. Same or lower rate of tax would have been paid by ultimate parent.
 - iii. It is reasonable to conclude that the amount of the payment has been considered under the 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%, 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.

- iv. The payment has given rise to a mismatch in an earlier Subdivision of 832.

Thin capitalisation

14. For each entity described in Question 3, for the income year/s in which the Transaction is to be undertaken (whether all or any part), you must advise whether the entity:
- a. will be subject to the thin capitalisation rules in Division 820 of the ITAA 1997,
 - b. anticipates satisfying the asset threshold test in section 820-37 of the ITAA 1997,
 - c. anticipates claiming an exemption as a special purpose entity pursuant to section 820-39 of the ITAA 1997 (including any part of the entity's controlled member/s where the entity is the head entity of a tax consolidated group or MEC group),
 - d. anticipates applying the fixed ratio test or group ratio test,
 - e. anticipates applying the third party debt test and/or using the conduit financing conditions in sections 820-427B and 820-427C of the ITAA 1997.

Debt deduction creation rules (DDCR)

15. For each entity described in Question 3, for the income year/s in which the Transaction is to be undertaken (whether all or any part) that commences on or after 1 July 2024, if the entity has debt deductions in the income year, you must advise whether the entity:
- a. will be subject to the DDCR in Subdivision 820-EAA of the ITAA 1997,
 - b. anticipates the DDCR applying to disallow debt deductions arising in relation to pre-existing arrangements (as relevant),
 - c. anticipates acquiring any CGT assets or legal or equitable obligation from an associate pair in connection with the Transaction, and
 - d. anticipates using a financial arrangement to fund or facilitate the funding of a payment or distribution covered by subsection 820-423A(5A) of the ITAA 1997 in connection with the Transaction.

[If applicable] Interest withholding tax exemption and the public offer test

This subsection applies to the public offer test exemption for interest withholding tax. If the public offer test is not being relied upon, then you do not need to complete this section when submitting your application.

16. If the 'public offer test' exemption from interest withholding tax in section 128F of the ITAA 1936 is being relied upon, describe the process (and provide evidence of that process) by which the debt interests or debentures have been publicly offered, to meet the requirements of the 'public offer test'. You must include:
- a. details as to which 'public offer test' was satisfied under subsection 128F (3), (3A) or (4),
 - b. the list of parties to which an invitation was made in relation to the public offer (whether or not they ultimately took up the offer),

- c. any publication, offering circular, brochure, prospectus, information memoranda or other similar marketing document related to the subscription,
- d. any draft term sheet or equivalent that was provided, and
- e. confirmation of whether any dealer, manager or underwriter was involved with your capital raising process. If so, provide names, descriptions, agreements, and any marketing documents produced by the dealer, manager, or underwriter.

[If applicable] Private capital considerations

This section applies if private equity, venture capital, or private capital funds (including infrastructure funds) participate in the Transaction, including where they directly or indirectly acquire, hold, dispose of, or otherwise have an ownership or economic interest in acquirer, vendor, or target. If no such entities participate in the Transaction, you do not need to complete this section when submitting your application.

- 17. Provide a full and complete ownership structure chart that includes the details of all entities between each fund and the target(s).
- 18. Provide complete descriptions of the functions, roles, responsibilities, commercial purpose and jurisdictions of establishment and operation of all interposed entities located between the fund(s) and the target(s).
- 19. Provide details of how the interposed entities carry out (or will carry out) their functions, roles and responsibilities, including whether these activities are (or will be) undertaken by directors, salaried employees, contracted service providers etc. and the residency/jurisdictions of those individuals or service providers.
- 20. Advise for each fund whether a partner, director, employee, or other delegate of the fund or its managing firm will be appointed to the board, management or other key role of any Australian entities in connection with the Transaction, regardless of their location. If yes, provide details of the relevant individual(s), their role, the entity to which they will be appointed, the nature and extent of their responsibilities, and the entity by which they are employed or engaged.
- 21. Advise for each fund and its managing firm whether it has a presence or office in Australia. If yes, provide details.

[If applicable] Intangible asset migration

This section applies to target(s) which are intangibles or whose assets include intangibles. If no target(s) in the Transaction have intangibles, then you do not need to complete this section when submitting your application.

- 22. Provide details of each planned, proposed or anticipated arrangement to transfer, create or assign rights, or otherwise make available any intangible assets from Australia to offshore related parties in connection with the Transaction, including:
 - a. details of the arrangement(s), including the names and tax residency of the entities involved and a step plan where applicable,
 - b. all commercial and non-tax reasons for the proposed arrangement(s), and
 - c. details of the anticipated Australian and foreign tax outcomes in connection with the arrangement(s).
- 23. Provide details of all planned, proposed or anticipated changes to the activities, assets and risks of the Australian target(s) (or the Australian economic group) relating to the

development, enhancement, maintenance, protection or exploitation of intangible assets in connection with the Transaction.

[If applicable] Managed Investment Trusts

This section applies to group structures which involve MITs. If no entity in the Transaction has a group structure involving managed investment trusts, you do not need to complete this section when submitting your application.

24. Provide a detailed explanation of how all MITs within the structure satisfy the MIT eligibility requirements with reference to Subdivision 275-A of the ITAA 1997. Your response must include an explanation of how each requirement in section 275-10 is satisfied.

[If applicable] Non-concessional Managed Investment Trust income

This section applies to stapled groups and other groups with an asset entity and an operating entity under some degree of common ownership (except where those entities are both members of a tax consolidated group). If there are no entities in the Transaction with such arrangements, you do not need to complete this section when submitting your application.

25. To the extent there are dealings (e.g. cross-staple lease, cross-staple loan) between the operating entity and the asset entity, answer the following questions:
 - a. Identify and describe the key features of those dealings, including:
 - i. nature of the dealing,
 - ii. how the dealing came about,
 - iii. why the dealing is necessary,
 - iv. if the dealing is already in existence and the date at which it was entered,
 - v. arm's length pricing mechanism used/to be used, and
 - vi. forecast of income/pricing of the dealing (both quantum and methodology).
 - b. If there is a cross-staple loan between the asset holding side and the operating side of the stapled structure, advise whether the cross-staple loan is entered into or proposed to be entered into on back-to-back terms with the group's external loan arrangement(s). Otherwise explain how the terms of the cross-staple loan are determined and priced to be arm's length.
 - c. Having regard to *TA 2017/1: Re-characterisation of income from trading businesses*, advise:
 - i. if any of the dealings may be in the nature of, or similar to, any of the examples described in that TA, and
 - ii. your reasons for the above assessment.
 - d. Advise whether any entities in the holding structure will be in receipt of non-concessional MIT income, as defined in section 12-435 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) (**TAA 1953**). Irrespective of the answer, provide an explanation with reference to the relevant section of Schedule 1 to the TAA 1953. For further assistance, refer to Law Companion Ruling (**LCR**) 2020/2 Non-concessional MIT income.

[If applicable] Hybrid mismatches

This section applies to entities with hybrid mismatches. If there are no entities which have hybrid mismatches, you do not need to complete this section when submitting your application.

26. Confirm if any Australian entities of the acquiring group are (or will be post-Transaction) parties to a hybrid arrangement giving rise to a hybrid mismatch under Division 832 of the ITAA 1997 (including the imported mismatch rule).
 - a. Where you have identified a hybrid mismatch arrangement, provide details of the nature of the arrangement and outline how Division 832 of the ITAA 1997 has been applied.
 - b. If a hybrid mismatch exists but the rules have not denied a deduction or included an amount of income, then you must provide the reasoning for this.
27. For US-headquartered groups, provide details of the classification of the relevant US and non-US tax resident entities under the US check-the-box regulations. Alternatively, you may provide an organisational entity chart with applicable US check-the-box elections depicted for each entity.