Transfer Pricing Guide

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**About the author**This guide was prepared by Baker Tilly Staples Rodway on behalf of CPA Australia.

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# What is Transfer Pricing?

New Zealand’s transfer pricing rules are codified in the Income Tax Act 2007 (**the Act**)[[1]](#footnote-2). Put simply, they require cross-border transactions between associated persons to be conducted on an arm’s-length basis. In turn, this should assist in ensuring the assessable income reported by the New Zealand member of a multinational group reflects economic reality.

For most CPA Australia members, transfer pricing needs to be considered in respect of the following cross border transactions:

1. loans
2. returns made by overseas owned import distributors
3. management fees.

We comment on each of these below.

## Loans & Advances

The advancing of money (either from or to the non-resident entity) should be conducted on arm’s length terms. Thus, the issue arises as to what is a sufficient interest rate charge.

The Act makes a distinction between cross border loans that are under or over $NZ 10 million.

For loans under $NZ 10 million (in aggregate), Inland Revenue allows the New Zealand taxpayer to apply a safe harbour rate. Inland Revenue currently consider 175 basis points (1.75%) over the relevant base indicator is broadly indicative of an arm's length rate[[2]](#footnote-3). This assumes that there isn’t already a readily available market rate for the debt instrument with similar terms and risk characteristics.

The margin is reviewed on an annual basis by Inland Revenue (therefore, there is a need to ensure the interest rate is reviewed annually). Historic rates can be found on Inland Revenue’s website[[3]](#footnote-4).

For loans in excess of $NZ 10 million, the amount of additional analysis to be undertaken by the New Zealand taxpayer is significantly greater. In particular, there may be a need to obtain a credit rating and in turn, calculate a rate of interest based on the underlying credit rating. Terms and conditions related to the loan that don’t reflect normal market terms must be ignored.

Traditional benchmarking may still be possible when the borrower and lender are considered a low BEPS risk[[4]](#footnote-5). It is strongly recommended that specialist advice is sought for loans exceeding (in aggregate) $NZ 10 million.

## Returns made by New Zealand import wholesale distributors

Inland Revenue have provided a safe harbour that applies to the majority of New Zealand’s import distributors[[5]](#footnote-6). Specially, qualifying distributors will be considered a low transfer pricing risk (with no further benchmarking required) if they have a weighted average earnings-before-interest-tax-and-exceptional-items (EBITE) ratio of 3% or greater. This assumes the absence of readily available transactional data for that particular taxpayer (for example, the existence of comparable market data for distributors operating with similar risk characteristics).

## Service Related payments

Service related payments (including management fees) are a common feature in New Zealand, in particular, where a subsidiary might be highly dependent upon assistance from overseas.

To assist taxpayers from a compliance perspective, Inland Revenue have introduced a simplification measure to assist with the charging of service related payments. Specifically, low value intra-group services can be charged at cost with a 5% margin without the need for additional benchmarking. There is no $ threshold for applying a 5% margin.

The simplification measure does not apply to all services but rather, those that are considered low value. Specially, qualifying services must meet the following criteria:

* are supportive in nature
* are not part of the core business activity of the multinational group
* do not involve unique and valuable intangibles, or the assumption or control of significant risk by the service provider.

## Inland Revenue Checklist

The following checklist from Inland Revenue is particularly useful when reviewing related party charges from a transfer pricing perspective:

[Service charges (ird.govt.nz)](https://www.ird.govt.nz/international-tax/business/transfer-pricing/practice-issues/service-charges)

## Further Information

Additional information can be obtained via Inland Revenue’s website[[6]](#footnote-7) or by contacting a specialist transfer pricing advisor.

1. Refer sub-parts GB and GC of the Act. [↑](#footnote-ref-2)
2. Inland Revenue’s next review for small term loans is scheduled for 30 June 2024. [↑](#footnote-ref-3)
3. [Simplification measures for transfer pricing (ird.govt.nz)](https://www.ird.govt.nz/international-tax/business/transfer-pricing/simplification-measures) [↑](#footnote-ref-4)
4. For the purposes of the restricted transfer pricing rules, a New Zealand-resident borrower will be considered a high BEPS risk when at least one of two factors are present.

It has a high New Zealand group debt percentage. Generally, this is where its debt percentage, as measured for thin capitalisation purposes is greater than 40%, unless its ratio is within 100% of its world-wide group where relevant.

The borrowing is from a low tax rate jurisdiction that is different from the ultimate parent. That is, a borrowing from a lender resident in a country where the interest is subject to a lower than 15% tax rate. [↑](#footnote-ref-5)
5. Overseas owned import distributors with an annual turnover of under $NZ 30 million [↑](#footnote-ref-6)
6. https://www.ird.govt.nz/international-tax/business/transfer-pricing [↑](#footnote-ref-7)