

# Sydney Pen Club

*Business and Consulting Services Monthly*

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This Month:

## Transfer Pricing



**Specific Compliance Issues  
2009-2010**



- Thin Capitalisation
- Cross Border Arbitrage
- Consolidation Activities
- Interaction of CGT with other Tax Law
- GST

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## *Specific compliance issues for 2009/10*

The ATO highlights a number of specific compliance issues for large businesses for this financial year. These include:

### *Loss generation and loss usage*

- Examining claims for losses that do not reflect genuine commercial arrangements, lack economic substance or are deducted but don't meet certain tests.

### *Transfer pricing*

The ATO works with firms and legal counsel to resolve complex legal issues relating to transfer pricing. They monitor TP by carrying out risk management activities primarily with companies that have low or failing tax performance, which have arisen because of TP practices. The ATO monitors the use of agreements between Australian and offshore entities. There has been an increased focus on:

- Arrangements between business branches to shift profit and tax from Australia to other countries;
- Reviewing the APA (Advanced Pricing Arrangements) program to make it easier and more relevant as well as working with Joint International Tax Shelter Information Centre to improve transfer pricing processes;
- Arrangements to pay excessive interest, guarantee and other fees; and
- Allocating revenue and expenses to Australian businesses that are inconsistent with the economic activities conducted in this country.

### *Thin capital*

- Proactively reviewing taxpayers who are likely to be in serious risk of failing the thin capitalisation test;
- As part of this work, following up on non-lodgement and incorrect completion of thin capitalisation schedules.

*Cross border arbitrage*

- Focusing on contrived and artificial arrangements which generate debt deductions;
- Continue to review the use of Offshore Banking Units (OBUs) to preferentially swap profits into OBUs and shift OBU expenses out to increase the tax effect.

*Consolidation activities*

- Specifically focus on entities that join or leave a group as well as the acquisition, transfer and use of losses by groups.

*Interaction of CGT with other tax law*

- Focus on non-disclosure or incorrect reporting of capital gains or losses;
- Target arrangements designed to circumvent foreign resident CGT obligations.

*GST*

- Focusing on incorrect reporting of property transactions, unreported sales and application of the margin schemes;
- Reviewing eligibility of claims for out-of-scope supplies.



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