



September 17, 2025

Australian Taxation Office
GPO Box 9977
Canberra ACT 2601
IntangiblesArrangements@ato.gov.au

Re: Draft Practical Compliance Guideline ([PCG 2025/D4](#)) - Low-risk payments relating to software arrangements (White and Green Zone Transactions)

The National Foreign Trade Council (the “NFTC”) is writing to acknowledge and thank the Australian Taxation Office (the “ATO”) for the opportunity to comment on Draft Practical Compliance Guideline 2025/D4 - *Low-risk payments relating to software arrangements - ATO compliance approach*, issued August 6, 2025 (“PCG 2025/D4”). The NFTC appreciates the ATO’s work to provide additional clarity on cross-border software transactions that are exempt from TR 2024/D1. NFTC previously provided [comments](#) on the associated draft ruling *TR 2024/D1 - Income tax: royalties - character of payments in respect of software and intellectual property rights*, published January 17, 2024 (the “Software Directive”).

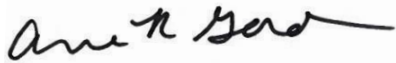
The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. We value work that focuses on establishing and maintaining international tax and transfer pricing norms that provide certainty to enterprises conducting cross-border operations.

The NFTC appreciates PCG 2025/D4 provided by the ATO which details the compliance approach to White and Green Zone transactions under the Software Directive. This PCG allows businesses to navigate the Software Directive with more understanding regarding how White and Green Zone transactions will be assessed as other aspects of the Software Directive are resolved.

The NFTC urges the ATO to consider the holding in *PepsiCo, Inc. v Commissioner of Taxation* ([2024] FCAFC 86) (“PepsiCo”), mentioned in paragraphs 5 and 6 of the PCG. Given the High Court’s finding that no royalty withholding tax or diverted profits tax was applicable in this case, we strongly urge the ATO to reconsider its approach to embedded royalties and the Software Directive as a whole.

Should ATO decide to proceed with the Software Directive, the NFTC plans continued engagement on this matter, including providing comments on the outstanding aspects of the Software Directive, such as apportionment. The NFTC looks forward to continuing our constructive dialogue with the ATO on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne K. Gordon", with a stylized flourish at the end.

Anne Gordon
Vice President for International Tax Policy