I, NICHOLAS HUGH MINCHIN, Minister for Industry, Science and Resources, make these Guidelines under subsection 9 (3) of the ACIS Administration Act 1999.

Dated 29 August 2000

NICK MINCHIN
Minister for Industry, Science and Resources

1 Name of Guidelines
These Guidelines are the ACIS Administration (Arm's Length Transactions) Guidelines 2000.

2 Commencement
These Guidelines commence on 1 September 2000.

3 Objects
These Guidelines set out a way of determining, for the purposes of the Act:
(a) the circumstances when the parties to a relevant transaction are to be treated as not being at arm’s length; and
(b) if the parties to a relevant transaction are to be treated as not being at arm’s length — the arm’s length amount.
4 Definitions

Act means the ACIS Administration Act 1999.

Arm’s length amount, for a non-arm’s length relevant transaction, means the amount that would have been the transaction value for the transaction had the parties been at arm’s length.

Non-arm’s length relevant transaction, means a relevant transaction the parties to which are to be treated as not being at arm’s length.

Participant party, for a relevant transaction, means the party to the transaction who is a participant of ACIS.

Transaction value, for a relevant transaction, means:

(a) if the transaction is a sale of motor vehicles, engines or engine components — the production value or sales value of the motor vehicles, engines or engine components; or

(b) if the transaction is a sale of any other goods or services — the production value or sales value of the goods or services; or

(c) if the transaction relates to an investment in plant and equipment — the amount of the investment; or

(d) if the transaction relates to an investment in research and development — the amount of the investment.

Relevant transaction means a transaction mentioned in subsection 9 (1) or (2) of the Act.

Note ACIS, participant, production value, sales value and Secretary are defined in subsection 6 (1) of the Act.

5 Circumstances when parties may be treated as not being at arm’s length

(1) The parties to a relevant transaction may be treated as not being at arm’s length if the parties are related or associated parties.

(2) For these Guidelines, and without limiting the meaning of subsection (1), parties are related or associated parties if:

(a) they are related to each other within the meaning of section 50 of the Corporations Law; or

(b) one party controls the other within the meaning of section 50AA of the Corporations Law; or

(c) the parties are involved in a cartel or other price-fixing arrangement.
6 Arm’s length amount for non-arm’s length relevant transaction

(1) The arm’s length amount for a non-arm’s length relevant transaction may be determined in accordance with this section.

(2) For a non-arm’s length relevant transaction of a kind referred to in paragraph (a), (b) or (d) of the definition of transaction value in section 4, the arm’s length amount is:
   - (a) the amount determined, according to the principles stated in section 7, by the participant party to be the transaction value; or
   - (b) if the Secretary does not accept the amount mentioned in paragraph (a) — the amount determined, according to the principles stated in section 7, by the Secretary to be the transaction value.

(3) For a non-arm’s length relevant transaction of a kind referred to in paragraph (c) of the definition of transaction value in section 4, the arm’s length amount is the amount determined, according to the principles stated in section 7, by the participant party to be the transaction value.

(4) However, if the amount determined under subsection (3) is $500 000 or more, the arm’s length amount for the transaction is the amount determined according to the principles stated in section 7, and certified, to be the transaction value by:
   - (a) a professional valuer appointed by the participant party; or
   - (b) if the Secretary does not accept the amount certified by the valuer mentioned in paragraph (a) — a professional valuer jointly appointed by the Secretary and the participant party.

(5) In this section:

professional valuer, in relation to a certification mentioned in this section, means a valuer who is professionally qualified to give the certification.

7 Principles for determining the transaction value for a non-arm’s length relevant transaction

(1) The principles stated in this section apply to the determination under subsection 6 (2), (3) or (4) of the transaction value for a non-arm’s length relevant transaction.

(2) A person may determine the transaction value by using:
   - (a) a method that involves:
     - (i) referring to the transaction value for a comparable transaction between parties who are not related or associated parties; and
     - (ii) working out an adjusted value by adding to, or subtracting from, the value referred to in subparagraph (i), any necessary adjustment to take into account any difference between the non-arm’s length relevant transaction and the comparable transaction; and
(iii) repeating the steps mentioned in subparagraphs (i) and (ii) for as many comparable transactions as is necessary to give an accurate comparison; and

(iv) determining the transaction value for the non-arm’s length relevant transaction based on the adjusted values; or

(b) any other method, or combination of methods, that can accurately assess the value in the particular case.

(3) The matters that a person may consider in deciding which method or combination of methods to use include the following:

(a) the kind of transaction;

(b) the terms of the transaction;

(c) the business structure, strategy and processes of the participant party;

(d) the market conditions at the time of the transaction;

(e) other commercial and economic realities at the time of the transaction;

(f) any other relevant facts and circumstances of the case.

(4) A person should use the method, or a combination of different methods, that produces the highest degree of comparability in the particular case.

(5) In this section:

*comparable transaction*, in relation to a non-arm’s length relevant transaction, means a transaction that:

(a) is of the same kind as the non-arm’s length relevant transaction; and

(b) takes place about the same time as the non-arm’s length relevant transaction; and

(c) involves the same or similar terms as the non-arm’s length relevant transaction.

*transaction value*, for a comparable transaction, means:

(a) if the comparable transaction is a relevant transaction — the transaction value as defined in section 4; or

(b) if the comparable transaction is not a relevant transaction — the amount that would have been the transaction value, as defined in section 4, if the comparable transaction were a relevant transaction.