



Jimmy Tse
Vantive Australia Pty Ltd
4 Julius Ave
North Ryde NSW 2113

Our Reference: 1051599235323
Client ID: 69 076 201 619

24 October 2019

We have started our audit of Vantive Australia Pty Ltd

Dear Jimmy

We refer to our conversation with Brian Diep on 18 October 2019 where we informed Brian that we had escalated our review of your income tax affairs, and the affairs of entities within your group, to an audit of the 2014 to 2018 income tax years.

To begin with, we will focus on the issues below:

- › Whether the related party transactions of Vantive Australia Pty Ltd (Vantive) comply with Australia's transfer pricing rules
- › Whether royalty withholding tax applies to payments made by Vantive to Oracle CAPAC Services in relation to its software distribution business

If we find other issues during the audit, we will let you know.

We have included a draft income tax audit plan with this letter. It explains:

- › The scope of the audit
- › How we expect this audit to progress
- › How we will communicate with you
- › How we collect the information we need to do the audit
- › The suggested audit timelines and key milestones
- › Information on how you can make a voluntary disclosure.

Initial meeting

We will organise a meeting to:

- › Explain the purpose and scope of the audit
- › Explain how we plan to carry out the audit.

Your tax adviser or another person is welcome to attend the meeting.

What you need to do

We have included a Request for Information with this letter. You need to send the information by **5 December 2019** to:

- › email: Mabel.Chan@ato.gov.au; Scott.Seow@ato.gov.au
- › mail:

Attention: Mabel Chan / Scott Seow
Australian Taxation Office
GPO BOX 9977
Sydney NSW 2001

NEED HELP?

If you have any questions, you can phone Mabel Chan on (02) 9374 2958.

If Mabel Chan can't answer your questions, you can phone the Team Leader, Adam Marks on (02) 9374 1550.

MORE INFORMATION

Our publication, *Taxpayer's Charter – If you're subject to review or audit*, explains your rights, obligations and what you can expect during this audit. You can find it on our website ato.gov.au by searching for **QC27177**.

You can also find more information about audits on our website ato.gov.au by searching for **QC45140**.

You can send us the information we require by email. You should be aware that the internet is not a secure environment. The ATO does not control the path of inbound and outbound emails, so the privacy of personal information sent by email cannot be guaranteed. You should be aware of this risk if you choose to communicate with the ATO and those communications include your personal details.

You can make a voluntary disclosure

You have an opportunity to review your records to find if you have made any mistakes or left something out. If you give us enough information to work out the shortfall amount, we may reduce any penalties that apply by 20%. The reduction is dependent on the amount of time and resources you save us. This is more likely if you make a voluntary disclosure early in the audit.

You can also make a voluntary disclosure if you find any mistakes or items you have left out of your records that are outside of the audit period. If we can work out the shortfall amount from the information you give us, we may reduce the penalty, if any, by 80%.

You can find more information about making voluntary disclosures on our website **ato.gov.au** by searching for **QC33800**. You can also find more information about how penalties and interest may be reduced if you make voluntary corrections on our website **ato.gov.au** by searching for **QC33795**.

In addition, the ATO is committed to resolving disputes. When disputes cannot be resolved by early engagement and direct negotiation, the ATO is open to using Alternative Dispute Resolution where appropriate to resolve disputes.

Yours sincerely,

Rebecca Saint
Deputy Commissioner of Taxation

Request for Information

Attachment A

Taxpayer name: Vantive Australia Pty Ltd (Vantive). A reference to Vantive includes a reference to the Vantive consolidated group and any of its members as the context requires

Audit period: Years ended 31 May 2014 to 2018 (2014 to 2018 income tax years)

Oracle entity: Refers to any entity in the global group of which Oracle Corporation is the ultimate holding company

File format: Where files are in Excel format, we request that you provide those files with the formulas to us in that format to assist our review of the information

Business overview

1. Provide a copy of the Vantive transfer pricing documentation for the year ended 31 May 2018. Include all corresponding appendices, benchmarking searches, and supporting documentation.
2. Describe the end-to-end process of planning and developing the marketing and business strategy for Vantive at the global, regional and local levels, and at the divisional and team levels within Vantive.
3. Describe the end-to-end process of budgeting and forecasting for Vantive's business at the global, regional and local levels. Include the role of each Oracle entity involved in this process.
4. Provide details of the individuals who formulated and determined the marketing budget of Vantive for the audit period including a description of their roles and responsibilities.
5. Identify and describe all documents prepared by Vantive or an Oracle entity relevant to the process described at Question 2 during the audit period, including but not limited to business strategies, business reviews, budgets, forecasts, market insights, feedback and reports on proposed strategies in relation to Vantive's business. This includes documents relating to the entire business as well as those relating to a business division or segment. Include the name of the Oracle entity which prepared the document.
6. Provide the documents identified in your response to Question 5.
7. Provide all contracts and agreements for marketing and advertising conducted by or on behalf of Vantive or an Oracle entity in relation to the Australian market during the audit period.
8. Reference is made to section 3 of Vantive's transfer pricing documentation for the 2014 to 2017 income tax years. Provide a breakdown of revenue earned by Vantive into the following categories for each year of the audit period:
 - a. New Software Licenses (excluding Cloud Software Subscriptions)
 - i. Database Software
 - ii. Middleware Software
 - iii. Applications Software
 - b. Software License Updates and Product Support
 - c. Cloud Software Subscriptions

- i. SaaS
 - ii. PaaS
 - iii. IaaS
- d. Hardware Systems Products
- e. Hardware Systems Support
- f. Consulting Services
- g. Managed Cloud Services
 - i. On demand
 - ii. Advanced Customer Services
- h. Education
- i. Other (to the extent there are revenue amounts not in the above categories, provide details).

In your response, identify the relevant accounts in the trial balance which comprise the amounts above in a. to i. and reconcile the total of the above amounts to the total revenue amount disclosed in the financial statements of Oracle Corporation Australia Pty Ltd (ORASUB).

9. Advise if Vantive has undergone any significant business or operational change since 31 May 2016. If so, provide a detailed explanation of all of these changes and their impact to Vantive's business.
10. Provide a full structure diagram illustrating the worldwide group structure of Oracle Corporation as it relates to Vantive for each year of the audit period. We note that you have provided an abbreviated group structure diagram in respect of the 2014 to 2017 income tax years. However, we request that you provide a full structure chart or provide an explanation for the parts of the structure diagram that have been omitted.

Channels to market

11. Provide the revenue earned by Vantive from direct sales to end customers, indirect sales through Oracle partners, and through internet (Oracle Direct) for each year of the audit period. Reconcile these amounts to the total revenue amount disclosed in ORASUB's financial statements.
12. With respect to the 20 largest Oracle partners in the Australian market by revenue, provide for each audit year:
 - a. The name of the Oracle partner and a breakdown of revenue earned by Oracle product group.
 - b. A detailed description of the activities undertaken by Vantive with respect to each Oracle partner. Identify the names and positions of the Vantive personnel involved in undertaking those activities.
 - c. A copy of each standard Oracle partner agreement.
 - d. A copy of all non-standard Oracle partner agreements where variations were made to:
 - i. The fee payable by the Oracle partner
 - ii. Any other essential terms and conditions.
13. Reference is made to section 3.4.1 of Oracle Corporation Master File for the fiscal year ended May 31, 2017, where it is stated that the distribution of NetSuite SaaS offerings and OFSS products and service offerings are exceptions to Oracle's multi-tier distribution model. Provide for each year of the audit period:
 - a. A description of the end-to-end sales process of NetSuite SaaS offerings, including the location of Oracle personnel involved, and revenue earned from Australian customers.

- b. A description of the end-to-end sales process of OFSS product and service offerings, including the location of Oracle personnel involved, and revenue earned from Australian customers.
- c. A description of all other arrangements where Oracle products and services are provided to an Australian customer by an offshore Oracle entity, including the name of the Oracle entity, the end-to-end sales process, location of Oracle personnel involved, and revenue earned from Australian customers.
- d. If there are no other arrangements that fall within your response to c., provide a written confirmation to this effect.

Customers

14. Provide an end-to-end process map for Vantive's sales process including descriptions of key milestones, customer interaction points, and internal approvals required.
15. In relation to Vantive's top 20 customers by aggregate revenue during the audit period, provide for each year:
 - a. The name of the customer.
 - b. Total revenue earned from the customer.
 - c. Breakdown of revenue earned from the customer into the categories (noted in Question 8).
16. During the audit period, for each of Vantive's largest three new customers by aggregate revenue, provide:
 - a. The name of the customer.
 - b. Total revenue earned from the customer.
 - c. All pre-sales, sales, and post-sale materials prepared.
 - d. A list of all personnel involved in developing and maintaining the customer relationship, and involved in any part of the pre-sales, sales and post-sales process. Include a description of each personnel's role and responsibility with respect to that customer.
 - e. All executed contracts.
 - f. All order documents received.
17. Where Vantive was not the direct contracting entity for a customer during the audit period, provide:
 - a. The number of instances where Vantive was not the contracting entity for each year of the audit period.
 - b. The proportion of Vantive's business (by revenue) attributable to another Oracle entity contracting with a customer for each year of the audit period.
 - c. A description of the products and services provided to the customer.
 - d. The name and jurisdiction of the contracting entity.
 - e. The name and jurisdiction of the customer.
 - f. The amount of revenue allocated to each Oracle entity. Include the name and jurisdiction of all receiving entities.

Staff

18. We note that Global Employee Detail Reports in Excel format were provided as part of the audit of Vantive for the 2011 to 2013 income years. For each year of the audit period, provide a similar list in Excel format of all employees of Vantive, including each employee's job title, function, specialty area, global career level, and the names of managers in the line of command.¹
19. Provide a table for each year of the audit period showing for each employee of Vantive:
 - a. the salary for the employee
 - b. the bonus or other incentives paid to the employee.
20. For the audit period, provide
 - a. all relevant supporting documentation evidencing how salary is determined for employees of Vantive (for example, standard employment contracts)
 - b. all relevant documentation showing how bonuses are calculated for employees of Vantive (for example, documented bonus and incentive plans).
21. Provide details of who designed the remuneration or performance packages for employees of Vantive applicable during the audit period.
22. Provide the number of Vantive employees working in the following categories for each year of the audit period:
 - a. Oracle Software Product sales (Excluding Cloud Subscriptions)
 - b. Oracle Cloud Subscriptions
 - c. Oracle Software Product support
 - d. Oracle Hardware Product sales
 - e. Oracle Hardware Systems support
 - f. Consulting services
 - g. Other services (Advanced Customer Services, On Demand, Education/Training)
 - h. Contract Manufacturing
 - i. Contract R&D
 - j. Marketing
 - k. G&A
 - l. Other (to the extent there are employees not in the above categories, provide details of their functions).
23. Provide the key performance indicators (KPIs) of all Senior Executives, Sales Directors, Functional Managers and Business Managers of Vantive. Include supporting documentation and any internal KPI policy documents, business plans and team plans.
24. With respect to staff not in a management position (as referred to in Question 23), provide the KPIs of staff by team or department. Include in your response, an explanation of what the KPIs are based on (for example, sales, cost or some other metric), and how this impacts on the remuneration of the employee (including bonuses). Include supporting documentation and any internal KPI policy documents and team plans.

¹ Global Employee Detail Reports in Excel format were provided as part of the audit of Vantive for the 2011 to 2013 income years. Provide your response to this question in the form of updated Global Employee Detail Reports or in a similar format with similar categories for this audit period.

Contractual arrangements

25. We note that the following agreements were provided during the Streamlined Assurance Review of Vantive for the 2014 to 2017 income years:

- Fifth Amended & Restated Distribution Agreement between Oracle CAPAC Services (OCAPAC) and ORASUB effective 1 June 2013 (5th A&R Agreement)
 - Amended & Restated Hardware Distribution Agreement between OCAPAC and ORASUB effective 1 October 2011 (HWDA)
 - Second Amended & Restated Master Services Agreement effective 31 May 2012 (MSA)
 - Amendment Three to the MSA
 - Amendment Four to the MSA
- a. Provide all other international related party agreements effective during the audit period that Vantive was party to (including any amendments thereto).
- b. Advise if any international related party agreements that Vantive was a party to were terminated during the audit period. If so, provide reasons for terminating the agreement(s), the termination agreement(s) and all subsequent agreement(s).

International related party services

26. For each international related party service provided and received by Vantive during the audit period, provide:

- a. A breakdown of all services provided and received including the cost base, corresponding allocation key, and mark-up applied in Excel format. Provide a reconciliation of these amounts to the International Dealings Schedule or Country by Country Reporting disclosure amounts and reasons for any discrepancies.
- b. A detailed explanation of how the cost base is calculated for each service.
- c. A description of the service identifying the benefit of the service (or types of service) to the service recipient.
- d. For each service that is similar to another service provided or received, provide an explanation as to why that service is not duplicative.
- e. Identify whether any shareholder services were provided or received.

Financial information and calculations

27. Reference is made to Article 5.2 and Part I of Schedule 1 to the 5th A&R Agreement. Provide for each year of the audit period:

- a. All calculations of the General End User License Fee payable by ORASUB to OCAPAC, including calculations for each of Part I (a) and (b) of Schedule 1. Provide calculations for the Net Revenue and Operating Costs for Program and for Support separately, with reference to the relevant accounts in the trial balance
- b. All calculations for the Operating Return on Software Revenue,² with reference to the relevant accounts in the trial balance

² As defined in the 5th A&R Agreement

- c. The monthly amounts and the dates of each payment made by ORASUB to OCAPAC, reconciling these amounts to the amounts shown at Label 6b – License fees deductions of the International Dealings Schedule.
- 28. With respect to the payments made by ORASUB under the 5th A&R Agreement, we understand that no royalty withholding tax was remitted to the ATO. To the extent the reasons as to why royalty withholding tax is not payable are different from Vantive's response dated 8 September 2017 to the ATO Audit Position Paper – Royalty Withholding Tax, provide a detailed explanation.
- 29. Reference is made to Section 7 and Exhibit A of the HWDA. Provide for each year of the audit period:
 - a. All calculations of the fee payable by ORASUB to OCAPAC under the HWDA, including calculations for each of subsections 1. (a) to (d) of Exhibit A
 - b. All calculations for the Operating Return on Sales for Hardware Systems,³ with reference to the relevant accounts in the trial balance.
- 30. Provide all calculations for the Operating Return on Sales (ROS) for the Services line of business, with reference to the relevant accounts in the trial balance.
- 31. Reference is made to Vantive's transfer pricing documentation for the 2014 to 2017 income tax years where it is stated that ORASUB made a ROS of 0.7%, 2.50%, 1.19% and 1.43% for the 2014 to 2017 income years respectively. Provide all calculations showing how ORASUB's ROS has been worked out for each year of the audit period. Include in your response, details how operating income and revenue has been worked out with reference to the relevant accounts in the trial balance.
- 32. Provide a reconciliation of the financial results of the Software, Hardware and Services lines of businesses to the amounts disclosed at Label 6T – Total Profit or Loss in Vantive's income tax returns for each year of the audit period.
- 33. Provide for the 2018 income year:
 - a. Statement of taxable income and any supporting working papers
 - b. Detailed trial balances, including the consolidated trial balance for Vantive, as well as the trial balances for each of the constituent entities.
 - c. Reconciliation between the accounting profit before income tax (PBIT) per the financial statements, and the PBIT in the tax return.
- 34. Provide Vantive's management accounts showing the commercial performance and profit outcomes for each year of the audit period.
- 35. Provide a breakdown of the management accounts for each business segment within Vantive, reconciling with the financial statements for each year of the audit period.
- 36. Provide the financial reports for each year of the audit period for all overseas related entities in the US (excluding Oracle Corporation), Ireland, and Singapore, with which Vantive interacts.

³ As defined in the HDWA

Servers

37. Provide details of the size and location of Oracle's servers for providing products and services to Australian customers (excluding any servers for internal use), including details of any changes in capacity or function of servers during the audit period.