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Tax Insights

ATO releases draft PCG on TP issues related to inbound distribution arrangements

On 10 December 2025, the Australian Taxation Office (ATO) released draft Practical Compliance Guideline PCG 2019/1DC (PCG 2019/1DC or "the draft PCG"), which is a draft consolidation for comment, outlining proposed changes to PCG 2019/1 titled "Transfer pricing issues related to inbound distribution arrangements" to ensure the ATO's profit markers for assessing transfer pricing (TP) risk remain relevant and up to date.

The draft PCG updates the ATO's profit markers for distributors in the information and communication technology (ICT) and life science industries, while ATO profit markers for general distributors and those in the motor vehicle industry remain the same as in the original PCG 2019/1.

The draft also modifies the scope of the application of the PCG, changing its definition of what is considered to be a distributor for PCG 2019/1 purposes. Usefully, the draft introduces a white zone risk category that is available to certain taxpayers, for example those with an advance pricing arrangement (APA) covering their distribution arrangements or that have recently obtained a low risk or high assurance rating for such arrangements in an ATO review.

PCG 2019/1DC is open for consultation and interested parties have until 13 February 2026 to submit their feedback.

This article summarises the key changes proposed in PCG 2019/1DC compared to the original PCG 2019/1 and provides Deloitte Australia's observations on practical implications for inbound distributors to consider.

Scope of application

PCG 2019/1DC includes changes which would affect the scope of its application, as follows.

Inbound distributors of tangible goods

PCG 2019/1 defines a taxpayer as being an inbound distributor of goods if their business "predominantly" involves the distribution of goods purchased from foreign related entities for resale, or the distribution of digital products or services where the intellectual property in those goods and services is owned by related foreign entities.

In relation to tangible goods, PCG 2019/1DC modifies which taxpayers are considered to be inbound distributors for purposes of the PCG, i.e., those whose business comprises the distribution of goods purchased from related foreign entities for resale to third parties, and where the taxpayer does not significantly contribute to the creation (including manufacture or alteration) of the goods in Australia.

Removing the word "predominantly" from the definition means the PCG could potentially apply to a larger cohort of taxpayers, resulting in those taxpayers potentially being required to make a risk zone disclosure at category C, question 24 of the reportable tax position (RTP) schedule, and an increased need for segmentation exercises to isolate earnings before interest and taxes (EBIT) margins earned from distribution activities.

Inbound distributors of digital products or services

PCG 2019/1DC expands what the ATO considers to be an inbound distributor of digital products or services. In this regard, an arrangement would not fall within the scope of the PCG where the distribution entity, or its related entities, significantly contribute to the creation of the digital product or services, or the intellectual property in the digital products or services, in Australia. An example is provided that, if the taxpayer or their related parties own or operate significant equipment used to host or provide the products or services being distributed, they are considered to significantly contribute to the creation of digital products or services. This language follows comments expressed by an ATO official during a speech in June 2024 on the ATO's focus on the tax outcomes associated with the operation of data centres, and suggests that where an Australian taxpayer is involved in the distribution and hosting (using significant equipment) of digital products or services, that taxpayer should not apply PCG 2019/1, as the ATO may look to assess these activities collectively.

Introduction of a "white zone"

PCG 2019/1DC introduces a white zone risk category, aligning it with other TP-related PCGs. Taxpayers will fall within the white zone if:

- In respect of the TP aspects of the distribution arrangements, the taxpayer has a signed APA, a settlement agreement with the ATO, a recent court or tribunal decision, or a recent risk review resulting in a low risk/high assurance rating; and
- There have been no material changes in the comparability factors or pricing of the distribution arrangements since the APA, settlement, court decision, risk rating, etc. was entered into or received.

If the white zone is applicable, taxpayers are not required to self-assess against the PCG's profit markers, and the ATO will not apply compliance resources to review the TP outcomes of the inbound distribution arrangements, other than to confirm ongoing consistency with the agreed approach.

Permanent establishments

PCG 2019/1DC makes it clear that it does not affect the principles determining taxable income attributable to business operations carried on at or through an Australian permanent establishment of a foreign resident.

Profit split approach

PCG 2019/1DC states that it may not be relevant for distribution arrangements where a multi-sided method such as the profit split is the most relevant TP methodology in the circumstances.

Changes to the ATO's profit markers

PCG 2019/1 identifies the profit markers used by the ATO to assess the TP risk of inbound distribution arrangements, with different profit markers being relevant for different industries and industry subcategories.

The ATO has broken down the life science and ICT industries into subcategories, based on the nature of activities that may be undertaken by distributors in those industries. The lower the category number, the lower is the perceived value associated with carrying out those activities.

Updates have been made to some, but not all, of the ATO's profit markers and industry categories, to reflect the ATO's up-to-date industry observations and views on market performance.

General distributors and motor vehicles

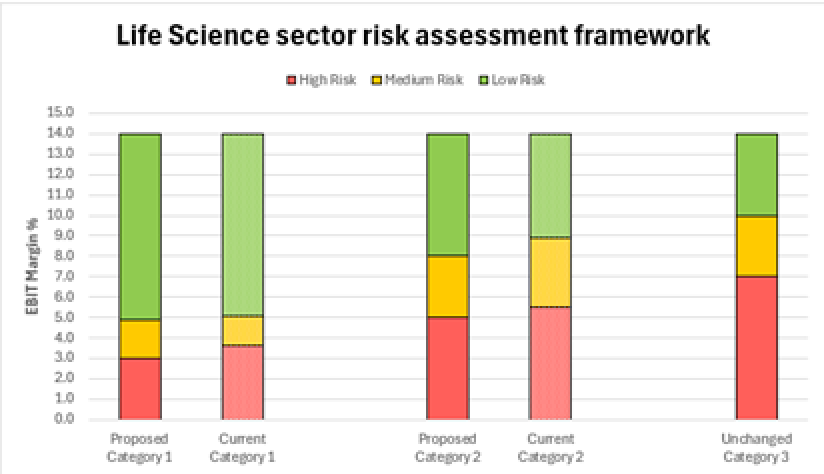
No changes have been made to the ATO profit markers or industry categories in PCG 2019/1 for the general distributors and motor vehicles sectors.

Life science

For the life science sector, "detailing activities" (such as the development of local detailing plans, and delivering detailed medical information and clinical research data to potential prescribers) have been updated from the ATO's category 1 activity to a category 2 activity, indicating that the ATO now sees more value in that activity, such that it should be rewarded with a higher profit margin.

The draft PCG also updates the life science category 1 and category 2 profit markers downwards, as outlined in Figure 1. The profit markers for category 3 life science distributors remain the same as in PCG 2019/1.

Figure 1: Life science profit markers

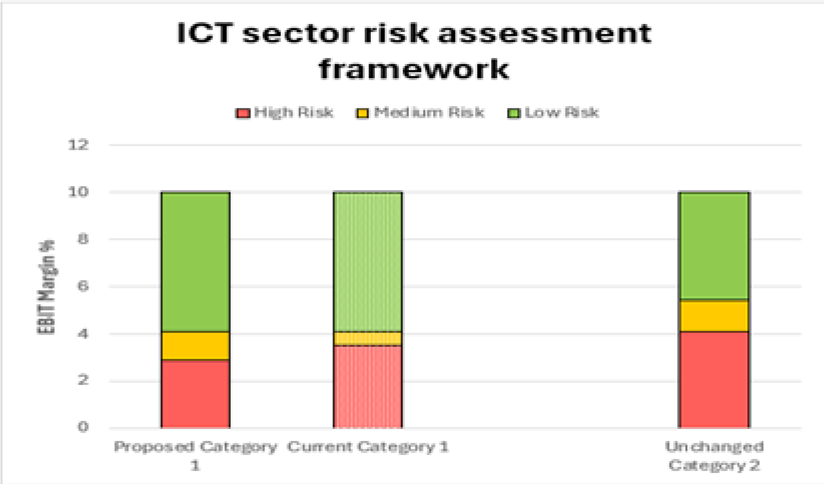


Risk zone	Category 1	Category 2	Category 3
High risk	Below 3.0% ~~Below 3.6%~~	Below 5.0% ~~Below 5.5%~~	Below 7.0%
Medium risk	Between 3.0% and 4.9% ~~Between 3.6% and 5.1%~~	Between 5.0% and 8.0% ~~Between 5.5% and 8.9%~~	Between 7.0% and 10.0%
Low risk	At or above 4.9% ~~Above 5.1%~~	At or above 8.0% ~~Above 8.9%~~	At or above 10.0%

Information and communication technology

For the ICT industry, the draft PCG moves the high risk and medium risk category 1 profit markers downwards, as outlined in Figure 2. The profit markers for category 2 ICT distributors remain the same as in PCG 2019/1.

Figure 2: ICT profit markers



Risk zone	Category 1	Category 2
High risk	Below 2.9% ~~Below 3.5%~~	Below 4.1%
Medium risk	Between 2.9% and 4.1% ~~Between 3.5% and 4.1%~~	Between 4.1% and 5.4%
Low risk	At or above 4.1%	At or above 5.4%

Basis for and positioning of ATO profit markers

Inbound distributors should continue to self-assess their results against the ATO's profit markers to determine the ATO's perception of their TP risks, and hence the likely level of ATO-initiated TP scrutiny they may face. Further, if in-scope taxpayers need to prepare an RTP schedule, the result of this self-assessment should be disclosed there.

Notwithstanding the above, as was the case with PCG 2019/1, in issuing PCG 2019/1DC the ATO has not made available its benchmarking approach or the comparables used in selecting its profit markers. Further, the draft PCG's profit markers remain relatively high compared to the results of Deloitte Australia's recent benchmarking experience. Accordingly, taxpayers may find themselves in the ATO's red/high risk zone notwithstanding that their arrangements may be commercial and supported by appropriate TP benchmarking and documentation.

Other changes

Transitioning arrangements to the ATO's green/low risk zone

PCG 2019/1DC removes paragraphs 63-65 of PCG 2019/1 relating to transitioning distribution arrangements to the ATO's green/low risk zone.

Alignment with the ATO's recently updated PS LA 2015/4

PCG 2019/1DC retains comments in PCG 2019/1 regarding the opportunity for distributors to engage with the ATO in negotiating an APA to manage their TP risks, and confirming that taxpayers can seek to discuss the potential for an APA with the ATO as part of the early engagement stage of the APA process regardless of into which PCG 2019/ risk zone they fall.

The draft PCG also deletes comments on the PCG's interaction with the ATO's APA process in paragraphs 57-62 of PCG 2019/1, to align the PCG with the ATO's recently updated Practice Statement Law Administration PS LA 2015/4.

Deloitte Australia's observations and practical considerations

Helpful guidance on the use of multi-year data

PCG 2019/1DC includes helpful guidance that meets the ATO's stated objective of "set(ting) out a practical administration approach to assist taxpayers in complying with relevant tax laws" (see the preamble to PCG 2019/1DC). As an example, the PCG clarifies the ATO's approach to using multi-year data in applying the transactional net margin method in an inbound distribution TP risk assessment context. In this regard, the PCG states that the ATO measures profit performance in this context by reference to a five-year weighted average EBIT/sales margin, calculated by reference to the revenues and costs of inbound distribution isolated from the revenue and costs of any other business activities carried on by the taxpayer (see paragraphs 41 and 42, PCG 2019/1DC).

Comparability issues not addressed

There are significant comparability issues that are not addressed by PCG 2019/1DC. When PCG 2019/1 was released, the ATO shared that it had relied on foreign companies as benchmarks for some of the industry sectors examined. Presumably, a similar approach has been followed in preparing the update, however this is not discussed in the draft PCG. Consequently, PCG 2019/1DC misses the opportunity to clarify the ATO's view on key issues of comparability, including:

- Under what circumstances foreign companies are considered to provide a more reliable benchmark than Australian companies in a certain sector;
- Whether a set of companies operating across a broader economic region (e.g., Asia Pacific) should be selected if insufficient Australian comparable companies can be identified; and
- How the ATO addresses operational intensity in identifying reliably comparable companies.

The PCG states that the selection of industry sectors (life science, ICT, and automotive) was based on the potential level of TP risk the ATO sees in those sectors based on the total value of the goods imported into Australia and the ATO's previous case work (see paragraph 39, PCG 2019/1DC). It is unclear whether there are other distribution sectors that warrant sector-specific benchmarking to determine an arm's length EBIT/sales margin.

OECD guidance on "Amount B" for baseline marketing and distribution not addressed

Since the publication of PCG 2019/1, the OECD has published its Pillar One Amount B approach to streamlining and simplifying the application of the arm's length principle in relation to baseline marketing and distribution activities. This approach applies a pricing matrix to determine arm's length returns for in-scope activities, including the use of quantitative adjustments to account for differing levels of functional intensity. The optional Amount B guidance has been incorporated in the OECD TP guidelines, and if adopted by jurisdictions, will apply to years starting on or after 1 January 2025.

Our understanding of the ATO's position is that PCG 2019/1 outlines the ATO's compliance approach to TP outcomes from common inbound distribution activities, and that the OECD's Pillar One Amount B report does not alter that guidance.

The importance of distributors supporting profits with reliable comparable data remains

Six years into PCG 2019/1’s operation, PCG 2019/1DC provides a welcome refresh from the ATO. However, while the PCG will continue to be helpful for inbound distributors for understanding their ATO TP risk profile, taxpayers should remember that:

- PCGs simply provide an ATO risk assessment framework;
- PCGs are not interpretive views of the law and do not represent application of the arm’s length principle as required under Australia’s TP legislation;
- ATO profit markers are not safe harbor administrative concessions;
- Australian distributors should not change their TP policies without that being supported by proper TP analysis, i.e., TP policies are best designed and supported by robust benchmarking of independent data that is comparable to distributors’ particular circumstances; and
- TP is a two-sided issue thus requiring positions to be sustainable from both sides of the distribution transaction.

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