

Practical compliance guideline compendium – PCG 2019/1

❶ Relying on this Compendium

This Compendium of comments provides responses to comments received on draft Practical Compliance Guideline PCG 2019/1DC *Transfer pricing issues related to inbound distribution arrangements*. It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Summary of issues raised and responses

Issue number	Issue raised	ATO response
1	Removing the word 'predominantly' from the definition of 'inbound distributor' means the Guideline could 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), thereby increasing compliance burden.	We do not anticipate significant changes in the number of disclosures at category C, question 24 of the RTP as a result of this change, other than in response to the clarifications in paragraphs 16 to 18 of what is specifically excluded from the scope of the Guideline. We continuously review the use and application of this Guideline and will review the outcomes of the changes in this update. Any future revisions will be made as necessary.
2	Further clarification should be provided in the final update of the Guideline on how the statement on permanent establishments at paragraph 7 of the draft update will impact the ATO's application of the Guideline to Australian permanent establishments which perform inbound distribution activities.	Paragraph 7 is intended as an explicit statement that the Guideline does not limit the principles determining the taxable income attributable to permanent establishments in accordance with the applicable taxation laws. In the final update, paragraph 7 has been adjusted for clarity. Taxation Ruling TR 2001/11 <i>Income tax: international transfer pricing - operation of Australia's permanent establishment attribution rules</i> provides relevant guidance on the attribution of income and expenditure to Australian permanent establishments.
3	Greater transparency of the benchmarking exercise would assist taxpayers in complying with Australia's transfer pricing rules by providing guidance on the ATO's views on key comparability issues. In particular, it would assist taxpayers to understand the ATO's views on the following key comparability issues:	The purpose of the Guideline is to provide a framework for taxpayers to assess risk based on the profit outcomes of their inbound distribution arrangements and to understand the ATO's compliance approach. We have increased the transparency of our risk assessment framework by updating the guidelines and the profit markers. The Guideline does not replace an appropriate comparability analysis and proper application of the transfer pricing obligations under the law. A

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	• 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 (for example, 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. It is also noted that despite the updates made to some industry sector profit markers within the draft update, these profit markers still remain relatively high compared to benchmarking ranges we are currently experiencing in the market. This demonstrates the need for further clarity on the ATO's benchmarking approaches and what should be considered standard practice for Australian taxpayers. Therefore, we suggest that the ATO addresses some of the above comparability issues in the final update, to assist taxpayers with performing benchmarking studies aligned with ATO expectations.	comparability analysis aims to find the most reliable comparables based on the facts and circumstances of each case. Given the importance of considering the specific facts and circumstances of each case, it is not the intent of the Guideline to provide generic guidance on the issues raised. Further, such generic guidance may be wrongly perceived as a pre-determination of the suitability of a particular approach without an appropriate comparability analysis based on the circumstances as required under the law.
4	The ATO should work with Parliament to provide clarity on Australia's position regarding Amount B. The current lack of clarity potentially causes confusion, as the Amount B approach is incorporated in the <i>OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations</i>.¹	Australia has not made any decision to adopt the Amount B approach. The ATO's compliance approach to transfer pricing remains consistent with the existing law.

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¹ OECD (2022) *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*, OECD Publishing, Paris.