



Insights: Transfer Pricing

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March 2019

Recent updates in transfer pricing

In this *Insights: Transfer Pricing*, we provide an update on exchange of country-by-country reports between the US and India and summarize a new guideline from the Australian Taxation Office on distributors' operating margin (OM).

India finalizes exchange of country-by-country reports with the US

On March 15, 2019, India's Central Board of Direct Taxes (CBDT) announced negotiations for an arrangement on exchange of country-by-country (CbC) reports between India and the United States (US).¹

The arrangement, expected to be final by March 31, 2019, means Indian subsidiaries of US-headquartered groups who have already filed CbC reports in the US, will not be required to do a local filing of a CbC report in India. This agreement will apply retroactively to all financial years commencing on or after January 1, 2016.

A road map for the post-BEPS world

Our transfer pricing consultants maintain an up-to-date **matrix** of BEPS Action 13 implementation status by jurisdiction, as well as traditional transfer pricing documentation requirements. For more information on the matrix, click [here](#).

Distribution subsidiaries under scrutiny in Australia

On March 13, 2019, the Australian Taxation Office (ATO) published PCG 2019/1 "Transfer pricing issues related to inbound distribution arrangements," (the Guideline).² The Guideline represents the finalized version of draft Practical Compliance Guideline PCG 2018/D8 and takes immediate effect. This Guideline sets a standard approach to risk rate the Australian distribution companies based on their industry, OM, and functional factors. The ATO indicates that if the Australian distribution subsidiary is below the ATO-specified OM, it is likely to come under audit.

¹ Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, "Signing of Bilateral Agreement for Exchange of CbC reports between India and the USA," press release, March 15, 2019, available at <https://www.incometaxindia.gov.in/pages/press-releases.aspx>.

² Australian Tax Office, PCG 2019/1, Transfer pricing issues related to inbound distribution arrangements, available at <https://www.ato.gov.au/law/view/document?DocID=COG/PCG20191/NAT/ATO/00001>.

The PCG provides a high, medium, and low risk classification based on the OM achieved by the inbound distributor, with inbound distributors divided into four key industry categories:

- Life sciences (including pharmaceuticals and medical devices)
- Information and communication technology (ICT)
- Motor vehicles
- General distribution (a “catch-all” category)

In addition, the life sciences industry is divided into three subcategories, whilst the ICT industry is divided into two subcategories. The subcategories are driven by the functions / activities undertaken by the inbound distributor, which the ATO considers “incrementally generate value.” For example, the following categories for the life sciences sector are applied.

Category 1: Distribution including detailing and marketing, logistics, and warehousing

Category 2: Activities in Category 1 plus regulatory approval, market access or government reimbursement activities, interpreting clinical trial data, and generating data and product awareness through engagement with the scientific and medical community

Category 3: Activities in Category 1 and 2 plus specialized technical services such as training and assistance in conducting surgical procedures involving medical devices (including implantables)

The ATO OM guidelines for each industry (which should be calculated on a 5-year weighted average basis) are summarized below. The ATO indicates that it will likely contact taxpayers that are considered to fall in the high or medium risk zones. As shown in the charts following, the “low risk” OM thresholds by industry and category are as follows:

Life sciences

Category 1: 5.1% OM | Category 2: 8.9% OM | Category 3: 10.0% OM

ICT

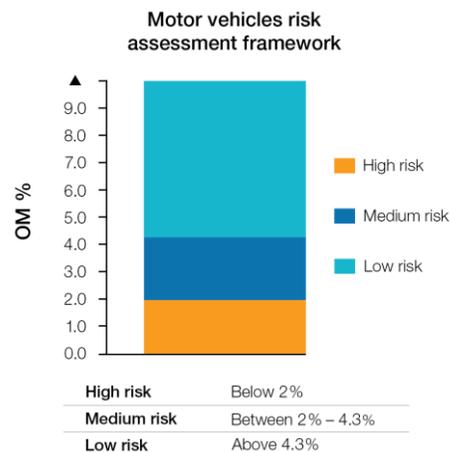
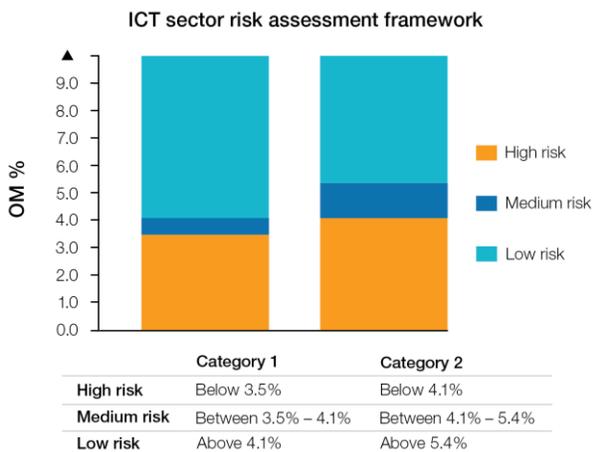
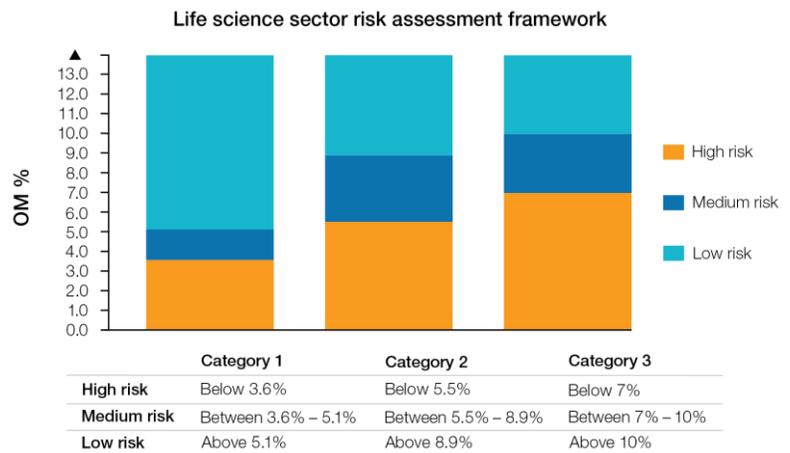
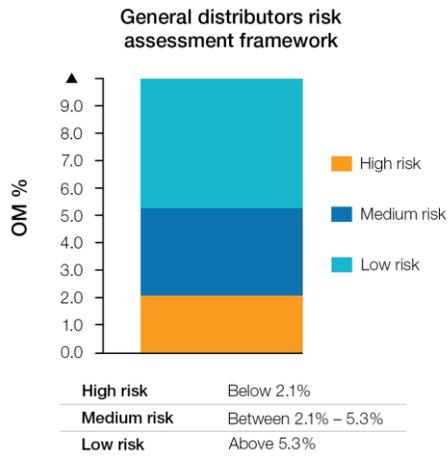
Category 1: 4.1% OM | Category 2: 5.4% OM

Motor vehicles

4.3% OM

General distribution

5.3% OM



To learn more about the Guideline, click here:

<https://www.ato.gov.au/law/view/view.htm?docid=%22COG%2FPCG20191%2FNAT%2FATO%2F00001%22#P72>

About CRA's Transfer Pricing Practice

Our consultants help clients navigate every phase of implementing and supporting international tax structures including: intellectual property (IP) and acquisition planning, documentation, and audit defense. We also provide litigation support and expert testimony services in tax and transfer pricing litigation. To follow are some highlights of projects from the past year.

For more information about this edition of *Insights: Transfer Pricing*, and our services, contact:

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