THE OECD INTERNATIONAL COMPLIANCE ASSURANCE PROGRAMME (ICAP)

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Introduction
The route to tax certainty
Operational routes to greater certainty

Pre-audit:
- Unilateral
- Bilateral: Advance Pricing Arrangements
- Co-ordinated
- Multilateral: ICAP
- Risk assessment

Audit:
- Unilateral
- Co-ordinated
- Multilateral: Audit

Dispute Resolution:
- Mutual Agreement Procedure
- Arbitration
Drivers for ICAP

- G20 Agenda
  - Need for certainty

- BEPS Action 13
  - Availability of more standardised documentation

- BEPS Action 14
  - Commitment to improve effectiveness of MAP

- Experience in co-operative compliance domestically

- Experience in multilateral engagement between tax administrations
The first ICAP pilot

- ICAP is a voluntary programme for co-operative multilateral engagements between MNEs and tax administrations
- Focus on common international tax risks that are best looked at by tax administrations working together (initially transfer pricing & PE issues)
- First pilot was launched in January 2018, with eight tax administrations participating (Australia, Canada, Italy, Japan, the Netherlands, Spain, the UK and the US)
- MNEs and tax administrations in the pilot provided feedback on their experience and possible improvements
The first pilot: Planned timeframe

- **Initial phase**
  - MNE group delivers pilot documentation package
  - Six weeks for initial review and consideration of documents

- **Level 1 risk assessment**
  - Kick-off meeting between MNE group and covered tax administrations
  - 8-16 weeks for a high level assessment of the covered risks
  - If not all covered risks assured as low or no risk, progress to Level 2 risk assessment

- **Level 2 risk assessment**
  - 5-6 months for additional, more in-depth multilateral risk assessment to be undertaken, if needed
  - Risk assurance period if required, to agree tax adjustments

- **Outcome letters**
  - Outcome letters prepared by each covered tax administration
  - Completion letter provided by the lead tax administration
The first pilot: Outcome letters

• Outcome letters are issued at the end of a risk assessment
• The format and content is determined by each tax administration, depending on domestic requirements and processes
• Where an area is found to be low risk, the outcome letter indicates that the tax administration is unlikely to apply further compliance resource
• This comfort is provided for the tax year reviewed, plus the next two tax years subject to there being no material changes
The first pilot: Learnings

What worked well in the pilot

• Central role for lead tax administration
• Direct multilateral engagement with MNE
• Clear timeframes for tax administrations and MNEs
• Single documentation package for use by all tax administrations
• Opportunities for issue resolution within the ICAP process were identified in certain cases

What improvements were needed

• Reduce resources required for both tax administrations and MNEs
• Some documents provided were not needed by tax administrations
• The process and planned timeframes worked better in some cases than others
• Greater opportunities to resolve issues within the ICAP process
• Participation by more tax administrations
From the first pilot to ICAP 2.0

- A second pilot, ICAP 2.0, was announced at the FTA Plenary in Santiago, Chile in March 2019

- Based on tax administration and MNE experiences in the first pilot, key changes for ICAP 2.0 include:
  - a clearer more flexible process
  - a more targeted approach to documentation
  - specific option for issue resolution within a risk assessment stage
  - participation has increased from 8 to 18 tax administrations
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ICAP 2.0 – Planned timeframe

Stage I: Pre-entry
Commenced June 2019

Stage II: Scoping
Commenced September 2019
20-36 weeks

Stage III: Risk assessment ...
... and issue resolution
4-8 weeks

Stage IV: Outcomes
Potential benefits of ICAP

Faster, clearer route to tax certainty
- Managed process with clear timelines
- MNE groups benefit from fewer or more targeted interventions
- Tax administrations gain assurance that risks areas are identified

Fully informed use of MNE information
- MNE groups will talk participating tax authorities through their CbC Report
- Tax administrations have the opportunity to ask questions and share their perspectives as to the tax risks identified

Efficient use of resources
- MNE groups engage simultaneously with multiple tax administrations
- Co-ordinated by lead tax administration
- Potential reduction in resources for APAs, audit and MAP, if these can be avoided

Fewer disputes enter into MAP
- Looking to the future
- Tax administrations will have a better understanding of relevant tax issues
- Differing positions can be identified and discussed earlier
ICAP and other routes to tax certainty

• Comparing ICAP with other routes to greater tax certainty:
  • the level of certainty provided
  • the point at which certainty is provided
  • the risks and jurisdictions covered
  • the level of documentation to be provided
  • the time taken
• ICAP is a complement to bilateral/multilateral APAs, joint/simultaneous audits and MAP
Questions for you
… and any questions you have for me

• Is ICAP a useful and attractive addition to the suite of tools available to tax administrations to provide better tax certainty?

• What features of ICAP make it attractive or unattractive to MNEs?

• Balancing the benefits of ICAP with the reduced burden compared to other tools, how could ICAP be made more attractive to MNEs?

• What areas of risk could ICAP focus on in future, beyond TP/PE risk?

• How else could the OECD support greater tax certainty through improved dispute prevention?