

ICC POLICY PAPER ON CO-OPERATIVE COMPLIANCE

POLICY STATEMENT

Key messages:

1. Co-operative compliance can foster trust and create confidence in tax systems, improve tax administrative efficiency and enhance certainty for business, which is an important driver for trade and investment.
2. Collaboration between governments and business is essential to defining the contours of a suitable tax framework that encourages business activities, job creation and economic growth.
3. Co-operative compliance programmes can be seen as an opportunity to use resources more effectively, as well as promote risk assessment in advance and avoid future tax litigation.

Implementation:

The ICC Policy Statement on Co-operative Compliance will be available on the ICC public website worldwide and will be distributed directly to ICC members and National Committees. The statement will also be shared at relevant events such as the ICC/University of Vienna workshop on co-operative compliance which provides an opportunity for dialogue between business and tax administrations with a view to promoting enhanced cooperation.

Document review:

After 24 months

Introduction

The International Chamber of Commerce (ICC), as the world business organization, works to promote open, rules-based multilateral trade and investment, the market economy system, sustainable economic growth, responsible business conduct and a global approach to regulation.

In the area of taxation, ICC seeks to promote transparent and non-discriminatory treatment of foreign investments and earnings that eliminate tax obstacles to cross-border trade and investment. ICC supports transparent, efficient, predictable and stable tax regimes that incentivise long term investment, job creation and economic growth. Through its wide membership network, ICC advocates for a consistent global tax system, founded on the premise that stability, certainty and consistency in global tax principles are essential for business and will foster cross-border trade and investment.

Co-operative compliance refers to a concept that builds on a reciprocal relationship of trust and co-operation between businesses and tax authorities. As an increasing number of tax authorities revise their tax policies in response to the international guidelines outlined in the G20 mandated Organisation for Economic Co-operation and Development (OECD) Base Erosion Profit Shifting (BEPS) package, it is evident that tax compliance could become more burdensome for business, particularly with increased reporting obligations. It will also result in greater costs for tax administrations at a time when there is great pressure on public funding. As revenue bodies and businesses work to find their footing in the post-BEPS implementation environment, ICC believes that co-operative compliance is ever more relevant and could be a powerful tool that is a cost effective and efficient solution for the benefit of both business and tax administrations.

This ICC policy paper is intended to raise the profile of co-operative compliance and highlight the key elements of a co-operative compliance model as developed by the OECD, to encourage broader application of this concept to improve tax administrative efficiency and enhance certainty for business, which is an essential driver for trade and investment.

What is meant by “co-operative compliance”?

The reciprocal relationship of co-operation between businesses and tax authorities, previously referred to as an “enhanced relationship”, has been in existence since the early 2000s at national level, and was elaborated upon in greater depth by the OECD in its “Study into the Role of Tax Intermediaries” in 2008. In 2013 the OECD released a further report “Cooperative compliance: A Framework – From Enhanced Relationship to Cooperative Compliance”.

The OECD first referred to co-operative compliance as “a relationship that favours collaboration over confrontation and is anchored more on mutual trust than on enforceable obligations” and “a relationship with revenue bodies based on co-operation and trust with both parties going beyond their statutory obligations”.¹ Thereafter the OECD characterised the concept as “transparency in exchange for certainty”.²

Why is co-operative compliance important for achieving certainty?

In March 2017 the OECD and the International Monetary Fund (IMF) issued a revised [joint report on tax certainty](#) as a response to the heightened concern expressed by the G20 Leaders about uncertainty in tax matters and its impact on cross-border trade and investment. An [update](#) of the report was provided in 2018. Co-operative compliance could be a key driver to achieving tax certainty, which is essential for business investment decisions.

¹ OECD, “Study into the Role of Tax Intermediaries”, p39 (OECD 2008).

² OECD, “Cooperative compliance: A Framework – From Enhanced Relationship to Cooperative Compliance,” p31 (OECD 2013).

It is clear, however, that there are some challenges that would need to be addressed in this context. Firstly, in response to perceptions that Multinational Enterprises (MNEs) engage in tax avoidance, some tax administrations have progressively adopted more adversarial approaches. This has been accelerated by the BEPS reports, which appear to challenge positions historically taken by MNEs. The risk is that there will be an increase in the number of tax disputes and that the processes for bilateral resolution will be overwhelmed.

Secondly, tax administrations are under severe cost pressure as they need to become as efficient as possible.

A more effective response to both of these challenges is to promote co-operative compliance over the traditional, adversarial approach of dealing with cases where taxpayers and tax administrators may disagree. Co-operative compliance programmes can be seen as an opportunity to use resources more effectively, as well as promote risk assessment in advance and avoid future tax litigation. Furthermore they could improve the public awareness of MNEs' tax responsibility. Whilst it is understood that different jurisdictions have individual experiences, co-operative compliance is a journey that presents an approach to day-to-day activities with potential benefits for both tax administrations and tax payers.

What is a Co-operative Compliance Programme? From Tax Policy Design to Operational Features

Following the conclusion of the BEPS project it remains imperative that the overall BEPS package is implemented in a coherent and coordinated manner and, moreover, in close co-operation with business to ensure that the reforms are both practicable and effective in an effort to protect government revenues and safeguard cross-border trade and investment.

A co-operative compliance approach that is successfully built on the pillars of trust, transparency, predictability and certainty, would go a long way to improving tax compliance, reducing administrative burdens and ensuring clarity of rules and consistency. This would be possible in a context where there is a combination of exchanged obligation and risk assessment methodology.

The OECD has identified essential features for a successful model that applies to both tax authorities and taxpayers:

Attributes of co-operative compliance for tax authorities

- Commercial awareness
- Impartiality
- Proportionality
- Openness through disclosure and transparency
- Responsiveness

Attributes of co-operative compliance for taxpayers (businesses)

- Disclosure
- Transparency

Aimed at improving certainty, efficiency and effectiveness, common features of co-operative compliance programmes include institutions of procedural tax law, tax compliance strategy, voluntary compliance from taxpayers and the ability to provide real-time or even advance clarity with respect to tax positions. Such programmes may then result in more targeted tax audits, rather than comprehensive tax audits.

A foundation of trust and transparency is paramount to achieving a successful co-operative compliance programme. Building trust leads to greater understanding of business and ultimately more effective collaboration on taxation issues. Flexibility and adaptability for tax administrations and taxpayers are key to building a reciprocal relationship of co-operation.

Status of Selected Co-operative Compliance Programmes: Strengths and Weaknesses

The strength of the co-operative compliance programmes lies in the potential for shared benefits between both tax authorities and taxpayers alike. Benefits for all stakeholders include establishing enhanced relationships to mitigate risks, ensure certainty in transactions and reduce administrative burdens. Specifically, strengths of co-operative compliance programmes can be summarised for both tax authorities and taxpayers as follows:

Benefits for tax authorities

- Enhanced relationship
- Better understanding of the business
- Risk management
- Certainty and clarity in advance with respect to tax positions
- Reduction of administrative burdens
- Improved real time information
- Better use of revenue body resources
- Improved confidence in tax system

Benefits for taxpayers

- Enhanced relationship
- Reputation
- Risk management
- Opportunity to highlight problems
- Certainty and clarity of rules
- Reduction of administrative burdens

Nevertheless, it is evident that some weaknesses arise with respect to challenges in the implementation process of co-operative compliance programmes. The challenges include building trust between tax authorities and businesses, managing cost and dealing with the reputation and public perception aspects. Some of these perceived challenges are highlighted below:

- There is greater emphasis on sound governance within tax administrations, such that decision making is elevated to appropriate senior levels or to governance boards or committees. This is generally welcome but one side effect is that there is sometimes less willingness at operational levels to make decisions. It is critical for the effective functioning of co-operative compliance that operational tax officials are in a position to make decisions in a timely way and with proportionate amounts of information (with advice from governance boards or senior officials as appropriate). Capacity building, including training for tax officials dealing with these programmes, is essential to ensure greater efficiency and provide clarity in terms of the relevant roles and responsibilities.
- Justification of the up-front investment in developing a co-operative compliance programme, with the need for additional resources, could also prove challenging.

Tax Control Framework: the Heart of a Co-operative Compliance Programme

Serving as the foundation to a co-operative compliance programme, a robust tax control framework serves as the central justification for tax administrations' reliance on the taxpayer's returns and other disclosures. It is the responsibility of the taxpayer to develop and maintain such a framework in compliance with clear, uniform and predicable sets of principles. In turn, the tax administration works to test the soundness of the framework.

While materiality is typically understood in the context of external audits of companies' accounts, for the purposes of testing a tax control framework it is necessary to define what is reasonably material in terms of the tax liabilities arising from the taxpayer's activities. Fostering a culture of insight and mutual trust can help ensure a broader sense of cooperation and transparency.

Key components of a tax control framework include:

- Tax Strategy
- Comprehensive
- Responsibility
- Governance
- Testing
- Assurance
- Tax expertise

Evaluation of co-operative compliance programmes

As co-operative compliance programmes do not conform with traditional performance measures, impact evaluation measures may be difficult to implement. Existing experiences with co-operative compliance programme evaluation have pinpointed key principles and potential pitfalls in the design of evaluation systems. A central benefit of co-operative compliance programmes includes early visibility on emerging tax risk which is an important tool to prevent tax non-compliance. Large businesses can also play vital roles in implementing co-operative compliance by ensuring voluntary compliance through a greater swathe of a tax population.

The evaluation of existing co-operative compliance pilot programmes presents opportunities to identify challenges in order to more effectively roll-out future systems. A benchmark set at the beginning of a pilot programme imposes a preliminary evaluation period of one year to determine whether a change can be observed. While it will generally take 2-3 years to collect impactful, measurable data, initial results will be helpful indicators to evaluate programmes across different regions.

Conclusion

Co-operative compliance could be a powerful tool that is a cost-effective and efficient solution for the benefit of both business and tax administrations. Concerted efforts to promote and apply co-operative compliance would go a long way in fostering trust and creating confidence in the tax system, improving tax administrative efficiency as well as enhancing certainty for business, which is an important driver for trade and investment. The validation of the tax control framework and further engagement with the economic community would also be useful in this process. Developing a suite of co-operative compliance performance measures and employing a greater use of technology are also vital drivers to broad co-operative compliance implementation. Collaboration between governments and the business community is essential to help define the contours of a suitable tax framework that encourages business activities, job creation and economic growth.

Annexes

This document includes an overview of current advances towards co-operative compliance in Africa and other regions. In addition, an overview of the International Compliance Assurance Programme can also be found in the annex, which builds off of a domestic concept of co-operative compliance towards the establishment of a multilateral, global system.

Annex I: On the Way to Co-operative Compliance Programmes in Africa and Other Regions

With the recent steps taken by various tax administrations from Africa and other regions to launch pilot programmes on co-operative compliance, greater attention must be directed towards introducing the concept of co-operative compliance in less-developed nations. To initiate such efforts, stakeholders in developing economies can benefit from greater clarity on the issues of rationale for pilot initiation, pilot design and documentation, communication and stakeholder engagement.

While tax administrations in developing countries are often under scrutiny and may question a change of tactic, there is concrete evidence that the co-operative compliance approach adopted by tax administrations has a direct influence on the propensity to invest. Industry best practices are essential to the improvement of the level playing field in developing economies.

In Uganda, tax authorities did not have the requisite resources or budget to fully implement a co-operative compliance programme. However, smaller initial steps were taken to deliver certain elements of co-operative compliance and benefit clients, including an accredited green-lane, self-clearing programme. So far, the programme has seen a number of benefits, including a reduction in tax redundancy.

In Ghana, tax audits are expensive in terms of resources and time, necessitating the implementation of co-operative compliance. Such programmes will help build capacity, eventually leading to more voluntary compliance. With support from the Vienna University of Economics and Business ("Wirtschaftsuniversität Wien," or "WU") Global Tax Policy Center, Ghana implemented a pilot programme ("Co-operative Compliance: Breaking the Barriers), which confronted questions of trust and clarified issues about additional costs. Moving forward, Ghana's tax authorities hope to understand business processes better, build capacity and bring other companies into the process.

Each pilot programme has been negotiated by revenue authorities directly with assistance from WU's experience from existing programmes. Each case is evaluated within its own specific context. Next steps for WU pilot programmes will attempt to run an additional survey to observe tax authorities, those working with tax authorities and the business community. Additional surveys can then be commissioned when the pilots are more mature and as the program widens, in order to determine if there is a change in tax authorities' reputation both externally and internally.

Annex II: International Compliance Assurance Programme

The [International Compliance Assurance Programme](#), or ICAP, works towards a multilateral and multijurisdictional co-operative compliance initiative. ICAP is a voluntary programme designed to increase certainty for both government and business through the fostering of multilateral cooperation between multinational enterprises (MNEs) and tax administrations. ICAP will use Country-by-Country Reports (CbCR) and other information to facilitate open and co-operative multilateral engagements between MNE groups and tax administrations. The programme provides for the possibility of certainty at early stages, with information sharing of data and explanations, ensuring efficient systems and building trust. The multilateral nature of ICAP exhibits an attempt to establish a consistency in approach among tax authorities in terms of risk assessment.

Under the program, which is voluntary for multinationals, tax administrations would jointly review the MNE's tax affairs using the firm's Country-by-Country Reports, master file and local file, as well as other materials specified in the [ICAP handbook](#).

What are the benefits of ICAP for MNE groups and tax administrations?

ICAP will use information available to tax administrations for risk assessment, including CbC Reports, to facilitate a multilateral discussion between MNE groups and participating tax administrations, improving the effectiveness of current risk assessment processes and providing the following benefits to all parties.

- **A fully-informed and targeted use of CbCR information.** The ICAP process will enable MNE groups to talk through their CbC Reports and provide clarity to aid understanding of their cross-border activities. This should help tax administrations to reach an early decision about the level of transfer pricing risk, permanent establishment risk and other specific international tax risks, if any, presented by the data contained in the CbC Report.
- **A more efficient use of resources and a co-ordinated approach to engagement.** Tax administrations will jointly review the information supplied by an MNE group and will co-ordinate any follow-up questions. The MNE group can then engage with tax administrations simultaneously, often via the tax administration in its headquarter jurisdiction (the lead tax administration), rather than deal with separate enquiries.
- **A faster, clearer route to multilateral tax certainty.** ICAP is a managed process with clear and ambitious timeframes. Working multilaterally, tax administrations will have a comprehensive picture of an MNE group's cross-border activities, to gain assurance of the extent to which the group's tax position is satisfactory and that any relevant tax risks have been identified. This will be communicated clearly and promptly to the MNE group.
- **Fewer disputes entering into MAP.**

What are the drivers of ICAP?

- **Better and more standardised information for transfer pricing risk assessment.** As a result of BEPS Action 13, countries can now work from the same dataset to assess transfer pricing and other BEPS-related risks across multiple tax administrations. By enabling participating tax administrations to consult with each other and hold multilateral conversations with an MNE group, ICAP allows for a more robust and considered basis for risk assessment using this new data.
- **Well-established MNE compliance frameworks.** The OECD's Forum on Tax Administration (FTA) has identified, developed and highlighted best practices in the areas of co-operative compliance, joint audits, tax control frameworks, and differentiated risk management. As such, tax administrations are well equipped to explore new approaches for multilateral tax risk assessment and assurance.

- **Improvements to Mutual Agreement Procedures (MAP).** More effective and efficient MAP processes are being implemented as part of BEPS Action 14. These initiatives will be supported by ICAP, to prevent unnecessary future disputes and limit MAP inventory growth.
- **Advances in international collaboration.** Co-operation amongst FTA member tax administrations has vastly increased in both depth and frequency in recent years. Well-developed forums for international co-operation are already in place (e.g. JITSIC and LBIP) and these will be complemented by ICAP.
- **Providing a pathway to improved tax certainty for low or medium risk MNEs.** ICAP can provide a pathway to greater international tax certainty for MNE groups and tax administrations alike, which is a positive BEPS-related outcome for MNEs wishing to be transparent and compliant. This also reflects the G20's agenda on tax certainty that supplements the work on BEPS

What is the ICAP pilot?

The ICAP pilot was [launched](#) on 23 January 2018, at an orientation session to bring all participating MNE groups and tax administrations together. The pilot includes eight FTA member tax administrations (Australia, Canada, Italy, Japan, the Netherlands, Spain, the United Kingdom and the United States) who will participate in the multilateral risk assessment of MNE groups with headquarters in one of their jurisdictions. A number of other FTA members will act as observers to the pilot, participating in discussions on the design and operation of the ICAP process, but will not participate in an MNE group's risk assessment and will not receive information on the groups involved. In conducting the pilot, there will be flexibility in terms of the profile of participating MNE groups, the timeline for the various stages in the ICAP process and the documentation to be provided by an MNE group, and other elements as they are identified.

To start, the countries will only address transfer pricing and permanent establishment risks. The goal is to complete the assessment in 12 months.

If the review goes well, countries will provide outcome letters to the multinational stating that the MNE will not likely be audited in that jurisdiction with respect to specific tax risks. The letter will also identify any tax risks that remain.

Thus, the review provides assurances, not legal certainty, as would be the case if the multinational sought an advance pricing agreement or other private tax ruling.

Lessons learned during the pilot will be shared with other FTA members, with a view to a possible broader roll-out of ICAP following the pilot.



About The International Chamber of Commerce (ICC)

The International Chamber of Commerce (ICC) is the world's largest business organization representing more than 45 million companies in over 100 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.

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