

FORUM ON TAX ADMINISTRATION

International Compliance Assurance Programme

Pilot Handbook 2.0

WORKING DOCUMENT



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Abbreviations and acronyms

APA	Advance Pricing Arrangement
BEPS	Base Erosion and Profit Shifting
CbC	Country-by-Country
DTC	Double Tax Convention
FTA	Forum on Tax Administration
ICAP	International Compliance Assurance Programme
JITSIC	Joint International Taskforce on Shared Intelligence and Collaboration
LBIP	Large Business & International Programme of the FTA
MAP	Mutual Agreement Procedure
MLI	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the Multilateral Instrument)
MNE	Multinational Enterprise
OECD	Organisation for Economic Co-operation and Development
PE	Permanent establishment
SPOC	Single Point of Contact
TIEA	Tax Information Exchange Agreement
TP	Transfer pricing
UPE	Ultimate Parent Entity

1. Introduction

1. The International Compliance Assurance Programme (ICAP) is a voluntary programme for a multilateral co-operative risk assessment and assurance process. It is designed to be an efficient, effective and co-ordinated approach to provide multinational groups (MNEs) willing to engage actively, openly and in a fully transparent manner with increased tax certainty with respect to certain of their activities and transactions. ICAP does not provide an MNE with legal certainty as may be achieved, for example, through an advance pricing arrangement (APA). It does however give comfort and assurance where tax administrations participating in an MNE's risk assessment consider a covered risk to be low risk. Where an area is identified as needing further attention, work conducted in ICAP can improve the efficiency of actions taken outside the programme, if needed. This handbook contains information on a second ICAP pilot (ICAP 2.0), which builds on the first pilot, described later in this introduction. This handbook remains a working document and will be revised based on the experience of participating tax administrations and MNEs.

1.1. The drivers for ICAP

2. There are six key drivers behind the development of the ICAP risk assessment and assurance process, set out below. Some of these concern the imperative for mechanisms to provide greater certainty for MNEs and tax administrations, building on the outcomes of the Organisation for Economic Co-operation and Development (OECD)/G20 Base Erosion and Profit Shifting (BEPS) Project and the establishment of the OECD Inclusive Framework on BEPS. Others concern the trend for greater collaboration and co-operation between different tax administrations, and between tax administrations and MNEs, which supported the development of such mechanisms.

Providing a pathway to improved tax certainty for MNEs: Multilateral programmes can provide a pathway to greater international tax certainty for MNEs and tax administrations alike, and are a positive outcome from the BEPS project for MNEs that are willing to engage actively, openly and transparently. They are also a reflection of the G20's agenda on tax certainty – a pillar of the G20's work on international taxation that is both part of and supplements the work on BEPS.¹ Programmes such as ICAP, which are based on increased transparency, co-operation and collaboration between tax administrations and MNEs, have the potential to positively influence taxpayer behaviour and improve tax compliance, while providing MNEs with greater tax certainty.

More effective dispute resolution: More efficient and effective mutual agreement procedures (MAP) are being implemented as a result of BEPS Action 14. A multilateral risk assessment and assurance programme can support these dispute resolution initiatives by preventing unnecessary disputes from arising and limiting MAP inventory growth. One of the most effective ways to manage the risk of disputes between tax administrations is through mechanisms to prevent these disputes from arising.

Well-established MNE compliance frameworks: The OECD's Forum on Tax Administration (OECD 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 a result, tax administrations are better equipped than ever to bring these initiatives and standards together and explore new approaches for multilateral tax risk assessment and assurance. Early resolution programmes prevent positions becoming entrenched and, by being done close to “real time”, can be undertaken while contemporaneous documentation, key decision makers, and staff with knowledge and understanding of recent transactions, are available.

Advances in international collaboration: Co-operation amongst OECD FTA member tax administrations has vastly increased both in depth and in frequency in recent years. Well-developed forums, such as the Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC)² and the Large Business and International Programme (LBIP)³ are already in place and can be leveraged to support multilateral interactions with MNEs.

Better and more standardised information for transfer pricing risk assessment: As a result of BEPS Action 13, tax administrations now have access to an increasingly common set of data to assess transfer pricing and other BEPS-related risks, across multiple jurisdictions. Working together to use the information contained in an MNE's CbC report, master file and local files more effectively, tax administrations may jointly de-select compliance issues and taxpayers which pose a lower tax risk, while selecting for further review those issues and taxpayers that present a higher risk of non-compliance.

Capitalising on greater opportunities for multilateral engagement to provide improved assurance for tax administrations: Following the BEPS Project, tax administrations have a growing volume of data available to them that can be used to identify and respond to compliance risk in a more efficient way. Multilateral programmes can provide additional assurance to participating tax administrations by providing a more robust and considered basis for risk assessment using this data, allowing decisions to be made in consultation with other tax administrations rather than unilaterally.

1.2. The anticipated benefits from ICAP

3. As tax administrations and MNEs enter an era of increased transparency, new opportunities arise to use the increased flow of information to support open, co-operative relationships between taxpayers and tax administrations, providing routes towards greater comfort or certainty, and a more effective use of resources. ICAP uses CbC reports and other relevant information to facilitate multilateral engagements between MNEs and participating tax administrations, providing benefits for both, including the following.

Fully informed and targeted use of CbC reports and other information held for risk assessment: ICAP enables MNEs to talk through their CbC reports and other information held by tax administrations for the purposes of risk assessing covered risks, and to provide additional clarity to aid understanding of their cross-border activities. Tax administrations are also able to discuss their findings with each other, improving consistency in the interpretation of data. This should help tax administrations to reach an early decision about the level of tax risk, if any,

presented by the data contained in these documents. It may also improve consistency in the understanding of MNEs with similar transactions in multiple jurisdictions.

An efficient use of resources: Tax administrations discuss the information provided by an MNE for its ICAP risk assessment, share their findings with each other and co-ordinate any follow-up questions. An MNE can thus engage with several tax administrations simultaneously, either through multilateral engagements or via the lead tax administration, rather than needing to deal with multiple separate enquiries.

A faster, clearer route to multilateral tax certainty: ICAP is a managed process with clear and ambitious timeframes, which are agreed upfront, for MNEs and tax administrations to reach a mutual understanding of the level of tax risk present. Working multilaterally, tax administrations gain a comprehensive picture of an MNE's cross-border activities and can be assured either that the tax position is satisfactory or that any tax risk has been identified. In the spirit of co-operative compliance, this is communicated clearly to the MNE at an early stage. The process also provides an MNE with an opportunity to use insights from ICAP more broadly in managing its affairs across its global operations.

Co-operative relationships between MNEs and tax administrations: ICAP includes a commitment by MNEs and tax administrations to work together through the ICAP risk assessment and assurance process in a transparent, open and co-operative manner. As a result of participation in the programme, a relationship of mutual trust based on reciprocal openness and good faith may be generated.

Fewer disputes entering into MAP: Mechanisms for a more co-operative and collaborative risk assessment and assurance of MNEs should improve how tax administrations understand the perception and treatment of transactions by other tax administrations. They also provide an opportunity for tax administrations to discuss transactions at the risk assessment stage, before differing views are adopted and become entrenched. This can improve consistency between tax administrations in the interpretation and treatment of transactions, reducing the number of instances where a case results in dispute and MAP.

1.3. ICAP and other tools to provide greater tax certainty

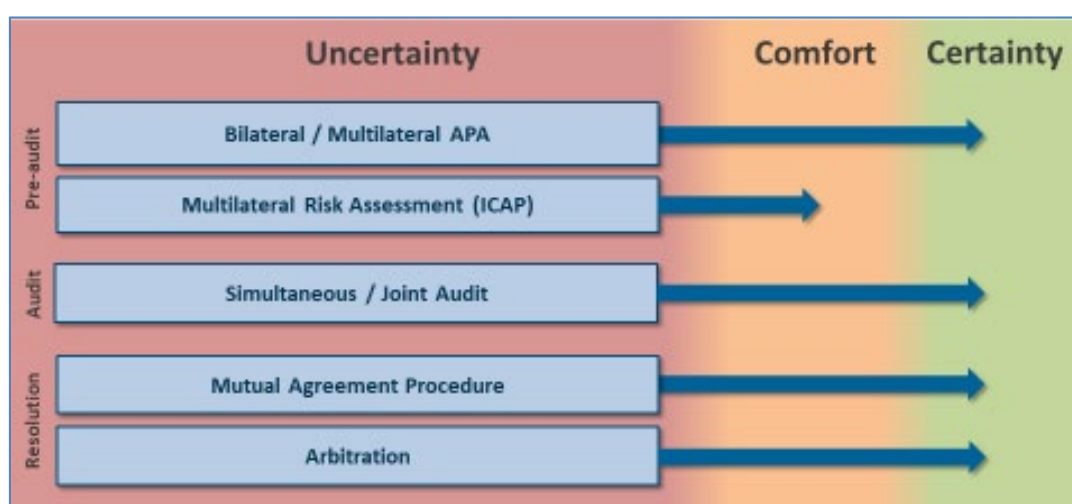
4. ICAP is one of a suite of tools available to tax administrations to provide greater certainty to MNEs with respect to their tax risk. These include:
 - tools to provide upfront legal certainty for specific transactions or arrangements, including APAs
 - tools to improve effective tax risk assessment, including standardised risk assessment documentation under BEPS Action 13
 - tools to improve effective tax audit, including global awareness training to improve domestic processes for the audit of international tax risks and programmes for the simultaneous or joint audit of MNEs
 - tools to improve effective dispute resolution, including improvements to MAP under BEPS Action 14 and mandatory binding arbitration such as under the

multilateral convention to implement tax treaty related measures to prevent BEPS (the MLI).

1.3.1. ICAP compared to other tools

5. Not all of the tools mentioned above will be suitable for every MNE and for every risk. In some cases, a particular approach will not be available in a particular jurisdiction or for certain types of transaction. Where different approaches are possible, an MNE may take into account different factors to determine which is most suitable.

The level of certainty required: As a risk assessment tool, ICAP may provide an MNE with comfort that a covered tax administration does not anticipate that compliance resources will be dedicated to a further review of covered risks for a defined period. ICAP does not provide an MNE with the type of legal certainty that may be obtained through other bilateral or multilateral routes, such as a bilateral or multilateral APA, simultaneous or joint tax audit or MAP/arbitration (see below).



The risks and jurisdictions with respect to which uncertainty exists: Under ICAP, an MNE may obtain comfort that multiple covered tax administrations do not anticipate dedicating compliance resources to a further review of the covered risks. This may include transactions with jurisdictions that are not participating in the programme, although comfort is only provided for the jurisdictions of covered tax administrations. This is wider than the scope of most APAs and MAP cases, and many audits, which may provide certainty with respect to specific transactions or categories of transactions, with particular jurisdictions.

The level of documentation an MNE is prepared to provide: The ICAP documentation package is set out in Chapter 6. In most jurisdictions, the level of documentation required for an ICAP risk assessment is less than that typically needed in order to agree an APA or in the course of a tax audit or MAP with respect to covered transactions. In addition, under ICAP an MNE is able to provide a single documentation package for use by all covered tax administrations, whereas it may be required to prepare different documents in each jurisdiction under domestic programmes.

The amount of time an MNE is prepared to spend: ICAP 2.0 includes a clear timeframe and typically an MNE's ICAP risk assessment will be completed and outcome letters issued within 24-28 weeks following delivery of the main documentation package, at the start of the risk assessment and issue resolution stage. Reflecting differences in terms of the level of documentation typically required and the level of certainty provided, this timeframe is shorter than may be required to agree an APA, or for completion of a tax audit or MAP case.

The extent to which early certainty is required: An ICAP risk assessment focuses on an MNE's recent completed fiscal period/s for which information, including the MNE's CbC report, is available. This will often be undertaken sooner after the end of the covered period than would be possible for a tax audit, and will certainly be sooner than would be possible under dispute resolution mechanisms such as MAP.

1.3.2. ICAP as a complement to other tools

6. Reflecting the differences highlighted above, ICAP is a complement to other tools that tax administrations may use to improve tax certainty for MNEs, both unilaterally and multilaterally.

Domestic tax audit: Even where a tax administration is unable to conclude that a covered transaction is low risk, it may be the case that no further compliance action is needed. Where a tax audit is required, the improved risk assessment conducted through ICAP and the better understanding of an MNE, its business and its activities gained from participation in the programme, should enable the tax administration to conduct a more effective audit, which may be completed more quickly and with less additional documentation needed.

Bilateral/multilateral APAs and joint/simultaneous audit: By introducing multilateral conversations with an MNE at the risk assessment stage, ICAP may also facilitate further multilateral action where this would be beneficial. This could include MNEs better identifying covered transactions as suitable for a bilateral or multilateral APA. It could also include covered tax administrations conducting joint or simultaneous tax audits, where they agree that a particular covered transaction requires further attention. In each case, the conversations that the covered tax administrations have already had during the ICAP process, and the better understanding they have of the MNE and of each other's position, can improve the effectiveness of these actions.

MAP: As mentioned above, programmes such as ICAP can also improve consistency between tax administrations in the interpretation and treatment of transactions, reducing the number of cases that result in disputes that require resolution through MAP.

1.4. The learnings from the first ICAP pilot and how this influenced ICAP 2.0

7. The first ICAP pilot was launched in Washington D.C. in January 2018. It brought together eight tax administrations (from Australia, Canada, Italy, Japan, the Netherlands, Spain, the United Kingdom and the United States) with a number of MNEs headquartered in these jurisdictions.

8. This handbook reflects the experience and feedback of these tax administrations and MNEs, gathered as the first pilot progressed. ICAP 2.0 retains many of the features that were a success in the first pilot, including a single documentation package, co-ordinated multilateral engagement by tax administrations with each other and with the MNE, a central role for the lead tax administration and clear timeframes for each stage, but also incorporates a number of improvements.

A clearer, more efficient and more flexible process: Based on experience in the first pilot, it has been possible in this handbook to provide more detail and clarity upfront as to how an ICAP risk assessment will be conducted, providing greater certainty for MNEs and covered tax administrations. The distinction between a level 1 (high level) and level 2 (in-depth) risk assessment is removed and more flexibility has been incorporated into the risk assessment stage, such as around the timing, format and content of multilateral engagements, including meetings with an MNE. These changes should ensure the approach adopted is appropriate to each MNE. They should also improve the efficiency and effectiveness of an ICAP risk assessment, reducing the resource burden for all participants.

A more targeted approach to documentation: A new scoping stage has been added to the ICAP risk assessment and assurance process, which takes place once it is confirmed an MNE will participate in the programme, to determine whether any covered transactions will be excluded from a covered tax administration's ICAP risk assessment, if appropriate. This ensures that an MNE will only be required to provide documentation relevant to transactions that are within the scope of its risk assessment.

A specific option for issue resolution to be included in the risk assessment stage: Issue resolution will allow covered tax administrations to work with an MNE, within the ICAP process, to identify any changes that are needed to allow them to conclude that one or more of the covered risks is low risk.

Greater participation by FTA member tax administrations: A greater number of tax administrations have indicated a willingness to participate in ICAP 2.0, compared with the eight in the first pilot. While the number of covered tax administrations for a particular MNE's ICAP risk assessment will remain limited, this increases the likelihood that an MNE will be able to obtain comfort over a greater proportion of its operations.

9. The OECD expresses its gratitude to all tax administrations and MNEs participating in the first pilot (and their staff) for their hard work and commitment in thoroughly testing a model for multilateral engagement in a form and on a scale never attempted before and for providing comprehensive feedback that has supported the development of ICAP 2.0.

Notes

¹ The OECD/IMF Report on Tax Certainty for G20 Finance Ministers and Central Bank Governors was published on 18 March 2017. This report explores the nature of tax uncertainty, its main sources and effects on business decisions and outlines a set of concrete and practical approaches to help policymakers and tax administrations shape a more certain tax environment. The report outlines a set of concrete and practical approaches and solutions to enhance tax certainty in G20 and OECD countries including through dispute prevention and early issue resolution programs, such as co-operative compliance programs and advance pricing arrangements (APAs), as well as simultaneous and joint audits (<http://www.oecd.org/tax/g20-report-on-tax-certainty.htm>).

² JITSIC brings together 40 national tax administrations and offers a platform to enable its members to actively collaborate within the legal framework of bilateral and multilateral conventions and tax information exchange agreements.

³ The Large Business and International Programme (LBIP) of the FTA brings together 41 member countries to develop frameworks, information and other tools to improve tax administrations individual and collective capacity to manage international tax risks. The LBIP currently provides the umbrella under which three complimentary projects, focused on tax risk assessment and assurance as an area for multilateral action, are being carried forward e.g. ICAP, Comparative Risk Assessment and Joint Audits.

2. Overview of ICAP 2.0

10. An MNE's ICAP risk assessment comprises a number of stages, which are set out below and described in more detail in Chapter 4. A diagram illustrating the anticipated timeframe for these stages is included in the Annex to this handbook.

2.1. Stage I: Pre-entry

11. The function of the pre-entry stage is to provide a simple, un-bureaucratic and cost-effective way for MNEs to explore whether their participation in ICAP would be considered favourably and, if so, by which tax administrations. An MNE may indicate an interest in participating in ICAP to the tax administration in the jurisdiction of its ultimate parent entity (the UPE tax administration)¹ or may be approached by its UPE tax administration to discuss its possible participation in the programme. This will be followed by a discussion to identify proposed covered tax administrations, covered periods and any covered risks the MNE would like included in its ICAP risk assessment in addition to transfer pricing risk and permanent establishment risk.

12. If the UPE tax administration is willing to act as lead tax administration, it may contact other FTA member tax administrations as appropriate, to discuss whether they would be willing to act as covered tax administrations in an ICAP risk assessment of the MNE. At this stage, the MNE will be asked to provide high level information, using standard ICAP templates provided by the lead tax administration, to support tax administrations in considering whether they would be willing to participate in the MNE's ICAP risk assessment, but typically would not need to provide any detailed documentation. An MNE should of course be prepared and willing to engage actively and openly in discussions concerning its possible participation in the programme. The outcomes of these discussions will be fed back to the MNE, which will decide whether it wishes to proceed to the scoping stage with the covered tax administrations that have indicated a willingness to participate.

13. In order to facilitate planning and co-ordination across different ICAP risk assessments, a single deadline for the start of the pre-entry stage is included on the OECD website, which will be applied by all tax administrations participating in ICAP 2.0. Any MNE that wishes to participate in the programme should contact its UPE tax administration to commence the pre-entry stage by this date.

2.2. Stage II: Scoping

14. The scoping stage starts with the submission of a scoping documentation package by the MNE, which is set out in Chapter 6. The items in the scoping documentation package are mostly among those that an MNE will typically already hold (e.g. its most recent CbC report and master file) or that involve the completion of standard ICAP templates provided by the lead tax administration. During this stage, further discussions are held between covered tax administrations to agree whether any covered transactions

should be excluded from scope of the MNE's ICAP risk assessment, the target timeframe for the risk assessment stage and any changes that are required to the standard main documentation package as set out in Chapter 6. The outcome of these discussions will be shared by the lead tax administration with the MNE, and the MNE will be asked whether it wishes to proceed to the risk assessment stage with the scope and terms of its ICAP risk assessment as described. The target timeframe for the scoping stage is four to eight weeks.

2.3. Stage III: Risk assessment and issue resolution

15. The risk assessment and issue resolution stage (also referred to as simply the “risk assessment stage”) is at the heart of ICAP, and involves a multilateral risk assessment and assurance of the covered risks by the lead tax administration and other covered tax administrations. This stage begins with the submission of the main documentation package by the MNE. In most cases, the risk assessment stage will include at least one multilateral call or meeting between the MNE, the lead tax administration and other covered tax administrations, with further calls or meetings held as required. The lead tax administration and other covered tax administrations will discuss their findings, until each is able to gain comfort that the covered risks pose a low risk, or else determines that such a finding is not possible.

16. In some cases, it may not be possible for one or more covered tax administrations to conclude, based on their risk assessment, that a covered transaction should not require further compliance review. In these cases, an MNE's ICAP process may also include an issue resolution process, during which agreement is sought with the MNE on the tax treatment of one or more covered transactions, including whether any tax adjustments are needed. This allows a solution to be identified within the ICAP framework.

17. In practice, within this stage, risk assessment and issue resolution may run sequentially or concurrently, so:

- a covered tax administration's risk assessment of an MNE may be completed before issue resolution begins
- some covered tax administrations may continue to conduct a risk assessment while others work on issue resolution
- a covered tax administration may continue to conduct a risk assessment over certain covered transactions while focussing on issue resolution for other covered transactions.

18. The target timeframe for the risk assessment stage (including issue resolution, if needed) will vary, but will typically be less than 20 weeks.

2.4. Stage IV: Outcomes

19. In the outcomes stage, the MNE will receive a completion letter issued by the lead tax administration, which confirms that the ICAP risk assessment and assurance process has concluded. The MNE also receives an outcome letter from each covered tax administration, containing the results of the tax administration's risk assessment and assurance of the covered risks for the covered periods. Each covered tax administration will determine the design, content and wording of its outcome letter, based on domestic requirements. The mechanism for delivering outcome letters may vary, depending upon the needs and preference of the MNE, the lead tax administration and other covered tax

administrations, but in all cases this will be co-ordinated so they will be received by the MNE at around the same time. The target timeframe for the outcomes stage is four to eight weeks.

20. If a covered tax administration is not able to conclude that a covered risk is low risk, or is not able to reach a conclusion with respect to a covered risk, this will be reflected in its outcome letter. In such a case, the better understanding gained as a result of participation in ICAP should facilitate any future domestic or multilateral action taken, to the benefit of both the MNE and the covered tax administration. This may include the sharing of information obtained through ICAP with the covered tax administration's audit function (subject to domestic rules and processes), or consideration as to further bilateral or multilateral action, as appropriate (e.g. a bilateral/multilateral APA or simultaneous/joint audit).

Notes

¹ In exceptional cases, a tax administration other than the UPE jurisdiction may act as lead tax administration, subject to safeguards. See Chapter 3 for more details.

3. Suitability and scope

3.1. Suitability

21. For ICAP 2.0, an MNE's suitability for the programme will be considered on a case-by-case basis and is not determined using a set list of criteria. Factors that an MNE should take into account in considering whether it is suitable for an ICAP risk assessment include:

- whether the MNE's UPE is resident in the jurisdiction of an FTA member tax administration participating in ICAP 2.0¹
- the footprint of the MNE and the volume and materiality of the MNE's covered transactions in jurisdictions of FTA member tax administrations participating in ICAP 2.0
- whether the MNE is subject to a CbC reporting filing requirement in its UPE jurisdiction² and whether CbC reports are available for fiscal years commencing on or after 1 January 2016
- whether the MNE has a group tax strategy which is clearly documented and owned by senior management at board level, and internal structures to set and manage its tax policies
- whether the MNE has an effective tax control framework (or equivalent) over the covered risks at a global level
- whether the MNE is willing to commit to engaging co-operatively and transparently throughout the ICAP process, including by:
 - participating in open and frank discussions with tax administrations
 - providing documentation and information in a timely manner
 - being open with respect to areas of uncertainty and the positions it takes in these areas
 - working pro-actively towards resolving issues that arise.

3.2. Scope

22. Determining the scope of a particular MNE's ICAP risk assessment involves identifying its lead tax administration, the other covered tax administrations, the covered risks and covered transactions, and the covered period/s. The process for this is described in Chapter 4. The roles of a lead tax administration, covered tax administrations and the MNE in an ICAP risk assessment are described in Chapter 5.

3.2.1. Lead tax administration

23. The FTA member tax administrations participating in ICAP 2.0 are listed on the OECD website.³ Typically, the lead tax administration will be in the jurisdiction of the UPE of an MNE.⁴ The lead tax administration is also a covered tax administration in an MNE's ICAP risk assessment.

Surrogate lead tax administration

24. If a tax administration is included on the list of participating tax administrations on the OECD website, an MNE with its UPE resident in the tax administration's jurisdiction should always approach that tax administration first to discuss participation in the programme. If the UPE tax administration is not willing to act as lead tax administration, or if it is not included on the list on the OECD website, the MNE may approach a tax administration in another jurisdiction where it has significant activities to invite that tax administration to act as a surrogate lead tax administration. In either case, the MNE should inform its UPE tax administration before approaching another tax administration.

25. When approaching a possible surrogate lead tax administration, an MNE should disclose the identity of its UPE tax administration, the reasons given to the MNE as to why the UPE tax jurisdiction is not willing to act as lead tax administration, and any other information that may be relevant. The UPE of the MNE should also provide assurance that:⁵

- it is, and will remain, fully committed, involved and supportive with respect to the ICAP risk assessment
- it will ensure access to all items in the ICAP documentation package, as required
- it will participate in meetings or discussions with the lead tax administration and other covered tax administrations as described in Chapter 4, and will provide responses to any requests for information or clarification.

26. In considering this invitation, the tax administration should ensure it has understood and considered the reasons why the UPE tax administration is not willing to act. It should also consider any limits on its ability to be effective as surrogate lead tax administration (e.g. taking into account the fact the UPE of the MNE is not resident in its jurisdiction, and the implications of this on the tax administration's understanding of the MNE and its ability to obtain information). Other tax administrations should also consider these factors when deciding whether they are willing to act as covered tax administrations in an ICAP risk assessment involving a surrogate lead tax administration.

27. In all cases, a tax administration should inform the UPE tax administration before it confirms its willingness to act as a surrogate lead tax administration to the MNE. Where a tax administration is willing to act as surrogate lead tax administration, this handbook should be read with appropriate modifications.

3.2.2. Covered tax administrations

28. The FTA member tax administrations participating in ICAP 2.0 are listed on the OECD website. No limit has been set on the number of covered tax administrations in a particular ICAP risk assessment, and this will be considered by the lead tax administration and MNE on a case-by-case basis. Experience from the first ICAP pilot suggests that a multilateral risk assessment including between four and eight covered tax administrations is likely to be most effective.

29. Even if a particular MNE is in general suitable for participation in ICAP, it remains within the discretion of each tax administration to decide whether it will act as a covered tax administration in that MNE's ICAP risk assessment. Factors that may be taken into account by a tax administration in considering whether to act as a covered tax administration include:

- the footprint of the MNE in the tax administration's jurisdiction
- the volume and materiality of the covered transactions from the perspective of the tax administration's jurisdiction
- the willingness of the MNE's UPE tax administration to act as lead tax administration or, exceptionally, the willingness of a tax administration in another jurisdiction where the MNE has significant operations to act as surrogate lead tax administration
- the willingness of other tax administrations in jurisdictions where the MNE has significant operations or key activities to act as covered tax administrations
- the extent to which the MNE has operations in jurisdictions that, in the view of the tax administration, pose a potential increase in base erosion or profit shifting risk, in particular where the MNE does not have substantial activities in the jurisdiction
- the existing perception of the tax administration as to the level of risk posed by the MNE with respect to the covered risks, taking into account the MNE's approach to managing tax risk, corporate governance and its tax compliance history
- the existence of APAs, tax rulings or other tools that already provide certainty or comfort with respect to covered risks in the tax administration's jurisdiction
- the level of tax administration resource an MNE's ICAP risk assessment may require, in light of other commitments (including commitments to other ICAP risk assessments).

30. The ICAP risk assessment and assurance process will be most effective where covered tax administrations are in jurisdictions where the MNE derives a significant proportion of its global revenue and where key activities are undertaken. These key activities may vary depending upon factors such as the sector in which an MNE operates.

31. In order to facilitate a multilateral risk assessment, covered tax administrations should be in jurisdictions that have existing international agreements in effect to allow the exchange of tax information with the lead tax administration and with all other covered tax administrations. It is anticipated that in many cases the *Multilateral Convention for Mutual Administrative Assistance in Tax Matters* (the Convention) will be used to provide the legal basis for exchange of information, but other agreements such as double tax conventions (DTCs) and tax information exchange agreements (TIEAs) may also be used, as appropriate.

32. Tax administrations should also consider wider implications of whether a DTC is in effect with the jurisdictions of the lead tax administration and other covered tax administrations. For example, where a DTC is in effect, the outcomes of an ICAP risk assessment could facilitate the use of mechanisms contained in the DTC (e.g. MAP or a bilateral APA) to provide greater tax certainty. On the other hand, where a DTC is not in effect and these mechanisms are not possible, ICAP could be an opportunity to provide multilateral comfort that may not otherwise be available.

33. For risk assessments in ICAP 2.0, there may be advantages from the involvement of covered tax administrations that also participated in the first pilot, which would provide an opportunity for the MNE and other covered tax administrations to benefit from their experience in previous ICAP risk assessments. As such, it is anticipated that ICAP risk assessments in ICAP 2.0 will include at least one or, ideally, two covered tax administrations that participated in the first pilot. These tax administrations will also benefit from the involvement of a broader range of covered tax administrations in ICAP 2.0. As ICAP 2.0 progresses, mechanisms will be identified to facilitate the sharing of experience by covered tax administrations across all ICAP risk assessments.

3.2.3. Covered risks and covered transactions

34. ICAP is suitable for dealing with a broad spectrum of international and cross-border tax risks, but is likely to be most effective where it is targeted at those risks that are a concern to all or most of the tax administrations involved, with primarily domestic tax risks dealt with through a tax administration's usual domestic programmes. For ICAP risk assessments in ICAP 2.0 the international and cross-border tax risks that may be covered include:

- transfer pricing risk⁶
- permanent establishment risk⁷
- other categories of international tax risk as agreed by the MNE, the lead tax administration and other covered tax administrations (e.g. hybrid mismatch arrangements, withholding taxes and treaty benefits etc.).

35. Each of these covered risks may comprise a number of covered transactions, taking into account considerations of materiality.⁸ The assessment of covered risks requires an understanding of an MNE's global value chain and tax policies, including activities in jurisdictions other than those of covered tax administrations. As such, covered transactions are not limited to those between the jurisdictions of covered tax administrations and include transactions with jurisdictions of tax administrations that are not covered tax administrations, if these potentially pose a covered risk to a covered tax administration. In such a case, comfort can only be provided to an MNE within ICAP from the perspective of covered tax administrations.

36. In general, there are benefits from all covered tax administrations agreeing to include all relevant covered risks and covered transactions in their ICAP risk assessment. However, where this is not practical or possible, an ICAP risk assessment may progress with some covered tax administrations excluding certain covered risks or covered transactions from their risk assessment, subject to the agreement of other covered tax administrations and the MNE during the scoping stage. Typically, where a covered tax administration is party to a unilateral, bilateral or multilateral APA or tax ruling with respect to a particular transaction, this will not be included as a covered transaction for the ICAP risk assessment conducted by that covered tax administration. However, this in no way prevents the same transaction being included as a covered transaction and considered separately by other covered tax administrations.⁹

3.2.4. Covered period/s

37. The periods eligible for review in an ICAP risk assessment are an MNE's tax filing periods that correspond to its fiscal years beginning on or after 1 January 2016. The specific period or periods to be included in a particular MNE's ICAP risk assessment (the covered

period/s) will be agreed between the MNE, the lead tax administration and other covered tax administrations and may therefore vary. It is anticipated that, in most cases, an ICAP risk assessment will focus on a single covered period.

3.2.5. Roll-forward periods

38. ICAP is also forward looking. As such, covered tax administrations will typically also aim to provide tax assurance to an MNE, in accordance with each tax administration's domestic framework, with respect to the covered risks for the two tax filing periods immediately following the covered period/s (the roll-forward periods), provided there are no material changes during these periods. The applicable roll-forward periods may be specified in the outcome letter issued by a covered tax administration.

39. MNEs participating in ICAP commit to notify covered tax administrations as soon as possible about any actual or expected material changes to their business that may impact the covered risks or the outcomes of the ICAP risk assessment, as they concern the applicable roll-forward periods. Specific topics where a covered tax administration must be notified of any change may be included in the covered tax administration's outcome letter. If required by a particular covered tax administration, an MNE should also provide annual confirmation that no such changes have occurred or are expected and/or updates to information concerning the covered transactions. Covered tax administrations will then determine whether further information is required and the appropriate course of action, if any, as a consequence of these changes. This may include sharing information with other tax administrations to the extent required or permitted under relevant instruments for the exchange of tax information.

40. Neither the first ICAP Pilot Handbook nor this handbook describe actions to be taken at the end of the roll-forward periods. This will be considered and clarified as tax administrations and MNEs gain experience in participating in ICAP risk assessments and the potential benefits and resource implications are better understood.

Notes

¹ <http://www.oecd.org/tax/forum-on-tax-administration/international-compliance-assurance-programme.htm>.

² This includes MNEs that are able to file a CbC report on a voluntary basis under parent surrogate filing in accordance with the BEPS Action 13 minimum standard and OECD *Guidance on the Implementation of Country-by-Country Reporting*.

³ See endnote 1.

⁴ In the majority of cases, an ICAP risk assessment will consider covered risks posed by an MNE as a whole. Therefore, the UPE of the MNE for the purposes of ICAP will be the same as the UPE of the MNE for the purposes of filing a CbC report in accordance with the BEPS Action 13 minimum standard. In a small number of cases, an MNE with clearly defined and segregated business lines may request that an ICAP risk assessment be limited to one or more of these business lines. In this case, and with the knowledge and agreement of relevant tax administrations, a suitable holding company or other entity within the MNE may be treated as the UPE of the business line or business lines, and this handbook may be read with suitable modifications. This will only be permitted where the actual UPE of the MNE gives assurance as to its commitment and support for the ICAP process, and the lead tax administration and all other covered tax administrations are

satisfied that they will be provided with all relevant documentation and information required to conduct an ICAP risk assessment in accordance with the timeframes described in Chapter 4.

⁵ The UPE of an MNE is usually in the best position to prepare and provide pre-entry information, the scoping documentation package, the main documentation package and supplementary documentation, and to respond to any questions from the lead tax administration or other covered tax administrations. As such, in most cases where the lead tax administration is not the MNE's UPE tax administration, the UPE will still be the main contact within the MNE for matters concerning the MNE's ICAP risk assessment. Exceptionally, another entity in the MNE may take on this role, but the lead tax administration and proposed covered tax administrations should only agree to participate if they are confident the entity has access to all the necessary information in order for an ICAP risk assessment to be undertaken effectively and to the timelines described in this handbook.

⁶ Transfer pricing risk arises where transactions within an MNE give rise to conditions, including but not limited to price, which result in the allocation of profits to MNE group entities in different jurisdictions on a non-arm's length basis. This can result in erosion of the tax base for some jurisdictions and lead to tax disputes over the allocation of income for tax purposes.

⁷ Permanent establishment risk may arise in two broad circumstances. The first is where the operations of an MNE suggest that it may be carrying on business in a jurisdiction through a permanent establishment, but a permanent establishment is not recognised by the MNE for tax purposes. The second is where an MNE does recognise a permanent establishment for tax purposes in a jurisdiction, but it attributes a non-arm's length level of profit to that permanent establishment. In an ICAP risk assessment, this includes risks concerning permanent establishments in the jurisdictions of covered tax administrations and permanent establishments of entities resident in the jurisdictions of covered tax administrations, including non-trading branches.

⁸ The level of materiality will be considered by covered tax administrations, taking into account factors including the value of covered transactions in absolute terms and compared to the overall activities and profitability of the MNE. Given differences between jurisdictions, there is no expectation that the same level of materiality will be applied by all covered tax administrations.

⁹ Similarly, where a covered tax administration is in the process of negotiating an APA or is considering a request for a tax ruling with respect to a particular transaction, this will typically not be included as a covered transaction for the ICAP risk assessment conducted by that covered tax administration, but may be included as a covered transaction and considered separately by other covered tax administrations.

4. The ICAP risk assessment and assurance process

41. The ICAP risk assessment and assurance process is based on a collaborative working relationship between the MNE and covered tax administrations, built on transparency, co-operation and trust. Throughout this process, the lead tax administration will engage in regular and timely communication with the MNE to ensure it is kept up to date as to the status of its risk assessment and any issues as they arise. Building on experience in the first pilot, an ICAP risk assessment in ICAP 2.0 comprises a number of stages.¹

Stage I: Pre-entry

Stage II: Scoping

Stage III: Risk assessment and issue resolution

Stage IV: Outcomes

4.1. Stage I: Pre-entry

The pre-entry stage provides a simple, un-bureaucratic and cost-effective way for MNEs to explore whether their participation in ICAP would be considered favourably and, if so, by which tax administrations. Typically, an MNE would not need to provide any documentation beyond basic information on its proposed covered tax administrations and the categories of transactions to be included under each of the covered risks. Despite this, it should be prepared and willing to engage actively and openly in discussions concerning its possible participation in the programme.

42. The pre-entry stage commences when an MNE first indicates an interest in participating in ICAP to its UPE tax administration² or is approached by its UPE tax administration to discuss its possible participation in the programme.³ A list of the FTA member tax administrations participating in ICAP 2.0 is included on the OECD website.

43. In order to facilitate planning and co-ordination across different ICAP risk assessments, a single deadline for the start of the pre-entry stage is included on the OECD website, which will be applied by all tax administrations participating in ICAP 2.0. Any MNE that wishes to participate in the programme should contact its UPE tax administration to commence the pre-entry stage by this date.

44. The pre-entry stage begins with a conversation between an MNE and its UPE tax administration, to discuss the ICAP process, the MNE's suitability, the possible scope of an ICAP risk assessment, and the level of comfort that may be obtained by the MNE from the programme.⁴ All related party transactions involving the jurisdictions of one or more covered tax administrations will be within the scope of an MNE's ICAP risk assessment, unless excluded from scope by the relevant covered tax administration/s. The UPE tax

administration is likely to have much of the information required for this discussion (e.g. the MNE's CbC report, group structure and financial statements) but additional information may be requested from the MNE if needed.⁵

45. If the UPE tax administration is not willing to act as lead tax administration, it should clearly explain the reasons for this to the MNE.⁶ If the UPE tax administration is willing to act as lead tax administration, the MNE will be asked to complete templates provided by the UPE tax administration with high level information,⁷ including:

- jurisdictions where most of its global revenue is raised and where key activities are undertaken, to identify proposed covered tax administrations from those listed on the OECD website
- the covered periods it proposes to be included in its ICAP risk assessment and for which it will provide the documentation contained in the main documentation package described in Chapter 6
- any covered risks it proposes to be included in its ICAP risk assessment in addition to transfer pricing risk and permanent establishment risk, indicating the jurisdictions with transactions falling within these risks and the existence of relevant APAs.

46. The UPE tax administration will share this information with proposed covered tax administrations and will organise one or more multilateral calls with these tax administrations, as appropriate. During these calls, tax administrations will discuss the MNE's suitability for the ICAP risk assessment and assurance process, and whether they are willing to act as covered tax administrations. This may include presentations by the lead tax administration on the MNE's structure and business, and by all tax administrations on the MNE's compliance history, known risks and any other relevant information that can be shared within the parameters of relevant instruments for the exchange of tax information. To facilitate these discussions, the lead tax administration should try to anticipate the tax issues that are likely to be a concern to the other tax administrations.

47. The tax administrations involved in these discussions will be in jurisdictions where the MNE has activities. Therefore, in most cases, they should already hold sufficient information, supplemented with the high level information provided by the MNE to the lead tax administration, to determine whether they would be willing to act as a covered tax administration in the MNE's ICAP risk assessment. Additional information may be requested from the MNE via the lead tax administration, but this should be limited to information required to reach a conclusion on whether to agree to act as a covered tax administration. If a tax administration has determined that it will not participate as a covered tax administration, it will not use the ICAP process to obtain further information for use in its domestic processes.⁸

48. A tax administration may decide not to act as a covered tax administration for a particular MNE for a number of reasons, including those described in Chapter 3. To the extent possible, where a tax administration feels it is unable to act as a covered tax administration, these should be communicated to the MNE as early as possible, to give the MNE an opportunity to consider any steps it may take to address the tax administration's concerns. A tax administration may also identify other routes to greater tax certainty that may be more appropriate for a particular transaction, and communicate these to the MNE.

49. At the end of the pre-entry stage, the lead tax administration will discuss the outcomes of these discussions with the MNE, including:

- which tax administrations agree to participate as a covered tax administration
- if any of these tax administrations will exclude covered risks proposed by the MNE (other than transfer pricing risk and permanent establishment risk) from the scope of the MNE's ICAP risk assessment
- details of authorisations that tax administrations are required to obtain under domestic law, to enable them to discuss a local entity's tax information with other members of its MNE group.

50. The minimum number of covered tax administrations required for an ICAP risk assessment to proceed will vary, and is subject to discussion between the MNE, the lead tax administration and other tax administrations. If fewer than three tax administrations (including the lead tax administration) agree to participate in the MNE's ICAP risk assessment the ICAP process ends and this is notified to the MNE by the lead tax administration.

51. If at least three tax administrations (including the lead tax administration) agree to participate, the MNE confirms whether it wishes to progress to the scoping stage. If the MNE does wish to progress, the lead tax administration will confirm to the MNE and other covered tax administrations that the MNE is now participating in the ICAP programme. If the MNE does not wish to proceed, the ICAP process ends and the other tax administrations are notified by the lead tax administration.

4.2. Stage II: Scoping

The scoping stage provides an opportunity for the lead tax administration and other covered tax administrations to review a summary of all of the MNE's transactions relevant to the covered risks, and determine whether any should be excluded from the scope of their ICAP risk assessment. This requires the MNE to provide a scoping documentation package, the items in which are mostly among those that an MNE will typically already hold or that involve the completion of templates provided by the lead tax administration. This stage has been included in the ICAP process to ensure that an MNE and covered tax administrations clearly understand the scope of an ICAP risk assessment before the risk assessment stage commences. It also means the MNE is not required to provide additional documentation relevant to transactions that are outside of this scope. The target timeframe for the scoping stage is four to eight weeks.

52. The scoping stage begins when the MNE submits a complete scoping documentation package to the lead tax administration and all covered tax administrations. The content of the scoping documentation package is described in Chapter 6. The process for making the scoping documentation package available to tax administrations will be agreed by the lead tax administration with the MNE. The preferred approach is for the MNE to upload documents to a secure virtual data room to which the lead tax administration and other covered tax administrations are given access. Alternatively, it may be agreed that documents will be provided by the MNE to the lead tax administration, which are exchanged with the other covered tax administrations under instruments for the exchange of tax information.⁹ In this case, protections over information exchanged under the relevant instrument will apply. In all cases, a jurisdiction's domestic rules and practices concerning the handling and confidentiality of information held by the tax administration

should apply. At this point, the lead tax administration will review the scoping documentation package for completeness and will ensure the package is available to all covered tax administrations. Any concerns will be discussed with the MNE and should be addressed or explained. If, having reviewed the scoping documentation package, it is identified that it would be beneficial to include additional covered tax administrations in the ICAP risk assessment, this should be discussed with the MNE by the lead tax administration as early as possible.

53. At the same time as the scoping documentation package is delivered, the MNE should provide any authorisations required by covered tax administrations to enable them to discuss a local entity's tax information with other members of its MNE group, as described to the MNE at the end of the pre-entry stage. Where one or more of these authorisations are not available at this time, they may be provided as soon as possible thereafter with the agreement of the relevant covered tax administration, but in all cases should be provided before the start of the risk assessment stage.

54. The lead tax administration will organise a series of multilateral calls with the covered tax administrations to discuss the scope of the MNE's ICAP risk assessment based on the content of the scoping documentation package. All covered transactions will be included in an ICAP risk assessment unless a covered tax administration determines to exclude one or more from scope. During these discussions, all tax administrations should be as transparent as possible, including with respect to the level of materiality they apply to different categories of covered transaction and the factors that influence this. Where a covered tax administration is party to a unilateral, bilateral or multilateral APA or tax ruling with respect to a particular transaction, this will not generally be included in the scope of the ICAP risk assessment conducted by that covered tax administration, but it may be included in the ICAP risk assessments carried out by other covered tax administrations.¹⁰ Similarly, where a covered tax administration identifies that a transaction may in its view be more suitable for an APA or other tool to provide certainty, it may exclude this from the scope of its ICAP risk assessment. In determining whether to exclude any transactions from the scope of its ICAP risk assessment, a covered tax administration should consider the cumulative effect of this on its ability to conduct an effect risk assessment of the covered risks. Where a covered tax administration does wish to exclude any transactions from the scope of its ICAP risk assessment, it should discuss this with the lead tax administration and other covered tax administrations, explaining its reasons.

55. The scoping documentation package is designed to ensure that a covered tax administration has sufficient information to determine whether any transactions should be excluded from the scope of the MNE's ICAP risk assessment. Covered tax administrations may request additional information and clarification from the MNE via the lead tax administration, but this should be limited to information required to reach a conclusion as to scope. If a covered tax administration has determined that it will exclude certain transactions from the scope of an ICAP risk assessment, it will not use the ICAP process to obtain further information that is only relevant to these transactions for use in its domestic processes.¹¹

56. Once the lead tax administration and covered tax administrations have agreed the intended scope of the MNE's ICAP risk assessment, they should discuss and agree a target timeframe for the risk assessment stage taking into account this scope. Target timeframes for the risk assessment stage are considered in the next section. They should also agree any changes that are required to the main documentation package set out in Chapter 6, for

example to include supplementary documentation relevant to certain covered risks or covered transactions.

57. At the end of the scoping stage, the lead tax administration will discuss the outcomes of these discussions with the MNE, including:

- any transactions that the lead tax administration or any other covered tax administrations propose to exclude from the scope of the ICAP risk assessment
- the target timeframe for the risk assessment stage
- details of the main documentation package to be provided by the MNE at the start of the risk assessment stage.

58. The MNE will be asked whether it agrees to proceed to the risk assessment stage with the scope and terms of its ICAP risk assessment as described by the lead tax administration. If the MNE wishes to proceed, the timeframe for delivery of the main documentation package will be agreed by the lead tax administration with the MNE, taking into account the views and availability of other covered tax administrations. At this point, the MNE, the lead tax administration and other covered tax administrations should also agree the preferred approach to the issuance of outcome letters, in order that any required consents can be provided by the MNE well in advance of the start of the outcomes stage (see below). If the MNE does not wish to proceed with the scope and terms as described, the ICAP process ends.¹² All covered tax administrations will be informed as to the outcome of these discussions by the lead tax administration.

59. The target timeframe for the scoping stage is four to eight weeks after delivery of the scoping documentation package.

4.3. Stage III: Risk assessment and issue resolution

At the centre of ICAP is a multilateral risk assessment and assurance of the covered risks by the lead tax administration and other covered tax administrations. Typically involving at least one multilateral meeting or call with the MNE, this provides a unique opportunity for tax administrations to work from the same documentation package and to discuss their findings with each other, improving consistency in their understanding and interpretation of data.

Where, as a result of its risk assessment, one or more covered tax administrations is unable to conclude that a covered transaction should not require further compliance review, the MNE may be approached to consider entering an optional issue resolution process. This would allow agreement to be reached within the ICAP process on the tax treatment of a covered transaction, including whether any tax adjustments are needed for the covered period/s or for future periods.

The target timeframe for the risk assessment stage, including issue resolution if needed, will typically be no more than 20 weeks.

60. The risk assessment and issue resolution stage (also referred to simply as the risk assessment stage) commences when the MNE makes the main documentation package available to the lead tax administration and other covered tax administrations. The standard

main documentation package is described in Chapter 6, but further items may be added and details will have been provided to the MNE at the end of the scoping stage.

61. The timing of delivery of the main documentation package will be agreed in advance by the MNE and the lead tax administration, taking into account the views and availability of the other covered tax administrations. This may be shortly after the completion of the scoping stage, or may be several weeks or months later, depending upon factors such as the MNE's fiscal year end, the availability of documentation and the availability and resource commitments of all participants. The main documentation package should be made available to covered tax administrations in a virtual data room or via the lead tax administration. Because the same documentation package is provided to all covered tax administrations, irrespective of their jurisdiction's domestic rules and documentation requirements, all covered tax administrations will be working from the same set of data. One item in the main documentation package is a schedule containing details of covered transactions. If a covered tax administration identifies covered transactions that have not been included in this schedule, the MNE will be asked to provide the missing information or to provide an updated schedule. These covered transactions will be included in the MNE's ICAP risk assessment unless a covered tax administration determines to exclude them from scope.

62. Typically commencing around four weeks after delivery of the main documentation package, a series of multilateral calls and/or meetings will be organised by the lead tax administration with other covered tax administrations. These calls and/or meetings will be used to discuss:

- documentation provided to date by the MNE
- the initial findings of each covered tax administration's risk assessment
- other information already held by covered tax administrations on the MNE relevant to the covered risks (e.g. tax filing history, tax returns, financial statements, ownership and group structure, rulings, publicly available information, information from other government agencies, tax audit and compliance history, relevant correspondence with the group etc.)
- expectations for the MNE's ICAP risk assessment (e.g. whether a multilateral meeting/call with the MNE is needed, initial views as to whether it will be possible to conclude that covered risks are low risk (if it is possible to form such views) and whether the target timeframe for the risk assessment is reasonable, etc.).

63. As covered tax administrations will work together collaboratively within a co-ordinated process, they are encouraged to share tax information relevant to the covered risks in a transparent and reciprocal manner, to the maximum extent possible within the parameters of the legal framework for exchange of tax information. Where necessary, covered tax administrations may request supplementary documentation or information from the MNE via the lead tax administration. The lead tax administration should co-ordinate these requests to ensure covered tax administrations are provided with information they require, while also engaging with covered tax administrations to help ensure requests for information are not excessive or inappropriate.¹³ Where further documentation or information is requested, the MNE should aim to provide this promptly, typically within four weeks.

64. Where a request for information is of interest to only one covered tax administration, it may be appropriate for that covered tax administration to engage directly

with the UPE or local MNE entity rather than via the lead tax administration. Such engagement should be discussed in advance with the lead tax administration, and the covered tax administration should ensure that the lead tax administration and all other covered tax administrations are fully aware of its concerns, the details of its request, and the outcomes of its discussions with the MNE.

65. Exceptionally, the risk assessment stage may be completed without the need for a multilateral call or meeting with the MNE, using documentation that has been provided by the MNE or is held by covered tax administrations, possibly supplemented by information provided in response to requests for further documentation or clarification. Typically, however, a multilateral call or meeting will be held with the MNE. The content of this call or meeting will vary depending upon the needs of covered tax administrations, but may include:

- discussion of any documents made available by the MNE that require clarification
- questions that have arisen in the course of a covered tax administration's risk assessment that would benefit from discussion
- identification of covered transactions that may be suitable for issue resolution.

66. The timing of a call or meeting with the MNE will also vary depending upon the needs of covered tax administrations and the preference of the MNE, but it is likely to be between eight weeks and 12 weeks following delivery of the main documentation package. If a call or meeting is to take place, an agenda should be prepared by the lead tax administration and agreed with all other covered tax administrations and the MNE a minimum of two weeks in advance of the call or meeting (earlier, if possible), unless otherwise agreed with the MNE. This is to allow the MNE adequate time to ensure the appropriate information and personnel are available. While a key benefit of such a call or meeting is the opportunity to engage with the MNE on a multilateral basis, an agenda may also include time for bilateral discussions between the MNE and each covered tax administration to focus on specific issues and covered transactions, where this is beneficial. Where the lead tax administrations for a number of MNEs participating in ICAP are located in the same geographical region, the dates and locations of meetings may be co-ordinated, to reduce the resource cost for covered tax administrations.

67. Additional calls and/or meetings will be organised as needed by the lead tax administration with other covered tax administrations and, if required, including the MNE. These may result in requests for further supplementary documentation and information. However, to the extent possible, covered tax administrations should anticipate early in the risk assessment stage any supplementary documentation or information that is needed, to avoid repeated requests to the MNE.

68. The processes used to perform an ICAP risk assessment will include the covered tax administrations' usual policies and practices for risk assessing the covered risks, such as transfer pricing risk assessment and permanent establishment risk assessment. Where there is a reported permanent establishment, these will also include a covered tax administration's usual transfer pricing policies and practices for attributing profit to a permanent establishment.¹⁴ The risk assessment will also take into account relevant published guidance, such as the OECD *Country-by-Country Reporting: Handbook on Effective Tax Risk Assessment*.

69. ICAP does not require covered tax administrations to change the tools they use to assess the covered risks for MNEs in their jurisdiction. However, as tax administrations

gain experience in multilateral risk assessment by engaging in programmes such as ICAP, it is anticipated there will be greater convergence in risk assessment approaches adopted and more efficient mechanisms for multilateral work will be developed. Other work undertaken by the OECD, including work by the FTA LBIP, will further support this. Irrespective of the tools applied, a co-ordinated approach will be taken in terms of the timing and manner of engagement with the MNE. To the extent a covered tax administration gains comfort over the covered risks, or determines that such comfort is not possible, this information will be shared with the other covered tax administrations. This sharing of perspectives and findings provides each covered tax administration with greater comfort that the level of tax risk posed by the covered risks of the MNE is fully understood.

70. Throughout the risk assessment stage, the MNE has a key role to play in working closely with covered tax administrations to ensure the covered risks are explained, managed and, if necessary, mitigated. At any point during the ICAP risk assessment, a covered tax administration may agree with the MNE to progress into an issue resolution process with respect to one or more covered transactions. This will typically be once the covered tax administration has completed its risk assessment of the particular covered transactions, and determined that:

- a) it would be able to conclude that compliance resources would not be expected to be dedicated to a further review of these covered transactions for a defined period, if certain steps were taken by the MNE, and
- b) it is unlikely to be able to reach such a conclusion in the absence of these steps.

71. During an issue resolution process, one or more covered tax administrations may work together with the MNE with the aim of agreeing, within the ICAP framework, the correct treatment of a covered transaction. This may include whether any tax adjustments (and, if relevant and to the extent possible, corresponding adjustments) are needed for the covered periods. Alternatively, a covered tax administration or the MNE may determine that discussions as to the correct treatment of a covered transaction should be conducted outside of ICAP (e.g. within an APA programme, which would be subject to the relevant jurisdiction's domestic processes and documentation requirements).

72. Where it seems that covered tax administrations may reach different conclusions as a result of work conducted in the risk assessment stage, including issue resolution if relevant, these will be discussed by the covered tax administrations to understand the reason for the difference and whether a consistent approach is possible, perhaps taking into account each other's risk assessment findings. However, ultimately each covered tax administration must draw its own conclusions based on its ICAP risk assessment and conversations with other covered tax administrations that, despite all efforts, may differ.

73. During the risk assessment stage, a covered tax administration may determine that it is unable to obtain comfort with respect to one or more of the covered risks. At this point, the relevant covered tax administration may cease its risk assessment of these covered risks, even though risk assessments by other covered tax administrations may continue. Where this occurs, such a decision should be communicated to the MNE via the lead tax administration. The covered tax administration will then wait for the risk assessment stage to be completed by other covered tax administrations, so that the lead tax administration and all covered tax administrations may enter the outcomes stage at the same time. In the meantime, the covered tax administration may provide the MNE with an early indication as to the outcomes of its ICAP risk assessment, but is not required to do so.

74. The target timeframe for the risk assessment stage will be agreed by the lead tax administration and other covered tax administrations during the scoping stage. This timeframe may be longer where an issue resolution process is needed but, in most cases, this stage will be completed within 20 weeks after delivery of the main documentation package. This timeframe may be shortened or extended as work on risk assessment and issue resolution proceeds, but any extension should be to no more than 36 weeks after delivery of the main documentation package. Any change to the target timeframe should be communicated to the MNE by the lead tax administration as soon as possible.

75. Once the risk assessment stage, including any issue resolution process if needed, is completed by the lead tax administration and all other covered tax administrations, an MNE's ICAP risk assessment progresses to the outcomes stage.

4.4. Stage IV: Outcomes

During the outcomes stage, an MNE will receive a completion letter from the lead tax administration, confirming that the ICAP risk assessment and assurance process has concluded. At around the same time, it will also receive an outcome letter from each covered tax administration, setting out the results of the tax administration's risk assessment and assurance of the covered risks for the covered periods. Outcome letters will confirm the details of any roll-forward periods after the covered period/s, as well as any obligations on the MNE to provide follow-up information, either annually or in the event of material changes that impact the covered risks. The target timeframe for the outcomes stage is four to eight weeks.

76. The outcomes stage commences once the risk assessment stage is completed for the lead tax administration and all other covered tax administrations.

77. This stage comprises the issuance of a completion letter by the lead tax administration, confirming the finalisation of the ICAP risk assessment on behalf of all other covered tax administrations, as well as an outcome letter by each covered tax administration, containing the results of its risk assessment and assurance of the covered risks for the covered periods. While a multilateral risk assessment and assurance process should facilitate greater convergence in the perception of risk among covered tax administrations, each covered tax administration will reach its own conclusions, which may differ and are not dependent on the conclusions of other covered tax administrations. The design, content and wording of an outcome letter is determined separately by each covered tax administration, depending upon domestic practices and processes, but will typically address the following:

- risk ratings, where these are assigned by a tax administration as part of its usual domestic processes, or otherwise a description of key findings from the ICAP risk assessment
- any agreement reached as part of an issue resolution process, if included in the ICAP risk assessment
- confirmation of the covered risks that are considered to be low risk, with a statement that it is not anticipated that compliance resources will be dedicated to a further

review of these risks for a defined period (generally the covered period/s, plus the following two tax filing periods, provided there are no material changes)

- appropriate caveats or limitations, including any requirements to notify the relevant covered tax administration as soon as possible of any material changes that impact the covered risks (or, if required by a covered tax administration, to provide an annual confirmation that no such changes are expected or have taken place and/or updated information concerning covered transactions).

78. While each covered tax administration will issue an individual outcome letter, it is important that the delivery of these to the MNE is co-ordinated to ensure that, to the extent possible, they are received at or around the same time. This may require different approaches to be adopted, depending upon the requirements and preferences of the lead tax administration, other covered tax administrations and the MNE, including those set out below.

Outcome letters are sent to the UPE of the MNE by the lead tax administration: Each covered tax administration sends its outcome letter to the lead tax administration under spontaneous exchange of information by an agreed date, approximately three weeks after the start of the outcomes stage. The lead tax administration issues a completion letter to the UPE of the MNE, including each of the outcome letters as enclosures. A copy of this package is sent by the lead tax administration to each of the other covered tax administrations. The benefit of this approach is that the MNE receives a single package containing all of the outcome letters, from the lead tax administration.

Outcome letters are sent to the UPE of the MNE by each covered tax administration: The lead tax administration issues a completion letter and each covered tax administration issues an outcome letter to the UPE of the MNE. These should be co-ordinated to arrive on or around an agreed date, approximately three weeks after the start of the outcomes stage. The completion letter and all outcome letters are copied to all covered tax administrations. This ensures that the UPE of the MNE receives all outcome letters at approximately the same time, but not as a single package.

Outcome letters are sent to the MNE's local entity by each covered tax administration: The lead tax administration issues a completion letter to the UPE of the MNE and each covered tax administration issues an outcome letter to the MNE group entity resident in, or operating in, its jurisdiction. These should be co-ordinated to arrive on or around an agreed date, approximately three weeks after the start of the outcomes stage. The completion letter and all outcome letters are copied to all covered tax administrations. This ensures that the MNE receives all outcome letters at approximately the same time, but these are not received by the same entity.

A combination of the above: Depending upon the domestic requirements of each covered tax administration, the outcomes stage of an MNE's ICAP risk assessment may involve a combination of the above approaches.

79. In all cases, the preferred approach to the issuance of outcome letters should be discussed and agreed by the lead tax administration, other covered tax administrations and the MNE during the scoping stage. The MNE should then ensure that any permissions required for this approach (e.g. to enable a covered tax administration to address its outcome letter to the UPE of the MNE resident in a different jurisdiction) are obtained in

advance of the start of the outcomes stage. Where a covered tax administration sends its outcome letter either to the lead tax administration or to the UPE of the MNE, it may also send a copy of the outcome letter to the MNE's local entity in its jurisdiction. Even where this is not required under domestic law or practice, it may prove helpful in order to avoid any confusion in future as to the treatment of the covered periods. The lead tax administration and/or other covered tax administrations may also provide an MNE with an indication of the outcomes of an ICAP risk assessment prior to the issuance of outcome letters, but are not required to do so.

80. On or around the point where a completion letter and outcome letters are issued, a meeting or call will be held between the lead tax administration and the MNE to discuss MNE's ICAP risk assessment, the outcomes of the process, and to invite feedback from the MNE. The lead tax administration will not be in a position to discuss conclusions drawn by other covered tax administrations, but will be able to provide insight into the overall ICAP risk assessment and assurance process and may relay any comments from the MNE to other covered tax administrations, as appropriate.

81. Wherever possible, the outcomes stage should be completed within a period of four weeks and this marks the end of the ICAP risk assessment and assurance process for a particular MNE for the relevant covered periods. There may be cases where a covered tax administration's internal processes mean that this timeframe needs to be extended, but it is expected that this should not extend the outcomes stage beyond a total of eight weeks.

82. There may be cases where a covered tax administration is not able to conclude that a covered risk is low risk, or is not able to reach a conclusion with respect to a covered risk, and this will be reflected in its outcome letter. Where this is the case, the better understanding of an MNE, its business and its activities gained as a result of participation in ICAP should facilitate any future domestic or multilateral action taken, to the benefit of both the MNE and the covered tax administration. This may include the sharing of information obtained through ICAP with the covered tax administration's audit function (subject to domestic rules and processes), or consideration as to further bilateral or multilateral action, as appropriate (e.g. a bilateral/multilateral APA or simultaneous/joint audit).

Notes

¹ Throughout all stages of an ICAP risk assessment and assurance process, communication between the lead tax administration, covered tax administrations and the MNE may be conducted face-to-face, by video conference, by telephone, by email or by any other method that is convenient and agreed by relevant participants. References in this handbook to meetings or calls do not preclude other methods of communication being used, if these are more convenient.

² As described in Chapter 3, in exceptional cases a tax administration other than the UPE jurisdiction may act as a surrogate lead tax administration, subject to safeguards.

³ In the majority of cases, an ICAP risk assessment will consider covered risks posed by an MNE as a whole. Therefore, the UPE of the MNE for the purposes of ICAP will be the same as the UPE of the MNE for the purposes of filing a CbC report in accordance with the BEPS Action 13 minimum standard. In exceptional cases, an MNE with clearly defined and segregated business lines may request that an ICAP risk assessment be limited to one or more of these business lines. In such a case, and with the knowledge and agreement of relevant tax administrations, a suitable holding company or other entity within the MNE may be treated as the UPE of the business line or business lines, and this handbook may be read with suitable modifications. This will only be permitted where the actual UPE of the MNE gives assurance as to its commitment and support for the ICAP process, and the lead tax administration and all other covered tax administrations are satisfied that they will be provided with all relevant documentation and information required to conduct an ICAP risk assessment in accordance with the timeframes described in this chapter.

⁴ Where an MNE desires greater certainty than is available under ICAP 2.0, it may consider whether other tools are available that may be more appropriate, such as an APA.

⁵ This could include information that may be required by the UPE tax administration in order to discuss the MNE's participation in ICAP with proposed covered tax administrations (e.g. the name of the MNE's main entity or permanent establishment in the jurisdiction of each covered tax administration and whether there are currently APAs or other agreements in place in these jurisdictions that relate to the covered risks).

⁶ As described in Chapter 3, in these circumstances an MNE may inform its UPE tax administration and invite a tax administration in another jurisdiction in which the MNE has significant activities to act as a surrogate lead tax administration. It is anticipated that a tax administration would only agree to act as a surrogate lead tax administration in exceptional cases.

⁷ In some jurisdictions, the tax administration may ask the UPE of an MNE to complete these templates before commencing any discussions.

⁸ It may still be possible for a tax administration to request this information outside of the ICAP process, either directly from the MNE local entity under domestic rules and practices, or from other tax administrations under applicable instruments for the exchange of tax information.

⁹ In the ICAP risk assessments of some MNEs, a combination of these approaches may apply.

¹⁰ A covered tax administration that is party to a unilateral APA with respect to a covered transaction may nevertheless include the covered transaction within the scope of its ICAP risk assessment, in order to obtain a better understanding of the MNE and its activities, to the benefit of the MNE and the tax administration.

¹¹ It may still be possible for a tax administration to request this information outside of the ICAP process, either directly from the MNE local entity under domestic rules and practices, or from other tax administrations under applicable instruments for the exchange of tax information.

¹² Where the MNE has specific issues concerning the scope and terms of its ICAP risk assessment as described by the lead tax administration, these may be discussed further with relevant covered tax administrations to determine whether agreement can be reached.

¹³ Taking into account the level of detail required to conduct a risk assessment and the materiality of a covered transaction to the covered tax administration.

¹⁴ These policies and practices will also reflect any changes that may be required once a jurisdiction has implemented recommendations under BEPS Action 6 and BEPS Action 7 into its bilateral tax treaties, via the MLI.

5. The role of participants in an ICAP risk assessment

5.1. The role of a lead tax administration

83. The lead tax administration plays a central role in all stages of an MNE's ICAP risk assessment. The lead tax administration is also a covered tax administration in an MNE's ICAP risk assessment, and so elements of the role of a covered tax administration (e.g. concerning the exchange of information and the risk assessment of the covered risks) are also relevant.

84. In the pre-entry stage and the scoping stage, the lead tax administration plays a “gatekeeper” role. This is to ensure that MNEs entering ICAP are suitable for the programme, they have a full understanding of the programme, and the scope of ICAP risk assessments are correctly defined and agreed with the covered tax administrations and the MNE. This typically includes the following.

- Engaging with an MNE seeking to participate in ICAP, to ensure the MNE fully understands the ICAP process, that it understands the expectations of other covered tax administrations, and that the MNE's own expectations are realistic, including in terms of the level of comfort available under the programme. Any suggestions or requirements with respect to the scope of an ICAP risk assessment and the required content of the main documentation package will be communicated to the MNE by the lead tax administration.
- Co-ordinating discussions with other tax administrations, as necessary, to ensure that all suitable proposed covered tax administrations and risks are identified. This includes reviewing an MNE's profile, group structure and business model, anticipating tax issues that are likely to be a concern to proposed covered tax administrations, and organising calls with proposed covered tax administrations to discuss their participation.
- Reviewing an MNE's scoping documentation package to ensure completeness and consistency with the approach communicated to the MNE at the end of the pre-entry stage, and ensuring documents are available to all proposed covered tax administrations (which may include exchanging documents under legal instruments for the spontaneous exchange of information).
- Organising calls with proposed covered tax administrations to discuss all elements of the MNE's suitability for ICAP 2.0. This includes:
 - presenting the MNE's group structure, business model and compliance history, as known to the lead tax administration
 - identifying tax administrations that are willing to act as a covered tax administration and any conditions attaching to this
 - agreeing a target timeframe for an ICAP risk assessment

- identifying documents, if any, that should be included in the MNE's main documentation package, in addition to the standard items described in Chapter 6.

85. In the risk assessment stage, the lead tax administration is central in co-ordinating discussions between covered tax administrations and the MNE, to ensure an effective multilateral risk assessment can take place within the agreed timeframe. This typically includes the following.

- Checking an MNE's main documentation package (and any supplementary documentation and information required during the course of the risk assessment stage) to ensure that all items are included and documentation is available to all other covered tax administrations (which may include exchanging the documentation package under legal instruments for the spontaneous exchange of information).
- Co-ordinating a multilateral risk assessment and assurance of the covered risks by the covered tax administrations. This includes:
 - organising calls with other covered tax administrations to discuss all elements of the MNE's risk assessment, including other information held by covered tax administrations relevant to covered risks
 - sharing its findings and engaging proactively in a multilateral assessment of the covered risks, and encouraging other covered tax administrations to do likewise
 - collecting questions and requests for supplementary documentation and information from other covered tax administrations, and communicating these to the MNE (including ensuring that requests are not excessive or inappropriate,¹ and that requests for information on common risks are co-ordinated)
 - monitoring compliance with the timeframes set at the end of the scoping stage, agreeing changes where needed and updating the MNE accordingly.
- Working with the MNE to ensure it is adequately prepared for multilateral meetings with covered tax administrations, and that the correct personnel attend and relevant information is made available. This includes:
 - preparing an agenda, which is agreed with the covered tax administrations
 - providing this agenda to the MNE at least two weeks in advance of the meeting (earlier, if possible)
 - chairing discussions during a meeting
 - co-ordinating follow-up actions
 - keeping the MNE updated on the status of its risk assessment
 - providing feedback as needed.

86. In the outcomes stage, the lead tax administration is responsible for finalisation of an MNE's ICAP risk assessment. This typically includes the following.

- Consulting with other covered tax administrations and the MNE on the approach to be taken in issuing a completion letter and outcome letters (based on the approaches

set out in this handbook), agreeing the approach to be used and the timing of the completion and outcome letters, and communicating this to the MNE.

- Issuing a completion letter to the MNE, which confirms finalisation of the ICAP risk assessment on behalf of all covered tax administrations, taking into account the model in this handbook. Facilitating the issuance of outcome letters by other covered tax administrations, using the agreed approach.
- Holding a call or meeting with the MNE at the point where a completion letter and outcome letters are issued, or very shortly afterwards, to discuss the MNE's ICAP risk assessment, the outcomes of the process, and to invite feedback from the MNE, which should be relayed to other covered tax administrations, as appropriate.

5.2. The role of a covered tax administration

87. All covered tax administrations have a key role to play in ensuring an effective multilateral risk assessment of an MNE during all stages of an ICAP risk assessment. This typically includes the following.

- Engaging actively in discussions concerning the suitability of an MNE for ICAP and the potential scope of its ICAP risk assessment, throughout the pre-entry stage and the scoping stage. This includes:
 - sharing information on the MNE's profile and compliance history relevant to the covered risks
 - putting forward suggestions or requirements for changes to the scope of the review proposed by the MNE
 - reviewing the scoping documentation package (once available)
 - identifying items that should be included in the main documentation package to be submitted by the MNE
 - determining and communicating to the lead tax administration whether it is willing to act as a covered tax administration.
- Participating in the multilateral risk assessment and assurance of the covered risks of the MNE, for the covered periods. This includes:
 - exchanging information held on the MNE relevant to the covered risks, subject to the provisions in applicable instruments for the exchange of tax information and competent authority rules
 - reviewing the main documentation package provided by the MNE and information exchanged by other covered tax administrations
 - conducting a risk assessment of the covered risks based on this data and sharing findings with other covered tax administrations
 - participating in calls and/or meetings organised by the lead administration
 - discussing the findings of each covered tax administration and the implications of any similarities or differences in these findings
 - participating in multilateral calls and/or meetings with the MNE

- identifying any further information needed to complete the MNE's ICAP risk assessment
- engaging pro-actively in issue resolution discussions with the MNE and other covered tax administrations, as needed and appropriate.
- Consulting with other tax administrations in the preparation of outcome letters, and submitting an outcome letter using the agreed approach (to the lead tax administration, UPE of the MNE or the local resident entity of the MNE).

5.3. The role of an MNE

88. ICAP is a collaborative process for the multilateral risk assessment and assurance of an MNE, and active participation of the MNE in planning and conducting an ICAP risk assessment is essential. An MNE considering participation in ICAP should note the following.

- The ICAP process commences in the pre-entry stage, when an MNE initiates a conversation with the tax administration in its UPE jurisdiction (or, exceptionally, the tax administration in another jurisdiction where the MNE has substantial operations), to enquire as to the possibility of participating in an ICAP risk assessment. This should include an open discussion on the suitability of the MNE, its expectations of ICAP and the possible scope of an ICAP risk assessment, as well as the provision of high level pre-entry information using templates provided by the UPE tax administration. An MNE should consider a broad scope for its ICAP risk assessment, including all jurisdictions where it maintains a substantial presence, but should also recognise that not all tax administrations may be able to act as covered tax administrations, based on their resources and priorities. All related party transactions involving the jurisdictions of one or more covered tax administrations will be within the scope of an MNE's ICAP risk assessment, unless excluded from scope by the relevant covered tax administration/s. The MNE should consider any suggestions or requirements communicated to it in determining whether to submit a scoping documentation package.
- At the start of the scoping stage, the MNE should make a complete scoping documentation package available to the lead tax administration and other covered tax administrations via a virtual data room or to the lead administration for exchange with covered tax administrations. The MNE may be required to provide additional information or clarifications during the scoping stage, which it should aim to do promptly. At the end of this stage the MNE will be informed by the lead tax administration as to which tax administrations have agreed to act as a covered tax administration, the scope of covered transactions, the anticipated timeframe of the risk assessment stage and details of the main documentation package to be provided by the MNE. The MNE should discuss this with the lead tax administration and determine whether it wishes to proceed into the ICAP risk assessment and assurance process.
- The risk assessment stage begins when the MNE makes the main documentation package available to the lead tax administration and other covered tax administrations. Much of this documentation will already be held by the MNE, though some information will need to be included in templates provided by the lead tax administration. Where there are follow-up requests for further information or clarifications, the MNE should respond to these promptly. If a multilateral call or

meeting is to be held with the MNE, the MNE will be included in all discussions concerning the timing, agenda, location and content of the call or meeting and should ensure that, to the extent possible, all necessary information and personnel are available. This may require the preparation of presentations and summaries for use during calls or meetings.

- During the course of an ICAP risk assessment, one or more covered tax administrations may propose one or more covered risks for an issue resolution process, during which the treatment of a covered transaction may be agreed within the ICAP framework. The MNE should consider any such proposal and, if it agrees, engage pro-actively in reaching an appropriate outcome.
- Throughout the ICAP risk assessment, an MNE may be invited to provide feedback on the process and its experience, via the lead tax administration. MNEs are encouraged to provide comprehensive and honest feedback, which will be taken into account in revising the ICAP process in the future. Feedback may also be provided spontaneously, via the lead tax administration or the OECD Secretariat, if necessary.
- The staff required to be involved in an MNE's ICAP risk assessment will reflect the nature of the MNE's business, the covered risks and the jurisdictions of the covered tax administrations. This will include staff familiar with the end-to-end value chain processes within the MNE's industry and the MNE's control framework. It will also require support from relevant business areas and central functions when specific information is required. Work should be led by a suitable member of the MNE's tax team, who is able to engage with the lead tax administration as well as other parts of the MNE at a senior level. More complex MNEs may benefit from a separate project manager, to ensure effective co-ordination and timely delivery of documentation and responses to requests for information.

Notes

¹ Taking into account the level of detail required to conduct a risk assessment and the materiality of a covered transaction to the covered tax administration.

6. The ICAP documentation package

89. The ICAP documentation package includes four parts¹:

- pre-entry information
- the scoping documentation package
- the main documentation package
- supplementary documentation.

90. Documents and other information provided to a covered tax administration in the course of an ICAP risk assessment will be subject to the covered tax administrations normal rules and practices concerning the use of taxpayer information. These may include the ability or requirement to use such information for purposes other than risk assessment, such as tax audit or agreeing future APAs. These rules and practices may vary depending upon whether information is obtained from a taxpayer or from another tax administration under instruments for the exchange of tax information.

6.1. Pre-entry information

91. During the pre-entry stage an MNE is expected to provide high level information to assist tax administrations in determining whether they are willing to participate in the MNE's ICAP risk assessment. This is prepared using templates provided by the UPE tax administration.

- An MNE information form, including basic information, such as:
 - a list of proposed covered tax administrations
 - a list of proposed covered periods
 - the identity of the main MNE entity in the jurisdiction of each proposed covered tax administration
 - whether any transaction, arrangement or re-structuring has taken place in the last 12 months which may mean that information currently held by a proposed covered tax administration is out of date.
- A pre-entry covered risk overview, including:
 - a list of the categories of transaction or arrangement falling within the proposed covered risks
 - the jurisdictions where the recipients of intra-group payments under each of these categories of transaction or arrangement are resident or have operations
 - an indication as to whether each of these categories of transaction or arrangement poses a potential risk to the jurisdiction of each proposed covered tax administration

- any APAs in effect with respect to each category of transaction or arrangement.

6.2. The scoping documentation package

92. An MNE's scoping documentation package for its ICAP risk assessment should include the following documents.

- A scoping covered risk overview, which expands the pre-entry covered risk overview to include an indication of the value of each category of covered transactions for each of the covered tax administrations.
- A copy of the MNE's latest CbC report, prepared in accordance with the laws of the MNE's UPE jurisdiction. This may be for a fiscal year earlier than the first covered period, if the deadline for filing a CbC report in the UPE jurisdiction for the first covered period has not yet passed.
- The MNE's master file, where this is required to be prepared in the jurisdiction of the lead tax administration (or equivalent information and documentation, where there is no requirement to prepare a master file in this jurisdiction).²
- A summary of the MNE's current global group structure (unless provided in the master file), clearly identifying entities and activities in the jurisdictions of all proposed covered tax administrations and other key jurisdictions, by reference to Table 2 of the CbC reporting template, together with entity classification for tax purposes.
- A list of all unilateral, bilateral and multilateral APAs in place or in process, and other tax rulings relevant to the proposed covered risks.

6.3. The main documentation package

93. The required content of the main documentation package for an MNE's ICAP risk assessment will be communicated to the MNE by the lead tax administration at the end of the scoping stage. This will include the core items listed below, but the lead tax administration and other covered tax administrations may also require further items to be added, if they agree these will be needed for the risk assessment of the covered risks of a particular MNE for the covered periods. Delivery of the main documentation package marks the start of the risk assessment stage.

- Updates to any of the documents contained in the scoping documentation package, as required, taking into account any changes to the scope of the ICAP risk assessment agreed during the scoping stage.
- A schedule containing details of covered transactions, using a template provided by the lead tax administration, including:
 - a short description of each transaction or group of similar transactions
 - the legal entities that are party to each transaction, with their jurisdictions of residence (or the jurisdiction where activity is undertaken in the case of a transaction entered into by a permanent establishment)
 - whether the transaction is covered by an APA
 - the value of the transaction

- the transfer pricing policy of the MNE
- details of how the transfer pricing policy has been applied to this transaction.
- The MNE's CbC report, prepared in accordance with the laws of the MNE's UPE jurisdiction. If the MNE's CbC report for a covered period was provided as part of the scoping documentation package, it does not need to be provided again as part of the main documentation package.
- A completed CbCR self-assessment with respect to the CbC report provided, using a template provided by the lead tax administration.
- Local files,³ to the extent these are required to be prepared in the jurisdictions of covered tax administrations (or equivalent information and documentation, where there is no requirement to prepare a local file in the jurisdiction of a covered tax administration).^{4 5}
- Audited consolidated financial statements if prepared, unless publicly and readily available (unaudited consolidated financial statements or trial balances should be provided if audited consolidated financial statements are not produced).
- To the extent this is documented, details of the MNE's tax strategy, including for managing the covered risks, and tax control frameworks (or equivalent information). In particular, this could include a description of the MNE's tax control framework, how the effectiveness of this framework is managed and monitored in general and how it is managed and monitored specifically with respect to the covered risks.
- To the extent not already covered in the master file, a value chain analysis for the MNE comprising an explanation, in written or diagrammatical format, of the external and internal profit drivers for the MNE, which the MNE considers important for showing how profits are aligned to its economic activities. This explanation should separately address the five largest product and service offerings, to the extent the value drivers differ.
- Permanent establishment documentation (for all permanent establishments in covered jurisdictions and all permanent establishments of entities resident in covered jurisdictions), to the extent not already provided as part of the MNE's CbC Report, comprising the following items.
 - An overview of the processes used by the MNE to ensure permanent establishments are correctly reported for tax purposes in the jurisdictions of participating tax administrations. This overview should address how the MNE mitigates the risk of creating unintended PEs, including, for example, through the characteristics of the MNE's operating model and/or applicable procedures (e.g., mechanisms to monitor employee activities outside their country of employment).
 - If the MNE has sought professional advice, or conducted its own internal review, on whether activities undertaken by the MNE in the jurisdictions of participating tax administrations would constitute having a permanent establishment, then a description of the key tax risks identified in this regard.
 - If applicable:

- a schedule showing all reported permanent establishments and non-trading branches
 - a list of all protective filings in the jurisdictions of covered tax administrations, concerning permanent establishments or non-trading branches, accompanied by a brief description of the relevant entity's activities in the jurisdiction that resulted in the protective filing, and the basis for claiming treaty benefits under the business profit and permanent establishment articles
 - financial data for reported permanent establishments, including revenue, income, expenditure, assets and liabilities
 - supporting transfer pricing documentation (e.g. functional analysis) with respect to the attribution of profits to a permanent establishment (if the taxpayer has filed on the basis of there being a permanent establishment).
- Additional information relevant to any agreed covered risks beyond transfer pricing risk and permanent establishment risk, as agreed.

94. Items within the main documentation package must be provided for all covered periods. If an item would be the same, or substantially the same, for more than one covered period, the lead tax administration may agree for the item to be provided once only, with any differences explained.

95. All items in the main documentation package should be provided at the start of the risk assessment stage. If any documentation will only be available at a later date, this should be discussed by the MNE with the lead tax administration as early as possible and before the main documentation package is provided by the MNE. In specific cases, the lead tax administration may agree that certain items may be provided by a specified later date, following discussion with other covered tax administrations.

96. The timeframe for the risk assessment stage described in Chapter 4 commences when the complete main documentation package, including all items, is made available by the MNE to the lead tax administration and other covered tax administrations. Where items in the main documentation package are not provided by the MNE, or are provided late without agreement from the lead tax administration, this may impact the ability of the lead tax administration and/or other covered tax administrations to conduct an ICAP risk assessment for a particular covered period or to issue an outcome letter for that covered period.

6.4. Supplementary documentation

97. Supplementary documentation means any other documents that covered tax administrations require for the risk assessment of a particular covered risk or a particular MNE, that are not provided within the scoping documentation package or the main documentation package. These documents may be requested by covered tax administrations at one time, or in stages as it becomes apparent they are required. Supplementary documentation may include, but is not limited to, the following items.

- Entity financial statements or trial balances, as specified (e.g. for counterparties to covered transactions).
- Copies of intercompany agreements relevant to covered transactions, if not already provided in local files.

- Local files for jurisdictions other than those of covered tax administrations, as specified.
 - Information concerning uncertain tax positions for financial reporting purposes, relating to the covered risks.
 - Description of material differences between financial statements and income tax returns, as specified.
 - Additional information on unilateral, bilateral and multilateral APAs, as specified, including copies of APAs (if not otherwise available in accordance with BEPS Action 5 or from a covered tax administration, and where the MNE is not restricted from providing a copy).
 - A further breakdown or analysis of an MNE's CbC report for the jurisdictions of covered tax administrations, as required.
98. The lead tax administration should engage with all other covered tax administrations to ensure that requests for supplementary documentation:
- are co-ordinated (e.g. to minimise the number of separate requests and to ensure that the same or similar information is not requested multiple times in different forms), and
 - are not excessive (e.g. if supplementary documentation requested concerns a covered transaction that is very small or relevant to only one covered tax administration).

Notes

¹ All items should be provided in English, unless explicitly agreed by the lead tax administration and the MNE.

² Where an MNE is not required to prepare a master file in the jurisdiction of the lead tax administration, "equivalent information and documentation" will include a master file required to be prepared in the jurisdiction of another covered tax administration or, where there is no such requirement, a master file required to be prepared in another jurisdiction that is consistent with the description in the Action 13 Report. To support an effective and efficient risk assessment, MNEs participating in ICAP 2.0 are encouraged to provide a clear and comprehensive master file, including all of the elements described at pages 25-26 of the BEPS Action 13 Report.

³ To support an effective and efficient risk assessment, MNEs participating in ICAP 2.0 are encouraged to provide clear and comprehensive local files, including all of the elements described at pages 27-28 of the BEPS Action 13 Report.

⁴ Where a requirement to prepare equivalent information and documentation applies in a jurisdiction, this information and documentation should be included in the main documentation package. Where no such requirement applies, the main documentation package should include the elements of a local file described at pages 27-28 of the BEPS Action 13 Report.

⁵ Where the local file or equivalent information and documentation for a particular jurisdiction is maintained in a language other than English, on a case by case basis it may be agreed that a summary will be prepared in English and provided in place of the full local file.

7. Governance and co-ordination

7.1. Governance: ICAP steering group

99. Oversight of ICAP 2.0 is the responsibility of the ICAP steering group, which includes a senior representative from each participating tax administration. The steering group is responsible for stewardship decisions and providing strategic oversight, as well as compliance with each tax administration's own internal governance procedures. The steering group is the escalation point for any disputes concerning the ICAP process that require resolution, between an MNE and the covered tax administrations, or between covered tax administrations.

100. Where a lead tax administration, covered tax administration or MNE fails to fulfil its role in an ICAP risk assessment, as set out in Chapter 5, this may be referred to the steering group for its consideration. Where this occurs, the steering group will invite comments from the lead tax administration, all covered tax administrations and the MNE, and will consider what action, if any, to take. It is expected that, in most cases, a reminder from the steering group as to the tax administration or MNE's commitments as participants in ICAP 2.0 will be sufficient to deal with any concerns. However, in cases of serious or persistent failure to fulfil its role, a tax administration or MNE may be excluded from the programme. Where this occurs, the steering group will also consider the implications for a particular MNE's ICAP risk assessment, on a case-by-case basis.

7.2. Co-ordination: ICAP single point of contact

101. Each tax administration taking part in ICAP 2.0 has a single point of contact (SPOC) to lead co-operation and collaboration within the programme, who may be supported by a shadow single point of contact (shadow SPOC) who is able and authorised to act on the SPOC's behalf. The SPOC and shadow SPOC must have competent authority status and a level of seniority within their tax administration to be able to deliver on the tax administration's commitments to ICAP. For a particular jurisdiction, the same official may fulfil the ICAP steering group position and the SPOC role.

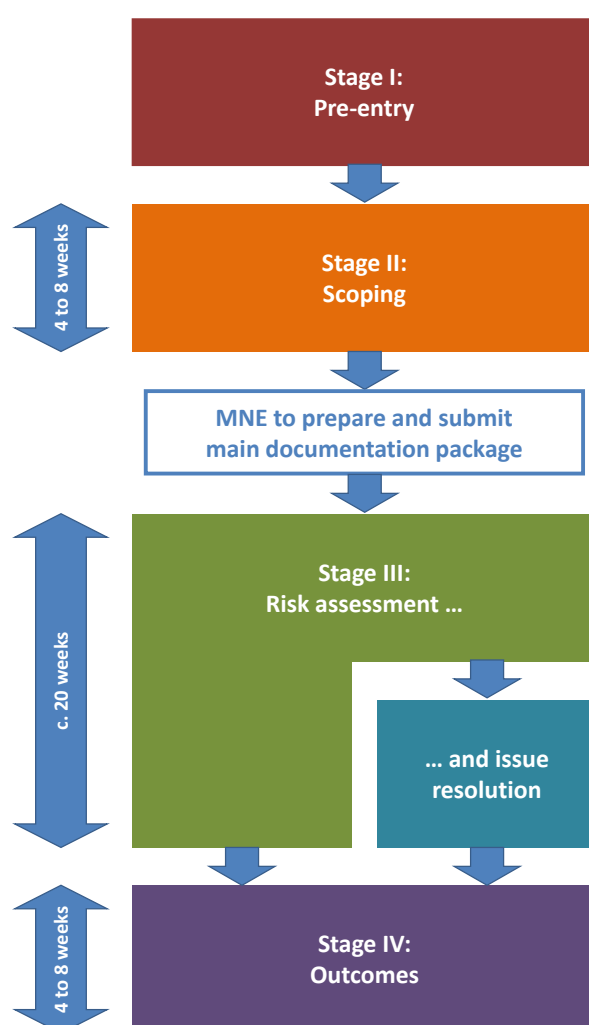
102. Working alongside the SPOC and shadow SPOC, the size and composition of a covered tax administration's ICAP risk assessment team may vary between tax administrations and between ICAP risk assessments. Typically, ICAP risk assessments will be resourced with personnel from a covered tax administration's existing work programmes and do not require the creation of a new operating structure. Depending on the complexity of the particular MNE and the covered risks, each covered tax administration may need to involve personnel with a varied range of skills, including, for example, lawyers, accountants, economists, business analysts, and/or international tax experts. Specialist expertise in transfer pricing risk, permanent establishment risk and any other covered risks will be particularly beneficial.

103. The SPOC, shadow SPOC and other members of a covered tax administration's ICAP risk assessment team are responsible for successfully completing ICAP risk assessments in their jurisdiction for participating MNEs. Tax administrations may consider using the same team of tax administration professionals for each ICAP risk assessment, or including core members in each team, to build competence, cohesion and capability.

104. The success of ICAP 2.0 depends upon each covered tax administration's ICAP risk assessment team embracing the principles underpinning the programme. In particular, these include working collaboratively with other covered tax administrations throughout the ICAP risk assessment and assurance process, to provide comfort to an MNE over its covered risks as early as possible where appropriate, while identifying areas for further attention.

Annex – Target timeframes for an ICAP risk assessment

Figure A.1 Target timeframes for an ICAP risk assessment



International Compliance Assurance Programme

Pilot Handbook 2.0 (Working document)

The International Compliance Assurance Programme (ICAP) is a voluntary risk assessment and assurance programme to facilitate open and co-operative multilateral engagements between MNE groups willing to engage actively and transparently and tax administrations in jurisdictions where they have activities. By co-ordinating conversations between an MNE and multiple tax administrations, ICAP supports the effective use of transfer pricing documentation, including the MNE's country-by-country report, providing a faster, clearer and more efficient route to improved multilateral tax certainty. Looking forward, ICAP should reduce the resource burden on both MNEs and tax administrations and mean fewer disputes requiring resolution through mutual agreement proceedings.

This handbook contains information on the process for a second ICAP pilot, announced at the 12th meeting of the OECD Forum on Tax Administration, held in Santiago, Chile on 26-28 March 2019. This builds on a first ICAP pilot, which commenced in January 2018, and reflects the experience and feedback of tax administrations and MNEs participating in the programme. This handbook is a working document and its content will be further revised based on experiences gained in the current pilot.