

The background of the cover features a series of smooth, reddish-brown stepping stones arranged in a path across a body of water. The water is a deep blue with gentle ripples. The stones are partially submerged, and their reflections are visible in the water. A semi-transparent white rectangular box is positioned in the upper half of the cover, containing the title and subtitle. An orange diagonal shape is located in the bottom right corner, containing the OECD logo and tagline.

International Compliance Assurance Programme

PILOT HANDBOOK

Working Document

International Compliance Assurance Programme

Pilot Handbook

Working Document

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Table of contents

Abbreviations and Acronyms	5
1. Introduction	7
Introduction to the ICAP pilot	7
What are the drivers for ICAP?	8
What are the anticipated benefits from ICAP?	9
2. Scope of the pilot.....	11
Covered tax administrations	11
Covered risks	11
Covered periods	11
3. The ICAP risk assessment process.....	12
Provision of documentation package and kick-off meeting.....	13
Level 1 risk assessment.....	14
Level 2 risk assessment.....	16
Outcome letters	17
4. Governance, management and resources	19
Governance	21
Management and resources	21
Annex 1 – Pilot documentation package.....	23
Annex 2 – Target timeframes for an ICAP risk assessment.....	27
Target timeframes where outcome letter issued following Level 1 risk assessment	27
Target timeframes where outcome letter issued following Level 2 risk assessment	28

Abbreviations and Acronyms

BEPS	Base Erosion and Profit Shifting
CbC	Country-by-Country
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
MNE	Multinational Enterprises
OECD	Organisation for Economic Co-operation and Development

1. Introduction

Introduction to the ICAP pilot

1. The International Compliance Assurance Programme (ICAP) is a programme for a multilateral cooperative risk assessment and assurance process. It is designed to be a swift and coordinated approach to providing multinational groups (MNE groups) willing to engage actively, openly and in a fully transparent manner with increased tax certainty with respect to certain of their activities and transactions, while identifying areas requiring further attention. ICAP does not provide an MNE group with legal certainty as may be achieved, for example, through an advance pricing agreement, but gives assurance where tax administrations participating in the programme consider a risk to be low.

2. This handbook contains information on a pilot for ICAP, which commences in January 2018 including tax administrations from eight jurisdictions (the participating tax administrations): Australia, Canada, Italy, Japan, the Netherlands, Spain, the United Kingdom and the United States. The information contained in this handbook will be revised based on experiences gained in the pilot, and will be used as the basis for an ICAP Operating Manual, which will describe in detail the process to be applied beyond the pilot.

3. The process of the pilot can be summarised as follows.

- In advance of the pilot launch, a number of MNE groups have been identified, which have headquarters in the jurisdictions of one of the eight participating tax administrations. It has been agreed with the MNE group which jurisdictions of participating tax administrations will be covered by its ICAP risk assessment (i.e. these will be the covered tax administrations). All MNE groups and participating tax administrations will be invited to participate in a Participant Orientation Event, to be held in Washington DC in January 2018, hosted by the IRS.
- Following the Participant Orientation Event, MNE groups participating in the pilot will be invited to provide a package of documentation, the content of which is set out in this handbook. Depending on the approach agreed between the MNE group and the tax administration in its headquarter jurisdiction (the lead tax administration), this package may be delivered by the MNE group (i) to each covered tax administration directly, or (ii) to the lead tax administration, which shares the package with other covered tax administrations through existing tax information exchange agreements. Approximately six weeks after the documentation package is provided, a kick-off meeting will be held between the MNE group and all covered tax administrations, to discuss the documentation package and ensure a common understanding of its content and the process to be followed.
- The covered tax administrations then conduct an assessment of the transfer pricing risks and permanent establishment risks (the covered risks) posed by the MNE group, based on the information contained in the documentation package and other information held by the covered tax administrations. This will begin with a high level initial risk assessment (a Level 1 risk assessment) but may be extended to

more in-depth risk assessment (a Level 2 risk assessment) if required. The covered tax administrations will seek to gain assurance that the MNE group poses no or low risk for each of the covered risks, within the timeframes described in this handbook. At the end of the risk assessment process, and subject to domestic requirements and processes, each covered tax administration will issue an outcome letter to the MNE group, which will set out each of the covered risks where the tax administration has been able to gain assurance, and any identified tax risks that remain.

- The ICAP process and the pilot is based on a collaborative working relationship between the MNE group 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 group to ensure it is kept abreast of the status of its risk assessment and any issues as they arise.

What are the drivers for ICAP?

4. There were six key drivers behind development of the ICAP risk assessment process.

- **Better and more standardised information for transfer pricing risk assessment:** as a result of BEPS Action 13, tax administrations can now work from the same dataset to assess transfer pricing and other BEPS related risks across multiple jurisdictions. Working together to use the information contained in an MNE group's CbC report and master file 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.
- **Global MAP review:** more effective and efficient MAP processes are being implemented as part of BEPS Action 14 and these dispute resolution initiatives may be supplemented and supported by an international compliance assurance programme which prevents unnecessary disputes arising and limits MAP inventory growth.
- **Well-established MNE compliance frameworks:** the OECD's Forum on Tax Administration (FTA) has identified, developed and highlighted best practices in the areas of cooperative compliance, joint audits, tax control frameworks, and differentiated risk management. Tax administrations are therefore well equipped 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 FTA member tax administrations has vastly increased in both depth and frequency in recent years. Well-developed forums are already in place (such as JITSIC¹ and LBIP²) which can be leveraged to support joint or multilateral interactions with MNE groups.
- **Providing a pathway to improved tax certainty for low or medium risk MNE groups:** multilateral programmes can provide a pathway to greater international tax

certainty for MNE groups and tax administrations alike, and are a positive outcome from the BEPS project for MNE groups wishing to be transparent and compliant. They are also a reflection of the G20's agenda on tax certainty – a new pillar of the G20's work on international taxation that supplements the work on BEPS.³ Programmes like ICAP, which are based on increased transparency, co-operation and collaboration between tax administrations and MNE groups, have the potential to positively influence taxpayer behaviour and improve tax compliance, while providing MNE groups with greater tax certainty.

- **Capitalising on the multilateral context to provide improved assurance for tax administrations:** post-BEPS, 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.

What are the anticipated benefits from ICAP?

5. As tax administrations and MNE groups enter an era of increased transparency, new opportunities arise to use the increased flow of information to support open, cooperative relationships between taxpayers and tax administrations. ICAP proposes to use CbC reports and other information to facilitate multilateral engagements between MNE groups and participating tax administrations, providing benefits for both.

- **Fully informed and targeted use of CbC information:** the ICAP process will enable MNE groups to talk through their CbC reports and provide additional clarity to aid understanding of their cross-border activities. This should help tax administrations to reach an early decision about the level of tax risk, if any, presented by the data contained in the CbC report and other documentation.
- **An efficient use of resources:** tax administrations will jointly review the information supplied by an MNE group and will coordinate any follow-up questions. This means that the MNE group can engage with several tax administrations simultaneously, either through multilateral engagements or via the lead tax administration, rather than deal with multiple separate enquiries.
- **A faster, clearer route to multilateral tax certainty:** ICAP is a managed process with clear and ambitious timeframes for MNE groups and tax administrations to reach a mutual understanding of the level of tax risk present. Working multilaterally, tax administrations will have a comprehensive picture of the MNE group'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 cooperative compliance, this will be communicated clearly to the MNE group at an early stage.
- **Fewer disputes entering into Mutual Agreement Procedures (MAP):** the process provides an opportunity to prevent disputes from reaching the MAP process.

Notes

- ¹ JITSIC stands for the Joint International Taskforce on Shared Intelligence and Collaboration and it brings together 37 national tax administrations. *All of the participating tax administrations are members of JITSIC.* It offers a platform to enable its members to actively collaborate within the legal framework of bilateral and multilateral conventions and tax information exchange agreements.
- ² Large Business International Programme of the FTA
- ³ The IMF/OECD Report for the G20 Finance Ministers was published on 18 March 2017 (Report). 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 cooperative compliance programs and advance pricing agreements (APAs), as well as simultaneous and joint audits (<http://www.oecd.org/tax/g20-report-on-tax-certainty.htm>).

2. Scope of the pilot

6. The pilot includes tax administrations from eight jurisdictions (Australia, Canada, Italy, Japan, the Netherlands, Spain, the United Kingdom and the United States) and MNE groups headquartered in one of these jurisdictions.

Covered tax administrations

7. Not all of the eight participating tax administrations are in jurisdictions covered by the ICAP risk assessment for every MNE group in the pilot. Ultimately, determining the covered tax administrations for a particular ICAP risk assessment is a matter for agreement between an MNE group and the relevant tax administrations, taking into account factors such as the level of the MNE group's activity in each jurisdiction, its perceived level of risk and the resources that would be required.

Covered risks

8. ICAP could cover a broad spectrum of international and cross-border risks, but is likely to be most effective where it is targeted to the international tax risks that are a concern to all of the tax administrations involved, with domestic tax risks dealt with through a country's normal programme.

9. The international tax risks to be covered as part of the pilot (the covered risks) are:

- transfer pricing risk⁴
- permanent establishment risk.⁵

10. Following the pilot, future ICAP risk assessments may also cover other relevant or material international tax risks, as agreed between an MNE group and covered tax administrations (including, for example, hybrid entities and hybrid financial instruments and withholding taxes and the application of the relevant international tax treaty).

Covered periods

11. The tax filing periods eligible for review as part of the pilot (the covered periods) are an MNE group's reporting fiscal years beginning on or after 1 January 2016, which correspond to the MNE group's reporting fiscal years for CbC Reporting. For MNE groups with a calendar year end, the covered periods for the pilot will therefore be fiscal years commencing 1 January 2016 and 1 January 2017.

12. ICAP is also designed to be forward looking and so participating tax authorities will aim to provide tax assurance to an MNE group at the conclusion of the ICAP risk assessment with respect to the covered risks for the next two succeeding tax filing periods (i.e. for MNE groups with a calendar year end, fiscal years commencing 1 January 2018 and 1 January 2019), provided there are no material changes during this period. MNE groups in the pilot commit to notify the covered tax administrations as soon as possible about any expected or actual material changes to their business in these jurisdictions which may impact the covered risks or the outcomes of the ICAP risk assessment. Covered tax

administrations will then determine whether more information is required and the appropriate course of action, if any, as a consequence of these changes. Where required, specific topics where any changes must be notified to a covered tax administration, along with critical assumptions underlying the outcomes of the ICAP risk assessment, can be set out in the outcome letter issued by a covered tax administration at the end of the pilot.

Notes

- ⁴ Transfer pricing risk arises where the transactions of the group give rise to conditions, including the price, which result in the allocation of profits to group companies in different countries on a non-arm's length basis. For example, there may be transfer pricing risk where related party payments have the potential to inappropriately shift income to other jurisdictions and erode the local tax base.
- ⁵ Permanent establishment risk arises where there is a likelihood that the operations of the group mean that it is carrying on business in another country through a permanent establishment and the permanent establishment has not been recognised for tax purposes by the group in the other country. There may also be risk where there is a recognised permanent establishment for tax purposes but there has not been the correct attribution of business profits to the permanent establishment in the other country (i.e. there is untaxed or insufficiently taxed business profits in the permanent establishment jurisdiction applying the business profits article of the relevant treaty for the covered tax administration and the arm's length principle).

3. The ICAP risk assessment process

13. An ICAP risk assessment comprises a number of discrete phases, each with a specified target timeframe:

- provision of documentation package and kick-off meeting (six weeks)
- Level 1 risk assessment (eight weeks, plus an additional four weeks if additional time is needed or an additional eight weeks if additional documentation is needed, plus a further three weeks if a risk assurance phase is required)
- Level 2 risk assessment, if required (approximately five months, plus an additional three weeks if a risk assurance phase is required)
- issuance of outcome letters (three weeks)

14. This means that an ICAP risk assessment may be completed in as little as 17 weeks (where assurance over all covered risks is achieved during a Level 1 risk assessment and no additional time or documentation is needed), but it is expected that all cases should be completed within 12 months. An overview of the target timeframes for an ICAP risk assessment is included in Annex 2.

Provision of documentation package and kick-off meeting

15. Before an ICAP risk assessment begins, an MNE group will be invited to provide a standard package of documentation to the covered tax administrations. Depending on the approach agreed between the MNE group and the tax administration in its headquarter jurisdiction (its lead tax administration), this package may be delivered by the MNE group (i) to each covered tax administration directly, or (ii) to the lead tax administration, which shares the package with other covered tax administrations through existing tax information exchange agreements. The documentation package to be used for the pilot is described in Annex 1.

16. Approximately five weeks after the documentation package is provided, the lead tax administration and other covered tax administrations will hold a pre-risk assessment workshop to discuss the package's contents and any questions they have. Approximately one week after the pre-risk assessment workshop (i.e. six weeks after the documentation package is provided), a kick-off meeting will be held between the MNE group and all covered tax administrations, to discuss the documentation package and ensure a common understanding of its content and the process to be followed.⁶

17. This kick-off meeting will include a presentation by the MNE group, which will include the following elements:

- a walk-through of the MNE group's CbC report and master file (or equivalent information and documentation)

- a general description of the global value chain of the MNE group, as well as that in the jurisdictions of covered tax administrations, and the significance of each to the global business
- any transfer pricing and permanent establishment tax risks
- the MNE group's tax control framework (or equivalent documentation), including how this is applied in practice to align the group's tax outcomes with the desired risk profile and its broader corporate tax strategy, and to mitigate any tax risks, as well as to assure the accuracy and completeness of the MNE group's tax returns and disclosures
- an overview of the MNE group's tax reporting and IT systems and, in particular, a high level summary of how tax data is captured and analysed in the jurisdictions of covered tax administrations as part of preparing accurate and complete tax returns and disclosures
- an overview of any business restructuring⁷ undertaken by the MNE group in the jurisdictions of covered tax administrations in the last three years, or any proposed to be undertaken by the MNE group in the near future
- an overview of the MNE group's external funding position, including an explanation of how the group's financing is managed, the location and function of any group treasury centres and how the group's operations in the jurisdictions of the covered tax administrations are financed, including, the amount, nature and pricing of any cross-border intragroup loans.

Level 1 risk assessment

18. Following the kick-off meeting, covered tax administrations will perform a Level 1 risk assessment of the MNE group with respect to the covered risks. The target timeframe for undertaking the Level 1 risk assessment phase is eight weeks from the date of the kick-off meeting.

19. Covered tax administrations will undertake a coordinated risk assessment process to:

- re-affirm the risk categorisation of the MNE group, having regard to behavioural risk flags such as emerging signs of uncooperative behaviour in the pilot or concerns with data integrity based on the information and materials which have been provided
- risk assess the covered risks for the MNE group.

20. The Level 1 risk assessment will include a Level 1 joint workshop involving all of the covered tax administrations to discuss the MNE group's presentation and review the documentation package. It will also include a review of other information already held by covered tax administrations on the MNE group 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.). As the covered tax administrations will work together collaboratively within a coordinated process, they will

be 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.

21. The key processes used to undertake a Level 1 risk assessment as part of the pilot will include the covered tax administrations' usual policies and practices for transfer pricing risk assessment and permanent establishment risk assessment and, where there is a reported permanent establishment, their usual transfer pricing policies and practices for attributing profit to a permanent establishment.⁸ This risk assessment will also take into account published guidance, such as the OECD *Country-by-Country Reporting: Handbook on Effective Tax Risk Assessment*.

22. The ICAP process does not require covered tax administrations to change the tools they currently use to assess the covered risks for MNE groups in their jurisdiction, but a coordinated approach will be used in terms of the timing and manner of engagement with the MNE group. The fact that each covered tax administration will apply its own risk assessment methods to the same documentation package will make it more likely that any tax risk that does exist will be identified and this information shared between covered tax administrations. This provides each covered tax administration with greater comfort that the level of tax risk posed by the covered risks of the MNE group is fully understood.

23. The target timeframe for a Level 1 risk assessment is eight weeks. During this period, the MNE group has a key role to play in working closely with covered tax administrations to ensure the covered tax risks are explained, managed and mitigated. In some cases, the covered tax administrations may need to request additional information and / or additional time in order to conclude this assessment. In these cases, the pilot provides for a covered tax administration to use a time extension of four weeks (if additional time is needed) or eight weeks (if additional information is needed). Where additional information is needed, the request will be sent to the MNE group by the lead tax administration and the MNE group will have four weeks to provide the required information.

24. There are two main possible outcomes from a Level 1 risk assessment:

- the covered tax administrations assess and assure the covered risks as low or no risk within the target timeframe (including any extension). In this case, the process moves directly to providing tax assurance. This concludes the ICAP risk assessment process for these MNE groups.
- the covered tax administrations are not able to conclude that the covered risks are low or no risk within the target timeframe (including any extension), and further information and / or discussion with the MNE group or with the other covered tax administrations is required. In this case, the process will progress to a Level 2 risk assessment, which provides for additional steps and a longer timeframe for the covered tax administrations to assess the covered risks.

25. In addition to these main outcomes, there may also be cases where the covered tax administrations determine that, if specific changes are made to aspects of the MNE group's tax filings, the covered tax administration would be able to assure the covered risks as low or no risk without further risk assessment being conducted. In such a case, the Level 1 risk assessment may enter a "risk assurance" phase, which is a cooperative process through which covered tax administrations and the MNE group work together to agree what tax adjustments are required (or why an adjustment may not be required). The target timeframe for this risk assurance phase should be no more than three weeks, but may be extended at the agreement of the MNE group and covered tax administrations. If agreement can be

reached within the agreed timeframe, the process moves directly to providing tax assurance and the ICAP risk assessment concludes. In the event agreement is not reached, then the process will progress to a Level 2 risk assessment. While a risk assurance phase may be included at the end of a Level 1 risk assessment, it is expected that in most cases risk assurance, where necessary, will be conducted following a Level 2 risk assessment, when there has been more opportunity to perform a detailed analysis of the covered risks.

Level 2 risk assessment

26. A Level 2 risk assessment is a more detailed and comprehensive review which is only undertaken where one or more covered tax administration concludes that the covered risks require further consideration beyond that which is possible under a Level 1 risk assessment. At the beginning of this phase, the covered tax administrations will prepare a timeline with agreed milestones. This timeframe will vary, but it is expected will be approximately five months from the first Level 2 joint workshop to the outcomes meeting with the MNE group where findings of the risk assessment are presented

27. As a first step, the covered tax administrations should hold a Level 2 joint workshop (face-to-face if practical and local law permits, or remotely using secure video-conferencing or tele-conferencing facilities) where they: (i) present their findings to date to each other with respect to any covered risks that they have not been able to conclude are no or low risk; (ii) discuss any gaps in the information available (i.e. where the MNE group will need to provide additional support or documentation); and (iii) work together to develop a plan for finalising the ICAP risk assessment for these covered risks.

28. Following this workshop, the lead tax administration will prepare a request for additional information based on that needed by each covered tax administration, which is reviewed by the other covered tax administrations and sent to the MNE group. This letter should be sent no later than seven days after the workshop.

29. The letter will be followed by a meeting (or telephone discussion) between the lead tax administration and the MNE group, during which the lead tax administration will provide an overview of the covered tax administrations' concerns with respect to the covered risks that they have not been able to conclude pose no or low risk, and answers any questions which the MNE group may have on the request for information. This meeting may also be attended by any of the covered tax administrations that wish to, and all are encouraged to do so. During this meeting, a timeframe for the MNE group to provide the requested information will be agreed. It is expected that this should be within four weeks of the date of the meeting, but may be longer or shorter depending upon the circumstances of the case and the nature and extent of the information requested.

30. The MNE group should provide all requested information to the lead tax administration within the agreed timeframe. This will then be circulated by the lead tax administration to the covered tax administrations. As under the Level 1 risk assessment, the covered tax administrations will apply their usual domestic processes to risk assess this additional information.

31. If the information provided by the MNE group is sufficient and complete, the covered tax administrations then proceed to finalise their respective risk review recommendations and conclusions for the covered risks. These will include risk ratings where a covered tax administration assigns these as part of its usual domestic processes. If this is not part of a covered tax administration's usual processes, then the risk findings from the assessment will be included. The risk ratings (or risk findings), together with the recommendations and conclusions of each covered tax administration, will be

communicated to the lead tax administration. This will also include any conditions attaching to a covered tax administration's risk assessment (such as where adjustments are required to be made to the MNE group's tax filing position, which may be part of the ICAP process) as well as details of covered risks where compliance activity may be required (which would be undertaken outside of ICAP). The lead tax administration will collate these recommendations and conclusions.

32. In the event the information provided by the MNE group at the start of the Level 2 risk assessment is not sufficient and complete, a further round of information requests may be completed. However, where possible, subsequent requests for more information should be avoided or kept to a minimum.

33. At the conclusion of the Level 2 risk assessment process, an outcomes meeting or telephone discussion will be held between the lead tax administration, the other covered tax administrations and the MNE group. During this meeting, the risk assessment conducted by the covered tax administrations will be discussed. The MNE group will be informed by each covered tax administration of any recommendations or other outcomes coming from their review, and will have the opportunity to raise points and ask questions. The MNE group will be invited to react to the outcomes of the Level 2 risk assessment and the covered tax administrations' conclusions and recommendations, either at the end of the meeting, or in writing shortly after the meeting.

34. There are three broad possible outcomes from a Level 2 risk assessment, following the concluding meeting:

- the covered tax administrations assess and assure the covered risks as low or no risk. In this case, the process moves directly to providing tax assurance. This concludes the ICAP risk assessment process for these MNE groups.
- the covered tax administrations identify aspects of the MNE group's tax filings where changes are needed in order for them to assess and assure the covered risks as low or no risk. The Level 2 risk assessment may then enter into a risk assurance phase. The target timeframe for this risk assurance phase should be no more than three weeks, but may be extended at the agreement of the MNE group and covered tax administrations. If agreement can be reached within the agreed timeframe, the process moves to providing tax assurance.
- the covered tax administrations identify aspects of the MNE group's tax filings where it is not possible to assess and assure the covered risks are low or no risk, or agreement is not reached by covered tax administrations and the MNE group during the risk assurance phase. In this case it will not be possible for the process to move to providing assurance for these specific covered risks.

Outcome letters

35. At the end of the ICAP risk assessment process, and subject to domestic requirements and processes, an ICAP outcome letter will be prepared separately by each covered tax administration, which will confirm the results of the ICAP risk assessment with respect to the covered risks for the covered periods. Where covered tax administrations gain assurance that all of an MNE group's covered risks pose no or low risk during the Level 1 risk assessment, and there is no need to progress to a Level 2 risk assessment, then an outcome letter may be issued at this stage. On the other hand, where covered tax administrations conclude that a Level 2 risk assessment is required, outcome letters will be

issued at the end of Level 2 risk assessment, addressing all of the covered risks, even if some of these covered risks were assured during the Level 1 risk assessment stage. In either case, an outcome letter should typically be issued within three weeks of the end of the ICAP risk assessment process.

36. Each participating tax administration will determine the appropriate content, form and wording for its outcome letters, based on its domestic legal requirements, as well as any processes and practices with respect to the finalisation of domestic risk reviews. There will also be a separate final ICAP communication issued to the group by the lead tax administration (referred to as a completion letter) to confirm the finalisation of the ICAP review collectively on behalf of all of the participating tax administrations.

37. An outcome letter may include the following components, with respect to covered risks that are found to be no or low risk for the covered periods.

- Risk assessment steps undertaken (insofar as these can be disclosed), recommendations and findings from the ICAP risk review.
- Risk assurance steps which have been undertaken, if any. This will include confirmation of any ways in which an MNE group has agreed to adjust its tax filings as a result of a risk assurance phase as part of the ICAP process, and any steps that have been or will be taken as a result.
- Details of the covered risks that are considered to be no or low risk.
- A statement that, given the covered risks have been assessed as no or low risk, it is not anticipated that compliance resources will be dedicated to a further review of the covered risks for a relevant period of time. The period for which this assurance is granted will generally be the periods covered by the ICAP risk assessment, together with the next two succeeding tax years, provided there are no material changes during this period.
- Any appropriate caveats or limitations, including for example details of requirements to notify the relevant covered tax administration should there be a material change that impacts the covered risks. This could include that an ICAP risk review has been based on the materials provided by the MNE group, there has been full disclosure and the MNE group has an obligation to notify the covered tax administration as soon as possible in terms of expected or actual material changes to the business which may impact the covered risks. The outcome letter could also, for example, outline the types of changes which may necessitate a revisiting of the risk assessment by the covered tax administrations, including changes in the law, developing jurisprudence, or new facts that should have come to light as part of the ICAP process but did not come to light.

38. To the extent that, at the end of a Level 2 risk assessment, a covered tax administration is not able to conclude that a covered risk is no or low risk, it will not be possible for the covered tax administration to provide tax assurance for these covered risks. This means that, with respect to these risks, the case would become part of the regular domestic compliance or assurance programme of the jurisdiction of the relevant covered tax administration. For these covered risks, the outcome letter may set out planned next steps and compliance actions that may be taken, if any. However, the better understanding of an MNE group and its business and activities gained as a result of the ICAP risk assessment

process should facilitate these actions, to the benefit of both the MNE groups and the covered tax administration.

39. Where diverging or competing positions may be taken by one or more of the covered tax administrations, and it has not been possible to successfully resolve this as part of the ICAP programme, then a case could also progress to an enquiry, if needed, and then MAP. Again, the considerable amount of groundwork will already have been done within ICAP to gather relevant facts, clarify the reasons for the tax administrations' respective positions and identify key points of dispute mean that tax administrations should be in a better position to reach resolution.

Notes

⁶ As with all multilateral meetings described in this handbook, covered tax administrations may arrange for translators to be present at the kick-off meeting.

⁷ In this regard, “business restructuring” refers to arrangements by which shares, rights, obligations, functions, assets and/or risks of a business are transferred or shifted through or in international related party dealings.

⁸ Once the local adoption and implementation of the Actions 6 and 7 BEPS Reports, including, the changes to the Model Tax Convention adopted via the Multilateral Instrument to modify the bilateral tax treaties of the covered tax administrations are in place, then these policies and practices will also be captured

4. Governance, management and resources

Governance

40. Oversight of ICAP and the pilot 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 participating tax administration's own internal governance procedures. The steering group will meet quarterly (either face-to-face or remotely), or more often, if required, to provide guidance and leadership with respect to each ICAP risk assessment case. The steering group will also be the escalation point for any disputes which require resolution, either between an MNE group and the covered tax administrations taking part in its ICAP risk assessment, or between participating tax administrations.

Management and resources

41. Each participating tax administration has appointed a Single Point of Contact (SPOC) to lead co-operation and collaboration within ICAP and the pilot. The SPOC has Competent Authority status and a level of seniority within its tax administration to be able to deliver, as the steering group needs, on the ICAP programme.

42. Working alongside the SPOC, the size and composition of a participating tax administration's ICAP risk assessment team will vary between participating tax administrations and between ICAP cases. Typically, ICAP cases will be resourced with personnel from a participating tax administration's existing work programmes and will not require the creation of a new operating structure. Depending on the complexity of the case, each participating 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 and permanent establishment risk will be particularly beneficial.

43. The SPOC and other members of a participating tax administration's ICAP risk assessment team is responsible for successfully completing the ICAP risk assessment in their jurisdiction for participating MNE groups. To the extent possible, participating in ICAP risk assessments using the same team of tax administration professionals, or including core members in each team, will build competence, cohesion and capability.

44. This will require a participating tax administration's ICAP risk assessment team to embrace the key principles underpinning the programme, namely working collaboratively with other tax administrations to provide swift assurance of the activities and transactions of MNE groups, while identifying key risk areas for further attention. This also means integrating new strategies within existing domestic tax administration processes to swiftly risk assess and assure the covered risks of MNE groups in the programme, working collaboratively and multilaterally with other covered tax administrations and using data and intelligence efficiently to complete the ICAP risk assessment, and provide timely outcomes.

Annex 1 – Pilot documentation package

45. For the purposes of the pilot, documentation and information may be required in three main tranches:

- an initial ICAP documentation package, for use in the Level 1 assessment
- additional information required for completion of the Level 1 assessment, and
- information not yet provided that is needed for a Level 2 assessment.

46. The documents and information listed below should be provided by an MNE group participating in the pilot at least six weeks before the kick-off meeting between the MNE group and covered tax administrations. Following the pilot, this documentation package will be reviewed and amended to focus on sources of information that tax administrations find most relevant and valuable for the assessment of risks covered by an ICAP risk assessment. Unless otherwise agreed, all documentation and information must be provided in English.

- The MNE group's CbC report, prepared in accordance with the laws of the jurisdiction of the lead tax administration.
- The MNE group'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).^{9 10}
- Local files, 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 such a jurisdiction, but a requirement to prepare equivalent information and documentation does apply).¹¹
- The MNE group's tax strategy and a summary of relevant tax control frameworks (or equivalent information).
- The MNE group's audited consolidated financial statements for the relevant fiscal periods, if prepared (or unaudited consolidated financial statements if these are prepared and audited financial statements are not available).
- Audited entity financial statements for all MNE group entities in the jurisdictions of covered tax administrations for the relevant reporting fiscal years, if prepared (or unaudited financial statements if these are prepared and audited financial statements are not available).
- Information regarding uncertain tax positions comprising tax reserves for the covered risks.

- A copy of the MNE group's current global business structure (unless already provided in the master file or elsewhere in the documentation package), which shows entity classifications for tax purposes¹² and has the entities in the jurisdictions of the covered tax administrations clearly marked and identified
- A description of material differences between the entity financial statements and income tax returns of MNE group entities in the jurisdictions of the covered tax administrations (i.e. book to tax differences), to the extent these relate to international tax risks (including covered tax risks), which concern cross-border transactions directly impacting participating jurisdictions.
- A value chain analysis, consisting of the following:
 - To the extent not already covered in the master file, an explanation of the profit drivers (both internal and external) for the MNE group that the group considers as important for showing how profits are aligned to its economic activities. This explanation should also separately address the different business segments described in the master file (i.e. the five largest product and service offerings) to the extent the value drivers are different.
 - A "covered issue" diagram¹³ which includes the following information. This should encapsulate a visual representation of what is described in the master file (in essence being a diagram or picture of the supply chain and value drivers) and outline:
 - The MNE group's business units (or similar divisions) as used for management purposes, together with a table, narrative, or other reconciliation showing the relationship between such business units and the legal entities comprising the MNE group. This information should also be provided for the group members and business units in the jurisdictions of participating tax administrations.
 - The value chain of the MNE group, comprising commercial or transactional flows between and among group members or business units in jurisdictions of participating tax administrations, between group members or business units in these jurisdictions and customers and other uncontrolled parties, and between group members or business units in these jurisdictions and any other group members or business units in other jurisdictions.
 - Organisation or management charts identifying key functional or occupational roles within the group members or business units in jurisdictions of participating tax administrations that are relevant to the covered risks (e.g., vice president of marketing for transactions involving sales of tangible goods), together with: (i) the names of individuals occupying such functional roles at the time the pilot documentation package is filed, and (ii) headcounts for the relevant group members or business units in jurisdictions of participating tax administrations.
- Permanent establishment documentation, to the extent not already provided as part of the MNE group's CbC Report:

- A schedule showing all reported permanent establishments including protective filings in the jurisdictions of participating tax administrations.
 - An overview of the processes used by the MNE group to ensure permanent establishments are correctly reported for tax purposes in the jurisdictions of participating tax administrations.
 - If the MNE group has sought professional advice, or conducted its own internal review, on whether activities undertaken by the MNE group 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, financial data for the reported permanent establishment(s) showing its 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).

Notes

⁹ Where an MNE group 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.

¹⁰ For the purposes of compiling the pilot documentation package, references to an MNE group's master file and local files are to those required to be prepared in the jurisdictions of participating tax administrations. In this regard, all of the requisite supporting information must also be provided including, for example, copies of material intercompany agreements concluded by local entities (where this is a prescribed requirement for the local file). However, there are no additional requirements to submit extra transfer pricing documentation for the purposes of the pilot above what is already prescribed in the jurisdictions of the participating tax administrations.

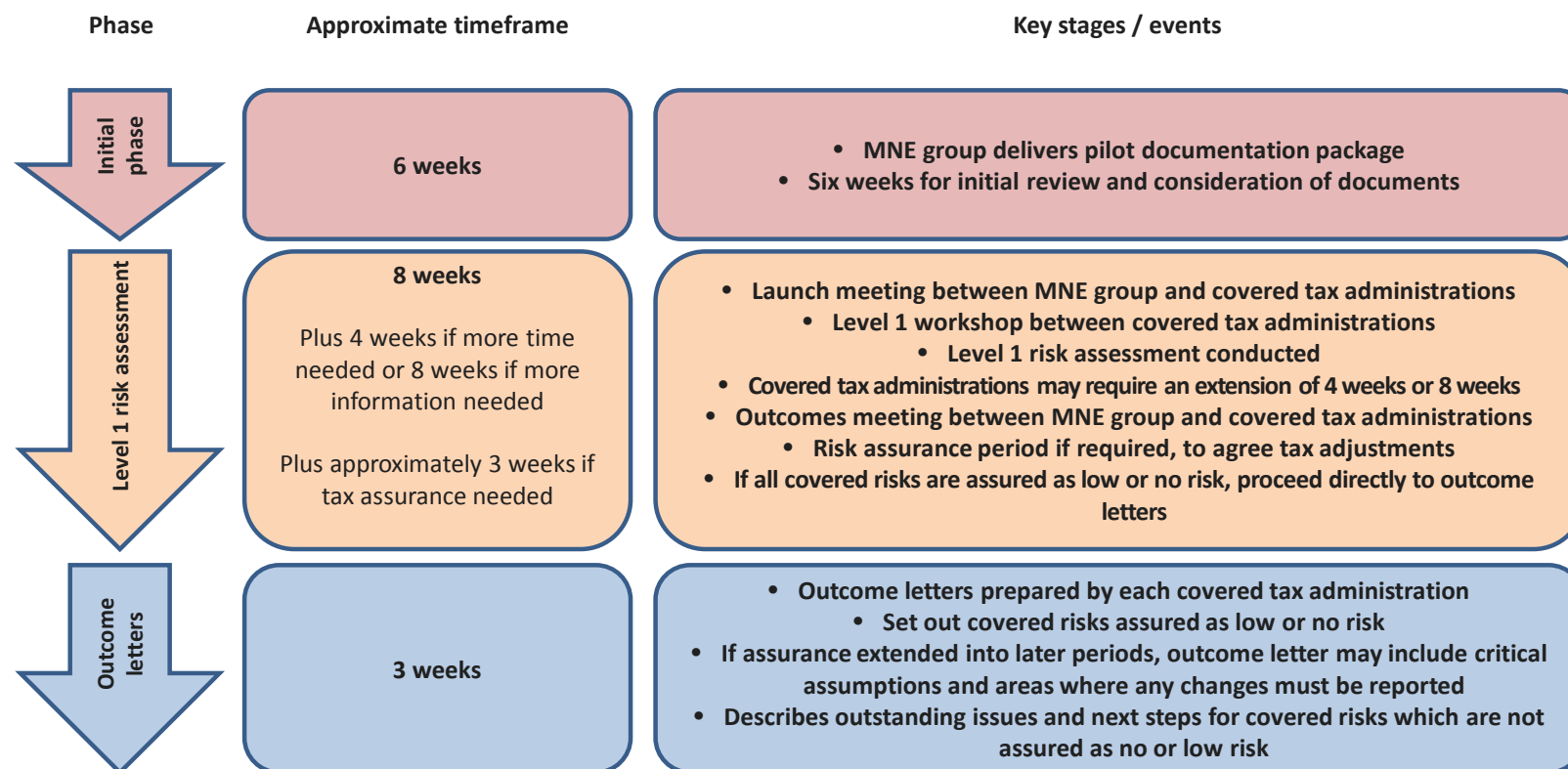
¹¹ Where the local file or equivalent information and documentation for a particular jurisdiction is maintained in a language other than English, on a case by case basis it may be agreed that a summary will be prepared in English and provided in place of the full local file.

¹² For example, where needed, partnerships, branches or disregarded entities not apparent from the legal structure diagram are clearly marked and identified.

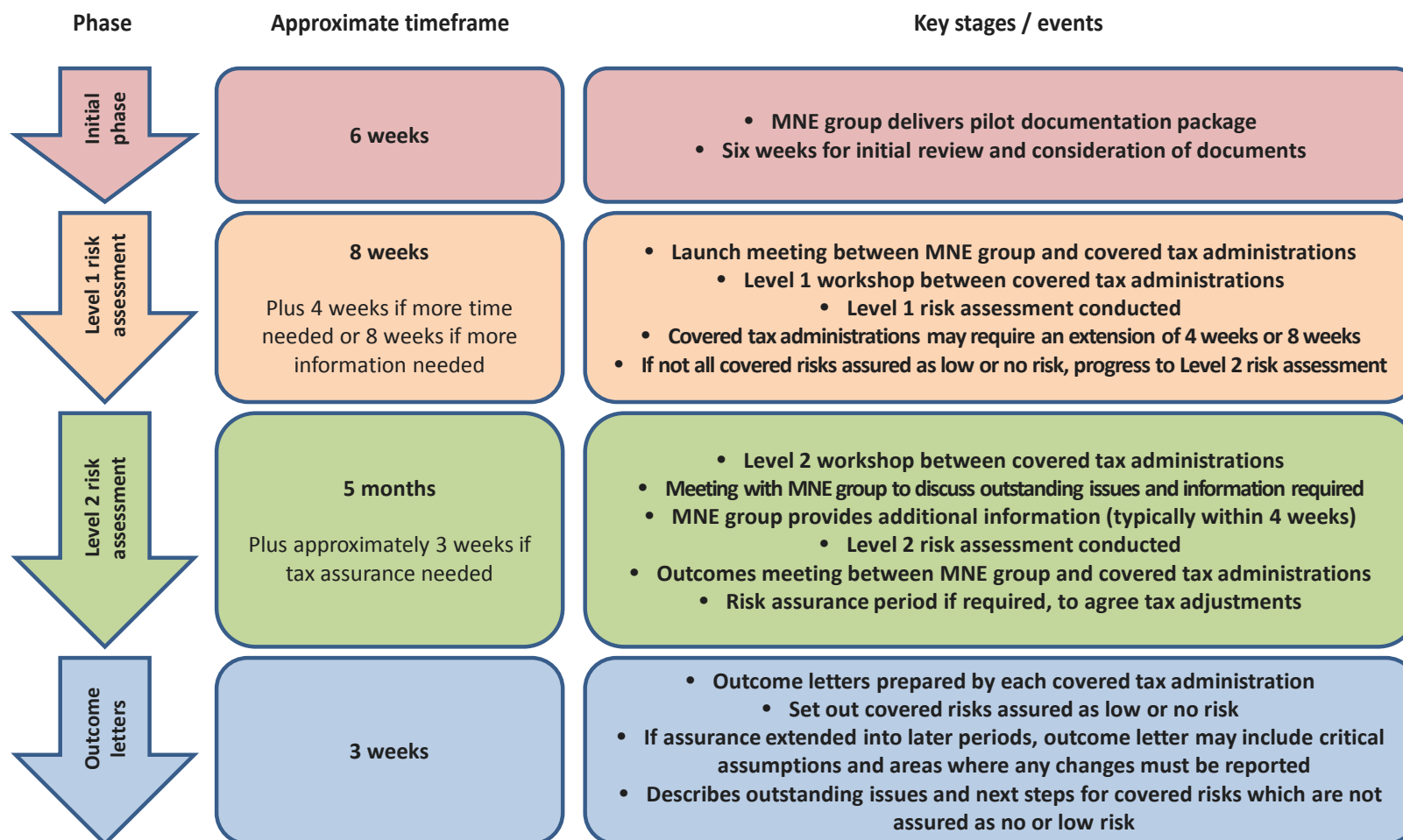
¹³ Similarly to the type of diagram described in Revenue Procedure 2015-41, the ICAP "covered issue" diagram would constitute diagrams, charts, tables, or similar representations that visually depict the structure and value chain of the group for the covered tax administrations as it relates to the proposed covered risks and (where applicable) interrelated issues that need to be considered by the covered tax administrations in reviewing the covered risks.

Annex 2 – Target timeframes for an ICAP risk assessment

Target timeframes where outcome letter issued following Level 1 risk assessment



Target timeframes where outcome letter issued following Level 2 risk assessment



International Compliance Assurance Programme

PILOT HANDBOOK

Working Document

The International Compliance Assurance Programme (ICAP) is a voluntary programme that will use Country-by-Country reports and other information to facilitate open and co-operative multilateral engagements between MNE groups and tax administrations, providing groups willing to engage actively and in a fully transparent manner with increased tax certainty. By coordinating conversations between a group and tax administrations in several jurisdictions, ICAP should ensure a more effective use of transfer pricing information, a more efficient use of resources both for groups and for tax administrations and, in the longer term, fewer cases entering into mutual agreement proceedings.

This handbook contains information on a pilot for ICAP, commencing in January 2018, including tax administrations from eight jurisdictions: Australia, Canada, Italy, Japan, the Netherlands, Spain, the United Kingdom and the United States. The handbook is a working document and its content will be revised, based on experiences gained in the pilot, and used as the basis for the development of an ICAP operating manual, which will describe in detail the programme and the processes to be applied beyond the pilot.

For more information:
<http://oe.cd/ICAP>