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OECD International Compliance Assurance Programme (ICAP) and Tax Certainty Mechanisms

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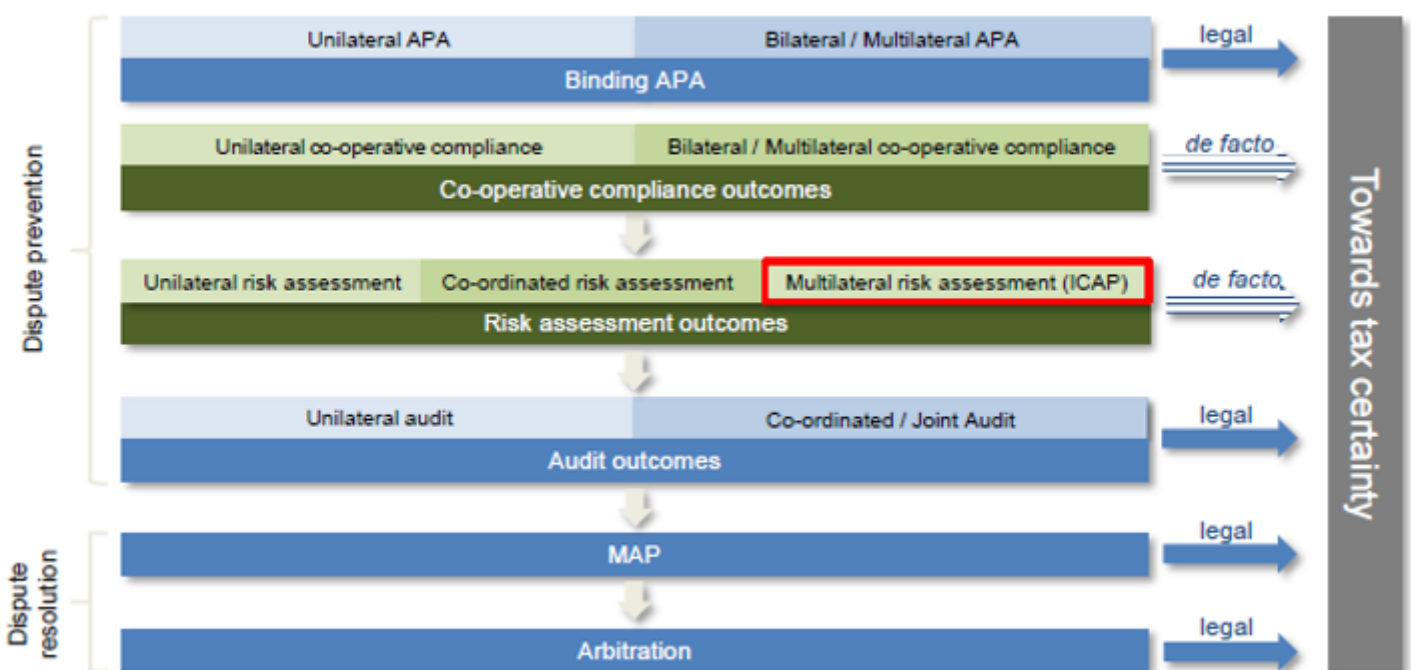
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Overview of ICAP

What is ICAP?

The OECD's International Compliance Assurance Programme (ICAP) is a voluntary programme for MNE groups and tax administrations to work together in a cooperative risk assessment and assurance process. It is designed to be an efficient, effective and coordinated approach to provide 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.

Where does ICAP sit within the wider tax certainty international landscape?



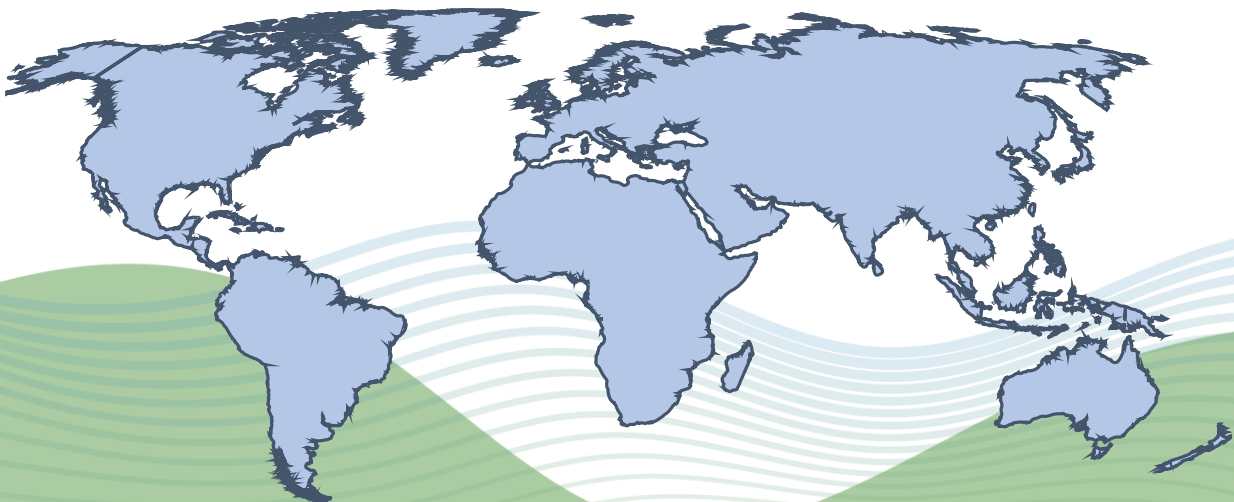
- ICAP does not provide an MNE group with legal certainty as may be achieved, for example, through an advance pricing arrangement (APA).
- It does, however, give comfort and assurance where tax administrations participating in an MNE group's risk assessment consider covered risks to be low-risk. Where an area is identified as needing further attention, work conducted in ICAP can improve the efficiency of actions taken outside the programme, if needed.
- Many MNEs which participated in ICAP reported a favorable experience, especially when creating better relationships with their home tax administrations. Participants noted that one unexpected challenge was managing the volume of administrative work associated with the documentation requirement. The ICAP tax administrations have taken this feedback on board and work is ongoing to reduce the documentation burden, such as the publication of the ICAP documentation packages on the OECD website.

Summary of the ICAP Process

- ICAP has the ability to improve knowledge for taxpayers and tax administrations.
- The scope of ICAP reviews cover transfer pricing and permanent establishment-related issues but other risks can be covered within an ICAP risk assessment.
- The decision as to which issues form part of the ICAP risk assessment is a collaborative one between tax administrations and the MNE.
- MNEs can also try to target certain countries which are expected to participate fully in ICAP and provide a level of comfort at the end of the process.
- It is important that MNEs approach ICAP discussions with a mindset of full transparency.
- Once selected for ICAP, the process works via a transparent online platform whereby taxpayers respond to rounds of questions raised by the participating tax administrations.
- The ICAP process typically takes between 6-12 months.
- The outcome is a form of comfort letter (not tax certainty) for the period covered – it is possible to have the comfort extended to future years if, for example, there are no changes to the transfer pricing policy and method, no new acquisitions or large-scale changes to the underlying data.
- While legal certainty is not achieved, in practice, MNEs have found that obtaining a low-risk comfort letter has proven helpful and has avoided the topics covered in an ICAP risk assessment being included in any subsequent audit requests raised by tax administrations.
- In some cases, tax administrations may provide feedback with suggested process improvements / changes, even in cases where the review of the MNE by that jurisdiction is deemed to be low-risk, which MNEs found useful.

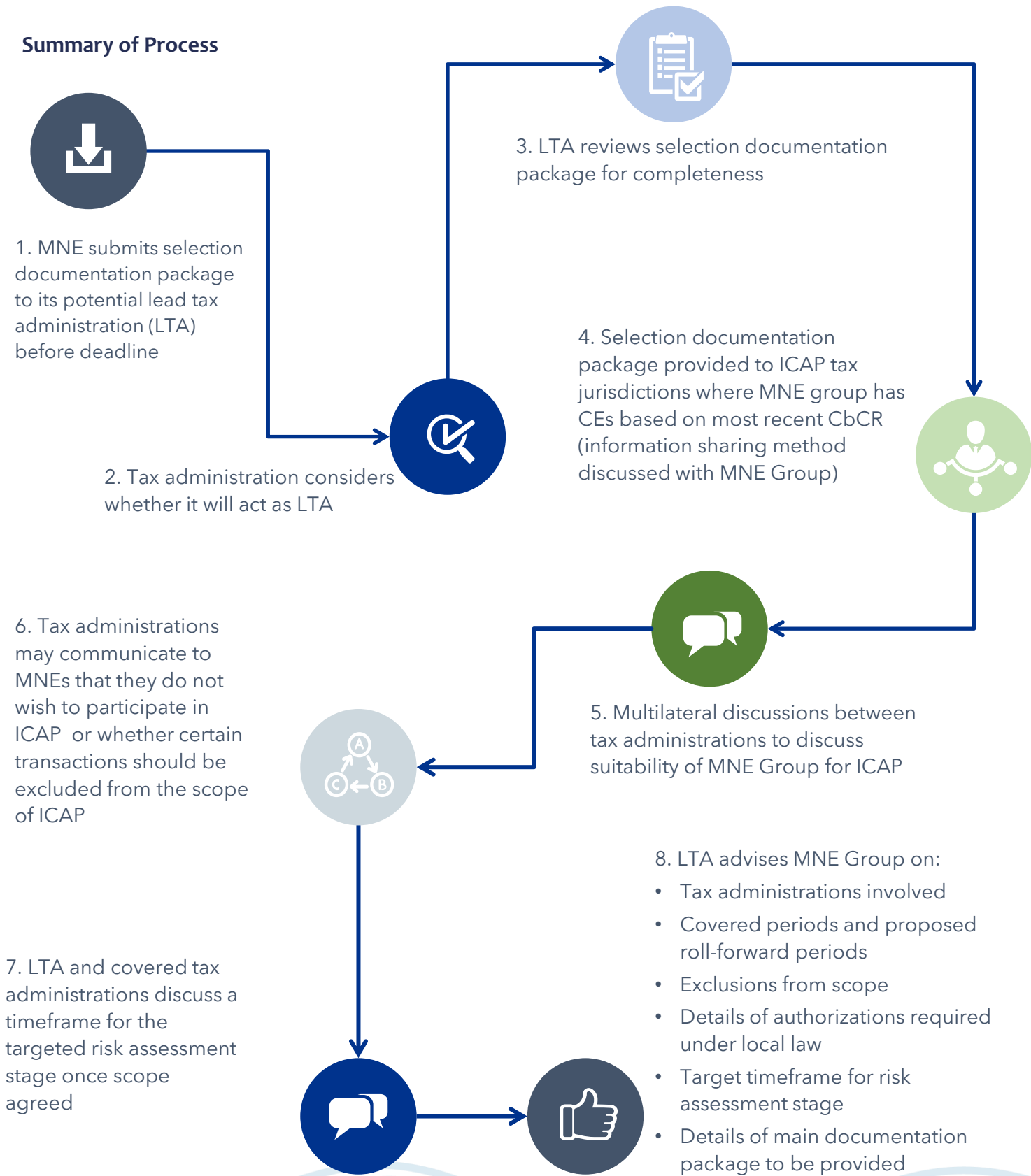
Participating Tax Administrations

- Argentina
- Australia
- Austria
- Belgium
- Canada
- Chile
- Colombia
- Denmark
- Finland
- France
- Germany
- Ireland
- Italy
- Japan
- Luxembourg
- Netherlands
- Norway
- Poland
- Portugal
- Singapore
- Spain
- United Kingdom
- United States



Overview of ICAP Selection Process

Summary of Process



Qualification For ICAP

Requirements to Qualify for the ICAP Process (Source: OECD FAQs)

An MNE group's suitability for ICAP is considered on a case-by-case basis. Factors that an MNE group should take into account in considering whether it is suitable for an ICAP risk assessment include:

- Whether the MNE group's Ultimate Parent Entity (UPE) is resident in the jurisdiction of an FTA member tax administration participating in the programme or, if not, whether the MNE has significant operations in another ICAP jurisdiction whereby that tax administration could act as a surrogate lead tax administration;
- The footprint of the MNE group and the volume and materiality of the MNE group's covered transactions in jurisdictions of FTA member tax administrations participating in the programme;
- Whether the MNE group is subject to a CbC reporting filing requirement in its UPE jurisdiction and whether CbC reports are available for the relevant fiscal years commencing on or after 1 January 2016;
- Where the MNE group has previously participated in ICAP, the value of a further ICAP risk assessment by the same covered tax administrations, by different covered tax administrations or a combination of the two;
- Whether the MNE group 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 group has an effective tax control framework (or equivalent) over the covered risks at a global level;
- Whether the MNE group is willing to commit to engaging cooperatively 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 proactively towards resolving issues that arise.

The OECD FAQ document on ICAP notes (updated frequently) that there may be cases where, due to resource commitments or other considerations, a tax administration is not able to act as lead tax administration or covered tax administration for a particular MNE group's ICAP risk assessment, even though the MNE group satisfies many of the factors described above. MNEs below the CbCR threshold can apply if they prepare a CbC report (even if it is not filed with a tax administration).

Evolution of ICAP

Jan 2018

- 9 MNEs participated in the first ICAP pilot (ICAP 1.0) – launched in January 2018
- 8 Tax Administrations participated from Australia, Canada, Italy, Japan, Netherlands, Spain, United Kingdom and United States

- Launch of second ICAP pilot in 2020
- Additional 19 Tax Administrations joined the second pilot
- Key changes from ICAP 1.0 to ICAP 2.0 included:
 - Clearer, more flexible process
 - More targeted approach to documentation
 - Specific option for issue resolution within a risk assessment stage

2020

2021

- Launch of the full ICAP programme

- Publication of [ICAP: Handbook for tax administrations and MNEs](#)
- Publication of [ICAP FAQs](#)

Feb 2021

Jan 2024

- Release of ICAP Statistics by the OECD

- Publication of revised ICAP documentation requirements
- Tax Certainty Roundtable

July 2024

Sep 2024

- Publication of ICAP outcome letter template

Dec 2024

- Publication of [ICAP - Frequently Asked Questions](#)
- removal the application deadlines

MNE ICAP Experience - ICAP 1.0 Pilot

Requirements to Qualify for the ICAP Process (Source: OECD FAQs)

Reactions from 1 MNE Group:

- Overall, working on the ICAP pilot was a positive experience.
 - We were fortunate to have a large, multi-disciplinary project team including Country Tax leads, Transfer Pricing (TP) and Permanent Establishment (PE) experts, project managers and support from business tax managers and other tax and finance colleagues;
 - The process was (relatively) clearly set out in the handbook and followed as much as possible and practical;
 - There were periods of highly intense activity as we pulled together batches of data for submission or answered the different batches of questions. There were also many periods of quiet, while the Tax Administration (TA) reviewed our data.
 - We initially submitted a wide range of data (see below), subsequent data requests/questions became narrower as the TA focused on items of interest to them. Each MNE's set up a virtual data room, such that all the MNE in scope TAs had access to all country information (initial data package and subsequent TA questions and MNE answers).
- We highly valued the face-to-face kick off workshops. These were an effective opportunity to not only explain our businesses operations and value chains, TP and PE policies, but also to demonstrate our Group's ways of working. For example, understanding our end-to-end value chain helps the tax authorities visually understand where value creation occurs, and potential transactions as shown in our documentation.
- Initial data requirements included: latest CbCR & CbCR self-assessment, Master file, Local files (or similar info if no local file), group structure, list of all unilateral, bilateral & multilateral APA and other rulings relevant to covered transactions, audited consolidated accounts & local accounts, tax strategy, tax control framework, tax risk management process, value chain analysis, various PE details: list of PEs, processes to ensure identification, protective filings and other financial data.
- After the previous year's tax compliance challenge of filing our first CbCR, ICAP was a natural progression in our commitment to transparency. In practice, working through the ICAP pilot was far simpler and more doable, than preparing that first CbCR. The cooperation amongst our participating ICAP Tax Authorities and the other MNEs made the process more collaborative and more enjoyable.

What have MNEs learned from the ICAP 1.0 Pilot?

Reactions from 1 MNE Group:

1. Transparency, trust and collaboration in effectively progressing compliance matters.
2. Areas identified where TP and PE processes, controls and documentation are fit for purpose from a Tax Authority perspective and where they need improvement (e.g., the need for robust audit trails).
3. Which countries are suitable to participate in ICAP from an MNE perspective.
 1. Is the country material from an MNE Group perspective?
 2. Will tax administrations have sufficient time, resources and language skills?
 3. Will the MNE have sufficient risk-levels in the jurisdiction to benefit from ICAP, but not so much risk that the tax administration cannot get comfortable based on a high-level review?
 4. Does the MNE have a good relationship with the tax administration or the start of a good relationship?

MNEs can gain a better understanding of how tax administrations work internally and work together; plus, greater insight into the time and effort needed by the tax administrations and the OECD to agree and implement joint processes.

What have MNEs achieved from the ICAP 1.0 Pilot?

Reactions from 1 MNE Group:

1. Group was able to actively demonstrate its commitment to tax transparency to the Tax Authorities, as part of our Tax Strategy & Responsible Tax Principles.
2. Contribute to the evolution of the OECD's agenda on tax certainty, which is crucial in the current times where tax laws change so frequently and become so complex.
3. Collaboration with the TAs, OECD and participating MNEs to shape the future ICAP process to be as practical and efficient as possible for all participants.
4. Improve relationships with the ICAP Tax Authorities, which will benefit our future compliance relationships.
5. Receive (some) low-risk outcomes for our in-scope transactions and identify early where our TP and PE processes and policies can be made more robust.
6. Create valuable data for re-use within the MNE Group and with other TAs, e.g., CbCR walk-through and Value Chain Analysis.

MNE ICAP Experience - ICAP 2.0 Pilot

What was the ICAP 2.0 Pilot like?

- Companies noted that their participation in ICAP was useful to gain low-risk status for certain topics as part of risk assessment procedures. MNEs also appreciated the opportunity to build stronger relationships with the tax administration in their home country.
- Participants believed that ICAP enhanced transparency and open communication throughout the dispute prevention process with tax administrations. Their participation was perceived as enhancing their company's reputation as compliant with tax administrations.
- The program increased overall transparency and created more opportunities for tax certainty. It enabled proactive feedback and responsiveness for tax administrations.
- Participants also noted that the program was very data intensive and requested more clarity around this part of the process in advance of applying to the program.
- While all companies that participated in the program have since been subject to audit, these audits did not include topics reviewed during their ICAP risk assessment. Sharing the ICAP risk assessment letter at the start of an audit prevented the same topics being covered, saving time for the companies and the tax auditors.
- ICAP participants were generally interested in a fast-track program going forward and in a wider scope of topics being added to the program including the potential for topics like Pillar Two to be covered in the future, withholding tax, and permanent establishment among them.
- Almost every company that responded was familiar with ICAP but noted that the program was not well publicized.

What were the barriers to entry for MNEs that did not participate in ICAP?

- MNEs that did not or have not participated in ICAP in recent years cited the following reasons for lack of participation:
 - Resource constraints (staffing, costs, etc.);
 - Complexity of reporting and compliance obligations;
 - Did not fit the company's needs;
 - Time to complete process viewed as too lengthy;
 - Difficulty in selecting the appropriate cooperative compliance program to fit transfer pricing needs;
 - Interactions with tax administrations;
 - Tax administrations perceived as aggressive;
 - Tax administration did not accept application for the specific topic;
 - Perceived lack of certainty;
 - Data Privacy Concerns.
- MNEs remain open to and interested in the program and recent education sessions at tax conferences have been helpful in providing clarity and insight into the advantages of the program.

What were the barriers to entry for MNEs that did not participate in ICAP?

- Tax Administrations should continue to publicize ICAP more broadly across platforms including social media campaigns, clear postings on the main tax administration websites, and increased visibility, which should lead to increased participation.
- Tax Administrations should ensure there is transparency around the program requirements. MNEs noted that FAQs around the length of time, documentation requirements, and subject matter should be clearly articulated. *The Secretariat took this under advisement and has recently published an update on their [website](#) with FAQs and updated documentation guidelines.*
- Coordination between the ICAP reviewers and audit exam teams is important to taxpayers. MNEs noted that there should be a clear process for communicating topics identified as low-risk as a result of ICAP to the exam teams.
- Identifying efficiencies in the process should be a continued focus in order to encourage taxpayers with cost constraints to participate.

Developments Post - ICAP 1.0 & 2.0 Pilot

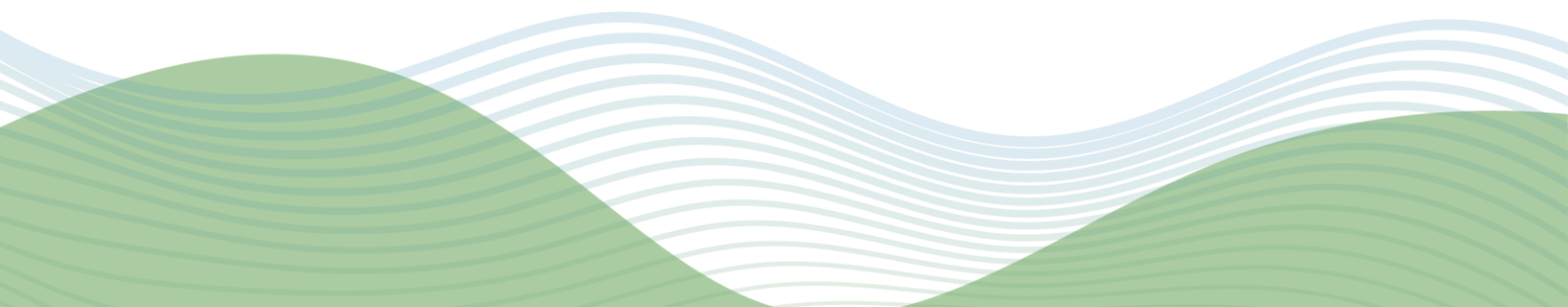
How has ICAP evolved in light of the two pilot programs?

- MNEs recently provided requests from improvements related to the documentation requests, and the administrative burdens associated with applying for and participating in the ICAP program.
- The OECD ICAP group have taken those points and had in mid-July of 2024, published some new requirements to ease the documentation process and make it less cumbersome to apply and participate in the program.
- The OECD has continued to positively engage with Business in identifying process improvements to existing dispute prevention and dispute resolution tools including most recently at the Tax Certainty Roundtable in July of 2024.
- These discussions continue to foster meaningful opportunities for tax administrations and taxpayers to collaborate and develop progressive solutions in the area of tax certainty in order to continue to promote growth and investment.

OECD ICAP Resources

Additional OECD Resources:

- OECD ICAP [website](#)
- OECD International Compliance Assurance Programme (ICAP): [Handbook for tax administrations and MNE groups](#)
- OECD ICAP awareness sessions - supporting [presentation](#)
- OECD ICAP [Frequently Asked Questions](#)







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