



THE INTERNATIONAL ORIGINS OF COOPERATIVE COMPLIANCE

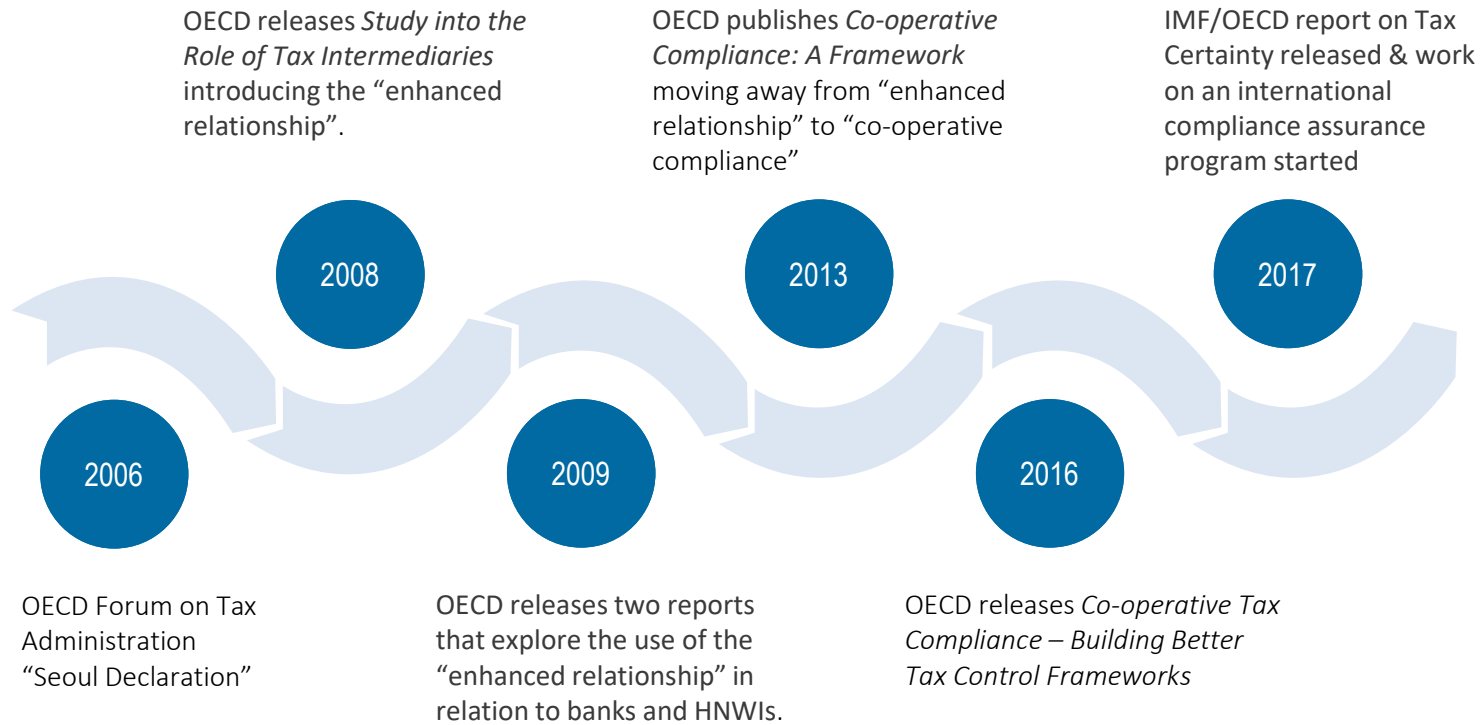
Achim Pross, OECD

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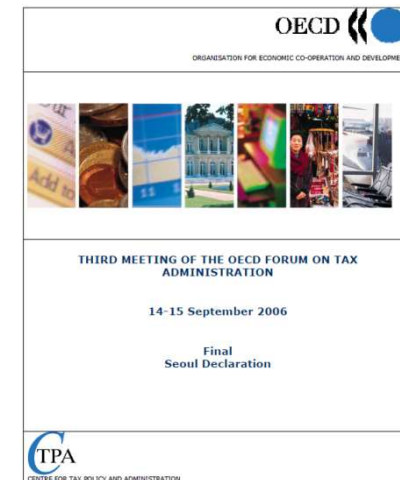
Overview



Seoul Declaration

- “It is our duty as heads of our respective countries’ revenue bodies to ensure compliance with our national tax laws by all taxpayers, including activities beyond our borders, through effective enforcement and by taking preventive measures that deter non-compliance. [...] Our discussions revealed continued concerns about corporate governance and the role of tax advisors and financial and other institutions in relation to non-compliance and the promotion of unacceptable tax minimization arrangements.”

(Seoul Declaration, 3rd Meeting of the OECD Forum on Tax Administration, 14-15 September 2006)



1



PART 1 THE ENHANCED RELATIONSHIP



Study into the Role of Tax Intermediaries (2008)

- Study addressed the topic of aggressive tax planning and analysed the tripartite relationship between revenue bodies, taxpayers and tax intermediaries
- Concluded that there was significant scope to influence the “demand side” of aggressive tax planning arrangements in relation to large corporate taxpayers
- Encouraged taxpayers and revenue bodies to engage in a relationship based on co-operation and trust
→ “The enhanced relationship”





Study into the Role of Tax Intermediaries (2008)

The enhanced relationship





Study into the Role of Tax Intermediaries (2008)

Seven pillars of the enhanced relationship

Revenue bodies	Taxpayers
Commercial awareness	Disclosure
Impartiality	Transparency
Proportionality	
Openness through disclosure and transparency	
Responsiveness	



Study into the Role of Tax Intermediaries (2008)

Building the enhanced relationship

- The study identified 3 possible mechanisms:
 - A unilateral statement or declaration by the revenue body, setting out how it intends to work
 - A charter adopted jointly by or on behalf of all stakeholders, setting out how all participants intend to work together
 - A formal or informal agreement between the revenue body and a specific taxpayer
- In this respect participants need to consider
 - A statement of intent
 - An assessment of capability
 - High-level endorsement



Enhanced relationship with banks and HNWI

- 2009 report *Building Transparent Tax Compliance by Banks*:
 - Deepen understanding of banks' involvement (direct or indirect) in aggressive tax planning
 - Identify the benefits to both revenue bodies and banks from an “enhanced relationship”
- Provides recommendations for revenue bodies on how to:
 - Improve staff capabilities and their commercial understanding of financial markets and banking, including complex structured financial transactions
 - Provide earlier certainty to banks
 - Improve risk assessment
 - Improve transparent tax compliance
 - Improve international co-operation
- Also identified a number of “good practice” recommendations for banks





Enhanced relationship with banks and HNWI

- 2009 report *Engaging with High Net Worth Individuals on Tax Compliance*:
 - Improve the understanding of the HNWI taxpayer segment, the use of ATP schemes by HNWI and the prevention, detection and response strategies that can be used to respond to these challenges
- Provides best practice recommendations for revenue bodies:
 - Understand the risks posed by the HNWI segment and subsets thereof, including the motivations of HNWI and the wider marketplace for ATP
 - Establish an appropriate structure in tax administrations to deal with HNWI
 - Improve international co-operation at both strategic and operational level
 - Create an appropriate legislative framework targeted at specific ATP risks
 - Explore how the concept of co-operative compliance could be applied to the HNWI segment





PART 2 CO-OPERATIVE COMPLIANCE



Co-operative Compliance: A Framework (2013)

From enhanced relationship to co-operative compliance

- The value of the co-operative compliance approach has been established by many countries after the release of the 2008 study
- The 2013 report establishes that “enhanced relationship” is no longer an entirely accurate description of the approach and adopts the term “co-operative compliance”
- New term “co-operative compliance” makes it clear that the approach is:
 - Based on co-operation
 - With the purposes of assuring compliance
 - Leading to payment of the right amount of tax at the right time
- Change from “traditional” control to co-operative compliance in many cases is the result of the development of a compliance risk management strategy





Co-operative Compliance: A Framework (2013)

Benefits and challenges of co-operative compliance models

Benefits	Challenges
An enhanced relationship	Communicating about the impact of the programme on taxpayers
Reputation	Taxpayer dissatisfaction
Risk management	Cultural issues
Certainty in advance	Maintaining the level of contact required to successfully establish desired relationship
Problem shooting	Tax control
Reduction of administrative burdens	Establishing metrics to assess delivery of benefits



Co-operative Compliance: A Framework (2013) Tax Control Framework

- The seven pillars remain valid but additional features are essential in particular the Tax Control Framework:
 - Governance matters
 - Good governance means good tax governance
 - OECD Guidelines for MNEs
 - MNEs with good governance are “in control”
 - Tax Control Framework ensures capability to meet standards of disclosure and transparency



Co-operative Compliance: A Framework (2013)

Internal governance of the tax administration matter too

- Integrity and core rules
- Standardisation of work programmes and methodology
- Second pair of eyes
- Training
- Rotation
- Systematic review and quality monitoring



Co-operative Compliance: A Framework (2013)

Some legal issues

- Co-operative compliance is compatible with the principle of equality before the law
- Does complying with the spirit of the law undermine an MNEs ability to take a different view from the tax administration and to test that before the courts?



Co-operative Tax Compliance – Building Better Tax Control Frameworks (2016)

- 2013 report identified the need for:
 - More research and discussion of how TCFs can be best assessed
 - Additional guidance to business about revenue bodies' expectation of them
- Based on this, the 2016 report provides guidance for:
 - Businesses to design and operate their TCF
 - Revenue bodies to adjust the risk management strategy for an individual large business in the context of a (voluntary) co-operative compliance relationship





Co-operative Tax Compliance – Building Better Tax Control Frameworks (2016)

- Essential building blocks of a Tax Control Framework
 - Tax strategy established
 - Applied comprehensively
 - Responsibility assigned
 - Governance documented
 - Testing performed
 - Assurance provided



Co-operative Tax Compliance – Building Better Tax Control Frameworks (2016)

- Assessing and testing the TCF is necessary to determine the effectiveness
 - Report gives some guidance on how this can be done
- Mandatory disclosure regimes can assist revenue bodies in obtaining greater assurance about the reliability of an enterprises tax risk management system



PART 3 TAX CERTAINTY



Tax certainty

- Work conducted under the German G20 Presidency but requested under the Chinese G20 Presidency:

“We emphasize the effectiveness of tax policy tools in supply-side structural reform for promoting innovation-driven, inclusive growth, as well as ***the benefits of tax certainty to promote investment and trade*** and ***ask the OECD and IMF to continue working on*** the issues of pro-growth tax policies and ***tax certainty.***”

(G20 Leaders' Communiqué, Hangzhou, 5 Sep. 2016)

Tax certainty

- Report on tax certainty¹ delivered to G20 Finance Ministers with IMF (March 2017, www.oecd.org/tax/g20-report-on-tax-certainty.htm)
- *“We welcome the ... work on tax certainty conducted by the OECD and the IMF. We acknowledge the report on Tax Certainty submitted to us and **encourage jurisdictions to consider voluntarily the practical tools for enhanced tax certainty as proposed in that report, including with respect to dispute prevention and dispute resolution to be implemented within domestic legal frameworks and international tax treaties.**”*
- *“We ask the OECD and the IMF to assess progress in enhancing tax certainty in 2018”*





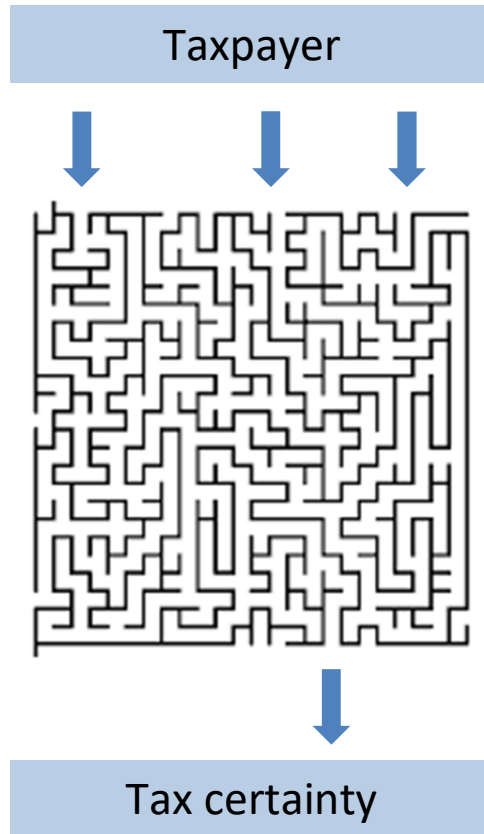
IMF/OECD Report

Business survey responses

- **Multilateral Advance Pricing Agreements**
 - 82% of respondents say important, very important or extremely important
- **Multilateral audits**
 - 74% of respondents say important, very important or extremely important
- **Multilateral co-operative compliance programmes**
 - 80% of respondents say important, very important and extremely important

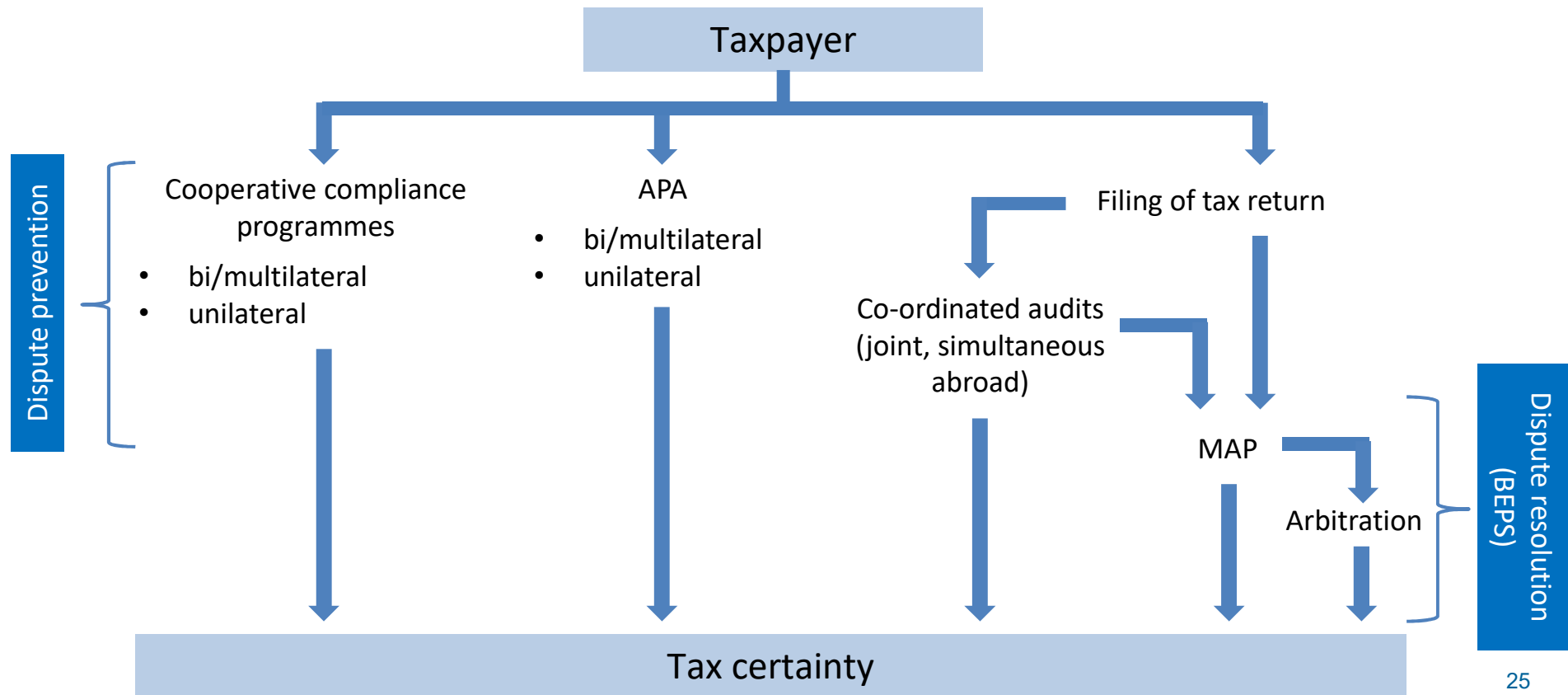


Tax certainty in two easy steps...





Tax certainty in two easy steps...

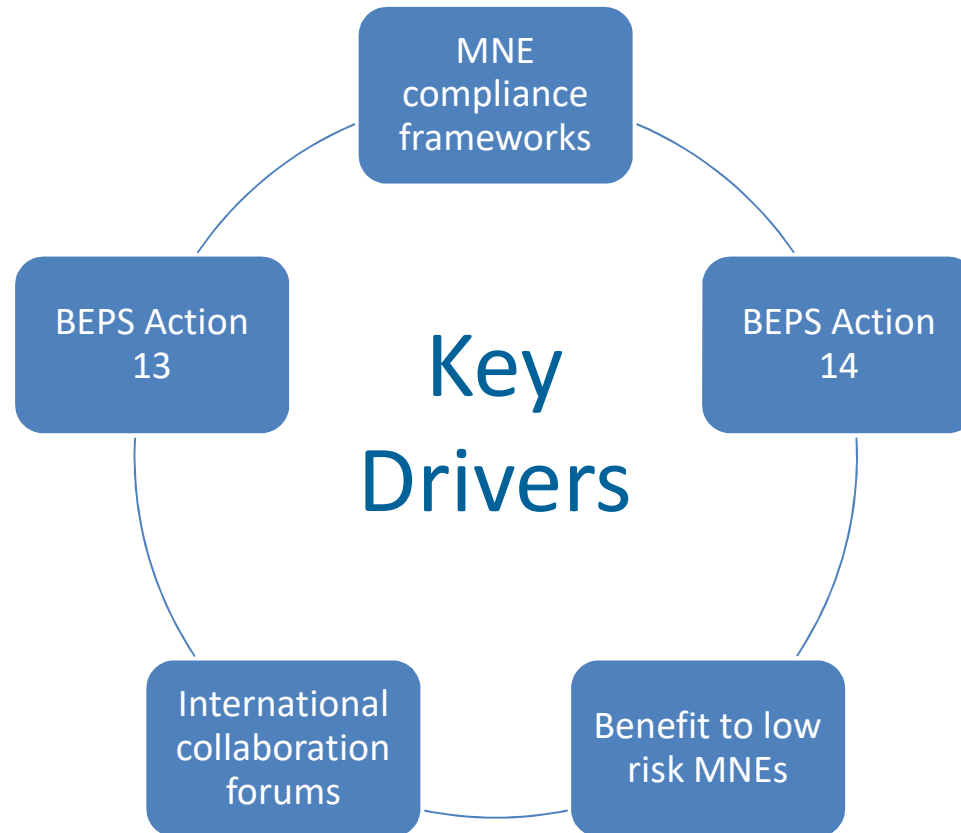





PART 3 INTERNATIONAL COMPLIANCE ASSURANCE PROGRAM – ICAP



ICAP – Key drivers





ICAP – Background

- Forum on Tax Administration (FTA) is looking at the possibility of a multilateral cooperative risk assessment and assurance process for not high risk multinationals (MNEs)
- *International Compliance Assurance Program (ICAP)* would be a high level risk assessment and assurance process that is different from an audit or Advance Pricing Arrangement (APA) Program
- ICAP will be a swifter and internationally coordinated way of risk assessing certain activities and transactions of MNEs, with a goal of gaining comfort that there is low risk



ICAP – Pilot

- The pilot will involve undertaking a coordinated multilateral risk assessment by a restricted number of tax administrations on a small set of non-high level risk multinationals (MNEs)
- The underlying drivers of this pilot are to test whether this can help minimize disputes going to MAP by increasing collaboration and cooperation between a MNE and multiple tax authorities at an early stage; to increase tax certainty for business; and to positively influence taxpayer behaviour



ICAP – Pilot Action Plan

- The procedures for the ICAP pilot are currently being finalized and potential candidates will be contacted about voluntary participation
- Candidates (one MNE from each participating jurisdiction) would be confirmed by July and a kick off session is likely in October 2017
- Following the pilot, there would be a report assessing the feasibility of a broader roll-out, participation in which would be up to each individual tax administration



Reflection on a pathway for the future...



All clear if tax planning is based on transparency, substance and coherence



Better dispute resolution



Increased focus on tax certainty



Additional information

www.oecd.org/tax/

Questions and comments:

Achim.PROSS@oecd.org