

# International Compliance Assurance Programme (ICAP)

## Frequently Asked Questions

Last updated: June 2024

## 1. What is ICAP?

ICAP is a voluntary programme for MNE groups and tax administrations to work together in a co-operative risk assessment and assurance process. It is designed to be an efficient, effective and co-ordinated 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. 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.

## 2. What are the benefits of ICAP?

ICAP is underpinned by increasing transparency and flow of information to tax administrations to provide a new tool for greater tax certainty and a more efficient use of resources. ICAP uses CbC reports and other relevant information to facilitate multilateral engagements between MNE groups 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 MNE groups 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 MNE groups with similar transactions in multiple jurisdictions.
- **An efficient use of resources:** Tax administrations discuss the information provided by an MNE group for its ICAP risk assessment, share their findings with each other and co-ordinate any follow-up questions. An MNE group 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 MNE groups 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 group at an early stage. The process also provides an MNE group with an opportunity to use insights from ICAP more broadly in managing its affairs across its global operations.
- **Co-operative relationships between MNE groups and tax administrations:** ICAP includes a commitment by MNE groups 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 MNE groups 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.

### 3. What level of comfort is provided in ICAP?

At the end of an ICAP risk assessment, an MNE group will receive outcome letters issued by each covered tax administration, containing the results of the tax administration's risk assessment and assurance of the covered risks for the covered periods. Transactions covered in an ICAP risk assessment will be classified as low-risk, or where the tax administrations cannot conclude on a low-risk outcome, such transactions would be considered not low-risk. A not low-risk transaction is not necessarily considered to be a high-risk transaction by 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 is based on a common template. Each outcome letter 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).

Although the certainty provided in ICAP is not legally binding, and instead is limited to a tax administration not anticipating that further enquiries may be required, this difference is also reflected in the fact that an APA or (audit and) MAP is a more time consuming and resource intensive process than ICAP, typically focusing on a narrower range of transactions and jurisdictions (usually bilateral).

Practically, if transactions that receive a low-risk outcome in ICAP are not subject to further enquiries, the value of ICAP is comparable with those other tools. In addition, a number of

participating jurisdictions have introduced guidance or other measures to ensure the value of a low-risk outcome in ICAP is recognised in their respective jurisdictions.

#### 4. How many periods does an ICAP risk assessment cover, and is there a possibility for a roll forward of the outcomes? (NEW)

An ICAP risk assessment generally covers one or two consecutive periods, agreed with an MNE group in advance of the ICAP risk assessment commencing, which will normally be the most recent for which necessary documentation is available.

Tax administrations will typically also aim to provide comfort with respect to a number of tax filing periods immediately following the covered periods, provided there are no material changes during these periods. The ability of a tax administration to provide comfort in respect of roll forward periods will depend on each tax administration's domestic legal framework. Further information on each tax administration's approach to roll forward periods (including the number of periods for which a roll forward is available) can be found in the document "*Information on Participating Tax Administrations*", available on the [OECD ICAP website](#).

#### 5. What factors should an MNE group consider in deciding whether to apply to ICAP?

ICAP is one of the tools available to tax administrations to provide greater tax certainty to MNE groups. When considering ICAP as an option, an MNE group may consider different factors to determine whether it is the most suitable.

- **The level of certainty required:** ICAP is a risk assessment tool to provide 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.
- **The scope of certainty required:** Under ICAP, an MNE group may obtain comfort that multiple covered tax administrations do not anticipate dedicating compliance resources to a further review of the covered risks. This is wider than the scope of most Advance Pricing Arrangements (APAs) and Mutual Agreement Procedure (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 required:** 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. Under ICAP an MNE group 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 taken:** ICAP includes clear target timelines for each stage of the process: selection, risk assessment, and outcomes, and the timeline in each case will

vary based on a number of factors. A typical risk assessment will be completed within 36 weeks from delivery of the main documentation package. Reflecting differences in terms of the level of documentation typically required and the level of certainty provided, this timeframe is significantly shorter than may be required to agree an APA, or for completion of a tax audit or MAP case. Additional information on the timelines for ICAP cases completed to date can be found in the ICAP statistics<sup>1</sup>.

- **The extent to which early certainty is required:** An ICAP risk assessment focuses on an MNE group's recent completed fiscal period/s for which information, including the MNE group'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.

## 6. Which tax administrations are participating in ICAP?

A list of tax administrations participating in ICAP is available on the OECD website and updated as further tax administrations join the programme. The OECD is currently in discussion with a number of tax administrations about their participation in ICAP in the future. If a jurisdiction you are interested in is not currently participating in ICAP, you may consider expressing your interest in ICAP to the tax administration directly, or alternatively by emailing [icap@oecd.org](mailto:icap@oecd.org).

## 7. Is my MNE group suitable for ICAP?

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:

- 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 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 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.

The factors outlined above may be relevant in considering whether a group is suitable for ICAP, but would not be decisive. Furthermore, there may be cases where, due to resource

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<sup>1</sup> [International Compliance Assurance Programme \(ICAP\) Aggregated results and statistics - January 2024 \(oecd.org\)](https://www.oecd.org/tax/automatic-exchange/icap/2024-01-24-icap-aggregated-results-and-statistics/)

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.

#### **8. My MNE group's Ultimate Parent Entity (UPE) is resident in a jurisdiction that is not participating in ICAP. Does this mean that my MNE group cannot submit a request for an ICAP risk assessment? (NEW)**

An MNE group's suitability for ICAP is considered on a case-by-case basis and MNE groups are encouraged to get in touch with their local ICAP participating tax administration to discuss potential options.

Even if an MNE group is headquartered in a jurisdiction that does not currently participate in ICAP, it may still be possible for a suitable tax administration that does participate in ICAP to act as a Surrogate Lead Tax Administration (Surrogate LTA) for the purposes of the MNE group's ICAP risk assessment. This would mean that the Surrogate LTA would undertake the role of the Lead Tax Administration (LTA) described in the ICAP Handbook.

In this case, an MNE group that is interested in applying for ICAP should:

1. identify a possible Surrogate LTA from the list of participating tax administrations, in a jurisdiction in which the MNE group has significant operations and which has sufficient familiarity with the MNE group that it is able to be an effective Surrogate LTA;
2. inform the tax administration in the jurisdiction of its UPE of its desire to participate in ICAP; and
3. contact the potential Surrogate LTA to discuss its suitability for the programme.

Following this contact with a potential Surrogate LTA, the tax administration may:

1. agree to act as Surrogate LTA;
2. suggest an alternative Surrogate LTA (following discussion with other tax administrations participating in ICAP); or
3. decline to act as Surrogate LTA without suggesting an alternative.

Whether other tax administrations agree to be Covered Tax Administrations for the purposes of the MNE group's ICAP risk assessment will depend upon a number of factors, such as materiality of transactions, and the suitability of the Surrogate LTA for the role, taking into account issues such as the location of the MNE group's management team and key activities.

In these circumstances, it may also be appropriate for an ICAP risk assessment to be undertaken with respect to a discrete segment of an MNE group rather than the entire MNE group, for example where the holding company of this segment is located in the jurisdiction of a tax administration participating in ICAP, and other participating tax administrations are satisfied that the segment is sufficiently operationally independent from the rest of the MNE group that an ICAP risk assessment can be undertaken effectively.

In instances of an ICAP risk assessment of a segment of an MNE group, the UPE of the MNE group should give its commitment and support for the ICAP process, for example by ensuring all relevant documentation and information is made available, should the segmented group not be

in possession of the information required.

**9. My MNE group's Ultimate Parent Entity (UPE) is resident in a jurisdiction that participates in ICAP. Is it possible to approach another tax administration participating in ICAP and request that it acts as a Surrogate LTA? (NEW)**

Where an MNE group's UPE is resident in a jurisdiction that participates in ICAP, the MNE group should always approach the tax administration in that jurisdiction first to request an ICAP risk assessment.

If, however, the tax administration in the jurisdiction where the UPE of the MNE group is resident declines to act as the LTA, due to a lack of capacity or the fact the MNE group only has limited activities in that jurisdiction, the MNE group may approach another jurisdiction participating in ICAP to serve as a Surrogate LTA.

In this case the MNE group should inform the tax administration of the UPE jurisdiction that it intends to do so and should act in a transparent manner with both tax administrations. The tax administration that the MNE group has requested to act as a Surrogate LTA will consult with the tax administration in the MNE group's UPE jurisdiction and confirm that capacity and/or limited activities is in fact the reason for that tax administration declining the request to act as LTA for an ICAP risk assessment for the relevant Periods. If the UPE jurisdiction is not content with another ICAP member acting as Surrogate LTA, it will not be possible for an ICAP risk assessment to proceed for these periods. Where the tax administration of the UPE jurisdiction declined to act as LTA due to a lack of capacity, the MNE group may approach that tax administration again in the future with respect to later periods, when this lack of capacity may no longer apply. Similarly, should the level of the MNE group's activities in that jurisdiction increase, the MNE group may also approach that tax administration again in the future.

**10. My MNE group has already participated in an ICAP risk assessment. Is my MNE group eligible to request an additional ICAP risk assessment? And if so, are there specific requirements for such requests (e.g., minimum time periods between ICAP risk assessments)? (NEW)**

Where an MNE group has participated in an ICAP risk assessment, there is no restriction on the MNE group submitting a request for a further risk assessment for later periods, either by the same covered tax administrations or by different covered tax administrations (or a combination of the two). There is also no minimum time period that must have elapsed before a new request can be made, although tax administrations may consider the amount of time that has elapsed since this last ICAP risk assessment when making a decision whether to participate.

MNE groups that wish to request a second or subsequent ICAP risk assessment are encouraged to contact their LTA before submitting a new selection documentation package to discuss their suitability to re-enter the programme and the possible scope of a further risk assessment.



### **11. My MNE group has consolidated group revenues below the threshold for country-by-country reporting (CbC reporting) in the jurisdiction where the Ultimate Parent Entity (UPE) of the MNE group is resident. Does this mean my MNE group is not able to apply for an ICAP risk assessment? (NEW)**

A decision on whether to participate in an ICAP risk assessment is considered by each tax administration on a case-by-case basis.

While the ICAP Handbook indicates that a CbC report is required for the selection and the main documentation packages, tax administrations participating in the programme have agreed that MNE groups that are exempt from mandatory CbC reporting may nevertheless apply for an ICAP risk assessment.

To participate in ICAP, such an MNE group will generally have to prepare a similar report that includes the full information specified in Annex III to Chapter V of the Transfer Pricing Guidelines. Generally, this report should be provided by the MNE group as part of the selection documentation package. Exceptionally, participating tax administrations may agree to commence the selection stage without such a report being already available, but this would still be expected to be provided as part of the main documentation package. Additionally, such MNE groups must be prepared to explain the procedures that were utilised in preparing the report to ensure the reliability of the underlying data. This may be most suitable for MNE groups that anticipate coming within the scope of CbC reporting in future, or that fall above the threshold in some Periods and not others.

MNE groups that wish to participate in ICAP but are exempt from CbC reporting for the relevant Periods are strongly encouraged to consult with the prospective LTA before submitting their selection documentation package, to discuss their suitability for the programme.

### **12. Can my MNE group use its external tax and/or legal advisors to assist it in ICAP? (NEW)**

External advisors may assist an MNE group during the ICAP risk assessment process. There have been a number of completed ICAP risk assessments that successfully involved external advisors working in conjunction with the MNE group and the participating tax administrations. However, the intention of ICAP is to facilitate transparent discussions between multiple tax administrations and the participating MNE group. Accordingly, external advisors should not be used as a replacement for personnel from the MNE group for the purposes of the ICAP risk assessment.

### **13. How can I find out more about ICAP?**

Details of the ICAP process can be found in the ICAP Handbook, and on the OECD website, which is updated periodically. You can also find out more information by contacting one of the participating tax administrations, either using the contact details included in the Information on



Participating Tax Administrations booklet on the ICAP website<sup>2</sup> or your regular tax administration contact. Should you have a question that is not answered here, please reach out to [icap@oecd.org](mailto:icap@oecd.org).

#### **14. How does an MNE group apply to participate in ICAP?**

ICAP has two deadlines for application each year, 31 March and 30 September.

MNE groups that wish to discuss possible participation in ICAP should contact the tax administration in the jurisdiction where their Ultimate Parent Entity is resident in advance of the next application deadline. For MNE groups with an Ultimate Parent Entity that is resident in a jurisdiction that is not participating in ICAP, please refer to question 7.

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<sup>2</sup> [Tax Administrations Participating in ICAP - Further Information \(oecd.org\)](#)