



US Inbound Corner

The International Compliance Assurance Program: An additional way to get transfer pricing certainty

The International Compliance Assurance Program (ICAP) is a voluntary risk assessment and audit assurance program for multinational enterprises (MNEs) that began in pilot form in 2018 and was made permanent with an ICAP Handbook (the “Handbook”) in February 2021.¹ The issues potentially covered by ICAP include transfer pricing, permanent establishment, and other international tax issues agreed upon by the participating MNE group and the examining tax administrations. These other issues may include hybrid mismatch arrangements, withholding taxes, and treaty benefits.²

This article provides a general overview of the ICAP process and discusses how MNEs might want to use it as a supplement to (rather than potential replacement of) other forms of tax assurance such as advance pricing agreements (APAs).

Overview of the ICAP process

The ICAP process involves three phases and culminates in the issuance of an “outcome letter” that sets out each participating tax administration’s assessment of the MNE group’s tax policies. The content and wording of an outcome letter is determined separately by each tax administration but will typically address the following:

- Risk ratings
- Confirmation of whether the covered transactions are considered to be low risk
- Any additional agreement reached as part of the resolution process
- Any appropriate caveats or limitations³

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The ICAP process involves multiple jurisdictions at once, and the delivery of the outcome letters is coordinated among the jurisdictions and the MNE group.⁴ The outcome letter covers the specified period under ICAP and potentially a roll-forward period.⁵

It is important to note, however, that the outcome letter only provides assurance on whether the transaction is low risk. It does not constitute a binding agreement with governments as to what the exact pricing range or best method is, such as an MNE would achieve with an APA.

Stage 1: Selection

In the first stage, the MNE group's Ultimate Parent Entity (UPE) submits a selection documentation package to its tax administration.⁶ That tax administration then reviews the package to identify which other tax administrations should participate and the transactions to be covered in the process.⁷ In relation to this, the IRS FAQs indicate that the IRS will review all intercompany transactions in which the United States is a counterparty, even if the jurisdiction in which the counterparty is located does not participate in ICAP.⁸

The target time frame for this stage is four to eight weeks from delivery of the selection documentation package.

Stage 2: Risk assessment and issue resolution

The second stage involves a risk assessment where the relevant tax administrations examine the covered transactions.⁹ This stage may include calls or meetings between the MNE group and the relevant tax administrations.

The participating tax administrations then discuss their findings. If a tax administration does not conclude that a covered transaction is low risk, it might seek a specific agreement with the MNE group on the tax treatment of that transaction.

The target time frame for this stage is less than 20 weeks, although more complex issues may take longer.¹⁰ Nevertheless, the Handbook advises that any extension should be no more than 36 weeks after delivery of the main documentation package.¹¹

Stage 3: Outcomes

In the final stage, the MNE group receives an outcome letter from each participating tax administration that contains the results of the assessment.¹² This outcome letter is meant to give the MNE group certainty that the tax administrations do not anticipate further review of the covered risks for the covered periods.¹³ Where a tax administration is not able to reach this level of comfort, it might make recommendations on how to resolve the issue.¹⁴

If a tax administration believes additional analysis is necessary, it might seek further action, such as suggesting a bilateral APA or asking the MNE group to modify the transfer pricing of the transaction at issue.¹⁵

The outcomes stage is designed to be completed within four weeks and could be extended; however, it is not expected to be extended beyond a total of eight weeks.¹⁶

Additional procedural points and considerations

Overall, the ICAP process is designed to be completed within 24 to 28 weeks following the MNE group's submission of the selection documentation package.¹⁷ There is no user fee, and the period covered is intended to be four consecutive years or less, but could include a potential roll-forward period.¹⁸ Currently, 22 countries participate in ICAP.¹⁹

Observations and conclusion

Given its process and time frame, the ICAP process provides less certainty but broader coverage than other proceedings such as an APA. The degree of certainty in an outcome letter is limited to "low risk" or not, rather than a binding agreement on the exact range of prices or a transfer pricing method. The outcome letter also covers fewer years than the results of other proceedings such as a typical APA. At the same time, what ICAP lacks in depth it has in breadth, because it can analyze multiple jurisdictions at the same time.

In our experience, ICAP has been used to achieve a moderate level of certainty on a broad range of limited-risk activities, many of which might be so small that a longer administrative process might prove too burdensome. In addition, the IRS has recently indicated it would be willing to engage in ICAP for non-treaty countries, as long as an information-sharing agreement is in place.²⁰

As a result, some MNE groups might see ICAP as a useful way to get transfer pricing certainty as a supplement to APAs and other administrative proceedings. If, for example, an MNE group wants to cover a large number of smaller transactions as an alternative to transfer pricing documentation or the chance of an audit, the ICAP process might prove beneficial. On the other hand, if the relevant transactions are large and complex, another administrative proceeding such as an APA might be more useful, as it would give a greater degree of certainty than what ICAP can provide.

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Endnotes

01. Organisation for Economic Co-operation and Development (OECD), [OECD International Compliance Assurance Programme \(ICAP\)](#), accessed October 13, 2023. The OECD has also released a list of frequently asked questions (FAQs), as has the Internal Revenue Service (IRS). Please see the OECD's [International Compliance Assurance Programme – FAQs](#) and the IRS's [International Compliance Assurance Program \(ICAP\) Frequently Asked Questions](#).
02. OECD, [International Compliance Assurance Programme: Handbook for tax administrations and MNE groups](#) (Paris: OECD, 2021), p. 16 at 34.
03. Ibid, p. 28 at 75.
04. Ibid, p. 28 at 76.
05. Ibid, p. 17 at 38.
06. Ibid, p. 21 at 44 and following.
07. Ibid.
08. IRS, "[International Compliance Assurance Program \(ICAP\) Frequently Asked Questions](#)," last updated February 2, 2023.
09. OECD, [International Compliance Assurance Programme: Handbook for tax administrations and MNE groups](#) (Paris: OECD, 2021), p. 24 at 58 and following.
10. Ibid, p. 27 at 72.
11. Ibid.
12. Ibid, p. 27 at 74 and following.
13. Ibid, p. 28 at 75.
14. Ibid, p. 29 at 80.
15. Ibid.
16. Ibid, p. 29 at 79.
17. Ibid, p. 8 at 7.
18. Ibid, p. 17 at 37 and 38.
19. OECD, [OECD International Compliance Assurance Programme \(ICAP\)](#).
20. Deloitte Tax LLP Dbrief with Acting Director of Advance Pricing and Mutual Agreement (APMA) Program John Wall, June 16, 2023.



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