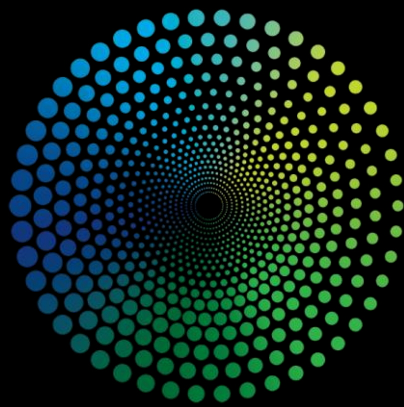

Singapore Tax & Legal developments

Committed to your success

Greetings from your Tax & Legal team at Deloitte Singapore. We hope that you and your loved ones are staying safe and healthy despite these challenging times. As we navigate ourselves through this trying period, we are committed to giving you the support you need.

We are pleased to share the following with you.

International Compliance Assurance Programme (ICAP)

On 9 December 2020, the IRAS updated its website and announced its intention to participate in the ICAP from 2021. IRAS' participation in the ICAP is part of its commitment to provide greater tax certainty to MNEs. Generally, the ICAP is a voluntary risk assessment and assurance programme to facilitate co-operative multilateral engagements between multinational enterprises (MNEs) and tax administrations. The ICAP will also complement the IRAS' approach to provide tax certainty to MNEs, which may improve the MNE's tax position as well as the overall administrative cost incurred.

IRAS' announcement came against the backdrop of the "2020 FTA "Amsterdam" Plenary Communique", which was issued on 8 December 2020 during the Forum on Tax Administration (FTA). The purposes of the FTA, in which Singapore is also a member, is to bring together tax commissioners from across the globe and representatives from international organisations and regional tax administration bodies.

One of the key areas of the FTA collaboration include next steps in enhancing tax certainty tools and outcomes. In particular, the FTA members agreed to ramp up work on tax certainty, including moving the ICAP from a pilot phase to an established programme for the coordinated assessment of MNE groups' transfer pricing risks.

What is ICAP all about?

In a nutshell, the nature of the ICAP is a pre-audit "multilateral cooperative risk assessment and assurance process," which is designed to provide MNEs with "increased tax certainty" in respect of their activities and transactions.

Currently, countries may have their own local tax cooperative programmes, which are restricted to the boundaries of their own jurisdiction. This limits the interaction between the taxpayers and tax administrations of the same countries. Such limits reduce the level of assurance provided under the programmes, as they may not cover the tax risks associated with the taxpayers' foreign subsidiaries.

Such a jurisdictional limitation may not be in line with the current worldwide reach of MNEs as well as with the Organisation for Economic Co-operation and Development's (OECD) approach in terms of the Base Erosion and Profit Shifting (BEPS) initiative. Thus, ICAP may be seen as a new approach to address cross-border uncertainties and challenges for MNEs and tax administrations against the backdrop of BEPS.

The pilot ICAP was introduced in January 2018, whereby eight members of the OECD FTA initiated a multilateral cooperative risk assessment and assurance programme. In March 2019, the second pilot of the programme (ICAP 2.0) was launched, but with an increase to 19 participating jurisdictions, which include Australia, Japan, United States, and United Kingdom etc.

The ICAP is a multilateral programme with a vision of bringing information from various jurisdictions to be used to foster a trust-based and collaborative relationship between tax authorities and taxpayers. This is in view that the call for full transparency between taxpayers and tax authorities has been increasing. Such a reciprocal relationship will derive mutual benefits for both: MNEs expect to receive assurance in relation to their tax positions and thus, can potentially reduce costs to administer tax matters especially with respect to tax audits, whilst the tax authorities could have a more efficient allocation of resources by concentrating their efforts on high-risk taxpayers.

There are certain entry requirements for MNEs potentially interested in participating in the ICAP. However, as outlined in the ICAP 2.0 handbook issued by the OECD, the level of documentation required might be less than what is typically needed in order to agree on an Advanced Pricing Agreement or in the course of a tax audit.

Moreover, the ICAP 2.0 handbook outlines several anticipated benefits, such as fully informed and targeted use of Country-by-Country (CbC) reports and other information held for risk assessment, an efficient use of resources, a faster, clearer route to multilateral tax certainty, co-operative relationship between MNEs and tax administrations, and fewer disputes entering into Mutual Agreement Procedures.

A list of documentation is expected to be furnished by the MNEs as part of the ICAP process, such as CbC report, master file, tax strategy, tax control framework, etc. on a case-by-case basis. In particular, the existence of a MNE's tax control framework, and the robustness of such framework, will be important in providing greater comfort to the tax administrations in understanding the MNE's tax processes and associated tax risks. Tax administrations might encounter difficulties in their assessment if there is no robust tax control framework in place.

Deloitte Singapore's views

Singapore's announcement to join the ICAP is not surprising as Singapore has always been a firm believer in multilateral cooperation and transparency. Moreover, the government is keen on maintaining Singapore as an attractive location for MNEs with an efficient tax administration.

Singapore has also been implementing their own local tax cooperative programme since 2008. The Enhanced Taxpayer Relationship (ETR) Programme was introduced in 2008 by the IRAS as a service initiative and aims to build an open and collaborative taxpayer relationship through regular engagement with large companies, mutually benefitting the IRAS and these companies. Under the ETR Programme, senior management of the IRAS and a company (at the Chief Financial Officer or equivalent level) meet regularly to address the company's current and emerging tax issues. Key areas of engagement could include specific issue resolution, generic issue resolution, significant current events, and review of Tax Control Systems.

Even though going into the ICAP is voluntary for businesses, the IRAS highlighted key benefits, which include; improving tax certainty for MNEs and tax administrations, more effective dispute resolution by preventing unnecessary disputes, better and more standardised information sharing such as CbC reports for transfer pricing risk assessment, better use of resources for MNEs and tax administrations, and advances in international collaboration.

However, businesses should also be aware of the considerable resources, both time and effort, that may be required to undergo the ICAP as it requires multiple meetings and negotiations with tax administrations and preparation of multiple documents. As already indicated, an extensive list of core documentation may be required to be prepared by businesses as part of the ICAP documentation package once the covered risks are identified and agreed upon.

One area of documentation that may require attention or improvement would be details of the MNE's tax strategy, including the management of the covered risks, and robustness of tax control frameworks (or equivalent information). In particular, a description of the MNE's tax control framework and how the effectiveness of this framework is managed and monitored is required. In this regard, many MNEs may already have implemented certain elements of a Tax Control Framework over the last couple of years. Against the ICAP backdrop, MNEs may wish to review and update their Tax Control Framework in order to ensure that they meet the latest best practices and standards. Deloitte would be able to assist in this regard.

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