European Commission

Guidelines
European Trust and Cooperation Approach (ETACA)

Taxation and Customs Union

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1. INTRODUCTION

1.1 The rationale and objective for this EU initiative

In July 2020, the European Commission published the Action Plan for fair and simple taxation supporting the recovery strategy[1], where it committed to develop, together with interested Member States, an EU Cooperative Compliance framework. The aim of this non-legislative initiative is to facilitate and promote tax compliance by taxpayers based on greater cooperation, trust and transparency between taxpayers and tax administrations as well as amongst tax administrations.

In recent years, the European Commission's legislative initiatives have primarily focused on anti-tax avoidance practices (e.g. ATAD 1 and ATAD 2) and tax cooperation through new legislative tools (e.g. Directive on administrative cooperation (DAC) and its series of amendments).

There is now a need for a more balanced policy. While fair taxation remains a priority, the focus is also on making it as easy as possible for compliant businesses to meet their obligations so that they can focus on what they do best: create jobs, invest, and innovate.

The aim of this initiative is to provide a clear, EU-wide framework for a preventive dialogue between tax administrations and business taxpayers.

This EU initiative includes the development of two different programmes covering (i) the small and medium-sized enterprises (SMEs)[2] and (ii) large multinational enterprises (MNEs), albeit with a different focus to better fit their respective realities.

Despite a different focus, both programmes share the same underlying objective of supporting companies in their internationalisation in order to avoid double taxation issues and reduce tax compliance costs.

1.2 Overview of the ETACA Programme for MNEs

The present Programme is reserved to MNEs with the requirements set out in Section 2.1 of these guidelines[3] (hereinafter, the "Guidelines"), which aim to establish a European Trust and Cooperation Approach ("ETACA" and/or the "Programme").

[1] https://ec.europa.eu/taxation_customs/system/files/2020-07/2020_tax_package_tax_action_plan_en.pdf and 2020_tax_package_tax_action_plan_annex_en.pdf (europa.eu)
[2] This programme is currently on hold.
[3] The Guidelines have been first drafted in collaboration with experts from Austria, Belgium, Croatia, Denmark, Germany, Finland, Greece, Hungary, Italy, Luxembourg, The Netherlands, Poland, Portugal, Romania, Slovakia and Spain. They have been revised in a second stage by the tax administrations of Finland, Italy, The Netherlands, and Slovakia. The contact details of the national competent authorities may be found on the website of the Programme: European Trust and Cooperation Approach – ETACA Pilot Project for MNEs - European Commission (europa.eu)

In particular, the Programme seeks to bring together tax administrations and taxpayers in a transparent environment to foster a preventive dialogue, enabling tax administrations to conduct a common risk assessment based on high-level information of the transfer pricing policy adopted by the MNE groups.

The approach adopted by the EU Member States to correctly evaluate the price of intercompany transactions is based on the arm's length principle. The arm's length principle is based on a comparison between the conditions applied by associated enterprises and the conditions that would have applied between independent enterprises.

However, the interpretation and application of the arm's length principle may vary between both tax administrations and taxpayers. This can result in uncertainty, increased costs and potential double taxation or even non-taxation. This may ultimately have a negative impact on the smooth functioning of the EU internal market.

The main goal of the Programme is to improve the tax certainty of cross-border transactions within the EU internal market, avoiding as far as possible different interpretations leading to double taxation situations and thus reducing disputes.

Indeed, mitigating double taxation after a tax audit by means of a Mutual Agreement Procedure (MAP) can be time consuming and costly for the tax administrations and taxpayers. A preventive dialogue between tax administrations with the early involvement of the taxpayer could help increasing tax certainty and, therefore, reduce double taxation. This is intended to support international cooperation between tax administrations and promote transparency.

The ETACA Programme launched its First Pilot in November 2021, with the participation of 14 Member States as members of the ETACA Steering Group (see Section 5.6 for the definition), along with three volunteering MNEs, in order to test the workability and efficiency of the Guidelines.

On 15 and 16 April 2024, the European Commission hosted a workshop with various stakeholders from the private sector, including the three volunteering MNEs, and tax administrations from 18 Member States. The main aim was to gather takeaways and feedback from the participants of the First Pilot and to discuss the next steps for ETACA, specifically the launch of a Second Pilot.

1.3 The benefits of the ETACA Programme

The Programme is beneficial for all the stakeholders involved.

In particular, the aim of the Programme is to provide practical tax certainty for participating MNEs that voluntarily offer a documentation package to the participating tax administrations of the relevant Member States. Tax certainty in transfer pricing is a key concept in lowering administrative burden for EU businesses through reduction of costly and toilsome controls and audits. Relieving businesses from unnecessary burdens of litigation enhances the possibilities for the businesses to expand their operations in the Single Market, thus paving way for economic growth and sustainability for the EU as a whole. By opening this opportunity to smaller MNEs as well, the Programme supports the well-being of the small and medium sized multinationals in the EU (see Section 2.1 below).

The taxpayer has the opportunity to explain to all participating administrations the essential parameters of their fiscal model and their transfer pricing policy, obtaining in return some degree of assurance as to how the tax administrations interpret the factual background. It should therefore give the taxpayer the possibility to map their own tax risk in each of the covered jurisdictions. The multilateral approach under the Programme enables the consideration of different views and can avoid inconsistent tax positions.

From the tax administrations' side, by reaching common understanding of the low-risk nature of transactions disclosed under the Programme, they will be in a position to allocate their resources more efficiently by focusing on more complex and fiscally relevant transfer pricing issues. The final and actual handling of the assessment results depends on the national law or the national decisions made by tax administrations.

In addition, all of the parties can save significant amounts of time and resources compared to time and resource-intensive tax audit enforcement, litigation and MAPs.

The Programme is a common risk assessment based on high-level information performed in a short and predefined period of time and therefore it does not provide an MNE group with legal certainty, as may be achieved, for example, through an advance pricing agreement (APA). Rather, the Programme is intended to give practical tax certainty such that when the available information and the risk assessment lead to the conclusion that the covered transactions can be considered to be low-risk, it is unlikely that plans and resources will be dedicated to high intensity local tax audits of such transaction.

The Programme takes inspiration from the positive experiences of similar existing programmes such as the OECD ICAP[4] and the Finnish cross-border dialogue[5] but taking in consideration the specifics of the EU internal market and the possibility to take full advantage of the EU administrative cooperation framework.

These Guidelines are for the benefit of the taxpayers and the tax administrations of the relevant Member States interested in the Programme.

2. SCOPE

2.1 Personal scope – (MNEs in scope)

The Programme is designed to be a flexible tool of administrative cooperation based on transparency and trust between the Participating Member States (see definition under Section 5.3) and the participating MNE groups.

An MNE group's suitability for the Programme is considered on a case-by-case basis by the tax administrations involved.

In principle, the Programme is available for all MNE groups with tax footprint in the EU. Given the structure of the Programme, the process is mainly targeted for MNE groups with a global total consolidated group revenue above EUR 750 million, i.e., those subject to Country-by-Country reporting (CbCR) and DAC4, thus having readily available the key information required for transfer pricing risk assessment. However, MNE groups with a

[4] OECD International Compliance Assurance Programme | OECD
[5] Pre-emptive discussion - vero.fi

global total consolidated group revenue lower than EUR 750 million can also be accepted in the Programme under the condition that they can provide similar information as contained in the CbCR.

2.2 Material scope – (covered transactions)

The Programme focuses on transfer pricing risks. The taxpayers are required to disclose all the group intercompany transactions without any restrictions.

There could be intercompany transactions where one of the parties perform only limited functions and/or carries only limited risks and/or do not make unique and valuable contributions, such as standard distribution activities, contract manufacturing activities and low value adding intra-group services. These transactions are less complex by nature and can most often be addressed by relatively straightforward transfer pricing policies and practises.

However, such transactions may nevertheless be targets for controls and audits and can be a source of litigation and double taxation. This could be the result of different interpretations of the factual background that may be easily avoided by a preventive dialogue between tax administrations with the early involvement of the taxpayer. A joint risk assessment based on a common approach and – at best – shared position of the participating tax administrations through the Programme can reduce the need for unilateral controls and litigation.

The Programme is thus primarily targeted on less complex transactions with no apparent pricing issues. The disclosure of the totality of transactions between the group entities will improve the understanding of the overall context in which the MNE group operates, and transactions take place.

If inconsistencies related to certain transactions are flagged by the MNE or tax administrations, the cooperation initiated through the Programme can be leveraged to find joint solutions in various ways. These are discussed in more detail in Chapter 6 of these Guidelines.

In addition, as the Programme is a tool for common risk assessment, the suitable transactions to the Programme are those replicated with the same features in all the Participating Member States and therefore of common interest to the Participating Member States.

This does not mean that the covered transactions are only limited to those between the jurisdictions of Participating Member States. Covered transactions may include transactions with third countries or with Member States not participating in the Programme that are relevant for the Participating Member States. In such cases, practical tax certainty can only be provided from the perspective of covered tax administrations.

3. CONDITIONS TO ENTER THE PROGRAMME

The participation of the taxpayers and a tax administration to the Programme is on a voluntary basis.

While all taxpayers willing to engage actively and transparently should be incentivised to apply, acceptance into the Programme is not guaranteed.

Since the Programme is based on the transparent and cooperative interaction between the taxpayer and the tax administrations, a taxpayer that does not exhibit this type of behaviour is not suitable for the Programme. Proactivity and transparency are expected.

It is crucial to ensure that this enhanced relationship is supported by concrete commitments and a demonstration of the taxpayer's tax compliance behaviour.

The conditions for entering the Programme should be analysed on a case-by-case basis by the Coordinating Member State (see the definition in Section 5.1) eventually in consultation with the other Participating Member States.

The Coordinating Member State plays a key role in assessing whether not only the Ultimate Parent Entity (UPE) but also the MNE group as a whole is suitable to enter the Programme.

The following conditions to enter the Programme may be assessed to evaluate whether the applicant is suitable for the Programme:

i. the footprint of the MNE and the volume and materiality of an MNE's covered transactions within the EU;

ii. the past behaviour of the taxpayer towards tax compliance (e.g., the taxpayer should not have incurred a serious penalty as a consequence of tax fraud, repeated wilful default and repeated gross negligence);

iii. a commitment of the taxpayer to engage co-operatively and transparently throughout the process;

iv. existence of an internal tax control framework, i.e. a set of processes and internal control procedures ensuring that a company has identified its tax risks and adequately controls and monitors these risks.

The taxpayer should fill and sign an application form declaring that those eligibility criteria are met. An example of the criteria that should be included in the application form is provided in Annex 1.

The taxpayer's participation in a national cooperative compliance programme (or similar) should be considered an asset to take into account when evaluating whether the applicant is suitable for the Programme.

The fact that the UPE or a MNE group entity resident in one of the Participating Member States is under a tax audit should not necessarily preclude their participation in the Programme, though an ongoing examination may be a factor to consider in the decision-making process of the single case. Particular attention should be paid to the tax years and tax issues under examination.

Finally, as the aim of the Programme is to perform a multilateral risk assessment on a common set of documentation, a factor to consider is whether the MNE is subject to a CbCR filing requirement in the jurisdiction of tax residence of the UPE and whether the MNE has the required transfer pricing documentation readily available.

4. DOCUMENTATION REQUIREMENTS

The documentation to be provided for the Programme includes two parts:

I. Preliminary Information Note
II. The Main Documentation Package

4.1 Preliminary Information Note

When formally requesting to enter the Programme, the taxpayer has to demonstrate its eligibility and provide high-level information to enable tax administrations to have an overview of the MNE's activities, evaluate their interest to participate in the Programme and express a preliminary opinion on such interest by filing the "Opt-in/Opt-out Decision Form" presented in Annex 2.

Annex 3 contains a template of the Preliminary Information Note that the taxpayer should provide when applying to the Programme.

4.2 The Main Documentation Package

When a sufficient number of tax administrations express their preliminary interest to participate in the common risk assessment of the taxpayer, the taxpayer is required to submit the Main Documentation Package.

A checklist with the documents that have to be included in the Main Documentation Package is included in Annex 4.

The aim of the Main Documentation Package is to provide Participating Member States with the full picture of the MNE group as a whole and adequate information on the covered transactions and periods.

The Programme aims to bring together tax administrations to perform a common risk assessment based on high-level information and it is therefore key that all tax administrations involved receive and analyse the same set of documents.

Tax administrations, in consultation with the taxpayer and the other tax administrations, may enquire and request clarifications in relation to the information contained in the Main Documentation Package.

It should be recalled that the aim of the Programme is to perform a high-level risk assessment rather than an in-depth analysis typical of a tax audit or an APA procedure.

5. ROLE OF PARTICIPANTS

The Coordinating Member State/Surrogate Coordinating Member State and the Participating Member States form together the Transfer Pricing Assurance Project group (TPAP group).

5.1 Coordinating Member State

The tax administration of the Member State where the UPE of a MNE group is located is the Coordinating Member State[6].

The Coordinating Member State plays a central role in all stages of the Programme.

In the Admission phase (see Section 6.1), the Coordinating Member State is key to assess whether not only the UPE but also the MNE group as a whole is suitable to enter the Programme. In addition, the Coordinating Member State has to ensure that the taxpayer has a full understanding of the Programme both in terms of the scope as well as in terms of consequences.

The Coordinating Member State is also responsible to contact the Participating Member States to discuss all elements of the MNE group's suitability for the Programme.

It is important that, in the Admission phase, the Coordinating Member State develops an action plan to be agreed with Participating Member States to set time milestones of the risk assessment and ensure that discussions with other tax administrations are conducted effectively, and within the timeframes set out in these Guidelines.

The role of the Coordinating Member States will include:

(i) ensuring smooth cooperation across the TPAP group;

(ii) facilitating coordination and communication with the taxpayer;

(iii) stimulating communication amongst all participants;

(iv) acting as a single point of contact; and

(v) ensuring that the Participating Member States receive the same level of information.

The Coordinating Member State should keep the taxpayer informed on milestones of the process.

5.2 Surrogate Coordinating Member State

In case the UPE of an MNE group is resident in a Member State that is not involved in the ETACA Programme and/or unable to assume the role of Coordinating Member State, the UPE could contact another Member State to act as Surrogate Coordinating Member State, whereby the Surrogate Coordinating Member State would undertake the role of the Coordinating Member State.

The Surrogate Coordinating may take the role of the Coordinating Member State if it has sufficient familiarity with the MNE group and its operations and is well-positioned to coordinate the TPAP group. Key factors that may influence this decision include:

- the presence of significant business operations in the Member State;
- the materiality of covered transactions in the Member State;

[6] At the current stage, the Programme is in its second pilot phase. After the pilot phase, Member States may agree to extend the Programme to MNE groups with an UPE outside the EU. In that case, the tax administration of the Member State where the EU regional headquarter is located, would be the Coordinating Member State.

- the Member State's capacity and experience in managing similar processes; and
- the ability of the Member State to facilitate effective cooperation among tax administrations.

5.3 Participating Member States

The (Surrogate) Coordinating Member State will approach Member States where the UPE has relevant transactions in order to check the possibility of their participation in the TPAP group.

The prospective participating Member States may accept the participation in the TPAP group having considered the following list of factors:

- the footprint of the MNE group in the Member State;
- the volume and materiality of the covered transactions in the Member State;
- the participation of other Participating Member State(s) which have relevant transactions with the Member State;
- the level of resources required for the Programme in the Member State, also taking into account the participation of the Member State in other TPAP groups;
- existing APAs or other tools that already provide assurance to transactions in scope;
- ongoing audit on transactions in scope; and/or
- the quality/maturity of the Tax Control Framework.

A Member State rejecting its participation in a TPAP group should communicate its decision to the other Participating Member States to ensure trust and transparency. Annex 2 lays down the template for the "Opt in/Opt-out decision" to be fulfilled by the relevant Member State regarding its decision on the participation in the TPAP group. However, the level of disclosure of information should be carefully assessed, particularly in cases involving sensitive information.

Member States that agree to participate in the Programme's common risk assessment of the current case become, together with the Coordinating Member State, the Participating Member States.

In general, the TPAP group should consist of a minimum of five Participating Member States. However, such number of Participating Member States in the TPAP group could vary taking in consideration the number of Member States where the MNE group is present.

5.4 The Role of the MNE group

The taxpayer has an important role to play in the multilateral risk assessment process.

MNEs are given the possibility to apply to the Programme on a voluntary basis.

However, it should be clarified that being admitted to the Programme is not a right of the taxpayer. Nevertheless, where tax administrations decide not to pursue a taxpayer's application, they should endeavour to give an explanation outlining the reasons for this decision.

Participating MNEs should engage actively and transparently and be ready to share - in a timely manner - the relevant information with Participating Member States.

In particular, the participating MNE group should commit to:

- being transparent and cooperative;
- participating in open and frank discussions with the Participating Member States;
- being open with respect to areas of uncertainty and the positions it takes in these areas;
- providing the requested documentation and information in a timely manner;
- responding in an open and frank manner to additional questions posed by the Participating Member States; and
- working pro-actively towards resolving issues that may arise.

On the other hand, the MNE group should be kept informed on milestones of the process.

An agile and open interaction between tax administrations and taxpayers is a key element of the EU cooperative compliance framework. The dialogue nature of the process should help the tax administrations to form a clear understanding of the covered transactions.

The MNE may be assisted by external advisers during the Programme. However, it is of utmost importance that the MNE personnel are present in all the meetings with tax administrations, unless the meetings are only between tax administrations.

5.5 Role of the European Commission

The role of the European Commission services will be of administrative nature only within the framework of the Programme.

In particular, the European Commission services will monitor the progress of the Programme and will provide secretariat support to its Steering Group (see Section 5.6 below).

Under no circumstances will the European Commission analyse the merit of the covered transactions whose risk assessment is the exclusive competence of the Participating Member States.

5.6 Steering Group

All the tax administrations participating in the Programme are automatically members of the Steering Group facilitated by the European Commission.

After the First Pilot, it was agreed that the Steering Group will operate under the umbrella of TADEUS. It was further agreed among the Member States that a group of four Member States[7] would become the co-leaders of the Steering Group to take the lead and where appropriate would organise meetings.

[7] The following Member States have taken on the role of co-leaders: Finland, Italy, The Netherlands and Slovakia.

At the end of the Second Pilot project, the Steering Group will evaluate the outcome and will discuss feedback from participating tax administrations and MNE groups, procedural issues that may have arisen during the risk assessment and will update the present Guidelines if required.

When the Programme becomes permanent, the Steering Group will meet twice a year to oversee the Programme and ensure that there is as much consistency as possible across Participating Member States.

6. PROCEDURAL ASPECTS

Three main phases of the Programme are identified and described below: the Admission phase (Section 6.1), the Risk assessment phase (Section 6.2) and the Outcome phase (Section 6.3).

The entire Programme is based on transparency and trust between the Participating Member States and the participating MNE group. Consequently, these principles must govern the three stages of the Programme.

6.1. Admission phase

The Admission phase has the purpose of identifying the eligible MNE groups, the Participating Member States, the covered transactions as well as the covered period/s (see Section 3 on Conditions to enter the Programme).

MNE groups interested in participating in the Programme can approach the Member State of residence of the UPE[8] to explore whether their participation could be considered.

Member States can also take the initiative and approach resident UPEs considered as eligible for the Programme and engage in discussions.

It is useful to have a preliminary meeting (or meetings) before a formal request is made. Such a meeting provides the taxpayer with an opportunity to discuss with the tax administration the suitability of its participation in the Programme, the type and extent of information that are required, and the formalities of the process.

It may also be useful that the Coordinating Member State gets in touch with prospective participating Member States to have a preliminary and informal exchange of views on the suitability of the MNEs for the Programme and the interest of the relevant Member States to participate in the risk assessment. This could avoid unnecessary work especially if it is unlikely that one of the prospective participating Member States will join the Programme.

6.1.1 Application and submission of the Preliminary Information Note

If the taxpayer wishes to pursue the request to participate in the Programme, it is required to make a formal application to the Coordinating Member State, prove that it is eligible for

[8] The email addresses of the tax administrations of the Participating Member States are published on the European Commission's website dedicated to the Programme: European Trust and Cooperation Approach – ETACA Pilot Project for MNEs - European Commission (europa.eu)

the Programme (see Annex 1), and submit the Preliminary Information Note in order to provide tax administrations with an overview of the group (see Annex 3).

If the Coordinating Member State decides that the MNE is suitable for the Programme, it gets formally in touch with the relevant Member States and share with them the Preliminary Information Note submitted by the MNE.

Tax administrations should express a preliminary opinion on whether they are interested in participating in the common risk assessment of the case at stake, by filing and returning the Opt-in/Opt-out Decision Form (see Annex 2) to the Coordinating Member State within four weeks of receipt.

6.1.2 The submission of the Main Documentation Package

The taxpayer must submit the Main Documentation Package, which will be shared with the tax administrations that have opted in to the TPAP group.

The Coordinating Member State should organize a “kick-off” meeting with the aim to finalise the selection of Participating Member States, the covered transactions, and periods.

In exceptional cases, tax administrations may withdraw from the Programme after examining the Main Documentation Package. The withdrawing tax administrations should explain the reasons of their choice.

Although taxpayers are required to disclose all intragroup transactions, it is for the Participating Member States to decide which transactions should be considered for the Programme taking in consideration what is determined under Material scope of the Programme under Section 2.2.

The Admission phase starts when the MNE group submits both the formal application together with the Preliminary Information Note and ends with the decision of the Participating Member States on the covered transactions and periods.

The timeframe of the Admission phase is between four to eight weeks from the submission of the formal application, unless tax administrations agree that an extension is needed, taking into consideration the facts and circumstances of each case.

6.2. Risk assessment phase

The heart of the Programme is a common risk assessment based on high-level information, performed in a short and predefined timeframe.

It is a common risk assessment, as the Participating Member States will follow, to the extent possible, a common approach in assessing the tax risks arising from the covered transactions.

It is understood that the greater the differences in the substantive approaches used by the different tax administrations, the greater the difficulties for the Programme to operate as a multilateral instrument for administrative cooperation.

Although each tax administration has its own methodology and is responsible for performing its own risk assessment, it is nonetheless key to follow certain pre-agreed steps within the Programme to ensure that the analysis is performed in a coordinated manner.

While it is recognized that the risk assessment is only a high-level transfer pricing analysis (and not an in-depth risk assessment characterising an audit or APA process), it is understood that following common steps are crucial to ensure consistency on the level of the analysis across Participating Member States.

Finally, the risk assessment is meant to be performed in a short and pre-defined period and therefore it is once again pivotal to establish common steps.

To be successful, the process should be administered in a non-adversarial, efficient and practical fashion and requires the co-operation of all participating parties.

It is key that the Coordinating Member State establishes clear channels for communication exploiting to the full extent modern communication such as video conferences and others.

It is also key to involve the MNE group along the entire process of risk assessment as its participation can help resolving factual background. The MNE may be invited to give presentations on the MNE group's structure as well as business and other relevant information.

Consequently, the risk assessment should follow a three-steps approach.

6.2.1 Review of the compliance

The first step begins at the end of the admission phase. Based upon the Preliminary Information Note filed by the taxpayer, the Participating Member States discuss their first impressions on certain high-level criteria. This will establish a common starting point to the risk assessment. The high-level criteria in this stage will mainly focus on the MNE's "compliance behaviour" as perceived by the Participating Member States (recent behaviour of the MNE, compliance activities by the Member States), its overall footprint in the Participating Member States, the perceived maturity of the MNE's internal tax control framework and the "materiality" of the covered transactions. The assessment and weighting of the criteria is the responsibility of the individual Participating Member State.

6.2.2 Review of the functional analysis

The functional analysis should be reviewed in order to understand and clarify, based on the facts and circumstances reported by the taxpayer, the functional profiles of the companies involved in the covered transactions taking in consideration the actual delineation of the transactions.

For example, if the MNE claims it performs distribution activity through low-risk distributors, the Participating Member States should first evaluate whether the functions, assets and risks of the distribution entities, as described in the Main Documentation Package, are in line with a functional profile of a low-risk distributor.

The Coordinating Member State may organise a checkpoint (video) meeting to hear what the opinion of Participating Member States is and facilitate a common understanding on the functional analysis of the covered transactions.

6.2.3 Review of the coherence of the transfer pricing methodology

The last stage of the risk assessment is to review whether the transfer pricing methodology of the covered transactions is coherent with the identified functional profile.

In order to assess the coherence, Participating Member States may review the transfer pricing methods, and the benchmark analysis used to price the covered transactions. In addition, the coherence of the actual remuneration of the covered transactions may be reviewed against the functional profile of the company. Furthermore, in this case, the Coordinating Member State may organise a checkpoint (video) meeting to hear the opinion of the Participating Member States and facilitate a common understanding on the coherence between functional profile and transfer pricing methodology.

In addition, due consideration should be given to the way the taxpayer implements and monitors the transfer pricing methodology. The aim of this review is to assess the measures adopted by the MNE group to ensure that the transfer pricing methodology is accurately implemented and that information feeding into tax returns and other relevant reports (for instance CbCR) is correct.

6.2.4 The aim of the common risk assessment

The aim of the Programme is to provide practical tax certainty for participating MNEs that voluntarily offer a documentation package to the Participating Member States. The core of the Programme is a common risk assessment based on high-level information.

A "**low-risk**" qualification within this Programme applies to transactions with respect to which tax administrations are sufficiently confident, after a common risk assessment based primarily on the high-level analysis of the documentation provided during the Programme that:

- it is clearly and appropriately defined in the documents provided by the MNE;
- its pricing is based on a solid application of the prevailing transfer pricing methodologies and practices;
- it appears that the transfer pricing methodologies and practices are implemented and adequately controlled.

This classification does not serve as a certification of the transaction's correctness, as such certification would not align with the high-level nature of the risk assessment. A low-risk transaction qualification indicates that Participating Member States are unlikely to allocate additional resources to more intensive local tax audits of such transaction.

During the risk assessment phase, however, it may become clear that a low-risk classification is not possible for one or more transactions. In such cases, tax administrations might classify these transactions as "**non-low risk**".

The concept of "non-low risk" refers to a transaction that, following a common risk assessment, appears to be not clearly and appropriately defined in the documents provided by the MNE and/or contains issues related to its pricing, implementation, or the control of the applied methodologies. A non-low risk classification is particularly expected for transactions involving issues that cannot be resolved within the relatively short timeframe of the ETACA risk assessment phase and that require a more in-depth analysis than what is available in the ETACA Programme. As a matter of fact, during this phase it has become clear that the Participating Member States need more information and more time to resolve the issues.

The classification of a transaction as “low risk” or “non-low risk” will be communicated and clarified, to the extent possible within national law and administrative practice, by the Participating Member States in the outcome letter issued to the MNE (see Annex 6).

For transactions classified as “non-low risk”, the Participating Member States may seek, within the constraints of their domestic legal frameworks, to reach a common understanding of the measures necessary to attain a “low-risk” classification by initiating an issue resolution phase (further details are provided in subsection 6.2.5).

6.2.5 Issue Resolution

When Participating Member States cannot reach a common understanding on the risk classification of a transaction (e.g., “low risk” vs “non-low risk”), they may, insofar as their domestic legal frameworks allow, initiate an issue resolution phase to further analyze the transaction in dialogue with the MNE[9]. In striving to reach a common understanding of the risk classification, Participating Member States should aim to minimize the administrative burden while addressing any potential fiscal impact of the mispricing. To achieve this, they may propose measures that ensure the correct application of the arm’s length principle and effectively resolve mispricing for the Covered period(s)[10].

If, despite the efforts, a common understanding cannot be reached, Participating Member States will actively explore alternative processes, in coordination with the MNE, to establish the facts of the transactions. These processes may include bilateral or multilateral APAs or joint audits.

An issue resolution phase may also be initiated when potential mispricing is detected, which could be easily rectified by the MNE during the risk assessment phase. For example, if Participating Member States agree on a “non-low risk” classification but identify one or more relatively straightforward measures that could warrant a “low risk” classification if implemented by the MNE.

When Participating Member States classify covered transactions as “non-low risk”, they will explain their conclusions, which may also include guidance for the MNE on the measures required to ensure the correct application of the arm’s length principle. The MNE may then have the option to adjust its transfer pricing policy for the Covered period(s) or future years.

The MNE’s willingness to cooperate and comply with the process should be emphasized when considering appropriate measures. This approach aligns with the broader goal of reducing double taxation, minimizing administrative burdens, and enhancing tax certainty within the EU Single Market.

In order not to prolong the overall timeline of the Programme, Participating Member States should strive to reach a conclusion within a short timeframe, ideally within six weeks.

[9] The following Member States can enter into this phase:
Bulgaria, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Poland, Portugal, Slovakia, Slovenia, The Netherlands.
The following Member States cannot enter into this phase:
Austria, Belgium, Spain.

[10] The Covered period is defined under Chapter 7 as the last fiscal year of the MNE group for which documentation is already available or will be available during the Admission phase of the Programme.

In any case, it should be noted that the value and limitations of the opinions expressed by tax administrations for the purpose of this Programme remain as described in Chapter 7.

6.2.6 Closing of the common risk assessment

At the end of the risk assessment phase, the Participating Member States should meet to discuss their preliminary conclusions regarding the risk classification of the in-scope transactions and discuss any outstanding points.

Such preliminary conclusions should then be presented for discussion and feedback to the MNE group in a separate meeting.

The meeting with the taxpayer should be followed by a final meeting between Participating Member States for the final decision regarding the risk classification of the in-scope transactions.

Participating Member States should endeavour to reach a common understanding on the level of the risk of each covered transaction. A common view on the risk level of the covered transactions would enhance tax certainty and reduce the risk of double taxation within the EU.

When a common agreement on the level of risk is not possible, each Participating Member State will report in the final summary report its own risk rate.

In case of disagreement between Participating Member States, it would be useful to explain the reasons for the differences. Agree-to-disagree situations with a clear reference to the reasons could still help to narrow down potential future litigations and streamline MAP procedures.

The target timeframe to complete the Risk assessment phase is 22 weeks with a possible extension when necessary. The final duration of the risk assessment will depend on several factors, including the complexity of the transactions; the completeness of documentation package provided by the taxpayer (as listed in Annex 4); potential additional requirements or clarifications that may arise during the risk assessment phase; the initiation of an issue resolution stage.

6.3. Outcome phase

The result of the common risk assessment should be incorporated into a final summary report agreed upon by all the Participating Member States (a draft template is provided in Annex 5).

To the extent possible, tax administrations should endeavour to agree on a common risk classification of each covered transactions. In case a common agreement on the level of risk is not possible, each tax administration will report in the final summary report its own risk classification (see Annex 5). In this case, it would also be useful to explain the reasons for the differences.

The final summary report should be drafted in English unless the Participating Member States agree to use another common language.

The Coordinating Member State should notify the UPE with an outcome letter that reflects the determinations expressed by Participating Member States in the final summary report (a template of the outcome letter, which should be used in this Programme, is contained in Annex 6).

The final summary report should be attached to the outcome letter.

Each covered tax administration may also issue an outcome letter to the MNE group entity resident in, or operating in, its jurisdiction according to national law or administrative practice.

The content of the outcome letter should address the following:

a. the reference to the European Cooperative Compliance Programme and the list of the Participating Member States to the common risk assessment;

b. the list of the group entities subject to the common risk assessment;

c. the list of the covered transactions;

d. the assignment of the risk rating to each covered transaction: the transactions are to be classified in “low-risk” or “non-low risk”;

e. description of the outcome of the issue resolution on selected transactions;

f. list of more complex transactions excluded from the Programme (including, where applicable, an indication of follow-up processes that may already be envisaged concerning these transactions);

g. caveats or limitations agreed, if any;

h. the obligation for the taxpayer to swiftly notify the relevant covered tax administrations of any material changes that impact the covered risks;

i. a clear statement that, in relation to the covered transactions (*sub* bullet c) rated as “low risk”, it is not anticipated that compliance resources will be dedicated by the relevant tax administrations to a further review of these risks;

j. covered periods and the agreed roll forward, depending on the possibilities of the Participating Member States to apply the latter.

The target timeframe to notify the outcome letters is between 4-8 weeks from the final meeting that concludes the risk assessment.

7. VALUE OF THE OUTCOME, COVERED PERIODS AND ROLL-FORWARD PERIODS

The Programme is a common risk assessment tool based on high-level information that provides an MNE group only with practical tax certainty that a tax administration participating in a TPAP group does not anticipate dedicating compliance resources to a further review of the covered risks for a defined period as long as the facts and circumstances remain unchanged.

The high-level nature of the risk assessment performed under the Programme cannot and does not provide an MNE group with the type of legal certainty that may be obtained through other bilateral or multilateral tools, such as a bilateral or multilateral APA, joint tax audit or MAP/arbitration.

Nevertheless, the low-risk classification of the transactions should be taken in due consideration in case of future audits. Unilateral tax adjustments triggered by different interpretations of the same facts and circumstances analysed during the common risk assessment should be carefully considered.

Participating Member States should guarantee adequate internal coordination with local auditors in order to achieve this result.

The Covered period is defined as the last fiscal year of the MNE group for which documentation is already available or will be available during the Admission phase of the Programme.

The Participating Member States may decide on how many past-looking periods are necessary to perform a meaningful high-level risk assessment.

The taxpayer should inform the Participating Member States of any relevant changes occurred after the end of the analysis.

Tax administrations should not anticipate the intention to dedicate additional compliance resources to a further review of covered risks as long as the facts and circumstances remain unchanged.

A minimum period of practical tax certainty should be guaranteed for at least the Covered Period/s, and the following two tax filing periods, the so-called Roll-forward Period, provided there are no material changes in the facts and circumstances that have been assessed.

Participating Member States that can provide for a Roll-forward Period may shorten it if this is inconsistent with, or not addressed by, national procedural rules or administrative practices.

ANNEX 1 – CONTENT OF THE APPLICATION FORM

A final template of the application form to be used for the Programme will be designed after the pilot phase.

The application form should contain all the data necessary to identify the participating taxpayer.

In addition, as the Programme is based on trust, transparency and cooperation between the tax administrations and the taxpayer, in the application form the taxpayer should declare that it meets the eligibility criteria and its commitment to adopt an open and transparent attitude towards the tax administrations throughout the Programme.

In particular, taking into consideration the conditions to enter the Programme under Chapter 3 of the present Guidelines, in the application form the taxpayer should specify:

i. the footprint of the MNE and the volume and materiality of the MNE's covered transaction within the EU;
ii. whether it has incurred a serious penalty as a consequence of tax fraud, repeated wilful default and repeated gross negligence;
iii. its commitment to engage co-operatively and transparently throughout the Programme;
iv. whether it has in place an internal tax control framework, i.e. a set of processes and internal control procedures ensuring that a company's tax risks are known and controlled.

In order to avoid burdening the taxpayer with providing copies of documents and proofs of tax compliance, the taxpayer should not be required to produce documents with the application form but should have the necessary documentation readily available for the tax administrations if requested.

ANNEX 2 – TPAP GROUP: OPT-IN/OPT-OUT DECISION FORM

The purpose of the "Opt-in/Opt-out Decision Form" is to make the process of opting in or opting out of a Transfer Pricing Assurance project group (TPAP group – see definition under Chapter 5) faster and simpler for the relevant Member States. This form is intended to streamline the decision-making process and should in no case replace a physical or an online meeting where all relevant Member States meet to discuss in plenum their decision to opt-in and/or opt-out.

OPT-IN/OPT-OUT DECISION FORM

TPAP group: [*Name of the TPAP group*]

(Surrogate) (Coordinating) Member State: [*Name of the Member State*]

For the first stage, please indicate with a cross whether you want to opt-in or opt-out.

OPT-IN	
OPT-OUT	

Where you have selected "opt-out", that is/are the reason(s) as to why your tax administration has decided to opt-out and provide a justification and supporting information, which will be discussed during the plenary meeting.

ANNEX 3 – PRELIMINARY INFORMATION NOTE

Name of the MNE group: [*Insert*]

Name and TIN of UPE: [*Insert*]

Names and TIN of the entities in each Member State: [*Insert*]

	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK
Member States with transactions																											
MNE's suggested list of Member States																											
Tax residence of UPE																											
Coordinating Member State																											
Surrogate Coordinating Member State																											
Pending APA																											
Pending MAP																											
Finished APA																											
Finished MAP																											
Relevant cross-border Rulings (e.g. patent box rulings)																											
Re-structuring in the last 3 years																											
Amount (in EUR) of each of the proposed covered transactions																											

ANNEX 4 – MAIN DOCUMENTATION PACKAGE

Document	Tick off available document	Year(s) of document(s)
Note with general information on the MNE group		
Country-by-Country report for the covered period(s)		
Master File, if available		
Local File, if available		
Existing/relevant APAs and MAPs		
Existing/relevant contracts		
Note with information on existing Joint audits or multilateral controls		
Audited financial statements		
Note with details of the MNE group's tax strategy		
Note with Value Chain Analysis for the MNE group comprising an explanation of the external and internal profit drivers for the MNE group, which the MNE group considers important for showing how profits are aligned to its economic activities		
Note with information about re-structuring, arrangements, and transactions in the last 3 years		
Note with a list of all intragroup transactions		
Note with a list of intragroup transactions the MNE group wishes to bring forward to the Programme		
Justification by the MNE group why a Member State/some Member States with relevant transactions should be excluded from the Participating Member States		
Benchmark analysis of each covered transaction		
Worksheet showing the actual application of the TP methods and the actual profit calculation of each covered transaction		
Note with a taxpayer's self-assessment of the internal tax control measures to ensure that transfer pricing transactions are correctly implemented		

ANNEX 5 – FINAL SUMMARY REPORT BY TPAP GROUP/[*MEMBER STATE*] TAX ADMINISTRATION

MNE group name: [*Insert*]

Address: [*Insert*]

Attn.: [*Insert*]

Date xx/xx/xxxx

In the context of the European Cooperative Compliance Programme, we have conducted a risk assessment based on high-level information of the transfer pricing policy adopted by [*MNE group name*] in relation to the covered transactions.

Below, we provide a list of the group entities subject to the common risk assessment based on high-level information, the Participating Member States, covered transactions and Covered period(s), and the risk classification for each covered transaction.

a) Group entities subject to the common risk assessment

The following group entities were subject to the common risk assessment:

[*Insert*]

b) Participating Member States

The following Member States participated in the common risk assessment:

[*Insert*]

c) Covered transactions and Covered period(s)

The taxpayer provided documentation for analysis in relation to the following covered transactions and periods:

[*Insert*]

d) Risk classification

Based on the documentation and information provided by the taxpayer, the outcome of the risk assessment based on high-level information conducted by the [*Member State*] tax administration for the covered transactions is as follows:

[*Insert*]

e) Limitations and caveats (if any)

This summary report does not constitute an audit, an Advance Pricing Agreement or an advance tax ruling of any kind.

This summary report does not limit our administration to conduct examinations in the future.

This summary report should be considered merely informative, and it does not constitute an administrative act that may be subject to appeal.

This summary report shall have no impact on any issue or tax year except as expressly provided herein.

f) Other remarks

[Insert]

Your sincerely,

[*Insert Member State*] Tax administration

ANNEX 6 – TEMPLATE OF THE COMMON OUTCOME LETTER BY THE (SURROGATE) CO-ORDINATING MEMBER STATE

MNE group name: [*Insert*]

Address: [*Insert*]

Attn.: [*Insert*]

Date xx/xx/xxxx

EUROPEAN COOPERATIVE COMPLIANCE PROGRAMME COMMON OUTCOME LETTER

In the context of the European Cooperative Compliance Programme, we have conducted a common risk assessment based on high-level information of the transfer pricing policy adopted by [*MNE group name*] in relation to the covered transactions.

A summary report of the common risk assessment with the list of the group entities subject to it, the list of the Participating Member States and the risk classification for each covered transaction is attached to this letter.

Following the completion of the European Cooperative Compliance Programme, we hereby provide you with the outcomes of the [Member State tax administrations]' risk assessment.

a) Covered transactions

We have analyzed the documentation provided by the taxpayer in relation to the following transactions:

1) Distribution activities [*short description of the transaction*]
2) Contract manufacturing activities [*short description of the transaction*]
3) Intra-group services [*short description of the transaction*]
4) [….]

b) Risk classification

Based on the documentation and the information provided by the taxpayer, the outcome of our risk assessment of the covered transactions are the following:

1) Distribution activity is [low risk/non-low risk]
2) Contract manufacturing activity is [low risk/non-low risk]
3) Intra-group services are [low risk/non-low risk]

In relation of the covered transactions considered low risk, the [*name of the tax administration*] does not anticipate any further review of risks of the covered transactions during the covered periods.

In relation to the covered transactions classified as non-low risk, the [name of the tax administration] clarifies, to the extent possible, the reasoning behind this non-low risk classification and elaborates, where possible, on the potential impact of the non-low risk classification on the covered transactions during the covered periods. The level of transparency and disclosure may depend on national law or administrative practice.

The taxpayer shall inform the Participating Member States of any relevant change occurred after the end of the analysis.

c) Covered periods

The outcomes of the risk assessment remain valid for the Covered period(s) plus the following two tax fiscal years subject to the following conditions:

- the MNE group has provided full and true disclosure of all matters for the Covered periods and for the covered transactions;
- there is no material change to the facts and circumstances of the covered transactions;
- there is no material change to national tax legislation after the date of this letter.

d) Limitations and caveats (if any)

The opinion in this letter does not constitute an audit, an Advance Pricing Agreement or an advance tax ruling of any kind.

This letter does not limit our administration to conduct examinations in the future.

This letter should be considered merely informative, and it does not constitute an administrative act that may be subject to appeal.

This letter shall have no impact on any issue or tax year except as expressly provided herein.

We appreciate your continued cooperation and active engagement for any expected or actual material changes that may affect our risk assessment.

e) Other remarks

[Insert]

The taxpayer should promptly notify the participating tax administrations of any material changes that may affect the covered risks.

Your sincerely,

[*Insert Member State*] Tax administration

ABBREVIATIONS AND ACRONYMS

APA	Advance Pricing Agreement
CbCR	Country-by-Country reporting
DAC	Directive on administrative cooperation
DAC4	Directive on administrative cooperation on automatic exchange of country–by-country reports
EU	European Union
ICAP	International Compliance Assurance Programme
IP	Intellectual property
MAP	Mutual Agreement Procedure
MNE	Large multinational enterprises
OECD	Organisation for Economic Co-operation and Development
The Programme	the Programme for large multinational enterprises
TIN	Tax Identification Number
TPAP group	Transfer Pricing Assurance project group
UPE	Ultimate Parent Entity