

FORUM ON TAX ADMINISTRATION

International Compliance Assurance Programme (ICAP)

Aggregated results and statistics

Release date: 29 January 2024

Background

- The International Compliance Assurance Programme (ICAP) is a voluntary programme for a multilateral coordinated risk assessment of an MNE's key international tax risks.
- The first ICAP pilot was launched in Washington D.C. in January 2018 and included eight tax administrations. A second pilot with 19 tax administrations began in March 2019.
- ICAP became a full programme of the OECD Forum on Tax Administration (FTA) commencing in September 2021.
- As of October 2023, 20 ICAP cases have been completed, including those within the two pilots, with others ongoing. The statistics in this presentation reflect the outcomes of these 20 cases.



Key takeaways

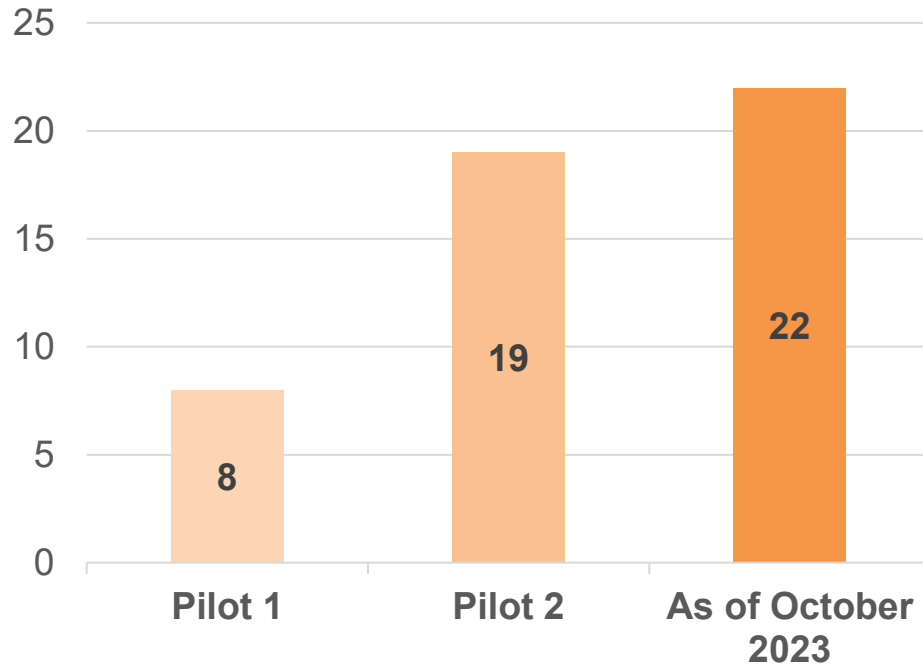
- 20 ICAP cases were completed by October 2023, with more currently in progress.
- The average time taken from the start of an ICAP process to the issuing of risk assessment outcomes to an MNE group was 61 weeks, which is higher than the maximum target timeframe of 52 weeks described in the ICAP handbook, in part due to the impact of Covid-19 on the second pilot.
- For 40% of MNE groups, all the main covered risk areas were considered low-risk by all tax administrations that included them in the scope of the risk assessment.
- In total, 80% of MNE groups received either only low-risk outcomes in all of the main covered risk areas or a mix of low-risk and not low-risk outcomes in just one or two of these risk areas
- In approximately one third of cases, at least one issue identified during a risk assessment was addressed within the ICAP process, avoiding audit and MAP
- The risk area that received the highest proportion of low-risk outcomes was permanent establishments (considered low-risk in 95% of instances where the topic was included in the scope of a tax administration's risk assessment), followed by tangible property (90%), intragroup services (88%), financing (76%) and intangible property (75%).





TAX ADMINISTRATIONS PARTICIPATING IN AN ICAP RISK ASSESSMENT

Tax administrations participating in ICAP



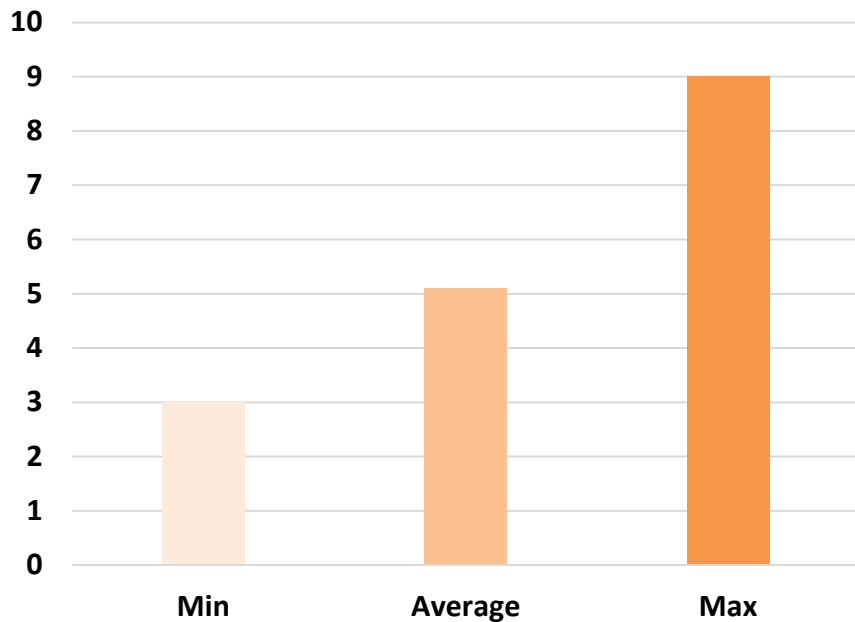
- ICAP commenced in 2018 with Pilot 1, where eight tax administrations participated in risk assessments.
- In Pilot 2, which commenced in 2019, a further 11 tax administrations joined ICAP, bringing the total number of participating tax administrations to 19.
- As of October 2023, 22 tax administrations participated in ICAP, with others in discussion to join the programme.



Tax administrations participating in ICAP

	Argentina		Australia		Austria		Belgium
	Canada		Chile		Colombia		Denmark
	Finland		France		Germany		Ireland
	Italy		Japan		Luxembourg		Netherlands
	Norway		Poland		Portugal (joined in January 2024)		Singapore
	Spain		United Kingdom		United States		

Number of tax administrations in an ICAP risk assessment



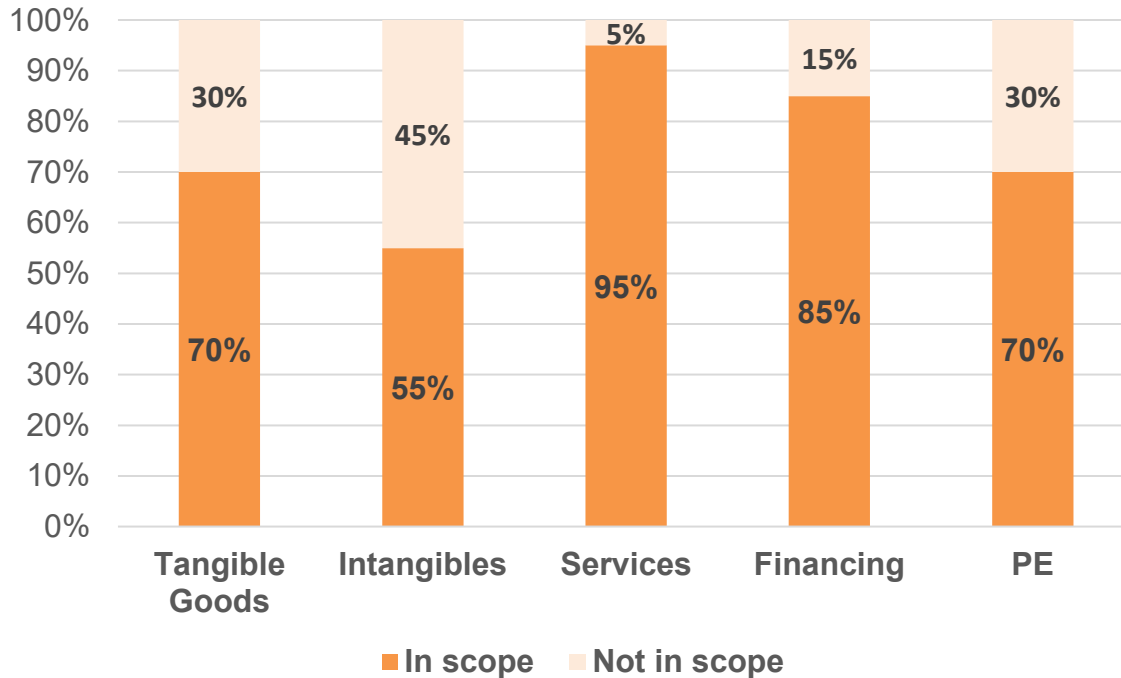
- The largest ICAP risk assessments to date involved nine tax administrations, while the smallest risk assessment involved three tax administrations.
- The average number of tax administrations involved in a risk assessment is five.
- This average has remained consistent since the first pilot.





CORE RISK AREAS COVERED BY AN ICAP RISK ASSESSMENT

Core risk areas covered by an ICAP risk assessment



- To date, ICAP has focused on five core areas of international tax risk, though not all of these areas are covered in each risk assessment.
- This chart illustrates the percentage of ICAP risk assessments that covered each of these five core risk areas.
- In addition, some tax administrations reviewed an MNE's tax control framework for monitoring that its transfer pricing policy in these risk areas is being applied correctly.
- Other risk areas were covered in a small number of cases. As these were different in each case they are not considered further in this presentation.



Observations

- Transactions in a particular risk area may be outside the scope of a risk assessment for several reasons, at the suggestion of an MNE or at the suggestion of tax administrations. Such reasons may include the following.
 - Transactions may already be covered by an APA, which means a further risk assessment is typically unnecessary.
 - An MNE may be undergoing a restructuring of some of its operations during the covered period which means it would be inappropriate to include certain transactions within the scope of a risk assessment.
 - Transactions may be considered sufficiently complex that they could not be reviewed within the target timeframes, and so scoping them out ensures a more effective and efficient risk assessment process.
 - Transactions in a particular jurisdiction may not be considered material by its tax administration.
 - An MNE may not have entered into an intercompany transaction in one or more core risk areas in the jurisdictions of tax administrations participating in its ICAP risk assessment.
- Where a risk area is in scope of an MNE's ICAP risk assessment, it still may not be covered by all tax administrations, for example where any of the factors above apply only in certain jurisdictions.
- The decision whether to include a particular risk area in an ICAP risk assessment is made on a case-by-case basis.





ICAP RISK ASSESSMENT OUTCOMES

ICAP risk assessment outcomes

The following slides consider the extent to which an MNE's transactions in each core risk area were considered to be low-risk or not low-risk following a risk assessment.

Transactions are considered to be low-risk where a tax administration does not anticipate that any further enquiries will be required for the periods covered by the risk assessment.

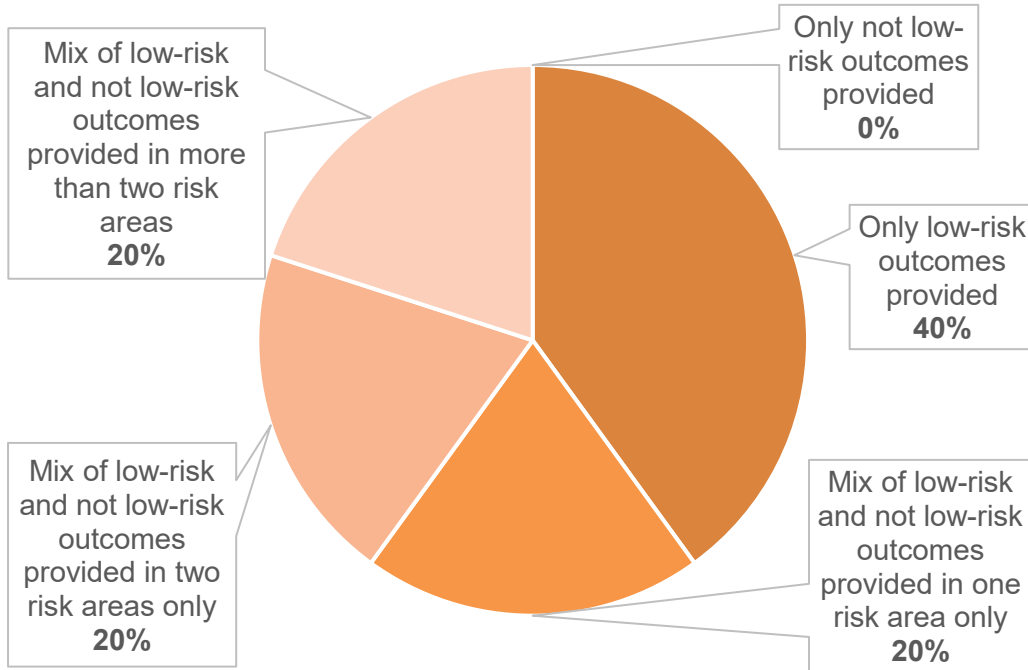
A low-risk outcome may be rolled forward to cover later periods, subject to conditions specified by a tax administration.

Where, within the timeframe provided, a tax administration is unable to reach the level of comfort required, it may not be possible for a low-risk outcome to be given over one or more transactions within one or more risk areas. Such transactions are therefore considered to be not low-risk.

This does not mean that further enquiries will be necessary.

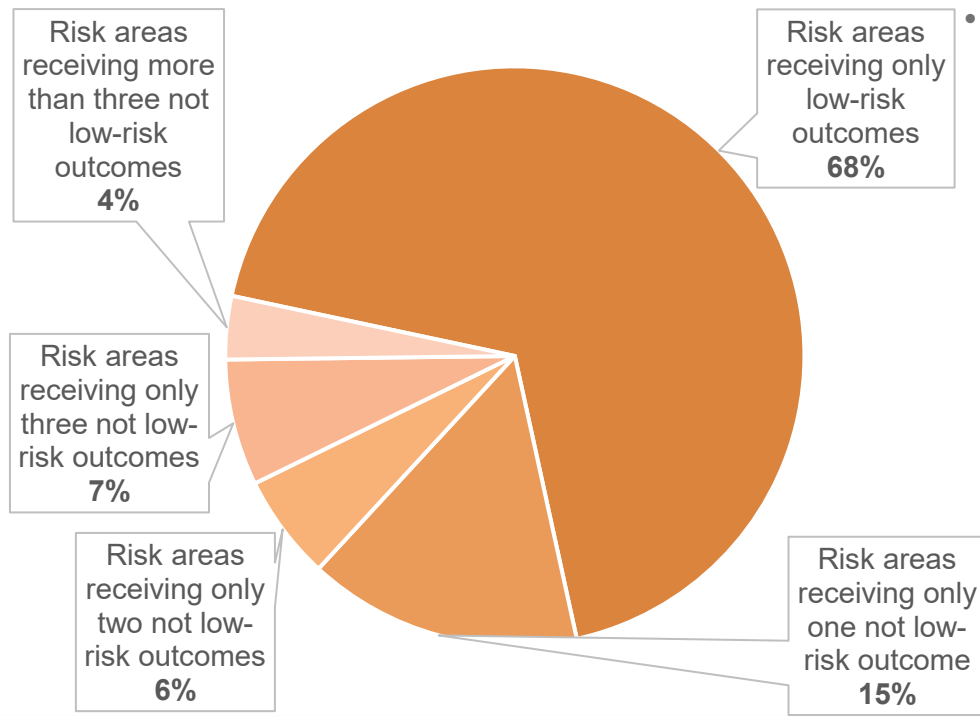


ICAP risk assessment outcomes by MNE



- Of the MNEs that received the outcomes of their ICAP risk assessment by October 2023:
 - 40% received only low-risk outcomes on transactions in all core risk areas covered by their risk assessment;
 - a further 20% received only low-risk outcomes on transactions in all core risk areas covered by their risk assessment except one; and
 - in total, 80% received either only low-risk outcomes in all core risk areas covered by their risk assessment or a mix of low-risk and not low-risk outcomes in just one or two of these risk areas.

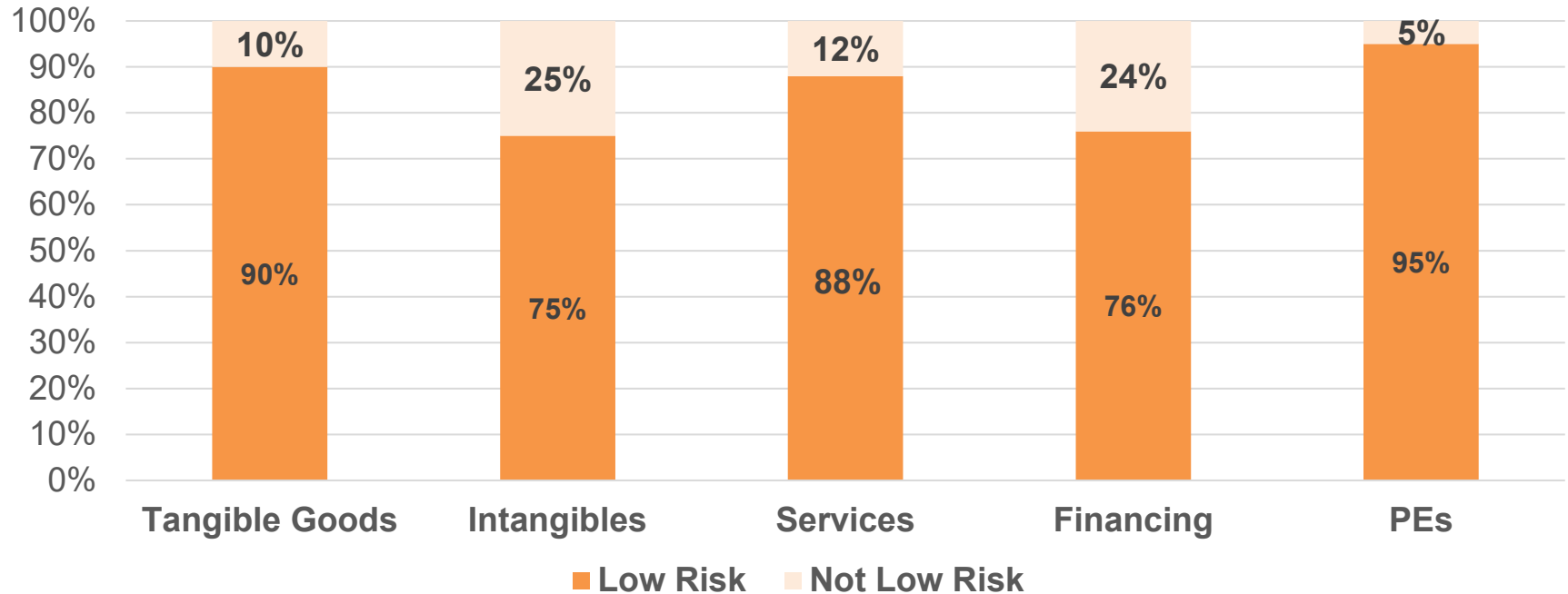
Risk assessment outcomes for instances where a core risk area is in scope



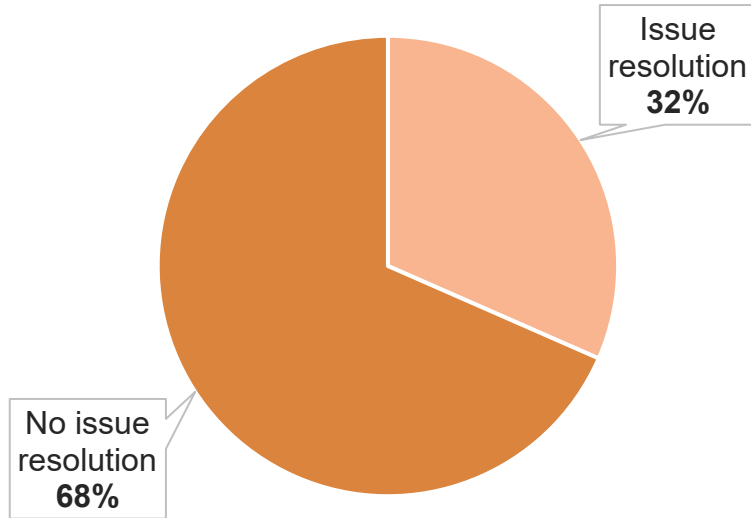
Looking separately at each core risk area that was risk assessed:

- in 68% of risk assessments of a particular core risk area, all tax administrations concluded that the area was low-risk (i.e. only low-risk outcomes were provided to the relevant MNE in respect of that area);
- in 15% of risk assessments of a particular core risk area, only one tax administration concluded that the area was not low-risk; and
- in almost 90% of risk assessments of a particular core risk area, either zero or only one or two tax administrations concluded that the area was not low-risk.

Summary of ICAP risk assessment outcomes by core risk area



Cases including issue resolution within ICAP



- In 32% of cases issue resolution was applied to one or more issues identified in the risk assessment
- Issue resolution refers to steps taken to resolve an issue within the ICAP process, avoiding the need for separate enquiries.
 - For example, agreeing a transfer pricing adjustment and corresponding adjustment in ICAP, avoiding time spent in audit and MAP.
- The use of issue resolution enabled tax administrations to reach low-risk outcomes in a greater number of core risk areas.
- In addition, in some cases, tax administrations and an MNE decided to undertake issue resolution outside of ICAP, and address one or more covered risks through an APA
- **Where applicable, issue resolution presents a significant benefit from ICAP compared to other tax certainty tools**

Whether issue resolution is available in a particular ICAP case depends upon several factors including the nature of the issue and the legal framework in the jurisdictions of the relevant tax administrations



Observations

- 40% of MNEs received only low-risk outcomes in all core risk areas covered by their risk assessment
- Of the remaining MNEs, the majority received a mix of low-risk and not low-risk outcomes in just one or two of the core risk areas covered by their risk assessment, and only low-risk outcomes in all of the others
- 32% of MNEs benefited from issue resolution within ICAP, resolving a transfer pricing issue and avoiding the need for audit and MAP

- Where a mix of low-risk and not low-risk outcomes were provided, in approximately half of these cases only one tax administration provided a not low-risk outcome
- In around two thirds of cases where there was a mix of outcomes, only one or two tax administrations provided a not low-risk outcome
- This means that in almost 90% of risk assessments, either zero or only one or two tax administrations concluded a risk area was not low-risk

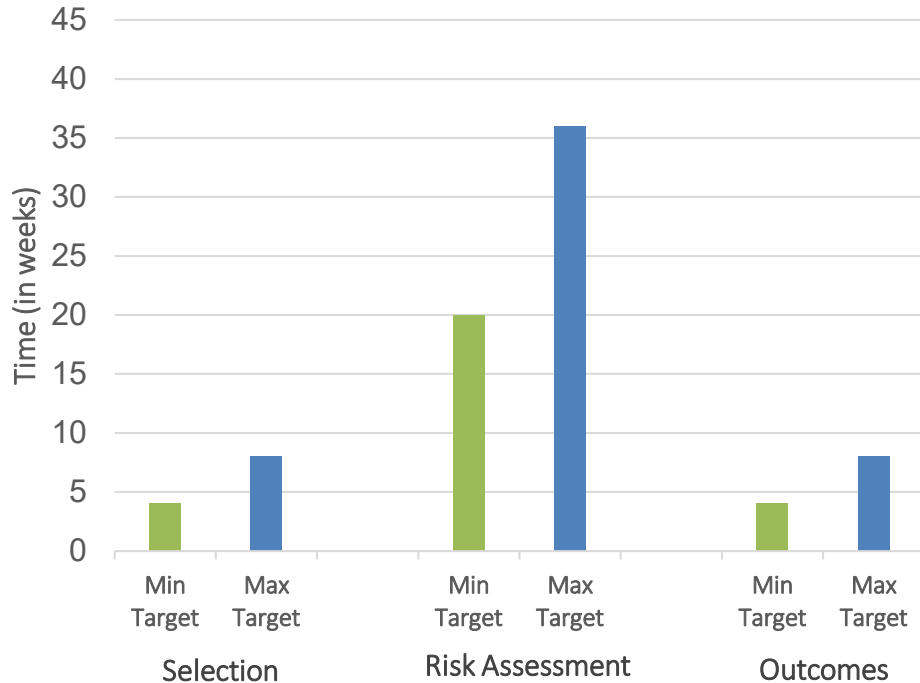
- Of the core risk areas, PEs were considered low-risk by the highest proportion of tax administrations that included the risk area in its risk assessment, followed by tangible assets and services
- Financing and intangible assets had the highest proportion of not low-risk outcomes, but even in these areas three quarters of tax administrations provided low-risk outcomes





TIMEFRAMES FOR AN ICAP RISK ASSESSMENT

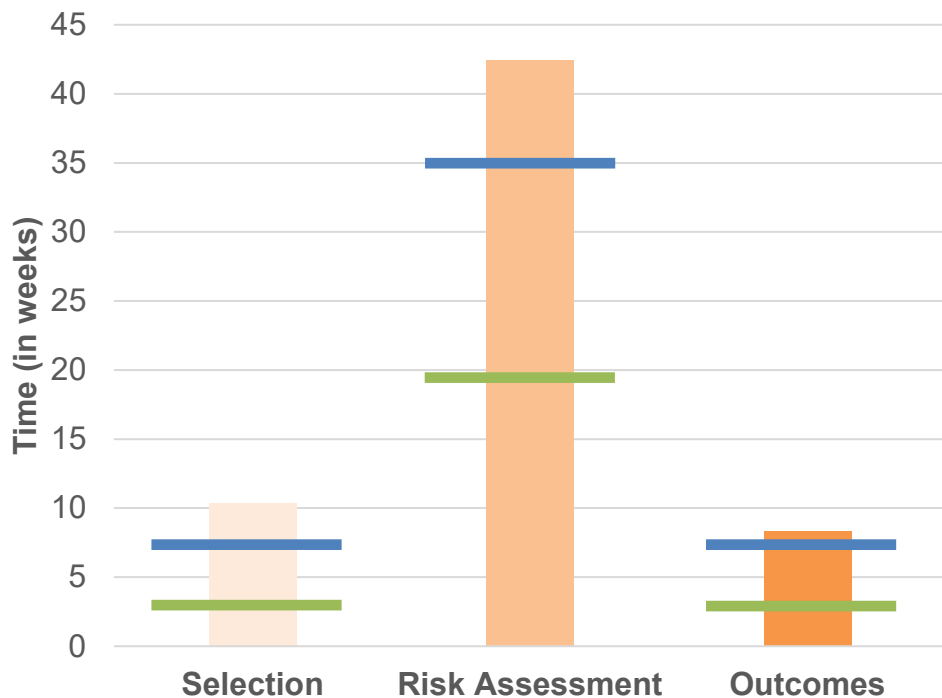
Target timeframes in ICAP



- ICAP involves three stages: selection, risk assessment, and outcomes.
- The target timeframe for the selection stage is 4-8 weeks.
- The target timeframe for the risk assessment stage is 20-36 weeks.
- The target timeframe for the outcomes stage is 4-8 weeks.



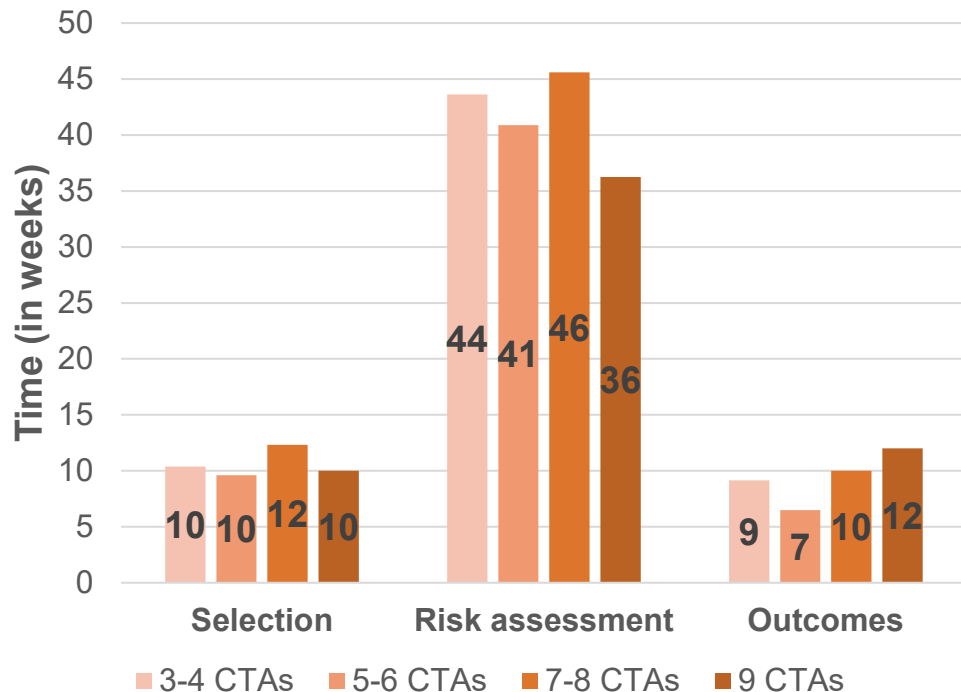
Average time taken in each stage of ICAP



- To date, the average time taken to complete the selection stage in ICAP is 10.4 weeks.
- The average time taken to complete the risk assessment stage in ICAP is 42.4 weeks. This includes the time taken for issue resolution, where relevant.
- The average time taken to complete the outcomes stage in ICAP is 8.3 weeks.
- On the whole, average timeframes were above the targets in the ICAP Handbook, which may be explained by a number of factors, including the Covid-19 pandemic.



Average time taken in each stage, by number of participating tax administrations



- This chart compares the average time taken in weeks in each stage of an ICAP risk assessment, analysed by the number of tax administrations participating in each case. The risk assessment stage includes taken for issue resolution, where relevant.
- While there is some variation in the time taken at each stage depending upon how many tax administrations are involved, this is not very significant.
- Within the range of tax administrations included in ICAP risk assessments to date, it seems a case involving a greater number of tax administrations does not necessarily take more time than one with a smaller number of participating tax administrations.




Observations

Tax administrations and MNEs are still gaining experience in ICAP and this will continue as new tax administrations join and undertake their first risk assessments. As experience grows, further efficiencies may be achieved.

In several cases the period for a risk assessment was extended at the request of an MNE, to allow more time to address identified concerns and achieve a low-risk outcome.

Issue resolution is included within the time taken for risk assessment. Where issue resolution was undertaken a risk assessment required more time but resulted in a more beneficial outcome for the MNE and the covered tax administrations.

Covid-19 had a significant impact on many cases but provided opportunities to develop alternative ways of working that will benefit the programme in the longer term.



Even where an ICAP risk assessment exceeded the target timeframe, the time taken is still relatively short given that certainty is provided in multiple jurisdictions and across multiple risk areas



COMPARING ICAP WITH OTHER ROUTES TO TAX CERTAINTY

Legal certainty versus the practical impact of a low-risk outcome in ICAP

Comments on ICAP often focus on the difference between a low-risk outcome provided by a tax administration following an ICAP risk assessment (i.e. that it does not anticipate further enquiries will be required) and the binding legal certainty provided following an APA or MAP.

Legal perspective

The difference between the legal certainty from an APA or MAP resolution, and the impact of a low-risk outcome in ICAP is real.

- *However, an APA, or audit followed by MAP, is a more time-consuming process than ICAP.*
- *An APA or MAP is also typically focused on a narrower range of transactions and jurisdictions (usually bilateral), whereas ICAP is a multilateral initiative to review a broad range of intercompany transactions and permanent establishment risks.*

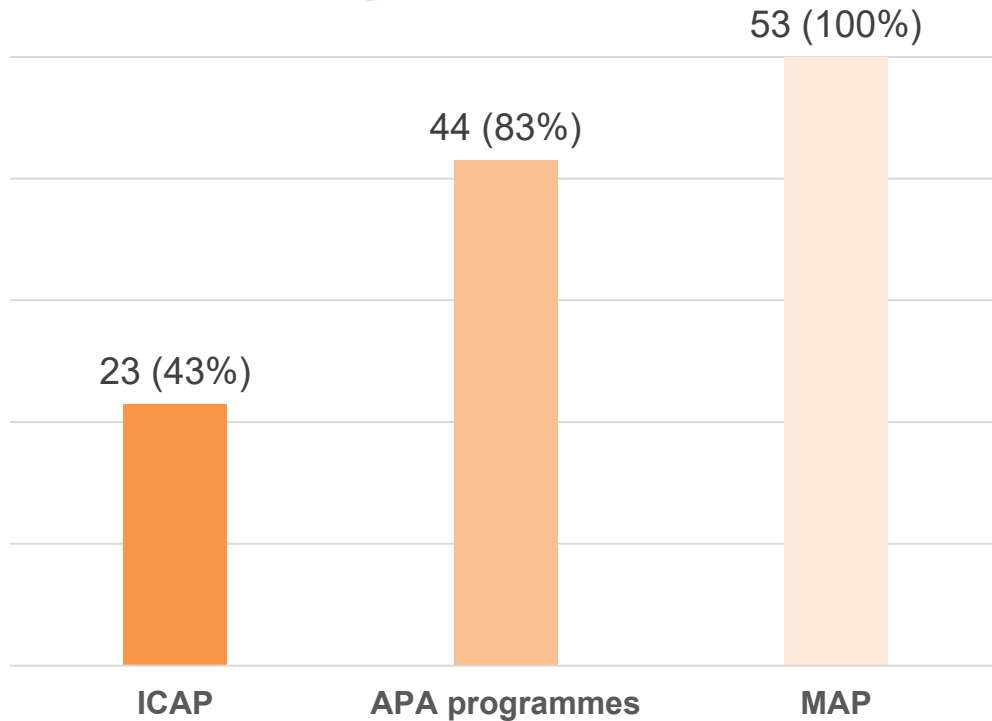
Practical perspective

In practice, if transactions for which a low-risk outcome is provided are not subject to further enquiries, ICAP could be viewed as providing a degree of “practical certainty” to an MNE, subject to the terms of the relevant outcome letter.

- *Based on experience to date, this has been the case*
- *Some tax administrations in ICAP have introduced domestic measures to ensure the value of a low-risk outcome is recognised.*

ICAP can be used to distinguish between low-risk and not low-risk transactions, such that low-risk transactions do not further constrain audit, MAP and APA resources. The use of ICAP in conjunction with other tax certainty tools to cover an MNE's full suite of transactions should achieve greater resource efficiency and ensure that each programme is used for the transactions for which it is most appropriate.

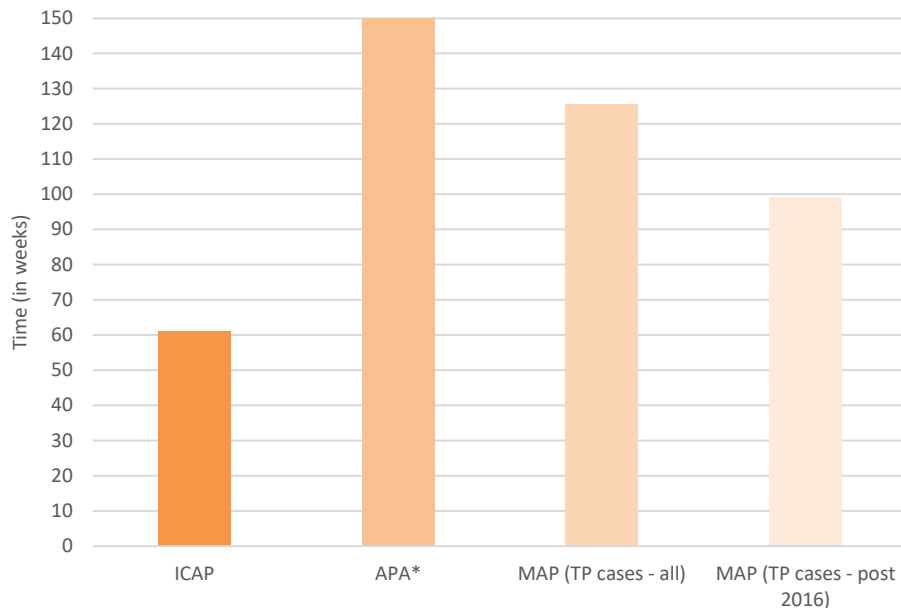
Availability of ICAP versus other routes to tax certainty



- The availability of the different routes to tax certainty also varies.
 - 23 of the 53 FTA member tax administrations currently participate in ICAP (43%)
 - 44 FTA members are in jurisdictions that have APA programmes (83%)
 - all FTA members are in jurisdictions that offer MAP to resolve disputes (100%)



Timeframes in ICAP versus other routes to tax certainty



- The average time to complete ICAP including all stages, from submitting a request to obtaining an outcome letter, is 61 weeks.
- This is significantly shorter than the typical time taken to complete an APA or MAP (which is usually preceded by a time-consuming audit).

Recognition should also be given to work by the Inclusive Framework to improve the efficiency of APA and MAP processes, and encourage wider use of multilateral APAs and MAPs, including the Bilateral Advance Pricing Arrangements Manual, the Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements and work under BEPS Action 14.

Note: Different methodologies were used for the calculation of jurisdiction-specific data. See Appendix 1 for source data.

*APA data relates to weighted average published data on APA timelines for the year 2022 for multiple jurisdictions. See Appendix 2 for details.

Comparing routes to tax certainty

- When comparing routes to tax certainty it should be recognised that each of these approaches has an important role to play in providing certainty to an MNE in different contexts
 - ICAP provides an opportunity for tax administrations to identify low-risk transactions relatively quickly across the five core risk areas, and other risk areas agreed between the MNE and participating tax administrations, and allows an MNE to focus limited resources on higher-risk transactions, for example by requesting an APA
 - APAs provide a high degree of legal certainty over complex transactions where a low-risk outcome may not be achievable through ICAP
 - MAP is generally the only bilateral or multilateral tool to resolve existing disputes and to relieve double taxation that has already arisen
- An efficient framework for tax certainty does not view these tools as substitutes for one another, but as complementary measures to be used as appropriate by an MNE wishing to control its overall transfer pricing risk profile.





NEXT STEPS AND MORE INFORMATION

Next steps and more Information

- MNEs interested in applying for ICAP, including MNEs that have already participated in the programme, should reach out to the tax administration in which their group is headquartered at the earliest convenience
- Applications can be accepted at one of the two annual application deadlines – 31 March and 30 September.
- For further information on ICAP, please contact icap@oecd.org or visit <https://www.oecd.org/tax/administration/international-compliance-assurance-programme.htm>



Appendix 1: Source data for timeframes in ICAP versus other routes to tax certainty

- ICAP:
 - Aggregate of average timeframes for each stage per slide 19
- MAP:
 - OECD 2022 Mutual Agreement Procedure Statistics (Transfer Pricing cases) (<https://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm>)
- APA United States:
 - Announcement and Report Concerning Advance Pricing Agreements, March 27 2023 (<https://www.irs.gov/pub/irs-drop/a-23-10.pdf>).
- APA United Kingdom:
 - Transfer Pricing and Diverted Profits Tax statistics 2021 to 2022, 7 February 2023 (<https://www.gov.uk/government/publications/transfer-pricing-and-diverted-profits-tax-statistics-2021-to-2022/transfer-pricing-and-diverted-profits-tax-statistics-2021-to-2022>)
- APA Japan:
 - Mutual Agreement Procedures Report 2022, (<https://www.nta.go.jp/english/MAP-Report/2022.pdf>)
- APA EU Member States:
 - Statistics on APA's (Advance Pricing Agreements) in the EU at the End of 2022, [APAs 2022 FINAL.pdf](#) (europa.eu)



Appendix 2: Jurisdictions included in the APA data for comparing timeframes in ICAP versus other routes to tax certainty

- Austria
- Belgium
- Czechia
- Denmark
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Japan
- Netherlands
- Poland
- Slovak Republic
- Spain
- Sweden
- United Kingdom
- United States

