

Cooperative Compliance:

A MULTI-STAKEHOLDER AND SUSTAINABLE APPROACH TO TAXATION

A Policy Brief for Governments and Businesses



by the **WU GTPC** in
cooperation with
CATA and the **ICC**



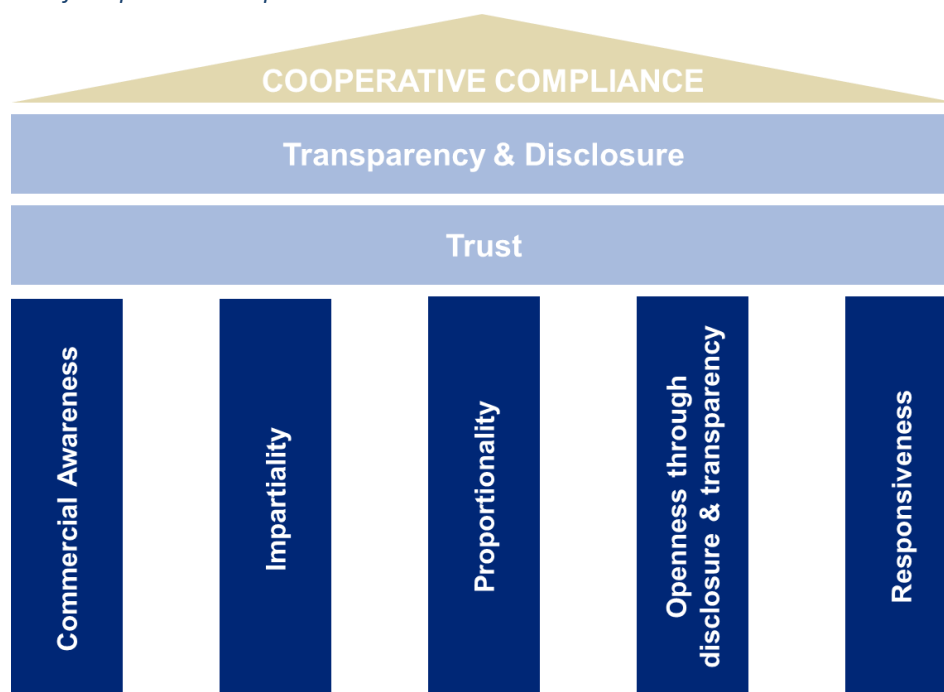
Cooperative Compliance: A Multi-stakeholder and Sustainable Approach to Taxation

We are delighted to announce that the publication of the Handbook took place in September 2021 and can now be purchased from [Cooperative Compliance: A Multi-stakeholder and Sustainable Approach to Taxation | Wolters Kluwer Legal & Regulatory](#).

The Handbook gives comprehensive information on the principles underpinning the Cooperative Compliance concept and identifies best practices collated during the considerable work (and stakeholder interviews) conducted by multi-national teams of tax advisers, academics, taxpayers from multinational groups, tax authorities and other interested parties. The Handbook is a vital resource for any country that already implemented a Cooperative Compliance programme or wishes to implement such a regime, detailing a wide range of policy and design considerations that will need to be determined throughout implementation. It will also be an invaluable aid to MNEs when discussing the concept with tax administrations around the world.

Given the breadth and detail of information within the Handbook, this shorter document provides a brief summary and roadmap, to enable businesses and tax administrations to initiate early-stage conversations with stakeholders to assess the appetite and appropriateness of implementing a pilot or full Cooperative Compliance programme (or – where such a programme already exists – consider how it may be enhanced). This should help all parties to identify the key challenges and opportunities that may arise as they seek to develop and implement a successful Cooperative Compliance regime.

Figure 1: The Pillars of Cooperative Compliance



The Cooperative Compliance concept: An introduction

Cooperative Compliance is an effective way of securing strong accurate tax compliance with reduced resources. It can deliver greater tax certainty and predictability, the critical components of a tax environment that encourages cross-border trade and investment.

Cooperative Compliance is not a new concept. The first national Cooperative Compliance programmes were implemented in OECD countries in the early 2000s and such programmes are now running in about a third of OECD countries. In recent years non-OECD countries as diverse as Honduras, Nigeria, Russia, Zambia, and others, have developed programmes of their own.

This is the context in which in 2018, the WU Global Tax Policy Center (GTPC) at Vienna University of Economics and Business, in cooperation with the International Chamber of Commerce (ICC) and the Commonwealth Association of Tax Administrators (CATA), developed a project to examine how more countries could be encouraged to develop or improve Cooperative Compliance programmes. The programme brought together over 200 people from 25 countries, including public officials, business representatives, and academics, leading to the publication of the handbook (“Cooperative Compliance: A Multi-Stakeholder and Sustainable Approach to Taxation”) in September 2021.

In 2020, the EU Commission issued “An Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy,” which included an initiative to create an EU Cooperative Compliance framework.

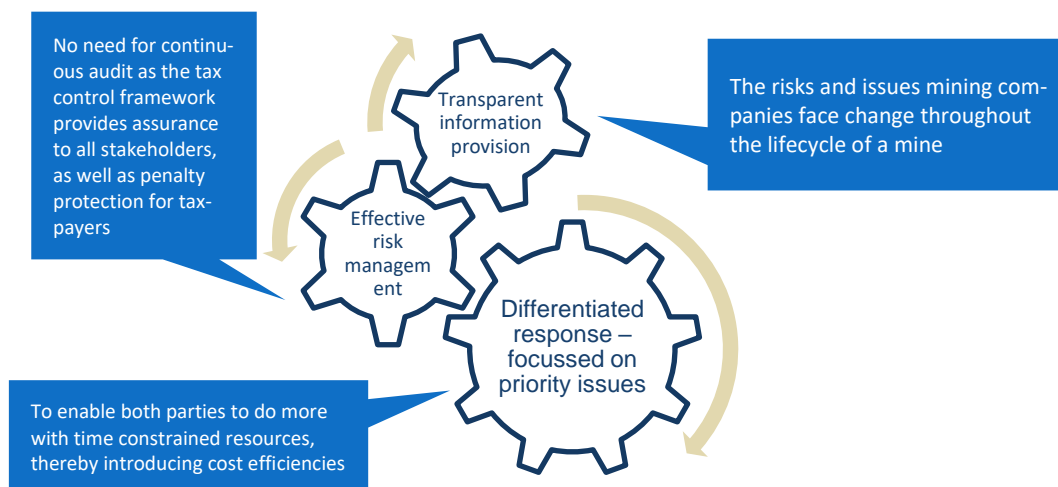
Since then the EC has launched a pilot study on the “European Trust and Cooperation Approach”. The ETACA pilot project for MNEs focuses on transfer pricing and aims to provide an EU wide framework to facilitate dialogue between tax administrations and business (see ETACA Europe EU).

Set against a background of increasing change within the corporate tax landscape, a rapidly changing multinational environment for trade alongside demand for increasing tax transparency, and an economic situation that results in cost-constrained businesses and tax authorities needing to maximize efficiency in their work, it is not a surprise that many jurisdictions are interested in the best practice elements of Cooperative Compliance.

Tax certainty and predictability are key components to providing a conducive tax environment for cross border trade and investment. In the long term, it is in the interest of both government and business to minimize tax uncertainty as far as possible and to secure a stable revenue base.

Many stakeholders see Cooperative Compliance as a way to reconcile improvements in tax compliance and fair taxation with a good business environment. Essentially, it does this by offering an exchange of transparency and disclosure on the taxpayer’s part for earlier and greater tax certainty. On the administration’s part that exchange is critically underpinned by the integrity of the taxpayer’s in-house systems for reporting to tax administrations.

Figure 2: Delivering greater efficiency and certainty for both parties through a relationship based on justified trust



Justified trust is a key concept underpinning a successful taxpayer and tax authority relationship and needs to be built upon many pillars – the ways in which a Cooperative Compliance regime is structured helps to build trust and all parties are responsible for this.

The five Focus Groups, headed by prominent individuals from tax administrations, business, the tax profession and academia (see chapter 1 of the handbook for full list of authors), researched and reported on key topics, which must be considered when setting upon Cooperative Compliance regimes. High-level summary is set out below; however for detailed information please see the main report.

The key areas of the report and the high-level conclusions

The report sets out best practices in the five key areas involved in designing Cooperative Compliance programmes, namely in five chapters:

1. Identifying criteria for access to Cooperative Compliance programmes;
2. Developing model legislation to facilitate the operation of such programmes;
3. Developing an Audit Assurance Standard for Tax Control Frameworks;
4. Developing a methodology to measure the cost and benefits of Cooperative Compliance programmes; and
5. Communicating the Cooperative Compliance model to obtain the trust from the wider society.

Chapter 1 gives context to the background against which Cooperative Compliance applies and sets out the role of tax certainty in promoting a multi-stakeholder and sustainable approach to taxation. It also contains an executive summary of the key findings of the report.

The subsequent chapters of the report set out each of the five topics listed above in greater detail.

Chapter 2 of the report ('Identifying criteria for access to Cooperative Compliance programs') describes the essential parameters that assist both taxpayers and tax authorities in designing a Cooperative Compliance regime. For example, criteria for entry should be publicly available, admittance should be a voluntary rather than compulsory requirement for companies, and there should be discretion for tax authorities to decide whether, or not, to admit a taxpayer, as well as the freedom to withdraw if necessary. It is also highly desirable that a company should have an effective tax control framework in place and a commitment to comply with accepted international standards on tax compliance before being admitted to a regime.

In Chapter 3 of the report ('Recommendations for Model Legislation to Facilitate Cooperative Compliance Programs') the various statutory ways in which countries that already run a Cooperative Compliance programme are considered. The report demonstrates a range of best practices to suit various jurisdictional models and country-specific operational climates.

It is, naturally, affected by the existing legal framework in each country but the report explains why the following elements are regarded as universally suitable for regulatory underpinning:

- The tax administration's competence to enter into a Cooperative Compliance relationship;
- The decision on the threshold to participate;
- Measures to protect the confidentiality of information provided by the taxpayer;
- The binding nature of decisions by the tax administration;
- Opportunities for appeal; and
- The use of information provided by the taxpayer during and after the termination of the Cooperative Compliance agreement.

Chapter 4 ('Recommendations on an Audit Assurance Standard for Tax Control Framework') sets out the crucial role that the Tax Control Framework (TCF) plays in Cooperative Compliance by assuring the tax administration on the robustness of a company's approach to tax, the reliability and completeness of its disclosures and how assurance can be obtained. A TCF Layer Model is presented and the implications for tax administrations of the audit standard amongst which a greater reliance on the work of others are discussed.

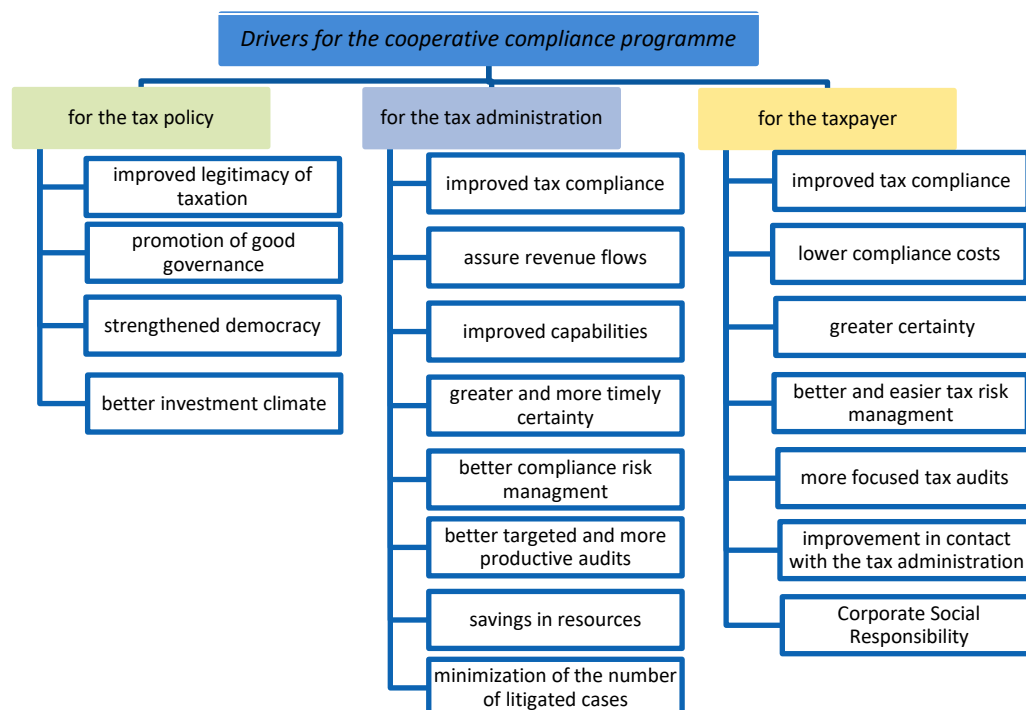
Chapter 5 ('Recommendations on the Methodology to Measure Costs and Benefits of Cooperative Compliance') tackles the important topic of how to establish a methodology for measuring the costs and benefits of such a framework. This is extremely important in communicating the process to stakeholders. Having a metric for measuring success assists the tax authority to agree on the evaluation parameters but the report finds that when assessing these costs and benefits, it is essential that the interests of all stakeholders and wider civil society should be considered. It is also important to recognize that the capacity to measure the cost efficiency and effectiveness of a Cooperative Compliance framework will influence the willingness of taxpayers to enroll in such programmes.

Many of the current indicators used by governments are primarily internally driven managerial measures that focus on the compliance process. It is not clear that measuring process efficiency is sufficient as a means of evaluation since it says relatively little about the compliance outcomes achieved. Alternative evaluation measures are discussed in the report; such as the frequency and length of tax audits and access to advance pricing agreements and advance rulings, cost efficiency measures such as the cost in terms of time taken to risk assess the return and full time employee input into the compliance management of the taxpayer. When it comes to measuring the effectiveness of programmes, some relevant factors are: securing tax revenue collected by the tax administration; looking at how large taxpayers outside of the programme compare with large taxpayers enrolled in the Cooperative Compliance framework in terms of compliance; tax revenue per Full-Time-Employee input (FTE).

Chapter 6 ('Recommendations on Communicating Cooperative Compliance — Obtaining Trust From Society') gives recommendations for best practice ways in which companies and tax administrations can seek to develop a coherent reporting and communication strategy on Cooperative Compliance with its many stakeholders particularly politicians and CSOs. Educating stakeholders and building trust are critical to the ultimate success of any regime.

As part of the project, a range of materials has been produced which can assist a tax authority in considering and communicating the benefits of Cooperative Compliance to stakeholders (information can be tailored to circumstances required), as well as setting out the steps and processes recommended for a Cooperative Compliance pilot programme.

Figure 3: Drivers for Cooperative Compliance



A roadmap towards Cooperative Compliance

The Handbook identifies a significant number of considerations that the design of a Cooperative Compliance regime must address to ensure that it dovetails with existing laws, systems, culture and practices and that the costs and benefits are recognized and accepted by all stakeholders. While Cooperative Compliance is known to reduce compliance costs for both taxpayers and tax administrations in the medium and long term, implementing (or enhancing) a regime will require significant time and investment to design and implement.

Like all ambitious projects, challenges will emerge (some perceived, some real) that will need to be addressed early to ensure that they do not manifest as barriers to achieving the positive outcomes of Cooperative Compliance. Some stakeholders may initially resist change; the timing may not be optimal for political or other structural reasons; legal systems may need broader reforms in order to pave the way; financial targets may discourage even small-scale initial investments without a clear demonstration of the financial benefits that will accrue.

All of these challenges (and others) can be overcome where relevant stakeholders are aligned at an early stage on the benefits of a Cooperative Compliance regime and on the critical success factors for implementation that will be specific to the jurisdiction and stakeholders engaged. The Handbook is an excellent resource for bringing stakeholders on this journey and will be most useful where a plan exists to leverage the different elements of it at the right time.

Proponents of Cooperative Compliance (either at business or within tax administrations) should develop a clear plan on how to engage stakeholders to manage challenges and optimize the opportunities. In order to develop such a plan, the following questions should be asked (with references to the chapters of the Handbook that may be most beneficial):

1. Stakeholder mapping
 - a. Who are the key stakeholders required to legally bring about change? [Ch.5]
 - b. Who are the key stakeholders politically required to accept change? [Ch.5]
 - c. What businesses might be interested in a pilot? What businesses might be interested in a full rollout? [Ch.1]
 - d. For each stakeholder - What are his or her objectives? Do these objectives conflict with other stakeholders? [Ch.5]
 - e. What other businesses/countries have implemented similar regimes? Did they face the same challenges? Can this be leveraged?
2. Challenges and opportunities
 - a. What resources might be required to implement the regime? Financial, headcount, external resources?
 - b. What resources might be required to implement a pilot? How does this differ?
 - c. What legal/cultural barriers might need to be overcome? How resource intensive is this process? Does it have longevity?
 - d. How would a successful pilot be measured? What would need to be achieved to result in a broader rollout? Could a pre-planned staged approach be beneficial and reduce initial costs, or would the whole regime need to be road mapped first? [Ch.4]
 - e. What is the process for iterating feedback from the consultation or pilot phase into a final regime?
 - f. How can new technologies such as Artificial Intelligence, Machine Learning, Robotics assist countries in designing and implementing Cooperative Compliance programmes, especially for SMEs?
3. Communication plan [Ch.5]
 - a. How should the regime be communicated to internal stakeholders?
 - b. How should the regime be communicated to external stakeholders?
 - c. At what stage should different stakeholders be consulted/engaged? What would indicate that the regime should or should not be considered further at this time?

Next steps

The participants in this project believe that the report will contribute to the ongoing dialogue on the usefulness and design of Cooperative Compliance programmes. The group intends to continue with its work focusing on the following aspects:

- (1) Monitoring the experience of countries with the recommendations by inviting feedback from both governments and businesses and using the knowledge gained to develop further the recommendations in, for example, the legal framework within which programmes operate and their applicability to SMEs.
- (2) Deepening the analysis of the methodologies used to evaluate the costs and benefits of such programmes based on countries' experiences, especially those that have recently introduced such programmes and using new academic research. An effort will be made to extend the methodology to the experience of business since the report focused only on that of tax administrations.
- (3) Pursue the idea of developing an external Audit Assurance Standard for Tax Control Frameworks by entering into a dialogue with the accounting standard bodies.
- (4) Exploring the design of multilateral Cooperative Compliance programmes, particularly in the context of the recently launched work of the European Commission in this area.

In addition to these topics, the group will continue to work with those countries that have recently launched Cooperative Compliance programmes (e.g., Belgium, Honduras, Kenya, Nigeria, Poland, Russia, Zambia) and those that have indicated that they are interested in exploring how such programmes would work in their environment (e.g., Columbia, Ghana, Malaysia, Peru).

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