# CUMPLIMIENTO TRIBUTARIO
# COLABORATIVO

## CO-OPERATIVE COMPLIANCE EVOLUTION and TAX CONTROL FRAMEWORK

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# PART 1:

## CO-OPERATIVE COMPLIANCE EVOLUTION

# Overview

**2006**

OECD Forum on Tax Administration "Seoul Declaration"

**2008**

OECD releases ***Study into the Role of Tax Intermediaries*** introducing the "enhanced relationship"

**2009**

OECD releases two reports that explore the use of the "enhanced relationship" in relation to banks and HNWIs

**2013**

OECD publishes ***Co-operative Compliance: A Framework*** moving away from "enhanced relationship" to "co-operative compliance"

**2016**

OECD releases ***Co-operative Tax Compliance – Building Better*** *Tax Control Frameworks*

**2017**

IMF/OECD report on **Tax Certainty** released & work on an international compliance assurance programme started

**2019**

OECD releases Joint-Audit Report *Joint Audit 2019 – Enhancing Tax Co-operation and Improving Tax Certainty*

**2020**

OECD launches ICAP – *International Compliance Assurance Programme*

# Seoul Declaration

*"It is our duty as heads of our respective countries' revenue bodies to ensure compliance with our national tax laws by all taxpayers, including activities beyond our borders, through effective enforcement and by taking preventive measures that deter non-compliance. [...]* ***Our discussions revealed continued concerns about corporate governance and the role of tax advisors and financial and other institutions*** *in relation to non-compliance and the promotion of unacceptable tax minimization arrangements."*

(Seoul Declaration, 3rd Meeting of the OECD Forum on Tax Administration, 14-15 September 2006)

# Study into the Role of Tax Intermediaries (2008)

**Enhanced relationship**

=

**Information**

↓

**Effective risk management**

↓

**Differentiated responses (service and enforcement)**

=

**Achieving improved compliance**

# Study into the Role of Tax Intermediaries (2008)

*Seven pillars of the enhanced relationship*

| Revenue bodies | Taxpayers |
| --- | --- |
| Commercial awareness | Disclosure |
| Impartiality | Transparency |
| Proportionality | |
| Openness through disclosure and transparency | |
| Responsiveness | |

# Study into the Role of Tax Intermediaries (2008)

## *Building the enhanced relationship*

- The study identified 3 possible mechanisms:
  - A **unilateral statement** or declaration by the revenue body, setting out how it intends to work
  - A **charter** adopted jointly by or on behalf of all stakeholders, setting out how all participants intend to work together
  - A **formal** or **informal agreement** between the revenue body and a specific taxpayer
- In this respect participants need to consider:
  - A statement of intent
  - An assessment of capability
  - High-level endorsement

# Co-operative Compliance: A Framework (2013)
## *From enhanced relationship to co-operative compliance*

- The **value of co-operative compliance** established by many countries after the release of the 2008 study

- The 2013 report establishes that "enhanced relationship" is no longer an entirely accurate description of the approach and adopts the term **"co-operative compliance"**

- "Co-operative compliance" makes clear that the approach is:
  - Based on **co-operation**
  - With the purpose of **assuring compliance**
  - Leading to payment of the **right amount of tax** at the **right time**


- Change from "traditional" control to co-operative compliance in many cases is the result of the development of a **compliance risk management strategy**

# Co-operative Compliance: A Framework (2013)

*Benefits and challenges of co-operative compliance models*

| Benefits | Challenges |
|---|---|
| An enhanced relationship | Communicating about the impact of the programme on taxpayers |
| Reputation | Taxpayer dissatisfaction |
| Risk management | Cultural issues |
| Certainty in advance | Maintaining the level of contact required to successfully establish desired relationship |
| Problem shooting | Tax control |
| Reduction of administrative burdens | Establishing metrics to assess delivery of benefits |

# Co-operative Compliance: A Framework (2013)
## *Tax Control Framework*

- The seven pillars remain valid but additional features are essential in particular the **Tax Control Framework**:
  - Governance matters
  - Good governance means good tax governance
  - OECD Guidelines for MNEs (2011)
  - MNEs with good governance are “in control”
  - Tax Control Framework ensures capacity to meet standards of disclosure and transparency

# Co-operative Compliance: A Framework (2013)

*Internal governance of the tax administration matters too*

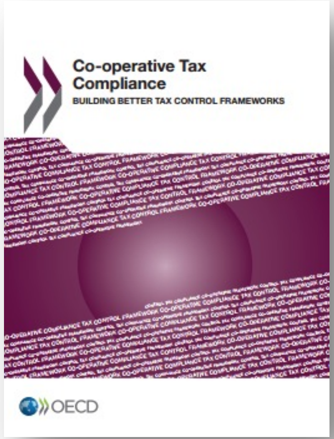
- Integrity and core rules
- Standardisation of work programmes and methodology
- Second pair of eyes
- Training
- Rotation
- Systematic review and quality monitoring

# PART 2:

## TAX CONTROL FRAMEWORK

# Co-operative Tax Compliance – Building Better Tax Control Frameworks (2016)

- 2013 Report identified the need for:
  - More research and discussion of how TCFs can be best assessed
  - Additional guidance to business about revenue bodies' expectation of them
- Based on this, the 2016 report provides guidance for:
  - Businesses to design and operate their TCF
  - Revenue bodies to adjust the risk management strategy for an individual large business in the context of a (voluntary) co-operative compliance relationship



# Co-operative Tax Compliance – Building Better Tax Control Frameworks (2016)

- Essential building blocks of a Tax Control Framework
  - Tax strategy established
  - Applied comprehensively
  - Responsibility assigned
  - Governance documented
  - Testing performed
  - Assurance provided

# Co-operative Tax Compliance – Building Better Tax Control Frameworks (2016)

- Governance Documented
  - Business should also have tax governance that is aligned with the business and tax strategy reflecting the expectations of customers, clients, staff, shareholders and other stakeholders.
  - *The commitment of businesses to co-operate, to be transparent and to be tax compliant should be reflected in its risk management systems, structures and policies. A comprehensive risk management strategy that includes tax will allow the enterprise to act as a good corporate citizen but also to effectively manage tax risk*

# Co-operative Tax Compliance – Building Better Tax Control Frameworks (2016)

- Governance Documented
  - The tax governance process should describe and define for example all tax responsibilities, the accountability, the key performance indicators (KPIs), communication methods, a correct definition of *materiality for tax purposes*, monitoring and mitigating of tax risks and testing of the TCF.

**Box 2.2. Example - Defining materiality**

In the Netherlands, the first aspect of materiality is called quantitative materiality and the second, qualitative materiality. The Netherlands uses a quantitative materiality determined as a fixed amount, which depends on the size of the organisation - of the (Dutch) turnover. Qualitative materiality refers to the significance of an identified (and, consequently, known) misstatement and, in particular, the nature of the misstatement. The nature primarily relates to the degree of culpability for the misstatement. (Serious) culpability for a misstatement in the Netherlands will always lead to adjustments of a tax return, even when the financial consequences are (relatively) small.

*Source*: Netherlands Tax and Customs Administration

# Co-operative Tax Compliance – Building Better Tax Control Frameworks (2016)

- Governance Documented: cont'd:
  - Another key feature in the governance process is the board level sign-off: to declare at the highest level that the business is in control of its tax processes - the TCF is designed to be operationally effective (the processes that have been established are followed in practice), maintained and monitored.
  - The value of signing off lies in the explicit statement that the business is committed to the specific process designed to realise in practice the principle commitment to transparency. A properly functioning TCF is a prerequisite for creating ***justified trust*** between the business and the tax administration.

# Co-operative Tax Compliance – Building Better Tax Control Frameworks (2016)

- Governance Documented: cont'd:
  - Signing off is also a means for the business to have ongoing discussions about internal control risk management, being in control and transparent, and to keep responsibility for tax in the boardroom.

**Box 2.1. Example – TCF Guidance from the Netherlands**

Guidance provided for large business by the Netherlands Tax and Customs Administration, states that, "The organisation has designed its tax control framework in a manner that ensures that it is aware of all relevant events with consequences for taxation. This requires communication structures to be employed by the officers (i.e. management and other operational staff) bearing *tax responsibilities*. Examples include forms of consultation that discuss financial, legal and operational events and which involve the officer bearing the tax responsibility. This is necessary as the organisation needs to identify risks. The *tax risks are then assessed and, where relevant, action is taken to control those risks.*"

*Source*: Netherlands Tax and Customs Administration

# Co-operative Tax Compliance – Building Better Tax Control Frameworks (2016)

- Assessing and testing the TCF is necessary to determine the effectiveness
  - Report gives some guidance on how this can be done

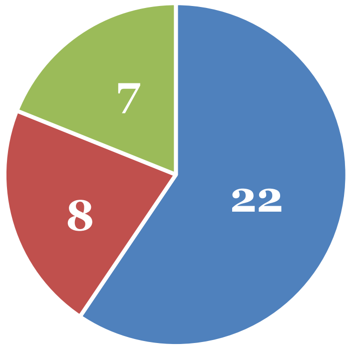
- Mandatory disclosure regimes can assist revenue bodies in obtaining greater assurance about the reliability of an enterprises tax risk management system

# Existence and nature of the co-operative compliance model

## Existence of a model

Total number of countries surveyed: 58

Source: data collected by OECD FTA from 2016/2017



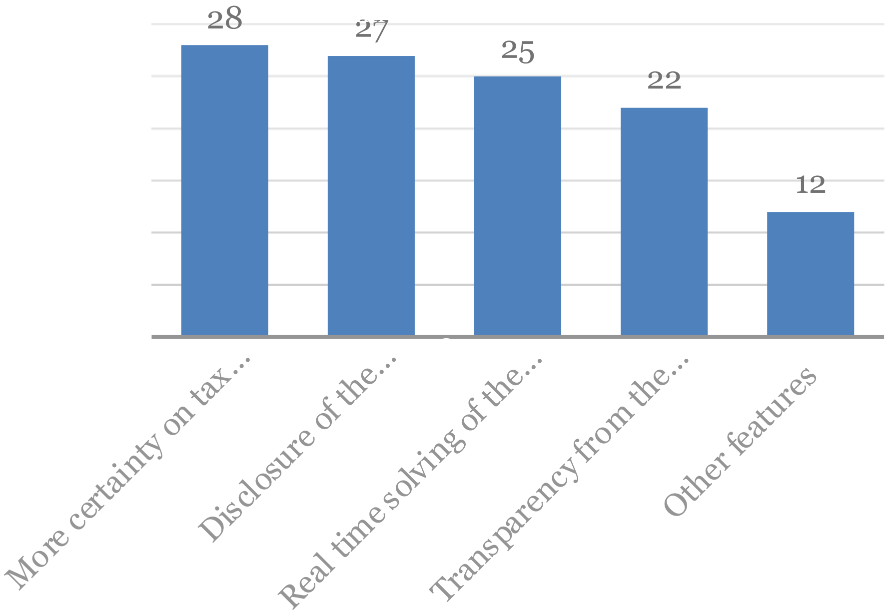

- Countries that have a programme in place
- Countries that were in the process of implementing it
- Countries that were planning to have one

## The nature of the co-operative compliance model for these countries was the following:

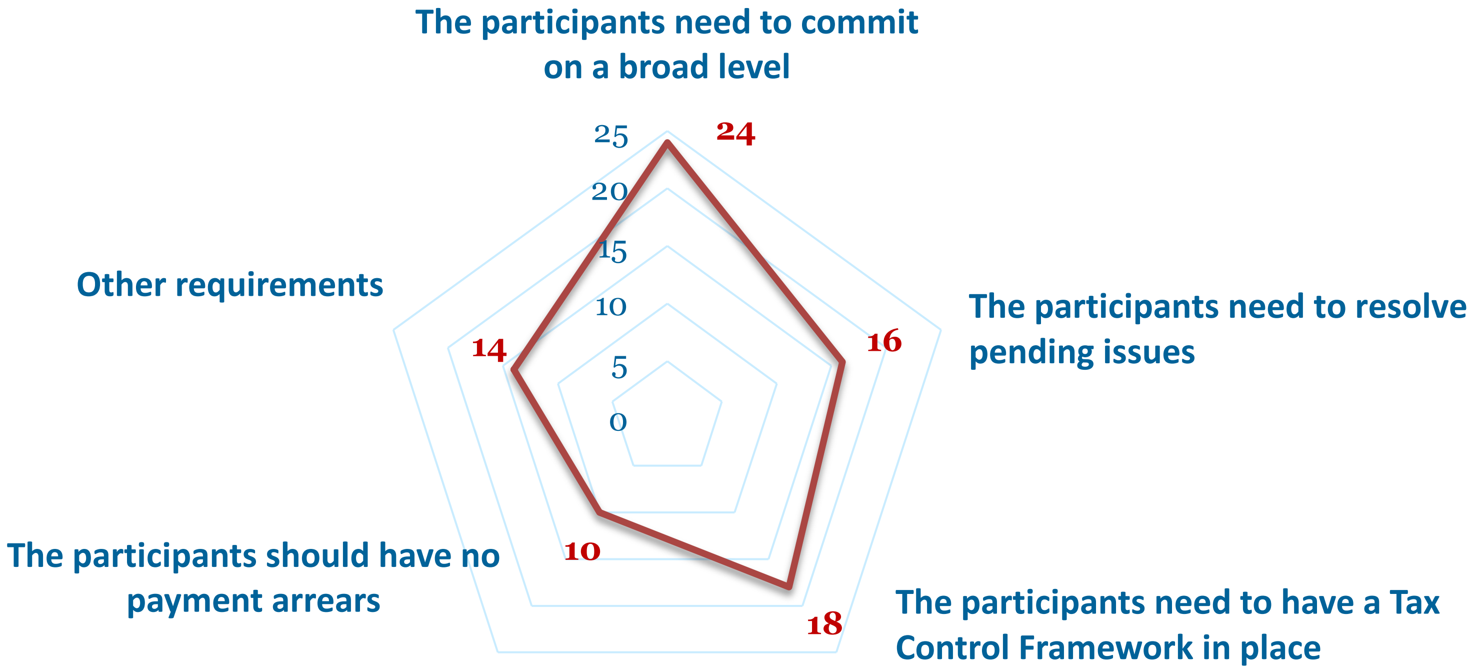
# Specific features of the approaches

- Disclosure of relevant tax issues by the taxpayer on a real-time basis
- Real-time solving of relevant tax issue, i.e. before filing
- Transparency from the side of the administration on audit plan, etc.
- More certainty on tax position for the taxpayer by working in real time
- Other features

**Features in the 35 countries that have (or were planning to adopt) a co-operative compliance programme**



# Requirements for participation in the programme




<u>Numbers indicate the number of countries, which have or plan to have the specific requirement as the condition for companies to participate in co-operative compliance programme</u>

# PART 3:

## TAX CERTAINTY / MULTILATERAL ROUTE

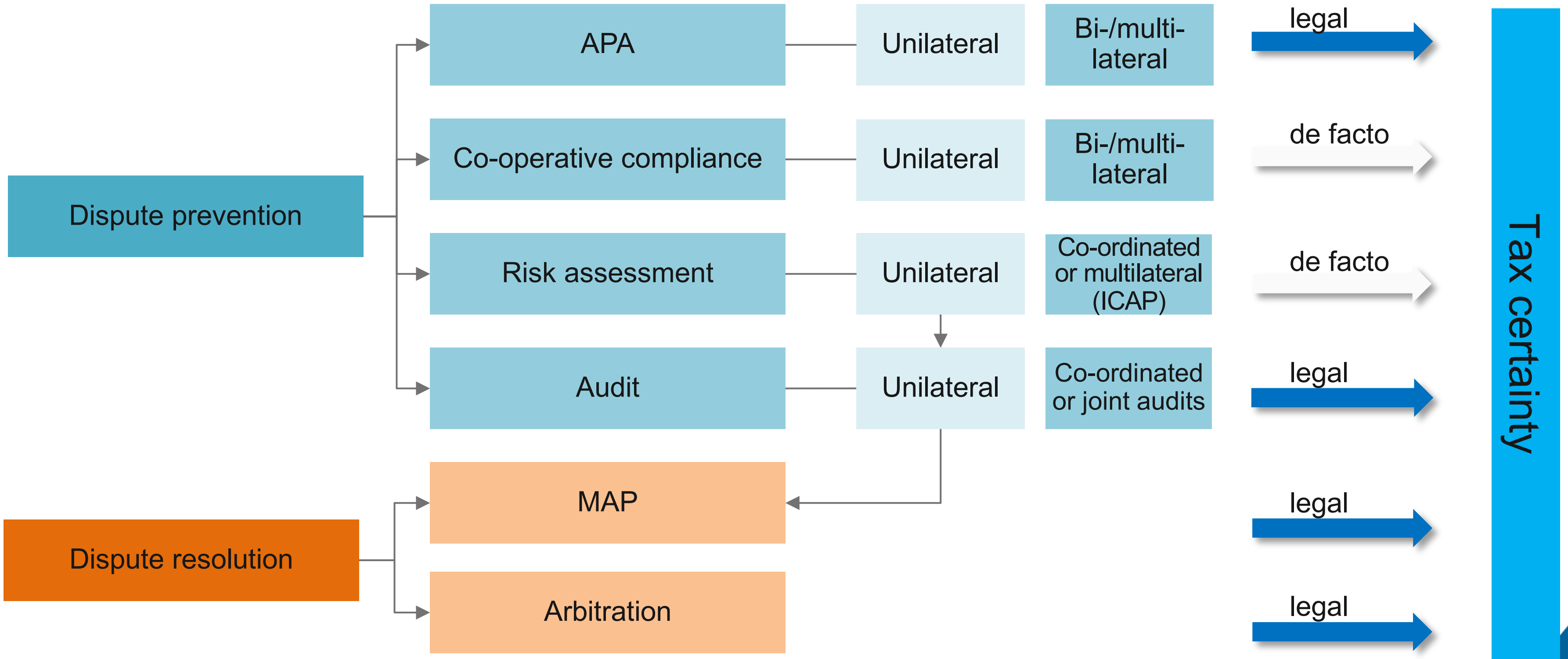
# Tax certainty– A G20 Priority

- Report on tax certainty delivered to G20 Finance Ministers with IMF (March 2017, [www.oecd.org/tax/g20-report-on-tax-certainty.htm](http://www.oecd.org/tax/g20-report-on-tax-certainty.htm))

*"We welcome the … work on tax certainty conducted by the OECD and the IMF. We acknowledge the report on Tax Certainty submitted to us and* ***encourage jurisdictions to consider voluntarily the practical tools for enhanced tax certainty as proposed in that report****, including with respect to* ***dispute prevention*** *and* ***dispute resolution*** *to be implemented within domestic legal frameworks and international tax treaties."*

***"We ask the OECD and the IMF to assess progress in enhancing tax certainty in 2018"***

# Tax certainty tools in the international landscape



# PART 4:

EVOLUTION CO-OPERATIVE COMPLIANCE CONTINUED

# Co-operative Compliance – Evaluations

Evaluations to some extent, per country and by academics

- In NL: -> *justified* trust -> focus on large taxpayers
  transparency to ensure equity, clear benefits, exit options, emphasis on monitoring, public guidance and good practices

- Shift in thinking away from adversarial approaches towards a more responsive and collaborative approach
- Mutual trust at the core <> vulnerability to critique from outside stakeholders
- Balance in level of formalisation of regulatory interactions which satisfies all actors and stakeholders
- Effective evaluation of benefits and costs

# Co-operative Compliance – Continued

Essential features from the evaluations /experience :

- Clear benefits and exit options
- Commitment from all stakeholders
- Continuous process needing resources and relevant capacities
- Mutual trust -> Justified trust
- Professional working relationships between taxpayers and tax administration -> Ongoing work

# Co-operative Compliance – Continued

Forum on Tax Administration (FTA) Large Business & International Program:
LB5:

- Voluntary compliance projects
- Encouraging voluntary compliance through co-operative compliance and specific programmes: Good practices
(Australia & NL.)

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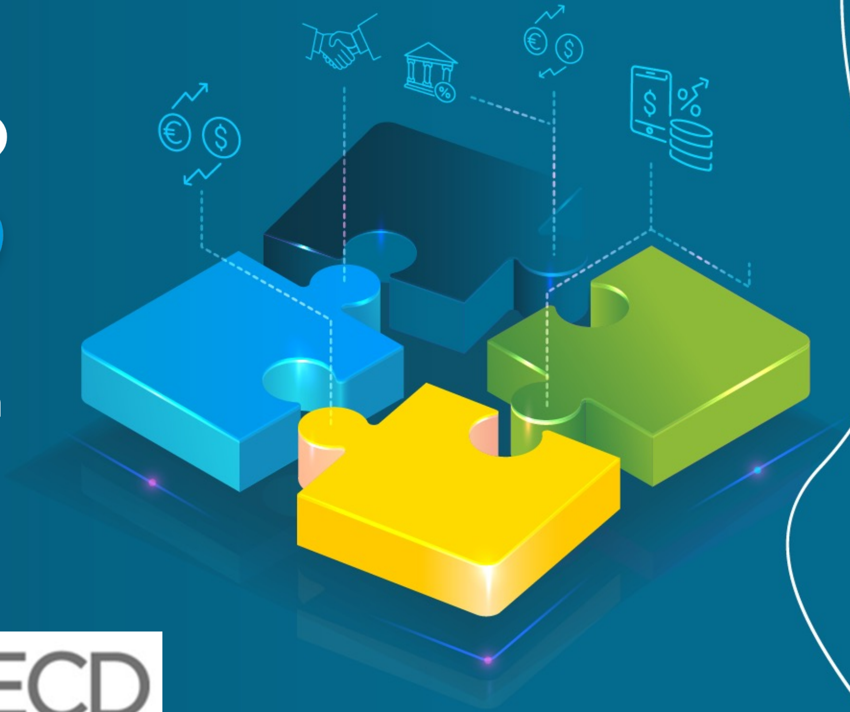
La nueva forma de relacionarse entre los contribuyentes y la Administración Tributaria



**¡GRACIAS!**
**Thank you!**

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