

Policy Brief

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

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Introduction

The corporate tax landscape has changed profoundly in the last two decades. Corporates are increasingly expected to engage more with society on corporate responsibility, corporate reporting and ‘acceptable fiscal behavior’.¹ There is a growing public demand to know “who is paying what and where”. There has been mounting political pressure in Europe and in the U.S. to introduce public Country-by-Country Reporting (CbCR)², which seems set to become the new global norm.

A new element in this debate is that institutional investors have become a driving force behind these calls for greater transparency. This was reflected in the introduction of GRI 207: “Tax 2019”³ in December 2019, which is the first independent, voluntary sustainability reporting standard for public financial and non-financial tax reporting issued by the Global Reporting Initiative (GRI).⁴ Investors, civil society organizations, labor unions and other stakeholders around the world have expressed support for this new tax standard as it will help meet their growing demand for fiscal transparency.⁵

Tax certainty and predictability are key components to provide a tax environment which is conducive to cross border trade and investment and in the long term it is in the interest of both government and business to minimize tax uncertainty as far as possible.

¹ Gribnau, H. (2019). Why Social Responsible Corporations Should Take Tax Seriously in: K.K.E. Elgaard et al. (eds.), Fair Taxation and Corporate Social Responsibility (Copenhagen: Ex Tuto Publishing), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3604256.

² Van der Made, B. (2020). The revival of public CbCR amid new interest in ESG transparency, *International Tax Review*, 30 March 2020, <https://www.internationaltaxreview.com/article/b1kzkw564ld7k3/european-union-the-revival-of-public-cbcr-amid-new-interest-in-esg-transparency>.

³ <https://www.globalreporting.org/standards/media/2513/gri-207-tax-standard-2019-factsheet.pdf>.

⁴ Eccles, B. (2020). The Time Has Come For Tax Reporting Transparency—Thank You Global Reporting Initiative!, *Forbes*, April 15 2020, <https://www.forbes.com/sites/bobeccles/2020/04/15/the-time-has-come-for-tax-reporting-transparency-thank-you-global-reporting-initiative/#79375cc7168f>.

⁵ Global Reporting Initiative, *Backing for GRI's Tax Standard* (December 5 2019), <https://www.globalreporting.org/information/news-and-press-center/newsarchive/Pages/Backing-for-GRIs-Tax-Standard.aspx>; Van der Enden, E. & Klein, B. (2020). Good tax governance, govern tax good, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3610858.

Achieving tax certainty may be particularly important in countries which are undergoing a rapid economic transformation and that have only a limited experience with international tax issues.

Cooperative Compliance is seen by many stakeholders as a way to reconcile improvements in tax compliance and fair taxation with a good business environment, although different stakeholders have very different views on how Cooperative Compliance could and should achieve that.

Essentially it does this by offering an exchange of transparency and disclosure on the part of the taxpayer for earlier and greater tax certainty. That exchange is critically underpinned by the integrity of the taxpayer's in-house systems for reporting to tax administrations.

Cooperative Compliance is increasingly recognized as an effective way of securing good tax compliance and can also deliver greater tax certainty and predictability, which are key components to providing a tax environment which is conducive to cross border trade and investment. Cooperative Compliance programmes can also promote a more sustainable approach to taxation and one which meets the needs of different stakeholders, although some remain skeptical of this approach to taxation.

The first national Cooperative Compliance programmes were implemented in OECD countries in the first decade of the 21st century. Such programmes are now running in about a third of the OECD countries. Over recent years non-OECD countries as diverse as Honduras, Nigeria, Russia, Zambia and others have developed programmes of their own. In 2020, the EU Commission issued "An Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy", which included an initiative for the creation of the EU Cooperative Compliance framework.

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 enter into or improve Cooperative Compliance programmes. The programme brought together over 200 people from 25 countries, including public officials, business and academics. The report ("Cooperative Compliance: A Multi-Stakeholder and Sustainable Approach to Taxation") will be issued in late summer 2021 and is the result of these two years of discussions. It focuses on practical implementation of the principles underpinning the Cooperative Compliance concept and identifies best practices. It is intended to help taxpayers and tax

administrations realize the full potential of Cooperative Compliance to increase tax certainty, while also addressing the legitimate concerns of other stakeholders in society. The main focus of the report is on unilateral Cooperation Compliance programmes but it also refers briefly to multilateral Cooperative Compliance in integrated economic regions (e.g. the European Union) and this will be a subject of follow-up work.



Figure 1: The working group leaders and some of the members during the online meeting on March 17, 2021.

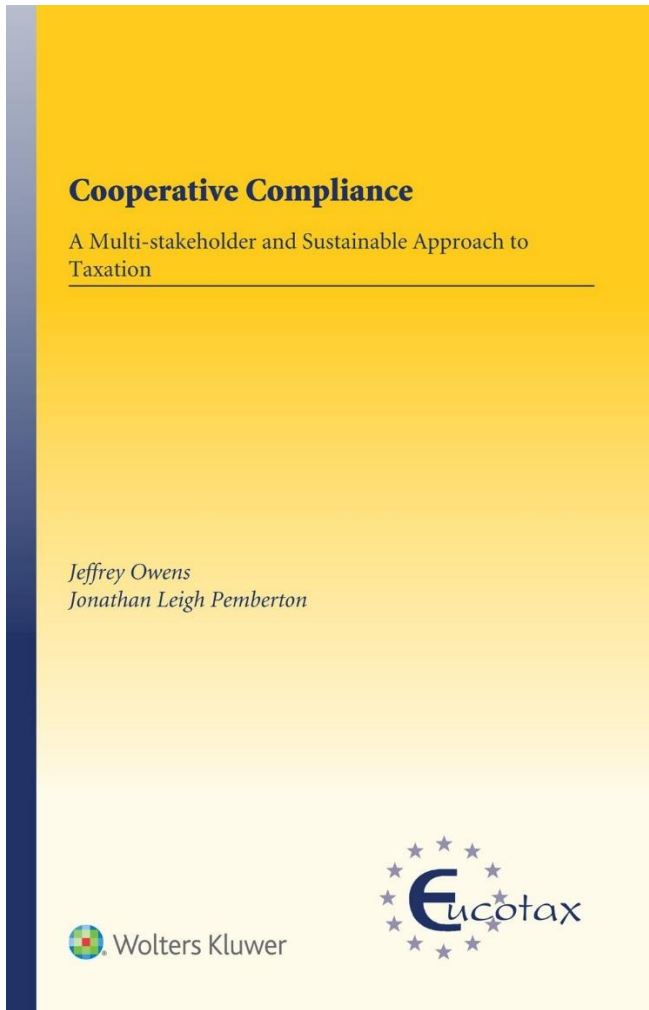


Figure 2: First look on the cover for the handbook

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

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 trust from the wider society.

This brief provides a summary of the main recommendations made by the report in each of those 5 areas.

Summary of recommendations in the report

It is convenient to summarize the main recommendations under each of the headings referred to above.

Recommendations for identifying criteria for access to Cooperative Compliance programmes

The recommendations for designing entry conditions for Cooperative Compliance programmes are:

- A company should have an effective tax control framework in place and a commitment to comply with accepted international standards on tax compliance.
- The programme should ideally be voluntary rather than compulsory and once a corporate taxpayer has entered such a programme, it should be free to withdraw from the programme.
- Tax administrations should have discretion as to whether to accept taxpayers into a Cooperative Compliance programme.
- The criteria for entry should be publicly available.
- Tax administrations should be free to decide which taxes to include in their Cooperative Compliance programmes, although, ideally, they should work towards the inclusion of all a jurisdiction's major taxes, including both direct and indirect taxes.

Recommendations for model legislation to facilitate Cooperative Compliance programmes

There has been considerable debate over whether and to what extent Cooperative Compliance programmes require statutory underpinnings. A majority of countries take the view that a lack of specific statutory underpinnings for Cooperative Compliance programmes is not a problem. Nevertheless, in certain jurisdictions, legal provisions are seen as necessary.

Cooperative Compliance programmes should not however be over regulated by detailed statutory provisions, to ensure there is a degree of flexibility for both the tax administration and the taxpayer.

The following elements are regarded as 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.

Recommendations on an Audit Assurance Standard for Tax Control Framework (TCF)

The Tax Control Framework (TCF) plays a crucial role in Cooperative Compliance by providing assurance to the tax administration on the robustness of a companies' approach to tax and the reliability and completeness of its disclosures.

The main recommendations here are:

- Companies' tax return and disclosures should be accompanied by a "Tax-In-Control Statement" by the senior management as part of the disclosure and should be seen as integral to the Cooperative Compliance model. That statement should be subject to assurance by way of external audit. A TCF should be regularly reviewed to ensure it identifies risks and key changes in the company's operating environment.
- A one-size-fits-all approach to the design of TCFs is inappropriate given that countries have different constraints in their approaches to achieving good compliance. Nevertheless, it is desirable and possible to agree an explicit Audit Assurance Standard for TCFs. The main elements of a possible standard and a "layer model" that visualizes the overall process of assurance, build on the six "essential features" of the TCF, formulated by the OECD in 2016, namely:
 1. Tax Strategy is Established;
 2. It is applied comprehensively;
 3. Clear responsibilities are assigned;
 4. Governance rules are well documented;
 5. Regular testing is performed; and
 6. Assurance provided.

These features ensure that the TCF is capable of providing assurance to all stakeholders.

The TCF Layer Model is made up of five pillars, comprising the first five features listed above, and these are underpinned by three layers of additive assurance processes.

There is more work to be done to translate these ideas into a formal Audit Assurance Standard.

At the EU level, this could take the form of a soft law instrument, such as the EU Code of Conduct.

Recommendations on the methodology to measure costs and benefits of Cooperative Compliance

It is essential to establish a methodology for measuring the costs and benefits of such a framework, which should cover, inter alia:

- The stability of the tax system, tax certainty, transaction costs, long term investment framework, dispute resolution channels, the need for the tax administration to provide guidance to large taxpayers and the recognition of legitimate expectation as a legal concept.
- 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.
- When assessing these costs and benefits it is essential that the interests of all stakeholders and the wider civil society should be considered.

Yet many of the current indicators used by governments are primarily internally driven managerial indicators 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.

Some alternative measures which could provide a first evaluation of the efficiency of a Cooperative Compliance programme are the frequency and length of tax audits and access to APA's 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: 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, tax revenue per Full-Time-Employee input (FTE).

Since improving the quality of the relationship with the tax administration and levels of trust is an important goal of Cooperative Compliance frameworks, these could be assessed by regular surveys of large taxpayers and of staff working within the large taxpayer function of the tax administration.

There is considerable skepticism in using an effective tax rate for taxpayers enrolled in a Cooperative Compliance programme compared with that of taxpayers outside the programme as a yardstick of

effectiveness. In principle the ETR of taxpayers within the programme should be no different from that of those outside; it is the time and effort taken to get there that will vary.

The risk assessment score of the taxpayer by the tax administration could also be considered. However, it is not clear that this is a helpful metric. A tax assurance indicator is perhaps a better measure of success. This would be made up of the total tax payable by taxpayers in the Cooperative Compliance programme, less any amounts that are subject to discussion/dispute and that could consequently be regarded as correctly declared and paid.

Any evaluation of the outcomes from these programmes should ideally use a basket of indicators:

1. Tax compliance/risk;
2. Legal certainty;
3. Tax risk management of the taxpayer;
4. Costs;
5. Trust and relationship; and
6. Customer satisfaction.

Whatever specific measures a tax administration chooses to track the efficiency and effectiveness of its Cooperative Compliance programme, it is important to establish prior to the introduction of a Cooperative Compliance programme the current state as a benchmark against which it is possible to compare subsequent performance as it is affected by the programme.

Recommendations on Communicating Cooperative Compliance – Obtaining trust from society

Companies and tax administrations need to develop a coherent reporting and communication strategy on Cooperative Compliance. This may include engaging with multi-stakeholder groups to test and challenge existing approaches and views. The following recommendations for best practices are suggested:

- A) For action by tax administration
 - Publish periodical tax administration Cooperative Compliance impact assessments.
 - Invest in stakeholder engagement and dialogue regarding the design, evaluation and improvement of Cooperative Compliance programmes.

- Invest in tax administrations' resource capacity, communication skills, knowledge of tax controls and risk management (including TCF), business models and realities and education.
- Ensure democratic scrutiny of Cooperative Compliance programmes and periodical reviews to ensure that such programmes, as well as existing laws and regulations, remain fit for purpose and justifiable from a societal perspective.
- Develop a global assurance standard for tax administrations that is internationally accepted to enhance the transparency and accountability of and public trust in tax administrations.

B) For action by companies

- Disclose more relevant and meaningful corporate income tax information, including non-financial (ESG) information, publicly and on a voluntary basis.
- Use a global tax reporting standard that is internationally accepted, e.g. OECD BEPS 13 or GRI 207: Tax 2019, for disclosing more relevant and meaningful corporate income tax information, including non-financial (ESG) information, publicly and on a voluntary basis.
- Provide tax assurance (internal and external) on corporate disclosures made and the figures in the tax return.

C) For action by both

- Shift from "Tell Me" to "Show Me" when reporting on and making the case for Cooperative Compliance systems and their benefits for tax administrations, companies, tax advisers and wider society.
- Change the 'tone at the top' in the tax administration and multinational which is crucial for the required behavioral change toward the general public.
- Upgrade tax good governance to an investor screening criterion in its own right to raise the bar for responsible tax behavior and investments further.
- Consider tax transparency not only as an external risk forced upon the organization but also as an opportunity for building trust with wider society.

Concluding comments

All of the participants in this project have gained greater insights into the conceptual and practical issues that arise for governments and business that do, or are considering entering into, Cooperative Compliance programmes. The report set out a number of best practices. Whilst there remain

different views on the precise way that these programmes should be designed all participants agreed that these programmes provide a useful complement to the existing ways in which tax administrations and taxpayers interact and encourage a move away from an adversarial to more open and constructive engagement. It is hoped that the best practices identified in this report and the country examples will encourage more countries, including economies in transition and developing countries, to explore how Cooperative Compliance programmes can be designed to meet their specific needs. The group recognized that some stakeholders will remain sceptical of this approach to taxation but it is hoped that the report will provide a firmer basis for an ongoing discussion.

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 a feedback from both governments and business and using the experience 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 on the basis of the experiences of countries, especially those which 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, 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).

The next meeting of the group which will take place in October 2021 will review the progress made in implementing such programmes and discuss how to address the new issues identified above.

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