

## KEY POINTS

**What is the issue?**

This article proposes a voluntary compliance programme for individuals, family trusts and private investment vehicles.

**What does it mean for me?**

The implementation of this proposal could enhance a culture of cooperative compliance and free up enforcement resources. Importantly, it could also protect the privacy needs of global wealth and business owners without compromising the ability of governments to ensure that tax and other obligations are met.

**What can I take away?**

This proposal has the potential to ensure compliance while also reducing costs and risks for both authorities and participants.

# Passports, please!

**PHILIP MARCOVICI AND NOAM NOKED ADVOCATE THE PILOTING OF A COMPLIANCE PASSPORT PROGRAMME FOR INDIVIDUALS AND TRUSTS**



The current trend for tax and beneficial ownership transparency has an important policy goal: increasing governments' ability to deter and detect tax non-compliance and money laundering. However, under these regimes many law-abiding individuals, family trusts and private investment vehicles face substantial direct and indirect costs, legal uncertainties and risks to privacy. Transparency regimes may also have limited effectiveness because bad actors might exploit loopholes to avoid detection. This means that compliant parties face high costs while others might continue to engage in tax evasion and money laundering.

The authors' proposal draws upon cooperative compliance programmes and, specifically, the International Compliance Assurance Programme (ICAP). Encouraged by the OECD, a growing number of countries are offering voluntary cooperative compliance programmes to their corporate taxpayers.<sup>1</sup> After two successful pilots, the OECD Forum on Tax Administration adopted ICAP as a permanent programme in December 2020. Unlike domestic cooperative compliance programmes, ICAP is multi-jurisdictional and provides participating multinational enterprises with tax certainty with respect to multi-jurisdictional international tax matters. Although the OECD made a recommendation in a 2009 report to enhance cooperative compliance with high-net-worth

individuals,<sup>2</sup> current programmes are generally not available for individuals and trusts.

## PROPOSAL FOR A COMPLIANCE PASSPORT

A multi-jurisdictional cooperative compliance model could be attractive for law-abiding business and wealth owners, and family trusts with assets and businesses in different jurisdictions. Under the proposed programme, the authorities of the relevant jurisdictions would determine whether the participant is in full compliance with their tax obligations and whether there are money laundering concerns. A successful participant would be granted a compliance passport and would be able to present this document to financial institutions (FIs), authorities and other parties to show that they are compliant in the jurisdictions that granted it. For anti-money laundering (AML) purposes, a compliance passport



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a trust). Alternatively, the lead tax administration could be the tax authority of the jurisdiction where most of the underlying assets are located. After identifying the lead tax administration, the next step would be to identify the potential covered tax administrations. These would include the tax authorities of jurisdictions of tax residence of the beneficiaries and beneficial owners; where the assets are located; where the relevant entities are organised; and where the relevant entities are resident for tax purposes.

The programme could also be applied by one tax authority of one jurisdiction only.

#### Stage II: compliance review

As part of this stage, the participant should provide documents, certifications and information that show they have been compliant with their tax obligations and that they have not been involved in money laundering. The relevant jurisdictions could raise issues with the participant and require additional information. The compliance review could be performed by the relevant authorities: the tax authorities in the relevant jurisdictions could review the tax compliance and the authorities in charge of AML enforcement could review the money laundering risks. Alternatively, the compliance review could be performed by third parties appointed by the authorities.

#### Stage III: issuance of a compliance passport

Once the compliance review has been successfully completed, the lead tax administration should issue a compliance passport to the participant, noting that the participant is in full compliance with their tax obligations in the relevant jurisdictions and that no money laundering concerns have been identified. This document should detail the covered tax administrations that endorsed its issuance.

#### Stage IV: periodic review

There should be a periodic review and renewal of the compliance status after a specified period (e.g., three years). The periodic review would likely be less rigorous than the compliance review in Stage II, but should identify any material changes to the tax compliance and money laundering risks.

#### POTENTIAL BENEFITS AND CONCLUDING REMARKS

This proposal would ensure compliance among the participants through a cooperative process in which the participants provide the requested information voluntarily. Ensuring compliance through audits and

investigations might involve higher enforcement costs. Conducting the compliance review in multiple jurisdictions in a multilateral manner can resolve issues more efficiently. This programme could free up enforcement resources that could be used to investigate other non-participating individuals and entities. The net cost of this programme could be covered by fees charged to the participants.

This programme would offer several advantages to its participants. A compliance passport holder should have greater tax and legal certainty because the relevant authorities would have already reviewed their tax compliance and money laundering risks. In addition, a compliance passport holder would be able to carry out activities such as opening bank accounts more easily because FIs and other parties would consider them as lower risk in respect of money laundering. Such FIs would incur lower compliance costs because they could apply simplified AML measures to low-risk compliance passport holders. This could reduce financial services costs. The authors propose that compliance passport holders should enjoy greater privacy protection through exclusion from public beneficial ownership registers and similar measures.

This proposal is feasible and could be implemented within the existing international framework. Policymakers could experiment with it by running a pilot programme similar to the ICAP pilots. This initiative would fit in well with approaches that the authors would advocate countries adopt to encourage open dialogue with wealth and business owners. The authors believe that there is much for countries to gain from finding ways to attract, rather than repel, those who can contribute heavily to economies, particularly given the global need to address increasing wealth and income inequality.<sup>3</sup>

#COMPLIANCE #PUBLIC POLICY  
#TAXATION

<sup>1</sup> Including Australia, Denmark, Ireland, the Netherlands, the UK and the US, among others. <sup>2</sup> OECD (2009), *Engaging with High Net Worth Individuals on Tax Compliance*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264068872-en> <sup>3</sup> This piece is a summarised version, with parts taken verbatim, of an article published by the authors in the *Journal of Tax Administration*, issue 6(2) (2021) (available at [bit.ly/3iw9cM6](http://bit.ly/3iw9cM6)). Please refer to that article for the appropriate references and citations. This proposal was developed with the valuable assistance of William Ahern TEP, Simon Hodges, John Riches TEP and Bruce Zagaris TEP. Simon Hodges is Director of Policy for STEP, John Riches was at the time Chair of the Public Policy Committee of STEP, and William Ahern and Bruce Zagaris, along with Philip Marcovici, are members of that committee. The work described in this article was fully supported by a grant from the Research Grants Council of the Hong Kong Special Administrative Region, China (Project No. CUHK 24611118).

holder should generally be considered a low money laundering risk. Policymakers should consider providing compliance passport holders with greater privacy protection. This proposal suggests that compliance passport holders be exempted from disclosure in public beneficial ownership registers. If the cost to the authorities of administering this programme were to exceed the amount of money saved, the net cost could be borne by the participants in the same way that applicants for advance pricing agreements are charged user fees.

The programme's process could be structured similarly to ICAP and include the stages described below.

#### Stage I: selection

An individual taxpayer, a trustee (in respect of a trust) or a director (in respect of a company) could contact a tax authority that acts as a lead tax administration to initiate the process. A lead tax administration could be the tax authority of the tax jurisdiction of the individual (in the case of an individual participant) or the tax jurisdiction of the individual who is the primary beneficial owner (in the case of a company or