

8 Disputes

Dispute prevention and resolution are essential features of tax systems. This chapter explores both issues by looking at the strategies put in place by tax administrations to resolve and prevent disputes efficiently and effectively.

Introduction

Taxpayer rights and obligations are frequently set out in law or taxpayer charters. Table 8.1 sets out some of the most commonly reported rights and obligations. Underpinning these rights and obligations is effective access to processes that allow taxpayers to challenge assessments and decisions. This safeguards taxpayer rights and ensures that appropriate checks and balances exist on the exercising of tax powers by administrations. At the same time, tax administrations and taxpayers should also strive to work together to prevent disputes from arising in the first place, thus reducing burdens and uncertainty for both parties.

Table 8.1. Taxpayer’s rights and obligations

Right	Obligation
To be informed, assisted, and heard	To be honest
Of appeal	To be co-operative
To pay no more than the correct amount of tax	To provide accurate information and documents on time
Certainty	To keep records
Privacy	To pay taxes on time
Confidentiality and secrecy	

Source: OECD (2019), *Tax Administration 2019: Comparative Information on OECD and other Advanced and Emerging Economies*, <https://doi.org/10.1787/74d162b6-en>.

This chapter examines the dispute resolution and review mechanisms in the jurisdictions covered by this report, as well as their performance in this area, and explores their dispute prevention strategies.

Dispute resolution review mechanisms

All 58 jurisdictions covered in this report provide taxpayers with the right to challenge assessments. Almost all administrations report having an internal review mechanism in place, and a large majority of administrations provide taxpayers with the option to seek an independent review by an external body, which can help improve legal certainty for taxpayers while avoiding potentially lengthy and costly legal proceedings. For those administrations that offer both review mechanisms, approximately 70% require taxpayers to seek an internal review before their case can be reviewed by an external body (see Figure 8.1).

Box 8.1. Resolving international tax disputes: Mutual agreement procedures

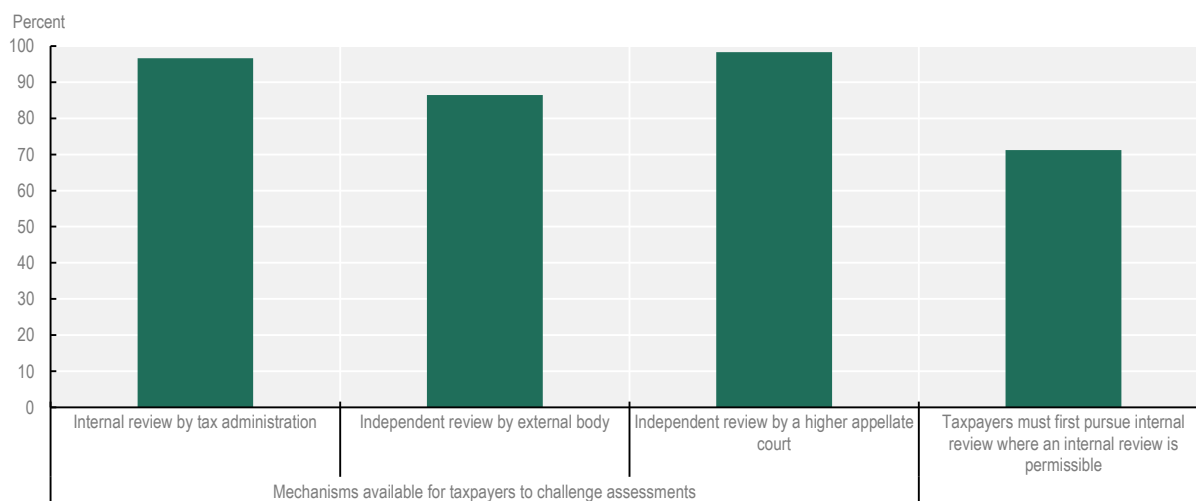
Double taxation of the same transaction or income can have significant economic impacts. Tax treaties, also known as double taxation agreements, usually aim to remove double taxation by setting out mutually agreed rules on the allocation of taxing rights for taxpayers resident in the signatory jurisdictions. They can also provide mechanisms to help prevent tax non-compliance.

Given the complexity of these situations, the parties may disagree on the application or interpretation of those rules. To respond to these situations, the vast majority of tax treaties have a formal process for dispute resolution through a mutual agreement procedure (MAP). Such a procedure is set out in Article 25 of the OECD Model Tax Convention, which is used by most jurisdictions as the framework for their tax treaties. MAP is critical component in ensuring the effective working of tax treaties, and in helping to reduce double taxation.

Source: OECD (2017), "Improving mutual agreement procedures", in *Tax Administration 2017: Comparative Information on OECD and Other Advanced and Emerging Economies*, https://doi.org/10.1787/tax_admin-2017-18-en.

Figure 8.1. Dispute resolution: Available review mechanisms, 2020

Percent of administrations



Source: Table A.37 Dispute resolution: Review procedures.

StatLink  <https://doi.org/10.1787/888934310993>

Performance in dispute resolution

While tax administrations cannot generally control the timing of judicial processes, many of them are working on improving dispute resolution processes to make them quicker. These might include mediation or other non-judicial routes. The examples included in Box 8.2 illustrate how technological advances offer new possibilities for tax administrations to improve the efficiency of dispute resolution.

Box 8.2. Examples – Improving the efficiency of dispute resolution

Australia - Optimising Disputes through Self-Service (ODSS)

Currently, many objections the Australian Taxation Office (ATO) receives are incomplete, incorrect, or lack necessary supporting information and evidence. These consume significant time and resources, affecting the ATO's ability to resolve disputes in a timely and efficient manner. The Optimising Disputes through Self-Service (ODSS) project will initially focus on making an online objection form available to all clients across all ATO online services (in addition to the existing paper or fax methods).

ODSS also aims to provide taxpayers with decision assistance tools to help them choose the right pathway for resolving their issue. The contents of the form aims to be tailored based on taxpayer responses and taxpayers will be guided to ensure that all critical information is provided upfront. The online form empowers taxpayers to lodge objections correctly in the first instance, reducing unwanted delays for the taxpayer and unnecessary touchpoints, and reducing costs for both the taxpayer and the ATO.

In the longer term, the online objection form will also provide data which will be used to strengthen upfront risk assessment. Data entered by taxpayers in real-time will be used in conjunction with ATO data to identify the subject matter of the objection, and assess the complexity and priority. This will allow objections to be routed to the area and/or staff member with the most appropriate skills and capacity, and enable staff to apply greater focus to higher-risk and higher complexity disputes. ODSS will also facilitate the development of a risk engine to streamline decision making and ensure accuracy and consistency of case outcomes.

Brazil – Intelligent litigation project

Brazil has around USD 140 billion in tax waiting for decisions in outstanding administrative court tax appeals. It takes about six years for the appeal ruling and so the number is constantly increasing. Under the AI Litigation Project, Brazil employed supervised machine learning when distributing groups of similar files to the same officers, which is a known strategy to increase decision speed.

The first trials, conducted with a sample of 2 000 manually labeled files, showed that supervised algorithms can attain sensitivity and specificity of over 80%. Additionally Brazil employed clustering algorithms to complete files either in full or in part. On top of that, a web-based report assistant tool, entitled "ARiA", is being developed to support officers' analysis and help in their goal of reusing blocks of text.

ARiA's resources include the presentation of suggested groups of files and paragraphs and the highlighting of sentences that turned out to be important for the clustering process. Officers can label files and paragraphs, and the labels are used to improve future suggestions.

Sources: Australia (2022) and Brazil (2022).

Making effective adjustments to dispute resolution processes requires sound reporting and monitoring mechanisms, and many administrations are active in improving the level of management information available. As a result, this report contains performance information from approximately 90% of administrations.

Tables 8.2 and 8.3 compare the change between 2018 and 2020 in the number of review cases initiated and on hand at fiscal year-end, for both internal and external reviews. Between 2019 and 2020, the majority of administrations reported a reduction in the number of cases initiated and on hand at fiscal year-end. In relation to cases under internal review, this changes the results that can be observed over the period 2018 to 2019, where the majority of administrations reported increasing numbers.

Table 8.2. Dispute resolution: Change in number of cases initiated during the year

Percent of administrations that reported an increase or decrease in the number of cases initiated

Movement	Tax cases initiated under internal review procedure		Tax cases initiated under independent review by external bodies	
	Change between 2018 and 2019	Change between 2019 and 2020	Change between 2018 and 2019	Change between 2019 and 2020
Increase	51.0	39.2	44.4	27.3
Decrease	49.0	60.8	55.6	72.7

Source: Table A.38 Dispute resolution: Number of cases.

Table 8.3. Dispute resolution: Change in number of cases on hand at fiscal year-end

Percent of administrations that reported an increase or decrease in the number of cases on hand

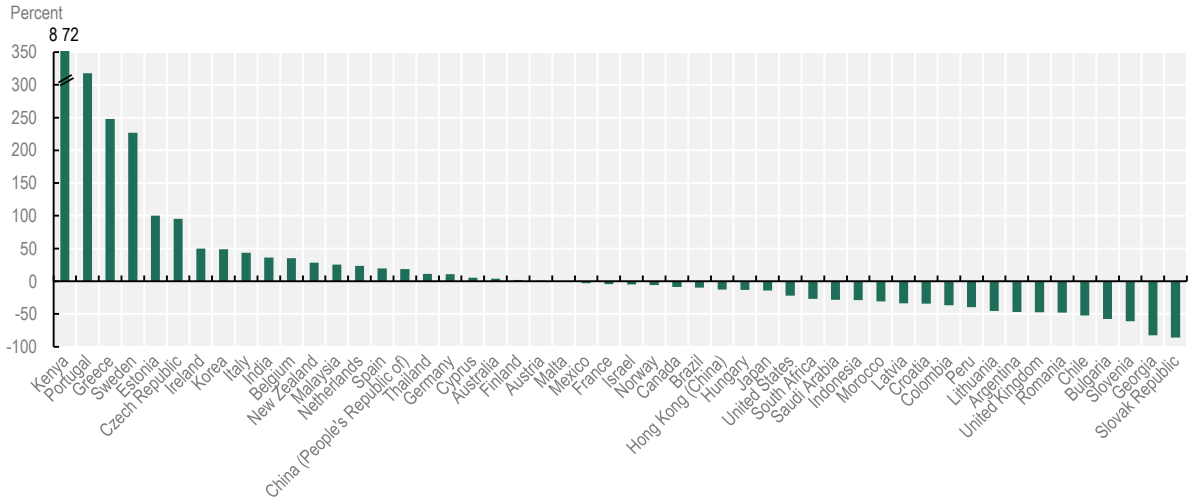
Movement	Tax cases on hand under internal review procedure		Tax cases on hand under independent review by external bodies	
	Change between 2018 and 2019	Change between 2019 and 2020	Change between 2018 and 2019	Change between 2019 and 2020
Increase	63.3	44.9	48.8	34.1
Decrease	36.7	55.1	51.2	65.9

Source: Table A.38 Dispute resolution: Number of cases.

Figures 8.2 and 8.3 take a more detailed look at the jurisdiction level data and show the change between 2019 and 2020 in the number of review cases on hand at fiscal year-end, for both internal and external reviews. What is interesting to note are the significant increases in the number of review cases reported by a few jurisdictions.

At the same time, it should be pointed out that the volume of cases per jurisdiction varies significantly and where the number of cases is very low there can be significant fluctuations between years. This becomes more evident when looking at Figure 8.4, which highlights the wide differences between jurisdictions in the use of internal review procedures.

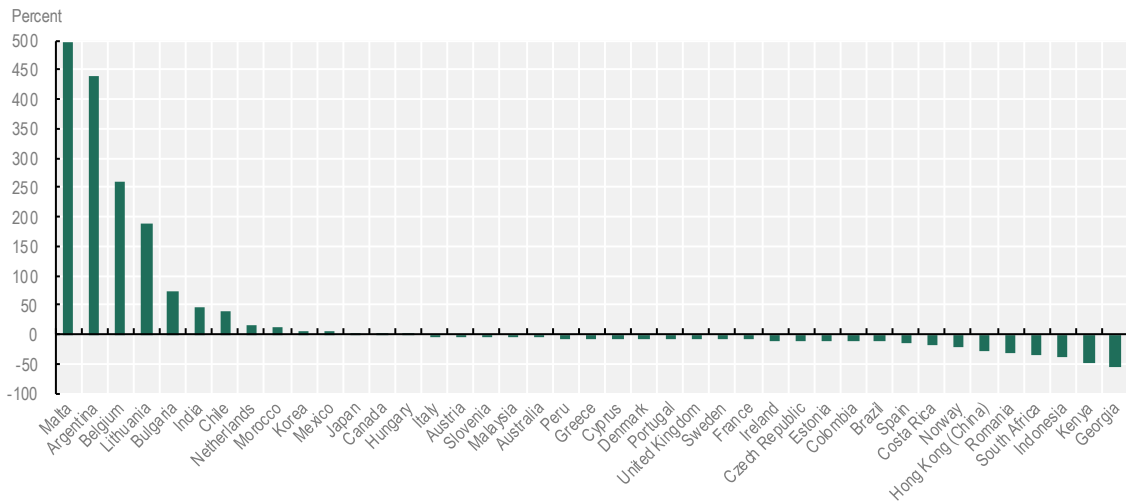
Figure 8.2. Internal review procedures: Change between 2019 and 2020 in the number of cases at fiscal year-end



Source: Table A.38 Dispute resolution: Number of cases.

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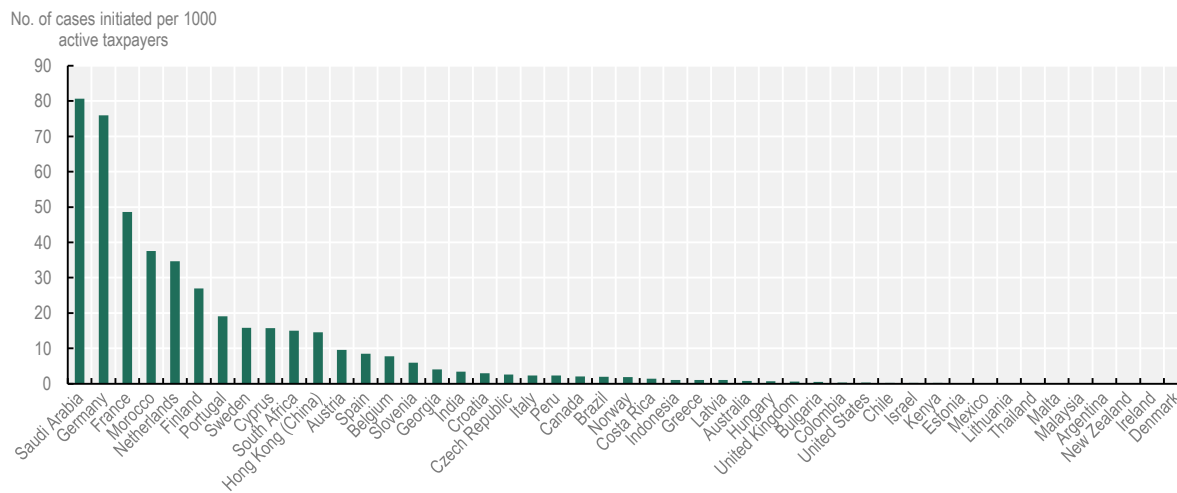
Figure 8.3. Independent review by external bodies: Change between 2019 and 2020 in the number of cases at fiscal year-end



Source: Table A.38 Dispute resolution: Number of cases.

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Figure 8.4. Number of internal review cases initiated per 1 000 active PIT and CIT taxpayers, 2020

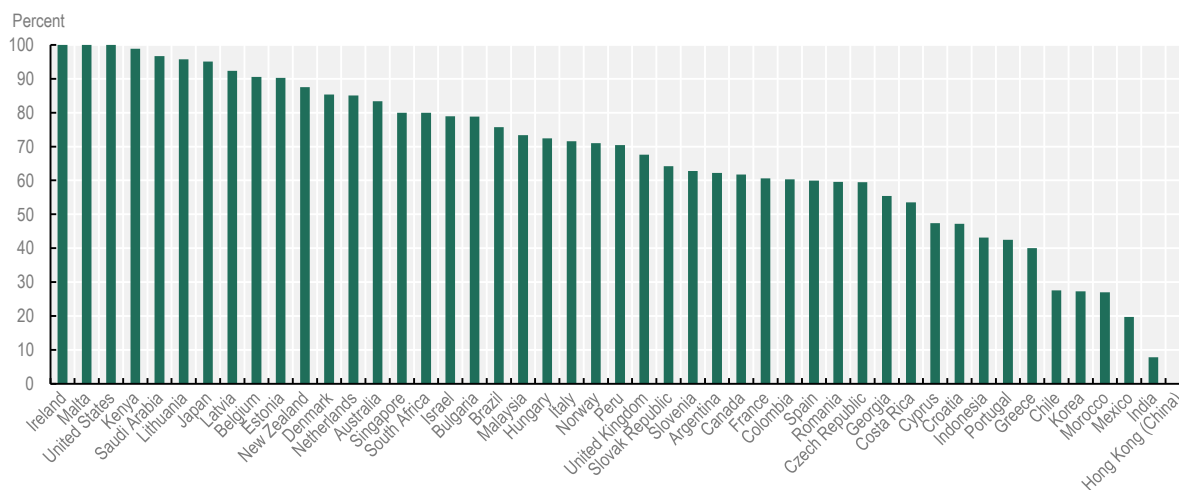


Note: For Saudi Arabia, the "No. of internal cases initiated during the FY per 1 000 active taxpayers" was put in relation to active VAT taxpayers.
Source: Table D.24 Administrative review cases and litigation.

StatLink  <https://doi.org/10.1787/888934311050>

Different interpretations of tax law by taxpayers and the tax administration are a normal part of tax administration, and it is not uncommon for these differences to become subject to litigation, once the internal and external review procedures have been exhausted. Whilst tax administrations report that most disputes are resolved without the need for litigation, Figure 8.5 reports the performance of administrations for cases decided upon by the courts. It shows significant differences in the success rate of administrations, although for some jurisdictions the number of cases decided is very low, meaning results can fluctuate significantly between years.

Figure 8.5. Percentage of cases resolved in favour of the administration, 2020



Note: Cases resolved in favour of the administration means those cases where the administration has been successful in more than 50% of the issues contested in each case. For France, Israel and Korea please see the notes in Table A.38.

Source: Table D.24 Administrative review cases and litigation.

StatLink  <https://doi.org/10.1787/888934311069>

Dispute prevention

As disputes can be resource intensive processes, preventing them is the most effective strategy, and a key element in the dispute prevention framework is the provision of guidance and advice to taxpayers. Tax administrations often do this as part of their wider service strategy. This can include putting information and interactive tools on their website, publishing guidelines and taxpayer information briefs, and carrying out educational and business support initiatives.

In addition, many administrations offer specific dispute prevention mechanisms. For example, as noted in the chapter “Innovations in dispute resolution” in the 2019 edition of this series, the Australian Taxation Office explained their independent review of the technical merits of an audit case prior to the finalisation of the audit. The review aims to encourage earlier engagement to resolve disputes (OECD, 2019^[1]). Initially this service was only available to large businesses with an annual turnover greater than AUD 250 million. However, following a successful pilot it has now been extended to small business taxpayers, i.e. taxpayers in business with income or turnover of less than AUD 10 million (Australian Taxation Office, 2022^[2]).

Rulings

As shown in Table A.120 of the 2019 edition of this series (OECD, 2019^[1]), as part of tax administrations’ commitment to give taxpayers certainty of treatment, it is now common practice for administrations to set out how they will interpret the laws they administer, and how it will interpret the tax law in particular situations, through rulings:

- A **public ruling** is a published statement of how an administration will interpret provisions of the tax law in particular situations. They are generally published to clarify application of the law, especially where a large number of taxpayers may be impacted by particular provisions and/or where a provision has caused confusion or uncertainty. Typically, a public ruling is binding on the tax administration if the ruling applies to the taxpayer and the taxpayer relies upon it.

- A **private ruling** relates to a specific request from a taxpayer (or their tax representative) seeking greater certainty as to how the law would be applied by the tax administration in relation to a proposed or completed transaction(s). The objective of private rulings is to provide additional support and certainty to taxpayers on the tax consequences of more complex transactions.

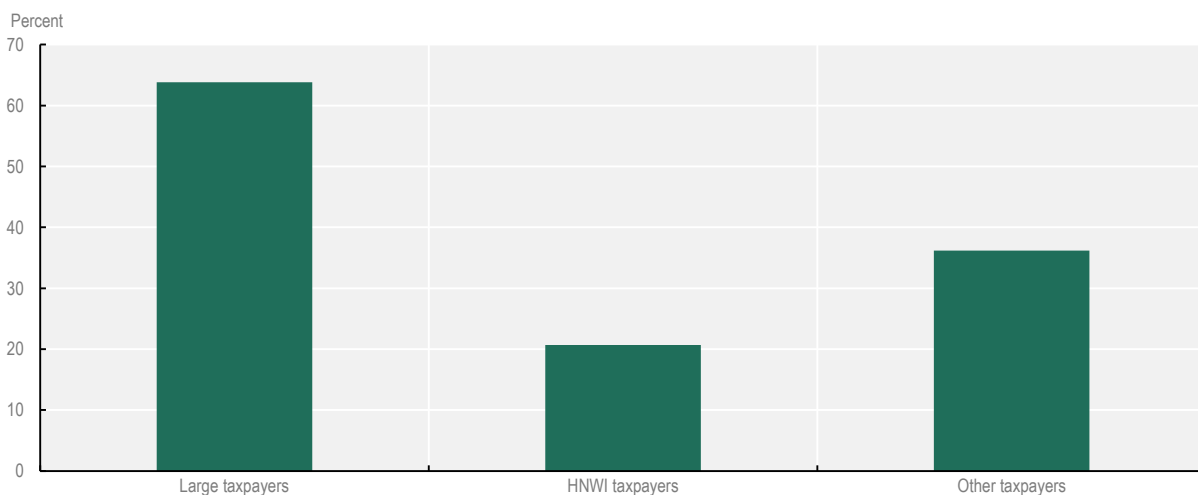
Co-operative compliance programmes

Over the last few years, there has been an increasing focus on the use of co-operative arrangements to manage compliance and enhance tax certainty. These programmes often involve a more transparent relationship between tax administrations and taxpayers, and can involve more proactive approaches to resolving material tax risks. The concept of co-operative compliance has been the subject of several OECD reports, most recently *Co-operative Tax Compliance: Building Better Tax Control Frameworks* (OECD, 2016^[3]).

As the operation of a co-operative compliance programme is resource intensive due to the high level of engagement between tax administration officials and taxpayers, traditionally those programmes were reserved for large companies. However, technological advances in risk assessment processes have led to a number of administrations applying this concept to other taxpayer groups (see Figure 8.6).

Figure 8.6. Existence of co-operative compliance approaches for different taxpayer segments, 2020

Percent of administrations that have such approaches



Source: Table A.50 Co-operative compliance approaches.

StatLink  <https://doi.org/10.1787/888934311088>

International Compliance Assurance Programme

The International Compliance Assurance Programme (ICAP) is a voluntary programme for a multilateral co-operative risk assessment and assurance process. It is designed to provide multinational enterprise groups (MNE groups) with increased tax certainty with respect to certain of their activities and transactions as long as they are willing to engage actively, openly and in a fully transparent manner. ICAP does not provide an MNE group with the legal certainty that may be achieved, for example, through an advance

pricing arrangement (APA). However, it does give assurance when tax administrations participating in an MNE group's risk assessment consider covered risks to be low risk.¹ (OECD, 2021^[4])

Joint audits

Another tool that can assist in preventing disputes is a joint audit where officials from two or more administrations join to form a single audit team which will examine issues or transactions of taxpayer(s) with cross-border business activities and in which the jurisdictions have a common or complementary interest. By collaborating it may be possible for the participating tax administrations to detect and address differences or potential disputes at an early stage. (OECD, 2019^[5])

Note

¹ See www.oecd.org/tax/forum-on-tax-administration/international-compliance-assurance-programme.htm for more information (accessed on 13 May 2022).

References

- Australian Taxation Office (2022), *Independent review for small businesses with turnover less than \$10 million*, [https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/In-detail/Avoiding-and-resolving-disputes/Independent-review/Independent-review-for-small-businesses-with-turnover-less-than-\\$10-million/](https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/In-detail/Avoiding-and-resolving-disputes/Independent-review/Independent-review-for-small-businesses-with-turnover-less-than-$10-million/) (accessed on 13 May 2022). [2]
- OECD (2021), *International Compliance Assurance Programme – Handbook for tax administrations and MNE*, OECD, Paris, <https://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/international-compliance-assurance-programme-handbook-for-tax-administrations-and-mne-groups.htm> (accessed on 13 May 2022). [4]
- OECD (2019), *Joint Audit 2019 – Enhancing Tax Co-operation and Improving Tax Certainty: Forum on Tax Administration*, OECD Publishing, Paris, <https://doi.org/10.1787/17bfa30d-en>. [5]
- OECD (2019), *Tax Administration 2019: Comparative Information on OECD and other Advanced and Emerging Economies*, OECD Publishing, Paris, <https://doi.org/10.1787/74d162b6-en>. [1]
- OECD (2016), *Co-operative Tax Compliance: Building Better Tax Control Frameworks*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264253384-en>. [3]



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