

# China Tax Alert

Issue 34, December 2017

## State Administration of Taxation Issued Announcement 46, clarifying the Information Exchange of Country-By-Country Report

### Laws and regulations discussed in this alert :

- In order to ensure cohesion between the 《Announcement of the State Administration of Taxation on Matters Relating to Improved Administration of Related Party Declarations and Contemporaneous Documentation》

(“Announcement 42”) and 《The Multilateral Convention on Mutual Administrative Assistance in Tax Matters》 (“Convention”), the State Administration of Taxation issued Announcement 46 on December 22 2017, clarifying that the provisions of Article 7 and Article 8 in the Announcement 42 are not applicable for the 2016 country-by-country report ( “CBC Report” ) .

### The background of Announcement 46

“The Multilateral Convention on Mutual Administrative Assistance in Tax Matters” (“Convention”) will be implemented in China effective January 1, 2017. In order to ensure cohesion between the “Announcement of the State Administration of Taxation on Matters Relating to Improved Administration of Related Party Declarations and Contemporaneous Documentation” (“Announcement 42”) and the Convention, the State Administration of Taxation (“SAT”) issued the (“Announcement 46”) on December 22 2017, clarifying that the provisions of Article 7 and Article 8 in the Announcement 42 are not applicable for the 2016 country-by-country report (“CBC Report”).

### Background of the Convention and China's Signature

The Convention is a multilateral agreement which was developed jointly by the Council of Europe and the Organisation for Economic Co-operation and Development (“OECD”) and opened for signature by the member states of both organisations on 25 January 1988. The Convention is designed to facilitate international cooperation among tax authorities, improve their ability to tackle tax evasion and avoidance, and ensure full implementation of their national tax laws, while respecting the fundamental rights of taxpayers. The Convention is the most comprehensive multilateral instrument available for tax cooperation and exchange of information. It provides for all possible forms of administrative cooperation between states in the assessment and collection of taxes. Forms of cooperation specifically include spontaneous exchanges of information, simultaneous examinations, performance of tax examinations abroad, service of documents, assistance in recovery of tax claims and measures of conservancy and automatic exchange of information. The Convention can also facilitate joint audits.

The Convention was amended in 2010 to align its information exchange provisions with international standards, and also to allow any country to become a party to the Convention. The amended Convention was opened for signature on June 1, 2011. As of December 15, 2017, 116 jurisdictions have signed the Convention. China signed the Convention on August 27, 2013.

### **Interpretation of Announcement 46**

The exchange of information in the Convention has been specifically written into the related provisions on the CBC Report in Announcement 42, which was released in 2016. In particular, Article 7 provides that the tax authorities may implement information exchange for CBC Report pursuant to the treaty, agreement or arrangement between China and a foreign counterparty. Article 8 also unequivocally states that tax authorities may, at the time of implementation of a special tax investigation, require the enterprise to provide a CBC Report when tax authorities fail to obtain the CBC Report through an information exchange mechanism.

The International Taxation Department of the SAT has made the following interpretations with regard to the Announcement 46:

- For the ultimate holding company of a multinational enterprise (“MNE”), which is a Chinese resident enterprise, the company needs to prepare and submit the CBC Report to the relevant tax authorities if it meets the requirements set forth in Announcement 42. That is, the annual consolidated revenue of the group in the previous fiscal year exceeds CNY 5.5 billion. In this case, according to the requirements of Announcement 46, the tax authorities in China will not implement the information exchange on the 2016 CBC Report.
- For foreign-invested enterprises in China, if the MNE group to which it belongs to is required to prepare a CBC report pursuant to relevant provisions of its respective country, Announcement 46 states that tax authorities in China may not, at the time of implementation of special tax investigation, require the Chinese company to provide the group CBC Report. However, if the company meets the threshold to prepare transfer pricing contemporaneous documentation under the Announcement 42, transfer pricing contemporaneous documentation should be prepared and submitted when required by tax authorities during a special tax investigation.

### **China’s current practice of international exchange of CBC Report under the framework of the Convention**

Under the framework of Convention, as of December 19, 2017, 68 countries have signed the Multilateral Competent Authority Agreement for the Automatic Exchange of Country-by-Country Reports (“MCAA”). China also signed the agreement on May 12, 2016. With regard to the 2016 CBC Report, China has not activated the MCAA with other countries, and therefore will not exchange the 2016 CBC Report. Meanwhile, China has activated the MCAA with the United Kingdom, France and Germany on July 31, 2017, which means that China will exchange the 2017 CBC Report with the above three countries.

### **KPMG’s observations**

The Announcement 46 clarifies that tax authorities in China will not implement the exchange of information mechanism for 2016 CBC Reports.

In the future, as more countries finalize their CBC Report legislation, and the legislative requirements become clearer, it is recommended that MNEs pay special attention to the latest updates of the CBC Report legislation around the world to ensure the accuracy and completeness of their CBC Reports prepared. This will help to effectively avoid the related risks on their global operations and transfer pricing policies. Companies should also constantly follow the latest updates of the filing requirements of CBC Reports in China and in other countries and the updates of the information exchange mechanism, in order to determine the most appropriate filing channel and to effectively avoid any potential negative impact resulting from non-filing or incomplete filing. It should be noted that, for countries that China has not activated the MCAA or countries for which China will not exchange information with, companies still have the obligation to file CBC Reports in accordance with the relevant local regulations.

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