

China Tax Alert

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OECD Task Force on the Digital Economy release Interim Report

Regulations discussed in this issue:

- Interim Report on the Tax Challenges Arising from Digitalisation, prepared by the Task Force on the Digital Economy (TFDE), released on the OECD website on 16 March 2018.
- BEPS Action 1 Report "Addressing the Tax Challenges of the Digital Economy", prepared by the Task Force on the Digital Economy (TFDE), released by the OECD on 5 October 2015.

On 16 March 2018, the [Interim Report on the Tax Challenges Arising from Digitalisation](#) (Interim Report), prepared by the Task Force on the Digital Economy (TFDE), was released on to the OECD website. The Interim Report reviews the progress made in tackling the issues of double non-taxation, and aggressive tax planning, which motivated the 2013-2015 Base Erosion and Profit Shifting (BEPS) project to reform global tax rules. It surveys the increasing adoption, across countries, of unilateral measures to tax digitalised businesses. It sets out a new theoretical framework for analysing the value creation processes in digitalised business models, to underpin the revision of international tax rules. Most importantly, the report makes clear that while there is no current consensus among countries on how to revamp the international tax framework for the digital era, and no consensus on the use of interim measure turnover taxes, the Inclusive Framework on BEPS will seek to arrive at a new global consensus by 2020.

Interim Report main content

The 218 pages of the Interim Report are divided into eight chapters, the most important of which are Chapter 5, 'Adapting the International Tax System to the Digitalisation of the Economy', which sets out the alternative views of countries on the need for long-term restructuring of international tax rules, and Chapter 6, 'Interim Measures to address the tax challenges arising from Digitalisation', which sets out the conflicting positions of countries on the need for interim measure turnover taxes. Highlights of the report include the following:

- **BEPS outcomes:** The report concludes (Chapter 3) that the BEPS measures, adopted by countries since 2015, have had some success in tackling the multinational enterprise (MNE) tax planning behaviours that motivated the launch of the BEPS project. There is some evidence that MNEs are changing their corporate structures (e.g. moving to local distributor models, 'on-shoring' of IP), though more evidence is needed. While the adoption of the BEPS PE rule changes by countries is below expectations, progress has been made with the rollout of the BEPS recommendations and standards for VAT, CFC rules, treaty abuse measures, transfer pricing, and IP regimes.

This being said, the report considers the BEPS measures to be inadequate to tackle the more fundamental long-term problems, caused by digitalisation and business model change, for traditional international tax rules.

- **Unilateral measures:** The report segments (in Chapter 4) unilaterally adopted digital economy tax rules into four categories.

These include (i) alternative applications of the PE threshold (e.g. India, Israel); (ii) withholding taxes; (iii) turnover taxes (e.g. India, Italy, France); and (iv) specific regimes to deal with large MNEs (e.g. UK, Australia, US). The report observes that the adoption of such measures reflects a growing discontent among countries with the tax outcomes of the current international tax rules, and has increased the sense of urgency to revamp the existing framework.

- **Value creation in digitalised businesses:** Chapter 2 sets out a new theoretical framework for analysing the value creation processes in digitalised business models. Moving beyond the classic 'value chain', the report describes two further 'value creation categories', the 'value shop' and the 'value network'. The latter encompasses, inter alia, internet advertising and intermediation services models, which rely on active user contributions/participation, and on direct and indirect network effects in their target markets. The report indicates that, out of the three value creation categories, the strongest case for value creation 'in the market' (in the absence of physical presence) can be made for value networks.
- **Interim measures:** The report is clear that many countries strongly oppose interim turnover taxes on digitalised businesses, and sets out the risks and adverse consequences for economic welfare, productivity and competition. As some countries are, however, determined to proceed, considerations for minimizing their negative impact are outlined (e.g. high revenue thresholds, targeting at internet advertising and intermediation services).
- **Long-term solutions:** Looking to the long-term revamp of international tax rules, the report identifies three groups of countries with disparate views. One group consider that targeted measures are called for, which are directed solely at certain highly digitalised businesses, in light of the manner in which their business models rely on user participation/contributions. A second group consider that a broader reconsideration of the international tax framework, as it applies to both digitalised and traditional businesses is called for, in light of the progressive digitalisation of the entire economy. However, this second group is highly diverse in its views, some considering that no special emphasis should be put on user participation/contributions in the redesign of tax rules, and others considering this calls for major changes to nexus and profit allocation rules. A third group consider that the existing framework does not need alteration.

KPMG observations

The fact that the TFDE work thus far has been unable to arrive at a consensus, on either the need or justification for interim measures or the direction of the long-term solution, may mean that the international tax system is headed into a 'period of turbulence'. The EU Commission is set to unveil their proposed interim measure turnover tax for EU countries in the coming week, joining India and Italy which have already implemented turnover taxes. India, Israel and Taiwan have adopted Virtual PE rules, with more countries also looking in this direction. Businesses operating cross-border may anticipate greatly heightened double tax risk and uncertainty.

The challenge for the Inclusive Framework on BEPS, supported by the TFDE and assisting OECD working parties, will be to reconcile the positions of the three groups of countries outlined above in the course of 2019 and 2020, and put forward expansion of and / or alteration to international tax principles and detailed rules which are robust into the future. It is noted that China is playing a pivotal role in the global quest for consensus on the tax issues facing the digital economy, tenaciously adhering to the principle of neutrality in the taxation of the traditional and digital economies, which is in line with the 1998 Ottawa principles.

The issues dealt with in TFDE Interim Report are highly complex and KPMG China will issue further, more detailed publications in the near future.

For any enquiries, please send to our public mailbox: taxenquiry@kpmg.com or contact our partners/directors in each China/HK offices.

Khoonming Ho

Head of Tax,
KPMG Asia Pacific
Tel. +86 (10) 8508 7082
khoonming.ho@kpmg.com

Lewis Lu

Head of Tax,
KPMG China
Tel. +86 (21) 2212 3421
lewis.lu@kpmg.com

Beijing/Shenyang/Qingdao

Vincent Pang
Tel. +86 (532) 8907 1728
vincent.pang@kpmg.com

Tianjin

Eric Zhou
Tel. +86 (10) 8508 7610
ec.zhou@kpmg.com

Shanghai/Nanjing/Chengdu

Anthony Chau
Tel. +86 (21) 2212 3206
anthony.chau@kpmg.com

Hangzhou

John Wang
Tel. +86 (571) 2803 8088
john.wang@kpmg.com

Guangzhou

Lilly Li
Tel. +86 (20) 3813 8999
lilly.li@kpmg.com

Fuzhou/Xiamen

Maria Mei
Tel. +86 (592) 2150 807
maria.mei@kpmg.com

Shenzhen

Eileen Sun
Tel. +86 (755) 2547 1188
eileen.gh.sun@kpmg.com

Hong Kong

Karmen Yeung
Tel. +852 2143 8753
karmen.yeung@kpmg.com

Northern China

Vincent Pang

Head of Tax,
Northern Region
Tel. +86 (10) 8508 7516
+86 (532) 8907 1728
vincent.pang@kpmg.com

Cheng Chi

Tel. +86 (10) 8508 7606
cheng.chi@kpmg.com

Conrad TURLEY

Tel. +86 (10) 8508 7513
conrad.turley@kpmg.com

Milano Fang

Tel. +86 (532) 8907 1724
milano.fang@kpmg.com

Tony Feng

Tel. +86 (10) 8508 7531
tony.feng@kpmg.com

Flora Fan

Tel. +86 (10) 8508 7611
flora.fan@kpmg.com

John Gu

Tel. +86 (10) 8508 7095
john.gu@kpmg.com

Rachel Guan

Tel. +86 (10) 8508 7613
rachel.guan@kpmg.com

Helen Han

Tel. +86 (10) 8508 7627
h.han@kpmg.com

Michael Wong

Tel. +86 (10) 8508 7085
michael.wong@kpmg.com

Josephine Jiang

Tel. +86 (10) 8508 7511
josephine.jiang@kpmg.com

Henry Kim

Tel. +86 (10) 8508 5000
henry.kim@kpmg.com

David Ling

Tel. +86 (10) 8508 7083
david.ling@kpmg.com

Li Li

Tel. +86 (10) 8508 7537
li.li@kpmg.com

Lisa Li

Tel. +86 (10) 8508 7638
lisa.h.li@kpmg.com

Thomas Li

Tel. +86 (10) 8508 7574
thomas.li@kpmg.com

Larry Li

Tel. +86 (10) 8508 7658
larry.y.li@kpmg.com

Lucia Liu

Tel. +86 (10) 8508 7570
lucia.j.liu@kpmg.com

Alan O'Connor

Tel. +86 (10) 8508 7521
alan.oconnor@kpmg.com

Shirley Shen

Tel. +86 (10) 8508 7586
yinghua.shen@kpmg.com

Joseph Tam

Tel. +86 (10) 8508 7605
laiyiui.tam@kpmg.com

Joyce Tan

Tel. +86 (10) 8508 7666
joyce.tan@kpmg.com

Cynthia Xie

Tel. +86 (10) 8508 7543
cynthia.py.xie@kpmg.com

Christopher Xing

Tel. +86 (10) 8508 7072
christopher.xing@kpmg.com

Irene Yan

Tel. +86 (10) 8508 7508
irene.yan@kpmg.com

Adams Yuan

Tel. +86 (10) 8508 7596
adams.yuan@kpmg.com

Jessie Zhang

Tel. +86 (10) 8508 7625
jessie.j.zhang@kpmg.com

Sheila Zhang

Tel. +86 (10) 8508 7507
sheila.zhang@kpmg.com

Tiansheng Zhang

Tel. +86 (10) 8508 7526
tiansheng.zhang@kpmg.com

Tracy Zhang

Tel. +86 (10) 8508 7509
tracy.h.zhang@kpmg.com

Eric Zhou

Tel. +86 (10) 8508 7610
ec.zhou@kpmg.com

Vivian Zhou

Tel. +86 (10) 8508 3360
v.zhou@kpmg.com

Central China

Anthony Chau

Head of Tax,
Eastern & Western Region
Tel. +86 (21) 2212 3206
anthony.chau@kpmg.com

Yasuhiko Otani

Tel. +86 (21) 2212 3360
yasuhiko.otani@kpmg.com

Johnny Deng

Tel. +86 (21) 2212 3457
johnny.deng@kpmg.com

Cheng Dong

Tel. +86 (21) 2212 3410
cheng.dong@kpmg.com

Chris Ge

Tel. +86 (21) 2212 3083
chris.ge@kpmg.com

Chris Ho

Tel. +86 (21) 2212 3406
chris.ho@kpmg.com

Henry Wong

Tel. +86 (21) 2212 3380
henry.wong@kpmg.com

Jason Jiang

Tel. +86 (21) 2212 3527
jason.tj.jiang@kpmg.com

Sunny Leung

Tel. +86 (21) 2212 3488
sunny.leung@kpmg.com

Michael Li

Tel. +86 (21) 2212 3463
michael.y.li@kpmg.com

Karen Lin

Tel. +86 (21) 2212 4169
karen.w.lin@kpmg.com

Benjamin Lu

Tel. +86 (21) 2212 3462
benjamin.lu@kpmg.com

Christopher Mak

Tel. +86 (21) 2212 3409
christopher.mak@kpmg.com

Naoko Hirasawa

Tel. +86 (21) 2212 3098
naoko.hirasawa@kpmg.com

Ruqiang Pan

Tel. +86 (21) 2212 3118
ruqiang.pan@kpmg.com

Amy Rao

Tel. +86 (21) 2212 3208
amy.rao@kpmg.com

Wayne Tan

Tel. +86 (28) 8673 3915
wayne.tan@kpmg.com

Tanya Tang

Tel. +86 (25) 8691 2850
tanya.tang@kpmg.com

Rachel Tao

Tel. +86 (21) 2212 3473
rachel.tao@kpmg.com

Janet Wang

Tel. +86 (21) 2212 3302
janet.z.wang@kpmg.com

John Wang

Tel. +86 (571) 2803 8088
john.wang@kpmg.com

Mimi Wang

Tel. +86 (21) 2212 3250
mimi.wang@kpmg.com

Jennifer Weng

Tel. +86 (21) 2212 3431
jennifer.weng@kpmg.com

Grace Xie

Tel. +86 (21) 2212 3422
grace.xie@kpmg.com

Bruce Xu

Tel. +86 (21) 2212 3396
bruce.xu@kpmg.com

Jie Xu

Tel. +86 (21) 2212 3678
jie.xu@kpmg.com

Robert Xu

Tel. +86 (21) 2212 3124
robert.xu@kpmg.com

Jason Yu

Tel. +86 (21) 2212 3316
jjm.yu@kpmg.com

William Zhang

Tel. +86 (21) 2212 3415
william.zhang@kpmg.com

Hanson Zhou

Tel. +86 (21) 2212 3318
hanson.zhou@kpmg.com

Michelle Zhou

Tel. +86 (21) 2212 3458
michelle.b.zhou@kpmg.com

Eric Zhang

Tel. +86 (21) 2212 3398
eric.z.zhang@kpmg.com

Kevin Zhu

Tel. +86 (21) 2212 3346
kevin.x.zhu@kpmg.com

Southern China

Lilly Li

Head of Tax,
Southern Region
Tel. +86 (20) 3813 8999
lilly.li@kpmg.com

Vivian Chen

Tel. +86 (755) 2547 1198
vivian.w.chen@kpmg.com

Nicole Cao

Tel. +86 (20) 3813 8619
nicole.cao@kpmg.com

Sam Fan

Tel. +86 (755) 2547 1071
sam.kh.fan@kpmg.com

Joe Fu

Tel. +86 (755) 2547 1138
joe.fu@kpmg.com

Ricky Gu

Tel. +86 (20) 3813 8620
ricky.gu@kpmg.com

Fiona He

Tel. +86 (20) 3813 8623
fiona.he@kpmg.com

Angie Ho

Tel. +86 (755) 2547 1276
angie.ho@kpmg.com

Aileen Jiang

Tel. +86 (755) 2547 1163
aileen.jiang@kpmg.com

Cloris Li

Tel. +86 (20) 3813 8829
cloris.li@kpmg.com

Jean Li

Tel. +86 (755) 2547 1128
jean.j.li@kpmg.com

Sisi Li

Tel. +86 (20) 3813 8887
sisi.li@kpmg.com

Mabel Li

Tel. +86 (755) 2547 1164
mabel.li@kpmg.com

Kelly Liao

Tel. +86 (20) 3813 8668
kelly.liao@kpmg.com

Patrick Lu

Tel. +86 (755) 2547 1187
patrick.c.lu@kpmg.com

Grace Luo

Tel. +86 (20) 3813 8609
grace.luo@kpmg.com

Ling Lin

Tel. +86 (755) 2547 1170
ling.lin@kpmg.com

Maria Mei

Tel. +86 (592) 2150 807
maria.mei@kpmg.com

Chris Xiao

Tel. +86 (755) 3813 8630