

China Tax Alert

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OECD FTA pushes forward global tax coordination initiatives

Documents referred to in this issue:

- Communiqué of the 10th Meeting of the OECD Forum on Tax Administration (FTA), issued by the FTA on 13 May 2016
- OECD, Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report, issued by the OECD on 5 October 2015
- OECD (2015), Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, issued by the OECD on 5 October 2015
- Tax Administrations and Capacity Building: A Collective Challenge, FTA publication issued on 11 May 2016
- Technologies for Better Tax Administration: A Practical Guide for Revenue Bodies, FTA publication issued on 11 May 2016

The 10th plenary meeting of the OECD Forum on Tax Administration (FTA) took place in Beijing, People's Republic of China (PRC), from 11 to 13 May 2016. The FTA brings together the tax commissioners of 44 tax authorities from the leading global economies to share best practices in tax administration, and to agree common directions on global tax collaboration. This was the first meeting of the FTA since the release, in October 2015, of BEPS 2015 Deliverables on global tax reform and their November 2015 endorsement by the G20.

Consequently, the FTA meeting had a key focus on planning the implementation of the BEPS deliverables, as well as parallel new initiatives on tax information exchange. This was alongside efforts to harness technology to a greater degree in tax administration, and efforts to assist developing countries to upgrade their tax capacity.

Given that it is the national tax commissioners who will ultimately effect the implementation of the BEPS program, the Beijing FTA meeting is a key event in aligning BEPS implementation agendas across countries. In this regard, a number of important action points emerged from the FTA meeting, including China's adherence to a global agreement on exchanging Country-by-Country (CBC) tax reports. In addition, as the FTA meeting considered a wide range of other global collaboration initiatives beyond BEPS, the outputs of the meeting provide a useful 'stock take' on the state of play of current global tax initiatives. Insofar as the State Administration of Taxation (SAT) of the PRC, as host of the meeting, was eager to showcase recent and upcoming China tax initiatives, the FTA meeting also provides useful information on the direction of travel of Chinese tax policy and administration.

FTA meeting communique – Implementation of BEPS and global tax information exchange

Subsequent to the FTA meeting, on 13 May 2016, the FTA released a communique, detailing the progress and outputs of the meeting, which was simultaneously posted on the OECD and SAT websites. The communique noted that the FTA meeting had focused on three themes:

Documents referred to in this issue:

- Rethinking Tax Services: The Changing Role of Tax Service Providers in SME Tax Compliance, FTA publication issued on 11 May 2016
- Advanced Analytics for Better Tax Administration: Putting Data to Work, FTA publication issued on 11 May 2016
- Co-operative Tax Compliance: Building Better Tax Control Frameworks, FTA publication issued on 11 May 2016
- CBC Multilateral Competent Authority Agreement (CBC MCAA), first promulgated on 27 January 2016.
- CRS Multilateral Competent Authority Agreement (CRS MCAA), first promulgated on 29 October 2014.
- STA "Internet + Tax" Action Plan (Shui Zong Fa [2015] No. 113), issued on 28 September 2015

1. Co-ordinated action across tax authorities to implement the G20/ OECD tax agenda, including BEPS and the initiative on automatic exchange of tax information;
2. Better use of digital technologies in tax administration;
3. Assistance for developing countries in tax capacity building.

Point 1 of the FTA agenda tackled, in relation to BEPS:

- i. The BEPS Action 14 matter of making Mutual Agreement Procedures (MAP) more effective;
- ii. The BEPS Action 13 matter of putting in place legal mechanisms for international exchange of CBC reports.

See our earlier China Tax Alert for further details on these BEPS initiatives, [China Tax Alert Issue 28 \(October 2015\)](#).

The BEPS Action 14 report had mandated to the FTA MAP Forum the role of monitoring the implementation of the MAP minimum standard agreed by the G20 in that report. The MAP minimum standard involves 17 commitments by the countries participating in BEPS, including, *inter alia*, ensuring taxpayer access to MAP and a 24 month MAP completion timeframe. The FTA communique reported progress in putting together the related Peer Review mechanism. The Peer Monitoring work is due to commence in 2016, with first reports due by the end of 2017. It is accompanied by a mechanism under which unresolved MAP cases, which doubled to 4,566 cases between 2006 and 2013, will be a set discussion point for G20 meetings. This will put pressure on governments to allocate sufficient resources to tax authorities to resolve them.

The BEPS Action 13 report sets out the schema of the CBC report. It also sets out the protocols under which MNEs will file the CBC report with the home country of their parent company, or other countries under backup 'surrogate' arrangements. Countries have progressively been signing up to the CBC Multilateral Competent Authority Agreement (CBC MCAA) which facilitates the international exchanges of these reports. The Beijing FTA meeting was the occasion of China, Canada, Iceland, India, Israel and New Zealand signing the MCAA to bring the total signatories to 39 countries. These countries, including China, will have flexibility, under the terms of the MCAA, as to with which signatories they wish to exchange CBC reports. Countries may also exchange CBC reports under mechanisms outside the MCAA, such as tax treaties.

Also falling under Point 1 of the FTA agenda are the various global exchange of information initiatives. The FTA reported the development of a Common Transmission System (CTS). This will facilitate the high volume automatic exchange of information (AEOI) to take place under the OECD-developed Common Reporting Standard (CRS). CRS is modelled on the US Foreign Account Tax Compliance Act (FATCA) system. As with FATCA, CRS obliges financial institutions in a given jurisdiction to automatically report account holder activity to tax authorities in that jurisdiction. Information on account holders of other jurisdictions is then supplied to those jurisdictions through the CTS to aid in tax audit. The FTA communique reports that 82 countries, including China, have now signed up to a so-called CRS Multilateral Competent Authority Agreement (CRS MCAA), to facilitate these exchanges. Additional countries will either engage in CRS through

other legal mechanisms or later join the CRS MCAA. In total 101 jurisdictions are committed to CRS. Their proper implementation of CRS will be subject to Peer Review by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

Beyond these initiatives, the FTA communique also observed that 'JITSIC', a global network of tax administration officials, has been revitalised and expanded. It will now be termed the Joint International Taskforce on Shared Intelligence and Collaboration - while always termed 'JITSIC' the network previously had a different name denoting a more limited mandate. The network provides a mechanism for exchange of intelligence on complex global tax avoidance schemes, and a platform for joint action against them, including joint and simultaneous audits.

The FTA communique also notes that the new inclusive framework for BEPS implementation will hold its first meeting in June 2016. This is effectively a formalisation and expansion of the mechanism through which OECD and non-OECD countries cooperated on developing the BEPS Deliverables. It will now move forward to adapt and supplement the BEPS work for implementation in developing countries, and coordinate implementation assistance, and monitor and review proper BEPS implementation.

FTA meeting communique – Improved tax administration and capacity

Point 2 of the FTA meeting agenda focused on better use of digital technologies in tax administration. The FTA communique highlights (i) the FTA endorsement of a number of OECD reports guiding tax administrations on the use of digital technologies, and (ii) initiatives between the OECD and regional tax networks designed to evaluate the efficacy of national tax systems.

The Point 2 focus on use of digital technologies in tax administration provided an occasion for the SAT to update tax commissioners of other countries on the great strides being made by China in this regard. The SAT could point to:

- The 'Internet + Tax' Action Plan under which the Chinese tax authorities progressively facilitate the conduct, by taxpayers, of all their interactions with the tax authorities (e.g. tax filings, invoice management, etc.), through the internet. In tandem with the integration of all taxpayer data received through digital channels, the SAT have upgraded their Big Data analysis capacity and capabilities. This allows for taxpayer credit rating and targeted tax enforcement. The data analysis can also guide better tax policy development;
- The Golden Tax Project III and the new VAT Invoice Processing System being rolled out from 2015. The latter allows for real-time invoice information collection and usage by local tax authorities across the country. This includes invoice cross-checking to eliminate fraudulently claimed VAT input credits.

In relation to broader improvements to tax administration, the SAT could point to their plans for a fundamental modernization of Chinese tax administration by 2020. This includes moves to put existing tax regulations on a statutory basis and the 'Spring Breeze' project to improve taxpayer services.

Interest, among tax commissioners in attendance at the FTA meeting, in the recently concluded BT to VAT reform will also have been high. See our recent China Tax Alert for details of the VAT reform, [China Tax Alert Issue 9 \(March 2016\)](#). The SAT will have outlined the practical challenges of this key reform to the other developing countries looking to eliminate cascading indirect taxes. The SAT will have also highlighted China's reform of the manner in which local and state tax authorities allocate tasks and collaborate in tax administration.

Linking directly to such efforts on enhancing tax administration is Point 3 on tax capacity building in developing countries. In this regard the FTA communique highlighted a G20-mandated, joint initiative between the OECD, IMF, UN and World Bank group to develop detailed guidance for improving technical assistance to developing country tax administrations. It also highlighted establishment of a Knowledge Sharing Platform and of a Capacity Building Network to coordinate assistance, from multiple international organisations and national governments, to developing countries.

China's role in such capacity building in developing countries draws on its own strides in upgrading domestic tax administration, and Chinese assistance to such countries is growing apace. China has implemented 12 bilateral and multilateral cooperation programs with developing countries, particularly those along the 'Belt and Road'. Under these, the SAT has been providing tax training courses, expert support, experience sharing and technical assistance in building tax capacity. In this regard, workshops on "Tax Administration and Taxpayer Service" were provided to 82 tax officials from 18 African, Asian and Latin American countries in 2015, facilitating further cooperation between those countries and China. As another example, a delegation was sent to Ethiopia in 2015 to help build up its tax administrative capacity and business environment. China also announced in March 2016 the establishment of an OECD-SAT Multilateral Tax Centre to provide tax-related trainings for developing countries.

Matters of note from the FTA meeting for businesses operating in China

The Beijing FTA meeting highlights clearly the key trends in global and China tax administration and cooperation, and propels these further forward. A number of matters come to the fore:

- **Tax information exchange** is about to 'get real'. For years, tax commentators have talked about the potential for taxpayers to be targeted and challenged on the basis of tax information obtained by China from other countries, and vice versa. In reality, up to now, exchanges have been limited. At present, China receives and handles approximately 400 EOI requests each year. In 2017/18 most of the world's countries will initiate AEOI through CRS, tax authorities will receive exchanged CBC reports, and private tax rulings will be exchanged under BEPS Action 5. This means an explosion in EOI.

Jurisdictions, such as China, claim to have the Big Data analytical capacity and capabilities to use this data for tax targeting – whether they truly do so remains to be seen. For businesses operating in China, 2017/18 will reveal how effectively the Chinese tax administration can use their new data sources, and whether privacy

and confidentiality concerns are met. It will also reveal whether the use by the Chinese tax authorities of the new data sources differs from global understanding on their appropriate usage. For example, the Chinese tax authorities are set to start collecting information on profit allocations within MNE global value chains in the updated TP Local File, which may also be supplemented by CBC information. Will this information be used solely for tax audit targeting, or might it also be used for formulary apportionment of MNE global profits to China?

- **MAP procedures** may finally start to rise to the challenge. As is well known, the BEPS changes aim at achieving greater 'tax symmetry' between jurisdictions, and ensure that income is taxed at least once. Such enhanced complexity, together with the fact than many of the new BEPS rules bring increased subjectivity (e.g. the TP DEMPE standard, the new PE rules and the treaty abuse PPT – See our linked BEPS China Tax Alert for further details) mean that a robust MAP is absolutely essential.

Will the FTA MAP Forum Peer Review mechanism drive sufficient improvements across countries? Will the elevation of MAP as a set item for discussion at G20 meetings see sufficient resources given by national governments to tax authorities to meet MAP demand from MNEs? Historically MAP has been very under-used in China – With tax disputes and incidents of double taxation likely to rise with the new BEPS rules and firmer Chinese tax enforcement, the expectations on improved Chinese MAP capacity are high.

- **Developing country tax administration upgrades** may come to be an area in which China emerges as a key player. China has, since 2014, radically upgraded its efforts in this space. These efforts may come to constitute a key pillar of Chinese outbound investment policy. Tax assistance is being channelled in particular at 'Belt and Road' countries, such that China is helping to enhance and shape the tax administration of countries in which Chinese businesses will invest and operate. China's more intensive interaction with the tax administrations of such countries, and the manner in which China is interlinking its efforts with those of the international tax organisations, such as the OECD, may give China greater influence, going forward on the overall shape of global tax policy and administration.

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