打击「侵蚀税基及转移利润」措施咨询文件

摘要

近年来，国际社会在税务合作方面的发展迅速。打击跨境避税及逃税活动以保障税收，不仅是个别国家的关注，亦是二十国集团及经济合作与发展组织（「经合组织」）等主要国际组织的关注。

2. 2013 年，二十国集团及经合组织推出应对「侵蚀税基及转移利润」（「BEPS」）方案。这方案标志着国际社会通力合作，共同制订对策回应国际税务挑战。BEPS 方案的最终目标是恢复公众对税制的信心及缔造公平的营商环境。BEPS 方案涵盖 15 个范畴，旨在完善国际税务规则的连贯性、把税收与经济活动及价值创造挂钩，以及提高税务环境的透明度。

3. 为确保全球采取一致及有效的做法，二十国集团及经合组织呼吁所有国家及税务管辖区加入为实施 BEPS 方案而设的合作框架。各成员将会共同制订国际标准，以及参与其后的检讨及监察机制。截至 2016 年 7 月 15 日，共有 85 个国家及税务管辖区加入了合作框架。作为国际金融中心及国际社会负责任的一员，香港已于 2016 年 6 月向经合组织表明就**BEPS 方案及其实施作出承诺**。我们亦清楚表明，香港对于实施 BEPS 方案的承诺，大前提为实施 BEPS 措施所需的法例修订获适时通过。

4. 香港一直奉行以地域来源为征税原则的简单税制，此制度是我们多年来赖以成功和保持竞争力的基石。在香港实施 BEPS 方案无可避免会涉及修订我们现行的税务法律。在制订香港实施 BEPS 方案的模式时，我们须确保所订定的模式既符合国际标准，亦不会影响我们的简单低税制。就此，我们会制订**务实的策略**，并实施相关的国际规定。

5. BEPS 方案的主要元素和规定于本文件**第一章**概述。我们于**第二章**阐述有关实施 BEPS 方案的政策理念及香港的工作优次。我们优先要处理的工作包括转让定价的规管架构（**第三章**）、转让定价文件及国别报告（**第四章**）、多边协议（**第五章**）、跨境争议解决机制以及自发交换税务裁定资料（**第六章**）订立所需的法律框架。我们提出了收集公众意见的主要范畴（**第七章**），并会于 2016 年 10 月 26 日至 12 月

31 日征询相关持份者的意见。我们的目标是在 2017 年年中向立法会提交相关的修订条例草案。

第一章

「侵蚀税基及转移利润」方案概览

什么是 BEPS？

1.1 「侵蚀税基及转移利润」(「BEPS」) 是指跨国企业利用税务规则的差异及错配，人为地将利润转移至只有很少或没有经济活动的低税或无税地方的税务规划策略。根据经济合作与发展组织 (「经合组织」) 的估计，BEPS 引致的税收损失**每年达 1,000 亿至 2,400 亿美元**，占全球企业所得税税收的 4%至 10%。

1.2 除了导致税收损失外，BEPS 亦损害税收制度的公平性和完整性。相比其本地对手，跨国企业或会利用 BEPS 策略取得竞争优势，制造**不公平的营商环境**。因此，经合组织认为有迫切需要让所有国家及税务管辖区携手合作，恢复公众对税制的信心及确保公平竞争。

BEPS 方案的元素

1.3 2015 年 10 月，经合组织推出了一套涵盖 **15 个范畴的行动计划**应对 BEPS。这套 BEPS 方案于 2015 年 11 月获二十国集团通过，旨在确保跨国企业就其利润缴纳公平份额的税款，以及堵塞税务管辖区之间就企业利润出现「双重不征税」的漏洞。

1.4 这 15 项行动计划可分为**四个主要类别**—

(a) **新订最低标准**旨在解决因某些税务管辖区没有采取行动，而对其他税务管辖区造成负面影响（包括对竞争力的负面影响），当中包括打击具损害性的税务措施、防止滥用税收协定的情况、订立国别报告的规定，以及改善跨境争议解决机制；

(b) **改良国际标准**旨在更新现行的国际标准，当中包括防止人为规避构成常设机构的手法，以及把转让定价的结果与价值创造挂钩；

(c) **一致措施和最佳做法**旨在促使各国的做法更趋一致，

当中包括消除混合错配安排的影响、就受控外国公司制定有效规则、对利息扣除和其他财务支出造成的税基侵蚀予以限制，以及引入强制披露规则；以及

(d) **分析报告**旨在提供解决其他 BEPS 相关问题的建议，包括应对数码经济带来的税收挑战、衡量及监察 BEPS 情况，以及制定用以修改双边税收协定的多边协议。

BEPS 方案的概览（只有英文版）载于**附件一**。

实施 BEPS 方案而设的合作框架

1.5 2016 年 2 月，二十国集团财政部长通过建立一个新设的合作框架，让有意参加的国家及税务管辖区在**平等的基础上**，与经合组织及二十国集团等成员国共同合作。这个合作框架旨在制订与 BEPS 有关的国际标准，并贯彻实施相关措施。2016 年 6 月 20 日，香港接受经合组织的邀请，以「中国香港」的名义加入合作框架。截至 2016 年 7 月 15 日，共有 85 个国家及税务管辖区加入合作框架。

1.6 至于决定不加入合作框架的国家及税务管辖区，经合组织或会将它们列为「**相关税务管辖区**」，并要求它们须遵守 BEPS 方案的最低标准，以维持**公平的竞争环境**。这些税务管辖区会获通知有关最低标准的详情及获邀就实施 BEPS 方案作出承诺，他们亦须接受经合组织的监察和评估。

检讨最低标准的实施情况

1.7 经合组织的**首要工作**是监察四项最低标准的实施情况。经合组织会设立监察机制，以评估各税务管辖区是否合规，以及 BEPS 方案实施后随时间出现的影响。所有合作框架的成员均会获邀参与检讨程序。

1.8 **BEPS 方案的实施时间表十分紧迫**。合作框架的成员将会为四项最低标准订立监察程序，亦会就 BEPS 方案的其他范畴设立检讨机制。经合组织明白，由于各税务管辖区的发展程度不一，而部分税务管辖区须待所需的本地法例通过后才可推行有关措施，因此实施时间表会有所不同。个别 BEPS 行动计划的实施计划，将于以下各章节详述。

1.9 BEPS 方案的实施标志着国际社会通力合作，共同改善税制。不同国家及税务管辖区已积极实施 BEPS 方案。部分例子载于**附件二**。作为合作框架的成员，香港须制定务实的策略，并落实相关的国际规定。

第二章

香港的实施策略

政策理念

2.1 一直以来，香港十分支持国际间就提升税务透明度及打击跨境逃税的努力。香港已就 BEPS 方案作出承诺，以维持香港作为国际金融和商业中心的声誉及履行我们的国际责任。

2.2 作为合作框架的成员，香港**承诺实施 BEPS 方案，包括当中的四项最低标准**，即打击具损害性的税务措施（第 5 项行动计划）、防止滥用税收协定的情况（第 6 项行动计划）、订立国别报告的规定（第 13 项行动计划），以及改善跨境争议解决机制（第 14 项行动计划）。

2.3 由于 BEPS 方案涵盖的措施范围广泛，而有关措施亦须透过修改税务法律才可予以落实，我们不会低估实施 BEPS 方案的挑战。我们已经向经合组织表示，香港对于实施 BEPS 方案的承诺，大前提是适时通过为实施 BEPS 措施所需的法例修订。在推展有关工作时，我们会继续奉行简单低税制，这是香港赖以成功及保持竞争力的基石。

香港的优次

2.4 在厘定香港的工作优次时，我们会集中落实四项最低标准，以及其相关措施。

2.5 我们优先要处理的工作，包括就涵盖经合组织最新指引的转让定价规则（第 8 至第 10 项行动计划）、自发交换税务裁定资料（第 5 项行动计划）、国别报告的规定（第 13 项行动计划），跨境争议解决机制（第 14 项行动计划）以及多边协议（第 15 项行动计划）**订立所需的法律框架**。我们的考虑是—

(a) 第 8 至第 10 项行动计划建议一系列**转让定价**的修订指引，旨在把利润征税与经济活动挂钩。虽然第 8 至第 10 项行动计划虽然不是经合组织订立的最低标准

之一，但对实施有关修订指引及为转让定价建立专设的规管架构对实施其他最低标准（如第 13 及第 14 项行动计划）至为重要。此外，拟议的规管架构将会提供清晰的法律基础，让税务局有系统地处理转让定价的事宜；

(b) **自发交换税务裁定资料、国别报告的规定，以及跨境争议解决机制**，均是 BEPS 方案中的最低标准。我们必须制定本地法例，从而在香港实施这些最低标准；以及

(c) **多边协议**旨在修改我们现行的全面性避免双重课税协定 （「全面性协定」），以便一致及快捷地实施与税收协定有关的 BEPS 措施。BEPS 方案其中两项最低标准（即第 6 项行动计划－防止滥用税收协定的情况，以及第 14 项行动计划－改善跨境争议解决机制），将会透过多边协议予以实施。

2.6 打击具损害性的税务措施是第 5 项行动计划要求的一项最低标准。香港会致力维持一个简单、中立及透明度高的税制。税务局会继续不时检视税制，以确保香港没有任何具损害性的税务措施。

其他 BEPS 行动计划

2.7 虽然现时无须就其他 BEPS 行动计划立即采取行动，政府会留意国际发展的步伐和拟订合适的应对计划。

第三章

转让定价的规管架构

目标

3.1 我们建议将转让定价的国际标准纳入本地法例，以规定在香港营运的企业与其关联公司的交易须以独立交易原则进行。

什么是转让定价？

3.2 转让定价是指关联公司之间涉及商品、服务及无形资产交易的价格厘定。就税务而言，转让定价规则确定这些关联公司之间交易的应有条件，包括价格，以公平分配利润。经合组织致力确保转让定价的结果与价值创造挂钩，此举有助避免跨国企业操控定价，将利润转移至低税的税务管辖区。

3.3 **独立交易原则（"arm's length principle"）**是厘定转让定价的国际认可标准。这项原则要求集团内部的转让定价，须与独立人士在类似交易条件及符合独立交易原则下进行交易的价格相若。这项原则已纳入经合组织的税收协定范本及转让定价指引。

我们现行的税制

3.4 现时，税务局一直依赖《税务条例》的一般条文及其释义及执行指引，处理有关转让定价的事宜。相对成文法规，依赖释义及执行指引的行政规则处理不符合独立交易原则的定价，在某些情况下会存在限制。将转让定价规则纳入法例，会令有关规则与《税务条例》其他条文的相互配合更为清晰明确。

3.5 虽然税务局可引用《税务条例》第 61A 条的反避税条文[1]打击涉及转让定价的税务安排，但有关条文只能处理以获

[1] 根据《税务条例》第 61A 条，因应是项条文所述的事项，如断定某项交易的唯一或主要目的是为了获得税项利益而落实，便会作出评定并将该项交易当作不曾订立或实行一样，或以其他合适的方式评定，用以消弭从该项交易中原可获得的税项利益。

得税项利益为唯一或主要目的而进行的交易，故有关条文的应用范围狭窄。值得留意的是，并非所有转让定价税务安排均涉及交易，而避税亦未必是落实不符合独立交易原则的交易的唯一或主要目的。基于上述引用《税务条例》第61A条的先决条件，税务局难于有效打击日趋复杂的转让定价税务安排。

转让定价的规则

3.6 因应上述情况，我们认为有必要在《税务条例》明确列出转让定价规则，以处理不符合独立交易原则的交易。

3.7 根据独立交易原则，我们**建议**制定**转让定价基本规则**（「基本规则」），赋权税务局局长在两名人士（「所涉人士」）之间的实际交易条款有别于独立人士的交易条款，并让企业享有税项利益的情况下，调整该企业的利润或亏损。为促使独立交易原则按经合组织的建议适当应用，我们**建议**引入一项特定规定，指明基本规则的演绎须与经合组织的税收协定范本及转让定价指引一致。

3.8 这基本规则适用于**所涉人士互有关联**的个案，即其中一方直接或间接参与管理或控制另一方，或持有其资本，或由第三者就这两名所涉人士作出上述行为。这规则亦适用于处理**同一企业内不同单位的交易**，如总公司与常设机构之间的交易[2]。为处理有关转让定价的各种情况，我们会确保基本规则的适用范围**不仅涵盖资产和服务交易，亦涵盖财务或商业安排，例如借贷[3]及成本分摊协议[4]**。我们亦会厘清涉及应课税利润或可予扣除亏损的调整，以反映(a)任何营业资产的转入或转出；或(b)任何并非在经营行业过程中以市值购入或

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[2] 在厘定企业各部分的利润时，将假设每一部分为独立分开的企业，并且(a)拥有作为一间独立个体合理预期拥有的股本及借贷资本；(b)在相同或近似的条件下进行相同或近似的活动；及(c)完全独立地互相进行交易。

[3] 在决定一项借贷是否基于独立交易原则进行时，须考虑如贷款人及借款人没有任何关联，或关联企业没有提供担保或抵押的情况下，该借贷是否仍会进行；如是的话，有关贷款额及利率会是多少。借款人将被假设为拥有在独立交易原则下应有的借贷能力，即其作为独立个体有能力及会向独立贷款人借入的贷款额。任何超出该借贷能力的贷款所招致的利息均不能在利得税下获得扣除。

[4] 成本分摊协议是指集团企业之间就共同开发、生产或取得资产、服务或权利所达成的协议，订明各参与者在过程中须承担的成本和风险，并确定它们就相关资产、服务或权利享有权益的性质和范围。雇员股权激励计划是成本分摊协议的普遍例子，用以摊分股份基础报酬的成本。一份成本分摊协议要符合基本规则，其参与者的贡献必须与它预期可从有关资产或服务所取得的收入成比例。

取得营业资产的交易。

3.9 为公平起见，我们亦**建议**设立机制，因应税务局局长或我们的全面性协定伙伴就转让定价作出的调整，提供相应的宽免。

对企业的影响

3.10 税务局一直将独立交易原则应用于关联公司之间的所有交易，不论企业的大小和性质。这项政策仍维持不变。将现行释义及执行指引所涵盖的独立交易原则纳入法例的建议，主要为完善现有制度，使其更**清晰明确**。这项建议旨在打击跨国企业所采取的 BEPS 策略，并不会对中小企带来重大影响。

3.11 我们明白拟备转让定价文件将会是一项新规定。在确保税务局能收集足够资料以及尽量减低企业的合规负担作出平衡后，我们**建议**豁免符合特定准则的企业不用拟备转让定价文件。有关建议的详情载于第四章。

罚则

3.12 转让定价规则要求企业在提交报税表时，须考虑与关联公司的交易所产生的应课税利润或可予扣除亏损是否需予调整。任何违反转让定价规则的情况，会被视为提交不正确报税表。若蓄意提交不正确报税表藉以逃税，或没有任何合理辩解，当局会向有关纳税人施加罚则。

3.13 现时，《税务条例》第 80 条、第 82 条及第 82A 条订明有关**不正确报税表**的罚则。我们认为适宜参照该等条文，针对因关联公司不按照独立交易原则定价而导致报税表申报不正确的情况，订定相关**罚则**。具体而言，我们**建议**对有关企业施加以下罚则—

(a) **在无合理辩解下**，提交涉及不正确转让定价资料的报税表：有关罪行可被处以第 3 级罚款[5]及少征收税款 3 倍的罚款，又或税务局局长可对有关纳税人施加不多于少征收税款 3 倍的行政罚款；以及

[5] 现时，第 3 级罚款为 1 万港元。

(b) 提交涉及不正确转让定价资料的报税表，以**蓄意及有意图逃税**：有关罪行可被处以最高第5级罚款[6]及少征收税款3倍的罚款，并监禁3年。

预先定价安排制度

3.14 一直以来，税务局设有预先定价安排制度，企业可藉此与税务局就如何将独立交易原则应用于关联公司的交易或安排预先达成共识。这制度确保在转让定价事宜出现时可获得更有效处理，亦有助避免日后就有关安排所涵盖的转让定价事宜进行审核及诉讼。预先定价安排制度可协助企业遵从独立交易原则，对有效实施转让定价规则至关重要。

3.15 现时，《税务条例》第88A条容许纳税人就事先裁定提出申请，但该等条文并未有规管预先定价安排的运作。税务局须运用其执行《税务条例》的一般权力，作出预先定价安排。由于本港现行的预先定价安排制度缺乏明确的法律依据，企业及会计界对该制度反应欠佳。法定转让定价规则实施后，预先定价安排的需求量预料会增加，特别是涉及大型企业的大额交易。因此，我们认为有需要强化本港的预先定价安排制度，赋予其所需的法律基础。

3.16 **拟议的法定预先定价安排制度**具有以下主要特点—

(a) 订明可纳入预先定价安排的转让定价事宜；

(b) 为预先定价安排提供明确的法律依据；

(c) 订明税务局局长及纳税人在预先定价安排下的权利和责任。举例而言，税务局局长须获赋权在其认为合适的情况下撤回、取消或更改任何已获批的预先定价安排，以保障政府的利益。若某申请预先定价安排的企业不同意有关评税，它仍有权根据《税务条例》提出反对及上诉；

(d) 扩大现行《税务条例》下罚则的适用范围，对预先定价安排申请或其后查询提供虚假或误导性资料，以及

[6] 现时，第5级罚款为5万港元。

未能就该等事宜提供所需资料者，施加罚则，以维持预先定价安排制度的完整性，并确保制度得以有效实施；

(e) 赋予税务局局长酌情权，因应有关交易的性质和金额，决定是否接纳预先定价安排申请。具体而言，税务局局长可拒绝接纳预先定价安排申请，如—

(i) 有关交易的金额低于指定门槛；

(ii) 预先定价安排申请的事宜涉及反对或上诉；

(iii) 税务局局长认为作出有关交易或安排并没有经过认真考虑；

(iv) 税务局局长认为有关交易或安排属避税计划的一部分或全部；

(v) 税务局局长正就有关交易或安排进行审核；

(vi) 税务局局长认为纳税人未有就申请提供足够资料；或

(vii) 因应部门资源，税务局局长认为要就申请作出裁决并不合理；以及

(f) 容许税务局局长就预先定价安排申请征收费用。

征询意见

- 你是否支持将转让定价规则纳入税务法律，使之更加清晰明确？

- 你对提交涉及不正确转让定价资料的报税表的拟议罚则有什么意见？

- 你对法定预先定价安排制度的建议形式有什么意见？

第四章

转让定价文件及国别报告

目标

4.1 我们建议规定在香港营运的相关企业须遵守转让定价文件的要求，以及促成政府与政府之间自动交换国别报告。

三层标准模式

4.2 经合组织就转让定价文件订定三层标准模式（即主体档案、本地档案及国别报告）。这模式规定企业须阐述其一贯的转让定价情况，并提交相关资料予税务当局评估转让定价风险。三层标准模式规定相关企业须提交以下文件－

(a) **主体档案**－这档案提供企业所属集团的**宏观资料**，包括全球业务营运情况、转让定价政策以及全球收入分配情况。所有相关的税务管辖区均会获提供这份档案；

(b) **本地档案**－这档案提供企业在每个税务管辖区**详细的交易转让定价资料**，包括企业与关联公司进行的重要交易或安排的详情、有关交易或安排所涉金额，以及就该等交易或安排所作的转让定价分析；以及

(c) **国别报告**－这报告列明**跨国企业集团于每个经营业务的税务管辖区**的收入、利润和缴税金额，以及特定的经济活动指标，例如雇员人数、订明资本、留存收益以及有形资产等。这报告亦规定集团须指出在每个营业地区经营的成员实体，并说明每个成员实体的业务活动。

经合组织公布的主体档案、本地档案及国别报告的标准范本（只有英文版）载于**附件三**。

文件规定的适用范围

4.3 若要求所有企业拟备相关文件以证明其遵守独立交

易原则，成本可能十分昂贵。所需的行政工作与涉及的税款或会不成正比。为避免造成不必要的合规负担，我们**建议**就拟备主体档案及本地档案提供**豁免**。

4.4 我们的具体建议如下－

(a) 所有在香港经营行业或业务**并**与关联公司有交易的企业，均须拟备主体档案及本地档案，下述(b)项的企业除外；

(b) 符合**以下三项条件其中两项**的企业**不须**拟备主体档案及本地档案－

(i) 年度总收入不多于1亿港元；

(ii) 总资产不多于1亿港元；以及

(iii) 不多于100名员工[7]。

拟议的豁免准则是根据《公司条例》（第622章）对「小型私人公司」在提交报告方面获豁免的准则而厘定。

4.5 至于国别报告，经合组织规定**每年集团总收入达7.5亿欧元或以上**（或以2015年1月本地货币的等值金额，即约**68亿港元**[8]）的跨国企业须提交国别报告。根据以上准则，我们预计全港约有150间企业须遵从规定。据经合组织表示，税务管辖区**无须**为反映汇率变动而定期修订收入门槛。经合组织将于2020年检讨7.5亿欧元的门槛是否恰当。

合规事宜

4.6 为确保有效实施这项最低标准，我们**建议**制定以下安排－

(a) **时限**－须就每个财政年度拟备主体档案及本地档案，并于有关年度完结后保留至少七年。至于国别报告，我们明白跨国企业集团需要更多时间整合其辖下成

[7] 须遵守相关文件要求的企业包括海外公司设于香港的常设机构。如这些常设机构（并非它们所属的集团）能符合规定的条件，有关机构可获豁免遵守相关文件要求。

[8] 根据香港金融管理局的数字，2015年1月港元兑欧元的平均汇率为9.02。

员的所有相关资料，以拟备国别报告。因此，这些跨国企业集团须于其财政年度最后一天起计 12 个月内提交国别报告；

(b) **语言**－主体档案、本地档案及国别报告应以中文或英文编制；以及

(c) **罚则**－转让定价文件将是新订的税务申报规定。为确保企业遵从，我们建议在《税务条例》加入以下罚则，以收阻吓作用－

(i) **在无合理辩解下，未能遵从有关主体档案及本地档案的规定**：此举属罪行，一经定罪，建议处以第 6 级罚款[9]。建议罚则与《税务条例》第 80(1A)条有关未有备存恰当的业务纪录的罚则相同；以及

(ii) **在无合理辩解下，未能提交国别报告**：此举属罪行，一经定罪，建议处以第 6 级罚款。建议罚则水平与上述第(c)(i)项的罚则一致。如定罪后罪行持续，继续违反规定，每天可另处 500 元的罚款。建议罚则与《税务条例》第 80B(4)条就有关自动交换财务帐户资料的安排下向财务机构施加的罚则相同。

国别报告的实施事宜

4.7 在一般情况下，跨国企业集团的最终母公司须于其居住地提交国别报告。为应付特殊情况，经合组织亦规定实施次级申报机制，并建议税务管辖区因应各自需要及情况考虑引入代理申报机制。就香港而言，我们**建议**引入以下安排－

(a) **次级申报机制**－如跨国企业集团的最终母公司所属的税务管辖区并没有规定提交国别报告，或没有规定与税务局交换有关报告，税务局局长会获赋权**指明该集团在港的其中一名机构成员（「香港机构成员」）提交国别报告**。这做法已在很多国家广泛采用，包括澳洲、加拿大、新加坡及瑞士。然而，如税务局可从另

[9] 现时，第 6 级罚款为 10 万港元。

一税务管辖区获得有关国别报告，或另一香港机构成员获授权代表集团向税务局提交报告（详见下文的代理申报机制），该香港机构成员则可获豁免；以及

(b) **代理申报机制**－根据上文(a)段所述的次级汇报机制，同一跨国企业集团在不同税务管辖区的机构成员或会同时被要求提交国别报告。为避免对跨国企业造成不必要的合规负担，我们建议容许上文(a)段所述的跨国企业集团可**授权一名香港机构成员代表该集团向税务局提交国别报告**，以便税务局与其他税务当局交换有关报告。此外，我们亦建议容许**「母公司代理申报」**作为过渡安排，若跨国企业集团的最终母公司属香港税务居民，有关企业可就 2016 年 1 月 1 日至拟议法例生效日期前一天的财政年度，自愿提交国别报告。

4.8 交换国别报告的安排涉及私隐及保密方面的关注。自动交换国别报告安排须建基于税收协定。首先，有关税务管辖区须签订**双边协议(即全面性协定或税务资料交换协定(「交换协定」))或多边协议(即《税务事宜行政互助多边公约》)**，作为交换税务资料的法律基础。其次，各主管当局须签订**主管当局协定**，藉以规范交换安排，确保资料根据经合组织订明的标准适当互通。就交换国别报告安排，国际上已有一份多边主管当局协定，但各税务管辖区亦可选择签订双边主管当局协定。

4.9 香港已承诺与合适的税务管辖区进行双边自动交换财务帐户资料，并打算与所有全面性协定或交换协定的伙伴进行有关交换。参考自动交换财务帐户资料的安排，我们计划以**全面性协定或交换协定**作为进行自动交换国别报告的**基础**，并**与所有全面性协定或交换协定的伙伴**进行双边**自动交换国别报告**。我们目前没有计划与其他税务管辖区签订《税务事宜行政互助多边公约》。然而，我们会继续密切留意透过多边安排进行自动交换财务帐户资料及自动交换国别报告的国际趋势，并在有需要时检视我们的策略。

4.10 与其他税务管辖区自动交换国别报告时，我们会确保纳税人的私隐和所交换资料的保密性得到保障，以及确保恰当使用所交换的资料。在这方面，全面性协定有关资料交换

的条文，以及交换协定的有关条文均订明相关的保障。由于我们会于现行的全面性协定及交换协定的框架下实施自动交换国别报告，因此该等保障措施将会适用。税收协定层面的有关保障措施载于**附件四**。

4.11　自动交换国别报告的主管当局协定范本也要求类似的保障措施。主管当局协定范本第 5 条订明，所有交换的资料必须符合保密规则及个别全面性协定或交换协定所订的其他保障措施。第 8 条订明，如其他主管当局有或曾有严重不遵守主管当局协定的情况，主管当局可向对方发出书面通知以暂停交换资料。主管当局也可向另一主管当局发出终止通知，以终止主管当局协定。

经合组织的实施及检讨计划

4.12　根据经合组织的实施时间表，有关国别报告的规定应由 2016 年 1 月 1 日或之后的财政年度开始实施。然而，考虑到部分税务管辖区需通过本地法例才可实施这项最低标准，实施时间表可能不尽相同。经合组织现时的计划是在 2020 年就国别报告规定的实施情况及相关标准的成效进行检讨。

4.13　我们须透过本地立法，在香港实施转让定价文件的规定及与其他税务管辖区自动交换国别报告。由于经合组织于 2020 年进行全球检讨，我们计划规定**相关跨国企业于 2018 年收集资料，并于 2019 年向税务局提交首批国别报告**。

征询意见

- 为免对企业造成不必要的合规负担，你是否同意豁免特定企业不须拟备主体档案及本地档案？

- 你对国别报告的合规事宜（即提交时限、语言及罚则），以及代理申报机制的意见？

第五章

多边协议

目标

5.1 香港须实施由经合组织统筹的多边协议，让我们可以一致及快捷地修改所有现行的全面性协定，并实施与税收协定有关的 BEPS 措施。

实施多边协议的意向

5.2 香港拥有广阔的全面性协定网络，涵盖 35 个税务管辖区。透过实施经合组织统筹的多边协议，可避免为修改相关条文以符合 BEPS 方案的规定，与个别全面性协定伙伴进行冗长的双边谈判。我们现时预计在全面性协定中引入多边协议的条文时，**不会有技术困难**。

多边协议的涵盖范围

5.3 多边协议旨在以快捷、协调及一致的方式，在多边框架下实施与税收协定有关的 BEPS 措施。经合组织在 2015 年 5 月成立特别小组共同制订多边协议。自 2015 年 11 月起，香港一直以「观察员」的身份参加特别小组。

5.4 2016 年 9 月，特别小组原则上同意多边协议的主要内容。根据经合组织最新的计划，特别小组成员会在 2016 年 11 月正式采纳和确认多边协议的最终英文本及法文本。按特别小组的规定，多边协议会由 2016 年 12 月 31 日起可供签署。

5.5 正如其他双边或多边协定的磋商安排，多边协议是各国政府以保密形式商讨后制定的。因此，在各缔约方采纳多边协议的最终定稿前，我们不能公开有关内容。

多边协议中与税收协定有关的建议

5.6 多边协议旨在实施各项措施，以解决与税收协定有关的 BEPS 问题。多边协议旨在—

(a) 解决与「混合工具」、「混合机构」，以及「持有双重居民身份机构」有关的问题。由于各个税务管辖区对某些工具或机构采取不同的处理方法，某些纳税人或会利用当中的漏洞，藉以逃避其在两个税务管辖区的税务责任。多边协议的其中一个目标是堵塞这些「双重不征税」的漏洞。就征税而言，「混合机构」或会在某税务管辖区被视为独立个体，即可予征税的人士；但在另一税务管辖区则被视为非独立个体，即是就有关机构的利润须由其成员课缴税款。「混合工具」或会在某税务管辖区被视为债务，而在另一税务管辖区则被视为资本。「持有双重居民身份机构」则会在两个不同的税务管辖区被视为税务居民；

(b) 防止在不恰当的情况下给予税收协定优惠；

(c) 防止人为规避构成常设机构的情况。这泛指透过采取税务规划策略，藉以规避在税收协定下构成某税务管辖区的可予征税业务；以及

(d) 在税收协定的层面加强争议解决机制。

由于这些措施旨在针对利用税收协定漏洞刻意避税的税务规划策略，没有采取这些策略的企业并不会受影响。

防止滥用税收协定

5.7 滥用税收协定涉及利用策略以获取在正常情况下无法享有的税收协定优惠，会导致有关税务管辖区蒙受税收损失。举例来说，税务管辖区 A 与税务管辖区 B 签订税收协定后，本身并非税务管辖区 A 的居民试图利用在税务管辖区 A 设立信箱公司，从而享受该协定提供予税务管辖区 A 居民的税务优惠。

5.8 作为 BEPS 方案的其中一项最低标准，第 6 项行动计划规定税务管辖区在税收协定中加入一项明确条文，订明税收协定的共同目标是避免双重征税，但同时须确保不会出现因逃税或避税策略（如滥用税收协定策略）而导致不征税或减少征税的漏洞。税务管辖区应透过**采用以下其中一项规则**，以落实这个共同目标：即是(a)主要目的测试规则；(b)利益限制规则和主要目的测试规则；或(c)利益限制规则和处

理转付安排的机制。有关主要目的测试规则及利益限制规则的详情概述如下 —

(a) 主要目的测试规则

如某人进行交易或作出安排的主要目的之一是为了取得税收协定优惠，则税务当局不得向该人提供有关优惠。这项规则提供一般途径以解决滥用税收协定策略的问题，当中包括利益限制规则未有涵盖的特定转付财务安排。

(b) 利益限制规则

除非某人符合各项条件属于「合资格人士」，或因应其主要目的、一般业务或拥有权等因素而另有规定，否则税务当局不得向该人提供税收协定优惠。这项规则旨在防止滥用税收协定的情况，如一名非缔约税务管辖区的居民在该地成立一间机构，透过取得有关税收协定优惠，藉以减少或避免其在另一缔约税务管辖区的应缴税款。

5.9 在上述各项方案中，**香港倾向以「仅采用主要目的测试规则」为首选方案**。由于香港税率相对较低，缔约伙伴的居民滥用本港税收协定的风险较小。从税务角度来看，「仅采用主要目的测试规则」应可提供足够保障，以防止香港的税收协定遭滥用。此外，我们签订的全面性协定中，不少已在特定条文（例如股息，利息及专利权费）中加入特别条款，订明当局会考虑某项安排或交易的主要目的之一，是否为取得税收协定优惠，以防止税收协定遭滥用。《税务条例》也载有一般反避税条文，规定如订立交易的唯一或主要目的，是让纳税人获得税项利益，则该人不得享有该税项利益。因此，香港要在全面性协定中引入涵义更广的主要目的测试条文，应**没有技术或行政困难**。

5.10 香港某些缔约伙伴或会选择「仅采用主要目的测试规则」以外的其他方案。在这些情况下，我们需要考虑是否接纳反滥用条文的不对等安排。为公平合理起见，我们目前的构思是，如缔约伙伴并不是采纳「仅采用主要目的测试规则」的方案，则**香港应采用对等安排**，而不采用不对等安排。如有需要，我们会与缔约伙伴进行双边谈判，以解决有关问题。

在香港实施多边协议

5.11　为了协助实施与税收协定有关的 BEPS 措施，香港拟在**2017 年年初**签署多边协议，其后会展开所需的立法工作，使多边协议得以在本港实施，并相应修订现行全面性协定的相关条文。我们会视乎全面性协定伙伴签署多边协议的时间，以及本地立法工作的进度，在较后阶段才决定每份全面性协定在修订后的生效日期。

5.12　至于日后新签订的全面性协定（即多边协议不会涵盖的协定），我们拟**加入多边协议的相关条文**，以确保符合有关 BEPS 方案的规定。

第六章

其他相关事宜

(I) 争议解决机制

目标

6.1 我们建议订立全面的法定机制，以确保能适时及快捷有效地解决涉及税收协定的跨境争议。

现时的情况

6.2 按照经合组织的税收协定范本，我们签订的全面性协定大多包含相互协商程序条文，以规管如何解决涉及税收协定的跨境争议。根据该条文，当纳税人认为缔约其中一方或双方的行为导致征税结果与全面性协定的条文不符，有关纳税人可将个案呈交其居住地的主管当局。若个案未能单方面解决，缔约双方的主管当局须致力透过相互协商解决有关争议。现时，我们某部分全面性协定的相互协商程序条文亦包括另一条款，订明未能透过相互协商程序解决的事宜可提交仲裁。

6.3 实施 BEPS 方案后，税务管辖区或会对 BEPS 措施的诠释及应用有不同意见，加上本港实施法定转让定价规则后，我们预期以相互协商程序或仲裁方式解决涉及税收协定的跨境争议个案无可避免地将会增多。若香港继续依赖税务局释义及执行指引中的行政规则解决这些争议，将是极不理想的做法。因此，我们**建议**引入**法定机制**，以便香港以相互协商程序或仲裁方式处理有关个案。

经合组织的规定

6.4 经合组织认为，打击 BEPS 的措施不应导致合规的纳税人无故被双重征税，也不应为他们带来不明确的情况。为确保营商的确定性及可预测性，经合组织规定所有 BEPS 项目的成员均须实施第 14 项行动计划改善争议解决机制，以便适时及快捷有效地解决涉及税收协定的跨境争议。第 14 项行动计划建基于三个重要原则—

(a) 应全面及真诚地履行与相互协商程序有关的税收协定责任，并适时解决按相互协商程序处理的个案；

(b) 行政程序应致力避免及适时解决涉及税收协定的跨境争议；以及

(c) 让符合指定条件的纳税人申请启动相互协商程序。

建议特点

6.5 按经合组织的规定，我们**建议**有关相互协商程序及仲裁的法定条文包括以下各项—

(a) 纳税人可根据有关全面性协定的相互协商程序条文，申请启动相互协商程序；

(b) 纳税人即使已根据《税务条例》提出反对或宽免申索，仍可申请启动相互协商程序；

(c) 在相互协商程序下，税务局局长并非必须与有关的全面性协定伙伴的主管当局达成共识；

(d) 纳税人可要求将个案中任何未能透过相互协商程序解决的事项提交仲裁；

(e) 若有关事项已于任何一方的诉讼程序获得解决，纳税人不可将有关事项提交仲裁；

(f) 容许税务局局长就提交仲裁的申请按收回成本的原则征收费用；以及

(g) 透过相互协商程序或仲裁方式达成的方案或共识应予以实施。

经合组织的实施及检讨计划

6.6 经合组织将制订完善的相互监察机制，以确保各税务管辖区切实履行就这项最低标准的承诺。

(II) 自发交换税务裁定资料

目标

6.7 我们建议容许自发交换税务裁定资料。

可交换税务裁定资料的范围

6.8 作为 BEPS 方案的一项**最低标准**，第五项行动计划旨在改善打击具损害性税务措施的工作，并重点提升税务透明度。其中一项措施是订立透明框架，强制规定须自发交换税务裁定资料。该框架涵盖**六种针对纳税人的税务裁定**－

(a) 与优惠制度有关的裁定；

(b) 单方面的预先定价安排及其他就跨境转让定价作出的单方面裁定；

(c) 就调低应课税利润的跨境裁定；

(d) 就常设机构的裁定；

(e) 就关联转付公司的裁定；以及

(f) 任何在没有自发交换资料情况下会引起 BEPS 问题的其他各类裁定。

6.9 上述透明框架下的建议交换资料范围，将同时适用于**以往及日后的裁定**。

接收税务裁定资料的税务管辖区范围

6.10 香港一贯的政策是不会与任何税务管辖区自发交换资料。这项政策原则基本维持不变。因应经合组织的最新规定，我们**建议**就上述六种税务裁定资料的交换作出例外安排，以便香港与以下的税务管辖区自发交换资料－

(a) 与纳税人订立交易的所有相关人士的居住地，前提是税务局已就该交易作出裁定，或在该项交易下从相关人士所取得的收入能享有优惠待遇；以及

(b) 最终母公司及直属母公司的居住地。

6.11 与其他税务管辖区自发交换税务裁定资料（六种指定类别）须建基于税收协定。我们现时的计划亦是与全面性协定或交换协定伙伴透过**双边**安排自发交换资料。若有关全面性协定或交换协定未能容许自发交换资料，我们或需要修订相关协定。

经合组织的实施及检讨计划

6.12 在确立所需法律基础的前提下，经合组织规定所有 BEPS 项目的新成员须按照以下的时间表进行自发交换税务裁定资料—

(a) 完成交换以往所有裁定的期限：**在经合组织指定的日期之前**；以及

(b) 交换日后裁定的期限：在作出裁定的税务管辖区的主管当局获得该项裁定后，**不迟于三个月内尽快**交换资料。

6.13 经合组织会设立持续监察及评估机制，确保各税务管辖区在透明框架下，履行自发交换税务裁定资料的责任。在评估过程中，税务管辖区须向经合组织提供以下统计资料—

(a) 在透明框架下自发交换资料的总次数；

(b) 按裁定类别划分的自发交换资料次数；以及

(c) 每次交换资料所涉及的税务管辖区。

(III) 双重课税宽免

目标

6.14 我们建议优化现行的税收抵免制度，以符合最新的国际标准。

优化税收抵免制度的建议措施

6.15 现时，香港根据《税务条例》第 50 条，以税收抵免方式在所有全面性协定下就法律性双重课税[10]提供宽免。我们现行的税收抵免制度未能追上国际最新的发展。随着香港实施法定转让定价规则，加上本港的全面性协定网络持续扩展，我们预期日后会接获更多宽免申请，要求以税收抵免方式获得法律性双重课税宽免。因此，我们认为有需要优化现行的税收抵免制度。我们**建议**的优化制度应具备以下主要特点：

(a) 在《税务条例》清楚订明，如《税务条例》与全面性协定的条文有抵触，**须以全面性协定为准**，以免全面性协定所议定的任何宽免及待遇被凌驾；

(b) 给予**较长的税收抵免申请期（即 6 年）**，以处理下列情况：纳税人因所得收入最初被视为可获豁免缴付外地税款而没有申请税收抵免，但其后该项豁免在现行时限届满后（即有关课税年度终结后两年）遭来源地撤回。拟议的税收抵免申请期与现行根据《税务条例》第 70A 条因错误或遗漏而对评税作出更正的时限一致；

(c) 要求纳税人**在申请税收抵免前，须先尽量使用其他宽免措施（即全面性协定或外地税务管辖区的当地法律）**。具体而言，纳税人如根据全面性协定或相关外地税务管辖区的法律可享有其他宽免，便不会获给予税收抵免。在任何情况下，税收抵免额不得超出在采取一切合理步骤以减低应缴外地税款后可获抵免的款额；

[10] 凡某香港企业从本港业务所得的利润遭上调，但该企业在全面性协定伙伴的业务所得的利润却未有相应下调，便会出现法律性双重课税的情况。

(d) 规定纳税人如**所缴外地税款有任何调整**或会导致所获的税收抵免额或单方面的宽免过多，均须**通知税务局**；以及

(e) 如**所缴外地税款已获单方面提供宽免**，则须确保该笔税款**不会**获得税收抵免。

征询意见

- 你是否支持引入法定争议解决机制，以确保能适时及快捷有效地解决税收协定跨境争议？

- 你对法定争议解决机制的建议形式有什么意见？

- 你对优化税收抵免制度的建议措施有什么意见？

第七章

征询意见

7.1　关于这份文件载列的建议，你的意见十分重要，有助我们根据国际标准就 BEPS 方案制定合适及有效的实施模式。我们现时的目标，是在 2017 年年中向立法会提交有关《税务条例》的修订建议。

7.2　具体而言，请就经合组织所订的框架内下述主要课题提出意见—

- 你是否支持将转让定价规则纳入税务法律，使之更加清晰明确？*（第三章）*
- 你对提交涉及不正确转让定价资料的报税表的拟议罚则有什么意见？*（第三章）*
- 你对法定预先定价安排制度的建议形式有什么意见？*（第三章）*
- 为免对企业造成不必要的合规负担，你是否同意豁免特定企业不须拟备主体档案及本地档案？*（第四章）*
- 你对国别报告的合规事宜（即时限、语言及罚则），以及代理申报机制的意见？*（第四章）*
- 你是否支持引入法定争议解决机制，以确保能适时及快捷有效地解决税收协定跨境争议？*（第六章）*
- 你对法定争议解决机制的建议形式有什么意见？*（第六章）*
- 你对优化税收抵免制度的建议措施有什么意见？*（第六章）*

7.3　请在 2016 年 12 月 31 日（星期六）或之前，以邮寄、传真或电邮方式发表你对上述事宜及其他关于应对「侵蚀税基及转移利润」方案的看法及意见—

邮寄： 香港添马
添美道2号
政府总部24楼
财经事务及库务局(库务科)
收入组

传真： 2179 5848
（经办人：打击「侵蚀税基及转移利润」措施咨询）

电邮： beps@fstb.gov.hk

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保障个人资料的私隐

1. 公众就本咨询文件提交意见时可付上个人资料，此举纯属自愿。收集所得的意见书和个人资料或会转交有关的政府决策局和部门，用于与是次咨询直接有关的用途。获取资料的决策局和部门只可把该等资料作这些用途。

2. 我们或会公开就本咨询文件提交意见书的个人及团体(「提交意见者」)的姓名／名称及其意见，供公众查阅。我们可能在内部或公开与其他人士讨论时，或日后发表的报告中，引述提交意见者就咨询文件提交的意见。

3. 为了保障提交意见者的个人资料私隐，我们在刊登其意见书时，会把其提供的有关资料，例如住址／回邮地址、电邮地址、身分证号码、电话号码、传真号码和签名等删除。

4. 提交意见者如不欲公开其姓名／名称，以及／或全部或部分意见，我们会尊重其意愿。提交意见者如在其意见书中要求把身分保密，我们会在公开意见书时删除其姓名／名称。提交意见者如要求把意见书保密，我们将不会公开其意见书。

5. 如提交意见者并无要求不公开身分或把意见书保密，则视作可公开其姓名／名称和其全部意见。

6. 向本局提交意见书的人士有权查阅所提供的个人资料和予以更正。提交意见者可循上述途径，书面向财经事务及库务局助理秘书长(库务)(收入)2 提出有关要求。

财经事务及库务局
税务局
2016 年 10 月

Annex A

Overview of BEPS Package

Action 1 – Address the Tax Challenges of the Digital Economy

The Action 1 report concludes that the digital economy cannot be ring-fenced as it is increasingly the economy itself. The report analyses BEPS risks exacerbated in the digital economy and shows the expected impact of the measures developed across the BEPS Project. Rules and implementation mechanisms have been developed to help collect value-added tax (VAT) based on the country where the consumer is located in the case of cross-border business-to-consumers transactions. These measures are intended to level the playing field between domestic and foreign suppliers and facilitate the efficient collection of VAT due on these transactions. Technical options to deal with the broader tax challenges raised by the digital economy such as nexus and data have been discussed and analysed. As both the challenges and the potential options raise systemic issues regarding the existing framework for the taxation of cross-border activities that go beyond BEPS issues, OECD and G20 countries have agreed to monitor developments and analyse data that will become available over time. On the basis of the future monitoring work, a determination will also be made as to whether further work on the options discussed and analysed should be carried out. This determination should be based on a broad look at the ability of existing international tax standards to deal with the tax challenges raised by developments in the digital economy.

Action 2 – Neutralise the Effects of Hybrid Mismatch Arrangements

A common approach which will facilitate the convergence of national practices through domestic and treaty rules to neutralise such arrangements. This will help to prevent double non-taxation by eliminating the tax benefits of mismatches and to put an end to costly multiple deductions for a single expense, deductions in one country without corresponding taxation in another, and the generation of multiple foreign tax credits for one amount of foreign tax paid. By neutralising the mismatch in tax outcomes, but not otherwise interfering with the use of such instruments or entities, the rules will inhibit the use of these arrangements as a tool for BEPS without adversely impacting cross-border trade and investment.

Action 3 – Strengthen CFC Rules

The report sets out recommendations in the form of building blocks of effective Controlled Foreign Company (CFC) rules, while recognising that the policy objectives of these rules vary among jurisdictions. The recommendations are not minimum standards, but they are designed to ensure that jurisdictions that choose to implement them will have rules that effectively prevent taxpayers from shifting income into foreign subsidiaries. It

identifies the challenges to existing CFC rules posed by mobile income such as that from intellectual property, services and digital transactions, and allows jurisdictions to reflect on appropriate policies in this regard. The work emphasises that CFC rules have a continuing, important role in tackling BEPS, as a backstop to transfer pricing and other rules.

Action 4 – Limit Base Erosion via Interest Deductions and Other Financial Payments

A common approach to facilitate the convergence of national rules in the area of interest deductibility. The influence of tax rules on the location of debt within multinational groups has been established in a number of academic studies and it is well-known that groups can easily multiply the level of debt at the individual group entity level via intra-group financing. At the same time, the ability to achieve excessive interest deductions including those that finance the production of exempt or deferred income is best addressed in a coordinated manner given the importance of addressing competitiveness considerations and of ensuring that appropriate interest expense limitations do not themselves lead to double taxation. The common approach aims at ensuring that an entity's net interest deductions are directly linked to the taxable income generated by its economic activities and fostering increased coordination of national rules in this space.

Action 5 – Counter Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance

Current concerns on harmful tax practices are primarily about preferential regimes which can be used for artificial profit shifting and about a lack of transparency in connection with certain rulings. The Action 5 report sets out a minimum standard based on an agreed methodology to assess whether there is substantial activity in a preferential regime. In the context of IP regimes such as patent boxes, consensus was reached on the "nexus" approach. This approach uses expenditures in the country as a proxy for substantial activity and ensures that taxpayers benefiting from these regimes did in fact engage in research and development and incurred actual expenditures on such activities. The same principle can also be applied to other preferential regimes so that such regimes would be found to require substantial activities where they grant benefits to a taxpayer to the extent that the taxpayer undertook the core income-generating activities required to produce the type of income covered by the preferential regime. In the area of transparency, a framework has been agreed for mandatory spontaneous exchange of information on rulings that could give rise to BEPS concerns in the absence of such exchange. The results of the application of the elaborated substantial activity and transparency factors to a number of preferential regimes are included in the report.

Action 6 – Prevent Treaty Abuse

The Action 6 report includes a minimum standard on preventing abuse including through treaty shopping and new rules that provide safeguards to prevent treaty abuse and offer a certain degree of flexibility regarding how to do so. The new treaty anti-abuse rules included in the report first address treaty shopping, which involves strategies through which a person who is not a resident of a State attempts to obtain the benefits of a tax treaty concluded by that State. More targeted rules have been designed to address

other forms of treaty abuse. Other changes to the OECD Model Tax Convention have been agreed to ensure that treaties do not inadvertently prevent the application of domestic anti-abuse rules. A clarification that tax treaties are not intended to be used to generate double non-taxation is provided through a reformulation of the title and preamble of the Model Tax Convention. Finally, the report contains the policy considerations to be taken into account when entering into tax treaties with certain low or no-tax jurisdictions.

Action 7 – Prevent the Artificial Avoidance of PE Status

Tax treaties generally provide that the business profits of a foreign enterprise are taxable in a State only to the extent that the enterprise has in that State a permanent establishment to which the profits are attributable. The definition of permanent establishment included in tax treaties is therefore crucial in determining whether a non-resident enterprise must pay income tax in another State. The report includes changes to the definition of permanent establishment in Article 5 of the OECD Model Tax Convention, which is widely used as the basis for negotiating tax treaties. These changes address techniques used to inappropriately avoid the tax nexus, including via replacement of distributors with commissionaire arrangements or via the artificial fragmentation of business activities.

Actions 8-10 – Assure that Transfer Pricing Outcomes are in Line with Value Creation

Transfer pricing rules, which are set out in Article 9 of tax treaties based on the OECD and UN Model Tax Conventions and the Transfer Pricing Guidelines, are used to determine on the basis of the arm's length principle the conditions, including the price, for transactions within an MNE group. The existing standards in this area have been clarified and strengthened, including the guidance on the arm's length principle and an approach to ensure the appropriate pricing of hard-to-value-intangibles has been agreed upon within the arm's length principle. The work has focused on three key areas. Action 8 looked at transfer pricing issues relating to controlled transactions involving intangibles, since intangibles are by definition mobile and they are often hard-to-value. Misallocation of the profits generated by valuable intangibles has heavily contributed to base erosion and profit shifting. Under Action 9, contractual allocations of risk are respected only when they are supported by actual decision-making and thus exercising control over these risks. Action 10 has focused on other high-risk areas, including the scope for addressing profit allocations resulting from controlled transactions which are not commercially rational, the scope for targeting the use of transfer pricing methods in a way which results in diverting profits from the most economically important activities of the MNE group, and the use of certain type of payments between members of the MNE group (such as management fees and head office expenses) to erode the tax base in the absence of alignment with the value-creation. The combined report contains revised guidance which responds to these issues and ensures that transfer pricing rules secure outcomes that better align operational profits with the economic activities which generate them.

The report also contains guidance on transactions involving cross-border commodity transactions as well as on low value-adding intra-group services. As those two areas were identified as of critical importance by developing countries, the guidance will be supplemented with further work mandated by the G20 Development Working Group,

which will provide knowledge, best practices, and tools for developing countries to price commodity transactions for transfer pricing purposes and to prevent the erosion of their tax bases through common types of base-eroding payments.

Action 11 – Measuring and Monitoring BEPS

There are hundreds of empirical studies finding evidence of tax-motivated profit shifting, using different data sources and estimation strategies. While measuring the scope of BEPS is challenging given the complexity of BEPS and existing data limitations, a number of recent studies suggest that global CIT revenue losses due to BEPS could be significant. Action 11 assesses currently available data and methodologies and concludes that significant limitations severely constrain economic analyses of the scale and economic impact of BEPS and improved data and methodologies are required. Noting these data limitations, a dashboard of six BEPS indicators has been constructed, using different data sources and assessing different BEPS channels. These indicators provide strong signals that BEPS exists and suggest it has been increasing over time. New OECD empirical analyses estimate, while acknowledging the complexity of BEPS as well as methodological and data limitations, that the scale of global corporate income tax revenue losses could be between USD 100 to 240 billion annually. The research also finds significant non-fiscal economic distortions arising from BEPS, and proposes recommendations for taking better advantage of available tax data and improving analyses to support the monitoring of BEPS in the future, including through analytical tools to assist countries to evaluate the fiscal effects of BEPS and impact of BEPS countermeasures for their countries. Going forward, enhancing the economic analysis and monitoring of BEPS will require countries to improve the collection, compilation and analysis of data.

Action 12 – Require Taxpayers to Disclose their Aggressive Tax Planning Arrangements

The lack of timely, comprehensive and relevant information on aggressive tax planning strategies is one of the main challenges faced by tax authorities worldwide. Early access to such information provides the opportunity to quickly respond to tax risks through informed risk assessment, audits, or changes to legislation. The Action 12 report provides a modular framework of guidance drawn from best practices for use by countries without mandatory disclosure rules which seeks to design a regime that fits those countries' need to obtain early information on aggressive or abusive tax planning schemes and their users. The recommendations in this report do not represent a minimum standard and countries are free to choose whether or not to introduce mandatory disclosure regimes. The framework is also intended as a reference for countries that already have mandatory disclosure regimes, in order to enhance the effectiveness of those regimes. The recommendations provide the necessary flexibility to balance a country's need for better and more timely information with the compliance burdens for taxpayers. It also sets out specific best practice recommendations for rules targeting international tax schemes, as well as for the development and implementation of more effective information exchange and co-operation between tax administrations.

Action 13 – Re-examine Transfer Pricing Documentation

Improved and better-coordinated transfer pricing documentation will increase the quality of information provided to tax administrations and limit the compliance burden on businesses. The Action 13 report contains a three-tiered standardised approach to transfer pricing documentation, including a minimum standard on Country-by-Country Reporting. This minimum standard reflects a commitment to implement the common template for Country-by-Country Reporting in a consistent manner. First, the guidance on transfer pricing documentation requires multinational enterprises (MNEs) to provide tax administrations with high-level information regarding their global business operations and transfer pricing policies in a "master file" that is to be available to all relevant tax administrations. Second, it requires that detailed transactional transfer pricing documentation be provided in a "local file" specific to each country, identifying material related-party transactions, the amounts involved in those transactions, and the company's analysis of the transfer pricing determinations they have made with regard to those transactions. Third, large MNEs are required to file a Country-by-Country Report that will provide annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax and income tax paid and accrued and other indicators of economic activities. Country-by-country reports should be filed in the ultimate parent entity's jurisdiction and shared automatically through government-to-government exchange of information. In limited circumstances, secondary mechanisms, including local filing can be used as a backup. An agreed implementation plan will ensure that information is provided to the tax administration in a timely manner, that confidentiality of the reported information is preserved and that the Country-by-Country Reports are used appropriately.

Taken together, these three documentation tiers will require taxpayers to articulate consistent transfer pricing positions, and will provide tax administrations with useful information to assess transfer pricing risks, make determinations about where audit resources can most effectively be deployed, and, in the event audits are called for, provide information to commence and target audit enquiries. By ensuring a consistent approach to transfer pricing documentation across countries, and by limiting the need for multiple filings of Country-by-Country Reports through making use of information exchange among tax administrations, MNEs will also see the benefits in terms of a more limited compliance burden.

Action 14 – Make Dispute Resolution Mechanisms More Effective

Countries recognize that the changes introduced by the BEPS Project may lead to some uncertainty, and could, without action, increase double taxation and MAP disputes in the short term. Recognising the importance of removing double taxation as an obstacle to cross-border trade and investment, countries have committed to a minimum standard with respect to the resolution of treaty-related disputes. In particular, this includes a strong political commitment to the effective and timely resolution of disputes through the mutual agreement procedure. The commitment also includes the establishment of an effective monitoring mechanism to ensure the minimum standard is met and countries make further progress to rapidly resolve disputes. In addition, a large group of countries has committed to quickly adopt mandatory and binding arbitration in their bilateral tax treaties.

Action 15 – Develop a Multilateral Instrument

Drawing on the expertise of public international law and tax experts, the Action 15 report explores the technical feasibility of a multilateral instrument to implement the BEPS treaty-related measures and amend bilateral tax treaties. It concludes that a multilateral instrument is desirable and feasible, and that negotiations for such an instrument should be convened quickly. Based on this analysis, a mandate has been developed for an ad-hoc group, open to the participation of all countries, to develop the multilateral instrument and open it for signature in 2016. So far, about 90 countries are participating in the work on an equal footing.

附件二

各国实施 BEPS 方案的情况
（截至 2016 年 9 月 29 日）

国家	BEPS 行动	新订法例／规则的现况	备注
澳洲	8-10	制订中	2016 年 5 月，宣布将会修改有关转让定价的规则，以实施 BEPS 第 8 至第 10 项行动的建议。
	13	已制订	2015 年 12 月，制定法例以实施新订的转让定价文件规定。
加拿大	5	已制订	2016 年 4 月，发布有关预先入息税裁定（包括自发交换税务裁定资料）修订指引。
	13	制订中	2016 年 7 月，就有关国别报告的法案草稿进行咨询。
中国	8-10	制订中	2015 年 9 月，就特别纳税调整实施办法发出征求意见稿。
	13	已制订	2016 年 7 月，就有关国别报告及新订的转让定价文件规定发出公告。

法国	13	已制订	2015年12月，制定法例以实施国别报告的规定。
德国	5	制订中	2016年9月，提交法案以实施欧盟就强制性自动交换预先跨境裁定和预先定价安排的规定。
	13	制订中	2016年5月，公布有关拟备主体档案及本地档案规定的法案草稿。2016年7月，德国内阁通过有关国别报告的法案。
纽西兰	5	已制订	2016年5月，发布就经合组织对交换纳税人裁定资料及裁决的规定的指引。
新加坡	8-10	已制订	2016年1月，发布转让定价的修订电子税务指南。
	13	制订中	2016年7月，就有关国别报告的法案草稿进行咨询。
	14	已制订	2016年1月，发布相互协商程序及预先定价安排制度的修订电子税务指南。
瑞士	5	制订中	2016年4月，就自动交换预先税务裁定资料的法案草稿进行咨询。
	13	制订中	2016年4月，就有关国别报告的法案草稿进行咨询。

英国	8-10	已制订	2016 年 9 月，制定法例将经合组织最新的转让定价规则纳入英国的转让定价规管架构内。
	13	已制订	2016 年 3 月，有关国别报告的规例正式生效。
美国	13	已制订	2016 年 6 月，公布有关国别报告的规例。

* 这些国家均已加入为实施 BEPS 方案而设的合作框架。

Annex I to Chapter V

Transfer pricing documentation – Master file

The following information should be included in the master file:

Organisational structure

- Chart illustrating the MNE's legal and ownership structure and geographical location of operating entities.

Description of MNE's business(es)

- General written description of the MNE's business including:
  - Important drivers of business profit;
  - A description of the supply chain for the group's five largest products and/or service offerings by turnover plus any other products and/or services amounting to more than 5 percent of group turnover. The required description could take the form of a chart or a diagram;
  - A list and brief description of important service arrangements between members of the MNE group, other than research and development (R&D) services, including a description of the capabilities of the principal locations providing important services and transfer pricing policies for allocating services costs and determining prices to be paid for intra-group services;
  - A description of the main geographic markets for the group's products and services that are referred to in the second bullet point above;
  - A brief written functional analysis describing the principal contributions to value creation by individual entities within the group, i.e. key functions performed, important risks assumed, and important assets used;
  - A description of important business restructuring transactions, acquisitions and divestitures occurring during the fiscal year.

MNE's intangibles (as defined in Chapter VI of these Guidelines)

- A general description of the MNE's overall strategy for the development, ownership and exploitation of intangibles, including location of principal R&D facilities and location of R&D management.

- A list of intangibles or groups of intangibles of the MNE group that are important for transfer pricing purposes and which entities legally own them.
- A list of important agreements among identified associated enterprises related to intangibles, including cost contribution arrangements, principal research service agreements and licence agreements.
- A general description of the group's transfer pricing policies related to R&D and intangibles.
- A general description of any important transfers of interests in intangibles among associated enterprises during the fiscal year concerned, including the entities, countries, and compensation involved.

MNE's intercompany financial activities

- A general description of how the group is financed, including important financing arrangements with unrelated lenders.
- The identification of any members of the MNE group that provide a central financing function for the group, including the country under whose laws the entity is organised and the place of effective management of such entities.
- A general description of the MNE's general transfer pricing policies related to financing arrangements between associated enterprises.

MNE's financial and tax positions

- The MNE's annual consolidated financial statement for the fiscal year concerned if otherwise prepared for financial reporting, regulatory, internal management, tax or other purposes.
- A list and brief description of the MNE group's existing unilateral advance pricing agreements (APAs) and other tax rulings relating to the allocation of income among countries.

Annex II to Chapter V

Transfer pricing documentation – Local file

The following information should be included in the local file:

Local entity

- A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.
- A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.
- Key competitors.

Controlled transactions

For each material category of controlled transactions in which the entity is involved, provide the following information:

- A description of the material controlled transactions (e.g. procurement of manufacturing services, purchase of goods, provision of services, loans, financial and performance guarantees, licences of intangibles, etc.) and the context in which such transactions take place.
- The amount of intra-group payments and receipts for each category of controlled transactions involving the local entity (i.e. payments and receipts for products, services, royalties, interest, etc.) broken down by tax jurisdiction of the foreign payor or recipient.
- An identification of associated enterprises involved in each category of controlled transactions, and the relationship amongst them.
- Copies of all material intercompany agreements concluded by the local entity.
- A detailed comparability and functional analysis of the taxpayer and relevant associated enterprises with respect to each documented category of controlled transactions, including any changes compared to prior years.[1]
- An indication of the most appropriate transfer pricing method with regard to the category of transaction and the reasons for selecting that method.

- An indication of which associated enterprise is selected as the tested party, if applicable, and an explanation of the reasons for this selection.
- A summary of the important assumptions made in applying the transfer pricing methodology.
- If relevant, an explanation of the reasons for performing a multi-year analysis.
- A list and description of selected comparable uncontrolled transactions (internal or external), if any, and information on relevant financial indicators for independent enterprises relied on in the transfer pricing analysis, including a description of the comparable search methodology and the source of such information.
- A description of any comparability adjustments performed, and an indication of whether adjustments have been made to the results of the tested party, the comparable uncontrolled transactions, or both.
- A description of the reasons for concluding that relevant transactions were priced on an arm's length basis based on the application of the selected transfer pricing method.
- A summary of financial information used in applying the transfer pricing methodology.
- A copy of existing unilateral and bilateral/multilateral APAs and other tax rulings to which the local tax jurisdiction is not a party and which are related to controlled transactions described above.

Financial information

- Annual local entity financial accounts for the fiscal year concerned. If audited statements exist they should be supplied and if not, existing unaudited statements should be supplied.
- Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements.
- Summary schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained.

Note

1. To the extent this functional analysis duplicates information in the master file, a cross-reference to the master file is sufficient.

Annex III to Chapter V

Transfer pricing documentation – Country-by-Country Report

A. Model template for the Country-by-Country Report

Table 1. **Overview of allocation of income, taxes and business activities by tax jurisdiction**

Name of the MNE group: Fiscal year concerned: Currency used:										
Tax Jurisdiction	Revenues			Profit (Loss) before Income Tax	Income Tax Paid (on Cash Basis)	Income Tax Accrued – Current Year	Stated Capital	Accumulated Earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

Table 2. **List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction**

Name of the MNE group: Fiscal year concerned:															
Tax Jurisdiction	Constituent Entities Resident in the Tax Jurisdiction	Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence	Main Business Activity(ies)												
			Research and Development	Holding or Managing Intellectual Property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of Services to Unrelated Parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding Shares or Other Equity instruments	Dormant	Other[1]
	1.														
	2.														
	3.														
	1.														
	2.														
	3.														

1. Please specify the nature of the activity of the Constituent Entity in the "Additional Information" section.

Table 3. **Additional Information**

Name of the MNE group: Fiscal year concerned:
Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the Country-by-Country Report.

B. Template for the Country-by-Country Report – General instructions

Purpose

This Annex III to Chapter V of these Guidelines contains a template for reporting a multinational enterprise's (MNE) group allocation of income, taxes and business activities on a tax jurisdiction-by-tax jurisdiction basis. These instructions form an integral part of the model template for the Country-by-Country Report.

Definitions

Reporting MNE

A Reporting MNE is the ultimate parent entity of an MNE group.

Constituent Entity

For purposes of completing Annex III, a Constituent Entity of the MNE group is (i) any separate business unit of an MNE group that is included in the Consolidated Financial Statements of the MNE group for financial reporting purposes, or would be so included if equity interests in such business unit of the MNE group were traded on a public securities exchange; (ii) any such business unit that is excluded from the MNE group's Consolidated Financial Statements solely on size or materiality grounds; and (iii) any permanent establishment of any separate business unit of the MNE group included in (i) or (ii) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes.

Treatment of Branches and Permanent Establishments

The permanent establishment data should be reported by reference to the tax jurisdiction in which it is situated and not by reference to the tax jurisdiction of residence of the business unit of which the permanent establishment is a part. Residence tax jurisdiction reporting for the business unit of which the permanent establishment is a part should exclude financial data related to the permanent establishment.

Consolidated Financial Statements

The Consolidated Financial Statements are the financial statements of an MNE group in which the assets, liabilities, income, expenses and cash flows of the ultimate parent entity and the Constituent Entities are presented as those of a single economic entity.

Period covered by the annual template

The template should cover the fiscal year of the Reporting MNE. For Constituent Entities, at the discretion of the Reporting MNE, the template should reflect on a consistent basis either (i) information for the fiscal year of the relevant Constituent Entities ending on the same date as the fiscal year of the Reporting MNE, or ending within the 12 month period preceding such date, or (ii) information for all the relevant Constituent Entities reported for the fiscal year of the Reporting MNE.

Source of data

The Reporting MNE should consistently use the same sources of data from year to year in completing the template. The Reporting MNE may choose to use data from its consolidation reporting packages, from separate entity statutory financial statements, regulatory financial statements, or internal management accounts. It is not necessary to reconcile the revenue, profit and tax reporting in the template to the consolidated financial statements. If statutory financial statements are used as the basis for reporting, all amounts should be translated to the stated functional currency of the Reporting MNE at the average exchange rate for the year stated in the Additional Information section of the template. Adjustments need not be made, however, for differences in accounting principles applied from tax jurisdiction to tax jurisdiction.

The Reporting MNE should provide a brief description of the sources of data used in preparing the template in the Additional Information section of the template. If a change is made in the source of data used from year to year, the Reporting MNE should explain the reasons for the change and its consequences in the Additional Information section of the template.

C. Template for the Country-by-Country Report – Specific instructions

Overview of allocation of income, taxes and business activities by tax jurisdiction (Table 1)

Tax Jurisdiction

In the first column of the template, the Reporting MNE should list all of the tax jurisdictions in which Constituent Entities of the MNE group are resident for tax purposes. A tax jurisdiction is defined as a State as well as a non-State jurisdiction which has fiscal autonomy. A separate line should be included for all Constituent Entities in the MNE group deemed by the Reporting MNE not to be resident in any tax jurisdiction for tax purposes. Where a Constituent Entity is resident in more than one tax jurisdiction, the applicable tax treaty tie breaker should be applied to determine the tax jurisdiction of residence. Where no applicable tax treaty exists, the Constituent Entity should be reported in the tax jurisdiction of the Constituent Entity's place of effective management. The place of effective management should be determined in accordance with the provisions of Article 4 of the OECD Model Tax Convention and its accompanying Commentary.

Revenues

In the three columns of the template under the heading Revenues, the Reporting MNE should report the following information: (i) the sum of revenues of all the Constituent Entities of the MNE group in the relevant tax jurisdiction generated from transactions with associated enterprises; (ii) the sum of revenues of all the Constituent Entities of the MNE group in the relevant tax jurisdiction generated from transactions with independent parties; and (iii) the total of (i) and (ii). Revenues should include revenues from sales of inventory and properties, services, royalties, interest, premiums and any other amounts. Revenues should exclude payments received from other Constituent Entities that are treated as dividends in the payor's tax jurisdiction.

Profit (Loss) before Income Tax

In the fifth column of the template, the Reporting MNE should report the sum of the profit (loss) before income tax for all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The profit (loss) before income tax should include all extraordinary income and expense items.

Income Tax Paid (on Cash Basis)

In the sixth column of the template, the Reporting MNE should report the total amount of income tax actually paid during the relevant fiscal year by all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. Taxes paid should include cash taxes paid by the Constituent Entity to the residence tax jurisdiction and to all other tax jurisdictions. Taxes paid should include withholding taxes paid by other entities (associated

enterprises and independent enterprises) with respect to payments to the Constituent Entity. Thus, if company A resident in tax jurisdiction A earns interest in tax jurisdiction B, the tax withheld in tax jurisdiction B should be reported by company A.

Income Tax Accrued (Current Year)

In the seventh column of the template, the Reporting MNE should report the sum of the accrued current tax expense recorded on taxable profits or losses of the year of reporting of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The current tax expense should reflect only operations in the current year and should not include deferred taxes or provisions for uncertain tax liabilities.

Stated Capital

In the eighth column of the template, the Reporting MNE should report the sum of the stated capital of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, the stated capital should be reported by the legal entity of which it is a permanent establishment unless there is a defined capital requirement in the permanent establishment tax jurisdiction for regulatory purposes.

Accumulated Earnings

In the ninth column of the template, the Reporting MNE should report the sum of the total accumulated earnings of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction as of the end of the year. With regard to permanent establishments, accumulated earnings should be reported by the legal entity of which it is a permanent establishment.

Number of Employees

In the tenth column of the template, the Reporting MNE should report the total number of employees on a full-time equivalent (FTE) basis of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The number of employees may be reported as of the year-end, on the basis of average employment levels for the year, or on any other basis consistently applied across tax jurisdictions and from year to year. For this purpose, independent contractors participating in the ordinary operating activities of the Constituent Entity may be reported as employees. Reasonable rounding or approximation of the number of employees is permissible, providing that such rounding or approximation does not materially distort the relative distribution of employees across the various tax jurisdictions. Consistent approaches should be applied from year to year and across entities.

Tangible Assets other than Cash and Cash Equivalents

In the eleventh column of the template, the Reporting MNE should report the sum of the net book values of tangible assets of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, assets should be reported by reference to the tax jurisdiction in which the permanent establishment is situated. Tangible assets for this purpose do not include cash or cash equivalents, intangibles, or financial assets.

List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction (Table 2)

Constituent Entities Resident in the Tax Jurisdiction

The Reporting MNE should list, on a tax jurisdiction-by-tax jurisdiction basis and by legal entity name, all the Constituent Entities of the MNE group which are resident for tax purposes in the relevant tax jurisdiction. As stated above with regard to permanent establishments, however, the permanent establishment should be listed by reference to the tax jurisdiction in which it is situated. The legal entity of which it is a permanent establishment should be noted (e.g. XYZ Corp – Tax Jurisdiction A PE).

Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence

The Reporting MNE should report the name of the tax jurisdiction under whose laws the Constituent Entity of the MNE is organised or incorporated if it is different from the tax jurisdiction of residence.

Main Business Activity(ies)

The Reporting MNE should determine the nature of the main business activity(ies) carried out by the Constituent Entity in the relevant tax jurisdiction, by ticking one or more of the appropriate boxes.

Business Activities
Research and Development
Holding or Managing Intellectual Property
Purchasing or Procurement
Manufacturing or Production
Sales, Marketing or Distribution
Administrative, Management or Support Services
Provision of Services to Unrelated Parties
Internal Group Finance
Regulated Financial Services
Insurance
Holding Shares or Other Equity Instruments
Dormant
Other[1]

1. Please specify the nature of the activity of the Constituent Entity in the "Additional Information" section.

附件四

全面性协定及交换协定下保障纳税人私隐和确保所交换资料能予保密的措施

(a) 所交换的资料须为可预见相关的资料，即不得作打探性质的资料交换请求；

(b) 缔约伙伴所获取的资料必须保密；

(c) 资料只可向税务当局披露，不得向其监管当局披露，除非全面性协定／交换协定伙伴提出充分理由，始作别论（即我们已对立法会承诺，该类监管当局必须以正面载列的方式列出）；

(d) 所交换的资料不得向第三司法管辖区披露；

(e) 在某些情况下缔约双方没有责任提供资料，例如资料会披露任何贸易、业务、工业、商业或专业秘密或贸易程序，又或有关资料属法律专业特权涵盖范围等；

(f) 容许交换所得的资料作其他用途（即非税务用途），但有关用途必须为缔约双方的法律所容许，并须经提供资料一方的主管当局批准。换言之，交换资料的大前提是，必须先为了有关全面性协定／交换协定规定的税务目的而进行；以及

(g) 不会答允缔约伙伴所提出的海外税务调查的请求（即我们并没有在全面性协定／交换协定内加入这类条款）。