

## China (People's Republic of)

The People's Republic of China ("China") has met all aspects of the terms of reference (OECD, 2017<sup>[3]</sup>) (ToR) for the calendar year 2018 (year in review) and no recommendations are made.

In the prior year report, China received one recommendation regarding the timely provision of information on rulings to the Competent Authority for exchange of information (ToR II.5.5). This recommendation has been addressed and is removed.

China can legally issue one type of rulings within the scope of the transparency framework. In practice, China issued rulings within the scope of the transparency framework as follows:

- 11 past rulings;
- For the period 1 April 2016 - 31 December 2016: six future rulings;
- For the calendar year 2017: three future rulings, and
- For the year in review: two future rulings.

Peer input was received from one jurisdiction in respect of the exchanges of information on rulings received from China. The input was generally positive, noting that information was complete, in a correct format and received in a timely manner.

## Introduction

This peer review covers China's implementation of the BEPS Action 5 transparency framework for the year 2018. The report has four parts, each relating to a key part of the ToR. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

## A. The information gathering process

China can legally issue one type of ruling within the scope of the transparency framework: cross-border unilateral advance pricing agreements (APAs) covering transfer pricing or the application of transfer pricing principles.

### **Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)**

There is a legal barrier to the exchange of information on rulings on China, which does not allow the exchange of past rulings. The legal framework in China was amended to allow exchanges on future rulings. As such, the balance of this report relates only to future rulings.

### **Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)**

For China, future rulings are any tax rulings within scope that are issued on or after 1 April 2016.

In the prior year peer review report, it was determined that China's undertakings to identify future rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. China's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

### **Review and supervision (ToR I.4.3)**

In the prior year peer review report, it was determined that China's undertakings to identify future rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. China's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

### **Conclusion on section A**

For the year in review, China has met all of the ToR for the information gathering process and no recommendations are made.

## B. The exchange of information

### **Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)**

China has implemented the necessary domestic legal basis to exchange information spontaneously in place. The legal framework in place does not allow the exchange of past rulings but does allow the exchange of information on future rulings, as from 1 April 2016.<sup>1</sup>

China is a party to international agreements permitting spontaneous exchange of information, including (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention") and (ii) double tax agreements in force with 100 jurisdictions.<sup>2</sup>

### **Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)**

In the prior year peer review report, it was determined that China's process for the completion and exchange of templates was sufficient to meet the minimum standard, except for the timely provision of information on rulings to the Competent Authority for exchange of information (ToR II.5.5) which took place on a yearly basis. As noted in the prior year report, China took actions in March 2018 to remedy this issue and reduce the timelines for providing information on future rulings to the Competent Authority. The new information system allows the Chinese tax administration to identify and process information relating to unilateral APAs issued by the local tax administration officers within 10 days after an APA is issued. As such, this recommendation is removed.

For the year in review, the timeliness of exchanges is as follows:

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2018	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2018	Reasons for the delays	Any other comments
	0	0	N/A	N/A
Future rulings in the scope of the transparency framework	Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted	Delayed exchanges		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	Reasons for the delays	Any other comments
	3	0	N/A	N/A
<b>Total</b>	3	0		

Follow up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	N/A

### **Conclusion on section B**

China has the necessary legal basis for spontaneous exchange of information, a process for completing the templates in a timely way and has completed all exchanges. China has met all of the ToR for the exchange of information process and no recommendations are made.

## **C. Statistics (ToR IV)**

The statistics for the year in review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	N/A	N/A
Cross-border unilateral advance pricing agreements (APAs) and any other cross-border unilateral tax rulings (such as an advance tax ruling) covering transfer pricing or the application of transfer pricing principles	<i>De minimis</i> rule applies	N/A
Cross-border rulings providing for a unilateral downward adjustment to the	N/A	N/A

taxpayer's taxable profits that is not directly reflected in the taxpayer's financial / commercial accounts		
Permanent establishment rulings	N/A	N/A
Related party conduit rulings	N/A	N/A
<i>De minimis</i> rule	3	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	N/A	N/A
<b>Total</b>	<b>3</b>	

#### D. Matters related to intellectual property regimes (ToR I.4.1.3)

In the prior years' peer review reports, it was determined that the transparency requirements were not relevant for China's intellectual property regime (Reduced rate for high & new tech enterprises).

#### Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made.

#### Notes

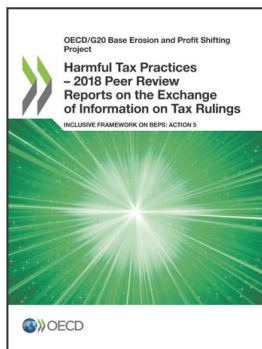
<sup>1</sup> Public Notice on Matters Regarding Enhancing the Administration of Advance Pricing Arrangements (SAT Public Notice [2016] No. 64).

<sup>2</sup> Parties to the Convention are available here: [www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm](http://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm). China also has bilateral agreements in force with Albania, Algeria, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Brunei Darussalam, Bulgaria, Cambodia, Canada, Chile, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Moldova, Mongolia, Montenegro, Morocco, Nepal, Netherlands, New Zealand, Nigeria, North Macedonia, Norway, Oman, Pakistan, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Serbia, Seychelles, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syria, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Venezuela, Viet Nam, Zambia and Zimbabwe.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution

is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Union. The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.



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