打擊「侵蝕稅基及轉移利潤」

措施諮詢文件

摘要

近年來，國際社會在稅務合作方面的發展迅速。打擊跨境避稅及逃稅活動以保障稅收，不僅是個別國家的關注，亦是二十國集團及經濟合作與發展組織（「經合組織」）等主要國際組織的關注。

2. 2013 年，二十國集團及經合組織推出應對「侵蝕稅基及轉移利潤」（「BEPS」）方案。這方案標誌著國際社會通力合作，共同制訂對策回應國際稅務挑戰。BEPS 方案的最終目標是恢復公眾對稅制的信心及締造公平的營商環境。BEPS 方案涵蓋 15 個範疇，旨在完善國際稅務規則的連貫性、把稅收與經濟活動及價值創造掛鈎，以及提高稅務環境的透明度。

3. 為確保全球採取一致及有效的做法，二十國集團及經合組織呼籲所有國家及稅務管轄區加入為實施 BEPS 方案而設的合作框架。各成員將會共同制訂國際標準，以及參與其後的檢討及監察機制。截至 2016 年 7 月 15 日，共有 85 個國家及稅務管轄區加入了合作框架。作為國際金融中心及國際社會負責任的一員，香港已於 2016 年 6 月向經合組織表明就**BEPS 方案及其實施作出承諾**。我們亦清楚表明，香港對於實施 BEPS 方案的承諾，大前提為實施 BEPS 措施所需的法例修訂獲適時通過。

4. 香港一直奉行以地域來源為徵稅原則的簡單稅制，此制度是我們多年來賴以成功和保持競爭力的基石。在香港實施 BEPS 方案無可避免會涉及修訂我們現行的稅務法律。在制訂香港實施 BEPS 方案的模式時，我們須確保所訂定的模式既符合國際標準，亦不會影響我們的簡單低稅制。就此，我們會制訂**務實的策略**，並實施相關的國際規定。

5. BEPS 方案的主要元素和規定於本文件**第一章**概述。我們於**第二章**闡述有關實施 BEPS 方案的政策理念及香港的工作優次。我們優先要處理的工作包括轉讓定價的規管架構（**第三章**）、轉讓定價文件及國別報告（**第四章**）、多邊協議（**第五章**）、跨境爭議解決機制以及自發交換稅務裁定資料（**第六章**）訂立所需的法律框架。我們提出了收集公眾意見的主要範疇（**第七章**），並會於 2016 年 10 月 26 日至 12 月

31 日徵詢相關持份者的意見。我們的目標是在 2017 年年中向立法會提交相關的修訂條例草案。

第一章

「侵蝕稅基及轉移利潤」方案概覽

什麼是 BEPS？

1.1 「侵蝕稅基及轉移利潤」(「BEPS」) 是指跨國企業利用稅務規則的差異及錯配，人為地將利潤轉移至只有很少或沒有經濟活動的低稅或無稅地方的稅務規劃策略。根據經濟合作與發展組織 (「經合組織」) 的估計，BEPS 引致的稅收損失**每年達 1,000 億至 2,400 億美元**，佔全球企業所得稅稅收的 4%至 10%。

1.2 除了導致稅收損失外，BEPS 亦損害稅收制度的公平性和完整性。相比其本地對手，跨國企業或會利用 BEPS 策略取得競爭優勢，製造**不公平的營商環境**。因此，經合組織認為有迫切需要讓所有國家及稅務管轄區攜手合作，恢復公眾對稅制的信心及確保公平競爭。

BEPS 方案的元素

1.3 2015 年 10 月，經合組織推出了一套涵蓋 **15 個範疇的行動計劃**應對 BEPS。這套 BEPS 方案於 2015 年 11 月獲二十國集團通過，旨在確保跨國企業就其利潤繳納公平份額的稅款，以及堵塞稅務管轄區之間就企業利潤出現「雙重不徵稅」的漏洞。

1.4 這 15 項行動計劃可分為**四個主要類別**－

(a) **新訂最低標準**旨在解決因某些稅務管轄區沒有採取行動，而對其他稅務管轄區造成負面影響（包括對競爭力的負面影響），當中包括打擊具損害性的稅務措施、防止濫用稅收協定的情況、訂立國別報告的規定，以及改善跨境爭議解決機制；

(b) **改良國際標準**旨在更新現行的國際標準，當中包括防止人為規避構成常設機構的手法，以及把轉讓定價的結果與價值創造掛鈎；

(c) **一致措施和最佳做法**旨在促使各國的做法更趨一

致，當中包括消除混合錯配安排的影響、就受控外國公司制定有效規則、對利息扣除和其他財務支出造成的稅基侵蝕予以限制，以及引入強制披露規則；以及

(d) **分析報告**旨在提供解決其他 BEPS 相關問題的建議，包括應對數碼經濟帶來的稅收挑戰、衡量及監察 BEPS 情況，以及制定用以修改雙邊稅收協定的多邊協議。

BEPS 方案的概覽（只有英文版）載於**附件一**。

實施 BEPS 方案而設的合作框架

1.5 2016 年 2 月，二十國集團財政部長通過建立一個新設的合作框架，讓有意參加的國家及稅務管轄區在**平等的基礎上**，與經合組織及二十國集團等成員國共同合作。這個合作框架旨在制訂與 BEPS 有關的國際標準，並貫徹實施相關措施。2016 年 6 月 20 日，香港接受經合組織的邀請，以「中國香港」的名義加入合作框架。截至 2016 年 7 月 15 日，共有 85 個國家及稅務管轄區加入合作框架。

1.6 至於決定不加入合作框架的國家及稅務管轄區，經合組織或會將它們列為「**相關稅務管轄區**」，並要求它們須遵守 BEPS 方案的最低標準，以維持**公平的競爭環境**。這些稅務管轄區會獲通知有關最低標準的詳情及獲邀就實施 BEPS 方案作出承諾，他們亦須接受經合組織的監察和評估。

檢討最低標準的實施情況

1.7 經合組織的**首要工作**是監察四項最低標準的實施情況。經合組織會設立監察機制，以評估各稅務管轄區是否合規，以及 BEPS 方案實施後隨時間出現的影響。所有合作框架的成員均會獲邀參與檢討程序。

1.8 **BEPS 方案的實施時間表十分緊迫**。合作框架的成員將會為四項最低標準訂立監察程序，亦會就 BEPS 方案的其他範疇設立檢討機制。經合組織明白，由於各稅務管轄區的發展程度不一，而部分稅務管轄區須待所需的本地法例通過後才可推行有關措施，因此實施時間表會有所不同。個別 BEPS 行動計劃的實施計劃，將於以下各章節詳述。

1.9 BEPS 方案的實施標誌著國際社會通力合作，共同改善稅制。不同國家及稅務管轄區已積極實施 BEPS 方案。部分例子載於**附件二**。作為合作框架的成員，香港須制定務實的策略，並落實相關的國際規定。

第二章

香港的實施策略

政策理念

2.1 一直以來，香港十分支持國際間就提升稅務透明度及打擊跨境逃稅的努力。香港已就 BEPS 方案作出承諾，以維持香港作為國際金融和商業中心的聲譽及履行我們的國際責任。

2.2 作為合作框架的成員，香港**承諾實施 BEPS 方案，包括當中的四項最低標準**，即打擊具損害性的稅務措施（第 5 項行動計劃）、防止濫用稅收協定的情況（第 6 項行動計劃）、訂立國別報告的規定（第 13 項行動計劃），以及改善跨境爭議解決機制（第 14 項行動計劃）。

2.3 由於 BEPS 方案涵蓋的措施範圍廣泛，而有關措施亦須透過修改稅務法律才可予以落實，我們不會低估實施 BEPS 方案的挑戰。我們已經向經合組織表示，香港對於實施 BEPS 方案的承諾，大前提是適時通過為實施 BEPS 措施所需的法例修訂。在推展有關工作時，我們會繼續奉行簡單低稅制，這是香港賴以成功及保持競爭力的基石。

香港的優次

2.4 在釐定香港的工作優次時，我們會集中落實四項最低標準，以及其相關措施。

2.5 我們優先要處理的工作，包括就涵蓋經合組織最新指引的轉讓定價規則（第 8 至第 10 項行動計劃）、自發交換稅務裁定資料（第 5 項行動計劃）、國別報告的規定（第 13 項行動計劃），跨境爭議解決機制（第 14 項行動計劃）以及多邊協議（第 15 項行動計劃）**訂立所需的法律框架**。我們的考慮是－

(a) 第 8 至第 10 項行動計劃建議一系列**轉讓定價**的修訂指引，旨在把利潤徵稅與經濟活動掛鈎。雖然第 8 至第 10 項行動計劃雖然不是經合組織訂立的最低標準

之一，但對實施有關修訂指引及為轉讓定價建立專設的規管架構對實施其他最低標準（如第 13 及第 14 項行動計劃）至為重要。此外，擬議的規管架構將會提供清晰的法律基礎，讓稅務局有系統地處理轉讓定價的事宜；

(b) **自發交換稅務裁定資料、國別報告的規定，以及跨境爭議解決機制**，均是 BEPS 方案中的最低標準。我們必須制定本地法例，從而在香港實施這些最低標準；以及

(c) **多邊協議**旨在修改我們現行的全面性避免雙重課稅協定 （「全面性協定」），以便一致及快捷地實施與稅收協定有關的 BEPS 措施。BEPS 方案其中兩項最低標準（即第 6 項行動計劃－防止濫用稅收協定的情況，以及第 14 項行動計劃－改善跨境爭議解決機制），將會透過多邊協議予以實施。

2.6 打擊具損害性的稅務措施是第 5 項行動計劃要求的一項最低標準。香港會致力維持一個簡單、中立及透明度高的稅制。稅務局會繼續不時檢視稅制，以確保香港沒有任何具損害性的稅務措施。

其他 BEPS 行動計劃

2.7 雖然現時無須就其他 BEPS 行動計劃立即採取行動，政府會留意國際發展的步伐和擬訂合適的應對計劃。

第三章

轉讓定價的規管架構

目標

3.1 我們建議將轉讓定價的國際標準納入本地法例，以規定在香港營運的企業與其關聯公司的交易須以獨立交易原則進行。

什麼是轉讓定價？

3.2 轉讓定價是指關聯公司之間涉及商品、服務及無形資產交易的價格釐定。就稅務而言，轉讓定價規則確定這些關聯公司之間交易的應有條件，包括價格，以公平分配利潤。經合組織致力確保轉讓定價的結果與價值創造掛鈎，此舉有助避免跨國企業操控定價，將利潤轉移至低稅的稅務管轄區。

3.3 **獨立交易原則（"arm's length principle"）**是釐定轉讓定價的國際認可標準。這項原則要求集團內部的轉讓定價，須與獨立人士在類似交易條件及符合獨立交易原則下進行交易的價格相若。這項原則已納入經合組織的稅收協定範本及轉讓定價指引。

我們現行的稅制

3.4 現時，稅務局一直依賴《稅務條例》的一般條文及其釋義及執行指引，處理有關轉讓定價的事宜。相對成文法規，依賴釋義及執行指引的行政規則處理不符合獨立交易原則的定價，在某些情況下會存在限制。將轉讓定價規則納入法例，會令有關規則與《稅務條例》其他條文的相互配合更為清晰明確。

3.5 雖然稅務局可引用《稅務條例》第 61A 條的反避稅條文[1]打擊涉及轉讓定價的稅務安排，但有關條文只能處理以獲

[1] 根據《稅務條例》第 61A 條，因應是項條文所述的事項，如斷定某項交易的唯一或主要目的是為了獲得稅項利益而落實，便會作出評定並將該項交易當作不曾訂立或實行一樣，或以其他合適的方式評定，用以消弭從該項交易中原可獲得的稅項利益。

得稅項利益為唯一或主要目的而進行的交易，故有關條文的應用範圍狹窄。值得留意的是，並非所有轉讓定價稅務安排均涉及交易，而避稅亦未必是落實不符合獨立交易原則的交易的唯一或主要目的。基於上述引用《稅務條例》第 61A 條的先決條件，稅務局難於有效打擊日趨複雜的轉讓定價稅務安排。

轉讓定價的規則

3.6 因應上述情況，我們認為有必要在《稅務條例》明確列出轉讓定價規則，以處理不符合獨立交易原則的交易。

3.7 根據獨立交易原則，我們**建議**制定**轉讓定價基本規則**（「基本規則」），賦權稅務局局長在兩名人士（「所涉人士」）之間的實際交易條款有別於獨立人士的交易條款，並讓企業享有稅項利益的情況下，調整該企業的利潤或虧損。為促使獨立交易原則按經合組織的建議適當應用，我們**建議**引入一項特定規定，指明基本規則的演繹須與經合組織的稅收協定範本及轉讓定價指引一致。

3.8 這基本規則適用於**所涉人士互有關聯**的個案，即其中一方直接或間接參與管理或控制另一方，或持有其資本，或由第三者就這兩名所涉人士作出上述行為。這規則亦適用於處理**同一企業內不同單位的交易**，如總公司與常設機構之間的交易[2]。為處理有關轉讓定價的各種情況，我們會確保基本規則的適用範圍**不僅涵蓋資產和服務交易，亦涵蓋財務或商業安排，例如借貸[3]及成本分攤協議[4]**。我們亦會釐清涉及應課稅利潤或可予扣除虧損的調整，以反映(a)任何營業資產的轉入或轉出；或(b)任何並非在經營行業過程中以市值購入或

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[2] 在釐定企業各部分的利潤時，將假設每一部分為獨立分開的企業，並且(a)擁有作為一間獨立個體合理預期擁有的股本及借貸資本；(b)在相同或近似的條件下進行相同或近似的活動；及(c)完全獨立地互相進行交易。

[3] 在決定一項借貸是否基於獨立交易原則進行時，須考慮如貸款人及借款人沒有任何關聯，或關聯企業沒有提供擔保或抵押的情況下，該借貸是否仍會進行；如是的話，有關貸款額及利率會是多少。借款人將被假設為擁有在獨立交易原則下應有的借貸能力，即其作為獨立個體有能力及會向獨立貸款人借入的貸款額。任何超出該借貸能力的貸款所招致的利息均不能在利得稅下獲得扣除。

[4] 成本分攤協議是指集團企業之間就共同開發、生產或取得資產、服務或權利所達成的協議，訂明各參與者在過程中須承擔的成本和風險，並確定它們就相關資產、服務或權利享有權益的性質和範圍。僱員股權激勵計劃是成本分攤協議的普遍例子，用以攤分股份基礎報酬的成本。一份成本分攤協議要符合基本規則，其參與者的貢獻必須與它預期可從有關資產或服務所取得的收入成比例。

取得營業資產的交易。

3.9 為公平起見，我們亦**建議**設立機制，因應稅務局局長或我們的全面性協定伙伴就轉讓定價作出的調整，提供相應的寬免。

對企業的影響

3.10 稅務局一直將獨立交易原則應用於關聯公司之間的所有交易，不論企業的大小和性質。這項政策仍維持不變。將現行釋義及執行指引所涵蓋的獨立交易原則納入法例的建議，主要為完善現有制度，使其更**清晰明確**。這項建議旨在打擊跨國企業所採取的 BEPS 策略，並不會對中小企帶來重大影響。

3.11 我們明白擬備轉讓定價文件將會是一項新規定。在確保稅務局能收集足夠資料以及盡量減低企業的合規負擔作出平衡後，我們**建議**豁免符合特定準則的企業不用擬備轉讓定價文件。有關建議的詳情載於第四章。

罰則

3.12 轉讓定價規則要求企業在提交報稅表時，須考慮與關聯公司的交易所產生的應課稅利潤或可予扣除虧損是否需予調整。任何違反轉讓定價規則的情況，會被視為提交不正確報稅表。若蓄意提交不正確報稅表藉以逃稅，或沒有任何合理辯解，當局會向有關納稅人施加罰則。

3.13 現時，《稅務條例》第 80 條、第 82 條及第 82A 條訂明有關**不正確報稅表**的罰則。我們認為適宜參照該等條文，針對因關聯公司不按照獨立交易原則定價而導致報稅表申報不正確的情況，訂定相關**罰則**。具體而言，我們**建議**對有關企業施加以下罰則—

(a) **在無合理辯解下**，提交涉及不正確轉讓定價資料的報稅表：有關罪行可被處以第 3 級罰款[5]及少徵收稅款 3 倍的罰款，又或稅務局局長可對有關納稅人施加不多於少徵收稅款 3 倍的行政罰款；以及

[5] 現時，第 3 級罰款為 1 萬港元。

(b) 提交涉及不正確轉讓定價資料的報稅表，以**蓄意及有意圖逃稅**：有關罪行可被處以最高第5級罰款[6]及少徵收稅款3倍的罰款，並監禁3年。

預先定價安排制度

3.14 一直以來，稅務局設有預先定價安排制度，企業可藉此與稅務局就如何將獨立交易原則應用於關聯公司的交易或安排預先達成共識。這制度確保在轉讓定價事宜出現時可獲得更有效處理，亦有助避免日後就有關安排所涵蓋的轉讓定價事宜進行審核及訴訟。預先定價安排制度可協助企業遵從獨立交易原則，對有效實施轉讓定價規則至關重要。

3.15 現時，《稅務條例》第88A條容許納稅人就事先裁定提出申請，但該等條文並未有規管預先定價安排的運作。稅務局須運用其執行《稅務條例》的一般權力，作出預先定價安排。由於本港現行的預先定價安排制度缺乏明確的法律依據，企業及會計界對該制度反應欠佳。法定轉讓定價規則實施後，預先定價安排的需求量預料會增加，特別是涉及大型企業的大額交易。因此，我們認為有需要強化本港的預先定價安排制度，賦予其所需的法律基礎。

3.16 **擬議的法定預先定價安排制度**具有以下主要特點—

(a) 訂明可納入預先定價安排的轉讓定價事宜；

(b) 為預先定價安排提供明確的法律依據；

(c) 訂明稅務局局長及納稅人在預先定價安排下的權利和責任。舉例而言，稅務局局長須獲賦權在其認為合適的情況下撤回、取消或更改任何已獲批的預先定價安排，以保障政府的利益。若某申請預先定價安排的企業不同意有關評稅，它仍有權根據《稅務條例》提出反對及上訴；

(d) 擴大現行《稅務條例》下罰則的適用範圍，對預先定價安排申請或其後查詢提供虛假或誤導性資料，以及

[6] 現時，第5級罰款為5萬港元。

未能就該等事宜提供所需資料者，施加罰則，以維持預先定價安排制度的完整性，並確保制度得以有效實施；

(e) 賦予稅務局局長酌情權，因應有關交易的性質和金額，決定是否接納預先定價安排申請。具體而言，稅務局局長可拒絕接納預先定價安排申請，如—

(i) 有關交易的金額低於指定門檻；

(ii) 預先定價安排申請的事宜涉及反對或上訴；

(iii) 稅務局局長認為作出有關交易或安排並沒有經過認真考慮；

(iv) 稅務局局長認為有關交易或安排屬避稅計劃的一部分或全部；

(v) 稅務局局長正就有關交易或安排進行審核；

(vi) 稅務局局長認為納稅人未有就申請提供足夠資料；或

(vii) 因應部門資源，稅務局局長認為要就申請作出裁決並不合理；以及

(f) 容許稅務局局長就預先定價安排申請徵收費用。

徵詢意見

- 你是否支持將轉讓定價規則納入稅務法律，使之更加清晰明確？

- 你對提交涉及不正確轉讓定價資料的報稅表的擬議罰則有什麼意見？

- 你對法定預先定價安排制度的建議形式有什麼意見？

第四章

轉讓定價文件及國別報告

目標

4.1 我們建議規定在香港營運的相關企業須遵守轉讓定價文件的要求，以及促成政府與政府之間自動交換國別報告。

三層標準模式

4.2 經合組織就轉讓定價文件訂定三層標準模式（即主體檔案、本地檔案及國別報告）。這模式規定企業須闡述其一貫的轉讓定價情況，並提交相關資料予稅務當局評估轉讓定價風險。三層標準模式規定相關企業須提交以下文件－

(a) **主體檔案**－這檔案提供企業所屬集團的**宏觀資料**，包括全球業務營運情況、轉讓定價政策以及全球收入分配情況。所有相關的稅務管轄區均會獲提供這份檔案；

(b) **本地檔案**－這檔案提供企業在每個稅務管轄區**詳細的交易轉讓定價資料**，包括企業與關聯公司進行的重要交易或安排的詳情、有關交易或安排所涉金額，以及就該等交易或安排所作的轉讓定價分析；以及

(c) **國別報告**－這報告列明**跨國企業集團於每個經營業務的稅務管轄區**的收入、利潤和繳稅金額，以及特定的經濟活動指標，例如僱員人數、訂明資本、留存收益以及有形資產等。這報告亦規定集團須指出在每個營業地區經營的成員實體，並說明每個成員實體的業務活動。

經合組織公布的主體檔案、本地檔案及國別報告的標準範本（只有英文版）載於**附件三**。

文件規定的適用範圍

4.3 若要求所有企業擬備相關文件以證明其遵守獨立交

易原則，成本可能十分昂貴。所需的行政工作與涉及的稅款或會不成正比。為避免造成不必要的合規負擔，我們**建議**就擬備主體檔案及本地檔案提供**豁免**。

4.4 我們的具體建議如下－

(a) 所有在香港經營行業或業務**並**與關聯公司有交易的企業，均須擬備主體檔案及本地檔案，下述(b)項的企業除外；

(b) 符合**以下三項條件其中兩項**的企業**不須**擬備主體檔案及本地檔案－

(i) 年度總收入不多於1億港元；

(ii) 總資產不多於1億港元；以及

(iii) 不多於100名員工[7]。

擬議的豁免準則是根據《公司條例》(第622章)對「小型私人公司」在提交報告方面獲豁免的準則而釐定。

4.5 至於國別報告，經合組織規定**每年集團總收入達7.5億歐元或以上**(或以2015年1月本地貨幣的等值金額，即約**68億港元**[8])的跨國企業須提交國別報告。根據以上準則，我們預計全港約有150間企業須遵從規定。據經合組織表示，稅務管轄區**無須**為反映匯率變動而定期修訂收入門檻。經合組織將於2020年檢討7.5億歐元的門檻是否恰當。

合規事宜

4.6 為確保有效實施這項最低標準，我們**建議**制定以下安排－

(a) **時限**－須就每個財政年度擬備主體檔案及本地檔案，並於有關年度完結後保留至少七年。至於國別報告，我們明白跨國企業集團需要更多時間整合其轄下

[7] 須遵守相關文件要求的企業包括海外公司設於香港的常設機構。如這些常設機構(並非它們所屬的集團)能符合規定的條件，有關機構可獲豁免遵守相關文件要求。

[8] 根據香港金融管理局的數字，2015年1月港元兌歐元的平均匯率為9.02。

成員的所有相關資料，以擬備國別報告。因此，這些跨國企業集團須於其財政年度最後一天起計 12 個月內提交國別報告；

(b) **語言**－主體檔案、本地檔案及國別報告應以中文或英文編製；以及

(c) **罰則**－轉讓定價文件將是新訂的稅務申報規定。為確保企業遵從，我們建議在《稅務條例》加入以下罰則，以收阻嚇作用－

(i) **在無合理辯解下，未能遵從有關主體檔案及本地檔案的規定**：此舉屬罪行，一經定罪，建議處以第 6 級罰款[9]。建議罰則與《稅務條例》第 80(1A)條有關未有備存恰當的業務紀錄的罰則相同；以及

(ii) **在無合理辯解下，未能提交國別報告**：此舉屬罪行，一經定罪，建議處以第 6 級罰款。建議罰則水平與上述第(c)(i)項的罰則一致。如定罪後罪行持續，繼續違反規定，每天可另處 500 元的罰款。建議罰則與《稅務條例》第 80B(4)條就有關自動交換財務帳戶資料的安排下向財務機構施加的罰則相同。

國別報告的實施事宜

4.7 在一般情況下，跨國企業集團的最終母公司須於其居住地提交國別報告。為應付特殊情況，經合組織亦規定實施次級申報機制，並建議稅務管轄區因應各自需要及情況考慮引入代理申報機制。就香港而言，我們**建議**引入以下安排－

(a) **次級申報機制**－如跨國企業集團的最終母公司所屬的稅務管轄區並沒有規定提交國別報告，或沒有規定與稅務局交換有關報告，稅務局局長會獲賦權**指明該集團在港的其中一名機構成員（「香港機構成員」）提交國別報告**。這做法已在很多國家廣泛採用，包括澳洲、加拿大、新加坡及瑞士。然而，如稅務局可從另

[9] 現時，第 6 級罰款為 10 萬港元。

一稅務管轄區獲得有關國別報告，或另一香港機構成員獲授權代表集團向稅務局提交報告（詳見下文的代理申報機制），該香港機構成員則可獲豁免；以及

(b) **代理申報機制**－根據上文(a)段所述的次級匯報機制，同一跨國企業集團在不同稅務管轄區的機構成員或會同時被要求提交國別報告。為避免對跨國企業造成不必要的合規負擔，我們建議容許上文(a)段所述的跨國企業集團可**授權一名香港機構成員代表該集團向稅務局提交國別報告**，以便稅務局與其他稅務當局交換有關報告。此外，我們亦建議容許「**母公司代理申報**」作為過渡安排，若跨國企業集團的最終母公司屬香港稅務居民，有關企業可就 2016 年 1 月 1 日至擬議法例生效日期前一天的財政年度，自願提交國別報告。

4.8 交換國別報告的安排涉及私隱及保密方面的關注。自動交換國別報告安排須建基於稅收協定。首先，有關稅務管轄區須簽訂**雙邊協議(即全面性協定或稅務資料交換協定(「交換協定」))或多邊協議(即《稅務事宜行政互助多邊公約》)**，作為交換稅務資料的法律基礎。其次，各主管當局須簽訂**主管當局協定**，藉以規範交換安排，確保資料根據經合組織訂明的標準適當互通。就交換國別報告安排，國際上已有一份多邊主管當局協定，但各稅務管轄區亦可選擇簽訂雙邊主管當局協定。

4.9 香港已承諾與合適的稅務管轄區進行雙邊自動交換財務帳戶資料，並打算與所有全面性協定或交換協定的伙伴進行有關交換。參考自動交換財務帳戶資料的安排，我們計劃以**全面性協定或交換協定**作為進行自動交換國別報告的**基礎**，並**與所有全面性協定或交換協定的伙伴**進行雙邊**自動交換國別報告**。我們目前沒有計劃與其他稅務管轄區簽訂《稅務事宜行政互助多邊公約》。然而，我們會繼續密切留意透過多邊安排進行自動交換財務帳戶資料及自動交換國別報告的國際趨勢，並在有需要時檢視我們的策略。

4.10 與其他稅務管轄區自動交換國別報告時，我們會確保納稅人的私隱和所交換資料的保密性得到保障，以及確保恰當使用所交換的資料。在這方面，全面性協定有關資料交換

的條文，以及交換協定的有關條文均訂明相關的保障。由於我們會於現行的全面性協定及交換協定的框架下實施自動交換國別報告，因此該等保障措施將會適用。稅收協定層面的有關保障措施載於**附件四**。

4.11 自動交換國別報告的主管當局協定範本也要求類似的保障措施。主管當局協定範本第 5 條訂明，所有交換的資料必須符合保密規則及個別全面性協定或交換協定所訂的其他保障措施。第 8 條訂明，如其他主管當局有或曾有嚴重不遵守主管當局協定的情況，主管當局可向對方發出書面通知以暫停交換資料。主管當局也可向另一主管當局發出終止通知，以終止主管當局協定。

經合組織的實施及檢討計劃

4.12 根據經合組織的實施時間表，有關國別報告的規定應由 2016 年 1 月 1 日或之後的財政年度開始實施。然而，考慮到部分稅務管轄區需通過本地法例才可實施這項最低標準，實施時間表可能不盡相同。經合組織現時的計劃是在 2020 年就國別報告規定的實施情況及相關標準的成效進行檢討。

4.13 我們須透過本地立法，在香港實施轉讓定價文件的規定及與其他稅務管轄區自動交換國別報告。由於經合組織於 2020 年進行全球檢討，我們計劃規定**相關跨國企業於 2018 年收集資料，並於 2019 年向稅務局提交首批國別報告**。

徵詢意見

- 為免對企業造成不必要的合規負擔，你是否同意豁免特定企業不須擬備主體檔案及本地檔案？

- 你對國別報告的合規事宜（即提交時限、語言及罰則），以及代理申報機制的意見？

第五章

多邊協議

目標

5.1 香港須實施由經合組織統籌的多邊協議，讓我們可以一致及快捷地修改所有現行的全面性協定，並實施與稅收協定有關的 BEPS 措施。

實施多邊協議的意向

5.2 香港擁有廣闊的全面性協定網絡，涵蓋 35 個稅務管轄區。透過實施經合組織統籌的多邊協議，可避免為修改相關條文以符合 BEPS 方案的規定，與個別全面性協定伙伴進行冗長的雙邊談判。我們現時預計在全面性協定中引入多邊協議的條文時，**不會有技術困難**。

多邊協議的涵蓋範圍

5.3 多邊協議旨在以快捷、協調及一致的方式，在多邊框架下實施與稅收協定有關的 BEPS 措施。經合組織在 2015 年 5 月成立特別小組共同制訂多邊協議。自 2015 年 11 月起，香港一直以「觀察員」的身份參加特別小組。

5.4 2016 年 9 月，特別小組原則上同意多邊協議的主要內容。根據經合組織最新的計劃，特別小組成員會在 2016 年 11 月正式採納和確認多邊協議的最終英文本及法文本。按特別小組的規定，多邊協議會由 2016 年 12 月 31 日起可供簽署。

5.5 正如其他雙邊或多邊協定的磋商安排，多邊協議是各國政府以保密形式商討後制定的。因此，在各締約方採納多邊協議的最終定稿前，我們不能公開有關內容。

多邊協議中與稅收協定有關的建議

5.6 多邊協議旨在實施各項措施，以解決與稅收協定有關的 BEPS 問題。多邊協議旨在－

(a) 解決與「混合工具」、「混合機構」，以及「持有雙重居民身份機構」有關的問題。由於各個稅務管轄區對某些工具或機構採取不同的處理方法，某些納稅人或會利用當中的漏洞，藉以逃避其在兩個稅務管轄區的稅務責任。多邊協議的其中一個目標是堵塞這些「雙重不徵稅」的漏洞。就徵稅而言，「混合機構」或會在某稅務管轄區被視為獨立個體，即可予徵稅的人士；但在另一稅務管轄區則被視為非獨立個體，即是就有關機構的利潤須由其成員課繳稅款。「混合工具」或會在某稅務管轄區被視為債務，而在另一稅務管轄區則被視為資本。「持有雙重居民身份機構」則會在兩個不同的稅務管轄區被視為稅務居民；

(b) 防止在不恰當的情況下給予稅收協定優惠；

(c) 防止人為規避構成常設機構的情況。這泛指透過採取稅務規劃策略，藉以規避在稅收協定下構成某稅務管轄區的可予徵稅業務；以及

(d) 在稅收協定的層面加強爭議解決機制。

由於這些措施旨在針對利用稅收協定漏洞刻意避稅的稅務規劃策略，沒有採取這些策略的企業並不會受影響。

防止濫用稅收協定

5.7 濫用稅收協定涉及利用策略以獲取在正常情況下無法享有的稅收協定優惠，會導致有關稅務管轄區蒙受稅收損失。舉例來說，稅務管轄區 A 與稅務管轄區 B 簽訂稅收協定後，本身並非稅務管轄區 A 的居民試圖利用在稅務管轄區 A 設立信箱公司，從而享受該協定提供予稅務管轄區 A 居民的稅務優惠。

5.8 作為 BEPS 方案的其中一項最低標準，第 6 項行動計劃規定稅務管轄區在稅收協定中加入一項明確條文，訂明稅收協定的共同目標是避免雙重徵稅，但同時須確保不會出現因逃稅或避稅策略（如濫用稅收協定策略）而導致不徵稅或減少徵稅的漏洞。稅務管轄區應透過**採用以下其中一項規則**，以落實這個共同目標：即是(a)主要目的測試規則；(b)利益限制規則和主要目的測試規則；或(c)利益限制規則和處

理轉付安排的機制。有關主要目的測試規則及利益限制規則的詳情概述如下 —

(a) 主要目的測試規則

如某人進行交易或作出安排的主要目的之一是為了取得稅收協定優惠，則稅務當局不得向該人提供有關優惠。這項規則提供一般途徑以解決濫用稅收協定策略的問題，當中包括利益限制規則未有涵蓋的特定轉付財務安排。

(b) 利益限制規則

除非某人符合各項條件屬於「合資格人士」，或因應其主要目的、一般業務或擁有權等因素而另有規定，否則稅務當局不得向該人提供稅收協定優惠。這項規則旨在防止濫用稅收協定的情況，如一名非締約稅務管轄區的居民在該地成立一間機構，透過取得有關稅收協定優惠，藉以減少或避免其在另一締約稅務管轄區的應繳稅款。

5.9 在上述各項方案中，**香港傾向以「僅採用主要目的測試規則」為首選方案**。由於香港稅率相對較低，締約伙伴的居民濫用本港稅收協定的風險較小。從稅務角度來看，「僅採用主要目的測試規則」應可提供足夠保障，以防止香港的稅收協定遭濫用。此外，我們簽訂的全面性協定中，不少已在特定條文（例如股息，利息及專利權費）中加入特別條款，訂明當局會考慮某項安排或交易的主要目的之一，是否為取得稅收協定優惠，以防止稅收協定遭濫用。《稅務條例》也載有一般反避稅條文，規定如訂立交易的唯一或主要目的，是讓納稅人獲得稅項利益，則該人不得享有該稅項利益。因此，香港要在全面性協定中引入涵義更廣的主要目的測試條文，應**沒有技術或行政困難**。

5.10 香港某些締約伙伴或會選擇「僅採用主要目的測試規則」以外的其他方案。在這些情況下，我們需要考慮是否接納反濫用條文的不對等安排。為公平合理起見，我們目前的構思是，如締約伙伴並不是採納「僅採用主要目的測試規則」的方案，則**香港應採用對等安排**，而不採用不對等安排。如有需要，我們會與締約伙伴進行雙邊談判，以解決有關問題。

在香港實施多邊協議

5.11　為了協助實施與稅收協定有關的 BEPS 措施，香港擬在 **2017 年年初**簽署多邊協議，其後會展開所需的立法工作，使多邊協議得以在本港實施，並相應修訂現行全面性協定的相關條文。我們會視乎全面性協定伙伴簽署多邊協議的時間，以及本地立法工作的進度，在較後階段才決定每份全面性協定在修訂後的生效日期。

5.12　至於日後新簽訂的全面性協定（即多邊協議不會涵蓋的協定），我們擬**加入多邊協議的相關條文**，以確保符合有關 BEPS 方案的規定。

第六章

其他相關事宜

(I) 爭議解決機制

目標

6.1 我們建議訂立全面的法定機制，以確保能適時及快捷有效地解決涉及稅收協定的跨境爭議。

現時的情況

6.2 按照經合組織的稅收協定範本，我們簽訂的全面性協定大多包含相互協商程序條文，以規管如何解決涉及稅收協定的跨境爭議。根據該條文，當納稅人認為締約其中一方或雙方的行為導致徵稅結果與全面性協定的條文不符，有關納稅人可將個案呈交其居住地的主管當局。若個案未能單方面解決，締約雙方的主管當局須致力透過相互協商解決有關爭議。現時，我們某部分全面性協定的相互協商程序條文亦包括另一條款，訂明未能透過相互協商程序解決的事宜可提交仲裁。

6.3 實施 BEPS 方案後，稅務管轄區或會對 BEPS 措施的詮釋及應用有不同意見，加上本港實施法定轉讓定價規則後，我們預期以相互協商程序或仲裁方式解決涉及稅收協定的跨境爭議個案無可避免地將會增多。若香港繼續依賴稅務局釋義及執行指引中的行政規則解決這些爭議，將是極不理想的做法。因此，我們**建議**引入**法定機制**，以便香港以相互協商程序或仲裁方式處理有關個案。

經合組織的規定

6.4 經合組織認為，打擊 BEPS 的措施不應導致合規的納稅人無故被雙重徵稅，也不應為他們帶來不明確的情況。為確保營商的確定性及可預測性，經合組織規定所有 BEPS 項目的成員均須實施第 14 項行動計劃改善爭議解決機制，以便適時及快捷有效地解決涉及稅收協定的跨境爭議。第 14 項行動計劃建基於三個重要原則—

(a) 應全面及真誠地履行與相互協商程序有關的稅收協定責任，並適時解決按相互協商程序處理的個案；

(b) 行政程序應致力避免及適時解決涉及稅收協定的跨境爭議；以及

(c) 讓符合指定條件的納稅人申請啟動相互協商程序。

建議特點

6.5 按經合組織的規定，我們**建議**有關相互協商程序及仲裁的法定條文包括以下各項—

(a) 納稅人可根據有關全面性協定的相互協商程序條文，申請啟動相互協商程序；

(b) 納稅人即使已根據《稅務條例》提出反對或寬免申索，仍可申請啟動相互協商程序；

(c) 在相互協商程序下，稅務局局長並非必須與有關的全面性協定伙伴的主管當局達成共識；

(d) 納稅人可要求將個案中任何未能透過相互協商程序解決的事項提交仲裁；

(e) 若有關事項已於任何一方的訴訟程序獲得解決，納稅人不可將有關事項提交仲裁；

(f) 容許稅務局局長就提交仲裁的申請按收回成本的原則徵收費用；以及

(g) 透過相互協商程序或仲裁方式達成的方案或共識應予以實施。

經合組織的實施及檢討計劃

6.6 經合組織將制訂完善的相互監察機制，以確保各稅務管轄區切實履行就這項最低標準的承諾。

(II) 自發交換稅務裁定資料

目標

6.7 我們建議容許自發交換稅務裁定資料。

可交換稅務裁定資料的範圍

6.8 作為 BEPS 方案的一項**最低標準**，第五項行動計劃旨在改善打擊具損害性稅務措施的工作，並重點提升稅務透明度。其中一項措施是訂立透明框架，強制規定須自發交換稅務裁定資料。該框架涵蓋**六種針對納稅人的稅務裁定**－

(a) 與優惠制度有關的裁定；

(b) 單方面的預先定價安排及其他就跨境轉讓定價作出的單方面裁定；

(c) 就調低應課稅利潤的跨境裁定；

(d) 就常設機構的裁定；

(e) 就關聯轉付公司的裁定；以及

(f) 任何在沒有自發交換資料情況下會引起 BEPS 問題的其他各類裁定。

6.9 上述透明框架下的建議交換資料範圍，將同時適用於**以往及日後的裁定**。

接收稅務裁定資料的稅務管轄區範圍

6.10 香港一貫的政策是不會與任何稅務管轄區自發交換資料。這項政策原則基本維持不變。因應經合組織的最新規定，我們**建議**就上述六種稅務裁定資料的交換作出例外安排，以便香港與以下的稅務管轄區自發交換資料－

(a) 與納稅人訂立交易的所有相關人士的居住地，前提是稅務局已就該交易作出裁定，或在該項交易下從相關人士所取得的收入能享有優惠待遇；以及

(b) 最終母公司及直屬母公司的居住地。

6.11 與其他稅務管轄區自發交換稅務裁定資料（六種指定類別）須建基於稅收協定。我們現時的計劃亦是與全面性協定或交換協定伙伴透過**雙邊**安排自發交換資料。若有關全面性協定或交換協定未能容許自發交換資料，我們或需要修訂相關協定。

經合組織的實施及檢討計劃

6.12 在確立所需法律基礎的前提下，經合組織規定所有 BEPS 項目的新成員須按照以下的時間表進行自發交換稅務裁定資料—

(a) 完成交換以往所有裁定的期限：**在經合組織指定的日期之前**；以及

(b) 交換日後裁定的期限：在作出裁定的稅務管轄區的主管當局獲得該項裁定後，**不遲於三個月內盡快**交換資料。

6.13 經合組織會設立持續監察及評估機制，確保各稅務管轄區在透明框架下，履行自發交換稅務裁定資料的責任。在評估過程中，稅務管轄區須向經合組織提供以下統計資料—

(a) 在透明框架下自發交換資料的總次數；

(b) 按裁定類別劃分的自發交換資料次數；以及

(c) 每次交換資料所涉及的稅務管轄區。

(III) 雙重課稅寬免

目標

6.14 我們建議優化現行的稅收抵免制度，以符合最新的國際標準。

優化稅收抵免制度的建議措施

6.15 現時，香港根據《稅務條例》第 50 條，以稅收抵免方式在所有全面性協定下就法律性雙重課稅[10]提供寬免。我們現行的稅收抵免制度未能追上國際最新的發展。隨着香港實施法定轉讓定價規則，加上本港的全面性協定網絡持續擴展，我們預期日後會接獲更多寬免申請，要求以稅收抵免方式獲得法律性雙重課稅寬免。因此，我們認為有需要優化現行的稅收抵免制度。我們**建議**的優化制度應具備以下主要特點：

(a) 在《稅務條例》清楚訂明，如《稅務條例》與全面性協定的條文有抵觸，**須以全面性協定為準**，以免全面性協定所議定的任何寬免及待遇被凌駕；

(b) 給予**較長的稅收抵免申請期（即 6 年）**，以處理下列情況：納稅人因所得收入最初被視為可獲豁免繳付外地稅款而沒有申請稅收抵免，但其後該項豁免在現行時限屆滿後（即有關課稅年度終結後兩年）遭來源地撤回。擬議的稅收抵免申請期與現行根據《稅務條例》第 70A 條因錯誤或遺漏而對評稅作出更正的時限一致；

(c) 要求納稅人**在申請稅收抵免前，須先盡量使用其他寬免措施（即全面性協定或外地稅務管轄區的當地法律）**。具體而言，納稅人如根據全面性協定或相關外地稅務管轄區的法律可享有其他寬免，便不會獲給予稅收抵免。在任何情況下，稅收抵免額不得超出在採取一切合理步驟以減低應繳外地稅款後可獲抵免的款額；

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[10] 凡某香港企業從本港業務所得的利潤遭上調，但該企業在全面性協定伙伴的業務所得的利潤卻未有相應下調，便會出現法律性雙重課稅的情況。

(d) 規定納稅人如**所繳外地稅款有任何調整**或會導致所獲的稅收抵免額或單方面的寬免過多，均須**通知稅務局**；以及

(e) 如**所繳外地稅款已獲單方面提供寬免**，則須確保該筆稅款**不會**獲得稅收抵免。

徵詢意見

- 你是否支持引入法定爭議解決機制，以確保能適時及快捷有效地解決稅收協定跨境爭議？
- 你對法定爭議解決機制的建議形式有什麼意見？
- 你對優化稅收抵免制度的建議措施有什麼意見？

第七章

徵詢意見

7.1　關於這份文件載列的建議，你的意見十分重要，有助我們根據國際標準就 BEPS 方案制定合適及有效的實施模式。我們現時的目標，是在 2017 年年中向立法會提交有關《稅務條例》的修訂建議。

7.2　具體而言，請就經合組織所訂的框架內下述主要課題提出意見－

- 你是否支持將轉讓定價規則納入稅務法律，使之更加清晰明確？*（第三章）*
- 你對提交涉及不正確轉讓定價資料的報稅表的擬議罰則有什麼意見？*（第三章）*
- 你對法定預先定價安排制度的建議形式有什麼意見？*（第三章）*
- 為免對企業造成不必要的合規負擔，你是否同意豁免特定企業不須擬備主體檔案及本地檔案？*（第四章）*
- 你對國別報告的合規事宜（即時限、語言及罰則），以及代理申報機制的意見？*（第四章）*
- 你是否支持引入法定爭議解決機制，以確保能適時及快捷有效地解決稅收協定跨境爭議？*（第六章）*
- 你對法定爭議解決機制的建議形式有什麼意見？*（第六章）*
- 你對優化稅收抵免制度的建議措施有什麼意見？*（第六章）*

7.3　請在 2016 年 12 月 31 日（星期六）或之前，以郵寄、傳真或電郵方式發表你對上述事宜及其他關於應對「侵蝕稅基及轉移利潤」方案的看法及意見－

郵寄： 香港添馬
添美道 2 號
政府總部 24 樓
財經事務及庫務局(庫務科)
收入組

傳真： 2179 5848
（經辦人：打擊「侵蝕稅基及轉移利潤」措施諮詢）

電郵： beps@fstb.gov.hk

– 0 – 0 – 0 –

保障個人資料的私隱

1. 公眾就本諮詢文件提交意見時可付上個人資料，此舉純屬自願。收集所得的意見書和個人資料或會轉交有關的政府決策局和部門，用於與是次諮詢直接有關的用途。獲取資料的決策局和部門只可把該等資料作這些用途。

2. 我們或會公開就本諮詢文件提交意見書的個人及團體(「提交意見者」)的姓名／名稱及其意見，供公眾查閱。我們可能在內部或公開與其他人士討論時，或日後發表的報告中，引述提交意見者就諮詢文件提交的意見。

3. 為了保障提交意見者的個人資料私隱，我們在刊登其意見書時，會把其提供的有關資料，例如住址／回郵地址、電郵地址、身分證號碼、電話號碼、傳真號碼和簽名等刪除。

4. 提交意見者如不欲公開其姓名／名稱，以及／或全部或部分意見，我們會尊重其意願。提交意見者如在其意見書中要求把身分保密，我們會在公開意見書時刪除其姓名／名稱。提交意見者如要求把意見書保密，我們將不會公開其意見書。

5. 如提交意見者並無要求不公開身分或把意見書保密，則視作可公開其姓名／名稱和其全部意見。

6. 向本局提交意見書的人士有權查閱所提供的個人資料和予以更正。提交意見者可循上述途徑，書面向財經事務及庫務局助理秘書長(庫務)(收入)2 提出有關要求。

財經事務及庫務局
稅務局
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

各國實施 BEPS 方案的情況
（截至 2016 年 9 月 29 日）

國家	BEPS 行動	新訂法例／規則的現況	備註
澳洲	8-10	制訂中	2016 年 5 月，宣布將會修改有關轉讓定價的規則，以實施 BEPS 第 8 至第 10 項行動的建議。
	13	已制訂	2015 年 12 月，制定法例以實施新訂的轉讓定價文件規定。
加拿大	5	已制訂	2016 年 4 月，發布有關預先入息稅裁定（包括自發交換稅務裁定資料）修訂指引。
	13	制訂中	2016 年 7 月，就有關國別報告的法案草稿進行諮詢。
中國	8-10	制訂中	2015 年 9 月，就特別納稅調整實施辦法發出徵求意見稿。
	13	已制訂	2016 年 7 月，就有關國別報告及新訂的轉讓定價文件規定發出公告。

法國	13	已制訂	2015 年 12 月，制定法例以實施國別報告的規定。
德國	5	制訂中	2016 年 9 月，提交法案以實施歐盟就強制性自動交換預先跨境裁定和預先定價安排的規定。
	13	制訂中	2016 年 5 月，公布有關擬備主體檔案及本地檔案規定的法案草稿。2016 年 7 月，德國內閣通過有關國別報告的法案。
紐西蘭	5	已制訂	2016 年 5 月，發布就經合組織對交換納稅人裁定資料及裁決的規定的指引。
新加坡	8-10	已制訂	2016 年 1 月，發布轉讓定價的修訂電子稅務指南。
	13	制訂中	2016 年 7 月，就有關國別報告的法案草稿進行諮詢。
	14	已制訂	2016 年 1 月，發布相互協商程序及預先定價安排制度的修訂電子稅務指南。
瑞士	5	制訂中	2016 年 4 月，就自動交換預先稅務裁定資料的法案草稿進行諮詢。
	13	制訂中	2016 年 4 月，就有關國別報告的法案草稿進行諮詢。

英國	8-10	已制訂	2016 年 9 月，制定法例將經合組織最新的轉讓定價規則納入英國的轉讓定價規管架構內。
	13	已制訂	2016 年 3 月，有關國別報告的規例正式生效。
美國	13	已制訂	2016 年 6 月，公布有關國別報告的規例。

* 這些國家均已加入為實施 BEPS 方案而設的合作框架。

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

全面性協定及交換協定下保障納稅人私隱和確保所交換資料能予保密的措施

(a) 所交換的資料須為可預見相關的資料，即不得作打探性質的資料交換請求；

(b) 締約伙伴所獲取的資料必須保密；

(c) 資料只可向稅務當局披露，不得向其監管當局披露，除非全面性協定／交換協定伙伴提出充分理由，始作別論（即我們已對立法會承諾，該類監管當局必須以正面載列的方式列出）；

(d) 所交換的資料不得向第三司法管轄區披露；

(e) 在某些情況下締約雙方沒有責任提供資料，例如資料會披露任何貿易、業務、工業、商業或專業秘密或貿易程序，又或有關資料屬法律專業特權涵蓋範圍等；

(f) 容許交換所得的資料作其他用途（即非稅務用途），但有關用途必須為締約雙方的法律所容許，並須經提供資料一方的主管當局批准。換言之，交換資料的大前提是，必須先為了有關全面性協定／交換協定規定的稅務目的而進行；以及

(g) 不會答允締約伙伴所提出的海外稅務調查的請求（即我們並沒有在全面性協定／交換協定內加入這類條款）。