

Implementing the OECD/G20 BEPS package

Date of Presentation: 13-11-2018

48th SGATAR Meeting




SOPHIA LIN

CHINESE TAIPEI



48th SGATAR
Hangzhou, China
13-15 November 2018

Agenda

-  Domestic Legislation
-  Compliance Measures
-  Collection and Use of TP Documentation



■ Domestic Legislation



2004
December

- ◆ Issued TP Regulations
- ◆ TP documentation necessary for controlled transactions

2017
November

- ◆ Amending TP Regulations
- ◆ Introduce three-tiered TP documentation



■ Three-tiered TP Documentation Requirements

	TP Report	Master File (new)	CbC Report (new)
Reporting Entity	Enterprises undertaking controlled transactions	Constituent entities of an MNE group	<ul style="list-style-type: none"> a. UPE b. SPE c. Constituent entities of an MNE group
Submitting / Preparing Time	<ul style="list-style-type: none"> a. Preparing when filling the tax return b. Providing upon receiving the investigation notice 	<ul style="list-style-type: none"> a. Preparing when filling the tax return b. Submitting within one year after the end of the fiscal year 	Submitting within one year after the end of the fiscal year
Content	Consistent with OECD guidance		
Effective Year	Fiscal Years from 2005	Fiscal Years from 2017	

■ Safe Harbor Rules

	Criteria
Master File (new)	Revenue < NTD 3 billion “or” Annual amount of cross-border controlled transactions < NTD 1.5 billion
CbC Report (new)	Annual consolidated group revenue in immediately preceding fiscal year < NTD 27 billion (approximately equivalent to EUR 750 million)



■ Compliance Measures

1

Disclosure Obligation

2

Administrative Measures

3

Punitive Measures for Noncompliance



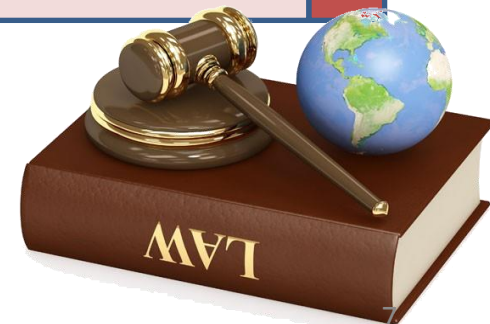


■ Punitive Measures for Noncompliance

◆ Refused to submit relevant information



1. Shall be fined NTD 3,000 ~30,000
(may be successively imposed)
2. Possibly induce a TP audit



■ Collection and Use of TP Documentation



Data Collecting Mechanism

- Disclosure in Form B2 ~B5
- Use income tax filling system
- Establish data base

Risk Assessment

- Failure to disclose related parties transactions
- Irregular fluctuations in profits within three consecutive years



■ Use of TP Information

★ Legal Basis for Transfer Pricing Adjustments



Tax authorities are required only to make adjustments to TP cases after factual investigation in accordance with the arm's-length principles



Ex: CBCR **shall not be used** as a direct reference by tax authorities for making TP adjustment

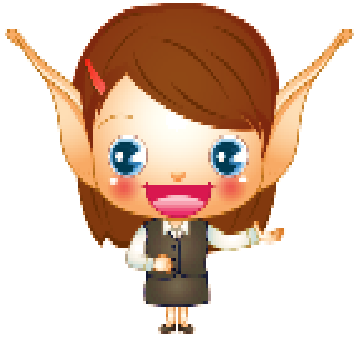


Conclusion



Improve the transparency of
taxation information





**Thank You for
Listening**



**Next topic --
Treaty-related measures**





Implementing the OECD/G20 BEPS Package (Treaty-Related Measures)

Chinese Taipei
November 13, 2018





Agenda

1. Implement Treaty Related BEPS Measures

2. Questions concerning MAP

3. Future Challenges





1. Methods Adopted to Implement Treaty Related BEPS Measures

Bilateral basis (renegotiate the existing bilateral treaties)

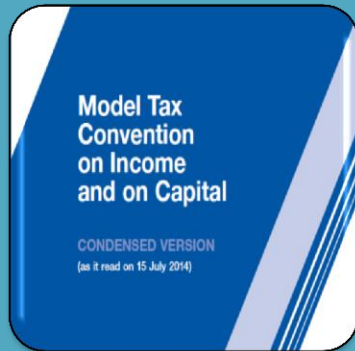
32 tax treaties enforced

8 out of the 32 are concluded with members of the SGATAR: Australia, Indonesia, Japan, Malaysia, New Zealand, Singapore, Thailand, Vietnam



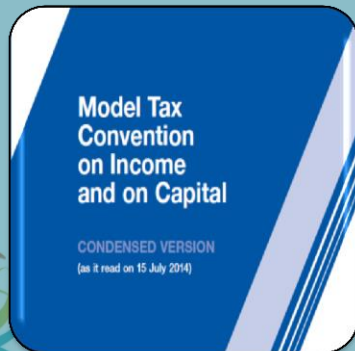


2. Question 1.a. & 1.b.: Status on the Inclusion of Article 25 and Article 9(2) of OECD Model in the Current Treaties



Article 25 Mutual Agreement Procedure (MAP)

- All 32 treaties contained a MAP provision
- 20 of them are fully compatible with Terms of Reference (ToR) under BEPS Action 14 peer review documents



Article 9(2) TP Corresponding Adjustment

- 28 out of 32 treaties contained a TP Corresponding Adjustment provision

To be amended via bilateral negotiations





Question 1.c.: Issuance of the “MAP Directions” on June 2018

MAP on (1)Tax disputes (2)TP Corresponding adjustment (3)Bilateral APA

Handling periods (including implementing MAP resolution) are stipulated

All cases shall be addressed to the CA without prejudice

The CA must consult with the other CA before rejecting a case

Allowing Bilateral APA roll-back to unsettled cases

**It is In line
with the
ToR under
BEPS Action
14**





Question 1.d.: Difficulties Encountered with Respect to MAP

ToR C.4 to resolve MAP independently

- The tax collection authority will release internal operation directions

ToR B.10 Relationship between MAP and domestic remedies

- Recheck or administrative appeal: amendment to the existing regulations allowing their suspension
- Administrative litigation: the plaintiff may apply for its suspension





Question 2.: To Standardize the Treaty Application

In general

- Treaty Regulations (released in January 2010)

EOI

- CRS Regulations (released in November 2017)
- TP Regulations (amended in November 2017)
- EOI Regulations (released in December 2017)

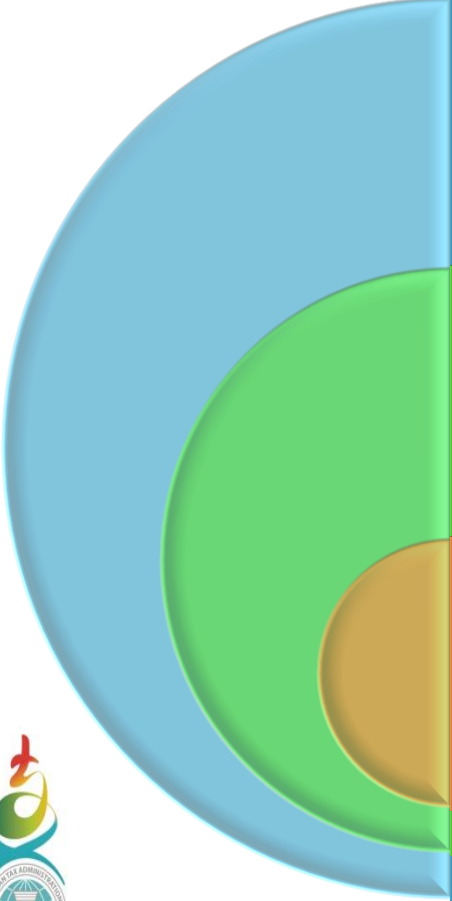
MAP

- MAP Directions (released in June 2018)





Question 2.: Education Program Provided to Tax Officials



An Institution was established in 1969 exclusively for tax officials' training

Training courses are organized every year and invites scholars, specialists, and treaty negotiators as lecturers

In 2017, 19 courses related to tax treaty were held with a total of 1,640 tax-official participants to ensure consistent application





3. Future Challenges

Continue to commit itself to the BEPS

Implement treaty related minimum standards via bilateral basis

Ensure efficiency on dispute resolution with all taxpayers





Thank you

