

Following Rule of Law and Raising Tax Certainty

Wuzhen Action Plan (2019–2021) Final Report

Following Rule of Law and Raising Tax Certainty Task Force



September 2021



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Abbreviations

APA	Advance Pricing Arrangement
BEPS	Base Erosion and Profit Shifting
BRI	Belt and Road Initiative
BRITACOF	Belt and Road Initiative Tax Administration Cooperation Forum
BRITACOM	Belt and Road Initiative Tax Administration Cooperation Mechanism
CFC	Controlled Foreign Company
CITA	Corporate Income Tax Act
DGT	Directorate General of Taxes
DWHT	Dividend Withholding Tax Act
GST	Goods and Services Tax
IMF	International Monetary Fund
IRAS	Inland Revenue Authority of Singapore
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development
VAT	Value-Added Tax

Introduction

1.1 Background of the Interim Report

The First Belt and Road Initiative Tax Administration Cooperation Forum (BRITACOF) was held in Wuzhen, China on 18-20 April 2019, and attended by heads and representatives of tax administrations or finance departments from 85 jurisdictions, 16 international organizations, and a number of academic institutions and businesses. At the first BRITACOF, the Belt and Road Initiative Tax Administration Cooperation Mechanism (BRITACOM) was officially established, aiming to facilitate cooperation in tax administration and promote experience and practice sharing among jurisdictions and contribute towards building a growth-friendly tax environment. In this connection, the following five areas were stressed:

- i. Raising Tax Certainty
- ii. Expediting Tax Dispute Resolution
- iii. Enhancing Tax Administration on Capacity Building
- iv. Streamlining Tax Compliance
- v. Digitalizing Tax Administration

A growth-friendly investment and business environment must be fostered by robust tax administration. In the Wuzhen Statement of the first BRITACOF, BRITACOM Members reiterated the essential role of the rule of law principle in underpinning the fairness and impartiality of tax administration and were determined to apply laws

and tax treaties in a fair, predictable and consistent fashion. They are committed to supporting taxpayers to improve tax certainty by enhancing transparency and predictability of laws in order to build mutual trust between taxpayers and tax administrations. This may be achieved by providing guidance to taxpayers concerning the interpretation and application of the law, and by making use of advanced rulings and enhancing cooperation amongst BRITACOM members.

The *Wuzhen Action Plan (2019-2021)* (*Action Plan*) was announced at the first BRITACOF as a roadmap for the period up to 2021. To implement the *Action Plan*, and to chart the course for “Building a Growth-friendly Tax Environment”, as part of the compilation of the *Final Report*, the BRITACOM Secretariat has conducted a survey among BRI jurisdictions, especially for BRITACOF participants, to have an understanding of the current situation on tax administration and the priorities of the BRI jurisdictions in raising tax certainty.

This *Final Report* provides an overview of the status quo with respect to tax certainty and rule of law in the BRI jurisdictions via a survey conducted anonymously, focuses on jurisdiction examples and key challenges in this regard, and explores a set of concrete and practical approaches as a basis for discussion by the BRI tax administrations to raise tax certainty and follow rule of law. Considering the aim of the BRITACOM to facilitate and strengthen

cooperation among tax administrations and taking into account the wide range of issues raised by both

tax certainty and rule of law, this report focuses, in particular, on the aspects related to tax certainty.

1.2 Importance of Tax Certainty

Taxation is an economic and social phenomenon that is based on legal rules. In this sense, taxation is part of the legal system of jurisdictions. Tax certainty is a fundamental principle and serves to ensure that legal rules are clear and precise and that the legal situations and relationships governed by tax law are foreseeable. The importance and necessity of tax certainty is highlighted in the *2019 Progress Report on Tax Certainty* issued by the International Monetary Fund (IMF) and the Organisation for Economic Co-operation and Development (OECD):¹

- Tax certainty for taxpayers is an important component of investment decisions and can have significant impacts on economic growth...
- to ensure that all taxpayers contribute to the financing of vital public services and the policy priorities of their governments...
- the need to ensure a predictable and stable investment environment and international rules that facilitate global trade remains a fundamental component of the international tax architecture.
- Improving tax certainty also cuts both ways, benefiting both taxpayers and tax administrations
- Tax Certainty is increasingly part of the

policy agenda for both G20, OECD, as well as developing countries...

- the *Progress Report* jointly prepared by the IMF and the OECD on the work on Tax Certainty issues shows clearly this remains a priority issue for taxpayers and tax administrations alike.

1.2.1 Rule of Law and Tax Certainty

Consensus has been reached at the first BRITACOF that rule of law is the fundamental principle underpinning the fairness and impartiality of a tax administration. In the context of taxation, the rule of law raises predictability and legal certainty between tax administrations and taxpayers. Therefore, a common understanding and application of the rule of law in taxation may simplify and facilitate cross-border trade relations. This is of utmost importance considering that tax policy shall be formulated on two themes: "Investment" and "State Revenue", i.e., aiming to offer a tax system attractive to investment, while at the same time to meet the tax jurisdiction's economic goals. To achieve the aforesaid twin goals, it is essential to enhance the certainty, fairness, predictability, transparency, and consistency in the process of tax legislation and administration.

However, in view of the economic development and diversity in tax system along the BRI jurisdictions, absence of certainty, fairness, and transparency

¹ 2019 Progress Report on Tax Certainty <https://www.imf.org/external/np/fad/pct/pdf/Progress%20Report%20G20%20Tax%20Certainty%202019.pdf>

in tax law system may erect barriers to foreign investors. Strengthening the rule of tax law is the core and foundation for solving such problems in BRI jurisdictions.

1.2.2 What is the “Rule of Law”?

Rule of law is defined by the Oxford English Dictionary as:

The authority and influence of law in society, especially when viewed as a constraint on individual and institutional behavior; (hence) the principle whereby

all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes.

It says:

The rule of law is notoriously difficult to define and measure.² A simple way of approaching it is to examine a set of outcomes the rule of law brings each of which reflects one aspect of the complex concept of the rule of law. The rule of law is a framework of laws and institutions that embodies four universal principles:

Accountability - *The government as well as private sectors are accountable under the law;*

Just Laws - *The laws are clear, publicized, stable, just and are applied equally;*

Open Government - *The processes by which laws are enacted, administered and enforced are accessible, fair and efficient; and*

Accessible and Impartial Dispute Resolution-

Justice is delivered timely by competent, ethical and independent representatives and neutrals who are accessible, have adequate resources and reflect makeup of the communities they serve.

The OECD also explained the general concept of the rule of law, stating that³:

...The rule of law refers to the ideas that the same rules, procedures and principles apply to all individuals and organizations, including the government itself.

In practice, the concept is enshrined in laws, codes and procedures guaranteeing fair treatment by institutions and equal access to justice. In turn, its applications rely on the expected predictability, reliability and accountability of the legal system.

In itself, the rule of law is a multidimensional concept encompassing diverse elements such as fundamental rights, order, and security, absence of corruption, and open government.

Most of these elements are also recognized as key components of good governance crucial for maintaining peace and order, achieving economic development and ensuring the effective provision of public goods and services.

1.2.3 Relevance of Tax Certainty and Rule of Law

The relevance of tax certainty is enhanced by the fact that, since 2009 the international tax system (with also relevant consequences on changes to domestic laws) has faced rapid changes which have altered the international tax landscape in particular with

² <https://worldjusticeproject.org/sites/default/files/documents/ROLI-2019-Reduced.pdf>

³ “Rule of Law” in Government at a Glance 2019, OECD, <https://doi.org/10.1787/bb550829-en>

the development of standards for tax transparency and the project on Base Erosion and Profit Shifting (BEPS). Further changes are likely to occur in the near future as reflected in the recent BEPS Inclusive Framework agreement on addressing the tax challenges of digitalized economy.

The consequence of those changes is that both taxpayers and tax administrations may be faced with uncertainty. As one of the defined goals of BRITACOF is to create stability and coherence, it is then crucial to improve tax certainty for businesses, investors and tax administrations, all of which may

facilitate and promote trade and investment under the Belt and Road Initiative. Nevertheless, raising tax certainty requires a proper balance with other relevant goals: the concerns about tax certainty should not hamper a jurisdiction's ability to take strong actions to prevent tax avoidance. Inevitably, such actions, while increasing tax uncertainty for taxpayers, are justified (and necessary) in order to protect a jurisdiction's tax base.

1.3 Design of the Survey

In order to better understand the status quo of tax certainty in the BRI jurisdictions, the Secretariat has conducted surveys among BRITACOM Members, Observers and invited parties (tax administrations), and enterprises investing in the BRI jurisdictions.

The questionnaire for the tax administrations comprised two parts:

- General questions on region, population, tax revenue, and GDP etc.;
- Other 10 questions on tax certainty and the rule of law.

The questionnaire for the enterprises comprised three parts:

- The status of tax certainty of BRI jurisdictions in which enterprises make investments;
- Legislation and practice development of Advance Pricing Arrangements (APAs) in BRI jurisdictions;

- Suggestions.

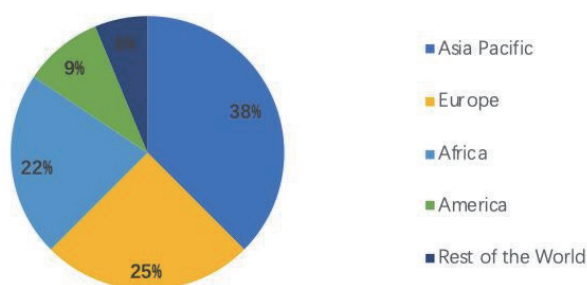
In addition, the economic and social development of the BRI jurisdictions is facing new challenges and pressure due to the impact of the COVID-19 pandemic. In order to further understand the work measures taken by the BRI jurisdictions to enhance tax certainty under the new situation, we organized a supplementary questionnaire and designed 23 questions, including preferential tax policies for supporting pandemic prevention and control, as well as economic and social development, the main methods of soliciting opinions when formulating policies, the evaluations on effect of the policy implementation, the implementation of the same tax policies in different areas, the promotion of APA negotiation and signing and so on.

1.3.1 Overview of the Survey Results from 36 Tax Administrations

[Note: Some of the total % does not add up to 100% due to rounding.]

1.3.1.1 Your region

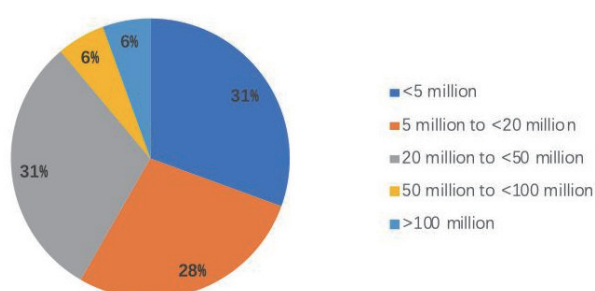
Figure 1:



In the survey, Asia Pacific refers to jurisdictions located in East Asia, Southeast Asia, North Asia, South Asia, Middle Asia, Australasia, Melanesia, Micronesia and Polynesia. Almost 40% of the survey participants are from Asia Pacific. Those from Europe and Africa account for 25% and 22% of the survey participants respectively.

1.3.1.2 Population of your jurisdiction

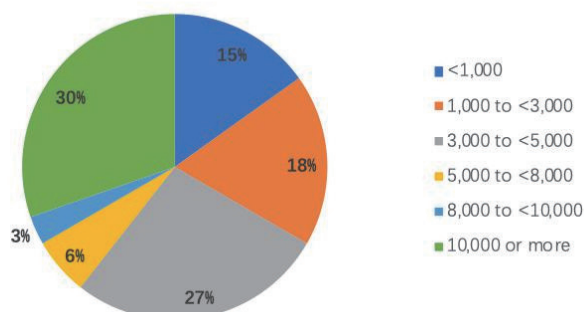
Figure 2:



One-third of the survey participants are from a jurisdiction with less than 5 million populations. Approximately a quarter of them are with a population size between 5 million to 20 million and another one-third with 20 million to 50 million.

1.3.1.3 GDP per capita in USD in 2018

Figure 3:



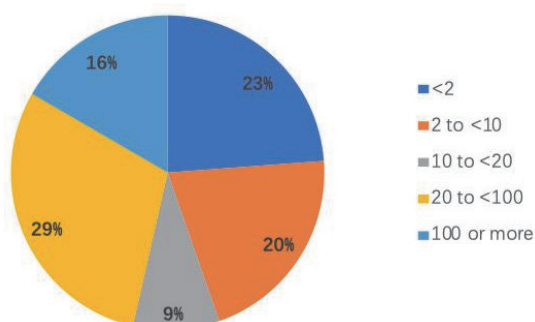
Survey participants with per capita GDP of:

- Less than USD 1,000 (15%) - production factor-driven stage of development according to the Global Competitiveness Report 2017-2018 published by the World Economic Forum⁴
- More than USD 1,000 but less than USD 3,000 in 2018 (18%) – production factor-driven / transitioning from production factor driven to efficiency driven development
- USD 3,000 to USD 5,000 (27%) – efficiency driven
- USD 5,000 to less than USD 8,000 (6%) – efficiency driven
- USD 8,000 to 10,000 (3%) – efficiency driven / transitioning from efficiency to innovation driven stage
- USD 10,000 or more – transitioning from efficiency to innovation driven / innovation driven stage (30%)

4 <http://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017-2018.pdf>

1.3.1.4 Aggregate annual tax revenue in USD billion in 2018

Figure 4:



In terms of the aggregate annual tax revenue in 2018, the results are more evenly spread. Aggregate annual tax revenue with:

- Less than USD 2 billion (23%)
- USD 2 billion to less than USD 10 billion (20%)
- USD 10 billion to less than USD 20 billion (9%)

- USD 20 billion to less than USD 100 billion (29%)
- USD 100 billion or more (16%)

1.3.2 Overview of the Survey Results from 43 Enterprises

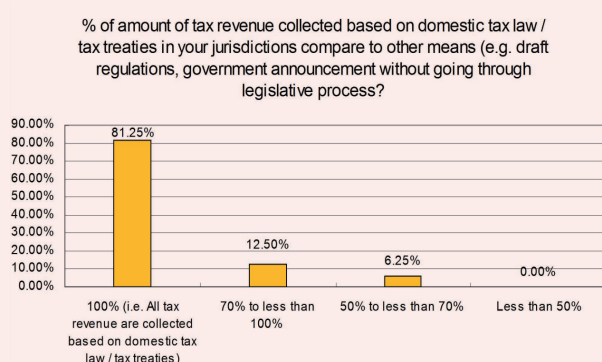
Forty-three enterprises responded to the survey and the results show that the five most popular regions for their investments are Southeast Asia, Africa, Central and Eastern Europe, South Asia as well as West Asia, covering 53 BRI countries and regions. The most popular investment destination countries include Vietnam, Singapore, Thailand, Malaysia, and Russia. Although Africa is the second most popular region, the investment in this region is relatively scattered, involving countries such as South Africa, Zambia, Algeria, Nigeria, etc.

Responses to Questions on Tax Certainty and Rule of Law

2.1 Survey Results from Tax Administrations

2.1.1 Amount of Tax Revenue Collected Based on Domestic Tax Law / Tax Treaties in Your Jurisdictions Compared to Other Means

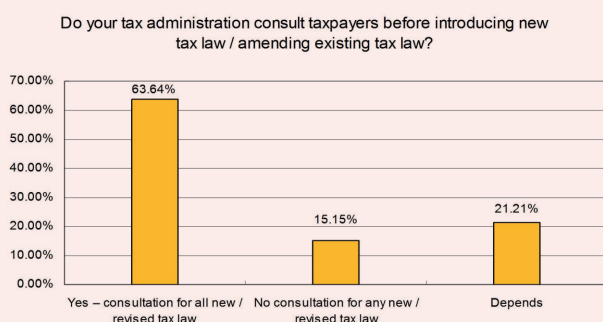
Figure 5:



According to the survey results, a vast majority (81.25%) of the respondents indicate that they collect all tax revenue based on domestic tax law / tax treaties, instead of other means (e.g., draft regulations, government announcements without going through legislative process). This suggests a good starting point.

2.1.2 Does Your Tax Administration Consult Taxpayers Before Introducing New Tax Law / Amending Existing Tax Law?

Figure 6:



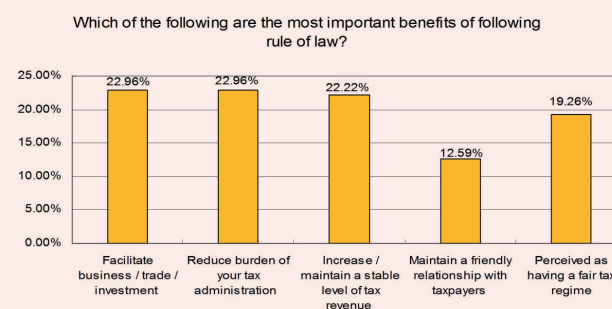
There are a number of administrative tools that can help to improve tax certainty, one of which is the active involvement of taxpayers in the early stage of tax legislation, i.e., to consult taxpayers before introducing new tax law / amending existing tax law. This may help to promote transparency, the perceived fairness of the system, and to promote buy-ins from taxpayers. Furthermore, consultation with taxpayers contributes to avoiding unintended or undesirable tax consequences.

Results reveal that 63.64% of the respondents indicate that their tax administrations consult taxpayers before introducing or amending tax laws, while 15.15% of the respondents indicate that there was no consultation in the tax legislation process. For the rest of the jurisdictions, the consultation process depends on the likely impact of the legislative proposal.

2.1.3 Which of the Following Are the Most Important Benefits of Following Rule of Law?

The top four benefits of following rule of law:

Figure 7:

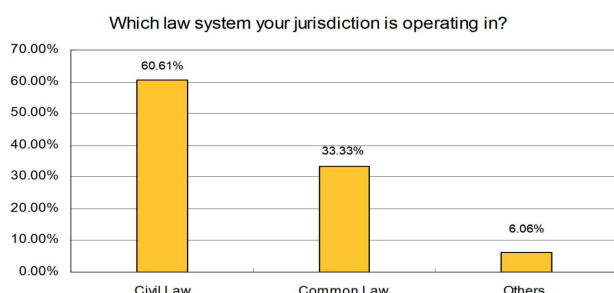


- “Reduce burden of your tax administration” and “Facilitate business / trade / investment”, both at (22.96%)
- “Increase/maintain a stable level of tax revenue” (22.22%)
- “Perceived as having a fair tax regime” (19.26%)

In the survey, respondents were asked to rank the items above from “1” to “4” with “1” being the most important one. The survey result shows that “Reduce burden of tax administration” and “Facilitate business / trade / investment” are the most important benefits of following rule of law. This result is reasonable as taxpayers would generally want a tax system that is structured fairly under rule of law and that they want everyone to pay what they are meant to.

2.1.4 Which Law system Is Your Jurisdiction Operating in?

Figure 8:

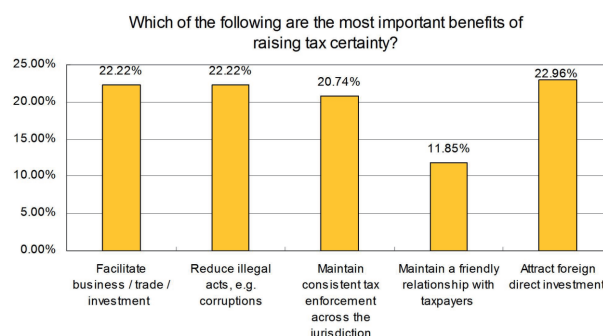


Although legal systems of jurisdictions vary, they usually follow civil law or common law (also known as judicial precedent or judge-made law). The survey results show that about 60.61% of the respondents adopt civil law, under which, jurisdictions rules are based on coded laws or enacted legislation; while 33.33% implement common law, which means that such jurisdictions also rely on cumulative judicial

precedents, in addition to tax legislations, so as to determine tax cases.

2.1.5 Which of the Following Are the Most Important Benefits of Raising Tax Certainty?

Figure 9:



People widely believe that improving tax certainty brings many benefits, as indicated by respondents, the top four benefits include:

- “Attract foreign direct investment” (22.96%)
- “Facilitate business / trade / investment” and “Reduce illegal acts, e.g. corruptions”, both at (22.22%)
- “Maintain consistent tax enforcement across the jurisdiction” (20.74%).

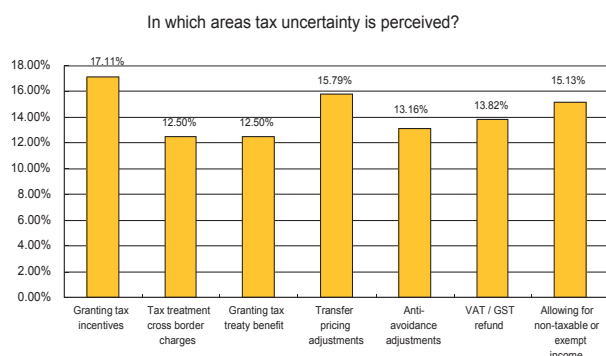
In the survey, respondents were asked to rank the items above from “1” to “4” with “1” being the most important one. The survey results show that “Attract foreign direct investment” is the most important benefits of raising tax certainty. The importance of providing greater tax certainty to taxpayers to support investment has become a shared priority of governments and businesses as investors will be concerned with the uncertainty about the effective tax rate on profit, uncertainty about input tax credits, refunds, place of supply issues for Value Added Tax or Goods and Services Tax purposes,

and uncertainty about the tax burden of other consumption taxes. All these uncertainties will result in adverse effects on investment and trade.⁵

2.1.6 In which Areas Is Tax Uncertainty Perceived?

Perceived?

Figure 10:

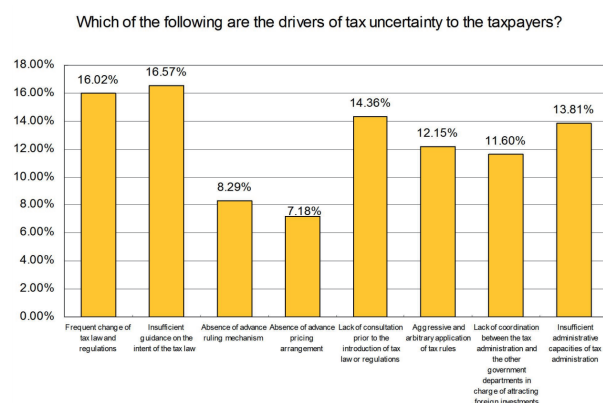


According to the survey results, the five most important areas of perceived tax uncertainty are:

- “Granting tax incentives” (17.11%)
- “Transfer pricing adjustments” (15.79%)
- “Allowing for non-taxable or exempt income” (15.13%)
- “VAT/GST refund” (13.82%)
- “Anti-avoidance adjustments” (13.16%)

2.1.7 Which of the Following Are the Drivers of Tax Uncertainty to the Taxpayers?

Figure 11:

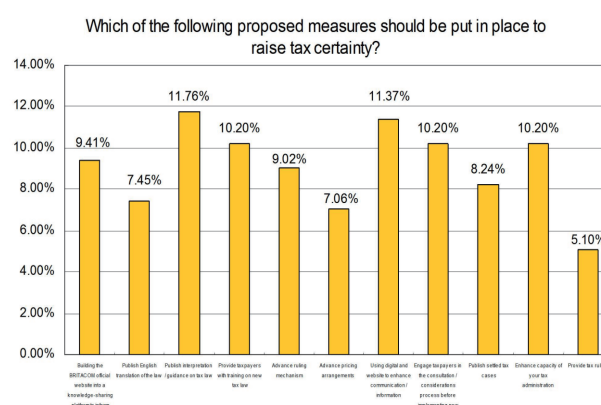


The top six general drivers of tax uncertainty are:

- “Insufficient guidance on the intent of the tax law” (16.57%)
- “Frequent change of tax law and regulations” (16.02%)
- “Lack of consultation prior to the introduction of tax law or regulations” (14.36%)
- “Insufficient administrative capacities of tax administration” (13.81%)
- “Aggressive and arbitrary application of tax rules” (12.15%)
- “Lack of coordination between the tax administration and the other government departments in charge of attracting foreign investments” (11.60%)

2.1.8 Which of the Following Proposed Measures Should Be Put in Place to Raise Tax Certainty?

Figure 12:



The top eight proposed measures that should be put in place to raise tax certainty are:

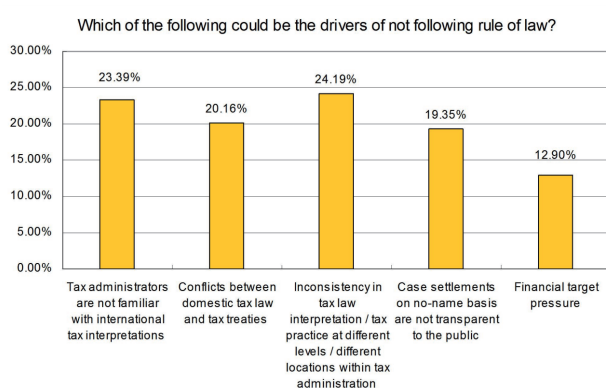
- “Publish interpretation/guidance on tax law” (11.76%)
- “Using digital technology and website to enhance communication / information” (11.37%)

5 <https://www.ey.com/gl/en/services/tax/international-tax/alert---imf-and-oecd-deliver-report-addressing-tax-certainty---including->

- “Enhance capacity of your tax administration”,
- “Engage taxpayers in the consultation / considerations process before implementing new tax regulations”
- “Provide taxpayers with training on new tax law”, (10.2%)
- “Building the BRITACOM official website into a knowledge-sharing platform to inform investors of the interpretation and application of tax law” (9.41%)
- “Advance ruling mechanism” (9.02%)
- “Publish settled tax cases” (8.24%)

2.1.9 Which of the Following Could Be the Drivers of Not Following Rule of Law?

Figure 13:



Among the five items, “Inconsistency in tax law interpretation / tax practice at different levels / different locations within tax administration” appears to be the most relevant one, while “financial target pressure” was cited as the least influential factor.

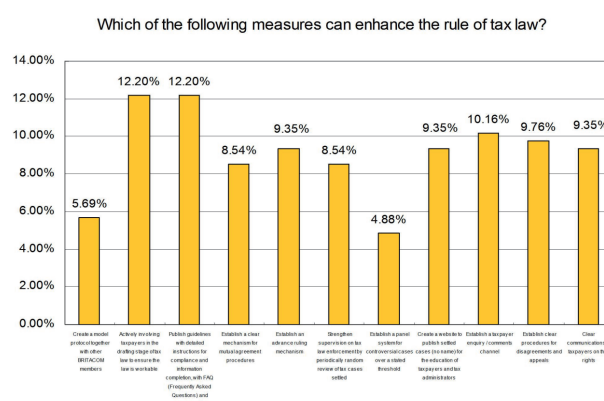
According to the survey result, the four most relevant factors are:

- “Inconsistency in tax law interpretation / tax practice at different levels / different locations within tax administration” (24.19%)
- “Tax administrators are not familiar with international tax interpretations” (23.39%)
- “Conflicts between domestic tax law and tax treaties” (20.16%)
- “Case settlements on no-name basis are not transparent to the public” (19.35%)

It is pleasing to see that financial target was ranked by surveyed tax administrations as the least relevant factor contributing to not following rule of law.

2.1.10 Which of the Following Measures Can Enhance the Rule of Tax Law?

Figure 14:



The survey also asked tax administrations in the BRI jurisdictions to prioritize a list of measures to identify how the rule of tax law could be enhanced. The chart above shows the top 11 measures. Respondents were asked to rank the items above from “1” to “4” with “1” representing the most welcome one for enhancing the rule of tax law.

According to the survey results, tax administrations consider that the top 4 measures that could improve

the rule of tax law include:

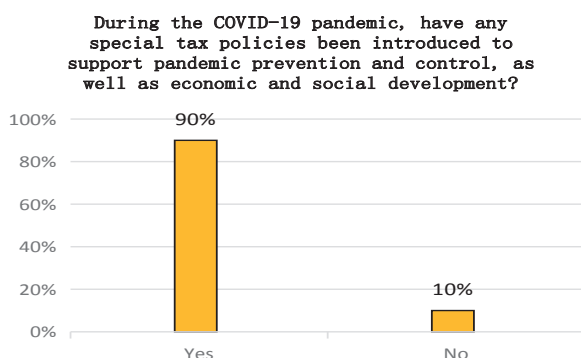
- “Publish guidelines with detailed instructions for compliance and information completion, with FAQ (Frequently Asked Questions) and answers” (12.20%)
- “Actively involving taxpayers in the drafting stage of tax law to ensure the law is workable”, (also at 12.20%)
- “Establish a taxpayer enquiry/comments channel” (10.16%)
- “Establish clear procedures for disagreements and appeals” (9.76%)

2.1.11 Supplementary Questionnaire

Ten tax administrations of BRI jurisdictions are involved in the supplementary questionnaire. The results of the survey are as follows.

2.1.11.1 During the COVID-19 pandemic, have any special tax policies been introduced to support pandemic prevention and control, as well as economic and social development?

Figure 15:

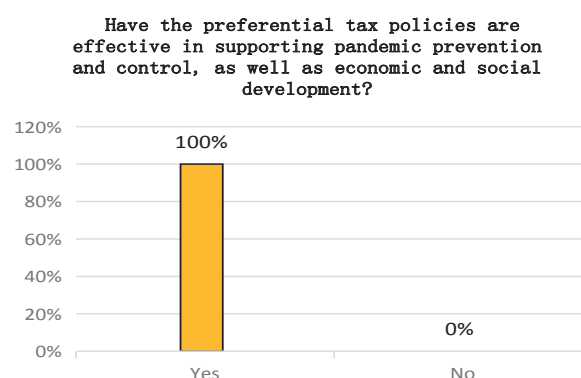


Nine of the ten survey participants introduced special tax policies to support pandemic prevention and control, as well as economic and social development. To a certain extent, the BRI

jurisdictions have reached the consensus that the taxation is one of the important ways and tools to regulate the economy.

2.1.11.2 Have the preferential tax policies been effective in supporting pandemic prevention and control, as well as economic and social development?

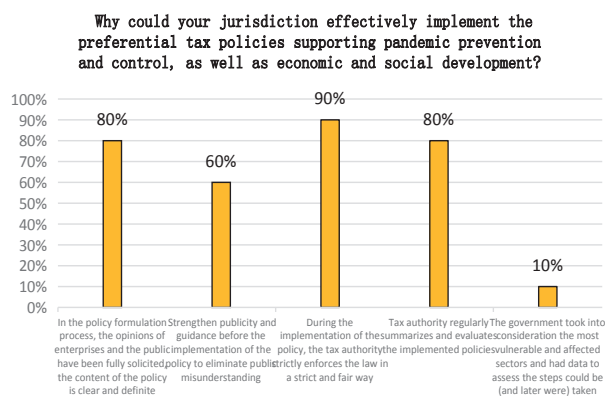
Figure 16:



Nine BRI jurisdictions participated in answering the question, and the participants agreed that the tax supporting policy has played a good effect. The survey results showed that the taxation, as the important economic regulation tool, has obtained obvious results in supporting pandemic prevention and control, as well as economic and social development.

2.1.11.3 Why could your jurisdiction effectively implement the preferential tax policies supporting pandemic prevention and control, as well as economic and social development?

Figure 17:

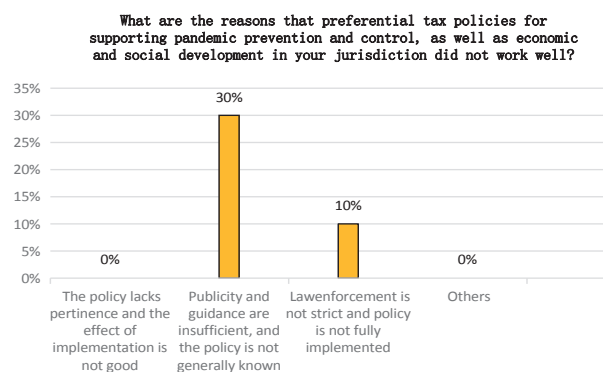


The ten survey participants indicated the most relevant reasons that their jurisdictions effectively implement the preferential tax policies supporting pandemic prevention and control, as well as economic and social development were as follows: “During the implementation of the policy, the tax authority strictly enforces the law in a strict and fair way” (90%); “In the policy formulation process, the opinions of enterprises and the public have been fully solicited, the content of the policy is clear and definite” (80%); “Tax authority regularly summarizes and evaluates the implemented policies” (80%); “Strengthen publicity and guidance before the implementation of the policy to eliminate public misunderstanding” (60%); “The government took into consideration the most vulnerable and affected sectors and had data to assess the steps could be (and later were) taken” (10%).

2.1.11.4 What are the reasons that preferential tax policies for supporting pandemic prevention and control, as well as economic and social

development in your jurisdiction did not work well?

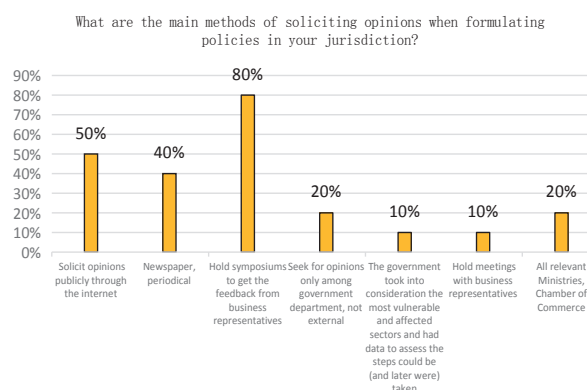
Figure 18:



The ten survey participants indicated the reasons that their jurisdictions did not effectively implement preferential tax policies for supporting pandemic prevention and control, as well as economic and social development were as follows: “Publicity and guidance are insufficient, and the policy is not generally known” (30%); “Law enforcement is not strict and policy is not fully implemented” (10%).

2.1.11.5 What are the main methods of soliciting opinions when formulating policies in your jurisdiction?

Figure 19:

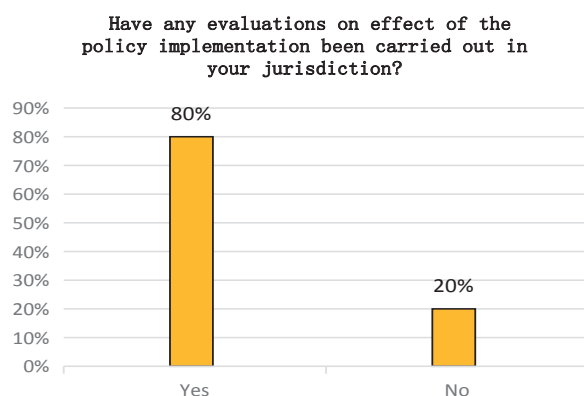


The ten survey participants indicated that the main methods of soliciting opinions when

formulating policies in their jurisdictions were: “Hold symposiums to get the feedback from business representatives” (80%); “Solicit opinions publicly through the internet” (50%); “Newspaper, periodical” (40%).

2.1.11.6 Have any evaluations on the effect of policy implementation been carried out in your jurisdiction?

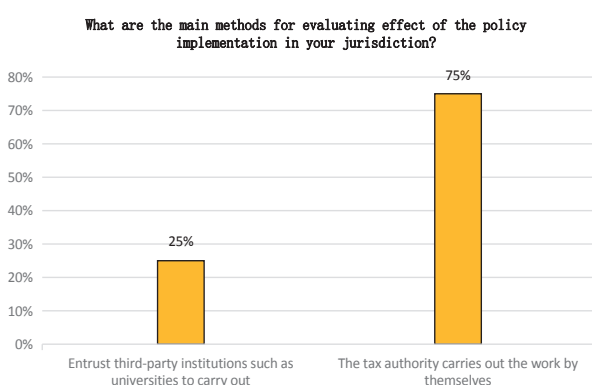
Figure 20:



Eight jurisdictions have carried out evaluations on effect of the policy implementation, while two other jurisdictions have not carried out such kind of evaluations.

2.1.11.7 What are the main methods for evaluating the effect of policy implementation in your jurisdiction?

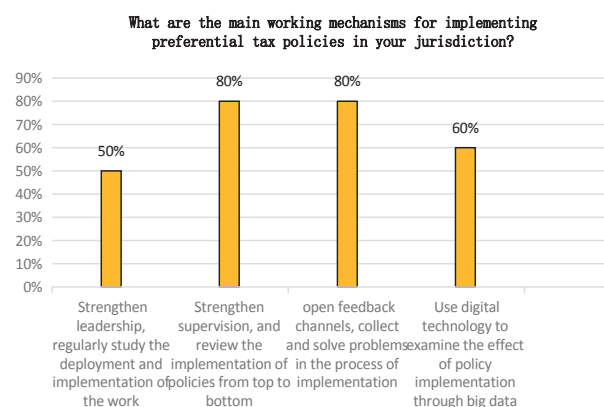
Figure 21:



Among the eight BRI jurisdictions who have carried out the evaluations on effect of the policy implementation in their jurisdictions, two of them entrusted third-party institutions such as universities to carry out the evaluation, while the others are carried out by their tax authority.

2.1.11.8 What are the main working mechanisms for implementing preferential tax policies in your jurisdiction?

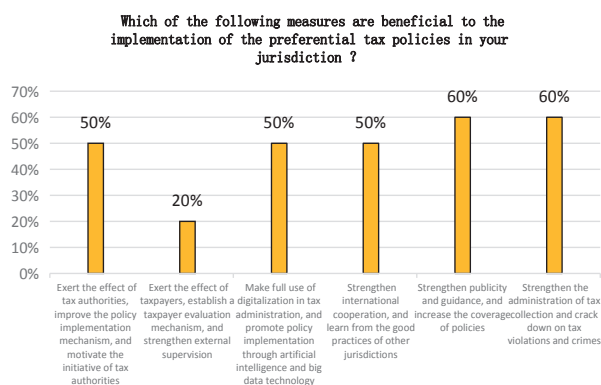
Figure 22:



Eight of the ten survey participants take “Strengthen supervision, and review the implementation of policies from top to bottom” and “Open feedback channels, collect and solve problems in the process of implementation” as the main working mechanism for implementing preferential tax policies in their jurisdictions. Six of them take “Use digital technology to examine the effect of policy implementation through big data” as the main working mechanism, and more than a half of them take “Strengthen leadership, regularly study the deployment and implementation of the work” as the main working mechanism.

2.1.11.9 Which of the following measures are beneficial to the implementation of preferential tax policies in your jurisdiction?

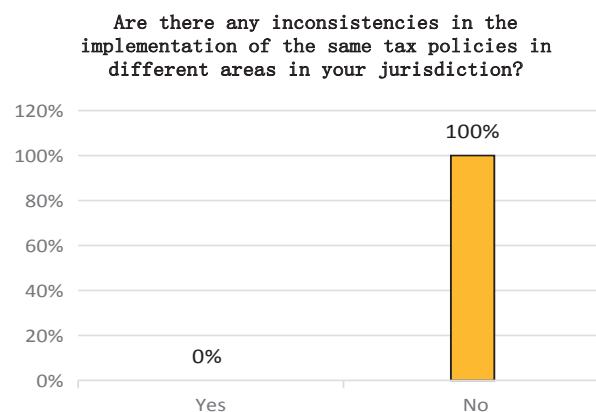
Figure 23:



The ten survey participants indicated that “Strengthen publicity and guidance, and increase the coverage of policies”(60%) and “Strengthen the administration of tax collection and crack down on tax violations and crimes”(60%) were the most beneficial measures to the implementation of the preferential tax policies in their jurisdictions. The next beneficial measures were “Exert the effect of tax authorities, improve the policy implementation mechanism, and motivate the initiative of tax authorities” (50%), “Make full use of digitalization in tax administration, and promote policy implementation through artificial intelligence and big data technology” (50%), “Strengthen international cooperation, and learn from the good practices of other jurisdictions” (50%). The last one was “Exert the effect of taxpayers, establish a taxpayer evaluation mechanism, and strengthen external supervision” (20%).

2.1.11.10 Are there any inconsistencies in the implementation of the same tax policies in different areas in your jurisdiction?

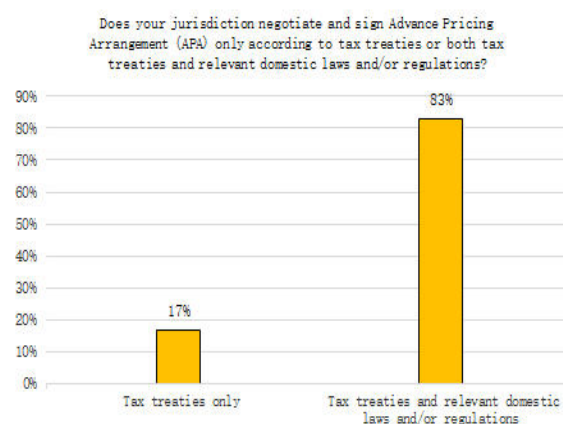
Figure 24:



The ten survey participants indicated that there were no inconsistencies in the implementation of the same tax policies in different areas in their jurisdictions.

2.1.11.11 Does your jurisdiction negotiate and sign Advance Pricing Arrangement (APA) only according to tax treaties or both tax treaties and relevant domestic laws and/or regulations?

Figure 25:

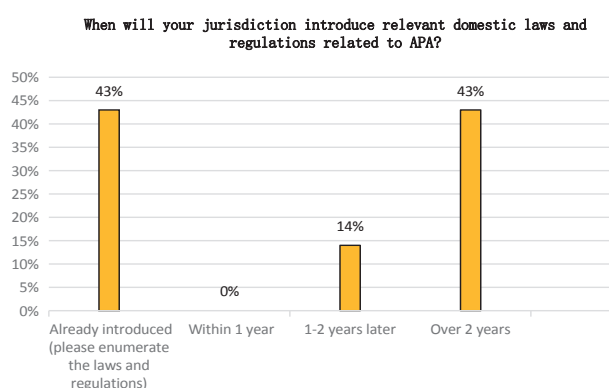


Five of the survey participants (83%) indicated that their jurisdictions negotiated and signed Advance Pricing Arrangement (APA) according to

both tax treaties and relevant domestic laws and/or regulations, while one survey participant (17%) indicated that their jurisdictions negotiated and signed APA only according to tax treaties.

2.1.11.12 When will your jurisdiction introduce relevant domestic laws and regulations related to APA?

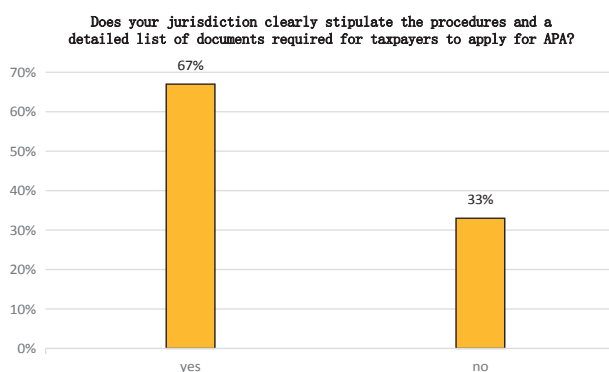
Figure 26:



Three of the participants (43%) already introduced relevant domestic laws and regulations related to APA in their jurisdictions, one of them (14%) will introduce within 1-2 years, and three of them (43%) will introduce over 2 years.

2.1.11.13 Does your jurisdiction clearly stipulate the procedures and a detailed list of documents required for taxpayers to apply for APA?

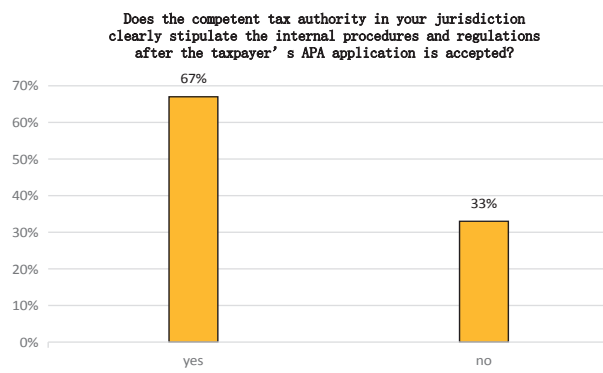
Figure 27:



Six of the participants (67%) have clearly stipulated the procedures and a detailed list of documents required for taxpayers to apply for APA in their jurisdictions, while three of them (33%) have not.

2.1.11.14 Does the competent tax authority in your jurisdiction clearly stipulate the internal procedures and regulations after the taxpayer's APA application is accepted?

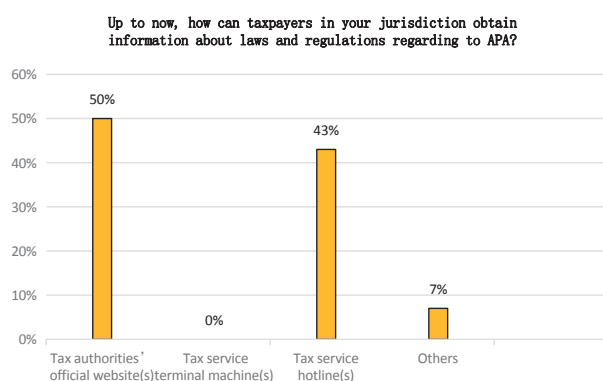
Figure 28:



Six of the participants (67%) indicated that the tax authority has clearly stipulated the internal procedures and regulations after the taxpayer's APA application is accepted in their jurisdictions, while three of them (33%) have not.

2.1.11.15 Up to now, how can taxpayers in your jurisdiction obtain information about laws and regulations regarding to APA?

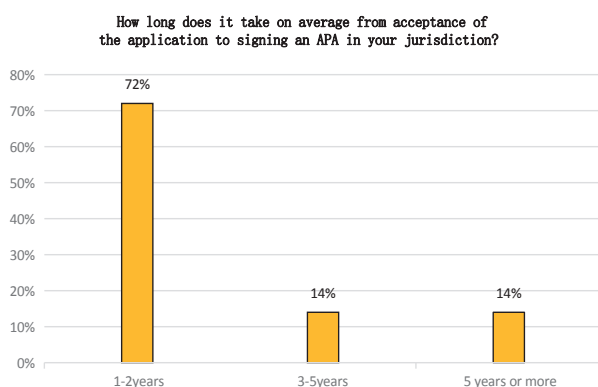
Figure 29:



About the methods that the taxpayers obtaining information about laws and regulations regarding to APA in their jurisdictions, four options were designed, including “Tax authorities’ official website(s)”, “Tax service terminal machine(s)”, “Tax service hotline(s)” and “Others”. According to the survey results, seven participants (50%) selected “Tax authorities’ official website(s)”; six participants (43%) selected “Tax service hotline(s)”; and one of them (7%) selected “Others”.

2.1.11.16 How long does it take on average from accepting the application to signing an APA in your jurisdiction?

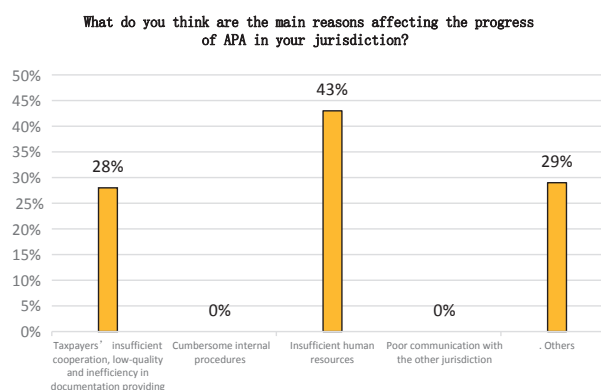
Figure 30:



About the average duration from acceptance of the application to signing an APA in their jurisdiction, three options were designed, including “1-2 years”, “3-5 years”, “5 years or more”. According to the survey results, five participants (72%) selected “1-2 years”; one of them (14%) selected “3-5 years”; and one of them (14%) selected “5 years or more”.

2.1.11.17 What do you think are the main reasons affecting the progress of APA in your jurisdiction?

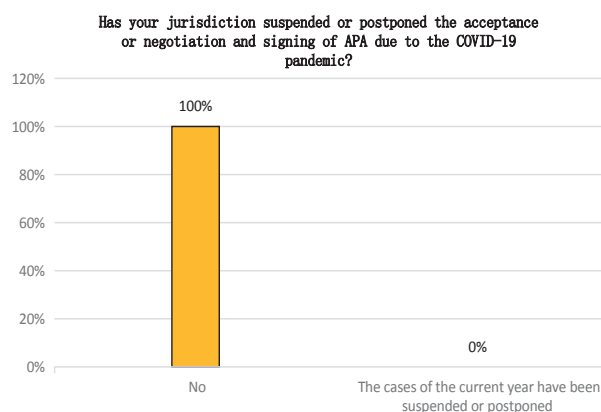
Figure 31:



About the main reasons affecting the progress of APA in their jurisdictions, five options were designed, including “Taxpayers’ insufficient cooperation, low-quality and inefficiency in documentation providing”, “Cumbersome internal procedure”, “Insufficient human resources”, “Poor communication with the other jurisdiction” and others. According to the survey results, two participants (28%) selected “Taxpayers’ insufficient cooperation, low-quality and inefficiency in documentation providing”; three participants (43%) selected “Insufficient human resources”; two participants (29%) selected others; and one of them did not signed APA.

2.1.11.18 Has your jurisdiction suspended or postponed the acceptance or negotiation and signing of APA due to the COVID-19 pandemic?

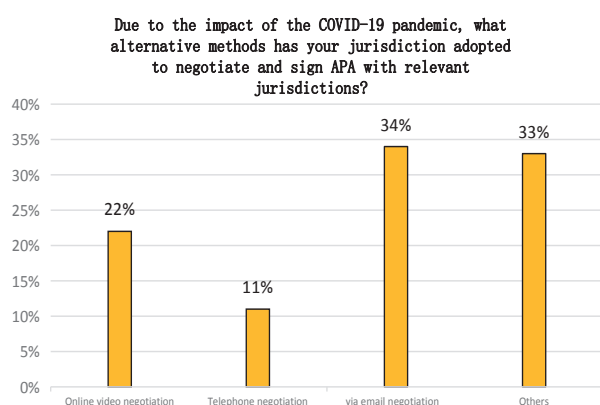
Figure 32:



Seven survey participants (100%) indicated that the acceptance or negotiation and signing of APA has not been suspended or postponed in their jurisdictions due to the COVID-19 pandemic.

2.1.11.19 Due to the impact of the COVID-19 pandemic, what alternative methods has your jurisdiction adopted to negotiate and sign APA with relevant jurisdictions?

Figure 33:



About the alternative methods adopted to negotiate and sign APA in their jurisdictions due to the impact of the COVID-19 pandemic, four options were designed, including “Online video negotiation”, “Telephone negotiation”, “Via email negotiation”, “Others”. According to the survey results, two participants (22%) selected “Online video negotiation”; one participant (11%) selected “Telephone negotiation”; three participants (33%) selected “Via email negotiation”; and three of them (34%) selected “Others”.

2.1.11.20 Based on the situation in your jurisdiction, please list the impact of COVID-19 on the promotion of APA negotiation and signing. Please specify relevant policy explanations or new policies issued by tax authorities if there is any.

- Some jurisdictions indicated that they were introducing the APA internal regulations. Due to the top priority of the COVID-19 pandemic and economic recovery policy, the introducing of APA regulations was delayed.
- Some jurisdictions indicated that the promotion of APA negotiation and signing in the jurisdiction was not affected by the COVID-19 pandemic, due to the alternative methods adopted to negotiate and sign APA.
- Some jurisdictions indicated that the COVID-19 pandemic affected the promotion of APA negotiation and the acceptance of APA application. Tax authority adopted online meeting to promote APA negotiation, and the taxpayer can submit the income forecast that affected by the COVID-19 pandemic.
- Some jurisdictions indicated that there was no APA application in 2020.

Some jurisdictions indicated that they have not joined the BEPS inclusive framework and global forum . They were doing related works, hoping it will help them to regulate the MAP and APA.

2.2 Survey Results from Enterprises

2.2.1 The Current Status of Tax Certainty of BRI Jurisdictions Where You Operate

2.2.1.1 Tax policies provide certainties in the jurisdictions where you operate?

Agree	65.12%
Don't agree	34.88%

Nearly two-thirds (65.12%) of the respondents believed that tax policies and regulations in BRI jurisdictions where they operate can provide certainties, while the rest of the respondents (34.88%) shared the opposite view.

2.2.1.2 Tax policies have been properly and effectively interpreted?

Strongly agree. Through the proper interpretations, tax certainty has been effectively enhanced.	13.95%
Agreed as acceptable. Policy interpretations have helped taxpayers to understand tax policies to some extent.	81.4%

Most respondents (81.4%) reported that policy interpretations are acceptable in the jurisdictions the companies operate but there is room for improvement, while 13.95% shared that tax policies have been properly and effectively interpreted.

2.2.1.3 Tax administrations clearly inform taxpayers of their rights and obligations in tax enforcement?

Agree	67.44%
Disagree	32.56%

More than two-thirds of the respondents (67.44%) reported that competent tax administrations have clearly informed them of their rights and

obligations during the enforcement process, while the rest (32.56%) said that their competent tax administrations failed to do so.

2.2.1.4 The jurisdictions have established a nation-wide unified tax collection and administration information system?

Agree	48.84%
Disagree	51.16%

Among all respondents, almost half (48.84%) said that the jurisdictions in which they do business have established a national-level tax collection and administration system, while 51.16% of respondents reported that the relevant system has yet to be established.

2.2.1.5 The jurisdictions have established national unified standard protocols for tax collection and administrations?

Agree	60.47%	<div><div></div></div>
Disagree	39.53%	<div><div></div></div>

As high as 60.47% said that the jurisdictions where they are located have formulated the unified national standards for tax collection and administration. The rest of respondents (39.53%) reported that the relevant jurisdictions have not yet done so.

2.2.1.6 The jurisdictions have established interpretation/implementation guidance system by publishing settled tax cases as examples?

Agree	46.51%
Disagree	53.49%

Less than half (46.51%) of the respondents said that they have seen such established systems, while

53.49% shared that they have not.

2.2.1.7 The jurisdictions have established advance tax ruling systems?

Agree	51.16%	<div><div></div></div>
Disagree	48.84%	<div><div></div></div>

Over half of the respondents (51.16%) stated that the jurisdictions they operate have established the advance tax ruling system, and 48.84% of the respondents believed that there is no such system in their jurisdictions.

2.2.1.8 Channels you prefer to receive tax policy news and guidance for making investments in BRI jurisdictions?

Direct taxpayer-facing tax authorities	74.42%
Official website of tax administration	90.7%
One-stop tax service centers	53.49%
Tax service hotline	41.86%
Other channels	16.28%

Most respondents (90.7%) prefer to use the “official website of tax administration” as the main channel for receiving tax policy news and guidance. The preference on taxpayer-facing tax authorities, one-stop tax service centers, tax service hotlines and other methods are 74.42%, 53.49%, 41.86% and 16.28% respectively.

2.2.1.9 The major challenges related to tax you have encountered in BRI jurisdictions?

Tax law system is less advanced and lack of transparency; lack of detailed information and guidance on implementation	44.19%	<div><div></div></div>
Tax law enforcement lacks consistence and certainty	23.26%	<div><div></div></div>

Tax law enforcement is less efficient	20.93%	<div><div></div></div>
Others	11.63%	<div><div></div></div>

The respondents stated that the major challenge they’ve encountered when conducting businesses in BRI jurisdictions is that “Tax law system is less advanced and lack of transparency; lack of detailed information and guidance on implementations”, which accounted for 44.19%. “Tax law enforcement lacks consistence and certainty” and “tax law enforcement is less efficient” took up 23.26% and 20.93% respectively.

2.2.1.10 Solutions adopted for tax issues encountered for the investments in BRI jurisdictions?

Seek help from the company headquarters	37.21%
self-solve at individual company level in each jurisdiction	20.93%
Entrust a local tax agency to help	83.72% <div><div></div></div>

Most respondents (83.72%) chose to “entrust local tax agency to help”, 37.21% chose “to seek help from the company headquarters”, and only 20.93% chose to “solve at individual company level in each jurisdiction”.

2.2.1.11 The interactions between companies and tax administrations?

Very active. May seek tax authorities' immediate help when needed	27.91%	<div><div></div></div>
Moderate. May receive one-to-one service provided by tax administrations	16.28%	<div><div></div></div>

Low level interactions. May get the general tax services provided to all taxpayers from tax administrations	53.49%	
Almost None	2.33%	

The survey result shows that 27.91% of the respondents are having very active interactions with tax administrations and can seek help in time when needed, while the majority (53.49%) of the respondents have low level interactions with tax authorities. 16.28% of the respondents stated that they have moderately interacted with tax authorities and may receive one-to-one services provided by tax administrations.

2.2.1.12 The main sources of obtaining tax policy knowledge for investments in BRI jurisdictions?

Public information provided by tax administrations official websites, trainings, etc.	74.42%	
Assistances provided by agencies	90.7%	
Self-collect and compile	53.49%	
Others	9.3%	

Based on the survey results, the majority (90.7%) of respondents received the tax laws and regulations in their jurisdictions via the “assistance provided by agencies”. The proportions of “Official publicity through websites, training, etc.” and “collected by oneself” amounted to 74.74% and 53.49%, respectively.

Summary: Based on the survey results, we have reached the conclusions as the following:

- Tax certainty in BRI jurisdictions is generally acceptable, but there is much room for

improvement.

- BRI tax administrations’ work in policy interpretations and notification of rights/ obligations during law enforcement is generally acknowledged. The efficiency of policy interpretation is highly expected to be further improved.
- For the subject of the standardization of tax collection and administration in BRI jurisdictions, companies who participated in the surveys believe that the gap between the expectations and current practice is significant. 51.16% of the respondents stated that the countries where they have made investments do not have a national unified system in tax collection and administration. For the question of whether there is a national unified standard for tax collection and administration enforced in the destination countries, the positive response of 60.47% does not show an obvious advantage.
- The relevant institutional arrangements for improving certainty in BRI jurisdictions can be further enhanced and improved. For example, about half of the respondents indicated that their countries have not established advance tax ruling system or a system to provide implementation or interpretation guidance through publishing settled cases.

2.2.2 Legislation and Practice Development of APAs⁶ in BRI Jurisdictions

2.2.2.1 Are there any laws and regulations on APA in BRI jurisdictions where you are located?

⁶ For the purposes of this report, the meaning of APA is based on the definition as provided in the OECD Transfer Pricing Guidelines, “an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.” See 2017 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, p. 26

Yes	41.86%
No	58.14%

2.2.2.2 Do you clearly understand the relevant laws and regulations on APA?

Yes	33.33%
No	66.67%

Among the 41.86% respondents (18 enterprises in total, hereinafter referred to as “18 enterprises”) that selected “YES” for “whether the APA rules have been announced in your jurisdictions”, only one third of them (6 enterprises) indicated that they clearly understand the relevant APA rules in their jurisdictions while the remaining two thirds stated that they are “not clear” about the rules.

2.2.2.3 Sources for obtaining the relevant knowledge on APA laws and regulations?

Through the relevant provisions of tax laws and regulations	83.33%	<div><div></div></div>
Call Center / Hotline	0%	<div><div></div></div>
Official website of tax administration	66.67%	<div><div></div></div>
Information shared by tax administrations	66.67%	<div><div></div></div>
Information shared by tax agencies	50%	<div><div></div></div>
Other channels	16.67%	<div><div></div></div>

With respect to the channels through which companies have obtained information on APA rules, six enterprises which have checked “yes” for “clearly understand the relevant laws and regulations on APA” chose their top four knowledge sources as “Through the relevant provisions of tax laws and regulations”, “Official website of the tax administration”, “Information shared by tax administrations” and “Information shared by tax agencies”, which accounted for five votes, four votes, four votes and three votes respectively.

2.2.2.4 Do you clearly understand the specific process for applying APA?

Yes	44.44%
No	55.56%

Among the 18 enterprises, 44.44% chose “clear”, while 55.56% chose “not clear”.

2.2.2.5 What are the hurdles for the APA application?

Policy and regulation restrictions	38.89%
Administration mechanism restrictions	44.44%
Resources constraints	55.56%
Others	16.67%

Based on survey results of the 18 enterprises, the hurdles for APA application are resource constraints as well as administration mechanisms and policies and regulations restrictions, which represented 55.56%, 44.44%, and 38.89%, respectively.

2.2.2.6 Have you initiated an APA application in the past three years?

Initiated and settled	0%	<div><div></div></div>
Initiated but not yet settled	11.11%	<div><div></div></div>
Not initiated as it is not necessary.	61.11%	<div><div></div></div>
No, because the process is complicated and time consuming	22.22%	<div><div></div></div>
No, there is a need, but it has not been initiated for reasons other than those mentioned above.	5.56%	<div><div></div></div>



Among the 18 enterprises who participated in the survey, none of them have settled APA cases in the past three years. The proportion of closed APAs is zero, the proportion of APAs initiated but not yet closed is 11%, and the proportion of uninitiated is as high as 89%.

2.2.2.7 Based on your observations and experience, what is the average APA case closing time?

1 year or less	22.22%
1 to 2 years	50%
2 to 3 years	22.22%
3 years and above	5.56%

Among the 18 enterprises, half of them believe that the APA cases in their jurisdictions can be closed within 1 to 2 years in average. Those who think that the case closing time is within “1 year or less” and “2 to 3 years” each account for 22.22%, and only 5.56% of enterprises believe that it may take more than 3 years to close the case.

2.2.2.8 Can the APA be effectively implemented?

Yes	100%	
No, please state the reason	0%	

2.2.2.9 Do you have any suggestions for improving the efficiency of applying for and implementing APA?

This is an open question, and only one enterprise answered that “There should be clear guidelines and case examples on the official website, in addition, tax administrations shall increase the efficiency of handling APA cases.”

2.2.2.10 Do you think it is necessary to establish a mechanism to avoid tax disputes, such as APA?

Very urgent, should be established within 1 year.	23.26%
Necessary, should be established within the next 2 to 3 years.	67.44%
Not necessary for now.	9.3%
Not necessary at all.	0%

The vast majority of the enterprises answered

this question affirmatively with 67.44% of the 18 enterprises believing that the APA mechanism is “necessary and should be established within the next 2-3 years”, while 23.26% chose “very urgent and should be established within 1 year”, and 9.3% opted for “not necessary for now”. No company chose “not necessary at all”.

Summary:

- The results of the enterprise’s survey indicate that the APA mechanism has been remotely applied in BRI jurisdictions, which remain consistent with the survey results of the BRI tax administrations. Only 4.6% of the 43 respondents have applied for the APA in the past three years while none of the cases have been settled.
- The respondents located in BRI jurisdictions where APA mechanism has not yet been established also expressed their strong demand for such mechanism.
- The survey has revealed that most enterprises have little knowledge of the local provisions and application processes of APA in BRI jurisdictions. Among all respondents, enterprises who claimed they are familiar with the APA application procedures only account for 6.2%, which demonstrates that the relevant tax administrations should enhance the publicity of APA mechanism and improve the interpretation of the relevant laws and regulations. In addition, tax administrations shall continue to practically explore how to play the role of APA more effectively and improve the certainty of cross-border taxation.

- The overall implementation of the APA in the surveyed area is not satisfied. The respondents generally believe that the APA arrangement is time-consuming and inefficient. The survey result indicates that it is necessary to further simplify the APA application procedures, to promote the convenience and efficiency, and

then to make better use of the APA to prevent and resolve tax disputes.

- It should be noted that the above survey results are based on the opinions of the 43 enterprises which participated in the survey, so it may not fully show the real picture.

2.3 Comparative Analysis of Survey Results of Tax Administrations and Enterprises

Both questionnaires involve 4 issues: benefits of raising tax certainty, areas contributing to tax uncertainty, main drivers of tax uncertainty, and proposed measures to raise tax certainty. The purpose of the survey is to compare and analyze issues related to tax certainty from perspectives of both tax administrations and enterprises. The survey results are now compared in the list below:

2.3.1 The Benefits of Raising Tax Certainty (Sorted by importance from high to low)

Rank	Benefits that enterprises consider the most important	Benefits that tax administrations consider the most important
1	Maintain friendly relationship with taxpayers	Facilitate business / trade / investment
2	Increase/maintain stable level of tax revenue	Reduce illegal behavior, such as corruption
3	Perceived as having a fair tax regime	Maintain consistency in tax enforcement within the jurisdiction
4	Reduce burden of tax administration	Maintain a friendly relationship with taxpayers

2.3.2 The Main Areas Resulting in Tax Uncertainty (Sorted by importance from high to low)

Rank	Areas that enterprises consider the most important	Areas that tax administrations consider the most important
1	VAT/GST refund	Granting tax incentives
2	Anti-avoidance adjustments	Transfer pricing adjustments
3	Transfer pricing adjustments	Allowing for non-taxable or exempt income
4	Granting tax incentives	VAT/GST refund
5	Granting tax treaty benefits	Anti-avoidance adjustments

2.3.3 The Main Drivers of Tax Uncertainty (Sorted by importance from high to low)

Rank	Factors that enterprises consider the most important	Factors that tax administrations consider the most important
1	Insufficient administrative capacities of tax administrations	Insufficient guidance on the intent of the tax law
2	Absence of advance pricing arrangement	Frequent changes in tax laws and regulations
3	Lack of consultation prior to the introduction of tax laws or regulations	Lack of consultation prior to the introduction of tax laws or regulations
4	Absence of advance ruling mechanism	Insufficient administrative capacities of tax administrations
5	Large number of tax policy documents	Aggressive and arbitrary application of tax rules

6	Arbitrariness of tax law enforcement	Lack of coordination between the tax administration and the other government departments in charge of attracting foreign investments
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2.3.4 The Proposed Measures to Improve Tax Certainty (Sorted by importance from high to low)

Rank	Measures that enterprises consider effective	Measures that tax administrations consider effective
1	Strengthen the capacity of tax collection and administration	Publish tax law interpretation/guidance
2	APA	Use digital and websites to enhance communication with taxpayers
3	Advance ruling	Strengthen the capacity of tax collection and administration
4	Announcement of settled tax cases	Engage taxpayers in the consultation/consideration process before implementing new tax regulations
5	Publish English translation of the law	Provide taxpayers with training on new tax laws
6	Engage taxpayers in the consultation/consideration process before implementing new tax regulations	Building the BRITACOM official website into a knowledge-sharing platform to inform investors of the interpretation and application of tax law
7	Use digital tools and websites to enhance communication with taxpayers	Advance ruling mechanism
8	Provide taxpayers with training on new tax laws	Announcement of settled tax cases

Summary: The results translate some of the most relevant conclusions of the surveys. From

the comparison results, we can clearly see that there is a large difference in the understanding of certain issues of tax certainty between the tax administrations and enterprises. This is a significant outcome and relevant actions should be adopted as to align both tax administrations and enterprises on what should be perceived as the relevant actions to be adopted as to improve tax certainty. Further recommendations are addressed in subsequent parts of this report.

Overall, the differences of results refer to:

- The benefits of improving tax certainty:
 - Enterprises mainly view it from the perspective of protecting their legal rights and interests. The majority of the enterprises have chosen the options of “maintain friendly relationship with taxpayers” and “perceived as having a fair taxation regime”.
 - Tax administrations believe that raising tax certainty can effectively help to optimize the business environment and improve administrative efficiency.
- The main areas contributing to tax uncertainty:
 - For enterprises, one of the most important areas contributing to tax uncertainty is “VAT/GST refund”.
 - For tax administrations, the problem is more focused on granting tax incentives with more discretion and transfer pricing adjustments.
- The main drivers of tax uncertainty:
 - From the perspective of enterprises, the main drivers include the insufficient capacities

of tax administrations, absence of relevant mechanisms, and lack of transparency in tax laws and regulations.

- From the perspective of tax administrations, the main driver comes from the instability of policies and regulations itself, which indicates that more should be done in the field of tax legislation and application of tax rules.
 - The different perspectives on tax uncertainty drivers between the two sides will inevitably lead to differences in how to look at and solve problems.
4. The effective measures to raise tax certainty:
- Different understanding of the cause of tax

issues will inevitably lead to differences in understanding of the problem-solving approach, which can be seen in this comparison. The measures recognized by enterprises to improve tax certainty are mainly at the level of system implementation. They tend to ask tax administrations to solve the problems by strengthening its capacity and system, such as introducing APA and advance ruling mechanisms.

- Tax administrations believe that it is more important to strengthen tax law interpretations and use digital tools and websites to enhance communication with taxpayers.

2.4 Suggestions for Raising Tax Certainty

2.4.1 Improving Tax System

In order to better stabilize market expectations and improve law enforcement, BRI jurisdictions are recommended to accelerate the construction and improvement of relevant tax mechanisms, such as APA and advance tax rulings. Furthermore, the enhancement of the capacity of the tax administrations should be perceived as a top priority measure to increase tax certainty.

2.4.2 Simplifying Tax Legislation

Complex tax laws are difficult for taxpayers to understand, which may lead to tax uncertainties. It is necessary to further simplify the requirements, improve the transparency and efficiency of tax regimes and make it easier for taxpayers to understand and apply. BRI jurisdictions are

recommended establishing a more comprehensive implementation guidance system by publishing cases and examples as well as improving the enforcement of tax laws so as to better meet the taxpayers' expectations.

2.4.3 Optimizing Dispute Prevention Mechanism

As tax uncertainty may bring tax disputes, it is necessary to further optimize the dispute prevention mechanism so as to reduce controversy. It is suggested to give better play to the negotiation procedures to reduce tax friction in cross-border trade.

2.4.4 Encouraging Taxpayers to be More Involved in Providing Business Opinions and Suggestions

Tax administrations shall encourage taxpayers to

be more involved in providing business opinions and suggestions. For example, to involve taxpayers, especially those engaged in new business models in policy consultation during tax legislation process; promote the interactions between tax administrations and taxpayers; improve the services of tax administrations. Taxpayers' active involvements in tax administration can help to enhance the tax certainty and improve tax compliance.

Identifying a Set of Measures Conducive to Tax Certainty and Rule of Law

This section identifies a set of measures conducive to tax certainty, which may be helpful to BRI tax administrations in enhancing tax certainty and rule of tax law:

- Tax policy design and tax administration
- Tax legislation
- Tax dispute prevention
- Tax administration capacity building
- Publish interpretation/guidance on tax law
- Advisory Boards, Panels or Committees
- Other measures

3.1 Tax Policy Design and Tax Administration

3.1.1 Sound Policy and Legislation

Tax policy design should be based on principles of equity, efficiency, neutrality, simplicity and transparency.

A common set of administrative and procedural laws that are simple and reliable for different types of taxes should be followed.

The legal framework should provide appropriate balance between the rights of taxpayers and powers of revenue administration, supported by effective dispute settlement procedures (e.g., independent tribunals, courts, or tax ombudsman). This builds the society's trust in revenue administration.

A system of self-assessment is in place, promoting voluntary compliance by taxpayers.

Clarity and stability of law, rules and processes, including minimal discretionary power vested in

revenue administrators, and where discretion is unavoidable should be guaranteed and there should be clear conditions on how discretions will be exercised, subject to internal control reviews.

3.1.2 Extensive Use of Technology

Automated system of internal control checks, risks management, case selection, fraud detection is in place and technology supports the collection of feedback from the public. This removes tax administrators' personal influence, and prevention of unethical and unprofessional behaviors.

3.1.3 Fair Human Resource Policy and Management

Human resource policies and management should ensure merit-based selection, appointment, appraisal, and promotion of tax administrators. This will help improving the quality and professionalism of staff. Salaries should be set at a sufficient and

competitive level compared to the market, reduce incentives for corrupt behavior.

3.1.4 Institutionalized Promotion of Integrity

Staff is regularly trained and supported in a positive manner. This will create a positive organizational culture through an enforced code of conduct and strongly express zero tolerance for low staff integrity.

Tax Certainty calls for a law framework with modernized features reflecting international good practice to better ensure the effective and efficient operation of the tax administration.⁷

The IMF reported that it supports drafting new laws or amendments to existing laws, safeguards to strengthen the governance of tax administration. An example is extracted below:

Examples

• Sri-Lanka

A new *Inland Revenue Act* (IRA) was adopted effective April 1, 2018 with modernized features reflecting international good practice to better ensure the effective and efficient operation of the tax administration. The new IRA contained safeguards to strengthen governance, anti-corruption efforts and taxpayer protection. IT system is also being upgraded for compatibility with the IRA, with e-filing and processing to help reduce discretion and leakage.⁸

• Pakistan⁹

Pakistan has accelerated its tax reform in recent years. The *Roadmap for Stability, Growth and Productive Employment*, released in 2019, makes a five-pronged strategy for tax policies. The government plans to formulate a Medium-Term Tax Policy Framework, which will remove government's reliance on ad hoc annual tax measures hereby instilling greater certainty in the markets about tax policy direction. Moreover, it also intends to improve capacity building of tax administrations by launching tax administration reforms.

7 Page 27, 2019 – Progress report on tax certainty, IMF/OECD 2019 <https://www.oecd.org/tax/tax-policy/imf-oecd-2019-progress-report-on-tax-certainty.pdf>

8 Page 28, 2019 – Progress report on tax certainty, IMF/OECD 2019 <https://www.oecd.org/tax/tax-policy/imf-oecd-2019-progress-report-on-tax-certainty.pdf>

9 <https://baijiahao.baidu.com/s?id=1630837931567069539&wfr=spider&for=pc>

3.2 Tax Legislation Procedure and Tax Legislation Interpretation and Application

A clear and effective tax law system may improve tax certainty substantially and provide a clear legal basis for tax administrations and a stable policy and implementation expectation for taxpayers. A comprehensive tax law system needs to be formed through scientific, democratic and standardized tax legislation. The legislation procedure is an important part to improve the quality of tax law and strengthen tax certainty.

To improve tax certainty, it requires simple and clear rules and regulations that minimize disputes. The development of a robust principle-based tax law design and monitoring framework coupled with various other measures to improve clarity and reduce complexity, including avoiding inappropriate retroactivity, encouraging appropriate mechanisms for consultation on proposed or announced legislation and enhanced guidance.¹⁰ In the area of international taxation, some ongoing developments have helped to increase tax certainty, such as a consistent implementation of BEPS measures through the BEPS Inclusive Framework.

To improve tax certainty and enhance rule of law at an early stage, it is recommended to start from the tax legislation process. BRI jurisdictions can adopt the following measures to enhance tax certainty and rule of law:

- Involve taxpayers in the drafting stage of tax law to ensure the law is viable. This could be achieved in particular through consultation procedures where taxpayers have the

opportunity to provide their opinions before the introduction of new tax legislation or amendments to existing tax legislation

- Enhance the accuracy of tax legislation and avoid ambiguity. To maintain the consistency of tax law in content, form and structure, with scientific logical linkage and high enforceability
- Provide interpretation/guidance on tax law and ensure consistent implementation within tax administration
- Publish guidelines with detailed instructions for compliance and information completion, with frequently asked questions and answers

The participation of taxpayers in the formulation of tax laws will effectively stimulate their confidence and trust in the tax system. Tax administrations shall make it easier for taxpayers to participate in the tax system. For example, jurisdictions may strengthen infrastructure construction (such as establishing a sound online system) to facilitate taxpayers' participation in tax law consultation where taxpayers have the opportunity to provide comments before the enactment of new legislation.

Furthermore, it is worth noting that inconsistent tax law interpretation or tax practices at different levels or locations within tax administration are ranked to be the main driver of non-compliance with the rule of law in BRI jurisdictions.

To tackle tax uncertainty, tax administrations at all levels shall interpret or apply the law in a manner

¹⁰ <https://taxinsights.ey.com/archive/archive-articles/imf-oecd-deliver-report-addressing-tax-certainty.aspx>

consistent with the wording or spirit of the law and consistently apply their published guidelines. This will require legislators to communicate the intent of the law and disseminate this to all levels of tax administrations and the public by way of education, press conference, and modern communication channels and platforms. In addition, a centralized administration is an alternative that may also be considered in order to ensure the consistent interpretation and application of tax legislation.

Examples

• Kazakhstan

The tax legislation process of Kazakhstan: First, the Ministry of National Economy of Kazakhstan proposes tax law revision proposals at the government meeting and drafts amendments to the tax law. During this period, relevant government departments, industry associations and experts will be consulted. After that, the draft amendments will be posted on the official website to solicit opinions and suggestions from the public. And then, the lower house and upper house of the Kazakhstan Parliament vote on the draft amendments to the tax law. After the vote is passed, the president signs a decree and the law will be formally implemented.

• China

China has made remarkable progress on tax legislation in recent years. The government has set *Environmental Protection Tax Law* (entered into force on 1 January 2018), *Tobacco Tax Law* (entered into force on 1 July 2018), *Vessel Tonnage Tax Law* (entered into force on 1 July 2018),

Farmland Occupation Tax Law (entered into force on 1 September 2019), *Vehicle Purchase Tax Law* (entered into force on 1 July 2019), *Resources Tax Law* (entered into force on 1 September 2020), *Urban Maintenance and Construction Tax Law* (will enter into force on September 1, 2021), *Deed Tax Law* (will enter into force on September 1, 2021), *Stamp Tax Law* (will enter into force on July 1, 2022) and also made amendments to existing laws of Corporate Income Tax, Individual Income Tax as well as Vehicle and Vessel Tax. The scientific and democratic tax legislation can improve quality of the tax law, gradually build a completed tax law system, and increase tax certainty.

In November 2019, the State Taxation Administration (STA) released the revised *Administrative Measures for the Stipulation of Tax-related Regulatory Circulars (Revised Measures)*. The *Revised Measures* took effect from 1 January 2020. It stipulates that, the government should actively involve enterprises and industrial associations in the consultation and consideration process before implementing new tax laws and regulations. At the same time, it should further strengthen the review of the legality of tax regulatory documents, assessment of the WTO compliance of the relevant regime, so as to promote a fair and orderly market environment.

• Macao SAR, China

Macao SAR, China has adopted regulations on public consultation of legislation¹¹. The purpose of those regulations is to promote the participation of the population in general and fully take into account

11 Order of the Chief of Executive no. 24/2011.

their opinion. The targets for the public consultation are the population in general, associations, consultation bodies, and professional bodies etc. The consultation refers to any legislation including relevant tax legislation and it should occur within a period no less than 30 days. The consultation may adopt several forms notably clarification sessions, colloquia, seminars, brochures, internet, multimedia and any other forms that promote the participation of the public.

The entity promoting the consultation – in case of taxation the Financial Services Bureau—should prepare a final report of the public consultation with a summary of the opinions collected, the questions raised during the consultation as well as the answers and explanations to the key issues raised.

• Myanmar

On 7 June 2019, the Union Parliament of Myanmar enacted the *Tax Administration Law* (TAL), which entered into force on 1 October 2019. The TAL covers detailed administrative matters concerning

the anti-tax avoidance, public rulings and advance rulings, keeping and maintaining accounting books and vouchers, tax filing, etc¹².

• Zambia

In April 2018, Zambia Revenue Authority published its *Transfer Pricing Practice Note 02/2018* to supplement its existing legislation and regulation. The new Regulations provide rules on a wide range of transfer pricing issues such as the use of the most appropriate transfer pricing method and specifying the documentation taxpayers must maintain to demonstrate their transfer pricing complies with the law. The *Practice Note* sets out the Commissioner-General's interpretation of Zambia's transfer pricing rules and describes the changes introduced through the *Income Tax (Transfer Pricing) (Amendment) Regulations, Statutory Instrument No. 24 of 2018*.¹³

These regulations are helping governments to better protect their tax bases in ways which accord with international tax norms.

3.3 Tax Dispute Prevention

An effective mechanism of tax dispute prevention and resolution plays a vital role in enhancing tax certainty. Tax administrations are encouraged to establish binding and effective dispute prevention and resolution mechanisms. A robust dispute prevention mechanism can help to improve tax certainty and predictability and reduce the potential

disputes up front. Even under the rule of law system, some loopholes and omissions at the micro institutional level can easily raise uncertainty at the macro level. Therefore, it is important to accelerate the improvement of the dispute prevention mechanism in BRI jurisdictions. An effective dispute prevention mechanism would reduce

¹² <https://www.yidaiyilu.gov.cn/wcm.files/upload/CMSydy/gw/202002/202002041152059.pdf>

¹³ <https://www.ataftax.org/zambia-provides-greater-transfer-pricing-certainty-for-its-taxpayers>

burden and cost for both tax administration and taxpayer.

- Advance ruling mechanism
- Advance pricing arrangement (APA)
- International Compliance Assurance Programme (ICAP) - The ICAP is a voluntary program for a multilateral co-operative risk assessment and assurance process. It aims to provide MNEs willing to engage actively, openly and in a fully transparent manner with increased tax certainty with respect to certain of their activities and transactions but does not provide a multinational group with legal certainty as may be achieved, for example, through an APA.¹⁴

For further details, please refer to the BRITACOM interim report on Expediting Tax Dispute Resolution.

3.3.1 Advance Ruling

The lack of effective dispute resolution mechanism (especially an advance resolution procedure) is one of the major sources for tax uncertainty. Nowadays, many tax administrations grant advance rulings, such as public rulings and private rulings. Public rulings are binding advice. They express the interpretation of laws that tax administrations administer. A private ruling is an expression of the Commissioner's opinion of the way in which a relevant provision applies to a taxpayer in relation to a specified scheme. By doing so, a written interpretation or authoritative decision

is issued to taxpayers who request clarification of tax consequences. An advance ruling mechanism, which can reduce the likelihood of tax disputes in the first place, will be a useful tool for achieving tax certainty.

Examples

• Italy – Advance Tax Agreements¹⁵

Italy has a system of Advance Tax agreements which are binding agreements between taxpayers and the Italian Revenue Agency aimed at enhancing tax compliance and promoting the business of multinational enterprises by giving them certainty on international tax issues in advance.

An advance tax agreement may be requested by resident companies engaged in certain international activities. Also, non-resident enterprises may request an advance tax agreement if they conduct or wish to conduct their business in Italy through a permanent establishment.

Enterprises with international activities wishing to reach a prior settlement and a shared evaluation with the Italian Revenue Agency, may request for an advance tax agreement in order to:

- define the most appropriate transfer pricing methods and criteria applicable to the transactions carried out with related parties, according to Article 9 of *OECD Model tax convention*;
- determine the entry or exit value of assets when the entity transfers its residence in or out of Italy;

14 <https://www.oecd.org/tax/administration/international-compliance-assurance-programme.htm>

15 <https://www.agenziaentrate.gov.it/portale/web/english/nse/invest-in-italy/advance-tax-agreements>

- in case a non-resident company starts a new business in Italy, verify through prior assessment whether the conditions for permanent establishment to exist in Italy are met, before the business starts;
- define the tax law provisions, including double taxation treaties provisions applicable to cross-border items, among which the tax treatment of income (such as dividends, interests, royalties or other income items) paid to/received from non-resident companies;
- determine the attribution of profits to a permanent establishment in Italy of a non-resident company or to a permanent establishment in another State of a resident company, according to the international standard recommended.

The agreement signed by the taxpayer and the Tax Administration remains in force for five years starting from the fiscal year in which it is signed, provided that the circumstances – specifically, the critical assumptions – under which the agreement was signed remain unchanged.

In case of bi/multilateral APAs, the validity period can start from the date of the application filing, consistently with the mutual agreement concluded with the treaty partner(s) under Article 25 of the Model tax convention.

• Portugal – Advance ruling system

Portugal has an advance ruling system, under which taxpayers could submit advance ruling request

electronically and proceed according to the official model. The position reflected in the ruling and applicable to the specific situation described by the taxpayer is binding before the Portuguese Tax and Custom Authority unless there is a judicial decision stating otherwise.

• Singapore – Advance ruling system for income tax¹⁶

IRAS has introduced an advance ruling that is a written interpretation of the *Income Tax Act* on how certain issues that arise from a proposed arrangement are to be treated for tax purposes. A ruling request can be raised when there are issues that require interpretation of the law and not one seeking to know what the law clearly indicates.

• Sweden – binding advance tax rulings¹⁷

There are two types of advance rulings in Sweden:

1. Formal rulings issued by the Swedish Council for Advance Tax Rulings
2. “Informal” rulings issued by the Swedish Tax Agency

Formal rulings

Formal rulings are issued by the Swedish Council for Advance Tax Rulings which is its own government authority separate from the Swedish Tax Agency (STA). Rulings issued by the council may be appealed directly to the Supreme Administrative Court both by the applicant and the STA.

Formal rulings may be issued where a ruling is of

¹⁶ <https://www.iras.gov.sg/irashome/Businesses/Companies/Working-out-Corporate-Income-Taxes/Specific-topics/Advance-Ruling-System-for-Income-Tax/>

¹⁷ https://www.business-sweden.se/globalassets/invest-new/reports-and-documents/establishment-guides/corporate-tax-in-sweden_march_2019.pdf

importance for the taxpayer or for the uniform application of the law. Rulings are only issued regarding questions of law, i.e. not regarding questions of evidence, valuation issues etc. It is also required that the relevant fact pattern is made completely clear to the board. (These requirements are normally not fulfilled with regard to transfer pricing issues. Therefore, formal rulings are generally not issued with respect to such issues.)

Formal rulings are binding for the STA if the taxpayer invokes the ruling when filing the annual tax return. Typically, the rulings are valid for a certain amount of years provided that the relevant rules are not changed by the legislator.

In terms of timing, it generally takes approximately six months to get a ruling from the council and an additional six months to get a decision from the Supreme Administrative Court if the ruling is appealed.

Informal rulings

“Informal rulings” (letter rulings) issued by the STA are not formally binding. The informal rulings are in practice followed by the STA. It has also been communicated by representatives of the STA that taxpayers should be able to rely on informal rulings. Moreover, the STA is generally positive to issuing “rulings” as a way of working together with taxpayers in a transparent manner.

As there are no procedural rules regarding informal rulings, it is in practice up to the STA to determine whether or not it is appropriate to issue a ruling. The STA is typically more flexible than Council

for Advance Tax Rulings/Supreme Administrative Court and may therefore issue informal rulings in situations where it would not be possible to obtain a formal one. (Nevertheless, it is very unusual that taxpayers apply for informal rulings regarding transfer pricing matters. The approach of the STA would generally be to recommend an APA.)

An informal ruling would normally be valid for a specified amount of years and would not be (informally) binding in case there are legislative changes to the rules upon which the ruling is based. It is typically possible to receive an informal ruling with 4-8 weeks.

Informal rulings may – as opposed to formal rulings – be sought without disclosing the identity of the taxpayer. Such rulings may potentially be weaker in terms of their (informally) binding nature but could still be very valuable as they communicate the STA's view – supported by senior officials – with respect to a certain fact pattern.

• The Netherlands¹⁸

Netherlands Tax and Customs Administration under the Ministry of Finance offers Advance Tax Ruling, which provides taxpayers with certainty in advance on the tax implications of a planned transaction or combination of transactions in an international context. It concerns the application of Dutch tax laws and regulations in a specific situation for a specific organization or company. A new ruling policy involving a number of amendments is implemented from 1 July 2019.

On 19 June 2019, a decree is published regarding

¹⁸ https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/standaard_funcies/individuals/contact/your_rights_and_obligations/prior_consultation_ruling/
<https://taxinsights.ey.com/archive/archive-news/the-netherlands-announces-new-tax-ruling-policy.aspx>

certainty in advance for activities with an international character. This decree replaces the decrees of June 2014, nrs. DGB2014/3098, DGB 2014/3099 and DGB 2014/3101

The June 2019 decree is limited to rulings of an international nature which relate to the application of the *Corporate Income Tax Act 1969* (CITA), the *Dividend Withholding Tax Act 1965* (DWHT) and the application of bilateral tax treaties.

The June 2019 decree can provide certainty in advance for the following aspects:

- the application of the participation exemption on income from participations in entities not resident in the Netherlands;
- the qualification of hybrid forms of financing or hybrid legal forms in international structures;
- the application of Articles 23e and 13ab Wet VPB (determination profit in case of CFC);
- the question whether or not there is a permanent establishment in the Netherlands or in the BES islands (these Islands are part of Kingdom of the Netherlands);
- the question whether or not an entity resident in the Netherlands has a permanent establishment in another jurisdiction;
- the purposes of Article 17, paragraph, part b, Wet VPB (substantial interest control);
- the question whether or not there is a permanent establishment on the BES islands of an entity resident in Aruba, Curaçao or Sint Maarten;
- the question whether there is a Dutch company as defined in Article 17a Wet VPB;
- the application of Article 1, seventh and eighth paragraph, DWHT;
- the application of article 4, the second, third, fourth, ninth, tenth and twelfth paragraph, DWHT;
- the application of an anti-abuse provision in a Tax Treaty with respect to treaty benefits relative to dividends, interest and royalties to the beneficial owner; these anti-abuse measures are referred to as a so-called "principal purpose test" and the so- called "main-purpose test";
- the allocation of assets (including shares) or risks to a permanent establishment;
- the closing of an APA (treatment of an APA request is based upon par 4.134 – 4.176 OECD TP Guidelines). An APA provides certainty in advance regarding the determination of reward/ the methodology to determine that reward (an arm's length remuneration) for cross-border transactions between related entities and profit allocation to permanent establishments;
- the question whether the subject entities are related parties within the meaning of Article 8b, first or second paragraph, CITA; and
- the question whether the activity is an intra group service or a shareholder activity as referred to in paragraph 6 of the Transfer Pricing Decree of April 2018

Taxpayers will not be able to obtain a tax ruling in case:

- There is not sufficient economic nexus with the Netherlands;
- The sole or decisive reason for the structure/ transactions is to avoid Dutch or foreign taxes (tax savings); or
- The transaction involves a non-cooperative or low-tax jurisdiction.

In order to obtain advance certainty, the Dutch taxpayer must have sufficient relevant operational activities taking place in the Netherlands (at group level), which are performed for its own risk and account. The activities must match the function of the company within the group.

International tax rulings will in principle be allowed for max 5 years. In exceptional cases this period can be extended to max 10 years (with interim review after 5 years). There will be a fixed format for international tax rulings.

Potential Foreign investors

The tax administration has a point of contact for potential foreign investors which can enter into agreements regarding tax consequences of potential investments in the Netherlands by these foreign investors. These agreements can regard the application of the *Income Tax Act*, *Corporate Income Tax Act*, *Wages Tax*, *Dividend Withholding Tax*, *Sales Tax*. A potential investor should meet following requirements:

investor intends to make a first substantial (physical) investment in the Netherlands;

central management of investor/group is not located in the Netherlands;

investor has not yet performed any activities in the Netherlands which go beyond auxiliary activities.

• South Africa – Binding private ruling and binding class ruling¹⁹

The Advance Tax Ruling system in South Africa seeks to promote clarity, consistency and certainty about the interpretation and application of applicable tax laws. Clarity and certainty on the Commissioner's interpretation and application of tax laws about proposed transactions can be obtained.

For further details, please refer to the BRITACOM interim report on Expediting Tax Dispute Resolution.

• Uruguay - Rulings

Uruguay also has a ruling system in place as provided in the Uruguayan Tax Code. In accordance, a taxpayer may submit a request in writing with the Tax Administration concerning the application of the law to a real and current factual situation. The Administration is bound to apply in regard to the taxpayer the technical approach provided in the tax ruling (binding effect). A change of approach by the Administration must be notified to the taxpayer and has effects from the notification onwards. The mechanism of tax ruling meets the rule of law and the principle of legal certainty in tax matters as the taxpayer, before being audited, may know the interpretation of the Tax Administration regarding the taxation of the activity carried out and which taxes apply and the Tax Administration is bound by the ruling.

19 <http://www.sars.gov.za/Legal/Interpretation-Rulings/Pages/Advance-Tax-Rulings-ATR.aspx>

3.3.2 Advance Pricing Agreement

An APA is an agreement reached on the basis of voluntariness, equality and mutual trust between tax authorities and enterprises. It is a service provided by tax authorities as an effective way, between tax authorities and enterprises, to enhance understanding, strengthen cooperation and reduce confrontation. In particular, it provides certainty for transfer pricing issues of enterprises in future years, so as to increase certainty for enterprises' operation and tax obligation, and also provide stable revenue expectations for tax authorities.

APA can improve tax certainty for taxpayers and tax administrations. By implementing an APA, the taxpayer and the tax administration can reach an agreement in advance on the transfer pricing methods and corresponding calculation methods, which to be applied to the taxpayer's related party transactions for a fixed period of time. An APA may be categorized as unilateral, bilateral or multilateral based on the number of competent authorities involved in the APA.

The successful conclusion of bilateral or multilateral APA can enhance the level of certainty and effectively reduce the possibility of double taxation among tax jurisdictions. BRI jurisdictions are encouraged to launch the APA program, provide detailed rules and implementation guidance and promote the agreement of APAs to increase tax certainty for taxpayers.

Examples

• Kazakhstan²⁰

The *Transfer Pricing (TP) Law* of the Republic of Kazakhstan was promulgated and implemented in 2009, providing regulations for APA. The main purpose of the *Transfer Pricing Law* is to administrate the transactions among affiliated companies. In the *Transfer Pricing Law*, many detailed regulations for TP administration are increased; the contents on the use the transfer price agreement in Kazakhstan are supplemented. The Transfer pricing mechanism of Kazakhstan adopts the arm's length principle.

According to the *Transfer Pricing Law*, the APA is valid for three years from the date of signing. From a perspective of regulation, there is sufficient legal basis for the implementation of APA in Kazakhstan. However, the actual use of APA by Kazakh taxpayers is not much and there are only a few APAs in practice.

• China

China began using APAs on a trial basis in the late 1990s. Generally, access to APA is available to enterprises with annual related party transaction amount exceeding RMB 40 million for the three years prior to the year in which the Notice on Tax Matters is issued by the in-charge tax administration(s) notifying the acceptance of enterprise's intent for the APA. APA process involves the following six stages: pre-filing meeting, letter of intent, analysis and evaluation, formal application, negotiation and signing, and implementation and monitoring. The procedure is

20 <https://www.oecd.org/tax/dispute/Kazakhstan-Dispute-Resolution-Profile.pdf>

regulated by *Public Notice of the STA on Matters Regarding Enhancing the Administration of Advance Pricing Arrangements (Public Notice of the STA [2016]No. 64)* and *Public Notice of the STA on Issuing the Administrative Measures for Special Tax Adjustment and Investigation and Mutual Agreement Procedures (Public Notice of the STA [2017]No. 6)*.

• Korea

A taxpayer, requesting an APA for the cross-border related party transactions, must apply for the unilateral APA to the NTS by the end of the first taxable year for which the unilateral APA is being sought. Once the arm's length pricing method is agreed, it is binding on both NTS and taxpayer. Unilateral APA can be rolled back three years (previously no rollback allowed under Unilateral APA). The taxpayer has the right to withdraw or modify the request for an APA at any time prior to obtaining the NTS' final approval. APA requests are completely confidential, and the data submitted to the NTS may only be used for reviewing APA requests. In the event that the application is rejected or withdrawn, all submitted data is returned to the taxpayer without further consequence to protect privacy. Once the APA is approved, taxpayers should file annual compliance report, which demonstrates related party pricing is set based on the TP method determined by the APA. The report is required to be completed with six months after the tax filing due date. APA applicants can request the NTS to initiate mutual agreement procedures (bilateral APA) with the counter party's competent tax authority. NTS also allows APA without completing the mutual agreement procedures. Once the APA is finalized,

the taxpayer is required to submit revised tax filing reflecting changes between the inter-company pricing and APA agreed pricing.

• Indonesia

APA management is the review, assessment, negotiation and conclusion work conducted by the Indonesian tax administrations according to the tax regulation, with respect to the pricing principles and calculation method proposed by the taxpayers of the related party transactions in future years. It is available for the taxpayers who have significant amount of related party transactions. APA will not prevent the transfer pricing audit of the tax administrations according to other current laws and regulations. If the APA is applied to the transactions between the taxpayer and its domestic related party, an adjustment can be applied to the other domestic taxpayer. If a double taxation is caused by the APA, the taxpayer can submit a written application of Mutual Agreement Procedure (MAP) to the Director General of Tax (DGT).

• Russia

Chapter 14.6 of the *Russia Tax Code* sets out the regulations for APA. The Russian legal entities who meet the "large taxpayer" criteria under the Article 83 can submit the APA application to tax administrations. APA is an agreement governing the pricing method and the applicable procedure relating to the controlled transactions within the effective period, which is signed between taxpayers and tax administrations as so to comply with the Provision 1 of Article 105.3 under the Tax Code. For an APA concluding or review application, the taxpayer needs

to pay a RUB 2 million government fee (e.g. service fee according to Article 333.33 (1-133) of the Tax Code).

• Belgium

Taxpayers that wish to obtain certainty in advance and avoid potential transfer pricing disputes may obtain APAs. Unilateral APAs can be obtained from the Belgian Service for Advance Decisions (Ruling Commission), which is a dedicated central and autonomous service within the Federal Ministry of Finance and independent from the Belgian Tax Authority (BTA).

Unilateral APAs in transfer pricing matters deal with the arm's-length character of a given price or remuneration based on the functions performed; the risks assumed; and the assets used.

APAs typically require a transfer pricing study that includes a functional analysis, a description of the methods used and a comparability analysis. Under certain circumstances, a limited transfer pricing report can suffice. The Ruling Commission generally has a cooperative attitude towards the taxpayer. Bilateral or multilateral APAs can be obtained through the Department of International Conventions.

Unilateral, bilateral or multilateral APAs may cover any (interpretative) issues regarding transfer pricing or the attribution of profits to permanent establishments. In this way, all transactions and entities subject to transfer pricing rules can be covered by APAs.

In general, APAs in Belgium are valid for a maximum of five years and the filing of a unilateral, bilateral or multilateral APA is free of charge in Belgium.

• Hong Kong SAR, China²¹

Any Hong Kong, China resident person or a non-resident person with a permanent establishment in Hong Kong, China, chargeable to profits tax and having controlled transactions, may apply for an APA. A person can request for an APA by submitting a request for APA early engagement (APA request). An APA request together with a draft APA case plan should be made at least 6 months prior to the proposed commencement date of the APA request. Generally, preliminary discussions should commence at least 5 months prior to the anticipated commencement date for the APA.

The basic features of the APA are as follows:

- establishes the transfer pricing methodology;
- covers a period of three to five years;
- and requires annual reporting.

• Singapore

The APA in Singapore refers to a dispute prevention mechanism established based on the mutual agreement procedure as prescribed in the treaties or arrangements concluded by Singapore and its domestic law. APA is an increasingly popular approach for taxpayers in Singapore to proactively reduce tax uncertainty for their inter-company transactions, especially if they assess their transfer pricing risk as high. Due to the relatively low tax rate, many companies have structured their operations in Singapore such that profits would flow to Singapore. In Singapore, there are three categories of APAs: unilateral APAs, bilateral APAs, and multilateral APAs. Bilateral APAs have been used in such instances to protect income in Singapore. Through APA, the company would be able to gain

21 https://www.ird.gov.hk/eng/tax/dta_apa.htm

certainty over the uncertainty that exists in transfer pricing.²²

Enterprises' application for APA shall be submitted to Singapore and/or relevant foreign tax administrations for approval. The application process includes APA preliminary meeting, formal application, approval and negotiation, and implementation. If an enterprise has the intention to sign an APA, the enterprise or its agent shall apply to the Inland Revenue Authority of Singapore (IRAS) for a preliminary meeting no less than 9 months before the date when APA applies. When applying for a preliminary meeting, the enterprise or its agent should make a brief explanation. If the IRAS and the enterprise reach an agreement during the preliminary meeting and intend to accept the application for APA, they should notify the enterprise of the specific arrangements for the formal application and the materials to be prepared no less than 4 months before the date when APA applies.

After receiving the formal application notice from the IRAS, the enterprise should submit an official application to the IRAS with an electronic copy and three paper copies of the information within 3 months. Late submission may result in the rejection of the APA application. The application materials submitted shall include the applicable annual financial forecast of related party transactions, the taxpayer's ultimate holding company, direct parent company as well as related party's tax jurisdiction, name, address and tax number of the related party. In addition, taxpayers are required to provide their transfer pricing methods and detailed analysis, detailed description of related parties, related

transactions and applicable years. Taxpayers should provide additional relevant information requested by the IRAS.

If the APA application is accepted, the IRAS should issue an acceptance notice to the taxpayer and the foreign tax administration. If APA application is rejected, the taxpayer will be notified in writing with the rejection reason. After accepting the application, IRAS will initiate an APA discussion with the relevant foreign tax administration and clarify its position. During this period, the IRAS may require taxpayers to provide more detailed information (such as financial data of branches) and meet with taxpayers at their companies to conduct on-site interviews and investigation with key personnel.

After the IRAS has reached an agreement with the relevant foreign tax administration, the IRAS should discuss the specific implementation details of the agreement with the taxpayer within one month from the date of the agreement being reached, and the enterprise will decide whether to accept the agreement. After the APA agreement becomes effective, the enterprise should follow the terms of the APA in the applicable year, and the IRAS will not audit the transfer price. However, the enterprise must submit tax compliance reports together with their income tax returns each year as a proof of their compliance with the terms of the APA.

Once an APA is reached, it would:

- provide greater certainty on the tax liability;
- ensure a fair application of the arm's length principle;
- reduce the risk of double taxation; and
- avoid the risk of audits and penalties.

22 <https://www.internationaltaxreview.com/article/b1f9jxlm2pj78/singapore-transfer-pricing-in-singapore-a-review-and-update>

3.4 Tax Administration Capacity Building

Building capacity and providing training in key tax system components – tax policy, revenue administration, and legal design and drafting of tax legislation is central to the tax certainty agenda. International institutions like the IMF, OECD and other institutions have been supporting many tax tools and training initiatives.²³ This is also the role played by the existing and future Belt and Road Initiative Tax Academies (BRITA).

Improving the capacity of tax collection and administration may not only regulate the discretionary behaviors in tax enforcement, but also improve the standardization and transparency of tax enforcement. Moreover, it can also improve the consistence and predictability of tax policy application and minimize the uncertainty as well as contribute to dispute prevention and resolution. Therefore, it is a key factor and it can be perceived as the single most important factor in improving tax certainty. On the other hand, a transparent, efficient, stable and predictable tax cooperation mechanism and a growth- friendly tax environment can be built through cooperation and experience sharing. The following measures can be taken to increase tax certainty and enhance rule of law:

- Securing the right skill, right resource with competitive compensation and feedback system to support the tax administration;
- Using digital tools and website to disseminate information and enable interactive communication/information;
- Provide tax administrators with clear guidance

and instructions on domestic and international tax rules;

- Provide taxpayers with regular training programs when new tax laws take effect so as to ensure that taxpayers are well-attuned to the new tax environment.
- Provide clear guidelines of collection and administration to enhance predictability for taxpayers and reduce tax compliance costs of taxpayers.

Please refer to the BRITACOM interim report on Capacity Building for more details.

Examples

• Singapore

The official website of IRAS provides a range of options for taxpayers with various tax matters and situations. Taxpayers can decide by themselves²⁴.

• China

In 2019, the STA issued a new *Procedural Guidance of Tax Collection and Administration* (*Procedural Guidance*) to regulate tax collection, solve the difficulties of taxpayers, reduce the cost of tax compliance and improve the efficiency of administration.

The new *Procedural Guidance* comprehensively revised the rules for tax collection and administration that were previously enforced by the original state tax administrations and local tax administrations. It standardizes the unified

23 <https://www.oecd.org/ctp/g20-report-on-tax-certainty.htm>

24 <https://www.iras.gov.sg/irashome/default.aspx>

collection and payment of taxes, social security premiums, and non-tax revenues throughout the country so as to bring maximum convenience to taxpayers and to regulate tax authorities with the most comprehensive specifications.

The *Procedural Guidance* also focuses on deepening the reform of “delegating power, streamlining administration and optimizing government services” and easing business environment. It optimizes business process and simplifies required documents for enterprises to submit by clarifying rights and responsibilities, making full use of information sharing and reasonably dividing business types. The *Procedural Guidance* streamlines the homogenized process and reduces more than 50% of business items comparing to that of the original process. By streamlining administration and delegating power, materials and documents for submission are reduced by 48%. Modern information technology simplifies and reduces the materials and documents for submission by another 26%.

In the *Procedural Guidance*, tax collection and administration matters are categorized by subjects and nature: matters that can be self-handled, general matters of tax administration, matters of tax credit and risk prevention and control, and matters of legal liability and remedies, improving the efficiency of tax collection and administration and guarantee the legitimate rights and interests of taxpayers.

According to the *Procedural Guidance*, in respect of dynamic credit monitoring and administration, more and better value-added services will be provided to taxpayers with high credit ratings, and more inspections will be carried out for taxpayers with low credit ratings. In addition, matters related

to the reform of Individual Income Tax, deepening of the VAT reform, and various latest tax reduction policies, as well as reform measures for streamlining administration, delegating power, strengthening regulation, and improving services are also followed up in the *Procedural Guidance* and will be continuously updated and amended.

To establish a tax knowledge base of tax advisory service hotline(s), the content of the knowledge base includes tax regulations, question answering, tax process, special business, forms and certificates, etc. It covers tax laws, regulations, rules, and regulatory documents as well as relevant tax knowledge, which can help front-line tax officials find the basis expediently and provide counseling more accurately when answer the consultation from taxpayers. It also helps tax officials from different regions and different departments to make a consistent interpretation of the same tax business, thereby improving tax certainty.

During the COVID-19 pandemic, the preferential tax policies and fee incentives were quickly launched from Chinese tax administrations to support epidemic control and economy development. In order to improve the effectiveness of policy implementation, a task mechanism for implement tax and fee incentives had been established. Regular meetings had been held to analyze, study and solve problems encountered in the implementation of policies. In the meantime, a precise notification mechanism for the preferential tax policies and fee incentives and a risk analysis mechanism have also been established. Utilize tax big data to profile taxpayers accurately, deliver notification of the implement tax and fee incentives information in a

targeted manner, screen two types of issues: "miss to take" and "mistaken" to ensure the implement tax

and deliver preferential tax policies accurately and directly.

3.5 Interpretation/Guidance on Tax Law

As suggested by respondents, both tax officials and taxpayers should be provided with clear and simple administrative guidance to follow for a particular subject matter.

The tax law system is relatively complex in many countries. The important role of tax law interpretation is determined by professionals of tax policy. Comprehensive, authoritative and effective tax law interpretation is an important measure to enhance tax certainty. Firstly, effective interpretation can help taxpayers accurately understand tax provisions, precisely apply tax policies and anticipate legal consequences of tax-related behaviors. Secondly, effective interpretation can also help improve tax certainty,

enhance satisfaction of taxpayers, and build a harmonious relationship between tax administrations and taxpayers. Thirdly, effective interpretation of tax law enables tax administrations to correctly and uniformly implement tax laws, ensure lawful and standardized law enforcement, achieve goals of tax policies, and enable the functions of taxation.

According to survey results, measures that are taken by relevant countries and regions in tax law interpretation for improving tax certainty include: 1) Issuing tax policy guidelines to facilitate taxpayers' understanding; 2) Interpret tax policies and strengthen communication with taxpayers by

digital and cyber. The key measures for taxpayers to understand tax laws and regulations include official publicity and interpretation. Meanwhile, alongside with extensive publicity through multiple channels, level of professional knowledge and preference of stakeholders should also be considered. Targeted content and methods should be adopted to enhance effective communication and help relevant parties to improve their understanding and application of tax laws.

Examples

• Kazakhstan

The State Revenues Committee of the Ministry of Finance of the Republic of Kazakhstan has released the revised tax law and its interpretation on its official website and tax filing platform, and opened a hotline to answer public questions³⁵.

• China

Tax policy guidelines in accordance to different types of taxpayers or industry sectors were released. Those existing policies, regulations and procedural requirements were accurately classified, summarized and released to help taxpayers understand and comply with applicable tax policies according to their own conditions and needs and ultimately improve the transparency of tax policies. At the same time, with the assistance of the Secretariat, relevant guidelines will be published and updated

on the official website of the BRITACOM.

Tax policies and policy interpretations are implemented in synchronization. That is, they are proposed, submitted for approval, and released simultaneously. The background, contents, and key points of tax policies are interpreted in detail to help taxpayers and tax administrations apply tax laws.

Tax policies are interpreted via video conferences, taxation lectures, etc. The STA shall provide unified interpretation to the newly issued tax policies, focusing on the hot and difficult topics reported by local tax administrations and taxpayers, standardize tax law enforcement, and enhance the certainty of tax policies.

• Portugal

The Portuguese Tax and Customs authorities publishes circulars and general orientations from the

tax administration or orders issued by the Secretary of State of Tax Affairs or a Director General of Taxes concerning interpretation issues on the Portuguese tax law. These sources are available for public consultation in the website of the Portuguese Tax and Customs authorities.

• Romania

Romania implements a cooperative compliance program for high-net-worth individuals, aiming to improve the tax certainty of such people in a valuable and efficient manner and help them volunteer to comply with tax laws. Each high-net-worth individual (with assets of more than 2.5 million euros) has a particular tax officer to provide customized services and relevant publicity and counseling on its tax-related issues to ensure the taxpayer better understand and apply the tax laws.

3.6 Advisory Boards, Panels or Committees

Several jurisdictions have established panels, advisory boards or committees that aim at safeguarding the consistency, uniformity and expertise in the application of relevant legislation, particularly the case of *General Anti-Avoidance Rules* (GAARs) and other anti-avoidance measures of general nature and scope.

One of the most challenging topics in modern tax systems refer to the application and interpretation of GAARs. GAARs lead to a tension between the fundamental goals of tax certainty (and the restraint to discretion) and increasing tax revenue.

GAARs are aimed at addressing tax avoidance

practices. However, it is difficult to delineate practices within the scope of a GAAR. That is why they are drafted to operate on a general basis, but not aimed at excluding eventual taxable events. Therefore, guidance, rulings and a certain degree of uniformity is desirable upon the application of the GAAR.

Examples²⁵:**• Chile**

Chile has a consultative anti-avoidance committee within its tax administration that advises, issues recommendations and establishes guidelines on the application of the GAAR. This committee is composed by the National Director and some high rank tax officials

• China

A panel also exists in China for controlling the application of GAARs, and normally a consensus

from panel must be reached when settling GAARs cases. Through this way, the risk of lowering tax certainty from abusing GAARs can be reduced.

• Poland

Poland has a Council for Tax Avoidance Matters which is a specialized body composed of representatives from the tax office, taxpayers, and academia and which issues non-binding opinions on the interpretation and application of the GAAR for both tax administration and taxpayers.

3.7 Other Measures

There are some other measures for enhancing tax certainty and rule of law.

Taxpayers and professional tax agencies are provided with a “one-stop” online service platform which integrates consultation, query, publicity and counseling, tax services, complaints, etc. into a single system. Communication channels and scope between tax administrations and taxpayers are expanded through 7*24 real-time services and customized self-service, which is beneficial for communication and information transmission.

For instance, the BRITACOM official website was built into a knowledge-sharing platform to inform investors of the interpretation and application of tax laws. It will then become a global online tool designed to promote the sharing of tax knowledge

and expertise, and to connect experts in all aspects of tax administration.

The knowledge-sharing platform can help to:

- create connections with tax administrations from around the world who share common interests;
- broaden access to reference and training material regardless of geographical location; and
- share their practices and knowledge with all tax administrations.²⁶

25 International Fiscal Association General Report (2018), Cahiers de DroitFiscal International, pp. 38–39

26 <https://www.iota-tax.org/news/iota-encourages-its-members-join-knowledge-sharing-platform-tax-administrations>

Examples

• Singapore

A new version of the My-tax website was launched in early 2017. The website has different login channels for individuals, businesses and agencies. After logging in, users can see the account status and handle tax-related matters such as declaration, tax payment, consultation, etc. With the continuous optimization of the tax service platform, taxpayers' satisfaction with the electronic tax services increased from 35.4% in 2015 to 89.1% in 2018²⁷.

• China

The 12366 tax service platform was newly upgraded and integrated with service resources in 2019. The hotlines, networks, and mobile channels are interconnected to expand service channels. It is now available on most major network platforms and its mini apps connecting to WeChat, Alipay, and Baidu, and 12366 smart consulting has also been launched to improve service coverage. The Platform extended services and integrated tax consulting, tax law publicity, tax services, and rights protection to provide comprehensive services for taxpayers.

The tax service platform uses big data, cloud computing and other technologies to provide taxpayers with intelligent robot interaction. Users can access one-account tracing, intelligent push of personalized content, online training and other services²⁸.

• Turkey

The official website of the Turkish Tax Administration has various quick access modules such as "Interactive Tax Advisor" and "Tutorial". In the "Interactive Tax Advisor" module, assessment procedures are set up based on various tax obligations that taxpayers may carry out within the framework of tax laws and income. By this module, taxpayers can determine their own tax obligations through assessment, and can create a calendar of special liabilities accordingly. In the "Tutorials" module, there are *Tax Incentive Manual for Young Entrepreneurs*, *5% Tax Reduction for Eligible Taxpayers*, *Tax Declaration System Manual*, *Tax Guide for Taxpayers Having Business Income* and other 36 targeted service manuals, providing taxpayers with convenient and clear guidelines.

27 Singapore- Inland Revenue Authority of Singapore (2019)

28 <http://www.chinatax.gov.cn/eng/c101276/c101277/c5099654/content.html>

Proposals of Raising Tax Certainty of BRI Jurisdictions

As to achieve the goals of raising tax certainty it is clear that BRI jurisdictions should commit to working together as to implement the appropriate solutions. BRITACOM aims at being the appropriate platform to facilitate this goal. One of the major takeaways of this report is the gap between businesses and tax administrations on what they perceive as relevant factors for tax uncertainty. Therefore, appropriate measures should be taken as to merge those gaps. Considering the extension of those differences it is relevant to focus on particular areas where results can be effectively achieved. Possible areas of intervention may be the main causes of tax uncertainty (VAT/GST refunds from a business perspective vs tax incentives discretion and transfer pricing adjustments from a tax administrations perspective) and the main drives of tax uncertainty (from a business perspective the lack of comprehensive capacity of tax administrations and lack of transparency in tax laws and regulations and from the perspective of tax administrations the instability of policies and regulations itself). But the objective of this report has not only been on identifying the main issues but also to propose possible solutions. Therefore, a proper focus was also on suggestions and recommendations as to improve tax certainty. In this context this section provides a list of the main factors and recommendations that may contribute to the increase of tax certainty of BRI jurisdictions taking into account the

fundamental outcomes of the surveys conducted.

Firstly, it is proposed to improve the legal system. Further improvement of the scientific nature of tax legislation and reduce ambiguity shall facilitate understanding and implementation. To ensure as much as possible the completeness and logical rigor of the tax law in terms of content, form, and structure. Specific situations that cannot be enumerated by the law should be clarified by formulating supporting systems. Moreover, to further improve tax dispute resolution, and prevention mechanisms, as well as continuously optimize the operation process of dispute resolution and preventive measures in order to bring more convenience to taxpayers on tax certainty.

Secondly, it is proposed to further improve the legislative procedures. To ensure the tax law is scientifically rigorous, easy to understand, and easy to implement, taxpayers shall participate in the drafting stage of the tax law, fully advantages shall be taken of experts, scholars, industry associations, etc., and opinions as well as suggestions shall be solicited through symposiums and the Internet. Meanwhile, in formulating management systems other than the tax law, it is recommended that public participation should also be ensured in accordance with open procedures.

Thirdly, it is proposed to further strengthen the publicity and interpretation of the tax policies. To

propaganda tax laws and related systems through various forms and channels, provide timely explanation/guidance of tax laws, strengthen policy training and guidance, publish tax operation guidelines, and regularly publish common questions and answers.

Fourthly, it is proposed to further improve tax dispute resolution and prevention mechanisms. The operational efficiency of tax dispute resolution and prevention mechanisms and the overall mechanism should be increased through supplementing human resources and using video conferencing or other alternative methods. We need to further optimize the information acquisition methods of tax dispute resolution and prevention mechanisms, so that taxpayers have a more in-depth understanding of the above-mentioned mechanisms.

Fifthly, it is proposed to strengthen the assessment of the implementation of the preferential tax policies and fee incentives. Superior taxation departments shall strengthen supervision and guidance, review the implementation of policies from top to bottom, and evaluate the implementation of tax policies internally. At the same time, to unblock taxpayers' feedback channels, collect and solve problems in the process of implementation regularly, and evaluate policies based on taxpayers' feedback. In addition, it is necessary to promote the use of digital technology and to examine the effect of policy implementation through big data.

Sixthly, it is proposed to further strengthen the experience exchange and cooperation between the BRI jurisdictions. Establishing the "Industrial and Commercial Tax Dialogue" mechanism under the BRI tax administration cooperation mechanism to

enroll large enterprises, chambers of commerce, tax intermediaries, etc. from the BRI jurisdictions to participate in the research and implementation of the tax certainty under the cooperation mechanism. This may be complemented with a more extensive and efficient use of technology and online platforms that may allow share BRI practices and to follow up on measures to improve tax certainty. This should be paired with the expansion and engagement with other relevant international organizations and businesses. Many international organizations have been carrying relevant studies and research that can support the collection of relevant information for implementation of tax certainty among BRI jurisdictions.

Furthermore and to strengthen exchange and cooperation it is also relevant to enhance the engagement with relevant cross-border investors and global MNEs. This will be of relevance as to devise the appropriate solutions that may support the increase of tax certainty.

The BRITACOM aims at being a platform to enhance the communication and cooperation among BRI jurisdictions and enhancing the dialogue and providing efficient communication tools would be of outmost relevant as to achieve the key objectives of the tax certainty increase. To increase the tax certainty in the BRI jurisdiction with a definite object in view shall promote the construction of a growth-friendly tax environment more firmly.

Following Rule of Law and Raising Tax Certainty

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September 2021

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