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Abstract
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Keywords
global, economic, reform, developed, nations

AN OUTLOOK ON INTANGIBLE ASSETS AND TRANSFER PRICING IN CHINA

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As a relative latecomer to the global transfer pricing regime, China's growing economic presence on the world stage is accompanied by the implementation of its domestic transfer pricing principles. While in favour of the European Union's view on the prospects of OECD BEPS Action plan, China's emphasis on its status as a developing country and a long-lasting tradition of focus on government revenue collection means that the country's transfer pricing regime is not always consistent with the OECD guidelines. As China progresses towards a true market economy, the SAT introduced Bulletin 6 in 2017 as another step towards incorporating OECD transfer pricing guidelines into its domestic regime. This article explores the possible legal significance of this regulation and argues that the implementation of Bulletin 6 indicates China's dedication to introducing transfer pricing principles compatible with the OECD guidelines. The DEMPEP analysis also exemplifies China's innovative approach in addressing factors unique to its domestic market. In the context of a centralised political system, the effectiveness of Bulletin 6 as a shield for taxpayers against aggressive government tax collection power remains to be seen, although there are reasons to remain positive and expect further improvements in China's tax administration.

I INTRODUCTION

As a developing country,[1] China is a late member of the global transfer pricing regime after its implementation of economic reform and open-door policies. In fact, it was not until 1991 that China introduced its first transfer pricing legislation when the National People's Congress[2] (NPC) approved the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* (ITLEFIFE).[3] However, China is notably one of the first few nations to adopt the Base Erosion and Profit Shifting (BEPS) plans to local rules in the new millennium.[4]

China's unique system of transfer pricing is not only practical for the developing countries but also a case study of value for the developed nations. In the developed world, the EU and the US differ on their views of the BEPS Action Plans. While the EU takes the BEPS Action seriously,[5] the US

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1 See country classification examples under Department of Economic and Social Affairs, United Nations, *World Economic Situation and Prospects 2018: Annex* (2018), < www.un.org/development/desa/dpad/wp-content/uploads/sites/45/WESP2018_Annex.pdf>.

2 The National People's Congress (NPC) of the People's Republic of China is the highest organ of state power.

3 Adopted at the Fourth Session of the Seventh National People's Congress and promulgated by Order No.45 of the President of the People's Republic of China on 9 April 1991.

4 See generally, Michelle Markham and Yixin Liao, 'The Development of Transfer Pricing in China' (2014) 29 *Australian Tax Forum* 715–744.

5 See for instance, the European Union's enactment of New Anti Tax Avoidance Directives. Taxation and Customs Union, The European Commission, *The Anti Tax Avoidance Directive* (2017), <eur-lex.europa.eu/legalcontent/EN/TXT/?uri=uriserv:OJ.L_.2017.144.01.0001.01.ENG&toc=OJ:L:2017:144:TOC>.

has refused to sign the Multinational Instrument to implement BEPS plans in its treaties.[6] In the phase of this rivalry between the world's two largest markets, China's reaction to BEPS plans could mean that eventually the EU view of BEPS Action plan will prevail,[7] a topic of interest to the developed world. It is therefore no surprise that professor Nolan Sharkey suggested that without China's involvement in the international regime, there can be no international regime.[8]

In the context of China rising as an important member of the international community, the following article examines China's transfer pricing principles before and after the Chinese State Administration of Taxation (SAT)'s enactment of Bulletin 6 and its future implications. Having regard to Action 8 of the Organisation for Economic Co-operation and Development's (OECD) BEPS plans and the increasingly relevant use of intangibles in businesses since the 1970s,[9] this article pays a special attention to transactions involving intangible assets in transfer pricing.

II INTANGIBLE ASSETS AND TRANSFER PRICING IN CHINA BEFORE THE INTRODUCTION OF BULLETIN 6

In respect of intangibles, during the initial stages of China's economic reform and open-door policies, as many foreign invested enterprises (FIEs) used intellectual property owned or controlled by their foreign affiliates, a common way of diverting profits from China to other countries was paying excessive royalties to foreign related companies, along with other inappropriate transfer pricing practices. By 2005, it was estimated that more than half of the FIEs in mainland China had reported losses and escaped income tax liability,[10] most of which were attributed to the manipulation of transfer pricing.[11] Since then, China has embarked on implementing tax regimes to tackle BEPS, the most noticeable example being the *Enterprise Income Tax Law of the People's Republic of China* (the EITL) enacted by the NPC in March 2007.[12]

From then onwards, when a royalty payment is made from a Chinese entity to overseas related parties, the Chinese authorities now adopt a substance over form test to apply the arm's length test stipulated in the EITL, looking at the proof of the existence of any commercial purpose and the economic substance of the transaction.[13]

In 2015, SAT issued Gonggao No. 16, a circular on the deductibility of service fees and royalties paid to foreign-related enterprises.[14] Despite eventually being repealed by Bulletin 6 in 2017, Gonggao No.16 was known for its significance in localising the principles adopted in the OECD

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6 Avi-Yonah and Xu, 'A Global Treaty Override? The OECD Multilateral Instruments and Its Limits' (2017) 542 *University of Michigan Public Law Research Paper* 1.

7 Avi-Yonah and Reuven S., 'Slicing and Dicing: The Structural Problems of the Tax Reform Framework' (2017) 17-015 *University of Michigan Law and Economics Research Paper.*

8 Nolan Sharkey, 'International Tax as International Law and the Impact of China' [2012] *British Tax Review* 269.

9 Martin Lagarden, 'Intangibles in a Transfer Pricing Context: Where Does the Road Lead?' [2014] *International Transfer Pricing Journal* 331.

10 *State Administration of Taxation Launches Anti-Avoidance Campaigns (Sina.com)*, available at <http://finance.sina.com.cn/nz/lngszjfb/> (Chinese).

11 H. Sun, 'DFI, Foreign Trade and Transfer Pricing' (1999) 29 *Journal of Contemporary Asia* 362.

12 It went into effect as of 1 January 2008.

13 *Enterprise Income Tax Law of the People's Republic of China 2007*, Article 41.

14 State Administration of Taxation (SAT) Gonggao [2015] No.16.

BEPS project concerning beneficial ownership.[15] Specifically, Gonggao No. 16 dictated that by virtue of the arm's length principle, in cases where royalties are paid to overseas related parties for the use of intangibles, each party's entitlement to the economic benefits would be determined by their contribution to the value creation of such intangibles.[16]

Reflecting on the development of transfer pricing rules in relation to intangible assets in mainland China, the following matters may be pinpointed as issues unique to China before the introduction of Bulletin 6.

A *Location-Specific Advantages*

From the SAT's perspective, certain issues with regard to intangibles in China are left unanswered by the OECD guidelines.[17] In particular, the Chinese tax authorities are interested in the treatment of 'qualification and allocation of location-specific advantages (LSA)' that multinational enterprises (MNEs) allegedly enjoy in China.[18]

LSA is defined as 'cost savings attributable to one particular market' under the OECD guidelines.[19] The rules stipulated under the OECD guidelines require any cost savings that are not passed on to independent customers or suppliers to be divided between the associated enterprises in a way that comparable independent enterprises allocate any retained net location savings.[20] When there are no such comparables, the entity must determine the degree to which benefits or burdens of local market features are passed on to independent customers or suppliers and divide the cost savings in a manner that independent enterprises operating under similar circumstances would allocate them.[21]

In contrast with the neutral approach recommended by the OECD, Chinese tax authorities have always insisted that its specific domestic situations and level of economic and social development must be taken into account,[22] and higher profits arising as a result of LSAs should then be rightfully earned by Chinese taxpayers.[23] The problem with China's approach is that all additional profits generated due to LSAs are allocated to the Chinese enterprises without consideration being given to the possibility that such additional profits should be passed on to independent parties.[24] The factors identified by SAT as China's LSAs, for example, first-mover advantages in certain industries and low labour and manufacture costs,[25] generally cannot be controlled by a single enterprise, and

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15 OECD's BEPS Action 8 states that transfer pricing outcomes involving intangibles must be in line with value creation. See Organisation for Economic Co-operation and Development (OECD)/G20 Base Erosion and Profit Shifting Project *Aligning Transfer Pricing Outcomes with Value Creation Action 8–10: 2015 Final Report,* 5 October 2015.

16 SAT Gonggao [2015] No.16.

17 United Nations, *United Nations Practical Manual on Transfer Pricing for Developing Countries* (29 May 2013) para 10.3.1.2 and 10.3.4.1.

18 Jingyi Wang, 'The Chinese Approach to Transfer Pricing: Problems Faced and Paths to Improvement' (2016) (1) *British Tax Review* 102.

19 OECD/G20 Base Erosion and Profit Shifting Project *Guidance on Transfer Pricing Aspects of Intangibles:* 16 September 2014, para 1.80.

20 Ibid 1.82.

21 Ibid 1.87.

22 UN, *United Nations Practical Manual on Transfer Pricing for Developing Countries* (7 April 2017) para D.2.3.1.3.

23 The UN Transfer Pricing Manual 2013, above n 17, para 10.3.3.1.

24 Ibid 10.3.3.6.

25 Ibid 10.3.8.2.

should be taken into account in comparability analysis under the OECD guidelines.[26] Consequently, China's transfer pricing adjustments based on its own position on the LSAs are likely not to be accepted by other tax jurisdictions for the purpose of corresponding adjustments, making China a less desirable investment destination.[27]

B *Transfer Pricing of Intangible Property Transactions*

Whilst Gonggao No.16 adopted the rules stipulated in the OECD BEPS Action Plan to incorporate the concept of value creation and beneficial ownership of intangibles,[28] its treatment of excessive royalties made to foreign-related parties fell short of the OECD's expectation. Most noticeably, Gonggao No.16 did not leave room for the adjustment of royalties or other payments to arm's length prices and simply denies their deductibility altogether, allowing the Chinese tax authorities to revise the taxable income upwards.

The dearth of adjustment to arm's length prices is problematic principally when China's treaty partner is following OECD's guidelines on corresponding adjustments, which provides that an adjustment to the profits of the related enterprise is only required if the treaty partner considers the adjustment made in China is justified both in principle and as regards the amount.[29] It is reasonably foreseeable that the treaty partner may not agree with China's treatment of the disputed payments, especially when it constitutes a complete denial of the actual transactions, resulting in no corresponding adjustment in the other jurisdiction.

Until the enactment of Bulletin 6, the five-function analysis provided by the OECD on determining each related party's entitlement to benefits was not officially localised in China. Rather, the SAT put an emphasis on compensating the Chinese entities for their contribution to the value creation of intangibles and the LSAs enjoyed by the MNEs.

From the perspective of the SAT, LSAs are assumed to be linked to the marketing, identification and valuation of intangibles.[30] For this reason, SAT's position is that adjustments must be made to the cost of research and development (R & D) activities carried out by an MNE's Chinese subsidiaries, and remunerations should be made to these Chinese entities if they contribute to the value creation and improvement of intangibles.

It is stated that MNEs set up R & D in China to take advantage of local talents for overseas principals through contract R & D, contributing significant profits to the MNEs based in the developed world while leaving little profit to their Chinese subsidiaries.[31] In many instances, the Chinese subsidiary would obtain a 'high and new technology' status under Chinese law on the basis of ownership of valuable core technology, effectively reducing the corporate tax rate from 25% to 15%.[32] However, these Chinese entities would also claim simultaneously that they are a mere contract R & D service provider with no valuable intangibles. The SAT now considers the status of 'high and new technology' and a mere contract R & D undertaking irreconcilable and would apply a profit split method (PSM) to determine the appropriate arm's length return for the R & D

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26 OECD, 2014 Guidance on Intangibles, above n 19, 1.82.
27 Jingyi Wang, above n 18, 104.
28 OECD/G20 Base Erosion and Profit Shifting Project, above n 15.
29 OECD, *OECD Commentary on the Model Conventions 2010* (2010), Commentary on Article 9, 6.
30 The UN Transfer Pricing Manual 2013, above n 17, 10.3.1.2 and 10.3.4.1.
31 The UN Transfer Pricing Manual 2017, above n 22, D.2.4.6.1.
32 EITL, Article 28.

entity.[33] The SAT now expects a company claiming high tech status to perform activities that result in the creation of intellectual property of which they can claim economic or legal ownership, and it is not by itself sufficient that the contract R & D entity has shifted the risks to a related party. [34]

Furthermore, the Chinese tax authorities claim that Chinese affiliates of MNEs acquire skills and expertise over time, enabling entities based in China to contribute to the improvement of the original intangible assets provided to them by the MNEs based in the developed countries. [35] Therefore, the Chinese affiliates that have contributed to the enhancement of the intangible assets should be entitled to earn additional profits or otherwise remunerated, for instance, potentially by paying less royalty for the initial intangibles provided.[36]

In summary, the SAT's view on contract R & D and the use of intangibles in China indicates that it has embraced the OECD transfer pricing principle that entities involved in the development, enhancement, maintenance, protection and exploitation (DEMPE) of intangibles should be compensated for their contributions,[37] albeit China's evident intention of broadening the taxable income base and increasing local tax revenues.[38]

C *Value Contribution Appointment Method (VCAM)*

Given that the SAT's attitude toward transfer pricing has become increasingly aggressive throughout the years, it is perhaps no surprise that VCAM was introduced as a potential alternative transfer pricing methodology (TPM) in Article 35 of the public discussion draft on 'Special Tax Adjustment' in 2015. Under this method, MNE profits would be allocated across the value chain based on how value creation contributions have been made to the group profits, having regard to the functions and risks undertaken by the Chinese enterprises.[39]

The SAT's viewpoint was that the VCAM is appropriate to use where comparability information is difficult to obtain, which meant that China may be even more inclined to dismiss potential comparables on grounds of LSAs and use the absence of comparables to apply this newly proposed method. Concerns were that the Chinese revenue authorities may be too aggressive in its approach and could potentially reduce tax incentives for foreign investment.

III Bulletin 6 and Changes in China's Transfer Pricing Principles

On 1 April 2017, the SAT issued its long-awaited Bulletin Gonggao [2017] No. 6 ("Bulletin 6"), titled "Supervisory Measures for Special Tax Investigation Adjustments and Mutual Agreement Procedures". [40] According to the SAT, Bulletin 6 was introduced as another step in converting the BEPS Actions 8–10 Reports into its domestic transfer pricing regime.[41]

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33 The UN Transfer Pricing Manual 2017, above n 22, D.2.4.6.5–D.2.4.6.6.

34 Ibid.

35 Ibid D. 2.4.5.1.

36 Ibid D. 2.4.5.3.

37 OECD, 2014 Guidance on Intangibles, above n 19, 6.32.

38 G. DeSouza, 'What the UN Manual Really Means for China?' (2013) 41(5) *Intertax* 331.

39 John Kondos et al, *China's New Transfer Pricing Guidelines* (4 December 2015) < http://www.internationaltaxreview.com/Article/3511707/Chinas-new-transfer-pricing-guidelines-and-BEPS.html>.

40 It went into effect as of 1 May 2017.

41 The Preamble to SAT Public Notice [2017] No.6.

A *VCAM and other TPMs*

Contrary to the Consultation Draft back in 2015, Bulletin 6 does not identify the VCAM as a type of TPM,[42] presumably due to criticisms made by commentators on the Consultation Draft.[43] Indeed, there are good reasons for China not to be overly aggressive on FIEs as its economic growth rate dropped below 7% in 2015, reaching a 25-year low.[44]

However, it could be reasonably argued that the term 'other methods in compliance with the arm's length principle' included in Bulletin 6 means that the Chinese tax authorities may still have implied legal grounds to apply the VCAM.[45] In light of the fact that Jiangsu Province, one of the economic powerhouses in China, favours the Global Value Chain Analysis Method (GVCAM) to allocate profits of MNEs on the basis of functions performed and risks assumed by these parties on the value chain,[46] it is reasonable to conclude that China may eventually adopt the model proposed by Jiangsu and apply VCAM indirectly when necessary.

In addition, Bulletin 6 provides that the most commonly used TPM, the transactional net margin method (TNMM) is not suitable in transactions where parties involved own significant intangibles,[47] and PSM should be applied instead.[48]

B *Transfer Pricing of Intangible Property Transactions*

The introduction of Bulletin 6 effectively repealed Gonggao No.16, replacing the original unilateral approach taken by the SAT to the payment of royalties between Chinese enterprises and their overseas affiliates with a bilateral approach.[49]

Specifically, instead of denying the deductibility of the full royalty payment, the Chinese authorities will now apply the arm's length principle and make an adjustment where necessary, taking into account the business norm in comparable unrelated transactions.[50] Furthermore, Bulletin 6 also recognises the principle of benefit commensurate with the royalty rate,[51] which means that the royalty paid or received for the transactions of intangibles should align with the economic benefit generated by the intangibles to the enterprise or its related parties.[52] If the royalty does not match the economic benefit derived from the exploitation of intangibles, the SAT is empowered to initiate a special tax adjustment under Chapter VI of the EITL.[53]

Although the definition of legal and economic ownership under the OECD guidelines is not included in Bulletin 6, the newly introduced regulation has incorporated the rule that an entity that

42 See SAT Public Notice [2017] No.6, Article 16: VCAM is not listed as an example of TPM.
43 Ernst & Young, *EY China TP Alert* < http://www.ey.com/Publication/vwLUAssets/ey-china-tp-alert-sat-newly-released-bulletin-6/$FILE/ey-china-tp-alert-sat-newly-released-bulletin-6.pdf>.
44 Mark Magnier, *China's Economic Growth in 2015 Is Slowest in 25 Years* (19 January 2016) <https://www.wsj.com/articles/china-economic-growth-slows-to-6-9-on-year-in-2015-1453169398>.
45 For the term 'other methods in compliance with the arm's length principle', see SAT Public Notice [2017] No.6, Article 16.
46 See Jiangsu Provincial Office of SAT, <http://www.jsgs.gov.cn/col/col1608/index.html>.
47 SAT Public Notice [2017] No.6, Article 20.
48 Ibid 21.
49 Ibid 48.
50 Ibid 31.
51 Avi-Yonah and Xu, above n 6, 5.6.
52 SAT Public Notice [2017] No.6, Article 32.
53 Ibid.

is merely the legal owner of intangible assets but has not contributed to the valuation creation of the intangibles, should not be entitled to the income derived from the exploitation of intangibles.[54] Similarly, an entity that merely funded but has not performed any functions or assumed any risks in the development and exploitation of intangibles should only be entitled to earn a reasonable financing return.[55]

This position is a reflection of the OECD BEPS Action Reports, which confirm that legal ownership of intangibles does not of itself entail an entitlement to all, or any of the return generated by the exploitation of intangibles.[56] However, it is important to note that Bulletin 6's specific reference to 'not in accordance with arm's length principle' may suggest that if royalties paid to the mere legal owner of the intangibles constitute an arm's length transaction, the legal owner could be entitled to the whole amount of the payment.[57]

The centrum of Bulletin 6 is the unique development, enhancement, maintenance, protection, exploitation, and promotion analysis (DEMPEP) stipulated by the SAT, adding 'promotion' to the original five functions outlined by the OECD guidelines.[58] In other words, marketing of intangible assets is now treated as a value creation factor in China for the purpose of analysing the parties' entitlement to profits. This innovation comes as a result of the Chinese traditional emphasis on the huge value of promotion efforts to attract Chinese customers to purchase foreign brands at a premium price.[59] Notwithstanding this, unlike the OECD BEPS guidelines, Bulletin 6 is silent on how performance of DEMPEP functions should be quantified and weighted in determining the arm's length allocation of income attributable to intangibles, and it has been suggested that the SAT may accentuate routine functions associated with exploiting intangible assets, such as the sale of branded products and use of licenced technology.[60]

C *LSA*

As is mentioned above, the Chinese tax authorities have put significant emphasis on compensating Chinese taxpayers for LSAs enjoyed by MNEs. While Bulletin 6 continues to stress the significance of LSAs, it has adopted an approach that is more coherent with the OECD guidelines, which states where local market comparables are available, specific comparability adjustments should not be required.[61] Indeed, Bulletin 6 now only requires an adjustment if the comparable company selected is in a 'different economic environment.[62] This has effectively reduced the compliance requirement for foreign MNEs operating in China, and any adjustments made in China are now more likely to be accepted by other tax jurisdictions for the purpose of corresponding adjustment.

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[54] Ibid 30.
[55] Ibid.
[56] OECD BEPS Action 8-10 Report, above n 15, para 6.42.
[57] Deloitte, *Global Transfer Pricing Alert 2017-012* (6 April 2017), <www2.deloitte.com/ content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-012-6-april-2017.pdf>.
[58] SAT Public Notice [2017] No.6, Articles 30–31.
[59] Avi-Yonah and Xu, above n 6, 5.6.
[60] Ernest & Young, above n 43.
[61] OECD, 2014 Guidance on Intangibles, above n 19, 1.83.
[62] SAT Public Notice [2017] No.6, Articles 27.

IV Conclusion

From the aftermath of the Cultural Revolution to a prospering nation with the second largest economy by nominal GDP,[63] China's integration with the global economy is accompanied by the rapid development of its transfer pricing regime.[64] There is sufficient evidence to suggest that in recent years, China's transfer pricing regime has become increasingly similar to that of the OECD as it adopts many of the core principles stipulated under the latter's guidelines, such as the application of arm's length transactions, the concepts of economic and legal ownership of an intangible asset and the treatment of LSAs. In addition, it can be observed that the Chinese authorities have become particularly interested in transactions involving intangibles in the context of Chinese-headquartered companies' expansion around the world, with a clear focus on where Chinese companies have not been appropriately remunerated.

Overall, while China has been dedicated to implementing regulations compatible with the OECD guidelines throughout the years, it is innovative in localising the OECD rules, which can be manifested by the notable DEMPEP analysis. China has also called for more respect for each jurisdiction's sovereignty as flexibility of rules is essential to developing countries.[65] With these factors in mind, it is reasonable to conclude that China's future transfer pricing principles will be more comparatively similar to the OECD's guidelines, although China's emphasis on being a developing nation and revenue collection means it will also deviate from OECD principles to best serve the SAT's interest. In summary, there are reasons for MNEs and other competent authorities to remain cautiously optimistic on the prospects of transfer pricing and intangibles in China.

As observed by the UN, China has established a centralised approval system to ensure the consistency and standardisation of tax reviews around the country at different government levels.[66] Simultaneously, a centralised taxation system also allows China to implement policies efficiently in addressing the lack of comparables it faces in enforcing the arm's length principle,[67] which is the focal point of China's transfer pricing regulations.[68] As China's stock exchanges are still in development, they do not yield high-quality information to find sufficient comparables, and Chinese tax authorities have to resort to other measures.[69] Apart from establishing an information exchange network on an international level,[70] Chinese tax authorities mainly relied on large-scale anti-avoidance campaigns, for example, the Annual Industry Focused Anti-Avoidance Review, starting from 2008, to make up for the shortage of publicly available comparable information.[71] With the advantage of having a large economy with various industries operating within its borders, China's centralised tax system allows the authorities to gather sufficient information and utilise them efficiently in identifying comparables and applying the arm's length principle.

However, centralisation of power vested in the SAT is a double-edged sword. The tax culture in China, notably the lack of judicial resolution to solve disputes and taxpayers' subordinate position

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63 World Bank, *GDP (Current US$)* < https://data.worldbank.org/indicator/NY.GDP.MKTP.CD>.

64 The UN Transfer Pricing Manual 2017, above n 22, para D.2.4.8.4.

65 Ibid, para D.2.1.3.

66 Ibid, para D.2.2.8.

67 OECD *Transfer Pricing Comparability Data and Developing Countries:* 2014, Executive Summary.

68 The UN Transfer Pricing Manual 2017, above n 22, para D.2.3.1.1.

69 Michelle Markham and Yixin Liao, above n 4, 729.

70 China is a signatory to the Common Reporting Standard Multilateral Competent Authority Agreement (CRS MCAA).

71 See Guoshuihan [2009] No.106, Guoshuihan [2010] No.84, Guoshuihan [2011] No.167 and Guoshuihan [2012] No.111.

vis-à-vis the tax administration, is vastly different from that of the OECD countries.[72] From this author's perspective, it is reasonable to contend that concentration of taxation power has exacerbated the power discrepancy between tax authorities and taxpayers in China. On top of that, since the dispute resolution process largely depends on the self-discipline of the Chinese tax authorities, it remains to be seen whether taxpayers can effectively use Bulletin 6 to challenge the SAT's decisions. Fortunately, the manner in which the Chinese tax administrators conduct themselves is improving as China strives to allocate more resources to transfer pricing administration and improve the tax official's personal capabilities,[73] and it is reasonable for taxpayers to anticipate further tax administration improvements as China progresses towards a true market economy.

[72] Tax culture encompasses not only the tax rules and actual tax practice, but also the relationship between taxpayers and the authorities. Birger Nerré, 'Tax Culture: A Basic Concept for Tax Politics' (2008) 38 *Economic Analysis and Policy* 153.

[73] The UN Transfer Pricing Manual 2017, above n 22, D.2.2.22.