



BEPS Action 5 on Harmful Tax Practices: Transparency Framework

PEER REVIEW DOCUMENTS

February 2017



BEPS Action 5 on Harmful Tax Practices: Transparency Framework

Peer Review Documents

February 2017

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Please cite this publication as:

OECD (2017), *BEPS Action 5 on Harmful Tax Practices – Terms of Reference and Methodology for the Conduct of the Peer Reviews of the Action 5 Transparency Framework*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf

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Abbreviations and acronyms

APAs	Advance pricing agreements
BEPS	Base Erosion and Profit Shifting
CFA	Committee on Fiscal Affairs
FHTP	Forum on Harmful Tax Practices
IP	Intellectual Property
OECD	Organisation for Economic Co-operation and Development
PE	Permanent Establishment

Summary

The *Action Plan on Base Erosion and Profit Shifting* (BEPS Action Plan, OECD 2013) identified 15 actions to address BEPS in a comprehensive manner. In October 2015, the G20 Finance Ministers endorsed the BEPS package which includes the report on Action 5: *Countering Harmful Tax Practices More Effectively, Taking Into Account Transparency and Substance* (2015 Action 5 Report, OECD 2015).

The 2015 Action 5 Report (OECD, 2015) is one of the four BEPS minimum standards. Each of the four BEPS minimum standards is subject to peer review in order to ensure timely and accurate implementation and thus safeguard the level playing field. All members of the Inclusive Framework on BEPS commit to implementing the Action 5 minimum standard, and commit to participating in the peer review. The peer review of the Action 5 minimum standard will be undertaken by the Forum on Harmful Tax Practices (“FHTP”).

The purpose of a peer review is to ensure the effective implementation of an agreed standard. Peer reviews should be conducted in a manner that is clear; targets the areas of risk; ensures that jurisdictions are treated fairly and equally; and is resource efficient.

The peer review will evaluate the implementation of the standard against an agreed set of criteria. These criteria are set out in terms of reference, which include each of the elements that a jurisdiction needs to demonstrate it has fulfilled in order to show proper implementation of the standard.

The manner in which the peer review is undertaken is set out in an agreed methodology. The methodology¹ sets out the procedural mechanics by which jurisdictions will complete the peer review, including the process for collecting the relevant data, the preparation and approval of reports, the outputs of the review and the follow up process. The methodology contemplates collecting the data points relevant to the peer review by using standardised questionnaires, sent to the reviewed jurisdiction as well as the peers (i.e. the other members of the Inclusive Framework on BEPS).

This note contains the key documents to be used for the peer review, which reflect the agreed approach: (1) the terms of reference and (2) the methodology for the conduct of peer reviews of the Action 5 transparency framework.

Note

1. The methodology would apply to reviews conducted in the context of the Inclusive Framework for BEPS Implementation. The modalities for reviews of countries and jurisdictions of relevance, which may be identified in the future and which have not joined the Inclusive Framework, will be agreed in due course.

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DOI: <http://dx.doi.org/10.1787/9789264241190-en>

OECD (2013), *Action Plan on Base Erosion and Profit Shifting*, OECD Publishing, Paris,

DOI: <http://dx.doi.org/10.1787/9789264202719-en>.

Introduction and background

The 2015 Action 5 Report, *Countering Harmful Tax Practices More Effectively, Taking Into Account Transparency and Substance* (OECD, 2015), is one of the four BEPS minimum standards. There are two aspects to the Action 5 minimum standard: a process for reviewing preferential tax regimes to ensure they are not harmful, and a transparency framework that applies to tax rulings (“the transparency framework”).

All jurisdictions that are members of the Inclusive Framework on BEPS commit to implementing the minimum standards, and being subject to a peer review of their implementation. The peer review is undertaken to assess jurisdiction’s implementation of the standard. The purpose is to ensure that the intended policy objectives of the standard are met swiftly and in accordance with the level playing field.

The peer review of the Action 5 transparency framework will be undertaken by the Forum on Harmful Tax Practices (FHTP). The peer review of preferential tax regimes is undertaken in accordance with the existing process used by the FHTP.²

Scope of the transparency framework

The Action 5 Report (OECD, 2015) sets out the agreed framework for the transparency framework. This includes six categories of taxpayer-specific rulings which in the absence of compulsory spontaneous exchange of information could give rise to BEPS concerns.

These six categories are (i) rulings relating to preferential regimes; (ii) unilateral advance pricing agreements (APAs) or other cross-border unilateral rulings in respect of transfer pricing; (iii) cross-border rulings providing for a downward adjustment of taxable profits; (iv) permanent establishment (PE) rulings; (v) related party conduit rulings; and (vi) any other type of ruling agreed by the FHTP that in the absence of spontaneous information exchange gives rise to BEPS concerns. The transparency framework applies to these categories of rulings provided they were issued within a certain period of time, as defined in the Action 5 Report (OECD, 2015) as “past rulings” and “future rulings”.

This does not mean that such rulings or the legal or administrative procedures under which they are given represent preferential regimes. Instead it reflects jurisdictions’ concerns that a lack of transparency can lead to BEPS, if jurisdictions have no knowledge or information on the tax treatment of a taxpayer in a specific country and that tax treatment affects the transactions or arrangements undertaken with a related taxpayer resident in their country. The availability of timely and targeted information, which was agreed and included in a template contained in Annex C of the Action 5 Report (OECD, 2015), is essential to enable tax administrations to quickly identify risk areas. The Action 5 Report (OECD, 2015) also specifies the jurisdictions with which information should be exchanged and the timeframe within which the information exchanges should occur.

Note

2. See 2015 Action 5 Report (OECD, 2015); see also OECD, (1998), *Harmful Tax Competition: An Emerging Global Issue* (OECD, 1998)

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OECD (2015), *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD Publishing, Paris.

DOI: <http://dx.doi.org/10.1787/9789264241190-en>

OECD (1998), *Harmful Tax Competition: An Emerging Global Issue*, OECD Publishing, Paris.

DOI: <http://dx.doi.org/10.1787/9789264162945-en>

Terms of reference for the conduct of the peer reviews of the Action 5 transparency framework

1. The minimum standard for the transparency framework contained in the 2015 Action 5 Report (OECD, 2015) has been translated into the terms of reference to facilitate the review of an assessed jurisdiction's compliance with the Action 5 minimum standard. The review will be carried out in accordance with the agreed methodology.
2. The terms of reference and methodology do not alter the Action 5 minimum standard. Any terms used in the terms of reference or methodology take their meaning from the language and policy objectives contained in the 2015 Action 5 Report (OECD, 2015) and the references therein.
3. The terms of reference are broken down into four elements, which capture the key elements of the transparency framework:
 - A. the information gathering process;
 - B. the exchange of information;
 - C. confidentiality of information received;
 - D. statistics.

I. The information gathering process

4. Jurisdictions should collect information relating to the tax rulings that are in the scope of the transparency framework. In particular:
 1. Jurisdictions should identify tax rulings within the scope of the transparency framework. This requires:
 1. Identifying tax rulings that are (i) rulings related to a preferential regime; (ii) cross-border unilateral advance pricing agreements (APAs) and any other cross-border unilateral tax rulings (such as an advance tax ruling) covering transfer pricing or the application of transfer pricing principles; (iii) cross-border rulings providing for a unilateral downward adjustment to the taxpayer's taxable profits that is not directly reflected in the taxpayer's financial / commercial accounts;³ (iv) permanent establishment rulings; or (v) related party conduit rulings.
 2. Identifying for each of these categories of tax rulings those that are past rulings and future rulings.⁴
 3. For jurisdictions with IP regimes, identifying taxpayers benefitting from the third category of IP assets; new entrants benefitting from grandfathered IP regimes, regardless of whether a ruling is provided; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption.⁵

2. With respect to each tax ruling in scope, jurisdictions should identify all jurisdictions for which the tax ruling would be relevant. This requires:
 1. Identifying the following jurisdictions:⁶
 1. Jurisdictions of residence of related parties with which the taxpayer enters into a transaction covered by the ruling, or which gives rise to income from related parties benefiting from a preferential treatment;
 2. The jurisdiction of residence of the immediate parent of the taxpayer;
 3. The jurisdiction of residence of the ultimate parent of the taxpayer;
 4. For PE rulings, the jurisdiction of the head office;
 5. For conduit rulings, the jurisdiction of residence of the ultimate beneficial owner of the payment.
 2. With respect to past rulings, if all jurisdictions for which the tax ruling would be relevant cannot be identified, jurisdictions should record and report instances of the use of the “best efforts approach.”⁷ This should include the relevant category(ies) of ruling where it was used and a brief description of the efforts taken to identify related parties.
 3. Jurisdictions should have in place a review and supervision mechanism to ensure that all relevant information is captured adequately, taking account of the separation of taxing powers between different levels of government.

II. The exchange of information

5. Jurisdictions should undertake compulsory spontaneous exchange of information on the tax rulings within the scope of the transparency framework. This requires:
 1. Having a domestic legal framework allowing spontaneous exchange of information and exchange of information on request;⁸
 2. Having international exchange of information instruments that:
 1. Are in force and effect; and
 2. Permit spontaneous exchange of information on the relevant tax rulings and the subsequent exchange of the relevant tax rulings on request.⁹
 3. Ensuring that each of the mandatory fields of information required in the template contained in Annex C of the 2015 Action 5 Report (OECD, 2015) are present in the information exchanged (noting, however, that in respect of past rulings, not all information in respect of related parties may be available in which case the “best efforts” approach should be applied);
 4. Ensuring that the information is in the form of the template contained in Annex C of the 2015 Action 5 Report (OECD2015) or the OECD XML Schema and in accordance with the OECD XML Schema User Guide.¹⁰
 5. Putting in place appropriate systems to ensure that information on rulings is transmitted to their competent authority responsible for international exchange of information without undue delay.
 6. Ensuring the information to be exchanged is transmitted to the relevant jurisdictions in accordance with the following timelines:¹¹

1. For past rulings, by 31 December 2016 for BEPS Associates, or by 31 December 2017 for members that joined the Inclusive Framework on BEPS during 2016, or by 31 December 2018 for non-G20 non-financial centre developing countries.¹²
2. For future rulings, as soon as possible and no later than three months after the tax ruling becomes available to the competent authority.
7. Ensuring that subsequent requests by another jurisdiction for a copy of a tax ruling made in connection with the transparency framework is responded to, or a status update is provided, within 90 days of the receipt of the request.

III. Confidentiality

6. With respect to information on rulings received under the transparency framework, jurisdictions should ensure that the information received is kept confidential. This requires:

1. Having international information exchange mechanisms which provide that any information received should be treated as confidential and, unless otherwise agreed by the jurisdictions concerned, may be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the exchange of information clause. Such persons or authorities should use the information only for such purposes unless otherwise agreed between the parties and in accordance with their respective laws;
2. Having the necessary domestic law to give effect to the restrictions contained in the international exchange of information instrument;
3. Having effective penalties for unauthorised disclosures of confidential information;
4. Ensuring confidentiality in practice; and
5. Respecting the terms of the international exchange of information instrument, including the limitation on use of information received for taxable periods covered by the agreement.

IV. Statistics

7. Jurisdictions should keep statistics on the exchange of information under the transparency framework. This requires:¹³

1. Reporting the total number of spontaneous exchanges sent under the framework.
2. Reporting the number of spontaneous exchanges sent by category of ruling.
3. Reporting, for each category of ruling exchange, a list identifying which jurisdictions information was exchanged with.

Notes

3. As per paragraph 151 of the Action 5 Report (OECD, 2015), in addition to rulings for downward adjustments, information should also be exchanged on downward adjustments where there is no ruling issued.
4. For OECD and accession countries and G20 countries, past rulings are any tax rulings within scope that were issued either on or after 1 January 2014 but before 1 April 2016; or on or after 1 January 2010 but before 1 January 2014, provided they were still in effect as at 1 January 2014 and future rulings are any tax rulings within scope that are issued on or after 1 April 2016.

For new members joining the Inclusive Framework on BEPS, past rulings are any tax rulings within scope that were issued either on or after 1 January 2015 but before 1 April 2017; or on or after 1 January 2012 but before 1 January 2015, provided they were still in effect as at 1 January 2015 and future rulings are any tax rulings within scope that are issued on or after 1 April 2017.

For non-G20 non-financial centre developing countries that require additional time to implement the transparency framework, past rulings are any tax rulings within scope that were issued either on or after 1 January 2016 but before 1 April 2018; or on or after 1 January 2014 but before 1 January 2016, provided they were still in effect as at 1 January 2016 and future rulings are any tax rulings within scope that are issued on or after 1 April 2018.

The process jurisdictions use to gather the relevant information will likely be different for past and future rulings, and as such the practices for both should be reviewed. However, the review process for past rulings is effectively transitional, and can be discontinued once jurisdictions have completed their obligations for exchanges on such rulings.

Jurisdictions that do not currently have the necessary legal framework in place for spontaneous exchange of information on rulings covered by the transparency framework will need to put in place such a framework in order to comply with the obligations under Action 5. In such cases the timelines contained in these terms of reference are subject to a jurisdiction's legal framework. This also takes into account the entry into force and effective date of application of provisions of the relevant exchange of information instruments.

5. As per paragraphs 37, 66, and 69 of the Action 5 Report (OECD, 2015). These paragraphs include requirements for transparency as part of the elaborated substantial activity factor for IP regimes (the nexus approach). This peer review framework will verify ongoing compliance with the transparency requirements in these paragraphs. The consideration of whether the information exchanged pursuant to these requirements has implications for compliance with the nexus approach will occur in the peer reviews of IP regimes.
6. As reflected in paragraph 121 of the Action 5 Report (OECD, 2015), including taking into account using the details defined set out in Table 5.1 of the Action 5 Report (OECD, 2015).
7. The best efforts approach is described in paragraph 128 of the 2015 Action 5 Report (OECD, 2015).
8. Refer to footnote 4 above.
9. It is acknowledged that jurisdictions may not have exchange of information instruments in place with all members of the Inclusive Framework on BEPS. Jurisdictions are encouraged to expand their exchange of information agreement network, where relevant, to meet the policy

intention of the transparency framework. However, for the purposes of the peer review of the transparency framework, jurisdictions will be assessed on their compliance with the transparency framework in respect of the exchange of information network in effect for the year of the particular annual review.

10. See www.oecd.org/tax/beps/exchange-on-tax-rulings-xml-schema-user-guide-for-tax-administrations.htm
11. Where a delay is caused by a legal impediment (for example, because of a legal requirement to notify the taxpayer, an appeal filed by the taxpayer against the exchange of information or other judicial procedure), the three month time limit is extended but the jurisdiction should exchange without undue delay once the legal impediment ceases to exist. Jurisdictions are encouraged, where possible, to advise the exchange partners of the delay. In addition, refer to footnote 4.
12. The additional time for developing countries would apply where needed on account of capacity constraints and where the FHTP has been informed. Developing countries refer to non-OECD countries and accession countries and non-G20 countries that are listed on the OECD Development Assistance Committee List of Official Development Assistance Recipients as updated from time to time, and do not house relevant financial centres. See <http://www.oecd.org/dac/stats/daclist.htm>
13. For the purpose of reporting these statistics, exchanges are counted as the number of jurisdictions that are sent the information on a ruling as opposed to the number of rulings which were the subject of the exchanges. For example, if information on one ruling is sent to three jurisdictions, then this counts as three exchanges. A different approach is taken in the European Union where statistics are recorded in respect of the numbers of rulings.

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Methodology for the conduct of the peer reviews of the Action 5 transparency framework

1. The BEPS 2015 Action 5 Report (OECD, 2015) mandated that an annual review of jurisdictions' compliance with the transparency framework would be undertaken, starting at the beginning of 2017. This methodology sets out the process for undertaking the reviews.

I. Scope

2. All members of the Inclusive Framework on BEPS will be assessed for compliance with the transparency framework on an annual basis. All members will be assessed using the terms of reference as the basis for the assessment. However, where a member of the Inclusive Framework does not issue rulings within the scope of the transparency framework, they will be asked to certify this and will not be required to complete the rest of the review process.

3. The first review will take place in 2017, with respect to the implementation of the transparency framework by OECD countries, OECD accession countries and G20 countries only during the 1 January 2016 – 31 December 2016 period.¹⁴

4. The second review will take place in 2018 with respect to the implementation of the transparency framework during the 1 January 2017 – 31 December 2017 period. For OECD countries, OECD accession countries and G20 countries that were reviewed in 2017, this will be an update report, such that only changes in implementation, action taken to address any recommendations and an update of statistics will be provided. With respect to new members that joined the Inclusive Framework on BEPS in 2016, the 2018 annual review will be their first review.

5. The third review will take place in 2019 with respect to the implementation of the transparency framework during the 1 January 2018 – 31 December 2018 period. For OECD countries, OECD accession countries and G20 countries and new members of the Inclusive Framework on BEPS that were reviewed in 2018, this will be an update report, such that only changes in implementation, action taken to address any recommendations and an update of statistics will be provided. With respect to non-G20 non-financial centre developing countries that had informed the FHTP in 2017 that they require additional time to implement the transparency framework, the 2019 annual review will be their first review.¹⁵

6. The fourth review will take place in 2020 with respect to the implementation of the transparency framework during the 1 January 2019 – 31 December 2019 period. This should be an update report only, other than in respect to any FHTP member that has not previously been reviewed. As the current mandate for the Inclusive Framework on BEPS ends in 2020, the carrying out of any subsequent reviews after 2020 will be subject to the agreement of the Inclusive Framework on BEPS.

7. The FHTP will conduct the reviews. However, it is noted that the Global Forum on Transparency and Exchange of Information for Tax Purposes (“Global Forum”) has conducted preliminary expert assessments of confidentiality and data safeguards with respect to the standard on automatic exchange of information. Given its expertise in this area and the importance of ensuring that the reviews are conducted efficiently, the FHTP will rely on the work of the Global Forum on confidentiality and data safeguards and will not form its own conclusions on this aspect of the review. In most cases, this would entail restating the Global Forum’s conclusion as to a reviewed jurisdiction, together with a reviewed jurisdiction’s description of recent updates on implementation of the confidentiality and data safeguards requirements, if applicable, to the extent these have not yet been considered by the Global Forum. However, given that there are some jurisdictions which are members of the Inclusive Framework on BEPS but have not been assessed by the Global Forum, a mechanism for a review of these jurisdictions will be needed. It is anticipated that the Inclusive Framework on BEPS will consider the best approach to designing such a mechanism and which would be taken into account by the FHTP.

II. Data collection process

8. The process for collecting data will be as follows for the annual reviews conducted from 2017 – 2020.

Time	Process	Explanation
January	Secretariat sends self-assessment questionnaire to reviewed jurisdictions, for completion within 6 weeks.	The self-assessment questionnaire covers each aspect of the terms of reference. Jurisdictions should provide responses in sufficient detail to allow an assessment to take place, and where relevant should include supporting material such as a copy of relevant legal provisions. No confidential taxpayer-specific information should be included. The questionnaire will be completed with respect to the implementation of the transparency framework during the previous calendar year. Questionnaires and any supporting material should be provided in English or French.
February	Self-assessment questionnaire provided to Secretariat. Secretariat will upload to FHTP secure ClearSpace site.	The Secretariat will review each questionnaire to identify any aspects which raise matters of interpretation of the minimum standard, any aspects of a jurisdiction’s response to the questionnaire which should be clarified or expanded upon, or any aspects which indicate that the jurisdiction has not met the standard. If the Secretariat identifies any such aspects, the Secretariat will informally discuss these with the relevant jurisdiction and where relevant the jurisdiction will be encouraged to submit a revised questionnaire. If the laws of the reviewed jurisdiction would prevent certain information in the questionnaire from being disclosed to the FHTP, the reviewed jurisdiction should advise the Secretariat. In such cases, the confidential information may either not be provided to the Secretariat, or be provided to the Secretariat but redacted from the version of the questionnaire that would be made available on the FHTP secure ClearSpace site.

Time	Process	Explanation
March	Peer input questionnaire sent to all FHTP delegates representing members of the Inclusive Framework on BEPS, for completion within 4 weeks.	All members of the Inclusive Framework on BEPS will be given the opportunity to provide peer input on their experience with respect to the reviewed jurisdictions in connection with the transparency framework. This can be both positive and negative feedback. Jurisdictions providing peer input should not include any confidential taxpayer-specific information. Members are encouraged but not required to provide input. Peer input questionnaires should be answered in English or French.
April	Peer input questionnaire response provided to Secretariat.	The Secretariat will share the peer input received on a reviewed jurisdiction only with that reviewed jurisdiction and not with all FHTP delegates. Reviewed jurisdictions would have the opportunity to respond to the peer input in writing to the Secretariat.
June	Draft section of report on each reviewed jurisdiction sent to that jurisdiction for comment.	Each reviewed jurisdiction should have the opportunity to review the section of the draft report assessing them, and have the opportunity to provide comments to the Secretariat in advance of the compiled draft report being circulated to FHTP delegates. Each jurisdiction would be given two weeks to review and provide comments if they wish. The Secretariat will then discuss with the reviewed jurisdiction the incorporation of any changes to the draft report.
July	Secretariat will send the draft annual report to FHTP delegates representing members of the Inclusive Framework on BEPS for written comment, if any, within 6 weeks.	The draft annual report will contain a short summary for each of the reviewed jurisdictions, with any Secretariat proposals for recommendations for improvement where relevant. The outline of the draft report is included in the next section of this methodology. The report will be based on the information from the questionnaires and any subsequent clarifications from the reviewed jurisdictions, the received peer inputs and where relevant the work of the Global Forum. Written comments, if any, should be based on the draft annual report and the questionnaire responses.
August	Revised section of report on each reviewed jurisdiction circulated to that jurisdiction for comment.	The draft revised section of the report concerning each reviewed jurisdiction will be sent to each jurisdiction for comment. This will show the changes in track changes on that draft section of the report to reflect written comments received from the FHTP, if any.
September	Secretariat may send a revised draft annual report to reflect the written comments, if any.	Any revised draft annual report will be provided in track changes. Any revised draft annual report will be used as the basis for discussion at the FHTP meeting.
FHTP meeting	Discussion and approval of	For each jurisdiction, the Secretariat will briefly introduce the section of the draft annual report that relates to the

Time	Process	Explanation
(fourth quarter)	annual report.	<p>jurisdiction. The reviewed jurisdiction will have the opportunity to make a brief statement, and FHTP delegates will have an opportunity to ask any additional questions based on the draft annual report, the questionnaire responses and the peer input.</p> <p>On the basis of the discussion, the FHTP may agree amendments to the annual report and any proposed recommendations if needed. Following the discussion, the FHTP will be asked to agree the annual report concerning that jurisdiction, and in particular agree any recommendations for improvement therein. The FHTP will then move on to discuss the next jurisdiction, and repeat the process until the annual report is agreed.</p> <p>If it is not possible to conclude the review of all aspects of a jurisdiction's implementation of the transparency framework at that FHTP meeting, the reviewed jurisdiction will provide any additional information that the FHTP requested to the Secretariat within four weeks after the meeting. The Secretariat will upload the additional information and updated summary section of the annual report to the secure ClearSpace site, with any proposed recommendations if relevant and seeking the FHTP's approval by written procedure.</p> <p>In the exceptional circumstances that the FHTP was unable to approve the report on an assessed jurisdiction, this will be referred to the Inclusive Framework on BEPS together with an explanation.</p>

III. Outline of annual report

9. The annual report will contain the following sections.

10. First, the introduction and executive summary. This will explain the background to the peer review of the transparency framework, the jurisdictions included in the review, and a synthesis of the progress made by reviewed jurisdictions in the year under review.

11. Second, the individual summaries and recommendations (if any) for each reviewed jurisdiction. For each reviewed jurisdiction, the summary is generally expected to be no more than two pages, with information organised according to the following sections:

- Overview of implementation: the statistics on information exchanged, the general tenor of peer input and outcomes of previous reviews (if any);
- Information gathering process: a brief description of the process and responsible actors, and any recommendations or action taken to address recommendations from previous reviews;
- Exchange of information: a brief description of the legal framework in place, timeliness of exchanges and any recommendations or action taken to address recommendations from previous reviews;

- Confidentiality: a brief description of the confidentiality framework (which in most cases would be a brief restatement of the status of review by the Global Forum on Transparency and Exchange of Information for Tax Purposes), and any recommendations or action taken to address recommendations from previous reviews;
- The jurisdictions' response to the review, if any.

IV. Approval of report

12. The FHTP will provide the report to the Inclusive Framework on BEPS each year, to invite it to adopt the report.

13. The Inclusive Framework may wish to produce a progress report for publication. Any such report would first be agreed by the FHTP and would not include the questionnaire responses from the reviewed jurisdiction or peers.

V. Amendments and interpretation

14. Where required in order to ensure the adequate functioning of the transparency framework and the related peer review process, the FHTP may decide to provide for additional clarifications, the inclusion of additional categories of rulings in the scope of the framework or amendments to the terms of reference, as follows.

15. The FHTP may agree on additional practical guidance on a consensus basis to clarify the minimum standard. Where this occurs, jurisdictions will be expected to adjust their implementation to reflect that guidance, if necessary, as soon as is practicable. It is acknowledged that jurisdictions will require additional time to implement such changes including any necessary changes to domestic law.

16. The FHTP may also agree that additional categories of tax ruling be included in the scope of the transparency framework where the absence of spontaneous information exchange gives rise to BEPS concerns. Where the FHTP so agrees, corresponding updates of the documents used to conduct the peer reviews will be necessary. Any such amendments will be agreed by the FHTP on the basis of consensus and approved by the Inclusive Framework on BEPS.

17. The FHTP may agree to any amendments to the terms of reference, methodology or questionnaires for undertaking the peer reviews. In addition, the FHTP may give consideration to providing overall ratings of performance or conclusions and the publication of the results of peer reviews. Any such amendments will be agreed by the FHTP on the basis of consensus and approved by the Inclusive Framework on BEPS.

VI. Confidentiality of peer review documents

18. Documents produced by a reviewed jurisdiction during a review (including responses to the questionnaire for reviewed jurisdictions, responses to the peer input questionnaire and responses to the Secretariat's queries) as well as draft reports and written comments on draft reports will be treated as confidential and for official use only. These documents should not be made publicly available. Any breach of confidentiality should be brought to the attention of the Co-Chairs of the FHTP, who will decide on the appropriate action in consultation with the FHTP as appropriate.

Note

14. The Action 5 Report (OECD, 2015) acknowledges that some jurisdictions may not have the legal framework in place for the spontaneous exchange of information under the transparency framework and will need to put such a framework in place. These jurisdictions may therefore not be able to answer all questions in the questionnaire for reviewed jurisdictions until the legal framework has been put in place.
15. The timeline for the review of any jurisdictions that join the Inclusive Framework on BEPS later than 2016, other than non-G20 non-financial centre developing countries, will be agreed on a case by case basis according to the same principles as agreed for new members in 2016.

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