



# **BEPS Action 5 on Harmful Tax Practices – Transparency Framework**

**PEER REVIEW DOCUMENTS**

February 2021

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Peer Review Documents

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# Foreword

The integration of national economies and markets has increased substantially in recent years, putting a strain on the international tax rules, which were designed more than a century ago. Weaknesses in the current rules create opportunities for base erosion and profit shifting (BEPS), requiring bold moves by policy makers to restore confidence in the system and ensure that profits are taxed where economic activities take place and value is created.

Following the release of the report *Addressing Base Erosion and Profit Shifting* in February 2013, OECD and G20 countries adopted a 15-point Action Plan to address BEPS in September 2013. The Action Plan identified 15 actions along three key pillars: introducing coherence in the domestic rules that affect cross-border activities, reinforcing substance requirements in the existing international standards, and improving transparency as well as certainty.

After two years of work, measures in response to the 15 actions were delivered to G20 Leaders in Antalya in November 2015. All the different outputs, including those delivered in an interim form in 2014, were consolidated into a comprehensive package. The BEPS package of measures represents the first substantial renovation of the international tax rules in almost a century. Once the new measures become applicable, it is expected that profits will be reported where the economic activities that generate them are carried out and where value is created. BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 90 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

A better understanding of how the BEPS recommendations are implemented in practice could reduce misunderstandings and disputes between governments. Greater focus on implementation and tax administration should therefore be mutually beneficial to governments and business. Proposed improvements to data and analysis will help support ongoing evaluation of the quantitative impact of BEPS, as well as evaluating the impact of the countermeasures developed under the BEPS Project.

As a result, the OECD established the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework), bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The Inclusive Framework, which already has more than 135 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on 17 February 2021 and prepared for publication by the OECD Secretariat.

# Table of contents

<b>Foreword</b> .....	<b>3</b>
<b>Abbreviations and acronyms</b> .....	<b>5</b>
<b>Executive Summary</b> .....	<b>6</b>
Bibliography .....	6
Note .....	7
<b>Introduction and background</b> .....	<b>8</b>
Bibliography .....	8
<b>Terms of reference for the conduct of the peer reviews of the Action 5 transparency framework</b> .....	<b>9</b>
Bibliography .....	12
Notes .....	12
<b>Methodology for the conduct of the peer reviews of the Action 5 transparency framework</b> .....	<b>15</b>
Bibliography .....	19

## TABLES

Table 1. Data collection process	16
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# Abbreviations and acronyms

<b>APA</b>	Advance Pricing Agreement
<b>BEPS</b>	Base Erosion and Profit Shifting
<b>FHTP</b>	Forum on Harmful Tax Practices
<b>IP</b>	Intellectual Property
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PE</b>	Permanent Establishment
<b>ToR</b>	Terms of References
<b>XML</b>	Extensible Mark-Up Language

# Executive Summary

The *Action Plan on Base Erosion and Profit Shifting* (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* (OECD, 2015).

The Action 5 Report (OECD, 2015<sup>[1]</sup>) 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, as well as jurisdictions of relevance identified by the Forum on Harmful Tax Practices (FHTP) 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 is undertaken by the FHTP.

The purpose of a peer review is to ensure the effective implementation of an agreed standard over time. 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 the methodology.<sup>1</sup> The methodology 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 annual peer review of jurisdictions' compliance with the Action 5 minimum standard, as approved by the Inclusive Framework on BEPS in February 2021: (1) the terms of reference and (2) the methodology for the conduct of the peer for the 2021-2025 period. The process builds on the approach used for the peer review over the period 2017-2020.

## Bibliography

- OECD (2015), *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241190-en>. [1]

OECD (2013), *Action Plan on Base Erosion and Profit Shifting*, OECD Publishing, Paris,  
<https://dx.doi.org/10.1787/9789264202719-en>.

[2]

## Note

<sup>1</sup> The methodology proposed in this note would apply to reviews conducted in the context of the Inclusive Framework for BEPS Implementation.

# Introduction and background

## Scope of the transparency framework

The Action 5 Report (OECD, 2015<sup>[1]</sup>) 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<sup>[1]</sup>) 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<sup>[1]</sup>), is essential to enable tax administrations to quickly identify risk areas. The Action 5 Report (OECD, 2015<sup>[1]</sup>) also specifies the jurisdictions with which information should be exchanged and the timeframe within which the information exchanges should occur.

## Bibliography

- OECD (2015), *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241190-en>. [1]

# 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 Action 5 Report (OECD, 2015<sup>[1]</sup>) has been translated into the terms of reference to facilitate the review of a reviewed jurisdiction's compliance with the Action 5 minimum standard.
2. The reviews in the years 2021-2025 will be carried out in accordance with the terms of reference and the methodology set out in this note.
3. 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 Action 5 Report (OECD, 2015<sup>[1]</sup>) and the references therein.
4. The terms of reference are broken down into four elements, which capture the key elements of the transparency framework:
  - I. the information gathering process;
  - II. the exchange of information;
  - III. confidentiality of information received;
  - IV. statistics.

## ***I. The information gathering process***

- A. 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;<sup>1</sup> (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.<sup>2</sup> The obligation to identify and gather information on past rulings remains in place for those Inclusive Framework members that joined by, and jurisdictions of relevance identified by 1 September 2017 as well as developing countries (non-financial centre) that requested additional time for the implementation, that fall under the following circumstances: i) they have identified past rulings not previously reported; and/or ii) they are still finalising the identification of past rulings in scope of the transparency framework; and/or iii) the necessary information and gathering process is not yet in place.<sup>3</sup> For all other jurisdictions that joined the Inclusive Framework or were identified as a jurisdiction of relevance on or after 1 September 2017, there is no obligation to conduct spontaneous exchange of information on past rulings.
  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.<sup>4</sup>
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:<sup>5</sup>
      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 benefitting 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,<sup>6</sup> 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.”<sup>7</sup> 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**

- B. Jurisdictions should undertake compulsory spontaneous exchange of information on the tax rulings within the scope of the transparency framework.<sup>8</sup> This requires:
  1. Having a domestic legal framework allowing spontaneous exchange of information and exchange of information on request;<sup>9</sup>
  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.<sup>10</sup>
3. Ensuring that each of the mandatory fields of information required in the template contained in Annex C of the Action 5 Report (OECD, 2015<sup>[1]</sup>) are present in the information exchanged (noting, however, that in respect of past rulings, when relevant, 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 Action 5 Report (OECD, 2015<sup>[1]</sup>) or the current OECD XML Schema and in accordance with the current OECD XML Schema User Guide.<sup>11</sup>
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:<sup>12</sup>
  1. For past rulings, as soon as possible for those Inclusive Framework members that joined, and jurisdictions of relevance identified by 1 September 2017 as well as developing countries (non-financial centre) that requested additional time for the implementation, that still have to complete the identification and exchange of information on past rulings and for which recommendations on these specific aspects of the terms of reference have been issued and not yet addressed.
  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**

- C. 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

- D. Jurisdictions should keep statistics on the exchange of information under the transparency framework. This requires:<sup>13</sup>
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.

### Bibliography

- OECD (2015), *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241190-en>. [1]

### Notes

<sup>1</sup> As per paragraph 151 of the Action 5 Report (OECD, 2015<sup>[1]</sup>), in addition to rulings for downward adjustments, information should also be exchanged on downward adjustments where there is no ruling issued.

<sup>2</sup> 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. Deviating timelines may apply under specified circumstances.

For new members that joined the Inclusive Framework on BEPS by 4 November 2016, 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 Inclusive Framework members that joined by, and jurisdictions of relevance identified by the FHTP by 1 September 2017, past rulings are any tax rulings within scope that were issued either on or after 1 January 2015 but before 1 September 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 September 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.

For Inclusive Framework members that joined, as well as jurisdictions of relevance identified on or after 1 September 2017, future rulings are defined based on two specific cut off dates of 30 June or 31 December in the year in which the jurisdiction joins the Inclusive Framework or is identified by the Inclusive Framework as a jurisdiction of relevance. When a jurisdiction joins the Inclusive Framework or is identified as a jurisdiction of relevance in the first semester of the year (i.e. between 1 January and 30 June), the date for future rulings would be those issued on or after 1 September of that year. When a jurisdiction joins the Inclusive Framework or is identified as a jurisdiction of relevance in the second semester of the year (i.e. between 1 July and 31 December), the date for future rulings would be those issued on or after 1 March of the following year. Past rulings are any tax rulings issued prior to the date for deciding future rulings. 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. Furthermore, for Inclusive Framework members that joined, as well as jurisdictions of relevance identified on or after 1 September 2017, the obligation to gather and exchange information on past rulings has ceased. 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.

<sup>3</sup> For these jurisdictions, the majority of peer reviewed jurisdictions have successfully identified and conducted spontaneous exchanges of information on past rulings as required under the standard. However, there remain a small number of jurisdictions that have been issued recommendations in relation to past rulings, and who have not yet fully addressed these recommendations. Therefore, the terms of reference with respect to past rulings remain in place for these jurisdictions, who are urged to finalise identification and spontaneous exchange of information on past rulings as soon as possible.

<sup>4</sup> As per paragraphs 37, 66, and 69 of the Action 5 Report (OECD, 2015<sub>[1]</sub>). 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.

<sup>5</sup> As reflected in paragraph 121 of the Action 5 Report (OECD, 2015<sub>[1]</sub>), including taking into account using the details defined set out in Table 5.1 of the Action 5 Report (OECD, 2015<sub>[1]</sub>).

<sup>6</sup> As previously noted in endnote 3, the obligation to spontaneously exchange information on past rulings is largely a historical aspect of the terms of reference. The obligation to exchange past rulings has ceased for jurisdictions that joined the Inclusive Framework or were identified as a jurisdiction of relevance on or after 1 September 2017. For jurisdictions that have a requirement to exchange information on past rulings under the ToR, to date, the majority of peer reviewed jurisdictions have successfully fulfilled this obligation under the standard and only a small number of jurisdictions remain that have recommendations with respect to past rulings.

<sup>7</sup> The best efforts approach is described in paragraph 128 of the Action 5 Report (OECD, 2015<sub>[1]</sub>). The obligation to identify past rulings and the use of the best efforts approach does not apply to Inclusive

Framework members that joined, as well as jurisdictions of relevance identified on or after 1 September 2017, for which there is no obligation to identify (and exchange) past rulings.

<sup>8</sup> Jurisdictions that have been identified as jurisdictions of relevance in respect of the work of the FHTP are required to send information on rulings, but members of the Inclusive Framework are not required to send information to these jurisdictions. The timeline that applies for a jurisdiction of relevance takes precedence, regardless of if that jurisdiction subsequently joins the Inclusive Framework.

<sup>9</sup> Refer to endnote 2 above.

<sup>10</sup> It is acknowledged that jurisdictions may not have exchange of information instruments in place with all members of the Inclusive Framework. 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.

<sup>11</sup> See <http://www.oecd.org/tax/beps/exchange-on-tax-rulings-xml-schema-user-guide-for-tax-administrations.htm>.

<sup>12</sup> 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 endnote 2.

<sup>13</sup> 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.

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

1. The Action 5 Report (OECD, 2015<sup>[1]</sup>) 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 in the years 2021-2025.

## Scope

2. All members of the Inclusive Framework on BEPS and jurisdictions of relevance with a corporate income tax system that have both the legal framework and the administrative practice to issue rulings in scope of the standard will be assessed for compliance with the transparency framework on an annual basis. All jurisdictions will be assessed using the terms of reference as the basis for the assessment. However, where a jurisdiction 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. Four annual peer reviews were conducted from 2017-2020, assessing the implementation of the transparency framework by 124 jurisdictions between 1 January 2016 and 31 December 2019.

4. Following the decision of the Inclusive Framework on BEPS to extend their co-operation on BEPS until 2025, the continuation of the peer reviews for the BEPS minimum standards (which includes the transparency framework) was agreed in connection with the extension of the BEPS mandate for the period 2021-2025.

5. For the second peer review cycle from 2021 to 2025, and until any change in the standard is agreed by the FHTP and the Inclusive Framework on BEPS, the process delineated in the existing methodology will continue to apply, in the following manner:

- For jurisdictions that cannot legally or administratively issue any relevant rulings, the peer review seeks certification of this with an explanation through the annual self-assessment questionnaire, without further assessing the other ToR which are not relevant.
- For jurisdictions that have met all the ToR in a year, the subsequent review becomes simpler and seeks an update on statistics (such as timeliness of exchanges) and any changes in implementation only.
- For jurisdictions that have received recommendations in peer review of the previous year, the subsequent review focusses on action taken to address those outstanding issues, as well as the update on statistics and any changes in implementation.

- For jurisdictions that are new members of the Inclusive Framework as well as jurisdictions of relevance further identified by the FHTP, the peer review assesses the ToR in full, in order to continue to ensure effective implementation of the transparency framework as the membership of the Inclusive Framework grows.

6. The FHTP will continue to conduct the reviews. It is noted that the Global Forum on Transparency and Exchange of Information for Tax Purposes (“Global Forum”) conducts regular 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 or have been identified as jurisdictions of relevance for FHTP purposes, that are subject to the transparency framework but have not been assessed by the Global Forum, a separate mechanism for reviewing these jurisdictions may be used, where required.

## Data collection process

7. The process for collecting data for the review of 2021-2025 will be the same as that used for the annual reviews conducted from 2017-2020.

**Table 1. Data collection process**

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 website.	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 website.
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 strongly encouraged to provide input, in order to reinforce the

		effectiveness in practice of the standard on an ongoing basis. 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 will send a revised draft annual report to reflect the written comments, if any. This document is submitted to the FHTP for approval under the written procedure.	The revised draft annual report will be provided in track changes to reflect changes based on written comments. The revised draft annual report will be submitted to the FHTP for approval under the written procedure. It will then be submitted to the Inclusive Framework for approval and declassification. After that, the report will be published.

## Outline of annual report

8. The annual report will contain the following sections.

9. 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.

10. 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), and any recommendations or action taken to address recommendations from previous reviews;
- The jurisdictions' response to the review, if any.

## Approval of report

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

12. The Inclusive Framework on BEPS 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.

## Amendments and interpretation

13. 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.

14. The FHTP may agree on additional technical guidance 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.

15. 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.

16. 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.

17. Furthermore, in 2016 the FHTP agreed that it would conduct an evaluation of the effectiveness of the transparency framework in 2020. The process has commenced at the October 2020 FHTP meeting and the results of the evaluation of effectiveness will inform the FHTP as to the need for any changes to the standard, or areas where further support or guidance would be useful. In the event that any changes to the standard are agreed by the FHTP and Inclusive Framework following the conduct of the effectiveness review, the ToR may be subject to change. In that event, additional time may be needed for jurisdictions to adopt their implementation to a new standard, which would also need to be reflected in an updated methodology.

## 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.

## Bibliography

- OECD (2015), *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241190-en>. [1]

# BEPS Action 5 on Harmful Tax Practices – Transparency Framework

PEER REVIEW DOCUMENTS