OECD/G20 Base Erosion and Profit Shifting Project

Harmful Tax Practices – Peer Review Reports on the Exchange of Information on Tax Rulings

INCLUSIVE FRAMEWORK ON BEPS: ACTION 5



OECD

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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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 via treaty provisions. With the negotiation for a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related measures, 67 countries signed the MLI on 7 June 2017, paving 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 an Inclusive Framework on BEPS, 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 100 members, will monitor and peer review the implementation of the minimum standards as well as complete 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.

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Abbreviations and acronyms

AAR	Authority for advanced rulings
ACCI	Associate Chief Counsel International
AFIP	Federal Administration of Public Revenue
APA	Advance pricing arrangement
APMA	Advance pricing mutual agreement
ATCA	Advance Thin Capitalisation Agreement
ATO	Australian Taxation Office
ATR	Advance tax ruling
BEPS	Base erosion and profit shifting
CASD	Competent Authority Services Division
CBDT	Central Board of Direct Taxation
CLO	Central Liaison Officer
CRA	Canada Revenue Agency
DR	Departmental Representative
EOI	Exchange of Information
ETCB	Estonian Tax and Customs Board
EU	European Union
FHTP	Forum on Harmful Tax Practices
FTE	Full time equivalent
FTS	Federal Tax Service of Russia
HMRC	Her Majesty's Revenue and Customs
IP	Intellectual Property
IRS	Internal Revenue Service
ITA	Authority for Technological Innovation
ITAT	International Tax Auditing Team
ITRD	Income Tax Rulings Directorate
JITSIC	Joint International Taskforce on Shared Intelligence and Collaboration
MAP	Mutual Agreement Procedure

NTA	National Tax Agency
NTCA	National Tax and Customs Administration
OECD	Organisation for Economic Co-operation and Development
PBR	Private Binding Rulings
PE	Permanent establishment
RFB	Brazilian Tax Administration
RTB	Regional Taxation Bureau
SAARC	South Asian Association for Regional Co-operation
SAT	State Administration of Taxation (Chinese Tax Administration)
SII	Chilean Tax Authority
TAAA	Tax Administrative Assistance Act
TAAO	Tax Administrative Assistance Ordinance
TIEA	Tax Information Exchange Agreement
ToR	Terms of Reference
UAPA	Unilateral advance pricing agreement
XML	Extensible Markup Language

Executive summary

Context for the exchange of information on tax rulings (the "transparency framework")

The BEPS Action 5 minimum standard on the compulsory spontaneous exchange of information on tax rulings (the "transparency framework") provides tax administrations with timely information on rulings that have been granted to a foreign related party of their resident taxpayer or a permanent establishment, which can be used in conducting risk assessments and which, in the absence of exchange, could give rise to BEPS concerns.

The transparency framework requires spontaneous exchange of information on five categories of taxpayer-specific rulings: (i) rulings relating to certain preferential regimes, (ii) unilateral advance pricing arrangements (APAs) or other cross-border unilateral rulings in respect of transfer pricing, (iii) rulings providing for a downward adjustment of taxable profits, (iv) permanent establishment (PE) rulings; and (v) related party conduit rulings.[1] The requirement to exchange information on the rulings in the above categories includes certain past rulings issued on or after 1 January 2010 as well as future rulings which were issued on or after 1 April 2016. The exchanges occur pursuant to international exchange of information agreements, which ensure taxpayer confidentiality.

The inclusion of the above categories of rulings in the scope of the transparency framework is not intended to suggest that the issuance of such rulings constitutes a preferential regime or a harmful tax practice. In practice, tax rulings can be an effective way to provide certainty to taxpayers and reduce the risk of disputes. Rather, the need for transparency on rulings is that a tax administration's lack of knowledge or information on the tax treatment of a taxpayer in another jurisdiction can impact the transactions or arrangements undertaken with a related taxpayer resident in their own jurisdiction and thus lead to BEPS concerns. The availability of timely and targeted information about such rulings, as agreed in the template in Annex C of the Action 5 Report, *Countering Harmful Tax Practices More Effectively, Taking Into Account Transparency and Substance* (OECD, 2015), will be beneficial in enabling tax authorities to quickly identify risk areas.

Scope of this review

This is the first annual peer review of the transparency framework. It covers 44 jurisdictions, which are all OECD and G20 countries, and the countries that were in the OECD accession process throughout the BEPS project.

The reviews on the implementation of the transparency framework contained in this annual report cover the year 2016. The reviews have been prepared using information from each reviewed jurisdiction, input from peers who received exchanges of information under the transparency framework, and input from the delegates of the Forum on Harmful Tax Practices (FHTP).

Key findings

Key findings from this first peer review include:

- As at 31 December 2016, more than 10 000 tax rulings in the scope of the transparency framework had been issued by the jurisdictions being reviewed. This includes certain past rulings issued between 1 January 2010 and 31 March 2016, as well as future rulings issued between 1 April and 31 December 2016;
- Almost 6 500 exchanges of information took place by 31 December 2016;
- All jurisdictions either had, or have undertaken steps to implement, the necessary legal framework for spontaneous exchange of information on rulings for the year in review;
- 49 recommendations for improvement have been made;
- In a substantial number of cases, the delays in exchanging information were on account of the initial transitional period during the first year of implementation, and in many cases these issues have already been remedied.

A compilation of the recommendations made can be found in the table below.

Next steps

The peer review is an annual process taking place in 2017, 2018, 2019 and 2020. The next annual peer review will include an update from the 44 jurisdictions in this report, and in particular the actions taken to respond to recommendations and an update on statistics on the exchanges of information. In accordance with the agreed methodology, the next annual peer review in 2018 will also include the other members of the Inclusive Framework on BEPS. However, developing countries which requested an additional year to implement the transparency framework will be first reviewed in 2019.

Compilation of recommendations made

Aspect of the implementation of the transparency framework that should be improved	Recommendation for improvement
Argentina	
	No recommendations are made
Australia	
	No recommendations are made
Austria	
It is not certain that information on all potential exchange jurisdictions is always identified for future rulings.	Austria is recommended to continue with its plan to ensure that information on all potential exchange jurisdictions is obtained as part of the ruling process.
No exchanges of information on past or future rulings occurred for the year in review.	Austria is recommended to continue its efforts to overcome the existing technical impediments and to ensure that information on past and future rulings is exchanged as soon as possible.
Belgium	
	No recommendations are made
Brazil	
During the year in review, Brazil conducted an annual search and exchange for future rulings which would not be frequent enough to ensure that rulings are transmitted to counterpart jurisdictions in a timely way. However, as no future rulings were issued in this period there has been no practical impact on the effectiveness of Brazil's implementation of the transparency framework.	No recommendation is made as Brazil has addressed this issue by ensuring that future rulings will be identified after they are issued.

Aspect of the implementation of the transparency framework that should be improved	Recommendation for improvement
Canada	
	No recommendations are made
Chile	
	No recommendations are made
China (People's Republic of)	
The identification of all future rulings has not been completed.	China is recommended to complete the identification of all future rulings as soon as possible.
No exchanges of information on future rulings occurred for the year in review.	China is recommended to ensure that the exchange of information on future rulings occurs as soon as possible, and by no later than three months of after receiving the template from the local in-charge tax authority.
Colombia	
Colombia did not yet have an information-gathering process for the transparency framework for the year in review.	Colombia is recommended to ensure that any future rulings within the scope of the transparency framework and all potential exchange jurisdictions are swiftly identified.
Colombia confirmed that it issued rulings within the scope of the transparency framework only in 2017 and as such no exchange took place in 2016.	Colombia is recommended to ensure the timely exchange of information on rulings in the form required by the transparency framework.
Czech Republic	
The Czech Republic has not applied the timelines for exchanges of information on rulings as set out in the transparency framework to the extent such exchanges are with other EU Member States.	The Czech Republic is recommended to exchange all information on past rulings as soon as possible, and to apply the timelines for future rulings as set out in the transparency framework with respect to all other members of the Inclusive Framework.
Denmark	
Denmark experienced some delays in exchanging information on past rulings.	No recommendation is made because Denmark completed the exchange of all past rulings in February 2017 and this is not a recurring issue.
Estonia	
Estonia does not currently collect information on the ultimate parent company for all future rulings.	Estonia is recommended to amend its rulings practice to require taxpayers to provide information on all potential exchange jurisdictions as part of the ruling process.
Estonia experienced some delays in exchanging information on past rulings and no exchanges of information on future rulings occurred for the year in review.	Estonia is recommended to ensure that the exchange of information on all rulings occurs as soon as possible.
Finland	
Finland did not exchange any information on rulings for the year in review because Finland chose to wait for the creation of the EU central directory platform before completing the templates or exchanging information on rulings as per the timelines set out in the Action 5 report (OECD, 2015).	Finland is recommended to ensure that information on all past and future rulings is exchanged as soon as possible.
France	
France experienced some delays in exchanging information on past rulings.	No recommendation is made because France completed the exchange of all past rulings by mid-February 2017 and this is not a recurring issue.
France did not identify or exchange information on new entrants to the IP regime or taxpayers benefiting from the third category of IP asset.	France is recommended to put in place a mechanism to ensure that it can identify and exchange information on all new entrants to the IP regime as soon as possible, and to identify and exchange information on taxpayers benefiting from the third category of IP asset as soon as possible.
Germany	
Germany experienced some delays in exchanging information on past rulings.	No recommendation is made because Germany completed the exchange of all past rulings by mid-May 2017 and this is not a recurring issue.

Aspect of the implementation of the transparency framework that should be improved	Recommendation for improvement
Greece	
Greece has not applied the timelines for exchanges of information on rulings as set out in the transparency framework.	Greece is recommended to ensure that the information on the past rulings is exchanged as soon as possible and to apply the exchange timelines for future rulings as set out in the transparency framework with respect to all other members of the Inclusive Framework.
Hungary	
It is not certain that the process for identifying all potential exchange jurisdictions, particularly the ultimate parent company, for future rulings will always be obtained.	Hungary is recommended to amend its rulings practice to ensure that information on all potential exchange jurisdictions, particularly the ultimate parent company, is always obtained.
Hungary did not yet have a process for the timely submission of the information to the Competent Authority.	Hungary is recommended to continue its efforts to put in place the internal procedure for the timely submission of information to the Competent Authority.
Hungary experienced significant delays in exchanging information on both past and future rulings.	Hungary is recommended to ensure the speedy exchange of all past and future rulings.
The identification of the new entrants to the IP regime is in progress. However Hungary has not exchanged information on new entrants to the IP regime.	Hungary is recommended to ensure the speedy exchange of information on new entrants to the IP regime.
Iceland	
Iceland did not use either the template contained in Annex C of the Action 5 report (OECD, 2015) or the OECD XML Schema to complete its exchange of information.	Iceland is recommended to exchange information on any future rulings using the form set out in Annex C.
India	
Information on all immediate parent and ultimate parent companies has not been sought for past and future rulings.	India is recommended to apply the "best efforts approach" to identify immediate parent and ultimate parent companies for all relevant past PE rulings and past APAs and to proceed with its plan to amend the process for issuing future rulings to require information on the immediate parent and ultimate parent company, using definitions that are consistent with definitions in accounting or legal provisions in India's domestic law.
India experienced significant delays in providing information to the Competent Authority.	India is recommended to continue to ensure that information is submitted to the Competent Authority without undue delay.
India experienced delays in exchanging information on past rulings.	India is recommended to ensure the speedy exchange of information on all past rulings.
Indonesia	
	No recommendations are made
Ireland	
	No recommendations are made
Israel	
For the year in review, the jurisdictions of residence of related party counterparts to transactions covered by the ruling or which gave rise to income from related parties benefiting from a preferential treatment were not identified.	Israel is recommended to ensure that information on all potential exchange jurisdictions is collected for past rulings.
Israel encountered some delays in the exchange of information on ruling within scope of the transparency framework.	Israel is recommended to ensure the speedy exchange of all past and future rulings.
During the year of review, no information on new entrants to the grandfathered IP regime was exchanged, although this information should be available.	Israel is recommended to ensure that information on new entrants to the grandfathered IP regime is swiftly made available to the Competent Authority for exchange of information.

Aspect of the implementation of the transparency framework that should be improved	Recommendation for improvement
Italy	
Italy experienced some delays in identifying future rulings.	Italy is recommended to ensure that all relevant future rulings are swiftly identified on a going forward basis.
For future rulings (other than APAs), information on all potential exchange jurisdictions is not yet always obtained, especially for ad hoc Patent Box agreements.	Italy is recommended to amend its rulings practices for all future rulings (other than APAs) to ensure that information on all potential exchange jurisdictions is collected.
Italy plans to transmit information on future rulings to the Competent Authority at six monthly intervals each year, which is longer than necessary.	Italy is recommended to reduce the timelines for providing the information on future rulings to the Competent Authority.
Italy has not identified all relevant information on new entrants to the IP regime that obtained benefits with respect to trademarks, although this information for the year 2015 should be available.	Italy is recommended to identify information on all new entrants to the IP regime that obtained benefits with respect to trademarks as soon as possible so as to be in a position to exchange the information.
Japan	
	No recommendations are made
Korea	
Korea does not yet have the necessary legal framework in place for exchanging information on rulings.	Korea is recommended to finalise the amendments to put the domestic legal basis in place to commence exchanges as soon as possible.
For the year in review, Korea had not finalised its mechanism to identify and exchange information on taxpayers benefiting from the third category of assets in the IP regime.	Korea is recommended to continue with its implementation of the legal and administrative framework to ensure taxpayers benefiting from the third category of assets in the IP regime are identified and information is exchanged as soon as possible.
Latvia	
Latvia does not yet have the necessary legal framework in place for exchanging information on rulings.	Latvia is recommended to finalise the amendments to put the domestic legal basis in place and implement all necessary administrative processes to commence exchanges as soon as possible.
Luxembourg	
The information-gathering process is still underway in Luxembourg with respect to past rulings and the classification of these rulings under each category.	Luxembourg is recommended to complete its information-gathering process on past rulings as soon as possible.
Luxembourg experienced significant delays in exchanging information on past rulings.	Luxembourg is recommended to continue to ensure that all information on past rulings is exchanged as soon as possible, and to complete the exchange process by the end of 2017.
Luxembourg is continuing to work on assuring identification and exchange on information on all new entrants to the IP regime as soon as possible.	Luxembourg is recommended to continue to work on identifying and exchanging information on all new entrants to the IP regime.
Mexico	
	No recommendations are made
The Netherlands	
The information-gathering process is still underway in the Netherlands with respect to past rulings.	The Netherlands is recommended to complete its information-gathering process on past rulings as soon as possible.
The Netherlands experienced significant delays in exchanging information on past rulings.	The Netherlands is recommended to continue to ensure that all information on past rulings is exchanged as soon as possible, and to fulfil its commitment to complete the exchange of information on past rulings by no later than 31 December 2017.
As information on new entrants to the IP regime will be exchanged in the same manner as for past rulings and for which there are some delays in the completion of the exchange, the exchange of information on all new entrants from 6 February 2015-31 March 2016 has not yet been completed.	The Netherlands is recommended to continue to ensure that all information on past rulings, including rulings on new entrants to the IP regime, is exchanged as soon as possible.
New Zealand	
	No recommendations are made

Aspect of the implementation of the transparency framework that should be improved	Recommendation for improvement
Norway	
	No recommendations are made
Poland	
The process to identify all potential exchange jurisdictions for past and future rulings (other than APAs) is still ongoing.	Poland is recommended to complete the process for identifying all potential exchange jurisdictions for past and future non-APA rulings.
For future rulings (both APAs and other rulings), Poland does not ensure that information on all potential exchange jurisdictions is always collected.	Poland is recommended to amend its rulings practices for all future rulings (APAs and other rulings) to ensure that information on all potential exchange jurisdictions is collected from the taxpayer in the course of issuing the ruling.
Poland did not have a process to complete the necessary information required on relevant rulings in the form of Annex C or the OECD XML Schema.	Poland is recommended to put in place the necessary process to complete the necessary information in the form of Annex C or the OECD XML Schema as soon as possible.
Poland did not have a process to provide the required information on rulings to the Competent Authority without undue delay.	Poland is recommended to put in place the necessary process to make the required information on rulings available to the Competent Authority as soon as possible.
Poland did not have a process to exchange information on rulings within the timelines required by the transparency framework and did not complete any exchanges in 2016.	Poland is recommended to complete all outstanding exchanges of information as soon as possible and put in place a process to meet the exchange timelines on a going forward basis.
Portugal	
Portugal encountered some delays in the exchange of information on rulings within scope of the transparency framework.	Portugal is recommended to ensure the speedy exchange of all past and future rulings.
Russian Federation	
Russia did not exchange information on past rulings within the timelines required by the transparency framework.	Russia is recommended to complete all outstanding exchanges of information as soon as possible and put in place a process to meet the exchange timelines on a going forward basis.
Saudi Arabia	
	No recommendations are made
Slovak Republic	
	No recommendations are made
Slovenia	
For future rulings for the year in review, it is not certain that information on all potential exchange jurisdictions was always obtained.	No recommendation is made as Slovenia has already amended its ruling practice to ensure that this information is provided by the taxpayer.
South Africa	
	No recommendations are made
Spain	
Spain did not appear to apply the best efforts approach to obtain information on potential exchange jurisdictions for past rulings which were preferential regime or PE rulings.	Spain is recommended to apply the best efforts approach for all past rulings, such as by using publicly available information, financial statements, corporate register information or other accessible information.
Spain does not yet collect information on all potential exchange jurisdictions for future rulings which are preferential regimes or PE rulings.	Spain has a public proposal to expand the information that the taxpayer must provide when asking for a ruling, including all the information required to identify potential exchange jurisdictions. Spain is recommended to continue with its proposal to amend its rulings practice for future rulings to require taxpayers to provide information on all potential exchange jurisdictions as part of the ruling process.
Spain transmits information on future rulings to the Competent Authority at six monthly intervals each year, to align with the EU Directive deadlines, which are longer than necessary. It is noted that the approach taken by Spain reflected its understanding at the time that such timelines would be consistent with the terms of reference for the transparency framework.	Spain is recommended to reduce the timelines for providing the information on future rulings to the Competent Authority.

Aspect of the implementation of the transparency framework that should be improved	Recommendation for improvement
Sweden	
For future rulings, Sweden did not obtain information on all potential exchange jurisdictions in all cases.	Sweden is recommended to amend its rulings practice to require taxpayers to provide information on all potential exchange jurisdictions as part of the ruling process.
Switzerland	
	No recommendations are made
Turkey	
No exchanges of information on past rulings occurred for the year in review.	No recommendation is made because Turkey completed the exchange of all past rulings by February 2017 and this is not a recurring issue.
Turkey has not been able to identify and exchange information on new entrants to the grandfathered IP regime.	Turkey is recommended to ensure that information on new entrants to the grandfathered IP regime are swiftly identified and exchanged.
United Kingdom	
The United Kingdom has not exchanged information on new assets of existing taxpayers benefiting from the grandfathered IP regime, as this information was not able to be collected other than in the case of a formal investigation. It is noted that it would not be practicable for the United Kingdom to open a formal investigation solely to obtain this information.	The United Kingdom is recommended to exchange information on new assets of existing taxpayers benefiting from the grandfathered IP regime to the extent that such information does become available in the future.
United States	
	No recommendations are made

Note

1. The Action 5 Report, *Countering Harmful Tax Practices More Effectively, Taking Into Account Transparency and Substance* (OECD, 2015) also provides that additional types of rulings could be added to the scope of the transparency framework in the future, where the FHTP and the Inclusive Framework agree that such a ruling could lead to BEPS concerns in the absence of spontaneous information exchange.

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Chapter 1

The review of the BEPS Action 5 standard on the exchange of information on certain tax rulings

Overview of the peer review on the exchange of information on tax rulings

1. The 2015 Action 5 Report, *Countering Harmful Tax Practices More Effectively, Taking Into Account Transparency and Substance* (Action 5 Report, OECD, 2015) is one of the four BEPS minimum standards. It involves two distinct aspects: a review of certain preferential tax regimes to ensure they are not harmful, and a framework for the exchange of information on tax rulings ("the transparency framework"). 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 to participating in the peer review, on an equal footing. The peer review of the Action 5 minimum standard is undertaken by the Forum on Harmful Tax Practices ("FHTP") and approved by the Inclusive Framework on BEPS.

2. The purpose of a peer review is to ensure the effective and consistent implementation of an agreed standard and to recognise progress made by jurisdictions in this regard. The peer review evaluates 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.[1]

3. The peer review has been conducted in accordance with the agreed methodology. The methodology sets out the process for undertaking the peer review, including the process for collecting the relevant data, the preparation and approval of annual reports, the outputs of the review and the follow up process.

4. The terms of reference and agreed 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 context of the Action 5 Report (OECD, 2015) and the references therein. Any terms in this report which are not included in the glossary take their meaning from the language and context of the Action 5 Report (OECD, 2015).

Outline of the key aspects assessed in the annual report

5. This annual report contains the findings of the first annual peer review process of jurisdictions' compliance with the transparency framework, conducted over the course of 2017. This first review covers 44 jurisdictions, which are all OECD and G20 countries, and the countries that were in the OECD accession process throughout the BEPS project.

It assesses the implementation of the transparency framework during the 1 January 2016-31 December 2016 period.

6. The reports on each reviewed jurisdiction cover each of the aspects of the terms of reference, which are broken down into four elements. The fifth element applies to jurisdictions which offer IP regimes. These capture the key elements of the transparency framework which are briefly described below.

A. The information-gathering process

7. This involves assessing the processes in place in each of the jurisdictions for identifying past and future rulings that fall within the scope of the transparency framework, and for each of these rulings, identifying the jurisdictions with which the information should be exchanged. With respect to past rulings which do not contain information to identify those jurisdictions for which the tax rulings would be relevant, the jurisdiction issuing the ruling should apply the "best efforts approach" to try to identify this information. The review of the information-gathering process also covers any supervision mechanism that the jurisdiction has in place to ensure that all relevant information is captured adequately.

B. The exchange of information

8. The exchange of information requires the legal and administrative framework to be in place to allow spontaneous exchange of information on the relevant tax rulings and subsequent exchange of the relevant rulings where a valid exchange of information request is received. Information on past rulings was to be spontaneously exchanged by 31 December 2016. Information on future rulings is to be spontaneously exchanged as soon as possible and no later than three months after the date on which the ruling becomes available to the Competent Authority for exchange of information. The exchange of information should occur in the agreed standardised form, either using the template contained in Annex C of the Action 5 Report (OECD, 2015), or the OECD *XML Schema and User Guide* (OECD, 2017).

9. The peer review includes reviewing (i) that there is a sufficient domestic and international legal framework for the exchange information related to rulings; (ii) that the templates for information on rulings being exchanged are complete and in the appropriate form; and (iii) that the systems are in place to ensure that information on rulings is transmitted to the jurisdiction's Competent Authority for exchange of information without undue delay and exchanged with relevant jurisdictions in accordance with the appropriate timelines.

10. The Action 5 Report (OECD, 2015) acknowledged that some jurisdictions may need to put in place the domestic or international legal framework in order to comply with the obligations under Action 5. In such cases the timelines for exchange of information on rulings are subject to a jurisdiction's legal framework.

11. With respect to the international exchange of information, for the 2016 year in review jurisdictions were required to exchange information with other jurisdictions being reviewed for the same year, to the extent that an exchange of information agreement was in force for such exchanges.[2] Some reviewed jurisdictions were also able, although not required, to exchange information on rulings with new members of the Inclusive Framework.

C. Confidentiality of information received

12. Each jurisdiction that exchanges information on rulings under the transparency framework should ensure that the information is kept confidential. The confidentiality aspect is reviewed by making sure that the international information exchange mechanisms being used by the jurisdictions include a confidentiality provision that restricts the use of information on rulings and there is the necessary domestic law and information security practices in place to give effect to such restrictions. Given its expertise in this area, the reviews of confidentiality in connection with the transparency framework defer to the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes in connection with the Standard for Automatic Exchange of Financial Account Information in Tax Matters. The outcomes of that work are not published and no further details of the review of confidentiality are provided in this peer review document.

D. Statistics

13. Each jurisdiction is required to report statistics on the exchange of information under the transparency framework including (i) the total number of spontaneous exchanges sent, (ii) the number of spontaneous exchanges under each category of ruling and (iii) a list of jurisdictions with which the information was exchanged for each type of ruling.

E. Exchange of information on IP regimes

14. The review of the transparency framework also includes a review of the spontaneous exchanges of information which are required to occur in respect of certain features of IP regimes, as set out in the Action 5 "nexus approach". This includes identifying and exchanging information on new entrants benefitting from grandfathered IP regimes (regardless of whether a ruling is provided), taxpayers which benefit from the third category of IP assets, and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption. This aspect of the review is only relevant for those jurisdictions which offer IP regimes, and the minimum standard does not require any jurisdiction to introduce such a regime.

Jurisdiction's response to their report

15. In addition, jurisdictions had the option to include a response to the report and update on recent developments which occurred after the 2016 year in review. Where included, this reflects the individual jurisdiction's views, and not those of the FHTP or the OECD Secretariat.

Notes

1. Terms of Reference and Methodology for the review as approved by the Inclusive Framework on 20 January 2017 available at www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf (OECD, 2017a).
2. Where a ruling related only to tax years which were not covered by the relevant exchange of information agreement, no exchange of information would be required to occur in respect of that ruling. No negative inference is drawn in the peer review where an exchange was not permitted to occur because of the absence of, or the tax years covered by, an exchange of information agreement.

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OECD (2017b), *Country-by-Country Reporting XML Schema: User Guide for Tax Administrations*, www.oecd.org/tax/beps/country-by-country-reporting-xml-schema-user-guide-for-tax-administrations.pdf (accessed on 10 November 2017).

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Chapter 2

Country profiles

Argentina

Argentina has met all aspects of the terms of reference (ToR) for the year in review and no recommendations are made. Argentina has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Argentina can legally issue five types of ruling within the scope of the transparency framework: (1) preferential regime (Promotional Regime for Software Industry); (2) cross-border unilateral APAs and any other cross-border unilateral tax ruling (such as an ATR) covering transfer pricing or the application of transfer pricing principles; (3) cross-border rulings giving a unilateral downward adjustment to the taxpayer's taxable profits in the country giving the ruling; (4) permanent establishment rulings; (5) related party conduit rulings. These rulings are referred to as individual binding consultations. Argentina notes that it does not issue APAs and that although the binding consultation regime does not explicitly exclude any of these categories of issues from its scope, the legal tax framework would not allow for a downward adjustment ruling. Argentina also notes that the preferential regime is not granted by tax ruling and there would not be expected to be any reason for a binding consultation on the interpretation of the regime to be given in practice. In addition, Argentina notes that it is highly unlikely that a conduit ruling would be issued given the structure of Argentina's tax laws which make it unlikely to be a jurisdiction of choice for a taxpayer using such arrangements. A specific unit (the Deputy General Direction for Technical and Legal Tax Matters) within the Argentine tax administration, the Federal Administration of Public Revenues (AFIP), is in charge of providing responses under the binding consultation regime. Responses given by AFIP to these binding consultations are published in anonymised form.[1]

In practice, Argentina issued two past rulings. For the period 1 April 2016-1 February 2017, Argentina issued no future rulings.

As no exchanges of information could occur for the year in review, no peer input was received in respect of information on rulings received from Argentina.

Introduction

1. This peer review covers Argentina's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for identifying past rulings in Argentina is the same as for identifying new rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. The process for identifying rulings covered by the transparency framework consists first of analysing the information contained in the public repository of anonymised rulings, which are required by law to be published in the tax gazette. These rulings are classified by year of issue, and with reference to the topic and type of tax covered. Officials reviewed all rulings issued from 2010 onwards and read the summary of the ruling. If a ruling did not fall within the scope of the transparency framework, it was disregarded.

6. If a ruling appeared to fall in one of the categories, the full technical report issued by the competent office of AFIP was then analysed in detail to confirm that the ruling was within the scope of the transparency framework, and within the period of validity for past rulings. This process was done by different offices of AFIP, in order to ensure consistency in the results which were later compared and discussed.

7. It was only recently confirmed that two past rulings were within the scope of the transparency framework, once an issue of interpretation of the transparency framework as it applies to Argentina's ruling programme was resolved. Argentina identified the potential exchange jurisdictions for both of the past rulings immediately after this confirmation, as follows. The information provided by the taxpayer and included in the ruling was consulted. Where the information on all potential exchange jurisdictions was not included in the ruling, AFIP used the "best efforts approach" which included consulting other information provided by the taxpayer and this allowed the identification of all potential exchange jurisdictions.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

8. Future rulings are identified as follows. The Deputy General Direction for Technical and Legal Tax Matters (which is responsible for issuing rulings) will alert the Directorate for International Affairs in case a relevant tax ruling is issued. The Directorate for International Affairs will analyse the ruling to verify whether the ruling is within the scope of the transparency framework. In addition, the Directorate for International Affairs will check the public repository of rulings on a quarterly basis to double check that all relevant rulings have been identified. Argentina notes that it intends to modify internal regulations regarding binding consultations to expressly contemplate this process.

9. Argentina notes that if a ruling was in the scope of the transparency framework, the potential exchange jurisdictions would be identified by taking into account the information provided by the taxpayer and included in the ruling. Although the information on all potential exchange jurisdictions is not automatically required from the taxpayer as part of the application for a binding consultation, the regulations governing the binding consultations grant sufficient discretionary powers to AFIP to request that information and these powers would be used in the event a relevant ruling was issued. Argentina also intends to modify its internal regulations to require the taxpayer to provide the relevant information when submitting an application for a binding consultation which could potentially fall within the scope of any of the categories of ruling within the transparency framework.

Review and supervision mechanism (ToR I.4.3)

10. The Directorate for International Affairs is formally in charge of supervising the entire procedure for the transparency framework (both the identification of relevant rulings and the exchange of information when relevant). The Directorate for International Affairs explained the scope of transparency framework to the Deputy General Direction for Technical and Legal Tax Matters and gave guidance on the criteria to identify relevant tax rulings. In addition, Argentina ensures that the information on past rulings was accurately collected as the research procedure described above was repeated by different offices and the results were compared and cross-checked as a review and supervision mechanism.

Conclusion on section A

11. Argentina has a process for identifying the rulings and potential exchange jurisdictions which is appropriate for the small size of the rulings programme in Argentina. Argentina has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

12. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

13. Argentina has the necessary domestic legal basis to exchange information spontaneously. Argentina notes that there are no legal or practical impediments that prevent the spontaneous exchange information on rulings as contemplated in the Action 5 minimum standard.

14. Argentina has international agreements permitting spontaneous exchange of information, including being a party to the Convention and double tax agreements in force with 16 jurisdictions. In total, this network of agreements covers 100 jurisdictions.[2]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

15. The Directorate for International Affairs is responsible for completing the template contained in Annex C in Word form. It would then be submitted to the Competent Authority for exchange of information (the Directorate for International Taxation) within one month of the issuance of the ruling.

16. With respect to the two rulings within the scope of the transparency framework, these were confirmed as being within scope only recently once an issue of interpretation of the transparency framework as it applies to Argentina's ruling programme was resolved. However, with respect to these two rulings, there are no agreements in force which permit spontaneous exchange of information with the relevant jurisdictions for the years concerned. As such, no exchanges were permitted to occur for the year in review and there was no delay in exchange of information in practice.

Conclusion on section B

17. Argentina has the necessary legal framework and administrative process in place for exchanging information on rulings. Argentina has met all of the terms of reference for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

18. As there were no exchanges of information on rulings in 2016, no statistics can be reported.

D. Matters related to intellectual property regimes (ToR I.4.1.3)

19. Argentina does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made

Notes

1. Available at http://biblioteca.afip.gob.ar/search/query/BoletinesDGI.aspx and http://biblioteca.afip.gob.ar/estaticos/consultasVinculantes/index.aspx (accessed on 10 November 2017).

2. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Argentina has in force Double Tax Agreements permitting spontaneous exchange of information with: Australia, Belgium, Bolivia, Brazil, Canada, Chile, Denmark, Finland, France, Italy, Netherlands, Norway, Russia, Spain, Sweden and United Kingdom. In addition, Argentina has agreements permitting spontaneous exchange of information with Aruba, Azerbaijan, Brazil, Ecuador, Italy, Peru and Venezuela.

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Australia

Australia has met all aspects of the terms of reference (ToR) for the year in review and no recommendations are made. Australia has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Australia can legally issue the following four types of rulings within the scope of the transparency framework: (1) preferential regimes (Offshore Banking Unit regime and the Conduit Foreign Income regime); (2) 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; (3) permanent establishment rulings; and (4) related party conduit rulings. Rulings are issued by different interpretative areas of the Australian Taxation Office (ATO).

In practice, Australia issued 208 Past rulings. For the period 1 April 2016-31 December 2016, Australia issued nine Future rulings. Australia publishes edited anonymised versions of written binding advice in the Register of Private Binding Rulings (PBRs) for all categories (excluding the unilateral APA's which are not published due to privacy reasons).[1]

Peer input received in respect of the exchanges of information on rulings received from Australia from two jurisdictions was positive, noting that information was complete and in the correct format and indicating that co-operation with Australia had been positive. The only concern expressed was that the information on past rulings was received late, by February 2017, instead of by the deadline of 31 December 2016. As noted below in section B, this was a relatively minor delay and which was resolved quickly.

Introduction

1. This peer review covers Australia's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. The ATO has a centralised case management system wherein all rulings issued by different interpretive advice areas of the office are stored. This case management system is supported in some circumstances by other internal systems and it was introduced prior to 1 January 2010. Therefore, all rulings or unilateral advance pricing agreements (UAPAs) issued by the ATO on or after 1 January 2010 are accessible on the case management system. The completeness of the case management system is ensured because before a ruling or UAPA can be finalised and issued, an approval process has to occur through the case management system.

6. The first step involved in identifying the rulings that were issued within the period defined as past rulings was establishing an exhaustive list containing all ATO advice and guidance products. Advice or guidance that was not found to be legally or administratively binding was eliminated. There were three remaining types of advice or guidance issued by the ATO that could be past rulings: (i) UAPAs; (ii) settlements; and (iii) private binding rulings (PBRs).

7. There was a different approach for UAPAs and settlements than there was for PBRs. For UAPAs and settlements, the process was as follows. All APAs and all settlements were identified in the internal case management system. Bilateral and multilateral APAs were removed (as they are out of scope of the Action 5 framework). The case management system is searchable and the search fields in the system for the dates were applied such that UAPAs and settlements which were signed prior to 2010 or which were no longer valid prior to 1 January 2014 were removed. The remaining UAPAs and settlements were manually verified as being entered into on or after 1 January 2010 (and still having application from 1 January 2014) or entered into on or after 1 January 2014 until 31 March 2016. A manual process was used to eliminate any rulings in these categories that were not within the five

categories listed in the Action 5 Report (OECD, 2015). This manual process was chosen because it was feasible on account of the relatively small number of UAPAs and settlements.

8. For PBRs, an automated filtering system was used, which was supplemented with a manual audit. This approach was chosen because of the large number of rulings identified in this category (approximately 30 000). All PBRs were identified from the central case management system and transferred into a data analytics programme. The PBRs were filtered based on the date of issue being after 1 January 2010 and if the ruling was still in effect as at 1 January 2014. A manual sampling process of the PBRs was conducted to ensure the periods identified by the system were accurate.

9. In order to determine if the PBRs were in scope, an automated search process was designed. This involved a meeting of technical staff to determine key words, phrases and legislative references that would likely appear for each of the five categories of rulings. A search was applied using those terms, and a set of PBRs were identified as potentially in scope. These results were manually sampled against rulings known to be both in and out of scope to determine the accuracy and the search process was refined. The search was performed again for all the remaining rulings.

10. The last step was that a statistical sampling of the identified rulings for each category was performed to verify the accuracy of the search results, with a target of having 95% or higher confidence that the results were correct. Refinements were made to the automated search process to ensure a higher percentage of rulings to be classified automatically. The sampling was based on each category of PBRs: (1) preferential regimes and conduit rulings: due to the small number of rulings identified, 100% were sampled and tested for accuracy; (2) permanent establishment rulings: a total of 24% were sampled and tested for accuracy; (3) downward adjustments rulings: a total of 43% of rulings containing key words that could have indicated a downward adjustment were sampled and tested for accuracy to confirm that no such rulings were issued. In total, 32% of PBRs were sampled and tested for accuracy. This statistical sampling of the past PBRs that we identified as being scope (using the methodologies discussed in the report) showed that 98% of the rulings identified were in scope.

11. In order to identify the potential exchange jurisdictions, the rulings themselves were consulted. However, the rulings did not always contain information all potential exchange jurisdictions and the ATO used the "best efforts approach." This involved using a combination of different information sources including a public database of company details, financial statements, agreements signed with the taxpayer and information collected through compliance action, such as case notes and group structures. Australia reports that in most cases it was able to identify all relevant parties, other than a minor number of UAPAs.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

12. In addition to the three types of rulings above (i.e. UAPAs, settlements and PBRs), a fourth category was introduced after 1 April 2016. This is the tailored compliance engagement product. The product provides taxpayers an opportunity to seek early engagement on potential areas of compliance risk and to receive advice on how the ATO views a specific tax risk in relation to a future commercial transaction.

13. Rulings which may be in the scope of the transparency framework are identified at the point that the request for the ruling is received. The client engagement officers are required to obtain information on all potential exchange jurisdictions from the ruling or APA applicant during the course of the engagement. The case officer is then required to input the information into the case management system for all the relevant related parties.

Review and supervision mechanism (ToR I.4.3)

14. The accuracy of the information-gathering process was ensured by designing a comprehensive search process, which was tested and refined. General awareness-raising of the transparency framework was conducted throughout the tax administrations, and tailored training sessions were held to equip the relevant rulings and APAs officers with the tools needed to identify rulings in the scope of the transparency framework. In addition, staff were provided with reference guides. Ongoing support is also being provided to the staff responsible for issuing rulings by a central BEPS team to assist with any issues in determining the scope of the transparency framework and the systems recording process.

Conclusion on section A

15. Australia has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

16. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

17. Australia has the necessary domestic legal basis to exchange information spontaneously. Australia notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

18. Australia has international agreements permitting spontaneous exchange of information, including being a party to the Convention and bilateral agreements with 45 jurisdictions. In total, this network of agreements covers 109 jurisdictions.[2]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

19. When a ruling is found to be in scope of the framework, the case officer must complete the relevant template within the case management system. The template is in accordance with the OECD *XML Schema and User Guide* (OECD, 2017). The template has a number of "drop-down" lists to reduce the number of input errors. The process for ensuring all relevant information is captured accurately is by an internal template that includes both mandatory and optional fields. The case officer is unable to finalise the template if certain fields have not been completed and will receive an error message. The template along with other information from internal sources is then compiled automatically and the XML Schema is generated. The compiled template requires sign-off by the team or technical leader and is then automatically assigned to the exchange of information unit for international exchange.

20. The timeliness of exchanges is as follows. Note that these statistics reflect the fact that information was only required to be exchanged with OECD/G20 countries, and not with new members of the Inclusive Framework, and that Australia in fact did only exchange information with OECD/G20 countries for the year in question.

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2016	Delayed exchanges: Number of exchanges not transmitted by 31 December 2016	Delayed exchanges: Reasons for the delays	Delayed exchanges: Any other comments
	191	103	Please see paragraph 21	Of the post 31 December exchanges, 52 were to occur with new member jurisdictions joining the Inclusive Framework. Australia confirms that rulings in this situation were identified and will be exchanged before the agreed deadline applying to those exchange partners (i.e. by 31 December 2017 or by 31 December 2018).

Future rulings in the scope of the transparency framework	Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted	Delayed exchanges: Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	Delayed exchanges: Reasons for the delays	Delayed exchanges: Any other comments
	11	N/A	N/A	
Total	**202**	**103**		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	1	2 weeks	N/A

21. Australia was aware that for some of their treaty partners there was a risk that the treaty partner would not have their system in place to receive the XML Schemas in the agreed format by 31 December 2016. To ensure both the confidentiality of the information and that the jurisdictions could use the information on rulings in a suitable format, the ATO wrote to jurisdictions with which they had not previously exchanged any information on rulings. Some exchanges were delayed due to receipt of the response occurring after 31 December 2016. Upon receipt of a response, the ATO exchanged the rulings and in some cases sent them in a different format to the XML Schema.

Conclusion on section B

22. Australia has the necessary legal framework and administrative process in place for exchanging information on rulings. There were some delays with respect to past rulings, however the explanation given by Australia indicates that this was on account of seeking to ensure effective co-operation rather than from any difficultly with the process itself. In addition, because approximately half of the exchanges that are counted as being sent after 31 December 2016 are with new members of the Inclusive Framework and with which Australia was not required to exchange before 31 December 2016, these are not considered

to be a deficiency in Australia's implementation of the transparency framework. Australia has met all of the terms of reference for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

23. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	9	Canada, New Zealand, United Kingdom, United States
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	154	Canada, Finland, India, Italy, Japan, Luxembourg, Netherlands, New Zealand, United Kingdom, United States
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	N/A	N/A
Permanent establishment rulings	38	Canada, India, Japan, Netherlands, New Zealand, United Kingdom, United States
Related party conduit rulings	Included in *de minimus*	
De minimis rule	1	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	N/A	N/A
Total	202	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

24. Australia does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made

Notes

1. Available at: www.ato.gov.au/General/ATO-advice-and-guidance/In-detail/Private-rulings/Register-of-private-binding-rulings/ (accessed on 10 November 2017).

2. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Australia also has Double Tax Agreements with Argentina, Austria, Belgium, Canada, Chile, China (People's Republic of), Czech Republic, Denmark, Fiji, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Italy, Japan, Kiribati, Korea, Malaysia, Malta, Mexico, Netherlands, New Zealand, Norway, Papua New Guinea, Philippines, Poland, Romania, Russia, Singapore, Slovak Republic, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Chinese Taipei, Thailand, Turkey, United Kingdom, United States and Viet Nam. The TIEA with Aruba also permits spontaneous exchange of information.

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Austria

Austria has met the terms of reference (ToR) for the year in review except that it is not certain that information on all potential exchange jurisdictions is identified for future rulings (ToR I.4.2.1) and it was not able to complete the timely exchange of information on past and future rulings (ToR II.5.6). Austria is recommended to continue with its plan to ensure that information on all potential exchange jurisdictions is obtained as part of the ruling process and to continue its efforts to ensure that information on relevant past and future rulings is exchanged as soon as possible. Austria has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Austria can legally issue one type of ruling within the scope of the transparency framework: 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. These rulings are issued by 39 competent local tax offices.

In practice, Austria has issued 63 past rulings. For the period 1 April 2016-1 February 2017, Austria issued 13 future rulings. These rulings are not published.

As no exchanges were undertaken by Austria, no peer input was received in respect of the exchanges of information on rulings received from Austria.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers Austria's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, being past and new rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. Each of the 39 competent tax offices had access to a database which recorded all issued rulings. At least two officials in each office were asked to search the records of the office to identify past rulings within the scope of the transparency framework. The responsible officers read each ruling to determine whether it fell into one of the Action 5 categories.

6. Potential exchange jurisdictions were identified on the basis of the information available either in the ruling itself. If the information was not available in the ruling, the "best efforts" approach was used which involved searching information in the concerned taxpayer's file. Austria states that information on all potential exchange jurisdictions was able to be identified for the past rulings.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

7. The information-gathering process on future rulings was carried out by each competent local tax office. All ruling applications are recorded in a database. Instructions from the federal specialist division have been given to the local tax offices as to how the officials issuing rulings should check to determine if a ruling is within the scope of the transparency framework. For any ruling in scope, they are compelled to refer to experts from the federal division without delay to confirm the categorisation of the ruling.

8. Information on potential exchange jurisdictions is identified from the ruling or where necessary from the taxpayer file. Austria notes that applicants for a ruling must provide all facts and circumstances of a case, which would generally be expected to include identifying all relevant jurisdictions, and where all necessary facts and circumstances are not presented, the tax office will make further inquiries. However, it is not certain that the information on all potential exchange jurisdictions would always be obtained on all future rulings in the scope of the transparency framework, such as the identity of the immediate

parent or ultimate parent company if such entities were not party to transactions covered by the APA. Austria further notes that it plans to amend the internal instructions for issuing rulings and train staff on the necessity of collecting all relevant information on potential exchange jurisdictions for the purposes of the transparency framework.

Review and supervision (ToR I.4.3)

9. Training on the transparency framework was provided to all tax offices and experts taking part in the process of identifying the relevant rulings. The heads of the expert team in each local tax office have the responsibility to check the compliance with the instructions from the federal specialist division on the transparency framework. The federal specialist division also reviews the work of the local tax offices including by audits of compliance with the instruction.

Conclusion on section A

10. Austria has met all the terms of reference for the information-gathering process except that it is not certain that information on all potential exchange jurisdictions is always identified for future rulings (ToR I.4.2.1). Austria is recommended to continue with its plan to ensure that information on all potential exchange jurisdictions is obtained as part of the ruling process.

B. The exchange of information

11. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

12. Austria has the necessary domestic legal basis to exchange information spontaneously. Austria notes that there are no legal impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

13. Austria has international agreements permitting spontaneous exchange of information, including being a party to the Convention, the Directive 2011/16/EU with all other European Union Member States, and double tax agreements in force in force with 88 jurisdictions. In total, this network of agreements covers 134 jurisdictions.[1]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

14. In order to share the required information with other jurisdictions, each competent local office of has to fill in the template contained in Annex C of the 2015 Action 5 report (OECD, 2015). This template is then reviewed by the federal specialist division. Subsequently, the Competent Authority performs an ultimate review by checking the template against the ruling before exchanging the information, which will be exchanged in the OECD XML Schema (OECD, 2017b).

15. Austria intends to ensure that the template is made available to the Competent Authority responsible for exchange of information in a timely way by calling upon each competent tax office to treat these issues as a matter of urgency. The templates are to be transmitted to the Competent Authority electronically.

16. Austria was waiting for the central directory of the European Commission to become available in order to be able to exchange the templates on rulings in the OECD XML Schema (OECD, 2017b). The delivery of the central directory was delayed, and after it became available Austria encountered further delays due to a technical incompatibility between the European Commission directory and the domestic Austrian IT systems. These technical issues are preventing Austria from producing and exchanging the XML files. Austria expects to be able to address this problem by the third quarter of 2017.

17. As a result, the timeliness of exchanges is as follows. Note that these statistics as to the outstanding exchanges reflect the fact that information was only required to be exchanged with OECD/G20 countries, and not with new members of the Inclusive Framework.

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2016	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2016	Reasons for the delays	Any other comments
	0	63		
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Delayed exchanges**		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	**Reasons for the delays**	**Any other comments**
	0	13		
Total	0	76		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	NA

Conclusion on section B

18. Austria has the necessary legal framework and administrative process in place for exchanging information on rulings. Austria was not able to complete any exchanges on past or future rulings due to technical impediments in implementing the OECD XML Schema (OECD, 2017b). Austria has met all of the terms of reference for the exchange of information process other than the timely exchange of information on past and future rulings (ToR II.5.6). Austria is recommended to continue its efforts to overcome the existing technical impediments and to ensure that information on past and future rulings is exchanged as soon as possible.

C. Statistics (ToR IV)

19. As there were no exchanges of information for the year of review, no statistical data can be reported.

D. Matters related to intellectual property regimes (ToR I.4.1.3)

20. Austria does not offer an intellectual property regime that is subject to transparency requirements under the Action 5 Report (OECD, 2015).

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
It is not certain that information on all potential exchange jurisdictions is always identified for future rulings.	Austria is recommended to continue with its plan to ensure that information on all potential exchange jurisdictions is obtained as part of the ruling process.
No exchanges of information on past or future rulings occurred for the year in review.	Austria is recommended to continue its efforts to overcome the existing technical impediments and to ensure that information on past and future rulings is exchanged as soon as possible.

Notes

1. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Austria also has Double Tax Agreements with Albania, Algeria, Armenia, Australia, Azerbaijan, Bahrain, Barbados, Belarus, Belgium, Belize, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, China (People's Republic of), Croatia, Cuba, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Hong Kong (China), Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Kazakhstan, Korea, Kyrgyzstan, Kuwait, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Moldova, Mongolia, Montenegro, Morocco, Nepal, Netherlands, New Zealand, Norway, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saint Vincent and the Grenadines, San Marino, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Tajikistan, Thailand, Turkey, Turkmenistan, Tunisia, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Venezuela and Viet Nam.

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Belgium

Belgium has met all aspects of the terms of reference (ToR) for the year in review and no recommendations are made. Belgium has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Belgium can legally issue the following four types of rulings within the scope of the transparency framework: (1) preferential regimes (patent income deduction, tax shelter regime for maritime exploitation and excess profits); (2) 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; (3) downward adjustments; and (4) permanent establishment rulings. In Belgium, there are four services that issue rulings within the scope of the transparency framework: the international relations department, five non-resident taxpayers services offices (Brussels, Antwerp, Gent, Liège and Namur), the Ruling Commission and the transfer pricing unit of the tax audit and compliance management office.

In practice, Belgium issued 586 past rulings. For the period 1 April 2016-1 February 2017, Belgium issued 57 future rulings. These rulings are published in an anonymised way.[1]

Peer input was received from nine jurisdictions in respect of the exchanges of information on rulings received from Belgium. The input noted that information was in the correct format, complete and timely. Three peers noted that some information on future rulings was received more than three months after the issuance of the ruling. However, since the standard is that information must be exchanged by three months of receipt of the information by the Belgian Competent Authority for exchange of information rather than within three months of issuance, the peers were unable to comment on whether it was late. One peer noted that the rulings summaries were very helpful.

Introduction

1. This peer review covers Belgium's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. The process for identifying past rulings in each of the four services that issue rulings was as follows.

6. With respect to the international relations department, staff members were instructed to review their own past files to identify any advice or recommendations given that could fall within the time frame for past rulings. All outgoing international correspondence was manually checked. Once the past rulings were identified, they were checked against the definitions of the various ruling categories to determine whether they fell within the scope of the transparency framework. The conclusions were checked and validated by the Head of Service. Two past rulings that fall within the scope of the transparency framework were identified. The ruling was consulted to identify the potential exchange jurisdictions, as the rulings usually included an overview of the group structure and the International Relations department only grants a decision if all related parties for the decision have been clearly identified. As such, the "best efforts approach" was not required to be used.

7. With respect to the five local non-resident taxpayers services offices, staff members were required to review their own files to identify relevant rulings. The rulings identified were all within the permanent establishment category, which reflects that this service deals only with non-residents. In order to identify the potential exchange jurisdictions, the information in the ruling was reviewed. The service also reviewed the information on the file kept by the non-resident taxpayers services. The available information allowed for the head office to be identified. The service was not always able to identify the ultimate parent company and this service did not have access to databases such as Orbis. It is noted that the impact of this should be limited as this service issued only ten past rulings.

8. With respect to the Ruling Commission, staff members performed a systematic review to identify if the rulings were past rulings. Since 2005, the Ruling Commission had a database containing all rulings granted with reference to the applicable legal provisions,

the date of the request, the date the decisions were made and the nature of the decision. Staff consulted the database and undertook a manual review to classify the results in accordance with the relevant categories of rulings. In order to identify the potential exchange jurisdictions, the information in the ruling was reviewed which usually included an overview of the group structure. The staff also reviewed the information on the file kept by the ruling service. If the information on the immediate parent or ultimate parent company was not available in the ruling, the "best efforts approach" was used which included consulting the Orbis database.

9. With respect to the transfer pricing unit, the Tax Audit and Compliance Management Office staff compiled a list of all potentially relevant decisions, which were all the signed agreements and the correction notices that were managed by the transfer pricing unit from 2010 to 2014. Each agent was then requested to check the files that were assigned to them in the past and to confirm the existence or not of a ruling. In this respect, an agreement or correction notice qualifies as a ruling relevant for exchange if (a) the agreement or notice has an impact on the future; (b) it concerns a cross-border transaction; and (c) it was issued to a Belgian taxpayer where the ruling relates to a transaction with a foreign company. For the past ruling from 2015-31 March 3016, each agent checked the rulings that were assigned to him or her using the same approach. In order to identify potential exchange jurisdictions, information in the ruling was reviewed. The transfer pricing unit also reviewed the information on the file. No "best efforts approach" was needed for the transfer pricing unit to identify the relevant jurisdictions with which to exchange information because the information on all potential exchange jurisdictions was available in the file.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

10. The process for identifying future rulings in each of the four services that issue rulings was as follows.

11. With respect to the international relations department, the office will continue to employ a manual approach to monitor the issuance of any rulings that would fall within the scope of the transparency framework. Belgium notes that it is highly unlikely that this office would issue such a ruling.

12. In 2016, the five local non-resident taxpayers' services were centralised into one specialised division based in Brussels. The service only issues rulings relating to PEs and as such all rulings are identified as within the scope of the transparency framework. The process for issuing a ruling has been updated to ensure that any future rulings will only be granted provided all potential exchange jurisdictions are identified according to the Action 5 requirements.

13. Within the Ruling Commission, a standard procedure was set up to identify future rulings and classify them under the relevant categories. First, the taxpayer has to complete a template containing the necessary information when making the request for a ruling (including the identification of all related parties). Second, a case-worker reviews the template. Third, a supervisor reviews it a second time. Fourth, the Board of the Ruling Commission makes its decision on granting the ruling. The ruling is only granted when the information to exchange is collected in an XML file the day the file is put on the agenda of the Board Meetings.

14. Within the transfer pricing unit, for each signed agreement or each registered correction notice, the competent agent has to fill in a template and instruction sheet for exchange of information, which ensures that the ruling is identified as within the scope of the transparency framework at the time it is issued. In this process, the agent has to ensure that all potential exchange jurisdictions are identified.

Review and supervision mechanism (ToR I.4.3)

15. The international relations department provided training to representatives of all the services involved in issuing rulings. The training explained the scope of the transparency framework and the procedure to register the information on the rulings concerned. For all services, in order to ensure the accuracy of the information-gathering process, all staff was briefed during a meeting and all staff were asked to review all of their own files to verify the existence of any rulings. A deadline was given for the verification and the registration of relevant rulings. Each office supervised the process for ensuring the information-gathering process was accurate and staff members were instructed to consult the Head of Service in case of any doubts.

Conclusion on section A

16. Belgium has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

17. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

18. Belgium has the necessary domestic legal basis to exchange information spontaneously. Belgium notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

19. Belgium is a party to international agreements permitting spontaneous exchange of information, including the Convention, the Directive 2011/16/EU with all other European Union Member States, and double tax agreements in force with 33 jurisdictions.[2] In total, this network of agreements covers 107 jurisdictions.

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

20. In order to share the required information with other jurisdictions, the agents responsible for identifying the rulings were required to complete the template and instruction sheet for exchange of information, which was collected by two designated staff members who audited the forms to ensure they were correct and complete. All forms were checked by the Head of Service or designated supervisors. The forms were then converted into XML format via the use of the XML tool, which allows for the registration of rulings and their transcription to the format in accordance with the *OECD XML Schema and User Guide* (OECD, 2017b). This tool includes control and validation rules that prevent the transmission of any incorrect or incomplete information by the Competent Authority. This tool also provides some guidance to the users, who were required to attend specific training sessions.

21. Belgium ensures that the information on rulings is made available to the Competent Authority responsible for international exchange of information in a timely way as follows, which applies to both past and future rulings. With respect to the local non-resident taxpayers services, the information on the rulings issued within the previous three months is sent every quarter to the Belgian Competent Authority. With respect to the rulings service, the template

for future rulings is saved in a computer directory and information on the rulings issued within the previous three months is provided to the Competent Authority every quarter. For the transfer pricing unit, the template and instructions on the rulings issued within the previous three months are provided to the Competent Authority every quarter.

22. Belgium notes that the practice of making the information available to the Competent Authority at quarterly intervals assists in co-ordinating the exchanges from the different offices which issue rulings. Belgium also notes that the first exchange of future rulings took place in December 2016, when the IT application for the international exchange became operational. Due to this, the future rulings issued during the earlier part of 2016 were made available to the Competent Authority later than the usual. This may explain the comments from a small number of peers on the timing of exchanges on future rulings. Belgium notes that at the end of 2017 an automated link will be created between the XML tool and the application used for the international exchange. This will mean that registered rulings will become available for international exchange as soon as they are registered and validated by a supervisor and the absolute maximum time limit for transmission to the Competent Authority would be one month.

23. In order to ensure a harmonised approach, the Competent Authority held meetings, organised training sessions and provided guidelines and clear deadlines to the units issuing rulings on the transparency framework and the use of the XML format. The federal tax administration created a second application designed for gathering all issued rulings in one database and for extracting one outgoing message per partner state containing all relevant information on rulings, in accordance with the *OECD XML Schema User Guide* (OECD, 2017b). This electronic message is sent after a validation by the Competent Authority.

24. The timeliness of exchanges is as follows. Note that Belgium was able to undertake exchanges of information not only with OECD/G20 countries as required, but also with new members that joined the Inclusive Framework in 2016.

Past rulings in the scope of the transparency framework		Delayed exchanges		
	Number of exchanges transmitted by 31 December 2016	**Number of exchanges not transmitted by 31 December 2016**	**Reasons for the delays**	**Any other comments**
	823	246	technical impediments no pre-established transmission channels with some jurisdictions	The exchanges not transmitted by 31/12/2016 were transmitted by 31/01/2017
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Delayed exchanges**		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	**Reasons for the delays**	**Any other comments**
	318	0	Not applicable	
Total	1 141	246		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	15[3]	5 days	0

25. Belgium provides two types of explanations for the transmission delay:

- technical impediments affecting the XML tool itself or the templates sent to the Competent Authority by the responsible departments. All necessary corrections were made within a month.
- practical impediments where there was no pre-established transmission channel with the Competent Authorities of certain new members of the Inclusive Framework.

Conclusion on section B

26. Belgium has the necessary legal framework and administrative process in place for exchanging information on rulings. Belgium experienced some delays in exchanging information on past rulings. Belgium has taken steps to remedy this issue, and all information on past rulings was exchanged within one month of the deadline. As such, the impact of this delay is minor. Belgium has met all of the terms of reference for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

27. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	29	Curaçao, Denmark, France, Germany, Ireland, Japan, Mexico, Netherlands, Sweden, United Kingdom and United States
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	991	Argentina, Australia, Austria, Brazil, Bulgaria, Canada, Chile, China (People's Republic of), Colombia, Croatia, Czech Republic, Curaçao, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hong Kong (China), Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Jersey, Korea, Latvia, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, Romania, Russia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Turkey, United Kingdom, United States
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	Included in de *minimus*	N/A
Permanent establishment rulings	344	Australia, Austria, Bulgaria, Canada, Croatia, Czech Republic, Colombia, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong (China), Hungary, India, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Mauritius, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turkey, United Kingdom, United States
Related party conduit rulings	0	N/A
De *minimis* rule	2	N/A

Category of ruling	Number of exchanges	Jurisdictions exchanged with
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	0	N/A
Total	1 366[4]	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

28. Belgium has an intellectual property regime that is subject to transparency requirements under the Action 5 Report (OECD, 2015) (the Innovation Income Deduction). It states that the identification of the benefitting taxpayers will occur as follows:

- ***New entrants benefiting from the grandfathered IP regime***: Information on new entrants would be available through a ruling or through the tax return, as follows. Rulings granted to new entrants benefitting from the grandfathered IP regime can be easily identified by the Ruling Service through its database. Belgium has identified ten new entrants through rulings after 6 February 2015, however for these rulings there were no potential exchange jurisdictions implicated as the respective Belgian companies did not receive IP income from associated companies situated abroad and these companies had no immediate or ultimate parent company. If rulings are granted in the future and which require exchange under the transparency framework, the identity of those new entrants would be exchanged as is the case for other "past rulings". Where a taxpayer obtains the benefits of the IP regime without obtaining a ruling, the information on new entrants will be available in the tax returns. This will be available and exchanged by the end of 2017 or early 2018 with respect to tax returns filed in 2016, and which will include information on whether the taxpayer was a new entrant after 6 February 2015.
- ***Third category of assets***: not applicable, as this option has not been incorporated in Belgium's IP regime.
- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption***: these taxpayers will be identified in the annual process of the taxpayer obtaining a yearly ruling allowing them to do so.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made

Notes

1. Available at: http://ccff02.minfin.fgov.be/KMWeb/browseCategory.do?method=browse&params.selectedCategoryId=840 (accessed on 10 November 2017).
2. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Belgium also has Double Tax Agreements with: Argentina, Australia, Bangladesh, Brazil, Canada, Chile, China (People's Republic of), Congo, Gabon, Egypt, Georgia, Hong Kong (China), Iceland, India, Indonesia, Israel, Japan, Korea, Mauritius, Mexico, New Zealand, Nigeria, Norway, Pakistan, Russia, San Marino, Senegal, Singapore, South Africa, Sri Lanka, Turkey, Ukraine, United States.
3. Belgium notes that these requests were exclusively questions on the format and the exchange as such, not on the substance of the rulings.
4. There were 1 082 exchanges as defined under footnote 13 of the Terms of Reference. The total of number of exchanges given in this table is higher due to the fact that some exchanges fall under more than one category of ruling.

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Brazil

Brazil has met all aspects of the terms of reference (ToR) for the year in review except with respect to the timely provision of future rulings to the competent authority (ToR II.5.5). However, as no future rulings were issued in this period there has been no practical impact on the effectiveness of Brazil's implementation of the transparency framework. No recommendation is made as Brazil has addressed this issue by ensuring that future rulings will be identified after they are issued. Brazil has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Brazil can legally issue two types of rulings within the scope of the transparency framework: (1) rulings related to a preferential regime (PADIS – Semiconductors Industry) and (2) 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. Since 2013, rulings are issued by the General Co-ordination of Taxation, an office of the Brazilian Tax Administration (*RFB*). Prior to 2013, ten regional offices were responsible for issuing rulings, together with the General Co-ordination of Taxation which was responsible for issuing rulings related to transfer pricing legislation, and in cases which two or more regional offices had different interpretations of the same tax legislation. The General Co-ordination of Taxation had access to information related to all previous rulings.

In practice, Brazil issued ten past rulings. For the period 1 April 2016-31 December 2016, Brazil did not issue any future rulings. All the rulings issued after 2013 are published on the RFB's website.[1] A summary of rulings issued prior to 2013 was published in the federal gazette.

No peer input was received in respect of the exchanges of information on rulings received from Brazil.

Introduction

1. This peer review covers Brazil's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. First, a search was performed on the internal database of RFB where all rulings are stored. Filters were applied in the database to limit the search to rulings relating to income tax and to limit the search to rulings issued in the period from 1 January 2010 to 31 May 2016. Brazil decided to consider 31 May 2016 as the cut-off date for past rulings as there were few rulings within the scope of the transparency framework, and the information was gathered in June 2016. Although the transparency framework requires that future rulings are those issued from 1 April 2016, Brazil's starting date is only slightly different and in Brazil's case appears to have very limited impact on the effective implementation of the transparency framework.

6. When a ruling was found to be in scope of this search, it was separated. In the case of rulings issued 1 January 2010-31 December 2013, the Head of International Tax Division examined it to see if it was about a law that had changed before 2014 in order to determine if the ruling remained valid on 1 January 2014. Each relevant ruling was then individually read by an officer from the International Taxation Division to verify if it was in the scope of the transparency framework.

7. In order to identify the potential exchange jurisdictions, the RFB used the taxpayer description in the ruling request as the first source of information. As information on the relevant related jurisdictions was not mandatory information that taxpayers had to present to the RFB, in most cases it was necessary to apply the "best efforts approach." This involved searches in databases or on publicly available information on the internet to identify relevant information (particularly to identify the name of a multinational enterprise group, name of the related party, or the name of the parent company). If it was not possible to identify the name of the foreign entity in this jurisdiction, Brazil still identified it as a relevant jurisdiction so that information could be sent to that jurisdiction albeit without the name.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

8. A similar search was applied for future rulings. In this case, filters were applied in the database to limit the search to rulings relating to income tax and that were issued from 1 June 2016. Each such ruling is manually reviewed to verify whether it is in the scope of the transparency framework. During the year in review, no future rulings were issued.

9. Brazil implemented Normative Instruction No. 1,689/2017 in February 2017 which amends the process for granting rulings. The amendments ensure that all potential exchange jurisdictions are identified in the process of issuing a ruling. This requires taxpayers to submit all information required under the transparency framework, such as to (i) identify the direct and the final controller of the legal entity that requested the rulings, as well as their jurisdictions of domicile; (ii) identify the jurisdictions of residence of all related parties and (iii) identify the resident country for the parent company and its permanent establishments. Although this amendment only commenced from February 2017, meaning there was a technical gap in the collection of information on potential exchange jurisdictions for future rulings issued from 1 April 2016 – February 2017, as no such rulings were issued in this period there is no practical impact on the effectiveness of Brazil's implementation of the transparency framework.

Review and supervision mechanism (ToR I.4.3)

10. The process for ensuring that all relevant information is captured accurately is by way of setting up a revision of every step, from searching the rulings to completing the forms, in order to guarantee that the information to be exchanged is complete as possible. The process is supervised by the Income Tax Co-ordinator, who is responsible for a final review.

Conclusion on section A

11. Information on all potential exchange jurisdictions is collected and best efforts were used for past rulings. Although there were two technical deviations from the transparency framework, these have had little or no impact on the implementation of the standard. Brazil has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

12. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

13. Brazil has the necessary domestic legal basis to exchange information spontaneously. Brazil notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

14. Brazil has international agreements permitting spontaneous exchange of information, including being a party to the Multilateral Convention and double tax agreements in force with 33 jurisdictions. In total, this network of agreements covers 105 jurisdictions.[2]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

15. In order to share the required information with other jurisdictions, the template contained in Annex C of the 2015 Action 5 Report (OECD, 2015) is prepared in MS Word format, observing the information-gathering process and subsequently it is translated and revised. Three assigned officers in the International Taxation Division fill in the templates, which are then checked by the Head of Division against the text of the actual ruling to ensure accuracy. The template is checked again by the Income Tax Co-ordinator and sent them to the Competent Authority for exchange of information to perform the exchange.

16. Brazil ensures that the ruling summary template is made available to the competent authority for exchange of information in a timely way by ensuring all information on past rulings was posted before 31st December 2016. As there are few rulings to be exchanged, for the year in review Brazil intended to exchange the future rulings on an annual basis. During the peer review process, Brazil realised an annual exchange will not meet the transparency framework. However, as no future rulings had been issued, there was no impact of this on the effectiveness of Brazil's implementation of the transparency framework.

17. The timeliness of exchanges is as follows. Note that Brazil was able to undertake exchanges of information not only with OECD/G20 countries as required, but also with new members that joined the Inclusive Framework in 2016:

Past rulings in the scope of the transparency framework		Delayed exchanges		
	Number of exchanges transmitted by 31 December 2016	Number of exchanges not transmitted by 31 December 2016	Reasons for the delays	Any other comments
	14	0	N/A	N/A
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Delayed exchanges**		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	**Reasons for the delays**	**Any other comments**
	N/A	N/A	N/A	N/A
Total	14	0		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response
	N/A	N/A

Conclusion on section B

18. Brazil has the necessary legal framework and administrative process in place for exchanging information on rulings. There were two exchanges with respect to past rulings which did not occur by 31 December 2016; however the explanation given by Brazil indicates that this was due to the lack of exchange of information provision in force. Brazil

has met all of the terms of reference for the exchange of information process except for the timely provision of future rulings to the Competent Authority (ToR II.5.5). However, as no future rulings were issued in the year of review, there has been no practical impact on the effectiveness of Brazil's implementation of the transparency framework. During the peer review process, Brazil realised this annual exchange would not be timely enough to meet the transparency framework. Brazil addressed this issue during the first semester of 2017 when it changed its methodology in order to identify and exchange future rulings after they had been issued. As such no recommendation is made.

C. Statistics (ToR IV)

19. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	N/A	N/A
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	14	Argentina, Canada, France, Japan, Netherlands, Spain, United States
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	N/A	N/A
Permanent establishment rulings	N/A	N/A
Related party conduit rulings	N/A	N/A
De minimis rule	N/A	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	N/A	N/A
Total	14	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

20. Brazil does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
During the year in review, Brazil conducted an annual search and exchange for future rulings which would not be frequent enough to ensure that rulings are transmitted to counterpart jurisdictions in a timely way. However, as no future rulings were issued in this period there has been no practical impact on the effectiveness of Brazil's implementation of the transparency framework.	No recommendation is made as Brazil has addressed this issue by ensuring that future rulings will be identified after they are issued.

Notes

1. Available at: https://idg.receita.fazenda.gov.br/acesso-rapido/legislacao (accessed on 10 November 2017)

2. Parties to the Multilateral Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Brazil also has Double Tax Agreements with Argentina, Austria, Belgium, Canada, Chile, China (People's Republic of), Czech Republic, Denmark, Equator, Finland, France, Hungary, India, Israel, Italy, Japan, Korea, Luxembourg, Mexico, Norway, Netherlands, Peru, Portugal, Philippines, Slovak Republic, Russia, South Africa, Spain, Sweden, Trinidad and Tobago, Turkey, Ukraine and Venezuela.

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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. http://dx.doi.org/10.1787/9789264241190-en.

Canada

Canada has met all aspects of the terms of reference (ToR) for the year in review and no recommendations are made. Canada has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Canada can legally issue the following four types of rulings within the scope of the transparency framework: (1) preferential regimes (life insurance business and international shipping);[1] (2) 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; (3) permanent establishment rulings; and (4) related party conduit rulings. In Canada, there are two services part of the Canadian tax administration (*Canada Revenue Agency or CRA*) that issue rulings within the scope of the transparency framework: the Competent Authority Services Division (CASD) for APAs, and the Income Tax Rulings Directorate (ITRD) for the other categories.

In practice, Canada issued 12 past rulings. For the period 1 April 2016-1 February 2017, Canada issued two future rulings. With the exception of APAs, Canada's rulings are published in redacted form by third-party publishers, who provide access to the documents to their subscribers and redacted rulings are available from the CRA upon request.

Peer input was received from one jurisdiction in respect of the exchanges of information on rulings received from Canada. The input noted that information was in the correct format, complete and timely. The peer noted that the information received on one future ruling was received more than three months after the issuance of the ruling, however, since the standard requires that the information be exchanged within three months of receipt of the information by the Canadian Competent Authority for exchange of information rather than within three months of issuance, the peer was unable to comment on whether it was late. As noted in section B below, Canada has been able to exchange information in a timely way in almost all cases.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers Canada's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on tax rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. For past rulings, both offices responsible for issuing them, namely CASD and ITRD, have an electronic tracking system of all rulings issued. In both offices, an authorised officer queried their respective databases to identify the rulings issued within the relevant timeframe.

6. For APAs, a report was run against CASD's database to extract all APAs that were issued after 1 January 2010, as the database shows the date of validity in the report generated. The list was reviewed manually to individually verify that the unilateral APAs were within the period defined as "past rulings".

7. In order to identify all potential exchange jurisdictions for unilateral APAs, the application for the ruling already included all relevant jurisdictions for which a ruling would be relevant. As such, the "best efforts approach" was not required to be used.

8. To identify the other categories of rulings within the transparency framework, ITRD conducted a similar search of its database. ITRD's database contains the full text of each ruling, which is searchable. In searching the ITRD database, the search parameters used were the issue date of the ruling as well as the keywords and legislative and treaty references indicative of the particular ruling categories. The senior officer conducting the search would then review the contents of the results to verify that they were in fact a ruling within the scope of the transparency framework.

9. In order to identify all potential exchange jurisdictions, the ruling was first consulted. In certain cases the "best efforts approach" was necessary. This consisted of reviewing the taxpayers' submissions that were in the possession of ITRD and if all relevant jurisdictions could not be identified, additional information was sought from the auditing branches of the CRA and from publicly available information (such as the taxpayer's website and the website

of the stock exchange on which the taxpayer was listed). The ITRD was able to identify all potential exchange jurisdictions for all rulings except one, in which they were not able to identify the jurisdiction of the immediate parent or the ultimate parent company. However, they exchanged information with the foreign country of residence and incorporation of the taxpayer.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

10. In order to identify future rulings that are within the scope of the transparency framework, in relation to unilateral APAs, a report is run every month by an officer in CASD to identify any new unilateral APAs that has been issued.

11. In order to identify all potential exchange jurisdictions, all required information is required to be included in the application for the APA. The requirements of the transparency framework have also been communicated to taxpayers who are requesting or considering applying for unilateral APAs to ensure all related parties are identified in the submissions.

12. For other ruling categories, management and staff in ITRD who are responsible for issuing rulings were alerted prior to 1 April 1 2016 about the requirement to identify the relevant rulings. Since ITRD issues a small number of rulings in the scope of the transparency framework, the process was not automated for 2016. Assistance was provided by the senior officer in charge of implementing the transparency framework in the Directorate to ensure that all rulings and jurisdictions were identified.

13. In order to identify all potential exchange jurisdictions for other types of rulings, for future rulings the ruling application process was amended, and the taxpayer is now required to provide the necessary information to identity relevant jurisdictions when requesting the ruling.

Review and supervision mechanism (ToR I.4.3)

14. The process for ensuring that all relevant information is captured accurately varies according to the type of ruling. For unilateral APAs, managers who are responsible for them are aware of the requirements of the transparency framework through internal guidance and training. One of the APA managers is tasked with providing oversight of the process to ensure that the relevant information is captured accurately.

15. For other ruling categories, the senior officer in charge of the implementation of the transparency framework for ITRD reviewed all exchanges. The senior officer is an experienced professional familiar with rulings within the scope of the transparency framework, and several discussions were held with Canada's delegate to the FHTP when commencing implementation of the framework. The search parameters for past rulings created by the senior officer were reviewed by a manager and the director of the international division of ITRD. The senior officer took a cautious approach and where they had any doubt as to whether a particular ruling fell within the transparency framework, the ruling in question was discussed and reviewed with Canada's delegates to the FHTP and Working Party 1.

Conclusion on section A

16. Canada has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

17. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

18. Canada has the necessary domestic legal basis to exchange information spontaneously under international agreements allowing such exchanges as described in paragraph 19. Canada notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

19. Canada has international agreements permitting spontaneous exchange of information, including being a party to the Convention, and 94 bilateral agreements. In total, this network of agreements covers at least 134 jurisdictions.[2]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

20. The process for sharing the required information with other jurisdictions in the template contained in Annex C of the Action 5 Report (OECD, 2015) in Canada varies according to the type of ruling. For APAs, normal file processing procedures already required the necessary information to be entered into a tracking system, and this information was easily imported into the OECD template.

21. For other categories of rulings, ITRD has prepared a template in Word format based on the *XML Schema and User Guide* (OECD, 2017). For rulings issued in 2016 and earlier, the senior officer in charge of the implementation of the transparency framework completed the template for each ruling.

22. The information in the completed template is entered into an IT system that was developed by the CRA to convert the information into XML format following the OECD *XML Schema and User Guide* (OECD, 2017). The system contains the required validation checks to ensure all mandatory fields are completed accurately. Once validated, the information is then transferred electronically to the Competent Authority for exchange of information. The information is reviewed by an officer and manager of that section before transmission to the relevant jurisdiction.

23. Canada ensures that the ruling summary template is made available to the Competent Authority in a timely way for the APAs as the completed template is provided to the Competent Authority by email. For other rulings, this is ensured by entering the ruling into the IT system, which generates the XML file and a message is sent to the Competent Authority's generic e-mail account. Internal guidance and training has made all officers in charge aware of the deadlines established for the exchanges of information on rulings.

24. The timeliness of exchanges is as follows. Note that Canada was able to undertake exchanges of information not only with OECD/G20 countries as required, but also with new members that joined the Inclusive Framework in 2016.

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2016	Delayed exchanges: Number of exchanges not transmitted by 31 December 2016	Delayed exchanges: Reasons for the delays	Delayed exchanges: Any other comments
	18	2	Human error in transmission of the rulings to the EOI Section – these past ruling were from before the automated system was put in place.	N/A

Future rulings in the scope of the transparency framework	Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted	Delayed exchanges: Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	Delayed exchanges: Reasons for the delays	Delayed exchanges: Any other comments
	2	None	N/A	N/A
Total	20	2		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	N/A

25. Canada explains that the transmission delay for two exchanges of information on past rulings related to a human error in the transmission to the Competent Authority. The process has now been adjusted to remedy this issue, and ensure automatic transmission of information to the Competent Authority.

Conclusion on section B

26. Canada has the necessary legal framework and administrative process in place for exchanging information on rulings. Canada experienced some minor delays in exchanging information on past rulings. Canada has taken steps to remedy this issue by implementing an automated system which intends to avoid any further delays. Canada has met all of the terms of reference for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

27. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	N/A	N/A
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	16	China (People's Republic of), France, Germany, Ireland, Netherlands, Singapore, United Kingdom, United States
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	N/A	N/A
Permanent establishment rulings	6	Japan, Sweden, Switzerland, United States
Related party conduit rulings	N/A	N/A
De minimis rule	N/A	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	N/A	N/A
Total	22	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

28. Canada does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made

Notes

1. The two preferential regimes are not granted by way of a ruling; however it is possible that a ruling could be issued on particular transactions.

2. Parties to the Multilateral Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Canada also has Double Tax Agreements with Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belgium, Brazil, Bulgaria, Cameroon, Chile, China (People's Republic of), Colombia, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, Estonia, Finland, France, Gabon, Germany, Greece, Guyana, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Moldova, Mongolia, Morocco, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Portugal, Romania, Russia, Senegal, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Chinese Taipei, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Venezuela, Viet Nam, Zambia and Zimbabwe. The TIEA with Aruba also permits spontaneous exchange of information.

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Chile

Chile has met all of the terms of reference (ToR) for the year in review that can be met in the absence of rulings being issued and no recommendations are made. Chile has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Chile can legally issue two types of ruling within the scope of the transparency framework: (1) 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; and (2) related party conduit rulings. There are specific units within the National Directorate of the Chilean Tax Authority (*SII*) that consider each type of ruling requests.

In practice, Chile issued zero past rulings. For the period 1 April 2016-1 February 2017, Chile issued no future rulings either. A few requests for unilateral APAs have been received from taxpayers and those requests are still under consideration by the SII. With respect to related party conduit rulings, the relevant provision giving the SII authority to grant such rulings entered into force on 30 September 2015 and no ruling has been issued so far.

As there were no rulings issued, no exchange of information was required. Therefore no peer input was received in respect of exchanges of information on rulings received from Chile.

Introduction

1. This peer review covers Chile's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. SII's Department of International Legislation (the "Department") is in charge of identifying covered rulings and co-ordinating the implementation process of the transparency framework.

6. First, the Department identified the legal provisions that may result in rulings that were either unilateral APAs or related party conduit rulings.

7. Second, the Department identified the relevant tax officials of SII units in charge of applying those provisions. The application of such provisions is centralised within the SII's National Directorate, and the relevant officials were contacted and informed about the Action 5 transparency framework, as well as about the terms of reference and assessment methodology for the peer review process. The two units in charge of issuing the type of rulings that are covered by the transparency framework were obliged to keep adequate records of their work and confirmed from their records and their experience that no covered ruling had been issued.

8. For both unilateral APAs and related party conduit rulings, the information on all potential exchange jurisdictions is required to be provided by the taxpayer as part of the information necessary to issue the ruling. This includes information on the immediate parent and ultimate parent company. As such, if any such rulings were to be issued, the SII would have the information in the ruling and be able to identify all potential exchange jurisdictions.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

9. In the future if any such rulings are issued, the relevant units and the department have been instructed to keep appropriate records of any covered rulings. The Department of International Legislation will regularly check with the head of the Transfer Pricing Unit

and the head of the Avoidance Analysis Unit about the issuance of any APA or ruling related to conduit arrangements, as appropriate. In addition, the relevant officials are instructed to inform to the Department of International Legislation in the event that any covered ruling is issued.

10. The same process for identifying potential exchange jurisdictions will be used for future rulings as is used for past rulings, as this information is contained in the course of issuing the ruling.

Review and supervision mechanism (ToR I.4.3)

11. The process for ensuring that all relevant information is captured accurately is by way of quality control and oversight of the search process by more experienced professionals with the SII and regular meetings between the personnel involved. An ad hoc implementation group was formed, consisting of officials from the Transfer Pricing Unit, the Avoidance Analysis Unit, the Department of International Legislation and officials in charge of spontaneous exchange of information (also a centralised unit). Direct co-ordination and meetings between the relevant officials were established on a regular basis. Considering that only a small number of APA applications have been received and that it was only possible to issue related party conduct rulings from 1 October 2015, there was little material to be searched.

12. In order to prepare for a greater volume of rulings to be searched in the future, Chile aims to implement working groups specialised on rulings. These groups will be composed of heads of department and technical officers and will facilitate the monitoring of any future rulings which are in the scope of the transparency framework. This procedure will be implemented once a larger number of rulings are issued. Chile also intends to implement an electronic register of rulings to facilitate the review and supervision mechanism.

Conclusion on section A

13. Chile has a process for identifying the rulings and potential exchange jurisdictions which is appropriate for the small size of the rulings programme in Chile. Chile has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

14. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

15. Chile has the necessary domestic legal basis to exchange information spontaneously. Chile notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

16. Chile has international agreements permitting spontaneous exchange of information, including being a party to the Convention and double tax agreements in force with 32 jurisdictions. In total, this network of agreements covers 103 jurisdictions.[1]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

17. With regard to the process to fill in the ruling summary templates and making them available to the competent authority for exchange of information, the officials from the centralised units in charge of issuing potentially covered rulings were informed of the Action 5 standard and the template in Annex C was explained and circulated to them. The ruling summary templates will be completed by the head of the relevant unit in co-ordination with the Department of International Legislation following the issuance of the ruling. The ad hoc implementation group agreed that the template must be completed as soon as possible following the issuance of the ruling. This is in order to provide the officials in charge of spontaneous exchange of information with the summary as soon as possible, allowing them to ensure that information on rulings can be exchanged within three months of issuance of the ruling.

18. As no rulings within the scope of the transparency framework have been issued in practice, Chile was not required to complete any exchanges of information and there is no data to report on the timeliness of exchanges.

Conclusion on section B

19. Chile has the necessary legal framework and administrative process in place for exchanging information on rulings. Chile has met all of the terms of reference for the exchange of information process that can be met in the absence of rulings being issued and exchanged in practice and no recommendations are made.

C. Statistics (ToR IV)

20. As there were no rulings required to be exchanged by Chile in 2016, no statistics can be reported.

D. Matters related to intellectual property regimes (ToR I.4.1.3)

21. Chile does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made

Note

1. Parties to the Multilateral Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Chile also has Double Tax Agreements with Argentina, Australia, Austria, Belgium, Brazil, Canada, Colombia, China (People's Republic of), Croatia, Czech Republic, Denmark, Ecuador, France, Ireland, Italy, Japan, Korea, Malaysia, Mexico, Norway, New Zealand, Paraguay, Peru, Poland, Portugal, Russia, Spain, South Africa, Sweden, Switzerland, Thailand and United Kingdom.

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China (People's Republic of)

The People's Republic of China has taken steps to implement the legal basis for the transparency framework and to commence administrative preparations to ensure that information on future rulings is exchanged. China has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner. However, China did not complete the identification or exchange any information on future rulings for the year in review. China has met all of the terms of reference (ToR) for the year in review except for the identification of future rulings (ToR I.4.1.2) and timely exchange of information on future rulings (ToR II.5.6) and China is recommended to complete this as soon as possible.

China can legally issue one type of ruling within the scope of the transparency framework: cross-border unilateral advance pricing agreements (APAs) covering transfer pricing or the application of transfer pricing principles. The local in-charge tax administration offices are responsible for issuing rulings, with relevant consultation with the Chinese tax Administration (SAT). Where an APA involves two or more local offices or both the state tax and local tax bureau, the APA process is organised and co-ordinated by the SAT. These APAs are not published in redacted form.

China did not have the necessary domestic and international legal framework for spontaneous exchange of information on past rulings for the year of review. As such, no exchanges on past rulings are permitted to occur.[1] In relation to future rulings, China is in the process of collecting the data from local in-charge tax administrations on the number of APAs issued and the relevant statistics are not yet available.

As no exchanges could be undertaken under China's legal framework with respect to past rulings, and no exchanges on future rulings have occurred, no peer input was received in respect of the exchanges of information on rulings received from China.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

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Introduction

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2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

4. There is a legal barrier to the exchange of information on rulings on China, which does not allow the exchange of past rulings. The legal framework in China has now been amended to allow exchanges on future rulings (i.e. those issued on or after 1 April 2016).[2] As such, the balance of this report relates only to future rulings.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

5. For the year in review, the information on APAs is collected by the SAT from the local in-charge tax administration offices which have issued the ruling. This work is still underway and as at August 2017, the process was approximately 50% complete. It is noted that SAT has a plan to streamline the information-gathering process for APAs as set out in a legal provision and which will ensure that SAT, which is responsible for the exchange of information under the transparency framework, will be aware of the issuance of any new APAs as soon as it occurs. This will be reviewed in the next annual peer review.

6. In order to identify all potentially relevant jurisdictions with which the information the rulings should be exchanged, this information is taken from the APA request. During the process of submitting an APA application, the taxpayers are requested to provide detailed information about the related parties. Specifically, the taxpayer is required to provide a list consisting of its ultimate parent company, its immediate parent company and related parties with whom it enters into a transaction covered by the APA to the tax administration(s) upon the conclusion of the APA.

Review and supervision mechanism (ToR I.4.3)

7. The accuracy of the information-gathering process is ensured by the legal instruction provided to all local in-charge offices by SAT. This requires that the local in-charge tax authority is in regular contact with the SAT during the process of concluding any future APAs, and that the SAT is notified before an APA can be finalised.

Conclusion on section A

8. For the year in review, China implemented a process to collect information on all future APAs and all potential exchange jurisdictions, and the process includes an oversight mechanism. However, this work is still underway and China was not able to confirm how many future rulings were identified as the process was still ongoing. China has met all of the terms of reference for the information-gathering process other than the identification of all future rulings (ToR I.4.1) and China is recommended to complete the identification of all future rulings as soon as possible.

B. The exchange of information

9. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

10. China has implemented the necessary domestic legal basis to exchange information spontaneously in place. The legal framework in place does not allow the exchange of past rulings but does allow the exchange of information on future rulings, as from 1 April 2016.[3]

11. China has international agreements permitting spontaneous exchange of information, including being a party to the Convention and double tax agreements in force with 102 jurisdictions. In total, this network of agreements covers 141 jurisdictions.[4]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

12. For the year in review, the SAT is completing the templates in the form of Annex C after the local in-charge tax administration has submitted the APAs. The templates will then be further reviewed by the Competent Authority before being exchanged. It is noted that SAT has a plan to streamline the completion and exchange of templates, and which will be reviewed in the next annual peer review.

13. There were no exchanges of information on future rulings during the year in review. China is recommended to ensure that the exchange of information on future rulings occurs as soon as possible, and by no later than three months of after receiving the template from the local in-charge tax authority.

Conclusion on section B

14. China has put in place the necessary legal basis for exchanging information on future rulings. China has started putting in place the administrative practices for the completion and exchange of templates on future rulings, but has not completed any exchanges in the year of the review. China has met all of the terms of reference for the exchange of information process other than the timely international exchange of information (ToR II.5.6) and China is recommended to complete the exchanges of information on future rulings as soon as possible.

C. Statistics (ToR IV)

15. As there were no exchanges of information for the year of review, no statistical data can be reported.

D. Matters related to intellectual property regimes (ToR I.4.1.3)

16. China offers an intellectual property regime (reduced rate for high and new tech enterprises), however no transparency requirements were relevant, as follows.

- ***New entrants benefitting from the grandfathered IP regime***: not applicable, as grandfathering is not relevant to the Chinese IP regime.
- ***Third category of IP assets***: not applicable, as this option has not been incorporated in the Chinese IP regime.
- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption***: not applicable, as this option has not been incorporated in the Chinese IP regime.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
The identification of all future rulings has not been completed.	China is recommended to complete the identification of all future rulings as soon as possible.
No exchanges of information on future rulings occurred for the year in review.	China is recommended to ensure that the exchange of information on future rulings occurs as soon as possible, and by no later than three months of after receiving the template from the local in-charge tax authority.

Jurisdiction's response and recent developments

17. China has completed the identification of all future unilateral APAs and all potential exchange jurisdictions. China has collected and reviewed all relevant templates from the local in-charge tax authorities in September 2017 and such information was then exchanged with the relevant jurisdictions in October 2017.

Notes

1. The Action 5 Report (OECD, 2015) notes that jurisdictions which do not currently have the necessary legal framework in place for spontaneous exchange of information on rulings will need to put in place such a framework in order to comply with the obligations under Action 5, but that in such cases the timelines are subject to a country's legal framework.
2. Public Notice on Matters Regarding Enhancing the Administration of Advance Pricing Arrangements (SAT Public Notice [2016] No. 64
3. Public Notice on Matters Regarding Enhancing the Administration of Advance Pricing Arrangements (SAT Public Notice [2016] No. 64

4. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. People's Republic of China also has Double Tax Agreements with Albania, Algeria, Armenia, Australia, Austria, Azerbaijan, Bahrein, Bangladesh, Barbados, Belarus, Belgium, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Cambodia, Canada, Chile, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Moldova, Mongolia, Montenegro, Morocco, Nepal, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Serbia, Seychelles, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syria, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Venezuela, Viet Nam, Zambia and Zimbabwe.

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Colombia

Colombia experienced some delay in implementing the transparency framework in 2016, as it was only confirmed in 2017 that Colombia could in fact issue rulings within the scope of the transparency framework. Colombia intends to take steps to quickly exchange the information on the relevant ruling and to put in place a process to ensure any future rulings are exchanged in a timely manner. Colombia is recommended to ensure that any future rulings are swiftly identified (ToR I.4.1.2), and to ensure the timely exchange of information on rulings (ToR II.5.5, II.5.6) in the form required by the transparency framework (ToR II.5.3, II.5.4).

Colombia can legally issue one type of ruling within the scope of the transparency framework: 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. The International Tax Auditing team (ITAT) is responsible for negotiating APAs and the Tax Commissioner is the Competent Authority responsible to approve APAs requests.

In practice, Colombia issued one past ruling. For the period 1 April 2016-1 February 2017, Colombia did not issue any future rulings. These rulings are not published.

No peer input was received in respect of the exchanges of information on rulings received from Colombia.

Introduction

1. This peer review covers Colombia's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process (ToR I.4)

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. During the year in review, Colombia was not aware that any rulings within the scope of the transparency framework were issued. As such, no information-gathering process was implemented.

5. Since confirming that APAs issued by Colombia are within the scope of the transparency framework, Colombia has been able to identify the relevant ruling and the potential exchange jurisdictions. The ITAT identified all relevant information on the potential exchange jurisdictions from the APA request and its related file. For future rulings, Colombia does not foresee a modification in their information-gathering process.

Conclusion on section A

6. Colombia did not yet have an information-gathering process for the transparency framework for the year in review. Colombia has since been able to identify the relevant past ruling and the potential exchange jurisdictions. Colombia is recommended to ensure that any future rulings within the scope of the transparency framework and all potential exchange jurisdictions are swiftly identified (ToR I.4.1.2).

B. The exchange of information

7. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

8. Colombia has the necessary domestic legal basis to exchange information spontaneously. Colombia notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

9. Colombia has international agreements permitting spontaneous exchange of information, including being a party to the Convention, and double tax agreements in force with nine jurisdictions. In total, this network of agreements covers 104 jurisdictions[1].

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

10. Colombia intends to exchange information on the ruling which was identified in 2017. The process for completing the templates in the correct form, making them available to the Competent Authority in a timely way and exchanging the information on rulings will be assessed in the subsequent peer review. Colombia notes that the reason for the delay is it that they were not fully aware that the APA issued was in the scope of the transparency framework, in particular due to the date in which the APA was issued.

Conclusion on section B

11. Colombia has the necessary legal framework and administrative process in place for exchanging information on rulings. Colombia is recommended to ensure the timely exchange of information on rulings (ToR II.5.5, II.5.6) in the form required by the transparency framework (ToR II.5.3, II.5.4).

C. Statistics (ToR IV)

12. As no information on rulings was exchanged in 2016, no statistical data can be reported.

D. Matters related to intellectual property regimes (ToR I.4.1.3)

13. Colombia offers an intellectual property regime (software regime), however no transparency requirements were relevant, as follows.

- ***New entrants benefitting from the grandfathered IP regime***: not applicable, as the Colombian IP regime is being abolished with no grandfathering.
- ***Third category of IP assets***: not applicable, as this option has not been incorporated in the Colombian IP regime.
- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption***: not applicable, as this option has not been incorporated in the Colombian IP regime.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Colombia did not yet have an information-gathering process for the transparency framework for the year in review.	Colombia is recommended to ensure that any future rulings within the scope of the transparency framework and all potential exchange jurisdictions are swiftly identified.
Colombia confirmed that it issued rulings within the scope of the transparency framework only in 2017 and as such no exchange took place in 2016.	Colombia is recommended to ensure the timely exchange of information on rulings in the form required by the transparency framework.

Notes

1. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Parties to the Andean Community Agreement are: Bolivia, Colombia, Ecuador, Peru and Venezuela. Colombia also has Double Tax Agreements with: Canada, Chile, Czech Republic, India, Korea, Mexico, Portugal, Spain and Switzerland. In addition, Colombia has agreements permitting spontaneous exchange of information with Barbados and United States.

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Czech Republic

The Czech Republic has met all aspects of the terms of reference (ToR) for the year in review except for the timely exchange of information on past and future rulings to the extent the exchanges are with other EU Member States (ToR II.5.6). The Czech Republic is recommended to exchange all information on past rulings as soon as possible, and to apply the timelines for future rulings as set out in the transparency framework with respect to all other members of the Inclusive Framework. The Czech Republic has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

The Czech Republic can legally issue one type of ruling within the scope of the transparency framework: 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.[1] In the Czech Republic, rulings within the scope of the transparency framework are issued by the General Financial Directorate, with rulings issued to large taxpayers being issued by a special office and other rulings being issued by local tax administrators.

In practice, the Czech Republic has issued 48 past rulings. For the period 1 April 2016-1 February 2017, the Czech Republic issued five future rulings. These rulings are not published.

No peer input was received in respect of exchanges of information on rulings received from the Czech Republic.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers the Czech Republic's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. The Czech Republic has a central database recording all cross-border APAs issued since 2006. The database contains unilateral and bilateral APAs. A search was run in the database to identify the unilateral APAs and to identify those which were issued on or from 1 January 2010. Such APAs were manually checked to verify if they fell within the period defined as "past ruling."

6. In order to identify potential exchange jurisdictions, each relevant ruling was reviewed. The ruling application was required to include information on all transactions between the taxpayer and any related party as well as an organisational chart for the group. In addition, the tax administration performed its own check of the accuracy of the information by using publicly available information. As such, the Czech Republic reports that the "best efforts approach" was not required to be used.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

7. A similar process is used to identify future APAs. When a future APA is issued, the official issuing the ruling enters the information in the database. The database is checked by a trained specialist at the Competent Authority for exchange of information who has an online access to the database. The database is checked once a month to identify the unilateral APAs which would be in the scope of the transparency framework.

8. The potential exchange jurisdictions are identified from the information in the ruling and the application. As the ruling application already required information on all potential exchange jurisdictions, no changes to the ruling process were required.

Review and supervision mechanism (ToR I.4.3)

9. In order to ensure all relevant information is captured accurately, a trained specialist is in charge of checking whether all relevant information in the database is correct. The designated specialist is also responsible for performing the exchange of information on rulings under the transparency framework.

Conclusion on section A

10. The Czech Republic has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

11. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

12. The Czech Republic has the necessary domestic legal basis to exchange information spontaneously. The Czech Republic notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

13. The Czech Republic is a party to international agreements permitting spontaneous exchange of information, including the Convention, the Directive 2001/16/EU with all other European Union Member States and double tax agreements in force with 88 jurisdictions.[2] In total, this network of agreements covers 100 jurisdictions.

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

14. In order to share the required information with other jurisdictions, the Czech Republic uses an Excel template in accordance with the OECD *XML Schema and User Guide* (OECD, 2017). The template is filled in by the trained specialist at the Central Liaison Office (CLO) using the information from the database and the text of the ruling. The completed template is reviewed by the head of the Direct Taxes International Co-operation Unit (i.e. the CLO) or his deputy. The templates for past rulings which would be sent to non-EU Member States were completed in the fourth quarter of 2016. The Czech Republic notes that once the EU Central Directory is in place, ruling templates will be filled in using a web application and which are then exported into the XML Schema.

15. As the trained specialist who is responsible for overseeing the information-gathering process and completing the templates is also responsible for exchange of information, this ensures that there is no delay in making the information available to the Competent Authority. The trained specialist can directly access the database containing all information on rulings.

16. The timeliness of exchanges is as follows. Note that these statistics reflect the fact that information was only required to be exchanged with OECD/G20 countries, and not with new members of the Inclusive Framework and the Czech Republic did in fact only exchange information with OECD/G20 countries for the year in question.

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2016	Delayed exchanges: Number of exchanges not transmitted by 31 December 2016	Delayed exchanges: Reasons for the delays	Delayed exchanges: Any other comments
	2	64	Applying the EU calendar.	3 additional exchanges only legally possible as of 2017.

Future rulings in the scope of the transparency framework	Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted	Delayed exchanges: Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	Delayed exchanges: Reasons for the delays	Delayed exchanges: Any other comments
	0	8	Applying the EU calendar.	

Total	2	72		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	N/A

17. The Czech Republic notes that most exchanges of information on rulings are likely to be with other EU Member States. The Czech Republic explains that as an EU Member State, it chose to follow the timeframe for exchange of information on rulings set out in the EU Directive to the extent they are with other EU Member States, and to follow the transparency framework timelines to the extent the exchanges are with non-EU Member States. The Czech Republic completed two exchanges of information on past rulings by 31 December 2016 which were the only two exchanges that needed to occur with non-EU Member States. The 64 outstanding exchanges on all past rulings will take place with other EU Member States by the end of 2017. This is one year later than the timeline for the transparency framework. For future rulings, any exchanges which are relevant for non-EU Member States will be exchanged within three months of the ruling being uploaded to the database of APAs referred to in section A (i.e. within three months of the ruling being issued and entered into the database.) Future rulings which are relevant to EU Member States will be sent twice a year within three months following the end of the half of the calendar year during which the ruling was issued.

Conclusion on section B

18. The Czech Republic has the necessary legal framework and administrative process in place for exchanging information on rulings. Information on past rulings which are to be exchanged with EU Member States will be one year late and no information on future rulings was exchanged in 2016 as all such rulings related to EU Member States and will be exchanged in accordance with the EU Directive timelines. The Czech Republic has met all of the terms of reference for the exchange of information process except for the timely

exchange of information on past and future rulings to the extent the exchanges are with other EU Member States (ToR II.5.6). The Czech Republic is recommended to exchange all information on past rulings as soon as possible, and to apply the timelines for future rulings as set out in the transparency framework with respect to all other members of the Inclusive Framework (subject to the terms of the international agreements for exchange of information).

C. Statistics (ToR IV)

19. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	N/A	
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	N/A	
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	N/A	
Permanent establishment rulings	N/A	
Related party conduit rulings	N/A	
De minimis rule	2	
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	N/A	
Total	2	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

20. The Czech Republic does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
The Czech Republic has not applied the timelines for exchanges of information on rulings as set out in the transparency framework to the extent such exchanges are with other EU Member States.	The Czech Republic is recommended to exchange all information on past rulings as soon as possible, and to apply the timelines for future rulings as set out in the transparency framework with respect to all other members of the Inclusive Framework.

Notes

1. A PE ruling will be able to be issued as of 1 January 2018.

2. Parties to the Multilateral Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. The Czech Republic also has Double Tax Agreements with Albania, Armenia, Australia, Austria, Bahrain, Barbados, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, China (People's Republic of), Colombia, Croatia, Cyprus, Democratic People's Republic of Korea, Denmark, Egypt, Estonia, Ethiopia, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Hong Kong (China), Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Moldova, Mongolia, Montenegro, Morocco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Panama, Philippines, Poland, Portugal, Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syria, Tajikistan, Thailand, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Venezuela and Viet Nam.

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Denmark

Denmark has met all aspects of the terms of reference (ToR) for the year in review, except for experiencing some delays with respect to the exchange of information on past rulings (ToR II.5.6). Denmark has taken steps to address this issue, and all information on past rulings was exchanged within two months of the deadline. As this is not a recurring issue, no recommendation is made on this point. Denmark has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Denmark can legally issue the five following types of rulings within the scope of the transparency framework: (1) preferential regimes (tonnage tax); (2) 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; (3) downward adjustments; (4) permanent establishment rulings; and (5) conduit rulings. Rulings are issued by the tax administration and, in cases where the matter is of general public interest, by the Tax Assessment Council as referred by the tax administration. Denmark notes that in practice downward adjustments are rarely issued as such rulings are conditional on a corresponding upward adjustment being made in the other jurisdiction.

In practice, Denmark has issued 43 past rulings. For the period 1 April 2016-1 February 2017, Denmark issued seven future rulings. These rulings are published in anonymised form on the tax administration's website when they are deemed of general public interest.[1]

Peer input was received from four jurisdictions in respect of the exchanges of information on rulings received from Denmark. The input was positive and peers noted that information was complete, in the correct format and in generally received in a timely manner. One peer noted that the summary of the ruling provided a good overview.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers Denmark's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. With respect to rulings directly issued by the Danish tax administration, all requests for a binding ruling are registered in an electronic filing-system and then assigned either to the tax administration or the Tax Assessment Council. A specific unit was made responsible for identifying past rulings falling within the scope of the transparency framework. The unit personnel searched the electronic filing system by using relevant keywords such as "cross-border" and "permanent establishment." In addition, a manual search was done to verify that the electronic search was correctly identifying the relevant rulings. A manual review of each ruling identified was undertaken to determine if the rulings were within the period defined as "past rulings".

6. In order to identify potential exchange jurisdictions, the same database was consulted as this would normally contain the necessary information to identify relevant parties. It was not necessary to use the "best efforts approach" since all the information was available.

7. With respect to the rulings issued by the Tax Assessment Council, issued rulings were stored within archived summaries of the council's monthly meetings. The physical and electronic archives for the relevant period were manually searched to identify rulings within the categories and time period of the transparency framework.

8. The potential exchange jurisdictions were then identified by going through the ruling itself or through the taxpayer's application. Denmark states that where this did not provide the necessary information, the "best efforts approach" was used to complete the information-gathering process, including by the use of information registered with the tax authorities, financial statements, corporate registry systems and financial databases.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

9. All ruling applications are registered in the database and assigned either to the tax administration or the Tax Assessment Council. For rulings assigned to the tax administration, the employees at the ruling unit write a short descriptive text of the request, and mark the case as relevant for exchange with "OECD exchange" in the electronic filing-system. The employee responsible for processing a request for a binding ruling is advised of the marking in the electronic filing-system when opening the case. When a draft ruling is ready to be sent to the taxpayer, another employee undertakes a review of the ruling to confirm that it is in the scope of the transparency framework. This is checked again when the ruling is issued.

10. For rulings assigned to the Tax Assessment Council, when the request for the ruling is received, the employee responsible for processing the ruling assesses if the ruling is covered by the transparency framework. This is confirmed by a manager before a case is presented to the council, and verified again when the ruling is issued.

11. In order to identify all potential exchange jurisdictions, a similar approach is used as for past rulings. The ruling itself will be consulted, and if the information is not contained in the ruling, the officials will make enquiries using the data available to them, such as corporate registry systems and financial databases. If information is insufficient to identify all potential exchange jurisdictions, the taxpayer applying for the ruling will be asked to provide all necessary information after the binding ruling is issued.

Review and supervision mechanism (ToR I.4.3)

12. Denmark issued and published an instruction specifically to address the transparency framework requirements, and additional internal guidance was provided to the relevant personnel to assist in identifying a ruling as being within the scope. The employees responsible for processing binding rulings are reminded regularly of the obligation to exchange information on binding rulings covered by the transparency framework and are held responsible for making sure that a ruling is exchanged, even if it is not marked correctly in the electronic filing-system.

13. The process in the tax administration for identifying past rulings includes a manual sampling to ensure the results are accurate, as well as the work being quality reviewed by a manager. The process of searching for relevant rulings in the Tax Assessment Council is reviewed by an employee who carries out random checks in the meeting agenda summaries of the Danish Tax Assessment Council. With respect to future rulings, the categorisation of a ruling as being within scope of the transparency framework is verified by three separate officials. In case of doubt, the legal department will be contacted in order to determine if the ruling should be made subject to exchange.

Conclusion on section A

14. Denmark has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

15. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

16. Denmark has the necessary domestic legal basis to exchange information spontaneously. Denmark notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard. Although there is a legal requirement to notify all concerned taxpayers before the exchange of information, Denmark notes that such notification process does not prevent exchange, but implies that exchange of information has to await the time by which it can be expected that the notification is received by the taxpayer.

17. Denmark has international agreements permitting spontaneous exchange of information, including being a party to the Convention, the Directive 2011/16/EU with all other European Union Member States, the Nordic Convention on Assistance in Tax Matters, and double tax agreements in force with 69 jurisdictions. In total, this network of agreements covers 118 jurisdictions.[2]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

18. In order to share the required information with other jurisdictions, Denmark uses the template contained in Annex C of the Action 5 report (OECD, 2015). For both past and future rulings, the process is the same. For rulings directly issued by the tax administration, when the ruling is identified as within the scope of the transparency framework, a copy of the ruling is sent to the two appointed staff members who are responsible for filling out the template and making sure that the legal basis is in place and the relevant information is provided. These two employees also check that the ruling is within the scope of the transparency framework. For rulings issued by the Tax Assessment Council, the staff member responsible for identifying whether the ruling is within the scope of the transparency framework then provides the ruling to one other appointed staff member who is responsible for completing the template and making the same verifications.

19. Denmark states that the instruction issued to all relevant staff and the internal guidance ensure that the information on rulings is made available to the Competent Authority for exchange of information in a timely way. For past rulings issued by the Danish tax administration, the templates were all provided to the Competent Authority in one batch in the last two months of 2016 and for past rulings issued by the Tax Assessment Council the templates on past rulings were provided to the Competent Authority as soon as they were completed. For future rulings issued by the tax administration, staff members responsible for completing the templates are requested to do so without any delay. For the rulings issued by the Tax Assessment Council, the information to be exchanged has to be sent to the Competent Authority within 14 days of the monthly meeting at which rulings are issued.

20. The timeliness of exchanges is as follows. Note that Denmark was able to undertake exchanges of information not only with OECD/G20 countries as required, but also with new members that joined the Inclusive Framework in 2016.

Past rulings in the scope of the transparency framework		Delayed exchanges		
	Number of exchanges transmitted by 31 December 2016	Number of exchanges not transmitted by 31 December 2016	Reasons for the delays	Any other comments
	18	32	(See below)	

Future rulings in the scope of the transparency framework	Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted	Delayed exchanges		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	Reasons for the delays	Any other comments
	7	0	N/A	Two exchanges were within three months of issuing of the ruling; Five exchanges were within about four months of the ruling being issued but within three months of the information becoming available to the competent authority.
Total	25	32		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	N/A

21. Denmark provides the following explanations for the transmission delay regarding past rulings:

- The searching process for past rulings took longer than expected for rulings given by the Tax Assessment Council, which required the search and review of the archived summaries. This issue will not arise for future rulings.
- An administrative mistake occurred at the level of the Competent Authority and which has now been corrected.
- The legal requirement to notify all concerned taxpayers took time, as many were residing abroad and were difficult to reach at the end of the year. As for future rulings, within 14 days of the ruling application being made, the taxpayer will receive a receipt including a notification of the requirement to exchange of information on binding rulings. Therefore, in the future there should be no exchange delay due to the notification process.
- Uncertainties arose regarding the definition of a permanent establishment or regarding exchange of information with new members of the Inclusive Framework, which were clarified after the deadline.

Conclusion on section B

22. Denmark has the necessary legal framework and administrative process in place for exchanging information on rulings. Denmark experienced some delays in exchanging information on past rulings. Denmark has taken steps to remedy this issue, the effectiveness

of which will be reviewed in the 2018 peer review and all information on past rulings was exchanged within two months of the deadline. Denmark has met all of the terms of reference for the exchange of information process except with respect to some delays in the timeliness of exchanges (ToR II.5.6) and no recommendation is made as this issue has been remedied and is not a recurring issue.

C. Statistics (ToR IV)

23. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	0	
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	Included in de *minimus*	
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	0	
Permanent establishment rulings	22	Australia, China (People's Republic of), Finland, France, Germany, Lithuania, Luxembourg, Malta, Norway, Poland, Sweden, Switzerland, United Kingdom, United States
Related party conduit rulings	0	
De minimis rule	3	
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	N/A	
Total	25	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

24. Denmark does not offer any intellectual property regime that is subject to transparency requirements under the Action 5 Report (OECD, 2015).

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Denmark experienced some delays in exchanging information on past rulings.	No recommendation is made because Denmark completed the exchange of all past rulings in February 2017 and this is not a recurring issue.

Notes

1. Available at www.skat.dk/SKAT.aspx?oID=80859&vID=0 (accessed on 10 November 2017)

2. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Denmark also has Double Tax Agreements with Argentina, Australia, Austria, Bangladesh, Belarus, Belgium, Brazil,, Bulgaria, Canada, Chile, China (People's Republic of), Croatia, Cyprus, Czech Republic, Egypt, Estonia, Former Yugoslav Republic of Macedonia, Georgia, Germany, Ghana, Greece, Hungary, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Korea, Kuwait, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Montenegro, Morocco, Netherlands, New Zealand, Pakistan, Philippines, Poland, Portugal, Romania, Russia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Sri Lanka, Switzerland, Chinese Taipei, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Kingdom, United States, Venezuela, Viet Nam and Zambia. Denmark also has a Tax Information Exchange Agreement permitting spontaneous exchange of information with Aruba.

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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. http://dx.doi.org/10.1787/9789264241190-en.

Estonia

Estonia has met all of the terms of reference (ToR) for the year in review, except for the identification of all potential exchange jurisdictions for future rulings (ToR I.4.2.1), and the timely exchange of information on past and future rulings (ToR II.5.6). Estonia is recommended to ensure information is obtained on all potential exchange jurisdictions for future rulings and to exchange information on all rulings as soon as possible. Estonia has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Estonia can legally issue the following two types of rulings within the scope of the transparency framework: (1) permanent establishment rulings; and (2) related party conduit rulings. In Estonia, the legal department is responsible for preparing the rulings within the scope of the transparency framework in co-operation with the Tax Department of the Tax and Customs Board, which are then signed by the Director General of the Tax and Customs Board.

In practice, Estonia issued 20 past rulings. For the period 1 April 2016-31 December 2016, Estonia issued eight future rulings. Estonia publishes anonymised summaries of tax rulings on the ETCB website.[1]

Peer input was received from one jurisdiction in respect of the exchanges of information on rulings received from Estonia. It was positive, noting that information on two past rulings was received on time and was complete.

Introduction

1. This peer review covers Estonia's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. The ETCB has a centralised electronic data file in which all rulings are registered and saved. This central file was created in 2010 and a separate folder exists for each year in which rulings were issued.

6. One legal department lawyer in the office that grants rulings was instructed to read all advance tax rulings issued since 2010, of which there were approximately 105. In the process of this manual review, the lawyer identified the rulings falling in the scope of the transparency framework. For all rulings contained in the separate annual file for 2010, 2011, 2012 and 2013, the period of validity of the rulings was verified in the process of reading the ruling.

7. In order to identify the potential exchange jurisdictions, the rulings themselves were consulted. This would usually contain information on the related parties. However, the rulings did not always contain information on all potential exchange jurisdictions, particularly the parent company, and the ETCB used the "best efforts approach." This involved using the Estonian commercial register to identify the immediate parent company. Estonia reports that it was generally able to identify all relevant parties to a transaction covered by the ruling and the immediate parent company, but not the ultimate parent company.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

8. Future rulings which may be in the scope of the transparency framework are identified by the department lawyer consulting the centralised electronic data file containing the issued rulings. The lawyer conducts a manual review of each newly issued ruling to determine whether it is within the scope of the transparency framework. This review is conducted once per month.

9. In order to identify potential exchange jurisdictions, the department lawyer will read the information contained in the ruling, and consult the Estonian commercial register if necessary to identify the immediate parent company. As such, information on the ultimate parent company is not always obtained. Estonia notes that the internal guidance on issuing the rulings is being updated so that the information on the ultimate parent company is always provided by the taxpayer in the course of applying for a ruling.

Review and supervision mechanism (ToR I.4.3)

10. The accuracy of the information-gathering process is ensured by the chief legal officer being responsible for supervising and approving the outcome of work of the department lawyer that identifies the rulings and the potential exchange jurisdictions. The department lawyer consulted the guidance provided in the Action 5 report (OECD, 2015) in order to undertake the task of identifying the relevant information.

Conclusion on section A

11. Estonia has a process for identifying the past rulings and relevant jurisdictions with which to exchange under the transparency framework which is appropriate for the small size of the rulings programme in Estonia. With respect to future rulings, Estonia is able to quickly identify the rulings in scope but does not currently collect information on the ultimate parent company. Estonia has met all of the terms of reference for the information-gathering process except for identifying all potential exchange jurisdictions for future rulings (ToR I.4.2.1). Estonia is recommended to amend its rulings practice to require taxpayers to provide information on all potential exchange jurisdictions as part of the ruling process.

B. The exchange of information

12. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

13. Estonia has the necessary domestic legal basis to exchange information spontaneously. Estonia notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

14. Estonia is a party to international agreements permitting spontaneous exchange of information, including the Convention, the Directive 2011/16/EU with all other European Union Member States, and double tax agreements in force with 57 jurisdictions. In total, this network of agreements covers 110 jurisdictions[2].

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

15. When a ruling is found to be in scope of the framework, the department lawyer responsible for identifying the rulings completes the template for exchange. A word document version of Annex C is used. The template is reviewed by chief legal officer and the template is then provided to the competent authority for exchange of information. The competent authority for exchange of information undertakes a quality control review to ensure that all the information is complete and in the correct form, and it is then exchanged.

16. In order to ensure the templates are provided to the Competent Authority in a timely way, for past rulings the templates were provided in a batch at the end of 2016. For future rulings, the templates will be provided as soon as possible and usually within a month or two of issuing the ruling, depending on the time required for translation.

17. The timeliness of exchanges is as follows. Note that these statistics reflect the fact that information was only required to be exchanged with OECD/G20 countries, and not with new members of the Inclusive Framework, and that Estonia did in fact only exchange information with OECD/G20 countries for the year in question.

Past rulings in the scope of the transparency framework		Delayed exchanges		
	Number of exchanges transmitted by 31 December 2016	Number of exchanges not transmitted by 31 December 2016	Reasons for the delays	Any other comments
	12	9		No
Future rulings in the scope of the transparency framework		**Delayed exchanges**		
	Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted	Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	Reasons for the delays	Any other comments
	0	3		
Total	12	12		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	N/A

18. Estonia experienced some delays for the exchange of information on past rulings, and Estonia did not exchange information on future rulings because the European Commission's Central Directory which facilitates the international exchange of information on rulings was not available. Estonia notes that the Central Directory was open to users as of the end of May 2017 and the information on future rulings was expected to be exchanged shortly thereafter.

Conclusion on section B

19. Estonia has the necessary legal framework and administrative process in place for exchanging information on rulings. Estonia experienced some delays for the exchange of information on past rulings, and no information on future rulings was exchanged on time. This issue is expected to be remedied by mid-2017 and is not expected to cause a problem in the future. Estonia has met all of the terms of reference for the exchange of information process except for the timely exchange of information on past and future rulings (ToR II.5.6) and Estonia is recommended to ensure that information on all outstanding rulings is exchanged as soon as possible.

C. Statistics (ToR IV)

20. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	1	Netherlands
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	N/A	N/A
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	N/A	N/A
Permanent establishment rulings	9	Austria, Finland, Ireland, Latvia, Netherlands, Sweden
Related party conduit rulings	14	Canada, Denmark, Finland, Germany, Latvia, Luxembourg, Netherlands, Sweden, Switzerland, United States
De minimis rule	N/A	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	N/A	N/A
Total	24	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

21. Estonia does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Estonia does not currently collect information on the ultimate parent company for all future rulings.	Estonia is recommended to amend its rulings practice to require taxpayers to provide information on all potential exchange jurisdictions as part of the ruling process.
Estonia experienced some delays in exchanging information on past rulings and no exchanges of information on future rulings occurred for the year in review.	Estonia is recommended to ensure that the exchange of information on all rulings occurs as soon as possible.

Notes

1. Available at: www.emta.ee/et/ariklient/maksukorraldus-maksude-tasumine/siduvad-eelotsused/siduvate-eelotsuste-kokkuvotted (accessed on 10 November 2017).

2. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Estonia also has Double Tax Agreements with Albania, Armenia, Azerbaijan, Austria, Bahrein, Belarus, Belgium, Bulgaria, Canada, China (People's Republic of), Croatia, Czech Republic, Denmark, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Hungary, Iceland, India, Ireland, Isle of Man, Israel, Italy, Jersey, Kazakhstan, Korea, Latvia, Lithuania, Luxembourg, Malta, Mexico, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Serbia, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Thailand, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan and Viet Nam.

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Finland

Finland has met all aspects of the terms of reference (ToR) for the year in review, except the timely exchange of information on past and future rulings (ToR II.5.6). Finland is recommended to ensure that information on all past and future rulings is exchanged as soon as possible. Finland has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Finland can legally issue the four following types of rulings within the scope of the transparency framework: (1) preferential regimes (shipping regime); (2) 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; (3) permanent establishment rulings; and (4) conduit rulings. In Finland, rulings within the scope of the transparency framework are issued mainly by the Corporate Taxation Unit. Rulings are also issued by the Central Tax Board, which is an autonomous body within the tax administration, except for rulings relating to transfer pricing (that can be issued only by the Corporate Taxation Unit). Rulings issued by the Corporate Taxation Unit are issued either nationally by the large taxpayers' office or locally by one of the six regional corporate tax offices.

In practice, Finland has issued 41 past rulings. For the period 1 April 2016-1 February 2017, Finland issued 19 future rulings. Some of these rulings are published on the tax administration's website, at the discretion of the Central Tax Board.[1]

No peer input was received with respect to exchanges under the transparency framework for the year in review.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers Finland's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. The Finnish tax administration has an electronic database for all tax documents including rulings, and this database is searchable. The officials in every unit gathered their own rulings from the database. A manual review of each ruling was then undertaken to determine whether a ruling was within one of the categories in the transparency framework. In order to identify whether the ruling fell within the period defined as past rulings, the officials also had to read all the rulings to review the date of issue and validity.

6. The potential exchange jurisdictions were identified by reading the rulings. Finland notes that the ruling applications and the procedure of granting a ruling are very comprehensive and in practice the applications for past rulings included information on related parties to a transaction covered by the ruling, the immediate parent and ultimate parent company. As such, all potential exchange jurisdictions were able to be identified from the ruling application and the "best efforts approach" was not needed to be used.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

7. With respect to future rulings, every unit with authority to issue rulings was made responsible for the identification of rulings that are within the scope of the transparency framework. This occurs in the process of granting a ruling and a checklist has been provided, setting out the five categories of rulings and their meaning.

8. In addition, internal recommendations were made to gather all necessary information from the taxpayers in the course of the issuance process, particularly to ensure information on all potential exchange jurisdictions is always collected during the ruling process.

Review and supervision mechanism (ToR I.4.3)

9. The review and supervision process for ensuring all relevant information is captured accurately is by way of always making at least two staff members responsible for any given ruling falling into the scope of the transparency framework. Furthermore, personnel in charge of the exchange of information process are providing their expertise and training on the transparency framework has been provided to officials in every Corporate Taxation Unit for all those officers who take part in the ruling procedure.

Conclusion on section A

10. Finland has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

11. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

12. Finland has the necessary domestic legal basis to exchange information spontaneously. Finland notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

13. Finland is a party to international agreements permitting spontaneous exchange of information, including the Convention, the Directive 2011/16/EU with all other European Union Member States, and double tax agreements in force with 85 jurisdictions.[2] In total, this network of agreements covers 121 jurisdictions.

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

14. In order to share the required information with other jurisdictions, Finland is creating XML files based on the OECD *XML Schema and User Guide* (OECD, 2017b), by using the central directory platform set up by the European Commission. The central directory was not available until the end of May 2017 and Finland commenced the process of completing the templates for the past rulings after this. With respect to the future rulings, the officers will fill in the information in the central directory within two weeks from the date of the decision (according to the tax administration internal guidance) and international information exchange experts and supervising officers will review and validate them before sending. As all templates are completed in the central directory, this ensures that the templates are immediately available to the Competent Authority once they are completed.

15. The timeliness of exchanges is as follows.

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2016	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2016	Reasons for the delays	Any other comments
	0	41	Waiting for the availability of the Central directory platform of the EU	
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Delayed exchanges**		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	**Reasons for the delays**	**Any other comments**
		18	Waiting for the availability of the Central directory platform of the EU	
Total	0	59		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	N/A

Conclusion on section B

16. Finland has the necessary legal framework and administrative process in place for exchanging information on rulings. Finland did not exchange any information on rulings for the year in review because Finland chose to wait for the creation of the EU central directory platform before completing the templates or exchanging information on rulings as per the timelines set out in the Action 5 report (OECD, 2015). This issue is expected to be remedied by the end of 2017 and is not expected to cause a problem in the future. Finland has met all of the terms of reference for the exchange of information process except for the timely exchange of information on future rulings (ToR II.5.6) and Finland is recommended to ensure that information on all past and future rulings is exchanged as soon as possible.

C. Statistics (ToR IV)

17. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	0	
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	0	
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	N/A	
Permanent establishment rulings	0	
Related party conduit rulings	0	
De minimis rule	N/A	
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	N/A	
Total	0	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

18. Finland does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Finland did not exchange any information on rulings for the year in review because Finland chose to wait for the creation of the EU central directory platform before completing the templates or exchanging information on rulings as per the timelines set out in the Action 5 report (OECD, 2015).	Finland is recommended to ensure that information on all past and future rulings is exchanged as soon as possible.

Notes

1. Available at: https://www.vero.fi/syventavat-vero-ohjeet/ennakkoratkaisut/ (accessed on 10 November 2017).

2. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Finland also has Double Tax Agreements with Argentina, Armenia, Aruba, Australia, Austria, Azerbaijan, Bailiwick of Jersey, Barbados, Belarus, Belgium, Bermuda, Bosnia and Herzegovina, Brazil, British Virgin Islands, Bulgaria, Canada, Cayman Islands, China (People's Republic of), Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Faroe Islands, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Guernsey, Hungary, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Kazakhstan, Korea, Kosovo, Kyrgyzstan, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Moldova, Montenegro, Morocco, Netherlands, Netherlands Antilles, New Zealand, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Russia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Tanzania, Thailand, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Viet Nam and Zambia.

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France

France has met all aspects of the terms of reference (ToR) for the year in review, except that France was not able to exchange information on any past rulings by the timelines set out in the transparency framework (ToR II.5.6). However, all information on past rulings was exchanged within two months of the deadline and this is not a recurring issue and as such no recommendation is made on this point. France did not identify or exchange information on new entrants to the IP regime or taxpayers benefiting from the third category of IP assets (ToR I.4.1.3). France is recommended to identify and exchange information on all new entrants to the IP regime as soon as possible, and to identify and exchange information on taxpayers benefiting from the third category of IP asset as soon as possible.

France can legally issue the three following types of rulings within the scope of the transparency framework: (1) preferential regimes (shipping regime); (2) 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; and (3) permanent establishment rulings. Rulings related to preferential regimes are issued by a specialised service in the legal department of the French tax administration. APAs are delivered by a specialised legal and economic expertise department in the legal department of the French tax administration.

In practice, France has issued 45 past rulings falling within the scope of the transparency framework. For the period 1 April 2016-31 December 2016, France issued four future rulings. These rulings are not published.

Peer input was received from three jurisdictions in respect of the exchanges of information on rulings received from France. The input was positive, noting that information was in the correct format and complete. One peer noted that information on past rulings was received by the end of January 2017.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers France's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and new rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. To identify past rulings, the personnel of the competent tax offices responsible for issuing rulings were instructed by way of an internal circular to search their records for all rulings issued since 1 January 2010. Records of rulings were identified in central electronic databases, which indicated the year of issue and the type of rulings. On the basis of this information, the information required for each of the relevant rulings was obtained by reviewing the paper files available within the relevant departments. Each identified ruling was manually reviewed in order to verify if it was in one of the categories of rulings in the scope of the transparency framework, to verify if the jurisdictions involved in the ruling are in the scope of the exchange of information on rulings and to verify that it was within the period defined as "past rulings".

6. France states that all the necessary information allowing for the identification of related parties was available in the ruling itself. This is because the documents required to process an advance ruling are included in the paper files and these documents contain detailed information about the taxpayer. In the course of issuing the ruling, if the information was not sufficient, the taxpayer would be requested to provide additional information. As such, the "best efforts approach" was generally not required to be used.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

7. In order to identify relevant future rulings, a new internal template designed in accordance with the Annex C was required to be completed as soon as a ruling was issued by each competent office within the tax administration. This template includes information on all potential exchange jurisdictions.

Review and supervision mechanism (ToR I.4.3)

8. The review and supervision process for ensuring all relevant information is captured accurately was by providing the relevant staff with specific guidance issued for the implementation of the transparency framework. This included guidance on the identification of relevant rulings, covering the scope and categorisation of rulings under the transparency framework; the identification of potential exchange jurisdictions; the applicable timelines; and the information to be exchanged.

Conclusion on section A

9. France has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

10. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

11. France has the necessary domestic legal basis to exchange information spontaneously. France notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

12. France is a party to international agreements permitting spontaneous exchange of information, including being a party to the Convention, the Directive 2011/16/EU with all other European Union Member States, and double tax agreements in force with 125 jurisdictions.[1] In total, this network of agreements covers 160 jurisdictions.

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

13. In order to share the required information with other jurisdictions, France developed an internal template in accordance with the one contained in Annex C of the Action 5 report (OECD, 2015). The officials responsible for identifying the rulings completed the internal template for each relevant ruling. The internal form was validated by the head of the relevant service to check the consistency and completeness of the information for each ruling. The form was then sent for review to the Competent Authority for exchange of information. The head of the department in the Competent Authority reviews the template and checks the coherence and completeness of the information before translation and exchange. If any information is missing or inconsistencies are found, the service responsible for the ruling is immediately contacted.

14. France states that the internal guidance provided to all relevant staff ensures that the information on rulings is made available to the Competent Authority responsible for international exchange of information in a timely way. The instruction included a deadline for completing and submitting the templates to the Competent Authority by 31 October 2016 for past rulings and for future rulings a deadline of two months after the ruling is issued.

15. The timeliness of exchanges is as follows. Note that France was able to undertake exchanges of information not only with OECD/G20 countries as required, but also with new members that joined the Inclusive Framework in 2016.

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2016	Delayed exchanges: Number of exchanges not transmitted by 31 December 2016	Delayed exchanges: Reasons for the delays	Delayed exchanges: Any other comments
	0	52	First transmission under the new procedure and the novelty of the exercise for the tax administration personnel.	

Future rulings in the scope of the transparency framework	Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted	Delayed exchanges: Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	Delayed exchanges: Reasons for the delays	Delayed exchanges: Any other comments
	2	0	N/A	
Total	2	52		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	N/A

16. Although four future rulings were issued, information was exchanged with respect to two of these as the other two were issued towards the end of 2016. France notes that information was exchanged in early 2017 and within the timeframes set out in the transparency framework.

Conclusion on section B

17. France has the necessary legal framework and administrative process in place for exchanging information on rulings. France was not able to exchange any information on past rulings by the timelines set out in the transparency framework. However all information on past rulings was exchanged within two months of the deadline and this is not a recurring issue. France has met all of the terms of reference for the exchange of information process except with respect to delays in the timeliness of exchanges (ToR II.5.6), and no recommendation is made as this issue has been remedied and is not a recurring issue.

C. Statistics (ToR IV)

18. The statistics for the 2016 review are as follows.

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	0	N/A
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	0	N/A
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	N/A	N/A
Permanent establishment rulings	2	Germany, Ireland
Related party conduit rulings	N/A	N/A
De minimis rule	0	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	0	N/A
Total	2	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

19. France offers an intellectual property regime (reduced rate for long term capital gains and profits from the licensing of IP rights). The identification of the benefitting taxpayers will occur as follows:

- ***New entrants:*** France should have information available to it on new entrants after 6 February 2015 to the existing IP regime. France has not exchanged information on new entrants to the existing IP regime.
- ***Third category of IP assets:*** France's IP regime provides benefits to income from patentable inventions, which appear to be a type of the "third category of IP asset" described in paragraph 37 of the Action 5 report (OECD, 2015). While France has not implemented all of the requirements associated with this category of IP asset, the transparency requirements described in paragraph 37 would still apply. France does not appear to have identified taxpayers benefiting from the third category of IP asset, or to have exchanged information on these taxpayers.
- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption:*** As France has not amended its IP regime to conform to the Action 5 "nexus approach". the French IP regime does not offer these benefits.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
France experienced some delays in exchanging information on past rulings.	No recommendation is made because France completed the exchange of all past rulings by mid-February 2017 and this is not a recurring issue.
France did not identify or exchange information on new entrants to the IP regime or taxpayers benefiting from the third category of IP asset.	France is recommended to put in place a mechanism to ensure that it can identify and exchange information on all new entrants to the IP regime as soon as possible, and to identify and exchange information on taxpayers benefiting from the third category of IP asset as soon as possible.

Note

1. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. France also has Double Tax Agreements with: Albania, Algeria, Andorra, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chile, China (People's Republic of), Congo, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Ecuador, Egypt, Estonia, Ethiopia, Finland, Former Yugoslav Republic of Macedonia, French Polynesia, Gabon, Georgia, Germany, Ghana, Greece, Guinea, Hong Kong (China), Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Korea, Kosovo, Kuwait, Kyrgyzstan, Latvia, Lebanon, Libya, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Montenegro, Morocco, Namibia, Netherlands, New Caledonia, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Philippines, Poland, Portugal, Qatar, Quebec, Romania, Russia, Saudi Arabia, Senegal, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Saint Martin, Saint Pierre and Miquelon, Sweden, Switzerland, Syrian Arab Republic, Chinese Taipei, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Venezuela, Viet Nam, Zambia and Zimbabwe.

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Germany

Germany has met all aspects of the terms of reference (ToR) for the year in review, except for experiencing some delays with respect to the exchange of information on past rulings (ToR II.5.6). All information on past rulings was exchanged within five months of the deadline. As this is not a recurring issue, no recommendation is made on this point. Germany has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Germany can legally issue the following four types of rulings within the scope of the transparency framework: (1) preferential regimes (related to the tonnage tax regime); (2) 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; (3) permanent establishment rulings; and (4) related party conduit rulings. In Germany, the local tax offices at state level are responsible for issuing rulings within the scope of the transparency framework.

In practice, Germany issued 18 past rulings. For the period 1 April 2016-1 February 2017, Germany issued seven future rulings. These rulings are not published.

No peer input was received in respect of the exchanges of information on rulings received from Germany.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers Germany's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. Each local tax office with responsibility for issuing rulings was tasked with identifying the past rulings. As there is no central record of all issued rulings, each local tax office had to check the individual taxpayer files to locate a ruling. These were then filtered by reading each ruling to identify any rulings falling within the scope of the transparency framework. In order to determine if rulings were issued in the period defined as "past rulings" the local office read the relevant ruling.

6. Each local tax office also undertakes the work of identifying the potential exchange jurisdictions. Domestic law requires that the information on all related jurisdictions must be obtained in the process of granting the ruling. The "best efforts" approach has been used, which involved checking the information available in the tax files and the corporate registry system, and staff were required to do so as per the instructions issued to them.

7. Each local tax office submits the completed template on the identified rulings to the Federal Tax Office. The Federal Tax Office reviewed the information received and stored it within its database, which is used in providing international co-operation in tax matters. Each ruling is assigned an "X-key" to quickly identify and retrieve each ruling when needed.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

8. Future rulings which may be in the scope of the transparency framework are identified by the local tax office. In June 2016, an instruction sheet was published by the German Federal Ministry of Finance setting out the process of how to identify rulings within the scope of the transparency framework. The local tax office will check whether a ruling would be within the transparency framework when issuing the tax ruling itself.

9. In order to identify potential exchange jurisdictions, domestic law requires that the information on all related jurisdictions must be obtained in the process of granting the ruling. After issuance of the instruction sheet in July 2016, information on all potential exchange jurisdictions as per the requirements of the transparency framework is part of the information required for granting a ruling and without all such relevant information the ruling would not be valid. Although the definition of future rulings under the transparency framework (and the requirement to collect information on all potential exchange jurisdictions) commenced from 1 April 2016, the slight delay in implementation of this requirement in Germany is relatively minor and would have a limited impact given the small number of future rulings issued. The completed templates on future rulings which are identified as being within the scope of the transparency framework are sent to the Federal Tax Office immediately after the ruling has been issued.

Review and supervision mechanism (ToR I.4.3)

10. Staff members in local tax offices were briefed on the implementation of the new instruction sheets on the transparency framework. Each local tax office supervised the work undertaken by their staff in the information-gathering process. Staff members within the Federal Tax Office are also regularly briefed and trained on new matters to ensure the correct implementation of the transparency framework.

Conclusion on section A

11. Germany has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

12. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

13. Germany has the necessary domestic legal basis to exchange information spontaneously. Germany notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

14. Germany is a party to international agreements permitting spontaneous exchange of information, including being a party to the Convention, the Directive 2011/16/EU with all other European Union Member States, and double tax agreements in force with 91 jurisdictions.[1] In total, this network of agreements covers 107 jurisdictions.

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

15. In order to share the required information with other jurisdictions, the template contained in Annex C of the Action 5 Report (OECD, 2015) is filled in by the local tax officer. For past rulings, this was done in the course of identifying the rulings after the local tax offices received the instruction sheet in July 2016. For future rulings the template is completed immediately after issuing the ruling. The templates are submitted to the Fiscal General Directorate of the Federal State, where the validity and the completeness of the

template is checked. It is then sent to the Competent Authority for exchange of information, where it is checked again before being forwarded to the relevant jurisdiction(s).

16. Germany ensures that the template is made available to the Competent Authority for exchange of information in a timely way by having issued the instruction sheet from the German Ministry of Finance to the local tax offices. For past rulings, the instruction sheet provided that the local tax offices were required to send the information on past rulings to the Federal Tax Office by 31 October 2016 at the latest, and for future rulings to start the procedure of completing the template and sending it immediately after the ruling is issued.

17. The timeliness of exchanges is as follows. Note that these statistics reflect the fact that information was only required to be exchanged with OECD/G20 countries, and not with new members of the Inclusive Framework, and that Germany in fact did only exchange information with OECD/G20 countries for the year in question.

		Delayed exchanges		
Past rulings in the scope of the transparency framework	**Number of exchanges transmitted by 31 December 2016**	**Number of exchanges not transmitted by 31 December 2016**	**Reasons for the delays**	**Any other comments**
	11	7	In one case, the taxpayer raised objections. In five cases, the Federal Tax Office was responsible for delay. The delays had to do with uncertainties concerning the handling of tax rulings having to be cleared. In one case, the local tax office was responsible for delay.	All the delayed past rulings have been exchanged with the relevant jurisdictions between January 2017 and 15 May 2017.

		Delayed exchanges		
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority**	**Reasons for the delays**	**Any other comments**
	5	0		Two are not yet transmitted, but the current time period is still within three months.
Total	16	7		

Follow-up requests received for exchange of the ruling	**Number**	**Average time to provide response**	**Number of requests not answered**
	0	N/A	0

18. Germany notes that delay for past rulings caused by uncertainties concerning the handling of tax rulings and exchange requirements within the Federal Tax Office are being cleared, because the processing of the tax rulings is being distributed to more officers within the Federal Tax Office.

Conclusion on section B

19. Germany has the necessary legal framework and administrative process in place for exchanging information on rulings. Germany experienced some delays in exchanging information on past rulings. Germany has taken steps to remedy this issue, and all information on past rulings was exchanged between January and mid-May 2017. Germany has met all of the terms of reference for the exchange of information process except with respect to some delays in the timeliness of exchanges (ToR 5.6), and no recommendation is made as this issue has been remedied and is not a recurring issue.

C. Statistics (ToR IV)

20. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	0	N/A
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	10	Austria, Luxembourg, Netherlands, Romania, Switzerland
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	Included in *de minimus*	N/A
Permanent establishment rulings	13	France, Korea, Luxembourg, United Kingdom, United States
Related party conduit rulings	0	N/A
De minimis rule	2	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	0	N/A
Total	25	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

21. Germany does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Germany experienced some delays in exchanging information on past rulings.	No recommendation is made because Germany completed the exchange of all past rulings by mid-May 2017 and this is not a recurring issue.

Note

1. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Germany also has Double Tax Agreements with Albania, Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Bolivia, Bosnia-Herzegovina, Bulgaria, Canada, China (People's Republic of), Costa Rica, Cote d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Egypt, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Ghana, Greece, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jersey, Kazakhstan, Kenia, Korea, Kosovo, Kuwait, Kyrgyzstan, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Morocco, Mongolia, Montenegro, Namibia, Netherlands, New Zealand, Norway, Pakistan, Philippines, Poland, Portugal, Republic of Moldova, Republic of Zambia, Romania, Russia, Serbia, Singapore, Slovak Republic, Slovenia, Spain, South Africa, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Venezuela, Viet Nam and Zimbabwe. Germany has also Tax Information Exchange Agreements in place with Andorra, Anguilla, Antigua and Barbuda, Austria, Bahamas, Bermuda, British Virgin Islands, Cook Islands, Cayman Island, Denmark, Finland, Gibraltar, Grenada, Guernsey, Isle of Man, Italy, Jersey, Liechtenstein, Monaco, Montserrat, Netherlands, San Marino, Sweden, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and Grenadine, Turks and Caicos Islands and United States of America.

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Greece

Greece has met all aspects of the terms of reference (ToR) for the year in review, except for the timely exchange of information on rulings (ToR II.5.6). Greece is recommended to ensure that the information on the past ruling is exchanged as soon as possible and to apply the timelines for future rulings as set out in the transparency framework. Greece has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Greece can legally issue only one type of ruling within the scope of the transparency framework: 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. Rulings are issued by a special department within the Audit Directorate of the Independent Authority for Public Revenues.

In practice, Greece has issued one past ruling. For the period 1 April 2016-1 February 2017, Greece issued no future ruling. These rulings are not published.

No peer input was received in respect of exchanges of information on rulings received from Greece.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

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Introduction

1. This peer review covers Greece's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and new rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. With respect to APAs, all APAs are issued by one specific department within the tax administration. The Department of Special Tax Audits, which is a unit within the Directorate of Audits of the General Directorate of Tax Administration of the Independent Authority for Public Revenue, was responsible for identifying the past rulings. Information on all APAs was kept centrally in a database which was consulted. As the only APA that has been issued was granted in 2015, it was within the definition of "past rulings". It is noted that Greece has applied a definition of "past rulings" that aligns to the EU Directive rather than the Action 5 definition of past rulings.[1] However, as the only ruling issued by Greece in the scope of the transparency framework was in 2015 and no future rulings have been issued, this definitional difference does not have any impact in practice.

6. The potential exchange jurisdictions were identified from the ruling. The ruling contained the information on the related parties with which the taxpayer entered into a transaction covered by the APA. The ruling also contained information on the immediate parent company and ultimate parent company, and as such the "best efforts approach" was not needed to be used by Greece.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

7. There is a new process when future rulings are issued to quickly flag them as an Action 5 ruling. The person granting a new APA would identify it as relevant for the transparency framework at the time it is issued. Information on all potential exchange jurisdictions is obtained as part of an application for an APA.

Review and supervision mechanism (ToR I.4.3)

8. In order to ensure that all relevant rulings were correctly identified, written instructions on the requirements of the transparency framework were issued by the Directorate of Audits. The Department of Special Tax Audits supervised the work to identify the relevant rulings.

Conclusion on section A

9. Greece has a process for identifying the past rulings and relevant jurisdictions with which to exchange under the transparency framework which is appropriate for the small size of the rulings programme in Greece. Greece has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

10. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

11. Greece has the necessary domestic legal basis to exchange information spontaneously. Greece notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

12. Greece has international agreements permitting spontaneous exchange of information, including being a party to the Convention, the Directive 2011/16/EU with all other European Union Member States, and double tax agreements in force with 57 jurisdictions. In total, this network of agreements covers 110 jurisdictions.[2]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

13. An authorised officer of the Department of Special Tax Audits will be responsible for completing the templates on the rulings. The completed template will be reviewed by the Head of the Department of Special Tax Audits. The template will be in the form of the OECD XML Schema. The template will then be provided to the Competent Authority for exchange of information promptly and by way of secure email.

14. In respect of the one past ruling in the scope of the transparency framework, Greece has not yet completed the template for the exchange. This is because it is applying the exchange timelines set out in the EU Directive, which require that information on past rulings be exchanged by 31 December 2017, rather than 31 December 2016. In the future, if Greece continues to follow the EU Directive timelines, information on any future rulings would be exchanged at six monthly intervals each year, by 30 September (for rulings issued from 1 January to 30 June) and by 31 March (for rulings issued from 1 July to 31 December).

15. The timeliness of exchanges is as follows. Note that these statistics reflect the fact that information was only required to be exchanged with OECD/G20 countries, and not with new members of the Inclusive Framework, and that Greece in fact did only exchange information with OECD/G20 countries for the year in question.

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2016	Delayed exchanges: Number of exchanges not transmitted by 31 December 2016	Delayed exchanges: Reasons for the delays	Delayed exchanges: Any other comments
	0	1	Alignment with EU Directive timelines	

Future rulings in the scope of the transparency framework	Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted	Delayed exchanges: Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	Delayed exchanges: Reasons for the delays	Delayed exchanges: Any other comments
	N/A	N/A		

Total	0	1		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	N/A

16. Greece notes that the information on the one ruling will be exchanged by 31 December 2017, as per the EU Directive timelines.

Conclusion on section B

17. Greece has the necessary legal framework and administrative process in place for exchanging information on rulings. However, no exchanges on rulings were undertaken in 2016. Greece has met all of the terms of reference for the exchange of information process except the timely exchange of information on past rulings (ToR II.5.6). Greece is recommended to ensure that the information on the past ruling is exchanged as soon as possible and to apply the exchange timelines for future rulings as set out in the transparency framework with respect to all other members of the Inclusive Framework.

C. Statistics

18. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	N/A	N/A
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	0	N/A
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	N/A	N/A
Permanent establishment rulings	N/A	N/A

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Related party conduit rulings	N/A	N/A
De minimis rule	N/A	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	N/A	N/A
Total	0	

D. Matters related to intellectual property regimes

19. Greece does not offer any intellectual property regime that is subject to transparency requirements under the Action 5 Report (OECD, 2015).

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Greece has not applied the timelines for exchanges of information on rulings as set out in the transparency framework.	Greece is recommended to ensure that the information on the past rulings is exchanged as soon as possible and to apply the exchange timelines for future rulings as set out in the transparency framework with respect to all other members of the Inclusive Framework.

Notes

1. Under the EU Directive, past rulings are those that were issued, amended or renewed between 1 January 2012 and 31 December 2013 (provided they were still valid on 1 January 2014) and those rulings that were issued, amended or renewed between 1 January 2014 and 31 December 2016.

2. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Greece also has Double Tax Agreements with: Albania, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Canada, China (People's Republic of), Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Hungary, Iceland, India, Ireland, Israel, Italy, Korea, Kuwait, Latvia, Lithuania, Luxembourg, Malta, Mexico, Moldova, Montenegro, Morocco, Netherlands, Norway, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Serbia, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States and Uzbekistan.

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Hungary

Hungary has met most of the terms of reference (ToR) for the year in review except for ensuring information on all potential exchange jurisdictions is always obtained for future rulings (ToR I.4.2.1), ensuring information is submitted to the Competent Authority without undue delay (ToR II.5.5), ensuring the timely exchange of information on past and future rulings (ToR II.5.6) and exchanging information on new entrants to the IP regime (ToR I.4.1.3).

Hungary can legally issue the following four types of rulings within the scope of the transparency framework: (1) preferential regimes (IP regime for royalties and capital gains); (2) Cross-border unilateral APAs and any other cross-border unilateral tax ruling (such as an ATR) covering transfer pricing or the application of transfer pricing principle; (3) permanent establishment rulings; and (4) related party conduit rulings. Unilateral APAs are issued by the APA unit in the National Tax and Customs Administration (NTCA) (from 1 April 2016 issued by the Large Taxpayers Directorate of the NTCA) and all other types of rulings are issued by the Ministry for National Economy.

In practice, Hungary issued 91 past rulings within the scope of the transparency framework. For the period 1 April 2016-31 December 2016, Hungary issued 13 future rulings within the scope of the transparency framework. Hungary does not publish its ATRs and APAs.

No peer input was received in respect of the exchanges of information on rulings received from Hungary.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers Hungary's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. With respect to APAs, the unit in the NTCA that issues APAs is responsible for identifying the APAs within the scope of the transparency framework. The APA unit has a central record of all issued APAs and this was consulted to identify the issued APAs. The period of validity of the ruling was verified by reading the ruling.

6. In order to identify the potential exchange jurisdictions for the relevant APAs, the information from the application form completed by taxpayers was consulted. The application form requires information on the countries of residence of all related parties with whom the taxpayer enters into transactions that are covered by the APA. This information was then checked by the NTCA using ORBIS or AMADEUS databases. In some cases, the application may also contain the information on the residence country of the ultimate parent company and the immediate parent company. If it did not, the NTCA used the "best efforts approach" which involved sending a request for this information to the taxpayer, and which was then checked by the NTCA in ORBIS or AMADEUS databases. Hungary notes that this process has been successful in identifying the necessary jurisdictions.

7. With respect to all other types of rulings, the Ministry of National Economy keeps a database of all rulings issued. Since the Ministry of National Economy commenced issuing rulings, the practice was for all of them to be sent to the NTCA for the purpose of using them in the course of a possible audit. In the year of review, in the absence of any procedural order the NTCA began to identify and exchange the rulings that fall within the scope of the transparency framework. A unit of the NTCA reviewed each ruling to determine which category it fell into and verified the period of validity of the rulings, in time to meet the EOI deadline of 2016.

8. In order to identify the potential exchange jurisdictions for these rulings, the rulings themselves were consulted. The rulings contained information on the jurisdictions of residence of related parties with which the taxpayer enters into a transaction covered by the ruling and the immediate parent company. This information is checked against information in the NTCA database. Information on the ultimate parent company was not usually

contained in the ruling, and the "best efforts approach" was applied, which involved the NTCA consulting the Company Registry and ORBIS and AMADEUS databases.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

9. With respect to APAs, the APA unit identifies the APA as being within the scope of the transparency framework at the point the APA is issued. A checklist is used to ensure that the official issuing a new APA does identify it as being relevant to the transparency framework. Potential exchange jurisdictions are identified in the same way as for past rulings, being identifying information from the ruling request, writing to the taxpayer and verifying the information from the ORBIS or AMADEUS database.

10. For the year in review, all issued future rulings were recorded on the Ministry of National Economy's database. Every two months, officials sent all the issued rulings to the special unit in the NTCA. As described in paragraph 7, the NTCA identified which rulings were in the scope of the transparency framework. In order to identify potential exchange jurisdictions, the same process is used as for past rulings, which involves consulting information on related parties and immediate parent company as provided in the ruling, and consulting the Company Registry and ORBIS and AMADEUS databases to identify the ultimate parent company. Hungary notes that it was not possible in every case to identify all relevant parties.

Review and supervision mechanism (ToR I.4.3)

11. The Headquarters (Central Management) of NTCA has responsibility for the implementation of the transparency framework as regards the exchange of information, specifically with the Audit Department overseeing the implementation for ATRs and the APA Unit overseeing implementation for APAs. The accuracy of the information-gathering process is ensured by the relevant officials in the APA unit and the Ministry of National Economy being supervised by the head of the relevant unit. In addition, officials participated in meetings at the OECD on the transparency framework, and provided briefing to all relevant officials involved in the information-gathering process.

Conclusion on section A

12. It is not certain that the process for identifying the ultimate parent company for future rulings will always ensure this information is obtained. Hungary has met all of the terms of reference for the information-gathering process except for identifying all potential exchange jurisdictions for future rulings (ToR I.4.2.1). Hungary is recommended to amend its rulings practice to ensure that information on all potential exchange jurisdictions, particularly the ultimate parent company, is always obtained.

B. The exchange of information

13. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

14. Hungary has the necessary domestic legal basis to exchange information spontaneously. Hungary notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

15. Hungary has international agreements permitting spontaneous exchange of information, including being a party to the Convention, the Directive 2011/16/EU with all other European Union Member States, and double tax agreements in force with 78 jurisdictions. In total, this network of agreements covers 123 jurisdictions.[1]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

16. The unit of NTCA which receives the rulings from the Ministry, and the unit which issues APAs are each responsible for completing an excel table for each ruling in scope. The excel table includes all mandatory and optional mandatory fields of the OECD XML Schema. The officer in charge of the exchange of information on rulings reviews the information in the table, translates the parts requiring translation, and in case of questions consults with the unit that completed the table. The officer then imports the information manually into the Annex C template.

17. The excel table will be sent to the Central Liaison Office, which is the competent authority responsible for international exchange. Before sending, the message is reviewed and signed by the Head of the Central Liaison Office. Hungary is still in the process of finalising the procedure and timing for delivering the templates to the Central Liaison Office.

18. The timeliness of exchanges is as follows. Note that these statistics reflect the fact that information was only required to be exchanged with OECD/G20 countries, and not with new members of the Inclusive Framework, and that Hungary did in fact only exchange information with OECD/G20 countries for the year in question.

Past rulings in the scope of the transparency framework		Delayed exchanges		
	Number of exchanges transmitted by 31 December 2016	**Number of exchanges not transmitted by 31 December 2016**	**Reasons for the delays**	**Any other comments**
	5	approximately 175	Administrative burden due to number of staff, translation, and manual processing	
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Delayed exchanges**		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	**Reasons for the delays**	**Any other comments**
	5	Approximately 20	Administrative burden due to number of staff, translation, manual processing	
Total	10	Approximately 195		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	N/A

19. Hungary acknowledges the delays in exchanging information on rulings, which is on account of work still being undertaken to put in place the practical side of the internal procedure for exchanging information on rulings, as well as some delays on account of the time needed to complete and review the summary templates. In order to address this, Hungary will issue an internal procedural regulation fixing deadlines and responsibilities of the officials in the process. This internal regulation was not issued earlier as Hungary was waiting for the European Commission's Central Directory to be operational, as this will impact the details of the regulation. After issuing the internal procedural regulation fixing deadlines and responsibilities of the officials in the process Hungary intends to exchange all outstanding past and future rulings on a retroactive basis.

Conclusion on section B

20. Hungary has the necessary legal framework and administrative process in place for exchanging information on rulings. Hungary experienced significant delays in exchanging both past and future rulings. Hungary has taken steps to remedy this issue, the effectiveness of which will be reviewed in the 2018 peer review. Hungary has met all of the terms of reference for the exchange of information process except for the timely submission of the information to the Competent Authority (ToR II.5.5) and the timely exchange of information on rulings (ToR II.5.6). Hungary is recommended to continue its efforts to put in place the internal procedure for the timely submission of information to the Competent Authority and to ensure the speedy exchange of all past and future rulings.

C. Statistics (ToR IV)

21. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	Included in "*de minimis* rule" category	
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	5	Austria, France, Ireland, Netherlands
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	0	N/A
Permanent establishment rulings	Included in "*de minimis* rule" category	
Related party conduit rulings	0	N/A
De minimis rule	5	
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	0	
Total	10	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

22. Hungary offers an intellectual property regime that is subject to transparency requirements under the Action 5 Report (OECD, 2015) (the IP Regime for royalties and capital gains). It states that the identification of the benefitting taxpayers will occur as follows:

- ***New entrants benefitting from the grandfathered IP regime***: Taxpayers that are new entrants to the IP regime can be identified in the tax return. New taxpayers to the IP regime can be selected based on the previous tax returns of the taxpayer. However, new IP assets cannot be identified in the absence of the relevant data in the tax returns. Therefore the identification of the new IP assets requires detailed inspection of each taxpayer benefitting from the IP regime. The first tax returns containing some information on new entrants would be filed after 6 February 2015 and information is intended to be exchanged within one year after the submission of the tax return, according to the relevant legislation. After the identification of new entrants (i.e. both new taxpayers and new IP assets), Hungary will exchange the information on a retroactive basis.
- ***Third category of IP assets***: not applicable, as this option has not been incorporated in the Hungarian IP regime.
- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption***: not applicable, as this option has not been incorporated in the Hungarian IP regime.

23. Despite the difficulties described above, the identification of the new entrants to the IP regime is in progress. However Hungary has not exchanged information on new entrants to the IP regime. Hungary is recommended to identify and exchange information on all new entrants to the IP regime as soon as possible.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
It is not certain that the process for identifying all potential exchange jurisdictions, particularly the ultimate parent company, for future rulings will always be obtained.	Hungary is recommended to amend its rulings practice to ensure that information on all potential exchange jurisdictions, particularly the ultimate parent company, is always obtained.
Hungary did not yet have a process for the timely submission of the information to the Competent Authority.	Hungary is recommended to continue its efforts to put in place the internal procedure for the timely submission of information to the Competent Authority.
Hungary experienced significant delays in exchanging information on both past and future rulings.	Hungary is recommended to ensure the speedy exchange of all past and future rulings.
The identification of the new entrants to the IP regime is in progress. However Hungary has not exchanged information on new entrants to the IP regime.	Hungary is recommended to ensure the speedy exchange of information on new entrants to the IP regime.

Note

1. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Hungary also has Double Tax Agreements with: Albania, Armenia, Australia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, China (People's Republic of), Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Hong Kong (China), Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Kazakhstan, Korea, Kosovo, Kuwait, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Moldova, Mongolia, Montenegro, Morocco, Netherlands, Norway, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Thailand, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan and Viet Nam.

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Iceland

Iceland has met all the terms of reference (ToR) for the year in review, except for ensuring that the information is in the form of the template contained in Annex C of the Action 5 Report (OECD, 2015) or the OECD XML Schema and in accordance with the OECD *XML Schema User Guide* (OECD, 2017) (ToR II.5.4). Iceland is recommended to use the template (either Annex C or the XML Schema) for the transparency framework for any information which is exchanged on a going forward basis. Iceland has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Iceland can legally issue the two following types of rulings within the scope of the transparency framework: (1) permanent establishment rulings; and (2) conduit rulings. In Iceland, authority to issue rulings is held by around 50 persons within the Directorate of Internal Revenue.

In practice, Iceland has issued 1 past ruling. For the period 1 April 2016-1 February 2017, Iceland did not issue any future rulings. Rulings are published on the tax administration website in anonymised form.[1]

Peer input was received from one jurisdiction in respect of the exchanges of information on rulings received from Iceland. The input noted that information was timely received in the correct format and complete.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers Iceland's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. Iceland keeps all rulings on a central database. It is noted that Iceland rarely issues ruling in practice (on average 10-20 per year for all rulings including those outside the scope of the transparency framework). The process for identifying past rulings falling within the scope of the transparency framework was to ask all 50 competent staff members of the Directorate of Internal Revenue to refer to the information on the database. Each of the staff members manually read every ruling which they had issued since 1 January 2010 to determine if it was in the scope of the transparency framework and whether it was within the period defined as "past rulings".

6. This searching method also applied to the identification of all potential exchange jurisdictions. The "best efforts approach" was not required to be used in the case of the one ruling within the transparency framework because the material submitted by the taxpayer contained information on relevant related parties including the immediate parent and ultimate parent company. Iceland notes that the vast majority of Icelandic companies are domestically owned with few of them having international ties.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

7. The process for issuing rulings changed with respect to future rulings. There is now only one person authorised to process ruling requests and to issue rulings, and this person is also the Competent Authority for exchange of information purposes.

8. Due to the limited number of rulings issued per year, the information-gathering process was solely manual and carried out by the person which issues rulings. Rulings are checked at the time of issuance to determine if they are within the scope of the transparency framework. To assist in this process, there is a general checklist used when processing

future rulings which includes guidance for Action 5. Iceland indicates that all future ruling applications require information on related parties and the immediate parent and ultimate parent companies and this is therefore provided by the taxpayer at the time of the ruling request.

Review and supervision (ToR I.4.3)

9. The Director of the Directorate of Internal Revenue communicated the requirements of the transparency framework to all staff. For past rulings, the Competent Authority was responsible for supervising the information-gathering process for past rulings and verifying that all local staff had correctly identified the relevant rulings. With respect to future rulings, the centralisation of the process to issue all rulings and the checklist which contains the requirements of the transparency framework should assist in ensuring that all future rulings are correctly and timely identified.

Conclusion on section A

10. Iceland has a process for identifying the past and future rulings and relevant jurisdictions with which to exchange under the transparency framework which is appropriate for the small size of the rulings programme in Iceland. Iceland has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

11. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

12. Iceland has the necessary domestic legal basis to exchange information spontaneously. Iceland notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

13. Iceland is a party to international agreements permitting spontaneous exchange of information, including the Convention, the Nordic Convention with Denmark, Faroe Islands, Finland, Greenland, Norway and Sweden and double tax agreements in force with 37 jurisdictions. In total, this network of agreements covers 92 jurisdictions.[2]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

14. As Iceland does not foresee that it will need to exchange information on more than one ruling per year, it has decided not to invest in systems that would exchange information using the OECD XML Schema. However, Iceland also did not use the template contained in Annex C of the Action 5 report in an available form such as Word or Excel. For the period covered by the present peer review, the one ruling that was sent was sent by way of short summary in a letter sent by registered mail.

15. For future rulings, as the person responsible for issuing future rulings is also the Competent Authority for exchange of information, there is no issue of delay in making the information on rulings available. With respect to past rulings, staff members were made

aware of the necessity to inform the Competent Authority of any identified rulings as soon as possible.

16. The timeliness of exchanges is as follows. Note that Iceland did not have to undertake exchanges of information with members other than OECD/G20 countries during the year 2016.

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2016	Delayed exchanges: Number of exchanges not transmitted by 31 December 2016	Delayed exchanges: Reasons for the delays	Delayed exchanges: Any other comments
	1	0	N/A	
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Delayed exchanges: Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority**	**Delayed exchanges: Reasons for the delays**	**Delayed exchanges: Any other comments**
	0	0	N/A	
Total	1	0		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	N/A

Conclusion on section B

17. Iceland has the necessary legal framework and administrative process in place for exchanging information on rulings. Iceland has met all of the terms of reference for the exchange of information process except ensuring that the information is in the form of the template contained in Annex C of the 2015 Action 5 Report or the OECD XML Schema and in accordance with the OECD *XML Schema User Guide* (OECD, 2017b) (ToR II.5.4). Iceland is recommended to exchange information on any future rulings using the form set out in Annex C.

C. Statistics (ToR IV)

18. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	N/A	N/A
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	N/A	N/A

Category of ruling	Number of exchanges	Jurisdictions exchanged with
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	N/A	N/A
Permanent establishment rulings	Included in *de minimus*	N/A
Related party conduit rulings	N/A	N/A
De minimis rule	1	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	N/A	N/A
Total	1	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

19. Iceland does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Iceland did not use either the template contained in Annex C of the Action 5 report (OECD, 2015) or the OECD XML Schema to complete its exchange of information.	Iceland is recommended to exchange information on any future rulings using the form set out in Annex C.

Notes

1. Available at: www.rsk.is/fagadilar/bindandi-alit (accessed on 10 November 2017).

2. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Iceland also has Double Tax Agreements with Albania, Barbados, Belgium, Canada, China (People's Republic of), Croatia, Cyprus, Czech Republic, Estonia, France, Georgia, Germany, Greece, Hungary, India, Ireland, Italy, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Netherlands, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, Spain, Switzerland, Ukraine, United Kingdom, United States and Viet Nam.

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OECD (2017b), *Country-by-Country Reporting XML Schema: User Guide for Tax Administrations*, www.oecd.org/tax/beps/country-by-country-reporting-xml-schema-user-guide-for-tax-administrations.pdf (accessed on 10 November 2017).

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India

India has met the terms of reference (ToR) for the year in review, except for identifying all potential exchange jurisdictions and using the best efforts approach for past rulings (ToR I.4.2.1 and ToR I.4.2.2), the timely provision of information on rulings to the Competent Authority (ToR II.5.5), and the timely exchange of information on past rulings (ToR II.5.6). India has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

India can legally issue the following two types of rulings within the scope of the transparency framework: (1) cross-border unilateral advance pricing agreements (APAs) and (2) permanent establishment rulings. In India, two offices of the Central Board of Direct Taxation (CBDT) issue APAs and the Authority for Advanced Rulings (AAR) is responsible for issuing PE rulings.

In practice, India issued 69 past rulings. For the period 1 April 2016-1 February 2017, India issued 126 future rulings. India publishes PE rulings,[1] whereas unilateral APA rulings are not published.

Peer input was received from one jurisdiction in respect in respect of the exchanges of information on rulings received from India. The input was positive, noting that information was in the correct format, complete and timely.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers India's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. A centralised office of the Central Board of Direct Taxation (CBDT) was established to have responsibility for the implementation of the transparency framework in India. The Competent Authority for exchange of information is also a part of CBDT.

6. In India, all past rulings pertaining to the existence of a PE or attribution of profit to a PE were issued by the AAR office in Delhi. Copies of all rulings issued by the AAR were maintained in case records. The AAR office identified all rulings which had been issued since 1 January 2010 and these were sent to the CBDT. The officers in the CBDT manually scanned the rulings to identify rulings within the scope of the transparency framework and whether they fell within the period defined as "past rulings". The officers determined that the rulings were PE rulings by examining the questions asked by the applicant in the request for the accompanying ruling.

7. Potential exchange jurisdictions were identified from the application for the ruling, which was required to contain such information before a ruling could be granted. The application form to be filled in required the name, address and country of residence of the applicant and as such the residence jurisdiction of the head office or of the PE is identified in the application.

8. In respect of unilateral APAs, these are issued by two designated offices of the CBDT, which keep a record of all such rulings granted in a central database. The database has separate tables for unilateral and bilateral APAs, which allows identifying the unilateral APAs within the scope of the transparency framework. The APAs which were within the period defined as "past rulings" were identified as all APAs entered into until 31 March 2016 were within the scope of the transparency framework since the unilateral APA programme was introduced in 2012 and each ruling is applicable for a period of five years.

9. Related parties which entered into a transaction covered by the APA were identified from the application for the APA, which was required to contain such information before a ruling could be granted.

10. For both PE rulings and APAs, information on the immediate parent and ultimate parent company was not included in the application for the ruling. India notes that these terms are not defined in the Action 5 Report (OECD, 2015) and notes that it approached the Secretariat in May 2016 with a request for guidance from the FHTP on this point. India is recommended to apply the "best efforts approach" to identify immediate parent and ultimate parent companies for all relevant past PE rulings and past APAs, using definitions that are consistent with definitions in accounting or legal provisions in India's domestic law (excluding any immediate parent or ultimate parent companies that have a immaterial shareholding in the entity).

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

11. The practice followed for future PE rulings is that when a ruling is issued by the Delhi office of the AAR, the ruling is sent to the same centralised office in the CBDT in addition to the field offices. The departmental representative (DR) posted in AAR checks the rulings to determine if they are PE rulings. The officers in the centralised office in CBDT also monitor the website where the AAR publishes its rulings to double check that all PE rulings have been identified as part of the transparency framework obligations. Potential exchange jurisdictions are identified by the CBDT from information available in the ruling, which would include the information on the residence of the head office, or of the PE, as the case may.

12. In case of a future APA ruling, two designated offices that can issue APAs would identify such rulings from the centralised database. The centralised database is maintained by one of the designated office authorised to enter into APAs. Every time a unilateral APA is signed, the database is updated. As is the case for past APAs, information on related parties which entered a transaction covered by the APA are identified from the application for the APA.

13. With respect to both PE rulings and APAs, India has indicated that it is prepared to amend the application form to require taxpayers to provide information on the immediate parent and ultimate parent, but that it is seeking guidance from the FHTP on the definition of these terms before doing so. Initial discussions were held with the Secretariat in May 2016 on this point. India is recommended to proceed with its plan to amend the process for issuing future rulings to require information on the immediate parent and ultimate parent company, using definitions that are consistent with definitions in accounting or legal provisions in India's domestic law (excluding any immediate parent or ultimate parent companies that have an immaterial shareholding in the entity).

Review and supervision mechanism (ToR I.4.3)

14. The work of the two offices responsible for issuing and identifying PE rulings and unilateral APA rulings is supervised by their respective Joint Secretaries. In addition, with respect to all PE rulings, the CBDT verifies that all such rulings have been identified by reviewing the information on the published rulings on the website. With respect to APAs, as these are issued by the CBDT which is responsible for overall implementation of the transparency framework this allows oversight of all relevant rulings that are in the scope of the transparency framework.

Conclusion on section A

15. Information on all immediate parent and ultimate parent companies has not been sought, owing to a perceived lack of definitional clarity in the Action 5 Report (OECD, 2015). India has met all of the terms of reference for the information-gathering process except for identifying all potential exchange jurisdictions and using the best efforts approach for past rulings (ToR I.4.2.1 and ToR I.4.2.2). India is recommended to apply the "best efforts approach" to identify immediate parent and ultimate parent companies for all relevant past PE rulings and past APAs and to proceed with its plan to amend the process for issuing future rulings to require information on the immediate parent and ultimate parent company, using definitions that are consistent with definitions in accounting or legal provisions in India's domestic law.

B. The exchange of information

16. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

17. India has the necessary domestic legal basis to exchange information spontaneously. India notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

18. India is a party to international agreements permitting spontaneous exchange of information, including the Convention, double tax agreements in force with 94 jurisdictions and a signatory to the South Asian Association for Regional Co-operation (SAARC) Agreement.[2] In total, this network of agreements covers 141 jurisdictions.

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

19. In order to share the required information with other jurisdictions, India is using a PDF format, observing the template contained in Annex C of the 2015 Action 5 Report (OECD, 2015) and its guidelines, which were distributed to all the offices responsible for filling out the information required.

20. For past PE rulings, after the centralised office in the CBDT identified the relevant rulings, a designated case officer was notified and requested to complete the Action 5 template. For future PE rulings, departmental representative in the AAR identifies the eligible ruling and prepares the template. For past and future APAs, the case officers were requested to complete the Action 5 template. All completed templates are submitted to the designated offices in CBDT which reviews the template for completeness and accuracy.

21. The designated offices in CBDT submit the final templates to the Competent Authority for exchange of information, which is a team within the CBDT.

22. The timeliness of exchanges is as follows. Note that India was able to undertake exchanges of information not only with OECD/G20 countries as required, but also with new members that joined the Inclusive Framework in 2016:

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2016	Delayed exchanges: Number of exchanges not transmitted by 31 December 2016	Delayed exchanges: Reasons for the delays	Delayed exchanges: Any other comments
	4	367	Delayed receipt of templates in the Competent Authority office.	All exchanges on past PE rulings were completed by 7 March 2017. The exchanges on unilateral APAs were expected to be completed soon after March 2017.

Future rulings in the scope of the transparency framework	Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted	Delayed exchanges: Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	Delayed exchanges: Reasons for the delays	Delayed exchanges: Any other comments
	1	11	Delay is on account of late receipt of template in Competent Authority office.	76 future PE rulings have not yet been communicated to the office of the CA. 369 exchanges of future unilateral APA rulings is yet to be exchanged.

Total	5	378		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	N/A	N/A	N/A

23. For past PE rulings, the delay in getting the template to the Competent Authority was remedied and information was exchanged by early March 2017. For future PE rulings, the delay in making the templates available to the Competent Authority's office has been addressed by simplifying the process for identifying future rulings. The requirement of the ruling being identified by the field offices spread throughout the country, preparing the template and sending it to the designated office in CBDT has been further fast tracked by making the departmental representative in the AAR prepare the template as soon as the ruling is issued. This is monitored by the CBDT through a new requirement that the departmental representative in the AAR is responsible for informing the CBDT of all eligible rulings issued each month. New guidelines have been issued which require the template to be sent to the CBDT within 15 days of the end of the month in which the ruling has been issued. Although there is no separate timeline for the CBDT to complete its review of the templates and to submit it to the Competent Authority, India reports that the overall period for the exchange of information on rulings takes an average of three months from the date of receiving the template.

24. In relation to the delayed exchanges of unilateral APA rulings, the CBDT has been in co-ordination with the case officers who are required to prepare the templates and has provided regular instructions and directions to expedite the sending of templates to the CBDT for review and onward transmission for exchange. India reports that this has started showing results and the backlog of delayed past rulings is being reduced.

Conclusion on section B

25. India has the necessary legal framework and administrative process in place for exchanging information on rulings. India experienced significant delays in providing information to the Competent Authority and for exchanging information on past rulings. India experienced a delay with respect to the exchange of information on future rulings in a relatively small number of cases. India has taken steps to remedy this issue. India has met all of the terms of reference for the exchange of information process except for the timely provision of information to the Competent Authority and the timely exchange of information on past rulings (ToR II.5.5 and ToR II.5.6). India is recommended to continue to ensure that information is submitted to the Competent Authority without undue delay.

C. Statistics (ToR IV)

26. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	N/A	N/A
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	0	N/A
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	N/A	N/A
Permanent establishment rulings	5	China (People's Republic of), Korea, Singapore, United Kingdom
Related party conduit rulings	N/A	N/A
De minimis rule	N/A	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	N/A	N/A
Total	5	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

27. India offers an intellectual property regime for which transparency requirements were imposed (Tax on Income from Patent regime), however no transparency requirements were relevant, as follows.

- ***New entrants benefitting from the grandfathered IP regime***: not applicable, as the regime is new and comprises no grandfathering clause.

- ***Third category of IP assets***: not applicable, as this option has not been incorporated in the Indian IP regime.
- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption***: not applicable, as this option has not been incorporated in the Indian IP regime.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Information on all immediate parent and ultimate parent companies has not been sought for past and future rulings.	India is recommended to apply the "best efforts approach" to identify immediate parent and ultimate parent companies for all relevant past PE rulings and past APAs and to proceed with its plan to amend the process for issuing future rulings to require information on the immediate parent and ultimate parent company, using definitions that are consistent with definitions in accounting or legal provisions in India's domestic law.
India experienced significant delays in providing information to the Competent Authority.	India is recommended to continue to ensure that information is submitted to the Competent Authority without undue delay.
India experienced delays in exchanging information on past rulings.	India is recommended to ensure the speedy exchange of information on all past rulings.

Jurisdiction's response and recent developments

28. India has already modified the application form for unilateral APAs to capture the information of ultimate parent company and immediate parent company at the application stage itself. This modification has been done via notification no. 53/2017 dated 16/6/2017.

Notes

1. Available at: www.aarrulings.in (accessed on 10 November 2017).
2. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Parties to the SAARC Agreement are: Bangladesh, Bhutan, Maldives, Nepal, Pakistan and Sri Lanka. India also has Double Tax Agreements with Albania, Armenia, Australia, Austria, Bangladesh, Belarus, Belgium, Bhutan, Botswana, Brazil, Bulgaria, Canada, China (People's Rep.), Colombia, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Fiji, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Kyrgyzstan, Latvia, Libya, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Mongolia, Morocco, Montenegro, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Norway, Oman, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syria, Chinese Taipei, Tajikistan, Tanzania, Thailand, Trinidad and Tobago, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Viet Nam and Zambia. The SAARC Limited Multilateral Agreement on Avoidance of Double Taxation and Mutual Administrative Assistance in Tax Matters provides for spontaneous exchange of information and was entered into force in India on 19 May 2010 and provides for exchanges with Bangladesh, Bhutan, Maldives, Nepal, Pakistan and Sri Lanka.

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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. http://dx.doi.org/10.1787/9789264241190-en.

Indonesia

Indonesia has met all of the terms of reference (ToR) for the year in review that can be met in the absence of rulings being issued and no recommendations are made.

Indonesia can legally issue one type of ruling within the scope of the transparency framework: 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. In Indonesia, the Director of Tax Regulation II is authorised to perform preliminary procedures with regard to APAs, which are then issued by Director General of Taxes through a Decree of the Director General of Taxes.

In practice, Indonesia did not issue any past rulings. For the period 1 April 2016-31 December 2016, Indonesia did not issue any future rulings. Rulings are not published. 14 requests for unilateral APAs have been received from taxpayers and those requests are still under consideration by Directorate General of Taxes.

As there were no rulings issued, no exchange of information was required. Therefore no peer input was received in respect of the exchanges of information on rulings received from Indonesia.

Introduction

1. This peer review covers Indonesia's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process (ToR I.4)

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. Unilateral APAs are identified through a specific lodgement process. The unit in charge of issuing APAs is responsible for creating, updating, and retaining records on every application and result of an APA. As there is a centralised system in managing unilateral APAs, the identification process is by the unit in change of APAs examining the relevant records. In practice, it was possible for APAs to be implemented only from April 2015 and no APAs have been issued within the period defined as "past rulings".

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

6. Future APAs are identified in the same manner as for past rulings, by the APA unit keeping its records of all APAs. In order to ensure all potential exchange jurisdictions are identified for future rulings, a taxpayer is required to disclose all related parties of the taxpayer which enter a transaction covered by the APA in the APA application. Taxpayers are not required to disclose the jurisdiction of the immediate parent and/or the ultimate parent company in the APA application. From 1 January 2016, this information can be collected from the taxpayer's transfer pricing documentation, if required to be prepared, which includes the taxpayer's group structure.[1] In practice, this would be likely to be the case for taxpayers which were applying for an APA.

Review and supervision mechanism (ToR I.4.3)

7. Officials in the APA unit were made aware of the BEPS action requirements through in-house trainings and dissemination of information on the transparency requirements. Indonesia ensures that all APA officers possess sufficient knowledge in identifying the tax rulings that fall within the scope of the transparency framework and the relevant related parties. The implementation of the transparency framework is supervised directly by the

Deputy Director for Prevention and Settlement of International Taxation Dispute Directorate of International Taxation, Directorate General of Taxes.

Conclusion on section A

8. Indonesia has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

9. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

10. Indonesia has the necessary domestic legal basis to exchange information spontaneously. Indonesia notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

11. Indonesia is a party to international agreements permitting spontaneous exchange of information, including the Convention, and double tax agreements in force with 65 jurisdictions.[2] In total, this network of agreements covers 127 jurisdictions.

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

12. Indonesia has put in place a process to exchange information on rulings in accordance with the form and timelines required by the transparency framework. Once a unilateral APA is concluded in the future, the Sub-Directorate of Prevention and Resolution of International Tax Disputes will be responsible for the unilateral APA and will provide all the necessary information required to complete the template in Annex C. The Competent Authority for exchange of information will complete the template with the information received. The Competent Authority for exchange of information is also Indonesia's Competent Authority responsible for concluding the APAs, which will ensure that information on any future APAs will be immediately available for the exchange of information purposes.

13. As no rulings within the scope of the transparency framework have been issued in practice, Indonesia was not required to complete any exchanges of information and there is no data to report on the timeliness of exchanges.

Conclusion on section B

14. Indonesia has the necessary legal framework and administrative process in place for exchanging information on rulings. Indonesia has met all of the terms of reference for the exchange of information process that can be met in the absence of rulings being issued and exchanged in practice and no recommendations are made.

C. Statistics (ToR IV)

15. As there were no rulings required to be exchanged by Indonesia in 2016, no statistics can be reported.

D. Matters related to intellectual property regimes (ToR I.4.1.3)

16. Indonesia does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made

Notes

1. This documentation is required to be prepared if the taxpayer has related party transactions and (a) annual gross turnover exceeds IDR 50 billion (approximately EUR 3.22 million); (b) if annual related party transactions for tangible goods exceed IDR 20 billion (approximately EUR 1.28 million); (c) if annual related party transactions for services, interest, intangible goods exceed IDR 5 billion (approximately EUR 322 000); or (d) the related party transactions are with parties domiciled in jurisdictions with an income tax rate lower than Indonesia (i.e. lower than 25%).

2. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Indonesia also has Double Tax Agreements with: Algeria, Armenia, Australia, Austria, Bangladesh, Belgium, Brunei Darussalam, Bulgaria, Canada, China (People's Republic of), Croatia, Czech Republic, Democratic People's Republic of Korea, Denmark, Egypt, Finland, France, Germany, Hong Kong (China), Hungary, India, Iran, Italy, Japan, Jordan, Korea, Kuwait, Laos, Luxembourg, Malaysia, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Norway, Pakistan, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Romania, Russia, Seychelles, Singapore, Slovak Republic, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Syrian Arab Republic, Chinese Taipei, Thailand, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Venezuela and Viet Nam.

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Ireland

Ireland has met all aspects of the terms of reference (ToR) for the year in review and no recommendations are made. Ireland has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Ireland can legally issue the three following types of rulings within the scope of the transparency framework: (1) preferential regimes (shipping regime and Knowledge Development Box); (2) 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; and (3) permanent establishment rulings. In Ireland, different divisions and regions in the Irish tax administration are authorised to issue opinions, which are signed off at a senior level and in most cases after obtaining the input from the Technical Services section.

In practice, Ireland has issued 29 past rulings, including five that fell into more than one category under the BEPS Action 5 report (OECD, 2015). For the period 1 April 2016-1 February 2017, Ireland issued no future rulings. These rulings are not published; however, the Irish tax administration publishes a briefing or guidance note on noticeable issues raised by specific cases.

No peer input was received in respect of the exchanges of information on rulings received from Ireland.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers Ireland's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. To identify past rulings, officers in each competent area of the Irish tax administration searched their records. Each area which issues rulings is responsible for maintaining a record of any opinions which they issue. In order to identify the opinions which were within the scope of "past rulings". each area conducted a comprehensive review of their records for the period in question. In order to determine whether a ruling was within one of the categories of the transparency framework, the officers read the ruling.

6. In order to identify the potential exchange jurisdictions, the ruling was read. The rulings did not contain all necessary information and the "best efforts approach" was used. This included a manual search within the tax administration's systems to identify all of a taxpayer's related parties. Where necessary, the officials sought information by contacting the taxpayer itself.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

7. The process set up within the Irish tax administration to gather information on rulings issued as of 1 April 2016 was as follows. A new system was implemented for all future rulings to record them on a centralised system in the tax administration when they are issued and in a standardised format. As part of this recording process, every officer is required to evaluate whether a ruling falls within the scope of the transparency framework at the time it is being issued. Each revenue officer is responsible for identifying the relevant ruling, categorising it in accordance with the transparency framework criteria and recording it as such in the centralised system. The International Tax Division runs monthly reports from this system in order to identify future rulings that are within the scope of the transparency framework.

8. In order to identify all potential exchange jurisdictions, a new procedure was implemented for future rulings whereby the necessary information is obtained from the taxpayer in the request for the ruling itself. A ruling cannot be issued unless all necessary information on potential exchange jurisdictions is provided, including the identification of all relevant related parties and the immediate and ultimate parent companies. This procedure is described in a specific staff manual.

Review and supervision mechanism (ToR I.4.3)

9. The implementation of the transparency framework was co-ordinated by the International Tax Division. This team liaised with the different areas of the tax administration to provide the necessary support and advice in the case of doubt, and also held information sessions and published guidance in a specific staff manual. The manual contained comprehensive instructions for revenue officers involved in the granting of rulings, a specific section on the transparency framework, instructions to the revenue officers for identifying past rulings, instructions on issuing new rulings, and a standardised format to gather the necessary information on rulings within the scope of the transparency framework. In addition, each division/region had a designated senior member of staff who was responsible for ensuring that all relevant rulings were identified and that all relevant timelines were met.

Conclusion on section A

10. Ireland has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

11. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

12. Ireland has the necessary domestic legal basis to exchange information spontaneously. Ireland notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

13. Ireland is a party to international agreements permitting spontaneous exchange of information, including the Convention, the Directive 2011/16/EU with all other European Union Member States, and double tax agreements in force with 74 jurisdictions. In total, this network of agreements covers 119 jurisdictions.[1]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

14. In order to share the required information with other jurisdictions, Ireland developed an internal template in an excel spreadsheet and which includes all the relevant fields contained in the Annex C template. It is filled out by each revenue officer when a past ruling is identified, or when a future ruling is issued. The exchange of information branch of the International Tax Division is responsible for extracting the information from the internal template and converting it into the form of the template contained in Annex C. This task also involves a quality check of the information initially submitted by the revenue officer

in relation to each ruling to ensure that it was categorised correctly and to ensure that all relevant information had been provided.

15. Ireland ensures that the information on rulings is made available to the Competent Authority responsible for international exchange of information in a timely way thorough the requirements set out in the staff manual. In relation to past rulings, internal timelines were set for when each division/region was required to complete the identification of all past rulings and the completion of the templates, and these were submitted to the Competent Authority in staged batches. For future rulings, the internal template is completed by the revenue officer at the time of issuing the ruling, and these templates are downloaded by the exchange of information office on at least a monthly basis in order to be reviewed and prepared for exchange.

16. The timeliness of exchanges is as follows. Note that Ireland was able to undertake exchanges of information not only with OECD/G20 countries as required, but also with new members that joined the Inclusive Framework in 2016.

		Delayed exchanges		
Past rulings in the scope of the transparency framework	**Number of exchanges transmitted by 31 December 2016**	**Number of exchanges not transmitted by 31 December 2016**	**Reasons for the delays**	**Any other comments**
	47	0	N/A	
	Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted	**Delayed exchanges**		
Future rulings in the scope of the transparency framework		**Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority**	**Reasons for the delays**	**Any other comments**
	0	0	N/A	
Total	47	0		

Follow-up requests received for exchange of the ruling	**Number**	**Average time to provide response**	**Number of requests not answered**
	0	N/A	N/A

Conclusion on section B

17. Ireland has the necessary legal basis for spontaneous exchange of information, a process for completing the templates in a timely way and has completed all exchanges on time. Ireland has met all of the terms of reference for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

18. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	16	Germany, Italy, Luxembourg, Netherlands, Singapore, United Kingdom
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	8	Canada, Malta, Netherlands, United States
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	N/A	N/A
Permanent establishment rulings	23	Canada, Germany, Luxembourg, Malta, Netherlands, Singapore, Turkey, United Kingdom, United States
Related party conduit rulings	N/A	N/A
De minimis rule	N/A	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	0	
Total	47	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

19. Ireland offers an intellectual property regime that is subject to transparency requirements under the Action 5 Report (OECD, 2015) (Knowledge Development Box). It states that the identification of the benefitting taxpayers will occur as follows:

- ***New entrants benefiting from the grandfathered IP regime***: Not applicable, as the regime is new and comprises no grandfathering clause.
- ***Third category of IP assets***: The corporate tax returns have been designed to allow the collection of relevant information. These corporate tax returns will be filed as of mid-2018 at the earliest for this regime. Information will be exchanged with relevant jurisdictions shortly after the submission of those returns.
- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption***: Not applicable, as this option has not been incorporated in the Irish legislation.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made

Note

1. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Australia also has Double Tax Agreements with Albania, Armenia, Australia, Austria, Bahrain, Belarus, Belgium, Bosnia and Herzegovina, Botswana, Bulgaria, Canada, China (People's Republic of), Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Guernsey, Hong Kong (China), Hungary, Iceland, India, Isle of Man, Israel, Italy, Japan, Jersey, Korea, Kuwait, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Moldova, Montenegro, Morocco, Netherlands, New Zealand, Norway, Pakistan, Panama, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Viet Nam, Zambia.

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Israel

Israel has met all of the terms of reference (ToR) for the year in review other than the identification of certain potential exchange jurisdictions for past rulings (ToR I.4.2.1), the timely exchange of information on past and future rulings (ToR II.5.6) and the exchange of information on new entrants to its IP regime (ToR I.4.1.3). Israel is recommended to ensure that information on all potential exchange jurisdictions is collected for past rulings, ensure the speedy exchange of all past and future rulings as well as the available information on new entrants to the IP regime.

Israel can legally issue all five types of ruling within the scope of the transparency framework: (1) rulings related to a preferential regime; (2) 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; (3) cross-border rulings giving a unilateral downward adjustment to the taxpayer's taxable profits in the country giving the ruling; (4) permanent establishment rulings; and (5) related party conduit rulings. The Professional Division of the Israel Tax Authority is responsible for issuing rulings, with each department responsible for issuing a different category of ruling.

In practice, Israel issued 79 past rulings. For the period 1 April 2016-1 February 2017, Israel issued five future rulings. Some rulings are published in anonymised form.[1]

Peer input received was received from one jurisdiction in respect of the exchanges of information on rulings received from Israel. The input was positive, noting that information on past rulings had been received and was in the correct format, complete and timely.

Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Introduction

1. This peer review covers Israel's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. The International Tax Division, which is responsible for exchange of information, formally instructed each of the department managers of the Professional Division which is responsible for issuing rulings to identify the rulings in the scope of the transparency framework.

6. The Professional Division made use of a computerised system which centralises, classifies and updates information on all rulings issued. This system has been in use since 2007. The computerised system contains data regarding the rulings periods, taxpayer name, subject and the full version of the ruling. The rulings periods contained on the centralised system allowed the Professional Division to identify whether the rulings were within the time period for "past rulings". Each department of the division was accountable for reviewing the type of ruling that it is responsible for issuing and for identifying whether the type of ruling was one of the categories of rulings in the scope of the transparency framework. In cases in which there were doubts about the classification of a ruling within a specific category, it was necessary to read the whole ruling and determine the relevant category.

7. In order to identify the potential exchange jurisdictions, all department managers were instructed to identify the taxpayer's state of residency, its immediate parent state and the ultimate parent state. In addition, for PE rulings the department managers were instructed to identify the jurisdiction of the head office or the PE (as the case may be), and for conduit rulings department managers were instructed to identify the ultimate beneficial owner of payments made to the conduit. For the year in review, the jurisdictions of residence of related party counterparts to transactions covered by the ruling or which gave rise to income from related parties benefiting from a preferential treatment were not identified.

8. The bulk of the data was included in the ruling papers. Where information on all potential exchange jurisdictions was not contained in the ruling, the "best efforts" approach was used, which involved seeking further information through internet search or where

needed by requesting the taxpayer's representative to provide the taxpayer's group structure. In some cases difficulties were encountered in identifying the names and addresses of the foreign parent companies. In these cases, the Professional Division used the information available to the Israel Tax Authority, including tax research database and public websites.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

9. In order to identify future rulings, the International Tax Division also issued instructions to each of the department managers to classify every future ruling at the point that the ruling is issued. In addition, the department managers were obligated to obtain from the taxpayer the information about the identity of all of the potential exchange jurisdictions as a pre-condition to issue the rulings.

Review and supervision mechanism (ToR I.4.3)

10. The process for ensuring all relevant information is captured accurately involves two steps. First, the department employees are assigned to identify the ruling, and collect the information following the instructions which were issued by the International Tax Division in connection with the transparency framework. Second, the department manager reviewed the data collected by the employee, and is accountable for submitting the correct documents to the EOI department.[2]

Conclusion on section A

11. Most potential exchange jurisdictions with which to exchange under the transparency framework were identified, except for jurisdictions of residence of related parties to a transaction covered by the ruling or which gave rise to income from related parties benefiting from a preferential treatment. Israel has taken steps to remedy this issue, and in 2017 the relevant rulings were re-examined and additional potential exchange jurisdictions were identified. This will be reviewed in the 2018 peer review. Israel has met all of the terms of reference for the information-gathering process except for identifying all potential exchange jurisdictions for past rulings (ToR I.4.2.1) and Israel is recommended to ensure that information on all potential exchange jurisdictions is collected for past rulings.

B. The exchange of information

12. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange of information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

13. Israel has the necessary domestic legal basis to exchange information spontaneously. Israel notes that there are no legal or practical impediments that prevent the spontaneous exchange information on rulings as contemplated in the Action 5 minimum standard.

14. Israel has international agreements permitting spontaneous exchange of information, including being a party to the Convention and double tax agreements in force with 54 jurisdictions.[3] In total, this network of agreements covers 109 jurisdictions.

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

15. In order to share the required information with other jurisdictions, the template contained in Annex C of the Action 5 Report (OECD, 2015) is used. The department managers of the Professional Division are responsible for submitting the information on the relevant rulings to the EOI department, which is responsible for entering the data into the template. The EOI department's employees examine the data attached to the ruling papers and if necessary, the ruling papers together with the data are returned to the relevant department for clarification and amendments. The Department Manager of the EOI Department supervises the process of completing and finalising the templates.

16. Israel ensures that the ruling summary template is made available to the Competent Authority for exchange of information in a timely way because the EOI Department is responsible for completing the templates. With regard to the rulings that were exchanged in the year of review (both past and future rulings), templates were transferred to the Competent Authority for exchange of information during December 2016 in one batch and sent by the competent authority towards the end of year 2016.

17. The timeliness of exchanges is as follows. Note that these statistics reflect the fact that information was only required to be exchanged with OECD/G20 countries, and not with new members of the Inclusive Framework, and that Israel in fact did only exchange information with OECD/G20 countries for the year in question.

Past rulings in the scope of the transparency framework		Delayed exchanges		
	Number of exchanges transmitted by 31 December 2016	Number of exchanges not transmitted by 31 December 2016	Reasons for the delays	Any other comments
	20	51	Lack of man power; in addition there was reorganisation and the heads of the departments were changed.	Israel refreshed the instructions to the department's managers to capture all potential exchange jurisdictions. Consequently, the department managers identified additional rulings for the exchange of information. The information was exchanged and the table was updated accordingly.
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Delayed exchanges**		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	**Reasons for the delays**	**Any other comments**
	1	7	As above for past rulings	
Total	21	58		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	0	0

18. Israel notes that they promote weekly department meetings, in which the data regarding the amount of the rulings identified, the amount of papers in process and the amount of papers ready for sending are presented to the EOI manager. The purpose of the meeting purpose is to monitor and oversee the exchange process and identify outstanding delays. With regard to the delayed exchanges, templates were transferred to the Competent Authority each quarter of 2017 and sent to the relevant jurisdictions immediately after receipt. The delayed exchanges were completed by the end of the third quarter of 2017.

Conclusion on section B

19. Israel has the necessary legal framework and administrative process in place for exchanging information on rulings. Israel encountered delays in the exchange of information on both past and future rulings within scope of the transparency framework. Israel has met all of the terms of reference for the exchange of information process except for the timely exchange of information on past and future rulings (ToR II.5.6) and Israel is recommended to ensure the speedy exchange of all past and future rulings.

C. Statistics (ToR IV)

20. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	N/A	N/A
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	N/A	N/A
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	N/A	N/A
Permanent establishment rulings	21	France, Germany, India, Ireland, Italy, Japan, Netherlands, Switzerland, United Kingdom, United States
Related party conduit rulings	N/A	N/A
De minimis rule	N/A	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	-	
Total	21	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

21. Israel offers two intellectual property regimes that are subject to transparency requirements under the Action 5 Report (OECD, 2015) (the Preferred Company regime and the Preferred Technological Enterprise regime). It states that the identification of the benefitting taxpayers will occur as follows:

- ***New entrants benefiting from the grandfathered IP regime***: This issue is relevant only for the Preferred Company regime. The benefits under this regime are only granted by way of ruling and new entrants are identified in the ruling process. Up to the end of 2016, there were seven new entrants to the grandfathered IP regime. These were made available to the Competent Authority in September 2017 and exchanged immediately thereafter.
- ***Third category of IP assets***: This issue is relevant only for the Preferred Technology Enterprise regime, which came into effect in 1 January 2017. In Israel, a third category of asset requires certification by the Authority for Technological Innovation (the certifying agency). The ITA receives detailed information regarding the certificates issued by the certifying agency. Information regarding income from assets that were certified for third category assets will also be required in the company's annual returns. The exchange of information on taxpayers benefiting from the third category of IP assets will be reviewed in the 2018 peer review. Israel notes that as soon as the relevant department (ECIL) issues a ruling regarding the third category of IP assets, they will be shared with the Competent Authority for exchange.
- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption***: Not applicable, as this option has not been incorporated in Israel's IP regime.

22. Israel notes that the department which is responsible for issuing this kind of rulings for the amended regime is well-instructed regarding how to treat and submit the relevant data for EOI purposes. During the year of review, no information on new entrants was exchanged, although this information should be available. Israel is recommended to ensure that information on new entrants is swiftly made available to the Competent Authority for exchange of information.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
For the year in review, the jurisdictions of residence of related party counterparts to transactions covered by the ruling or which gave rise to income from related parties benefiting from a preferential treatment were not identified.	Israel is recommended to ensure that information on all potential exchange jurisdictions is collected for past rulings.
Israel encountered some delays in the exchange of information on ruling within scope of the transparency framework.	Israel is recommended to ensure the speedy exchange of all past and future rulings.
During the year of review, no information on new entrants to the grandfathered IP regime was exchanged, although this information should be available.	Israel is recommended to ensure that information on new entrants to the grandfathered IP regime is swiftly made available to the Competent Authority for exchange of information.

Jurisdiction's response and recent developments

23. Israel has taken steps to remedy the first recommendation above. In 2017, the relevant rulings were re-examined and additional potential exchange jurisdictions were identified. The information was then exchanged as relevant. Israel has also taken steps to remedy the third recommendation. In September 2017, information on new entrants to the grandfathered IP regime was transmitted to the Competent Authority and was immediately exchanged with the relevant jurisdictions.

Notes

1. Available at: https://taxes.gov.il/Pages/TaxationDecisions/TaxationDecisions.aspx (accessed on 10 November 2017).
2. The EOI Department is a sub-division of the International Tax Division.
3. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Israel also has Double Tax Agreements with Austria, Belarus, Belgium, Brazil, Bulgaria, Canada, China (People's Republic of), Chinese Taipei, Croatia, Czech Republic, Denmark, Estonia, Ethiopia, Finland, France, Georgia, Germany, Greece, Hungary, India, Ireland, Italy, Jamaica, Japan, Korea, Latvia, Lithuania, Luxembourg, Malta, Mexico, Moldova, Netherlands, Norway, Panama, Philippines, Poland, Portugal, Romania, Russia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, Ukraine, United Kingdom, United States, Uzbekistan, Viet Nam.

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Italy

Italy has met the terms of reference for the year in review except that Italy experienced some delays in identifying future rulings (ToR I.4.1.2), for future rulings (other than APAs), information on all potential exchange jurisdictions is not yet always obtained, especially for ad hoc Patent Box agreements (ToR I.4.2.1), Italy plans to transmit information on future rulings to the Competent Authority at six monthly intervals each year which is longer than necessary (ToR I.5.5), and Italy has not exchanged information on new entrants to the IP regime that obtained benefits with respect to trademarks although this information for the year 2015 should be available (ToR I.4.1.3). Italy is recommended to ensure that all relevant future rulings are swiftly identified on a going forward basis, to ensure that information on all potential exchange jurisdictions is collected in the course of issuing the ruling, to reduce the timelines for providing the information on future rulings to the Competent Authority, and to identify information on all new entrants to the IP regime that obtained benefits with respect to trademarks as soon as possible.

Italy can legally issue the three following types of rulings within the scope of the transparency framework: (1) preferential regimes (International shipping and Patent Box); (2) 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; and (3) as of May 2016, permanent establishment rulings. Rulings related to preferential regimes (including on Patent Box applications) and permanent establishment rulings are issued by offices within the Central Directorate for Tax Regulations. APAs and Patent Box ad hoc agreements to determine the embedded IP income in accordance with transfer pricing principles are issued by the APA office within the Central Directorate for Tax Assessment.

In practice, Italy has issued 58 past rulings. For the period 1 April 2016-31 December 2016, Italy issued 39 future rulings. Rulings other than APAs and ad hoc Patent Box agreements may be published in anonymised form as a general ruling or "resolution" on the Italian revenue agency website, if they are of general interest.[1]

Peer input was received from five jurisdictions in respect of the exchanges of information on rulings received from Italy. The input was positive, noting that information was complete, in the correct format, and timely.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers Italy's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and new rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. Italy stores the information on rulings on different databases depending on the category they fall into.

6. With respect to APAs, the process was centralised within the APA office which has a specific database containing all APA information back to 2005, when the first unilateral APA was issued. A search was performed on this database in order to identify the rulings by using the date of issuance as search criteria. Each agreement was reviewed manually to identify the potential exchange jurisdictions. The APA itself identifies all the related parties involved in the transactions covered by the APA, and information on the immediate parent company and the ultimate parent company is part of the documentation requested and gathered during the process of analysis carried out by the APA office. Italy notes that it was able to identify all relevant jurisdictions from the rulings and application documents without having to use the "best efforts approach."

7. With respect to preferential regimes, a specific database contains information on all rulings, going back to 2001 when the ruling procedure was enacted. The database was searched to identify the relevant rulings. In order to locate any shipping regime rulings, the database was searched using the search field for the reference to the relevant provision of the shipping law. This yielded no matching result as regards the shipping regime. As regards the Patent Box and permanent establishment rulings, they were only issued after 1 April 2016 and as such fell outside of the timeframe set for past rulings.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

8. With respect to APAs and the Patent Box ad hoc agreements issued by the same office, the relevant rulings were identified using the existing database. The APA database is updated as soon as a new ruling is issued. In order to identify all potential exchange jurisdictions, the relevant rulings and ruling application documents were manually reviewed and which contained all the necessary information.

9. With respect to preferential regimes, the search through the database was assisted by the implementation of a new "cross border" flag signalling the relevant rulings on which exchange of information was required. In order to verify whether the ruling fell within the transparency framework, the database was searched such as the provision of the relevant law, or free text searches such as "permanent establishment." No shipping rulings were identified for the period. The potential exchange jurisdictions would be identified by looking at all the relevant data provided by the taxpayer who requested the ruling.

10. Five ad hoc agreements on the Patent Box were issued in 2016, however it was not confirmed whether these were in the scope of the transparency framework by the end of 2016 as the APA Office was still examining the agreements in order to identify those which have a cross-border feature. Italy notes that it is still discussing how to identify the potential exchange jurisdictions and collecting the necessary data, since this was not immediately reported in the rulings or in the filings. It is intended that the forthcoming Inter-ministerial Decree implementing the grandfathering legislation should provide specific provisions on the collection of such information, at least for new entrants opting for trademarks.

11. With respect to the newly introduced permanent establishment rulings, one permanent establishment ruling was issued in 2016, but it was also not confirmed as being in the scope of the transparency framework by the end of 2016 because the ruling has been issued by a newly created office and the information was not yet available in the database. Italy notes that this will be remedied at the end of July 2017. The potential exchange jurisdictions would be identified by looking at all the relevant data provided by the taxpayer who requested the ruling.

Review and supervision mechanism (ToR I.4.3)

12. The International Co-operation Office of the Italian Revenue Agency organised meetings with the different offices involved in the process of issuing rulings and provided guidelines to them. The internal procedure of creation, correction and reviewing of the rulings is the responsibility of the two directorates responsible for issuing the ruling. A database supervisor was in charge of co-ordinating all the database activities, from inserting data to searching information in the database.

Conclusion on section A

13. Italy experienced some delays in identifying future rulings other than APAs and information on all potential exchange jurisdictions is not yet always obtained for future rulings, especially for ad hoc Patent Box agreements. Italy has met all of the terms of reference for the information-gathering process except for identifying all relevant future rulings (ToR I.4.1.2) and identifying all potential exchange jurisdictions for future rulings (ToR I.4.2.1). Italy is recommended to ensure that all relevant future rulings are swiftly identified on a going forward basis and to ensure that for all future rulings, information on all potential exchange jurisdictions is collected.

B. The exchange of information

14. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

15. Italy has the necessary domestic legal basis to exchange information spontaneously. Italy notes that there are no legal or practical impediments that prevent the spontaneous exchange information on rulings as contemplated in the Action 5 minimum standard.

16. Italy has international agreements permitting spontaneous exchange of information, including being a party to the Convention, the Directive 2011/16/EU with all other European Union Member States, and double tax agreements in force with 98 jurisdictions. In total, this network of agreements covers 134 jurisdictions.[2]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

17. In order to share the required information with other jurisdictions, Italy created an Excel form in accordance with the OECD *XML Schema and User Guide* (OECD, 2017b). This template is filled out by case workers in each competent office of the tax administration. The templates are reviewed by the head of office, before it is sent to the International Co-operation Office which is responsible for exchange of information. For past rulings, the APA office sent all completed templates in bulk at the beginning of December 2016. For future rulings, the templates will be completed and sent to the Competent Authority every six months in order to align with the EU Directive timelines, although these timelines are longer than necessary for the transparency framework. This means that information on future rulings will be exchanged by 30 September (for rulings issued from 1 January to 30 June) and by 31 March (for rulings issued from 1 July to 31 December).

18. The timeliness of exchanges is as follows. Note that Italy was able to undertake exchanges of information not only with OECD/G20 countries as required, but also with new members that joined the Inclusive Framework in 2016.

Past rulings in the scope of the transparency framework		Delayed exchanges		
	Number of exchanges transmitted by 31 December 2016	Number of exchanges not transmitted by 31 December 2016	Reasons for the delays	Any other comments
	184	0	N/A	
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Delayed exchanges**		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	**Reasons for the delays**	**Any other comments**
	0	0	N/A	See below
Total	184			

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	N/A

19. Italy encountered no delays in exchanging information on past rulings. With respect to future rulings, no exchanges were completed during 2016, although relevant future rulings were issued in 2016. However, almost all of these future rulings were issued in

December 2016, and the timely exchange of information on these rulings will be reviewed in the 2018 peer review.

Conclusion on section B

20. Italy has the necessary legal basis for spontaneous exchange of information, a process for completing the templates in a timely way and has completed all exchanges on past rulings on time. Italy did not complete any exchanges on future rulings for the year in review. Italy has met all of the terms of reference for the exchange of information process except for transmitting information on future rulings to the Competent Authority without undue delay (ToR II.5.5). Italy is recommended to reduce the timelines for providing the information on future rulings to the Competent Authority.

C. Statistics (ToR IV)

21. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	0	N/A
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	184	Argentina, Austria, Belgium, Brazil, China (People's Republic of), Croatia, Denmark, Czech Republic, Finland, France, Germany, Greece, Hungary, India, Ireland, Japan, Luxembourg, Netherlands, Pakistan, Poland, Portugal, Romania, Russia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States
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	N/A	N/A
Permanent establishment rulings	0	N/A
Related party conduit rulings	N/A	N/A
De minimis rule	N/A	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	0	N/A
Total	184	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

22. Italy offers an intellectual property regime that is subject to transparency requirements under the Action 5 Report (OECD, 2015) (Patent Box). It states that the identification of the benefitting taxpayers will occur as follows:

- ***New entrants benefiting from the grandfathered IP regime***: the Italian Patent Box regime was available to taxpayers in the second half of 2015 and as such all the taxpayers who opted for the regime may be considered new entrants to the extent that they benefited from income from trademarks. These taxpayers will be

identified as they must enter the regime by way of a specific e-filing. In addition, in some cases, a mandatory ruling is provided for by the law. Italy has not exchanged information on new entrants to the IP regime that benefited from income from trademarks, although this information for the year 2015 should be available. Italy notes that it is still discussing how to identify the potential exchange jurisdictions and collecting the necessary data, since this was not immediately reported in the rulings or in the filings. It is intended that the forthcoming Inter-Ministerial Decree implementing the grandfathering legislation should provide specific provisions on the collection of such information.

- ***Third category of IP assets***: not applicable, as this option has not been incorporated in Italy's IP regime.
- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption***: not applicable, as this option has not been incorporated in Italy's IP regime.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Italy experienced some delays in identifying future rulings.	Italy is recommended to ensure that all relevant future rulings are swiftly identified on a going forward basis.
For future rulings (other than APAs), information on all potential exchange jurisdictions is not yet always obtained, especially for ad hoc Patent Box agreements.	Italy is recommended to amend its rulings practices for all future rulings (other than APAs) to ensure that information on all potential exchange jurisdictions is collected.
Italy plans to transmit information on future rulings to the Competent Authority at six monthly intervals each year, which is longer than necessary.	Italy is recommended to reduce the timelines for providing the information on future rulings to the Competent Authority.
Italy has not identified all relevant information on new entrants to the IP regime that obtained benefits with respect to trademarks, although this information for the year 2015 should be available.	Italy is recommended to identify information on all new entrants to the IP regime that obtained benefits with respect to trademarks as soon as possible so as to be in a position to exchange the information.

Jurisdiction's response and recent developments

23. Italy does confirm its commitment to the transparency framework and to the spontaneous exchange of information on cross-border rulings in accordance with the timeline agreed in the Report on Action 5 BEPS. It should be taken into account that the spontaneous exchange of information on rulings is a new process and some time is required to stabilise the relevant procedures.

24. In this regard, Italy would like to highlight that all the procedural issues encountered have been promptly addressed, and therefore the delays happened in the past year are now overcome and Italy is able to timely exchange information on rulings with the relevant jurisdictions. In particular, future rulings issued in 2016, mostly at the end of the year, have been exchanged with the relevant jurisdictions.

25. As shown by the above progress, Italy has made a decisive effort to fully comply with the transparency framework requirements, which confirms also its overall commitment to implement Action 5 minimum standard.

Notes

1. Available here: www.agenziaentrate.gov.it/wps/content/nsilib/nsi/documentazione/normativa+e+prassi/risoluzioni (accessed on 10 November 2017).

2. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Italy also has Double Tax Agreements with: Albania, Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, China (People's Republic of), Congo, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Ghana, Greece, Holy See, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Israel, Japan, Jordan, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Moldova, Montenegro, Morocco, Mozambique, Netherlands, New Zealand, Norway, Oman, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Senegal, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Venezuela, Viet Nam and Zambia.

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Japan

Japan has met all aspects of the terms of reference (ToR) for the year in review and no recommendations are made. Japan has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Japan can legally issue three types of ruling within the scope of the transparency framework: (1) 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; (2) PE rulings; and (3) conduit rulings. In Japan, APAs are issued by specific divisions in charge of administration of APAs in each of the 12 Regional Taxation Bureaus of the Japanese tax administration (the National Tax Agency or "NTA").

With respect to PE rulings and conduit rulings, Japan is theoretically able to provide such ruling under the "written reply procedure". This is a procedure to provide a written answer to a taxpayer's inquiry on the tax treatment of its specific transaction by the Rulings and Legal Affairs Divisions in each Regional Taxation Bureau in charge of application of relevant regulations (hereinafter "RTB Rulings Divisions"). However, no written reply procedure within the scope of the transparency framework has been issued in practice.

In practice, Japan issued 45 past rulings. For the period 1 April 2016-1 February 2017, Japan issued ten new rulings. Unilateral APAs are not published, whereas written answers under the Written Reply Procedure are published on the NTA website.[1]

Peer input was received from five jurisdictions in respect of the exchanges of information on rulings received from Japan. The input was positive, noting that the information was complete, in the correct format and received on time. One peer noted that the template did not include a summary of the ruling. Japan confirms that it completes the templates as required by the transparency framework, and has provided additional information to the peer in question to assist in understanding the particular case.

Introduction

1. This peer review covers Japan's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. For past unilateral APA rulings, the Large Enterprise Division in the NTA is in charge of the information-gathering process under the transparency formwork ("NTA APA Division"). The NTA APA Division instructed the divisions in charge of the administration of APAs in each Regional Taxation Bureau ("RTB APA Divisions") to identify the past rulings using the following steps.

6. First, the officials of each RTB APA Division reviewed each taxpayer's APA file. The file includes information such as the taxpayer's name, related jurisdictions, and the issuing date. The officials then made a list of all unilateral APAs which were within the definition of "past rulings".

7. Second, the RTB APA Divisions identified all potential exchange jurisdictions. In order to obtain this information, the APA filed was consulted. APA requests submitted before June 2016 were not required to contain information on immediate parent and ultimate parent company. Japan used the "best efforts approach" which involved the officials searching all information in the APA files including the company profile, financial statements and details of covered transactions. Japan reports that information on all relevant parties was obtained. Third, the RTB APA Divisions submitted the list of all unilateral APAs in scope with all information on potential exchange jurisdictions to the NTA APA Division.

8. For past written reply procedure rulings, the RTB Rulings Divisions provide written answers and publish all of them on the NTA's website. The Office of Rulings and Legal Affairs in the NTA in charge of applying relevant regulations (hereinafter "NTA Ruling Office") read all of the written answers published on the website to determine if there were any rulings within the scope of the transparency framework. No such rulings have been identified.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

9. The process for identifying future APA rulings is substantially the same as for past rulings, whereby the RTB APA Divisions identifies unilateral APA confirmations within the scope of the future rulings from APA files which they manage. The RTB APA divisions report to the NTA division immediately after they have issued a new APA. In June 2016, a requirement was added to the APA ruling application process to require the taxpayer to provide information on all potential exchange jurisdictions including the immediate parent and ultimate parent company.

10. For future rulings issued under the Written Reply Procedure, the NTA Rulings Office instructs the RTB Rulings Divisions to report the publication of all new written answers immediately after such a ruling is issued. The NTA Rulings Office reads all of the written answers to determine if they are within the transparency framework. No such rulings have been identified. If a ruling was issued in the future, the RTB Rulings Divisions Office would obtain information on all potential exchange jurisdictions including the ultimate parent and immediate parent company from the taxpayer according to the administrative guidelines governing the issuance of rulings.

Review and supervision mechanism (ToR I.4.3)

11. With respect to unilateral APAs, the NTA APA Division provided the RTB APA Divisions with written guidance on the procedures to complete all requirements under the transparency framework, and gave training to related officials based on that guidance. The NTA APA Division also answered questions from the RTB APA Divisions. In addition, the NTA APA Division reviewed the rulings identified by the RTB APA Divisions to ensure they were in scope and within the period of either "past ruling" or "future ruling."

12. With respect to the written reply procedure rulings, the NTA Rulings Office itself completed the work on past rulings and for future rulings also checked this against the information reported by the RTB Rulings Divisions. The International Operations Division is in charge of monitoring the implementation of the transparency framework, and the NTA APA Division and the NTA Rulings Office report to this office on the conduct of their work.

Conclusion on section A

13. Japan has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

14. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

15. Japan has the necessary domestic legal basis to exchange information spontaneously. Japan notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

16. Japan is a party to international agreements permitting spontaneous exchange of information, including the Convention and double tax agreements in force with 68 jurisdictions. In total, this network of agreements covers 121 jurisdictions.[2]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

17. In order to share the required information on APAs with other jurisdictions, the RTB APA Divisions fill in the information required in the template contained in Annex C. In respect of past rulings, the RTB APA Divisions submitted the information to the NTA APA Division by 2 November 2016. In respect of future rulings, the RTB APA Divisions submit the Annex C template no later than eight weeks after the date on which the confirmation of APA is issued.

18. The NTA APA Division checks that the information is filled in appropriately in the Annex C template and performs a high-level check to ensure it is correct and complete. The NTA APA Division submits the Annex C to the Division in charge of EOI of the NTA, with a target of ensuring this is done within two months of the ruling being issued.

19. The timeliness of exchanges is as follows. Note that these statistics reflect the fact that information was only required to be exchanged with OECD/G20 countries, and not with new members of the Inclusive Framework, and that Japan in fact did only exchange information with OECD/G20 countries for the year in question.

Past rulings in the scope of the transparency framework		Delayed exchanges		
	Number of exchanges transmitted by 31 December 2016	Number of exchanges not transmitted by 31 December 2016	Reasons for the delays	Any other comments
	66	0	N/A	N/A
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Delayed exchanges**		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	**Reasons for the delays**	**Any other comments**
	27	0	N/A	N/A
Total	93	0		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	0

Conclusion on section B

20. Japan has the necessary legal basis for spontaneous exchange of information, a process for completing the templates in a timely way and has completed all exchanges on time. Japan has met all of the terms of reference for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

21. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	N/A	N/A
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	93	Australia, Belgium, Brazil, Canada, China (People's Republic of), France, Germany, Hungary, India, Ireland, Israel, Italy, Korea, Luxembourg, Netherlands, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States
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	N/A	N/A
Permanent establishment rulings	N/A	N/A
Related party conduit rulings	N/A	N/A
De minimis rule	N/A	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	N/A	N/A
Total	93	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

22. Japan does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made

Notes

1. www.nta.go.jp/shiraberu/zeiho-kaishaku/bunshokaito/01.htm (accessed on 10 November 2017).

2. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Japan also has Double Tax Agreements with Armenia, Australia, Austria, Bangladesh, Belarus, Belgium, Bermuda, Brazil, Brunei Darussalam, Bulgaria, Canada, Chile, China (People's Republic of), Czech Republic, Denmark, Egypt, Fiji, Finland, France, Georgia, Germany, Guernsey, Hong Kong (China), Hungary, India, Indonesia, Ireland, Israel, Italy, Jersey, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Luxembourg, Malaysia, Mexico, Moldova, Netherlands, New Zealand, Norway, Oman, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Singapore, Slovak Republic, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Chinese Taipei, Tajikistan, Thailand, Turkey, Turkmenistan, Ukraine, United Kingdom, United States, Uzbekistan, Viet Nam and Zambia.

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Korea

Korea is taking steps to implement the legal basis for the transparency framework and to complete the administrative work to ensure that information on rulings is exchanged as soon as possible after the new legal basis is in force. Korea has met all of the terms of reference (ToR) for the year in review other than having the domestic legal framework for spontaneous exchange of information on rulings (ToR II.5.1) and that it has not yet finalised it mechanism to identify and exchange information on taxpayers benefiting from the third category of assets in the IP regime (ToR I.4.1.3). Korea is recommended to finalise the amendments to put the domestic legal basis in place to commence exchanges as soon as possible, and to continue with its implementation of the legal and administrative framework to ensure taxpayers benefiting from the third category of assets in the IP regime are identified and information is exchanged as soon as possible.

Korea can legally issue the following type of rulings within the scope of the transparency framework: 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.[1] Rulings on APAs are issued by the International Taxation Bureau at the Central Office of the National Tax Service.

In practice, Korea issued 45 past rulings. For the period 1 April 2016-1 February 2017, Korea issued one future ruling. These rulings are not published.

Korea did not have the necessary domestic legal basis for spontaneous exchange of information on rulings for the year of review. As such, no exchanges on rulings were permitted to occur.[2] As no exchanges on rulings could be undertaken under Korea's domestic legal framework, no peer input was received in respect of the exchanges of information on rulings received from Korea.

Introduction

1. This peer review covers Korea's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. Korea has commenced the information-gathering process in advance of the legal basis for spontaneously exchanging information on rulings being finalised. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. With respect to unilateral APAs, these are issued by the International Taxation Bureau at the Central Office of the National Tax Service. All information regarding unilateral APAs that have been issued in the past are stored and managed centrally at this Bureau and recorded on a spreadsheet. The spreadsheet categorises the APAs as bilateral or unilateral and includes the date of issue. The International Taxation Bureau is responsible for identifying from the spreadsheet all unilateral APAs that were issued in the relevant years.

6. In order to identify the potential exchange jurisdictions, Korea consulted the information contained in the request for the APA. Since 1995, the information required to be submitted when a taxpayer requests a unilateral APA ruling has contained the countries of residence of all related parties with whom the taxpayer enters into transactions that are covered by the APA, and the residence country of the ultimate and immediate parent company.

7. Where necessary, if information in the ruling request was unclear, Korea made use of the "best efforts approach" which involved checking other information that had been submitted by the taxpayer, or contacting the taxpayer or their representative.

8. With respect to the advance rulings programme, Korea also took steps to confirm that no rulings within the scope of the transparency framework had been issued. The Collection and Legal Bureau which issues such rulings searched its files, and all issued rulings are stored and managed centrally. As all rulings have a chronological issuance number and are published in anonymised form on the legal database, the records were able to be searched systematically and by provision of law or category of ruling. Korea was able to confirm that no rulings within the scope of the transparency framework have been issued, as was expected to be the case.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

9. To identify future unilateral APAs, the International Taxation Bureau regularly refers to its central spreadsheet which records all unilateral APAs. As was the case for past rulings, information on all potential exchange jurisdictions is required to be provided in the ruling application.

10. Korea also verified that no other future rulings issued under the advance rulings programme were within the scope of the transparency framework. This was conducted by reviewing all such rulings, in the same manner as for past rulings. No rulings within the scope of the transparency framework had been issued between 1 April 2016 and 31 December 2016, as was expected to be the case.

Review and supervision mechanism (ToR I.4.3)

11. Korea notes that the centralisation of the rulings in one place for unilateral APAs, together with the fact that a relatively small number of APAs that had been issued assisted in ensuring that the relevant rulings were identified.

Conclusion on section A

12. Korea has a process for identifying the rulings and potential exchange jurisdictions which is appropriate for the small size of the rulings programme in Korea. Korea has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

13. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

14. Korea does not have the necessary domestic legal basis to exchange information on unilateral APAs spontaneously. This is because a domestic regulation specifically restricts the tax administration's use of data that is submitted in an application of an APA to (1) review of the APA and (2) follow-up procedures related to the APA.[3] Under Korea's legal system, treaty provisions enabling administrative power such as exchange of information cannot automatically override the legal provision regarding the restrictions on use of APA information. Korea is currently in the process of revising that regulation so that APA information may also be used for exchange of information purposes. Korea anticipates that the new law will take effect in early 2018.

15. Korea has international agreements permitting spontaneous exchange of information, including being a party to the Convention and double tax agreements in force with 93 jurisdictions.[4] In total, this network of agreements covers 136 jurisdictions.

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

16. Korea will exchange all past and future rulings in bulk once the legal basis is in force. Korea has already identified the number of exchanges that need to be made, and the treaty partners with whom the exchanges shall take place. Korea has also begun filling in the templates in the form of Annex C so that by the time the revised law takes effect, they will be ready to exchange without further delay. With respect to future rulings, Korea will educate its tax officers to ensure that rulings are submitted to the Competent Authority for exchange of information within three months of the ruling being issued.

17. As there is no legal basis for exchange, no data on the timeliness of exchanges can be reported.

Conclusion on section B

18. Korea does not yet have the necessary legal framework in place for exchanging information on rulings. Korea has already taken steps to ensure the administrative practices for the completion and exchange of templates on rulings is in place in advance of the finalisation of the domestic legal framework, which will ensure as speedy an exchange process as possible. Korea has met all of the terms of reference for the exchange of information process other than having the domestic legal framework for spontaneous exchange of information on rulings (ToR I.5.1) and Korea is recommended to finalise the amendments to put the domestic legal basis in place to commence exchanges as soon as possible.

C. Statistics (ToR IV)

19. As there is no legal basis for exchange, no statistical data can be reported.

D. Matters related to intellectual property regimes (ToR I.4.1.3)

20. Korea has an intellectual property regime that is subject to transparency requirements under the Action 5 Report (OECD, 2015) (the Innovation Income Deduction). It states that the identification of the benefitting taxpayers will occur as follows:

- ***New entrants benefiting from the grandfathered IP regime***: as this is a new regime, grandfathering is not relevant.
- ***Third category of assets***: the registration of such assets is required to be registered and managed with the Korea Institute for Advancement of Technology. In addition, a new appendix table under the Ordinance of Ministry of Strategy and Finance has been created to collect information on how many taxpayers enjoy benefits from the third category IP asset and total amount of income generated from such assets. The necessary legal basis was put in place in early 2017 and will be reviewed in the next annual peer review.
- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption***: not applicable, as this option has not been incorporated in Korea's IP regime.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Korea does not yet have the necessary legal framework in place for exchanging information on rulings.	Korea is recommended to finalise the amendments to put the domestic legal basis in place to commence exchanges as soon as possible.
For the year in review, Korea had not finalised its mechanism to identify and exchange information on taxpayers benefiting from the third category of assets in the IP regime.	Korea is recommended to continue with its implementation of the legal and administrative framework to ensure taxpayers benefiting from the third category of assets in the IP regime are identified and information is exchanged as soon as possible.

Notes

1. Korea notes that although it has an advance rulings programme, binding administrative guidance prevents a taxpayer from requesting, or the authority from granting, advance rulings which would depend on, or involve a determination of, the facts and circumstances (such as a permanent establishment or conduit arrangement). The issuance of these rulings is governed by the binding administrative guidance published by the National Tax Service.

2. The Action 5 Report (OECD, 2015) notes that jurisdictions which do not currently have the necessary legal framework in place for spontaneous exchange of information on rulings will need to put in place such a framework in order to comply with the obligations under Action 5, but that in such cases the timelines are subject to a country's legal framework.

3. Article 9(5) of the Presidential Decree to the Law on the Co-ordination

4. Parties to the Multilateral Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Korea also has Double Tax Agreements with Albania, Algeria, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Brazil, Brunei Darussalam, Bulgaria, Canada, Chile, China (People's Republic of), Colombia, Croatia, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Fiji, Finland, France, Gabon, Georgia, Germany, Greece, Hong Kong (China), Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Democratic People's Republic of Korea, Kuwait, Kyrgyzstan, Laos, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Mongolia, Morocco, Myanmar, Nepal, Netherlands, New Zealand, Norway, Oman, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Thailand, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Venezuela and Viet Nam.

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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. http://dx.doi.org/10.1787/9789264241190-en.

Latvia

Latvia is taking steps to implement the legal basis for the transparency framework and to commence administrative preparations to ensure that information on rulings will be exchanged once the new legal basis is in place. Latvia has met all of the terms of reference (ToR) for the year in review that can be met in the absence of the legal framework for spontaneous exchange of information on rulings (ToR II.5.1) and Latvia is recommended to finalise the amendments to put the domestic legal basis in place and implement all necessary administrative processes to commence exchanges as soon as possible. Latvia has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Latvia can legally issue the following three types of rulings within the scope of the transparency framework: (1) preferential regimes (shipping tax regime and regime related with the taxpayers investments in special economic zones and free ports (Special economic zones); (2) cross-border unilateral APAs and any other cross-border unilateral tax ruling (such as an ATR) covering transfer pricing or the application of transfer pricing principles; and (3) permanent establishment rulings. In Latvia, rulings within the transparency framework are issued by the State Revenue Service.

In practice, Latvia issued 59 past rulings. For the period 1 April 2016-31 December 2016, Latvia issued ten future rulings.[1] The summaries of these rulings are published in an anonymised way.[2]

Latvia did not have the necessary domestic and international legal framework for spontaneous exchange of information for the year of review. As such, no exchanges were permitted to occur.[3] As no exchanges could be undertaken under Latvia's domestic legal framework, no peer input was received in respect of the exchanges of information on rulings received from Latvia.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers Latvia's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. As Latvia did not have the legal basis to exchange rulings in 2016, this section could not be assessed. It is noted that Latvia completed its peer review questionnaire explaining the preparations being made to identify all relevant rulings and potential exchange jurisdictions in 2017, which includes the following.

5. The State Revenue Service has a centralised system in which all rulings are registered and monitored, being the Latvian Tax Information system. The divisions which are responsible for issuing rulings will be responsible for identifying whether the issued rulings are within the scope of the transparency framework. The divisions have allocated specific personnel who are responsible for consulting their internal registers and identifying past rulings for the purposes of exchanges pursuant to the EU Directive and the same approach is likely to be used for the transparency framework. Future rulings are expected to be identified at the point they are issued.

6. In order to identify the potential exchange jurisdictions, the rulings themselves will be consulted. The rulings should contain information on all potential exchange jurisdictions, including the immediate parent company, the ultimate parent company, and all related parties that enter a transaction covered by the ruling as this is required from the taxpayer in the application pursuant to the Cabinet of Ministers Regulations and Administrative Procedure Law.

Conclusion on section A

7. For the year in review, Latvia did not have the necessary legal framework in place for exchanging information on rulings. This section will be assessed in the subsequent annual peer review. Latvia is encouraged to commence the identification of all relevant rulings and potential exchange jurisdictions in order to ensure that the exchanges of information under the transparency framework can occur as soon as possible after the legal basis is finalised.

B. The exchange of information

8. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

9. Latvia does not have the necessary domestic legal basis to exchange information spontaneously. Latvia notes that an amendment to the Cabinet of Ministers' Regulations concerning spontaneous exchange of information on rulings is currently being drafted. It is planned that the draft amendment will be finished in 2017. Latvia is not yet able to confirm whether the amendment will allow the exchange of information on both past and future rulings.

10. Latvia is part to international agreements permitting spontaneous exchange of information, including the Convention, the Directive 2011/16/EU with all other European Union Member States, and double tax agreements in force with 58 jurisdictions. In total, this network of agreements covers 113 jurisdictions.[4]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

11. As the Latvian tax administration does not yet have the legal basis for exchanges, the completion and exchange of templates is not assessed.

12. Latvia notes that the staff dealing with the exchange of information on tax rulings has examined the OECD *XML Schema and User Guide* (OECD, 2017b) and is familiar with the template in Annex C of the Action 5 Report (OECD, 2015). Once the Cabinet of Ministers' Regulation has been amended, internal provisions for the exchange of information on tax rulings within the transparency framework will be drafted and training seminars will be organised if required.

13. As there is no legal basis for exchange, no data on the timeliness of exchanges can be reported.

Conclusion on section B

14. Latvia does not yet have the necessary legal framework in place for exchanging information on rulings. Once this is put in place, Latvia will prepare the internal provisions for the exchanges under the transparency framework. Latvia is recommended to finalise the amendments to put the domestic legal basis in place and implement all necessary administrative processes to commence exchanges as soon as possible. Latvia is encouraged to commence the completion of templates for all relevant rulings in order to ensure that the exchanges of information under the transparency framework can occur as soon as possible after the legal basis is finalised.

C. Statistics (ToR IV)

15. As there is no legal basis for exchange, no statistical data can be reported.

D. Matters related to intellectual property regimes (ToR I.4.1.3)

16. Latvia does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Latvia does not yet have the necessary legal framework in place for exchanging information on rulings.	Latvia is recommended to finalise the amendments to put the domestic legal basis in place and implement all necessary administrative processes to commence exchanges as soon as possible.

Notes

1. Of the 69 rulings issued in total, 67 of these rulings were rulings related to a preferential regime which were issued to micro-enterprise taxpayers (a special tax regime in the Republic of Latvia). The aforementioned rulings concern only Latvian enterprises, i.e. other jurisdictions are not concerned.

2. Available at: www.vid.gov.lv/ (accessed on 10 November 2017).

3. The Action 5 Report (OECD, 2015) notes that jurisdictions which do not currently have the necessary legal framework in place for spontaneous exchange of information on rulings will need to put in place such a framework in order to comply with the obligations under Action 5, but that in such cases the timelines are subject to a country's legal framework.

4. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Latvia also has Double Tax Agreements with Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Canada, China (People's Republic of), Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Hungary, Iceland, India, Ireland, Israel, Italy, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Lithuania, Luxembourg, Malta, Mexico, Moldova, Morocco, Netherlands, Norway, Poland, Portugal, Qatar, Romania, Russia, Serbia, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States and Uzbekistan.

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Luxembourg

Luxembourg has met all aspects of the terms of reference (ToR) for the year in review, except for being able to identify all past rulings within the scope and to classify them in accordance with the relevant categories (ToR I.4.1.1 and ToR I.4.1.2.), meeting the timelines for exchanging information on past rulings (ToR II.5.6) and exchanging available information on new entrants to the IP regime (ToR I.4.1.3). Luxembourg is recommended to ensure that all rulings are identified and information on relevant past rulings and new entrants to the IP regime are exchanged as soon as possible. Luxembourg has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Luxembourg can legally issue the following four types of rulings within the scope of the transparency framework: (1) preferential regimes (private asset management company, investment company in risk capital, provision for fluctuations in reinsurance companies, informal capital and partial exemption for income/gains derived from certain IP rights); (2) 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; (3) unilateral downward adjustments; and (4) permanent establishment rulings. To the extent that conduit rulings are provided, they are already covered under the second category.

In practice, Luxembourg issued 5 600 past rulings. For the period 1 April 2016-31 December 2016, Luxembourg issued 219 future rulings. These rulings are published in a summarised and anonymised form in the annual report of the tax administration.

Peer input was received from 10 jurisdictions in respect of the exchanges of information on rulings received from Luxembourg. The input noted that information was in the correct format and all peers stated that the information received was complete, except one that responded with "N/A". Five peers mentioned exchange delays with respect to past rulings.

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Introduction

1. This peer review covers Luxembourg's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as potential exchange jurisdictions.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. The process for issuing tax rulings in Luxembourg was changed with effect from 1 January 2015, and the information-gathering process is therefore different after that period.

6. Rulings granted in response to requests submitted before 1 January 2015 were not centrally registered. As far as corporate taxation is concerned, authority to grant rulings was held by eight corporate tax offices, each of which was responsible for either a specific region in the country or a specific sector (such as large businesses, types of enterprises such as partnerships, or sectors such as insurance, agriculture, financial industry and e-commerce). In practice, a large part of all the rulings were issued by one corporate tax office.

7. In order to identify the rulings within the scope of the transparency framework, each of the heads of the eight corporate tax offices were requested to prepare a list of all the taxpayer specific rulings issued by their office on or after 1 January 2010. The corporate tax office which issued most of the rulings already maintained a database of all rulings since 2007, and the lists were then combined with the information in that database to create one central database listing all issued rulings. The central database comprised the following information: name of the taxpayer; tax identification number of the taxpayer; name of the taxpayer group; keywords describing the subject of the ruling; date of receipt of ruling request; date of acceptance; amount invested (if available); and a link to the relevant documents.

8. The tax administration staff had to go manually through all of the rulings in the database to determine if they were in the scope of the transparency framework. In order to assist in accelerating the identification of past rulings, taxpayers or their advisors were contacted and asked to identify for each relevant ruling whether or not it was in scope. A national template was created by the tax administration in April 2016 in order to meet the requirements of the transparency framework. This template is available for taxpayers or their advisors on the tax administration's website.[1] If the ruling was in scope, the form required the classification into the relevant categories and the verification that the ruling

was within the period defined as "past ruling." The received forms were then reviewed by the tax administration staff to verify if the classification was correct. For rulings where the form was not completed by the taxpayer or advisor, the tax administration staff classified the ruling using information contained in the ruling.

9. The form also included information needed to identify the potential exchange jurisdictions, which assisted in accelerating the information-gathering process, and which is beyond the requirements of the "best efforts" approach. Where information was provided by the taxpayers or their advisors, this information was also reviewed by the tax administration staff to verify if it was complete. Where the form was not completed by the taxpayer or advisor, the task of identifying potential exchange jurisdictions was performed by the Luxembourg tax administration staff using information contained in the ruling request files (including the annexed documents, which usually included a group organisation chart or where relevant contracts with related parties). Of the rulings reviewed by 31 December 2016, all potential exchange jurisdictions were able to be identified from the ruling request file or from the taxpayer.

10. As of 1 January 2015, a new procedure for issuing rulings was introduced with the enactment of paragraph 29A of the General Tax Law. This provided for the creation of a tax ruling commission which assists the competent tax offices with the execution and the uniform application of the tax law. The ruling commission is the gateway for any future ruling and it provides an opinion on each ruling request as far as corporate taxation is concerned. The ruling commission's opinion is transmitted to the head of the competent tax office for execution and the ruling commission's opinion is legally binding on the tax office receiving the request. The final ruling is then issued by the head of the tax office.

11. The process for identifying all past rulings issued on and from 1 January 2015 was as follows. The ruling commission received all ruling requests that were pending as of 1 January 2015. All ruling requests were entered into the central database of the ruling commission. After the delivery of the opinions by the ruling commission the rulings were provided to the relevant competent tax office for execution. The ruling was then recorded in the relevant competent tax office's records as well. The data from the ruling commission's database and the competent tax office records were used for the purposes of the transparency framework to compile the central database listing all past rulings. The process of reviewing that list and identifying potential exchange jurisdictions was the same as for all other past rulings.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

12. All future rulings were issued under the framework of new paragraph 29A of the General Tax Law and with the involvement of the ruling commission.

13. For future rulings, all taxpayers must complete the national template together with the ruling request, and this includes an indication of whether the ruling is in the scope of the transparency framework. Immediately after the delivery of a positive opinion by the ruling commission, the ruling commission reviews the form and makes the decision as to whether the ruling is in the scope of the transparency framework.

14. The new legal framework also sets out the minimum information requirements that must be submitted by the taxpayer in the national template with the ruling request. This includes the name, residence and tax number (if applicable) of the applicant, and other parties concerned (including related parties, immediate parent and ultimate parent company and third parties) and the description of their respective activities. If the template is not submitted, the ruling request will not be considered. This ensures that information on all potential exchange jurisdictions is collected for the purpose of meeting the transparency framework requirements.

Review and supervision (ToR I.4.3)

15. In order to ensure that all past rulings were accurately identified, the task of reviewing the files to prepare the full list of all issued rulings was completed by each of the heads of the eight corporate tax offices. A team of four full time equivalent officers ("FTE team") was made responsible for reviewing all of the templates completed for past rulings. A second review of the templates was undertaken by the project manager in the FTE team, who is also responsible for the overall supervision of the process of gathering and exchanging information in connection with the transparency framework. With respect to future rulings, the supervision role is through the oversight of the ruling commission.

16. Members of the newly created ruling commission were trained on Action 5, together with all other staff involved in the identification and information-gathering process in relation to past rulings.

Conclusion on section A

17. Information on all potential exchange jurisdictions is available for all future rulings and has so far been available in respect of all past rulings. However, as Luxembourg had to search through a large number of past rulings which were not centrally issued, the process for identifying past rulings and for classifying them according to the Action 5 categories is still underway. As at June 2017, 4 615 past rulings had been identified. It is noted that Luxembourg anticipates completing this process by 31 December 2017. Luxembourg has met all the terms of reference for the information-gathering process except for identifying all past rulings in the relevant categories (ToR I.4.1.1 and I.4.1.1.2). Luxembourg is recommended to continue its work to complete its information-gathering process on past rulings as soon as possible.

B. The exchange of information

18. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

19. Luxembourg has the necessary domestic legal basis to exchange information spontaneously. Luxembourg notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

20. Luxembourg has international agreements permitting spontaneous exchange of information, including being a party to the Convention, the Directive 2011/16/EU with all other European Union Member States, and double tax agreements in force with 71 jurisdictions. In total, this network of agreements covers 108 jurisdictions.[2]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

21. In order to ensure that the information to be exchanged is complete and filled in the correct template, the following process was used. For past rulings, the templates were completed in the process of identifying the relevant rulings. Of the 4 615 past rulings identified at June 2017, templates had been completed for 4 474 rulings. The templates were reviewed by the FTE team according to the four-eye principle, whereby the work of

the FTE team was always reviewed by at least one other person. For future rulings, the taxpayer completes the national template as part of the ruling request, and this is reviewed by the ruling commission in the process of considering the ruling request.

22. Luxembourg developed an application allowing the conversion of the national templates into XML files in accordance with the OECD *XML Schema and User Guide* (OECD, 2017b). In the event of a failure of the automatic conversion process, the FTE team steps in to correct the problem.

23. Luxembourg ensures that the information on rulings is made available to the Competent Authority for exchange of information in a timely way by its internal guidelines that apply within the tax administration which were adapted to meet the Action 5 requirements. This requires that for future rulings, after the ruling is issued, the national template has to be communicated to the Competent Authority without delay. The guidelines provide that the Competent Authority has to exchange the information with the relevant jurisdictions within the month of receipt of the national template. For past rulings, the international exchange of information process is still ongoing, due to the large number of rulings to be exchanged upon. Completed templates are provided to the competent authority on an ongoing basis.

24. A team of roughly five persons proceeds to the exchange of information on rulings according to the legal provisions in place. The relevant information is currently exchanged by using an e-form for EU Member states and a national template in PDF format for non-EU members.

25. The timeliness of exchanges, as at 1 February 2017, is as follows. Note that Luxembourg was able to undertake exchanges of information not only with OECD/G20 countries as required, but also with new members that joined the Inclusive Framework in 2016.

Past rulings in the scope of the transparency framework		Delayed exchanges		
	Number of exchanges transmitted by 31 December 2016	Number of exchanges not transmitted by 31 December 2016	Reasons for the delays	Any other comments
	1 171	(Complete data not yet available)	Volume of exchanges and the late availability of the necessary IT solutions due to the delayed documents.	N/A
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Delayed exchanges**		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	**Reasons for the delays**	**Any other comments**
	482	0	N/A	N/A
Total	1 653[3]	Not yet available		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	3	2 months	0

26. Luxembourg provides two types of explanations for the transmission delay regarding past rulings. This is the large volume of exchanges; and practical IT impediments due to the timing of the availability of the OECD and EU technical specifications. Luxembourg specifies that the work on the creation of the database on past rulings mentioned above under section A began in January 2016 (in other words, this work was not delayed by the technical impediments). The national template was created in April 2016 and revised in June 2016 once the EU functional specifications were available. This issue is not expected to cause delays on a going forward basis and it is noted that Luxembourg has completed the exchanges on all future rulings in a timely manner.

Conclusion on section B

27. Luxembourg has the necessary legal framework and administrative process in place for exchanging information on rulings. Luxembourg experienced significant delays in exchanging information on past rulings mostly due to the administrative burden which stems from the issuance of a large number of rulings within the scope of the transparency framework. Luxembourg has met all of the terms of reference for the exchange of information process other than the timely exchange of information on past rulings (ToR II.5.6). Luxembourg is recommended to continue to ensure that all information on past rulings is exchanged as soon as possible, and to complete the exchange process by the end of 2017.

C. Statistics (ToR IV)

28. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	0	N/A
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	509	Australia, Austria, Bahamas, Belgium, Bulgaria, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Canada, China (People's Republic of), Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Guernsey,Hungary, India, Ireland, Italy, Jersey, Japan, Malta, Mexico, Netherlands, Norway, Poland, Portugal, Romania, Russia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Thailand, United Kingdom, United States
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	17	Canada, Denmark, France, Germany, Guernsey, Ireland, United States
Permanent establishment rulings	58	Belgium, Canada, France, Germany, Ireland, Italy, Japan, Mexico, Netherlands, Singapore, United Kingdom, United States
Related party conduit rulings	0	N/A
De minimis rule	2	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	Included in *de minimus*	

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Other types of rulings	1 067	Australia, Austria, Bahrein, Belgium, Bermuda, Brazil, British Virgin Islands, Cayman Islands, Canada, China (People's Republic of), Cyprus, Denmark, Finland, France, Germany, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Korea, Lithuania, Malaysia, Malta, Mauritius, Mexico, Netherlands, Norway, Panama, Poland, Portugal, Qatar, Czech Republic, Russia, Singapore, Slovak Republic, South Africa, Spain, Sweden, United Arab Emirates, United Kingdom, United States
Total	1 653	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

29. Luxembourg offers a grandfathered intellectual property regime that is subject to transparency requirements under the Action 5 Report (OECD, 2015) (partial exemption for income/gains derived from certain IP rights). It states that the identification of the benefitting taxpayers will occur as follows:

- ***New entrants benefiting from the grandfathered IP regime***: the legislation provides the necessary provisions to identify new entrants benefitting from the grandfathered IP regime, by means of a specific line in their tax return. The spontaneous exchange of information then occurs within a year, unless the tax administration obtains the information earlier, in which case this information is exchanged within three months of the tax administration's date of notice. In order to ensure the effectiveness of the exchange of information on rulings, an internal note was addressed to the head of the corporate tax offices.
- ***Third category of IP assets***: not applicable, as the IP regime has been abolished.
- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption***: not applicable, as the IP regime has been abolished.

30. Luxembourg identified seven new entrants, but only information on two new entrants has been exchanged during the year 2016. Luxembourg is taking steps to address this and is recommended to continue to work on identifying and exchanging information on all new entrants to the IP regime.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
The information-gathering process is still underway in Luxembourg with respect to past rulings and the classification of these rulings under each category.	Luxembourg is recommended to complete its information-gathering process on past rulings as soon as possible.
Luxembourg experienced significant delays in exchanging information on past rulings.	Luxembourg is recommended to continue to ensure that all information on past rulings is exchanged as soon as possible, and to complete the exchange process by the end of 2017.
Luxembourg is continuing to work on assuring identification and exchange on information on all new entrants to the IP regime as soon as possible.	Luxembourg is recommended to continue to work on identifying and exchanging information on all new entrants to the IP regime.

Jurisdiction's response and recent developments

31. With respect to new entrants to the grandfathered IP regime, in order to assist the heads of the corporate tax offices in accelerating the information-gathering process, an IT research was launched with the aim to identify all the taxpayers who requested the application of the IP regime in their tax return. These lists were sent to the competent corporate tax offices which were asked to gather the necessary information and to transmit them to the Competent Authority for exchange of information as soon as possible. Luxembourg has provided an update on the number of new entrants identified, which is 17 as at 18 October 2017.

32. As at 18 October 2017, the process to identify all past rulings had been completed. 7 894 exchanges on past rulings had occurred, and 633 exchanges on future rulings had occurred.

Notes

1. Available here: www.impotsdirects.public.lu/fr/formulaires/collectivites.html (accessed on 10 November 2017).

2. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Luxembourg also has Double Tax Agreements with Armenia, Austria, Azerbaijan, Bahrain, Barbados, Belgium, Brazil, Bulgaria, Canada, China (People's Republic of), Czech Republic, Denmark, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Guernsey, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Kazakhstan, Korea, Latvia, Lao People's Democratic Republic, Liechtenstein, Lithuania, Malaysia, Malta, Mauritius, Mexico, Moldova, Monaco, Morocco, Netherlands, Norway, Panama, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Chinese Taipei, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, United Arab Emirates, United Kingdom, United States, Uzbekistan and Viet Nam.

3. At June 2017, the total number of exchanges is 2 974.

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Mexico

Mexico has met all of the terms of reference (ToR) for the year in review and no recommendations are made. Mexico has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Mexico can legally issue the following two types of rulings within the scope of the transparency framework: (1) 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; and (2) permanent establishment rulings. In Mexico, rulings are issued either by the Large Taxpayer's Legal Affairs and Transfer Pricing offices or by the Oil and Gas Legal Affairs office.

In practice, Mexico issued 13 past rulings. For the period 1 April 2016-1 February 2017, Mexico issued one future ruling. In Mexico, rulings (other than APAs) can be published in a redacted summarised form.[1]

No peer input was received in respect of the exchanges of information on rulings received from Mexico.

Introduction

1. This peer review covers Mexico's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. Each office which was in charge of issuing rulings was responsible for identifying the rulings which would fall within the transparency framework. The timeframe for the identification of rulings to be exchanged was internally stated, to ensure that all rulings were identified by 31 December 2016.

6. The APAs were identified from an internal database which is populated each time a request for an APA is received. The databases allow the user to consult information based on different criteria and facilitate the selection of rulings to be exchanged. This internal database contains the following information on APAs: (i) taxpayer's name and fiscal ID; (ii) type of agreement (unilateral, bilateral, MAP); (iii) years covered by the APA; and (iv) counterparty's jurisdiction. All unilateral APAs were identified from this database and filtered according to the date of issue. Each relevant ruling was manually reviewed to verify whether it fell within the date defined as "past rulings".

7. In order to identify the potential exchange jurisdictions, the ruling application file was reviewed. Information on all potential exchange jurisdictions was available in the file for APAs because when filing an APA request, the taxpayer must disclose the information regarding the related parties with transactions covered by the APA, as well as the information regarding its immediate and ultimate parent company.

8. Other rulings were identified by manual review of each file which contained a ruling. As the three offices which can issue rulings are centralised in the Mexican tax administration, the ruling files were located in a central location. Each such ruling identified as being of a type within the scope of the transparency framework was read to verify if they fell within the period defined as "past rulings".

9. In the case of PE rulings, Mexico was able to gather the necessary information on all potential exchange jurisdictions by analysing each case file. Mexico did not have to make

use of the "best efforts approach" as information on the head office or PE, the immediate parent and ultimate parent company was always available in the file.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

10. With respect to future APAs, these are identified from the same database. For other rulings, these are identified by the same personnel in the three offices which can issue rulings. Information from the ruling request is manually reviewed by the official receiving the request at the time the request is received to determine if a ruling falls within the scope of the transparency framework, as the information necessary to make this determination is required to be included in the ruling request.

11. In order to ensure all potential exchange jurisdictions are always identified, the Tax Miscellaneous Regulations which govern the ruling application process were modified in 2016 in order to allow tax administration to gather the necessary information. The amended regulation requires that the applicant taxpayers provide information on all relevant related parties as set out in Table 5.1 of the Action 5 Report (OECD, 2015) for the purpose of meeting the exchange under the transparency framework.

Review and supervision mechanism (ToR I.4.3)

12. A person in each of the three offices that issue rulings was appointed to be in charge of the process to identify the relevant rulings. That person was responsible of overseeing the work of the people responsible for identifying rulings from the files, to verify that the rulings were in the scope of the transparency framework and to verify the information on potential exchange jurisdictions. To do so, the supervisor reviewed the ruling files and interviewed team members in charge of searching for information within the files.

Conclusion on section A

13. Mexico has a process for identifying the past rulings and relevant jurisdictions with which to exchange under the transparency framework which is appropriate for the small size of the rulings programme in Mexico. Mexico has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

14. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

15. Mexico has the necessary domestic legal basis to exchange information spontaneously. Mexico notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

16. Mexico is party to international agreements permitting spontaneous exchange of information, including the Convention, double tax agreements in force with seven jurisdictions and three Tax Information Exchange Agreements. In total, this network of agreements covers 101 jurisdictions.[2]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

17. In order to share the required information with other jurisdictions, the template contained in Annex C of the Action 5 Report (OECD, 2015) was filled in by the officials who had been involved in the identification of the relevant rulings. Once filled in, the supervisor was able to compare it with the file itself, to ensure that the information was reported accurately.

18. Mexico ensures that the ruling summary template is made available to the Competent Authority for exchange of information in a timely way by ensuring they are sent as soon as the template is completed. Mexico is in the process of issuing internal guidelines regarding deadlines to complete the template once the ruling is issued and deadlines to send it to the EOI unit.

19. The timeliness of exchanges is as follows. Note that these statistics reflect the fact that information was only required to be exchanged with OECD/G20 countries, and not with new members of the Inclusive Framework, and that Mexico in fact did only exchange information with OECD/G20 countries for the year in question.

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2016	Delayed exchanges: Number of exchanges not transmitted by 31 December 2016	Delayed exchanges: Reasons for the delays	Delayed exchanges: Any other comments
	18	0		
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Delayed exchanges: Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority**	**Delayed exchanges: Reasons for the delays**	**Delayed exchanges: Any other comments**
	3	0		
Total	21	0		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	N/A

Conclusion on section B

20. Mexico has the necessary legal framework and administrative process in place for exchanging information on rulings and exchanged all information on rulings on time. Mexico has met all of the terms of reference for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

21. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	0	0
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	16	Barbados, Canada, Japan, Korea, Luxembourg, Netherlands, Spain, Switzerland, United Kingdom, United States
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	0	0
Permanent establishment rulings	Included in *de minimus*	
Related party conduit rulings	0	0
De minimis rule	5	0
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	0	0
Total	21	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

22. Mexico does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made

Notes

1. Available at: www2.sat.gob.mx/sitio_internet/sitio_aplicaciones/Resoluciones_Favorables/ (accessed on 10 November 2017).

2. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Mexico also has Double Tax Agreements with Austria, Canada, Hong Kong (China), Russia, South Africa, Ukraine and the United States.

   In addition, Mexico has Tax Information Exchange Agreements permitting spontaneous exchange of information with Aruba, Canada and the United States.

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The Netherlands

The Netherlands has met all the terms of reference (ToR) for the year in review, except for being able to identify all past rulings within the scope (ToR I.4.1.1.), meeting the timelines for exchanging information on past rulings to the relevant jurisdictions (ToR II.5.6), and identifying and exchanging information on all new entrants to the grandfathered IP regime (ToR I.4.1.3). The Netherlands is recommended to ensure that all past rulings are identified and information on relevant past rulings and new entrants to the grandfathered IP regime is exchanged as soon as possible. The Netherlands has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

The Netherlands can legally issue the four following types of rulings within the scope of the transparency framework: (1) preferential regimes (Innovation box and international shipping); (2) 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; (3) downward adjustments; and (4) permanent establishment rulings. To the extent that conduit rulings are provided, in the Netherlands they are already covered under the second category. APAs and advance tax rulings are co-issued by a specialised team based in Rotterdam and the competent local tax inspector. Rulings on preferential regimes are mostly co-issued by specialised teams within the Dutch tax administration and the competent local tax inspector. Certain forms of PE rulings (as well as some rulings that would fall into the APA category) are issued by local tax inspectors throughout the country.

In practice, the Netherlands estimates it has issued approximately 2 000 past rulings within the scope of the transparency framework. For the period 1 April 2016-31 December 2016, the Netherlands estimates that it issued more than 180 future rulings. These rulings are not published, although the general policy approach that is applied to certain type of ruling issues is published.

Peer input was received from ten jurisdictions in respect of the exchanges of information on rulings received from the Netherlands. The input noted that information was in the correct format and all peers but one stated that the information received was complete. Seven peers mentioned exchange delays in relation to past rulings, including in one case with respect to future rulings.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers the Netherlands' implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. APAs and ATRs are centrally registered in an electronic system which contains all APAs and ATRs dating back to at least 2010. This system was searched in order to identify the rulings within the scope of the transparency framework. The types of ATRs falling within the scope of the transparency framework (i.e. PE rulings) were categorised in the database as such. The system also shows whether the rulings were issued within the period defined as "past rulings". The same process was used to identify past cross-border rulings providing for a downward adjustment of taxable profits, as for past rulings they were regarded as APAs under Dutch legislation.

6. With respect to rulings on preferential regimes and PE rulings (apart from the PE rulings regarded as ATRs and thus centrally issued and kept), the tax inspectors which are located in different offices across the country were instructed to conduct a manual review of the individual taxpayer files in order to identify all relevant rulings. If a ruling is identified, the tax inspector reads it to determine which category of ruling it is and whether it falls within the definition of "past rulings". The Netherlands estimates that tax inspectors, namely the "client co-ordinators" representing over 100 people, needed to search approximately 13 000 files manually to gather the information on past rulings. This work is still in progress.

7. In order to identify the potential exchange jurisdictions, the available information in the taxpayer file was reviewed. The ruling application (which was in the taxpayer file) was always required to include relevant information on the taxpayer's worldwide group structure which generally provided information on the ultimate parent company and immediate parent company. In some cases, the "best efforts approach" was required. The Netherlands notes that in a lot of cases, the draft template was sent to the taxpayer or the tax adviser to ask them to complete any missing information including on the relevant related parties, which is beyond the requirements of the "best efforts" approach.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

8. For the year in review, the process for identifying future rulings is by the officer issuing the ruling completing the template used for exchange of information. This is completed at the point of granting the ruling. The template requires all information necessary to identify the rulings as being in the scope of the transparency framework and information on all potential exchange jurisdictions.

Review and supervision (ToR I.4.3)

9. To assist tax inspectors to identify relevant rulings, information sessions, internal newsletters and internal e-mails were circulated to inform them about the scope and categories of rulings in the transparency framework.

10. For rulings which were not centrally issued (i.e. not issued by the specialised team for APAs and advance tax rulings), a special taskforce was created to recover the past rulings, comprised of managers and specialists of the international exchange of information on rulings. The manual gathering of information by tax inspectors was supervised by local managers and then reviewed at the national level by the task force. In order to ensure that all relevant information is captured accurately, where information was provided by the taxpayer or adviser, this was cross-checked with information in the tax administration's files.

Conclusion on section A

11. Information on all potential exchange jurisdictions is also available in most cases for past rulings, and is collected for all future rulings. However, as the Netherlands had to search through a large number of past rulings which were not centrally issued, the process for identifying some rulings, particularly PE rulings, is still underway. It is noted that the Netherlands has committed to complete this by 31 December 2017 and has communicated to its peers to provide an update on the process. The Netherlands has met all the terms of reference for the information-gathering process except for identifying all past rulings (ToR I.4.1.1). The Netherlands is recommended to complete its information-gathering process on past rulings as soon as possible.

B. The exchange of information

12. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

13. The Netherlands has the necessary domestic legal basis to exchange information spontaneously. The Netherlands notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

14. The Netherlands is a party to international agreements permitting spontaneous exchange of information, including the Convention, the Directive 2011/16/EU with all other European Union Member States, and double tax agreements in force with 94 jurisdictions. In total, this network of agreements covers 142 jurisdictions.[1]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

15. In order to share the required information with other jurisdictions, the Netherlands developed an electronic template in accordance with the OECD *XML Schema and User Guide* (OECD, 2017b). This template is filled out when the relevant rulings are identified. Depending on the case this is done by the taxpayer, the tax adviser or the tax inspector, and then reviewed by the tax inspector, who has the final responsibility for the complete and correct exchange of information on rulings.[2] The filled out templates are centrally collected within the tax administration and then sent to the central liaison office (CLO) responsible for the exchange of information. Before the exchange occurs, the CLO reviews the template and if corrections are needed sends it back to the central contact in the tax administration to request the correction from the local tax inspector.

16. The Netherlands ensures that the information on rulings is made available to this competent authority for exchange of information in a timely way by the periodic transmission of the templates by the central collecting point within the Dutch tax administration to the CLO. In practice, the transmission from the central collecting point to the CLO and subsequently from the CLO to other jurisdictions generally occurs once a month. The central point and the CLO both report to the Ministry of Finance on progress to provide an overview of the whole ruling process.

17. The timeliness of exchanges, as at 1 January 2017, is as follows. Note that the Netherlands was able to undertake exchanges of information not only with OECD/G20 countries as required, but also with new members that joined the Inclusive Framework in 2016 and jurisdictions that are not members of the Inclusive Framework but with which the Netherlands has an exchange of information agreement permitting spontaneous exchange.

Past rulings in the scope of the transparency framework		Delayed exchanges		
	Number of exchanges transmitted by 31 December 2016	Number of exchanges not transmitted by 31 December 2016	Reasons for the delays	Any other comments
	1 142	Not on all past rulings information has been exchanged on time. Because the process to identify all rulings is not complete, information is not yet available on how many exchanges should have been transmitted	1. The Netherlands has a relatively large number of rulings. 2. Not all rulings are centrally issued and registered. 3. Tax inspectors need to go through 13 000 files manually.	During the month of January 2017, another 558 exchanges of templates on past rulings were completed.
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Delayed exchanges**		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	**Reasons for the delays**	**Any other comments**
	361	0	N/A	
Total	1 503			

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	N/A

18. The Netherlands points out that more personnel have been dedicated to the exchange of information on rulings (an increase from 5 full time employees in 2016 to 15-20 full time employees in 2017) and that the assistance of tax advisers is being sought to fill out more templates for past rulings in order to help speed up the process, and has created more guidance on the completion of the templates. The Netherlands is committed to completing the exchange of information on past rulings by the 31 December 2017 and has communicated this to the FHTP and to its exchange of information partners.

Conclusion on section B

19. The Netherlands has the necessary legal framework and administrative process in place for exchanging information on rulings. The Netherlands experienced significant delays in exchanging information on past rulings mostly due to the administrative burden which stems from the issuance of a large number of rulings within the scope of the transparency framework. The Netherlands has met all of the terms of reference for the exchange of information process other than the timely exchange of information on past rulings (ToR II.5.6). The Netherlands is recommended to continue to ensure that all information on past rulings is exchanged as soon as possible, and to fulfil its commitment to complete the exchange of information on past rulings by no later than 31 December 2017.

C. Statistics (ToR IV)

20. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Rulings related to a preferential regime	581	Argentina, Australia, Austria, Belgium, Brazil, British Virgin Islands, Bulgaria, Canada, China (People's Republic of), Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Ghana, Greece, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Jersey, Jordan, Kazakhstan, Korea, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Morocco, New Zealand, Nigeria, Norway, Panama, Philippines, Poland, Portugal, Romania, Russia, Saudi Arabia, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Chinese Taipei, Thailand, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Viet Nam
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	901[3]	Argentina, Australia, Austria, Barbados, Belgium, Belize, Bermuda, Bosnia and Herzegovina, Brazil, British Virgin Islands, Bulgaria, Canada, Cayman Islands, China (People's Republic of), Colombia, Costa Rica, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Ghana, Gibraltar, Greece, Guernsey, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Jersey, Jordan, Kazakhstan, Korea, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Morocco, New Zealand, Norway, Pakistan, Panama, Philippines, Poland, Portugal, Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Chinese Taipei, Thailand, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Venezuela, Vietnam, Zimbabwe

Category of ruling	Number of exchanges	Jurisdictions exchanged with
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	These rulings were exchanged as APAs but as from 1 July 2017 they will be exchanged as downward adjustment rulings	
Permanent establishment rulings	21	Canada, China (People's Republic of), Curaçao, Ireland, Korea, Luxembourg, Mexico, Romania, Saint Martin, Switzerland, United Kingdom, United States
Related party conduit rulings	N/A	
De minimis rule	N/A	
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	Included in the category of rulings related to a preferential regime[4]	
Total	1 503	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

21. The Netherlands offers an intellectual property regime that is subject to transparency requirements under the Action 5 Report (OECD, 2015) (the new innovation box). It states that the identification of the benefitting taxpayers will occur as follows:

- ***New entrants benefiting from the grandfathered IP regime***: as the Netherlands' IP regime was in nearly all cases offered by way of ruling, new entrants will be identified using the approach described above for preferential regimes which are past rulings.
- ***Third category of IP assets***: as the new innovation box took effect from 1 January 2017 and is applied to newly developed IP assets as from 1 July 2016, the transparency requirements will be reviewed in the subsequent peer review.
- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption***: not relevant, as this option has not been incorporated in the Dutch legislation.

22. As information on new entrants to the IP regime will be exchanged in the same manner as for past rulings and for which there are some delays in the completion of the exchange, the exchange of information on all new entrants from 6 February 2015-31 March 2016 may not yet have been completed. The Netherlands is recommended to continue to ensure that all information on past rulings, including rulings on new entrants to the IP regime, is exchanged as soon as possible.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
The information-gathering process is still underway in the Netherlands with respect to past rulings.	The Netherlands is recommended to complete its information-gathering process on past rulings as soon as possible.
The Netherlands experienced significant delays in exchanging information on past rulings.	The Netherlands is recommended to continue to ensure that all information on past rulings is exchanged as soon as possible, and to fulfil its commitment to complete the exchange of information on past rulings by no later than 31 December 2017.
As information on new entrants to the IP regime will be exchanged in the same manner as for past rulings and for which there are some delays in the completion of the exchange, the exchange of information on all new entrants from 6 February 2015-31 March 2016 has not yet been completed.	The Netherlands is recommended to continue to ensure that all information on past rulings, including rulings on new entrants to the IP regime, is exchanged as soon as possible.

Jurisdiction's response and recent developments

23. The identification of all past rulings has been completed by the end of September 2017. At that date, exchanges on 1 885 past rulings have been completed. Exchanges of information on the approximately 50 rulings remaining will be completed before the end of 2017.

Notes

1. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. The Netherlands also has Double Tax Agreements with Albania, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Bermuda, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, China (People's Republic of), Croatia, Curaçao, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Ghana, Greece, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Latvia, Lithuania, Luxembourg,, Malawi, Malaysia, Malta, Mexico, Moldova, Montenegro, Morocco, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saint Martin, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Chinese Taipei, Tajikistan, Thailand, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Venezuela, Viet Nam, Zambia and Zimbabwe.
2. For past rulings, with respect to the centralised APAs and advance tax rulings, in most cases the large tax advisory firms were first asked to fill out the template; otherwise the task was completed by the tax administration. For future rulings, for the year in review, the template was filled out by the officer issuing the ruling.
3. The Netherlands specifies that this number includes the exchange of a few templates that have been exchanged erroneously under the code for downward adjustments and related party conduit rulings. The Netherlands has taken measures to prevent such errors and states that they should be avoided as from 1 July 2017.
4. The Netherlands indicates that its information system does not allow for a split between sub-categories within rulings related to a preferential regime.

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New Zealand

New Zealand has met all the aspects of the terms of reference (ToR) for the year in review and no recommendations are made. New Zealand has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

New Zealand can legally issue the following three types of rulings within the scope of the transparency framework: (1) 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; (2) permanent establishment rulings; and (3) related party conduit rulings. In New Zealand, rulings are issued by three different interpretative areas of the Inland Revenue: APAs are issued by Specialist Advice; private binding rulings other than APAs are issued by Taxpayer Rulings Unit; and indicative views are issued by Investigations.

In practice, New Zealand issued 69 past rulings. For the period 1 April 2016-1 February 2017, New Zealand issued 14 future rulings. These rulings are not published.

Peer input received was received from four jurisdictions in respect of the exchanges of information on rulings received from New Zealand. It was positive, noting that information was timely, complete and in the correct format, and that the summary provided a good overview of the ruling.

Introduction

1. This peer review covers New Zealand's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. Inland Revenue maintains three databases of all completed rulings. Senior officers in the three areas with competency to issue rulings reviewed the database to identify rulings that could be in the scope of the transparency framework and that were issued within the period defined as "past rulings". The databases listed all rulings issued since 2010. Senior officers searched these records by the issue date, and then examined each ruling individually for the covered period. Senior offices also consulted the associated files containing the ruling to confirm whether it was in scope.

6. In order to identify the potential exchange jurisdictions, each ruling was examined individually. In a small number of unilateral APAs where the transactional net margin method was used, the relevant jurisdictions were not noted on the ruling and the "best efforts approach" was used. This involved examining the background working papers, and consulting the principal advisors from the transfer pricing team assigned to the taxpayer to ensure accurate identification of relevant jurisdictions. This allowed the identification of potential exchange jurisdictions in all cases.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

7. The process of issuing each of the three types of rulings was amended. In respect of APAs, the principal advisors for transfer pricing are required to complete an exchange template that mirrors the requirements of the transparency framework. The template is immediately submitted to the International Revenue Strategy unit as a new mandatory step in finalising a unilateral APA. In addition, in respect of the types of APAs where information on all potential exchange jurisdictions was not previously collected, namely APAs using the transactional net margin method, the principal advisors from transfer pricing are now required to identify relevant jurisdictions prior to the finalisation of APAs.

8. For private binding rulings, the debrief and file closure checklists have been amended to include the criteria to verify if there are obligations to exchange information on the ruling, and if so, requiring immediate submission with any relevant rulings to the International Revenue Strategy unit. For indicative views, any rulings classified as "international" are submitted immediately to the International Revenue Strategy unit for determination as to whether they are within the transparency framework. As information on potential exchange jurisdictions was already collected in the course of issuing these two types of rulings, no further amendments to the process were required.

Review and supervision mechanism (ToR I.4.3)

9. The International Revenue Strategy unit, which is responsible for exchanges of information with tax treaty partners, took overall responsibility and engaged with the three areas of Inland Revenue that issue rulings. All copies of APAs, private binding rulings and indicative views which were possibly within the transparency framework criteria for exchange are submitted to International Revenue Strategy for review to check whether they fall within the transparency framework. This examination is followed by review by a Senior Advisor.

Conclusion on section A

10. New Zealand has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

11. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

12. New Zealand has the necessary domestic legal basis to exchange information spontaneously. New Zealand notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

13. New Zealand is a party to international agreements permitting spontaneous exchange of information, including the Convention and double tax agreements in force with 39 jurisdictions. In total, this network of agreements covers 108 jurisdictions.[1]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

14. For past rulings, the process of accurately completing the exchange template was as follows. In respect of APAs the exchange template was prepared by the senior APA case worker. This template was then submitted to a senior advisor in the International Revenue Strategy unit for review before the ultimate sign-off by either the manager of the Strategy and Intelligence or of the International Revenue Strategy units. In respect of private binding rulings and indicative views, a senior advisor in the International Revenue Strategy unit was responsible for preparing the exchange template. This was followed by review and sign-off by either the manager of the Strategy and Intelligence or of the International Revenue

Strategy units. In all cases, the template is based on the OECD *XML Schema and User Guide* (OECD, 2017).

15. For future rulings, when a ruling is issued which is in scope of the framework, the case officer must complete the relevant template at the time the ruling is finalised. The template is based on the OECD *XML Schema and User Guide* (OECD, 2017b). This is then also reviewed by the Senior Advisor in the International Revenue Strategy for review before the ultimate sign-off by either the manager of the Strategy and Intelligence or of the International Revenue Strategy units.

16. The process for ensuring all relevant information on past rulings was provided to the Competent Authority in a timely way was that a process was put in place which ensured that the majority of the referrals from the three impacted units were received in bulk by the International Revenue Strategy unit in November 2015, with the templates being completed by June 2016 and exchanged by 30 September 2016. For future rulings, personnel involved with all relevant rulings were trained on the need for immediate referral of information on rulings to the International Revenue Strategy unit on finalisation of any covered ruling.

17. The timeliness of exchanges is as follows. Note that New Zealand was able to undertake exchanges of information not only with OECD/G20 countries as required, but also with new members that joined the Inclusive Framework in 2016.

		Delayed exchanges		
Past rulings in the scope of the transparency framework	**Number of exchanges transmitted by 31 December 2016**	**Number of exchanges not transmitted by 31 December 2016**	**Reasons for the delays**	**Any other comments**
	139	0	N/A	N/A
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Delayed exchanges**		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	**Reasons for the delays**	**Any other comments**
	25	0	N/A	N/A
Total	164	0		

Follow-up requests received for exchange of the ruling	**Number**	**Average time to provide response**	**Number of requests not answered**
	0	N/A	N/A

Conclusion on section B

18. New Zealand has the necessary legal basis for spontaneous exchange of information, a process for completing the templates in a timely way and has completed all exchanges on time. New Zealand has met all of the terms of reference for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

19. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	N/A	N/A
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	160	Australia, Belgium, Canada, Chile, China (People's Republic of), Denmark, Finland, Germany, Guernsey, Hungary, India, Ireland, Italy, Japan, Korea, Luxembourg, Netherlands, Norway, Philippines, Singapore, Sweden, Switzerland, United Kingdom, United States.
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	N/A	N/A
Permanent establishment rulings	Included in *de minimus*	N/A
Related party conduit rulings	Included in *de minimus*	N/A
De minimis rule	4	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	N/A	N/A
Total	164	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

20. New Zealand does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made

Note

1. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. New Zealand also has Double Tax Agreements with Australia, Austria, Belgium, Canada, Chile, China (People's Republic of), Czech Republic, Denmark, Fiji, Finland, France, Germany, India, Indonesia, Ireland, Italy, Japan, Korea, Malaysia, Mexico, Netherlands, Norway, Papua New Guinea, Philippines, Poland, Russia, Samoa, Singapore, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Thailand, Turkey, United Arab Emirates, United Kingdom, United States and Viet Nam.

Bibliography

OECD (2017a), *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 (accessed on 10 November 2017).

OECD (2017b), *Country-by-Country Reporting XML Schema: User Guide for Tax Administrations*, www.oecd.org/tax/beps/country-by-country-reporting-xml-schema-user-guide-for-tax-administrations.pdf (accessed on 10 November 2017).

Norway

Norway has met all of the terms of reference (ToR) for the year in review and no recommendations are made. Norway has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Norway can legally issue the following two types of rulings within the scope of the transparency framework: (1) preferential regimes (international shipping regime); and (2) cross-border unilateral 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, which apply only for companies liable to tax under the Petroleum Tax Act. In Norway, rulings on the preferential regime are issued by the Central Tax Office for Large Enterprises and rulings on unilateral tax rulings covering transfer pricing in relation to transactions involving liquid natural gas are issued by the Petroleum Taxation Office. The Directorate of Taxes can also issue rulings involving complex tax questions and tax matters of interest to the broader public or related to tax principles.

In practice, Norway issued one past ruling. For the period 1 April 2016-1 February 2017, Norway did not issue any new rulings. These rulings are not published.

No peer input was received in respect of the exchanges of information on rulings received from Norway.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers Norway's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. The Norwegian Directorate of Taxes is responsible for the implementation of the transparency framework. The Directorate of Taxes first clarified with the Norwegian Ministry of Finance which rulings issued by Norwegian tax authorities are covered by the transparency framework.

6. The Directorate of Taxes then formally instructed the relevant tax authority entities which had competency to issue rulings (namely the Central Tax Office for Large Enterprises, the Petroleum Taxation Office and the Central Office for Foreign Tax Affairs) to identify the rulings which had been issued. The former two offices first searched for rulings within the period of validity for "past rulings". This search was conducted by performing digital searches in document archive systems in addition to manual review of all hard copies of rulings. This process identified one ruling issued by the Petroleum Taxation Office and a number of rulings issued by the Central Tax Office for Large Enterprises in relation to the shipping tax regime. The Central Office for Foreign Tax Affairs confirmed that it could not issue any rulings which could be in the scope of the transparency framework as the documents provided to taxpayers were not given in response to a request from a taxpayer and they were not binding. The rulings identified were forwarded to the Directorate of Taxes for consideration.

7. The Directorate of Taxes reviewed each ruling to determine whether they were within the scope of the transparency framework. With respect to the shipping tax regime, all of the past rulings related to wholly domestic issues and transactions and none concerned cross border matters. The one ruling issued by the Petroleum Taxation Office was determined to be in scope.

8. In order to identify the potential exchange jurisdictions, the Directorate of Taxes reviewed the ruling, which contained information on the parties to the transaction covered by the ruling. The ruling did not contain information on all potential exchange jurisdictions

and the "best efforts approach" was used. This involved identifying information on all related companies in the group by consulting the information on the company's public website. All information on potential exchange jurisdictions was identified.

9. In addition to the above, rulings issued by the Directorate of Taxes concerning were also reviewed. The review was performed by officials others than those involved in the issuing of the ruling. The conclusion was that none of these rulings were within the scope of the transparency framework.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

10. Future rulings which may be in the scope of the transparency framework are identified by a formal instruction being issued to the offices issuing rulings relating to preferential regimes and cross-border unilateral rulings in respect of transfer pricing to identify and transmit all relevant rulings to the Directorate of Taxes. This is required to occur as soon as possible after finalisation of the ruling. This formal instruction has been sent to all concerned entities within the tax authority and published on the internal website.

11. In order to identify potential exchange jurisdictions for future rulings, the Ministry of Finance amended the Tax Administration Act and the Tax Administration Regulation which govern the issuance of a tax ruling. These amendments require the taxpayer applying for a tax ruling to provide, as a condition of receiving a ruling, information about the residence country of all related parties and the residence country of the ultimate parent company and the immediate parent company. This information is also verified against information in the possession of the Directorate of Taxes.

Review and supervision mechanism (ToR I.4.3)

12. The Directorate of Taxes has conducted a review process in order to identify and assess rulings that could potentially fall within the scope of the transparency framework. Only one ruling was identified to be within the scope of the transparency framework during this review process.

Conclusion on section A

13. Norway has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

14. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

15. Norway has the necessary domestic legal basis to exchange information spontaneously. Norway notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

16. Norway is party to international agreements permitting spontaneous exchange of information, including being a party to the Convention, the Nordic Convention on Assistance

in Tax Matters, and double tax agreements in force with 93 jurisdictions.[1] In total, this network of agreements covers 128 jurisdictions.

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

17. In order to share the required information with other jurisdictions, the template contained in Annex C of the Action 5 Report (OECD, 2015) is filled in by the Central Office for Large Enterprises and the Petroleum Taxation Office after confirming the ruling is in scope of the transparency framework. The completed template is provided to the Legal Department in the Directorate of Taxes, together with a copy of the relevant ruling. The Legal Department performs a quality check of the information submitted.

18. Norway ensures that the ruling summary template is made available to the Competent Authority for exchange of information in a timely way because the individuals acting as Competent Authority are part of the Legal Department. The competent authority reviews the template and checks the information before submitting the template for international exchange.

19. The timeliness of exchanges is as follows. Note that these statistics reflect the fact that information was only required to be exchanged with OECD/G20 countries, and not with new members of the Inclusive Framework, and that Norway in fact did only exchange information with OECD/G20 countries for the year in question.

		Delayed exchanges		
Past rulings in the scope of the transparency framework	**Number of exchanges transmitted by 31 December 2016**	**Number of exchanges not transmitted by 31 December 2016**	**Reasons for the delays**	**Any other comments**
	1	0	N/A	
	Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted	**Delayed exchanges**		
Future rulings in the scope of the transparency framework		**Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority**	**Reasons for the delays**	**Any other comments**
	N/A	N/A	N/A	
Total	1	0		

Follow-up requests received for exchange of the ruling	**Number**	**Average time to provide response**	**Number of requests not answered**
	0	N/A	0

Conclusion on section B

20. Norway has the necessary legal framework and administrative process in place for exchanging information on rulings. Norway has timely exchanged the ruling within scope of the transparency framework. Norway has met all of the terms of reference for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

21. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	N/A	N/A
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	Included in *de minimus*	N/A
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	N/A	N/A
Permanent establishment rulings	N/A	N/A
Related party conduit rulings	N/A	N/A
De minimis rule	1	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	N/A	N/A
Total	1	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

22. Norway does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made

Note

1. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Parties to the Nordic Convention on Assistance in Tax Matters are Denmark, Faroe Islands, Finland, Iceland and Sweden. Norway also has Double Tax Agreements with Albania, Argentina, Aruba, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belarus, Belgium, Benin, Bermuda, Bosnia and Herzegovina, Brazil, British Virgin Islands, Bulgaria, Canada, Cayman Islands, Chile, China (People's Republic of), Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Egypt, Estonia, Former Yugoslav Republic of Macedonia, France, Gambia, Georgia, Germany, Greece, Greenland, Guernsey, Hungary, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Jamaica, Japan, Jersey, Kazakhstan, Kenya, Korea, Latvia, Lithuania, Luxembourg, Malawi, Malaysia, Malta, Mexico, Morocco, Nepal, Netherlands, New Zealand, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, Russia, Senegal, Serbia, Sierra Leone, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Switzerland, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Kingdom, United States, Venezuela, Viet Nam, Zambia and Zimbabwe.

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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. http://dx.doi.org/10.1787/9789264241190-en.

Poland

Poland has not met the terms of reference (ToR) with respect to identifying all past rulings and future rulings and all potential exchange jurisdictions (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2), or the completion and timely exchange of information on rulings (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7) for the year in review. Poland is recommended to complete the process of identifying all past rulings and future rulings and potential exchange jurisdictions, and to put in place the necessary process to complete the necessary information and exchange all information on rulings as soon as possible. Poland has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Poland can legally issue the four following types of rulings within the scope of the transparency framework: (1) cross-border unilateral tax rulings (such as an advance tax ruling) covering transfer pricing or the application of transfer pricing principles; (2) unilateral downward adjustments; (3) permanent establishment rulings; and (4) related party conduit rulings. In Poland, rulings were issued by the authorised directors of Tax Chambers in five local offices in Bydgoszcz, Katowice, Lodz, Poznan and Warsaw.

In practice, Poland has identified 19 past rulings. For the period 1 April 2016-1 February 2017, Poland has identified six new rulings. Rulings other than APAs are published in anonymised form.[1]

No peer input was received in respect of the exchanges of information on rulings received from Poland.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers Poland's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. With respect to APAs, all APAs are issued by a separate unit in the Ministry of Finance. All rulings issued by this unit were unilateral APAs within the scope of the transparency framework. The APA unit then classified APAs as "past" or "future" rulings using their databases, registries and statistics. In order to identify potential exchange jurisdiction, the APAs were read. Where all necessary information was not provided in the APA application, the "best efforts approach" was used, which involved searching the trade register and/or Orbis database was used to identify the immediate parent company, and Orbis database was used to identify the ultimate parent company.

6. With respect to rulings other than APAs, the officials in the National Revenue Administration which are authorised to issue rulings in the five local offices undertook preliminary steps in the third quarter of 2016 to detect relevant cross border rulings. All rulings which were issued before 2017 were reviewed manually to identify whether they were in the scope of the transparency framework. This included identifying rulings which might have international impact (i.e. global, wider than European Union) and those which may be relevant under the EU's Directive for the exchange of information on rulings (i.e. those relevant to EU Member States only). The process to identify all potential exchange jurisdictions is still ongoing and information on the need to use the "best efforts approach" is not yet available.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

7. With respect to APAs, the same process is used as for past rulings. The APA unit will identify a future APA from its databases which contain information on all issued APAs. The potential exchange jurisdictions will be identified from the APA itself, or from the trade register and/or Orbis database. In case of any doubts concerning potential exchange jurisdictions, members of the APA unit may ask the taxpayer for clarification and further

explanations concerning entities engaged in the transaction covered by APA application. No formal changes to the process of granting future APAs has been made to ensure that all potential exchange jurisdictions are identified at the point of issuing the ruling.

8. With respect to rulings other than APAs, new rulings are immediately screened at the point when they are issued to determine whether they are in the scope of the transparency framework. The process to identify all potential exchange jurisdictions is still ongoing within the Ministry of Finance/National Fiscal Administration.

Review and supervision mechanism (ToR I.4.3)

9. The APA unit has a small number of employees, and Poland notes that all APA unit members are familiar with the requirements of the transparency framework. The officials in the APA unit are subject to ongoing supervision and monitoring in respect of all APA cases, particularly with regard to the requirements concerning the transparency framework. With respect to other rulings, the officials responsible for identifying relevant rulings were assisted with internal guidelines on the requirements for selecting the relevant rulings. In case of doubts as to classification of rulings, the officials received advice from experts in the Ministry of Finance.

Conclusion on section A

10. Poland has been able to identify past APAs and has identified potential exchange jurisdictions including using the best efforts approach. Poland can identify future APAs, but it is not certain that all potential exchange jurisdictions are always identified (ToR I.4.2.2). With respect to rulings other than APAs, the process to identify all potential exchange jurisdictions is still ongoing (ToR 1.4.2.2). Poland is recommended to complete the process for identifying all potential exchange jurisdictions for past and future non-APA rulings. Poland is recommended to amend its rulings practices for all future rulings (APAs and other rulings) to ensure information on all potential exchange jurisdictions is collected in the course of issuing the ruling.

B. The exchange of information

11. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

12. Poland has the necessary domestic legal basis to exchange information spontaneously. Poland notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

13. Poland is a party to international agreements permitting spontaneous exchange of information, including being a party to the Convention, the Directive 2011/16/EU with all other European Union Member States, and double tax agreements in force with 84 jurisdictions.[2] In total, this network of agreements covers 125 jurisdictions.

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

14. Poland is still in the process of developing a process to complete the templates on relevant rulings, to make them available to the Competent Authority for exchange of information, and to exchange them with relevant jurisdictions.

15. As at 1 February 2017, Poland had not undertaken any exchanges of information.

Conclusion on section B

16. Poland has the necessary legal basis to undertake spontaneous exchange of information. Poland has not met the terms of reference to complete the necessary information required on relevant rulings in the form of Annex C or the XML Schema (ToR II.5.3 and II.5.4), to provide them to the Competent Authority without undue delay (ToR II.5.5) or to exchange them within the timelines required by the transparency framework (ToR II.5.6) and as such no follow-up requests could have been made to Poland (ToR II.5.7). Poland is recommended to put in place the necessary process to prepare the information and exchange all information on rulings as soon as possible.

C. Statistics (ToR IV)

17. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	N/A	N/A
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	0	N/A
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	N/A	N/A
Permanent establishment rulings	N/A	N/A
Related party conduit rulings	N/A	N/A
De minimis rule	N/A	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	N/A	N/A
Total	0	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

18. Poland does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
The process to identify all potential exchange jurisdictions for past and future rulings (other than APAs) is still ongoing.	Poland is recommended to complete the process for identifying all potential exchange jurisdictions for past and future non-APA rulings.
For future rulings (both APAs and other rulings), Poland does not ensure that information on all potential exchange jurisdictions is always collected.	Poland is recommended to amend its rulings practices for all future rulings (APAs and other rulings) to ensure that information on all potential exchange jurisdictions is collected from the taxpayer in the course of issuing the ruling.
Poland did not have a process to complete the necessary information required on relevant rulings in the form of Annex C or the OECD XML Schema.	Poland is recommended to put in place the necessary process to complete the necessary information in the form of Annex C or the OECD XML Schema as soon as possible.
Poland did not have a process to provide the required information on rulings to the Competent Authority without undue delay.	Poland is recommended to put in place the necessary process to make the required information on rulings available to the Competent Authority as soon as possible.
Poland did not have a process to exchange information on rulings within the timelines required by the transparency framework and did not complete any exchanges in 2016.	Poland is recommended to complete all outstanding exchanges of information as soon as possible and put in place a process to meet the exchange timelines on a going forward basis.

Jurisdiction's response and recent developments

19. In 2017 there were numerous changes made in the Polish exchange of tax information system, including juridical framework for realising such exchange as well as technical issues connected to it.

20. First, Act of 9th of March 2017 on tax information exchange with other countries (Polish Journal of Laws of 2017 item 648) was adopted. Second, the practice as regards APAs was verified with the view to identifying jurisdictions covered by the exchange of APA rulings (recommendations no. 1 and 2).

21. Third, Poland undertook necessary effort in order to identify all advanced cross-border rulings that are subject to be exchanged under the BEPS Action 5. The Ministry of Finance was supervising the process of selection, ensuring relevant substantial assistance. National administrative procedures in the above mentioned area were developed and implemented in order to fulfil the Polish obligations stemming from transparency framework (recommendations no. 4 and 5).

Notes

1. Available at http://sip.mf.gov.pl/ (accessed on 10 November 2017).

2. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Poland also has Double Tax Agreements with Albania, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Chile, China (People's Republic of), Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Guernsey, Hungary, Iceland, India, Indonesia, Iran, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Jordan, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Moldova, Mongolia, Montenegro Morocco, Netherlands, New Zealand, Norway, Pakistan, Philippines, Portugal, Qatar, Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Chinese Taipei, Tajikistan, Thailand, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Viet Nam and Zimbabwe.

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OECD (2017b), *Country-by-Country Reporting XML Schema: User Guide for Tax Administrations*, www.oecd.org/tax/beps/country-by-country-reporting-xml-schema-user-guide-for-tax-administrations.pdf (accessed on 10 November 2017).

Portugal

Portugal has met all of the terms of reference (ToR) for the year in review other than the timely exchange of information on rulings (ToR II.5.6). Portugal is recommended to ensure the speedy exchange of all past and future rulings. Portugal has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Portugal can legally issue the following two types of rulings within the scope of the transparency framework: (1) cross-border unilateral APAs and any other cross-border unilateral tax ruling (such as an ATR) covering transfer pricing or the application of transfer pricing principles; and (2) permanent establishment rulings. In Portugal, the Large Taxpayers Office is responsible for issuing APAs and the Corporate Income Tax Office (IRC Directorate) is responsible for issuing the other categories of rulings.

In practice, Portugal issued 24 past rulings. For the period 1 April 2016-1 February 2017, Portugal issued two future rulings. Rulings other than APAs are published in anonymised form.[1]

Peer input was received from two jurisdictions in respect of in respect of the exchanges of information on rulings received from Portugal. This input was positive, noting that information was complete, in the correct format, and on time.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers Portugal's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. With respect to APAs, the Large Taxpayers Office which was responsible issuing the rulings has a database containing a summary of relevant information regarding completed APAs. The information gathered in the database involves not only a summary of the terms and conditions of the APA, but also information regarding the date of issuance and the date of termination of the agreement. This allowed the identification of rulings which were within the period defined as "past rulings".

6. In order to identify all potential exchange jurisdictions, the information was already available either in the APA itself, or on the APA file as taxpayers were required to submit information on the related parties with which the covered transactions will occur as well as a full description of the structure of the group. The "best efforts approach" was not required as information on all potential exchange jurisdictions was contained in the ruling.

7. With respect to PE rulings, the Corporate Income Tax Office (IRC Directorate) has a file organised by subjects/articles of the tax law, and which are organised in chronological order of decision. This file covers all of the rulings issued since 2010. The information-gathering process was using an initial search which was designed by the officials involved in issuing the rulings, with the assistance of the Centre for Fiscal and Customs Studies. A manual search was then conducted on the results to read all the rulings to detect the occurrence of transactions with non-residents. Of those rulings, the description of the facts in the ruling and all the data available to the tax authority concerning the taxpayer and the transactions covered by the ruling was read to determine if the ruling was within one of the transparency framework categories, and to verify that it was within the definition of "past rulings".

8. In order to identify potential exchange jurisdictions for PE rulings, the taxpayer's application for the ruling was consulted, as the application is required to include the identification of all the entities involved in the transaction or issues covered by the ruling as well as information on the immediate parent company. Although it was not mandatory for the taxpayer to include information on the ultimate parent company in the ruling application,

Portugal reports that information on all potential exchange jurisdictions was contained in the particular past rulings which were identified for the transparency framework. As such, the "best efforts approach" was not required to be used.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

9. The methodology used in the identification of past rulings is followed with some adaptations with regard to future rulings. With respect to APAs, the Large Taxpayers Office made some changes in the negotiation process in order to allow immediate identification of APAs that are within the scope of the transparency framework. As the APA applications were already required to include information on all potential exchange jurisdictions, no further changes were required.

10. With respect to PE rulings, a mechanism was established to ensure a monthly update and review of all the rulings issued in order to capture any ruling that may be covered by one of the transparency framework categories. In order to identify potential exchange jurisdictions, the ruling applications were already required to include information on most of the potential exchange jurisdictions, and if any information was missing, Portugal would approach the taxpayer to collect this information before the ruling is issued. It is noted that Portugal has modified the legal framework for issuing rulings to ensure that all information on potential exchange jurisdictions is collected, and this was effective from 1 January 2017.

Review and supervision mechanism (ToR I.4.3)

11. A review process is in place for APAs whereby the information gathered by the tax officials is reviewed by the team co-ordinator in order to verify accuracy and completeness. The review process for PE rulings is verified by the Director and the Deputy General-Director reviewing the information gathered by the officials. In addition, a briefing was given to all officials involved in the collection of information for the transparency framework, to ensure awareness of the requirements to identify all relevant rulings.

Conclusion on section A

12. Portugal has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

13. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

14. Portugal has the necessary domestic legal basis to exchange information spontaneously. Portugal notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

15. Portugal is a party to international agreements permitting spontaneous exchange of information, including the Convention, the Directive 2011/16/EU with all other European Union Member States, and double tax agreements in force with 68 jurisdictions.[2] In total, this network of agreements covers 117 jurisdictions.

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

16. In order to share the required information with other jurisdictions, the template contained in Annex C is used in a paper form, which is filled in by officials in the Large Taxpayers Office and CIT Directorate who are responsible for identifying the relevant rulings.[3] The form is revised by the team co-ordinator in order to verify its accurateness and completeness. For past and future rulings, when the team co-ordinator reviews the template it also compares the text of the ruling with the information on the template. After revision, the form is sent by the responsible offices to the Competent Authority responsible for international exchange of information.

17. Portugal ensures that the ruling summary template is made available to the competent authority for exchange of information in a timely way as follows. The templates on past rulings were sent to the Competent Authority in a batch before the end of 2016. The templates on future APA rulings are completed at the time the ruling is issued and are sent to the Competent Authority not later than one month after the APA is in force. The templates on other future rulings are completed on a monthly basis and immediately sent to the Competent Authority.

18. The timeliness of exchanges is as follows. Note that these statistics reflect the fact that Portugal was able to undertake exchanges of information not only with OECD/G20 countries as required, but also with new members that joined the Inclusive Framework in 2016.

		Delayed exchanges		
Past rulings in the scope of the transparency framework	**Number of exchanges transmitted by 31 December 2016**	**Number of exchanges not transmitted by 31 December 2016**	**Reasons for the delays**	**Any other comments**
	10	14		
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Delayed exchanges**		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	**Reasons for the delays**	**Any other comments**
	0	2		
Total	10	16		

Follow-up requests received for exchange of the ruling	**Number**	**Average time to provide response**	**Number of requests not answered**
	0	N/A	0

19. Portugal explains that delays occurred because of difficulties with the allocation of resources in the tax authority for the implementation of the transparency framework. Portugal notes that it is working on an IT application that will contain a signalling and alert mechanism in order to have a more automatic procedure for identifying and exchange the information of the relevant rulings, which should assist in reducing delays.

Conclusion on section B

20. Portugal has the necessary legal framework and administrative process in place for exchanging information on rulings. Portugal encountered some delays in the exchange of information on both past and future rulings within scope of the transparency framework. Portugal has met all of the terms of reference for the exchange of information process except for the timely exchange of information on past and future rulings (ToR II.5.6) and Portugal is recommended to ensure the speedy exchange of all past and future rulings.

C. Statistics (ToR IV)

21. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	N/A	N/A
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	10	Ireland, Korea, Netherlands, Spain, Sweden, United Kingdom
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	N/A	N/A
Permanent establishment rulings	0	N/A
Related party conduit rulings	N/A	N/A
De minimis rule	N/A	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	0	
Total	10	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

22. Portugal offers an intellectual property regime that is subject to transparency requirements under the Action 5 Report (OECD, 2015) (Partial exemption for income from patents and other industrial property rights). It states that the identification of the benefitting taxpayers will occur as follows:

- ***New entrants benefitting from the grandfathered IP regime***: the spontaneous exchange of information for new taxpayers entering the regime after 6 February 2015 is identified in the tax returns relating to the 2015 tax year, which were first filed in June 2016. Additional information will be gathered from the tax administration's databases or by direct contact with taxpayers involved if needed. Portugal is also considering adjusting the corporate income tax return in order to streamline the identification of new entrants that are benefiting from the grandfathered IP regime. Portugal notes that it was not possible for new IP assets that were acquired directly or indirectly from related parties after 1 January 2016 to benefit from the regime and as such there is no spontaneous exchange of information required on this aspect.
- ***Third category of IP assets***: not applicable, as this option has not been incorporated in the Portuguese IP regime.

- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption***: not applicable, as this option has not been incorporated in the Portuguese IP regime.

23. In practice, no exchange of information on new entrants was required for the year in review because in all cases the ultimate parent companies were all Portuguese residents; and the immediate parent companies (if different) were all Portuguese residents; and all of IP income received by the new entrants was received from either unrelated parties, or from related parties which were all resident in Portugal.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Portugal encountered some delays in the exchange of information on rulings within scope of the transparency framework.	Portugal is recommended to ensure the speedy exchange of all past and future rulings.

Notes

1. Available at http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/informacoes_vinculativas (accessed on 10 November 2017).

2. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Portugal also has Double Tax Agreements with Algeria, Andorra, Austria, Bahrain, Belgium, Brazil, Bulgaria, Canada, Cabo Verde, Chile, China (People's Republic of), Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Estonia, Ethiopia, Finland, France, Georgia, Germany, Greece, Guinea-Bissau, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, Kuwait, Latvia, Lithuania, Luxembourg, Macau (China), Malta, Mexico, Moldova, Morocco, Mozambique, Netherlands, Norway, Pakistan, Panama, Peru, Poland, Qatar, Romania, Russia, San Marino, Saudi Arabia, Senegal, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela and Viet Nam.

3. The process to implement the use the OECD XML Schema is underway for use in the future.

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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. http://dx.doi.org/10.1787/9789264241190-en.

Russian Federation

Russia has met all aspects of the terms of reference (ToR) for the year in review, except the timely exchange of information on past rulings (ToR II.5.6). Russia is recommended to complete all outstanding exchanges of information as soon as possible and put in place a process to meet the exchange timelines on a going forward basis. Russia has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Russia can legally issue the following five types of rulings within the scope of the transparency framework: (1) preferential regimes (special economic/industry zones); (2) 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; (3) cross-border rulings giving a unilateral downward adjustment to the taxpayer's taxable profits in the country giving the ruling; (4) permanent establishment rulings; and (5) related party conduit rulings. Rulings other than APAs are known as a "motivated opinions." Motivated opinions were introduced on 1 May 2016, and therefore are only relevant as future rulings. APAs are issued by a centralised office of the Federal Tax Service of Russia (FTS) and motivated opinions are drafted by the nine large taxpayers' offices and for the year in review would be considered and finalised by the Directorate for Desk Audits at the Central Office.

In practice, Russia issued two past rulings. For the period 1 April 2016-1 February 2017, Russia did not issue any future rulings. These rulings are not published.

As no exchanges were undertaken by Russia, no peer input was received in respect of the exchanges of information on rulings received from Russia.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers Russia's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and new rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings. For the year in review, the process was a temporary process put in place by a letter from the Deputy Commissioner to the Desk Audit Directorate and Transfer Pricing Directorate in the central office instructing them on the information-gathering process. This is pending the finalisation of a special order for the transparency framework.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. In order to identify the rulings within the scope of the transparency framework, the central office of FTS which issues APAs reviewed all the files manually. The period of validity of the rulings was verified in the process of reading the ruling to determine if it was within the period defined as "past rulings". Of the two APAs issued, one was no longer valid at 1 January 2014 and as such information on that ruling was not required to be exchanged.

6. In order to identify the potential exchange jurisdictions, information was first sought from the rulings file. The rulings file contains information on jurisdictions of residence of related parties with which the taxpayer enters into a transaction. Russia used the "best efforts" approach to identify information about the immediate parent and ultimate parent company. This involved searching the companies register to identify information about the immediate parent company. Russian legal entities are also obliged under anti-money laundering law to identify their ultimate parent company and this information was available to the tax administration, and for large taxpayers this information is also usually available on the tax file. Russia confirms information on all potential exchange jurisdictions was identified for the one APA subject to the transparency framework.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

7. With respect to APAs, the process for identifying future rulings is also conducted by way of manual review of all APA files by the central office of the FTS, as instructed by the letter from the Deputy Commissioner. In order to identify all potential exchange jurisdictions, the information would be requested from taxpayers during the decision

process, and officials can also verify the identity of the relevant related parties using internal and commercial databases.

8. With respect to motivated opinions, special guidance issued by the FTS requires that a request for a motivated opinion received by the large taxpayer office should be provided to the Directorate for Desk Audits at the Central Office. The Directorate for Desk Audits considers and finalises such rulings, and this would include verifying if the ruling was in the scope of the transparency framework. No such rulings were granted during the year in review. In order to ensure that information on all potential exchange jurisdictions is obtained, taxpayers who request a motivated opinion are obliged to provide all necessary information to the tax authority. In addition, any missing information can be requested from the applicant taxpayer in the course of the decision process, and this information can be verified from internal and commercial databases. Russia notes that only taxpayers which are part of the co-operative compliance programme ("Tax Monitoring") are eligible to apply for a motivated opinion, and this provides additional assurance that all necessary information is, or can be, made available to the tax authority.

Review and supervision mechanism (ToR I.4.3)

9. The review and supervision process for ensuring all relevant information is captured accurately is ensured by the central office of the FTS. The staff in the FTS receives training on a yearly basis, in order to ensure that they are aware of new developments including the transparency framework.

Conclusion on section A

10. Russia has a process for identifying the rulings and potential exchange jurisdictions which is appropriate for the small size of the rulings programme in Russia. Russia has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

11. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange of information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

12. Russia has the necessary domestic legal basis to exchange information spontaneously. Russia notes that there are no legal or practical impediments that prevent the spontaneous exchange information on rulings as contemplated in the Action 5 minimum standard.

13. Russia has international agreements permitting spontaneous exchange of information, including being a party to the Convention and double tax agreements in force with 83 jurisdictions. In total, this network of agreements covers 129 jurisdictions.[1]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

14. Russia has put in place a temporary process to ensure that the required information should be completed in the form of the template contained in Annex C. This was put in place by way of the letter from the Deputy Commissioner to the Desk Audit Directorate and Transfer Pricing Directorate in the central office instructing that the information on relevant rulings should be provided to the Competent Authority for exchange of information (the International Directorate) in the form that is consistent with the template. In practice, the Transfer Pricing Directorate did provide information on the one relevant past APA in the required form.

15. Departments which are responsible for issuing rulings report to the Competent Authority for exchange of information with respect to any relevant rulings. Russia considers that this ensures that the information on rulings is made available to the Competent Authority responsible for international exchange of information in a timely way.

16. No exchanges of information took place as of 1 February 2017. Russia notes that the reason for the delay is it is taking considerable time to manually review rulings and to perform extra verifications on the files for the first exchange. Russia notes that it intends to perform the exchanges as soon as the files are ready.

Conclusion on section B

17. Russia has the necessary legal framework and administrative process in place for exchanging information on rulings. Russia has met all of the terms of reference for the exchange of information process except that Russia has not completed any exchanges (ToR II.5.6). Russia is recommended to complete all outstanding exchanges of information as soon as possible and put in place a process to meet the exchange timelines on a going forward basis.

C. Statistics (ToR IV)

18. As no exchanges of information on rulings were undertaken by Russia in 2016, no statistics can be reported.

D. Matters related to intellectual property regimes

19. Russia does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Russia did not exchange information on past rulings within the timelines required by the transparency framework.	Russia is recommended to complete all outstanding exchanges of information as soon as possible and put in place a process to meet the exchange timelines on a going forward basis.

Note

1. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Russia has Double Tax Agreements with: Albania, Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Botswana, Bulgaria, Canada, Chile, China, Croatia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Egypt, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Malta, Morocco, Mexico, Moldova, Mongolia, Montenegro, Namibia, Netherlands, New Zealand, Nigeria, Norway, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Syria, Tajikistan, Thailand, Turkey, Turkmenia, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Venezuela, Viet Nam.

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Saudi Arabia

Saudi Arabia has met all aspects of the terms of reference (ToR) that can be met given that no rulings are issued and no recommendations are made.

Saudi Arabia does not issue any type of ruling within the scope of the transparency framework. Theoretically, there is no impediment for Saudi Arabia to issue rulings, but in practice Saudi Arabia does not issue any rulings.

As no rulings are issued, no exchanges were required under the transparency framework and no peer input was received in respect of the exchanges of information on rulings received from Saudi Arabia.

Introduction

1. This peer review covers Saudi Arabia's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. As no rulings are issued, this section is not assessed.

B. The exchange of information

4. As no rulings are issued, this section is not assessed.

C. Statistics (ToR IV)

5. As no rulings are issued, no statistical data can be reported.

D. Matters related to intellectual property regimes (ToR I.4.1.3)

6. Saudi Arabia does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made.

Bibliography

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 (accessed on 10 November 2017).

Slovak Republic

The Slovak Republic has met all of the terms of reference (ToR) for the year in review and no recommendations are made. The Slovak Republic has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

The Slovak Republic can legally issue the following two types of rulings within the scope of the transparency framework: (1) cross-border unilateral APAs and any other cross-border unilateral tax ruling (such as an ATR) covering transfer pricing or the application of transfer pricing principles; and (2) permanent establishment rulings. In the Slovak Republic, rulings are issued by eight regional tax offices and one tax office for selected taxpayers.

In practice, the Slovak Republic issued one past ruling. For the period 1 April 2016-1 February 2017, the Slovak Republic issued two future rulings. Rulings are not published.

No peer input was received in respect of the exchanges of information on rulings received from the Slovak Republic.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers the Slovak Republic's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. In order to identify past rulings in the scope of the transparency framework, a database of all tax rulings was created. The tax office personnel searched the database and then manually reviewed the content of each ruling request and any attachments in order to determine if the ruling was in scope and within the period defined as "past ruling."

6. In order to identify potential exchange jurisdictions, the ruling itself was first consulted. Rulings would contain information on relevant related parties to a transaction covered by the ruling as well as the immediate parent and ultimate parent company, as required by domestic legislation. As such, all potential exchange jurisdictions were able to be identified and the "best efforts approach" was not required.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

7. The procedure for identifying future rulings is that any office that issued a future tax ruling was obliged to fill in an internal e-form containing substantial information on the ruling at the time the ruling was issued. This e-form included identification of the ruling as being within the scope of the transparency framework.

8. In order to identify potential exchange jurisdictions for future rulings, the text of the ruling is consulted, as for past rulings. Since the Slovak Republic confirms that information on all potential exchange jurisdictions was already required as part of the ruling process, no changes to the process for granting a ruling was needed.

Review and supervision mechanism (ToR I.4.3)

9. The adequacy of the information-gathering process was ensured by providing training to all relevant officials on the new requirements. The training usually includes an examination or other verification of the training material. In addition, compliance with the new standard can be subject to internal audit.

Conclusion on section A

10. The Slovak Republic has a process for identifying the rulings and potential exchange jurisdictions which is appropriate for the small size of the rulings programme in the Slovak Republic. The Slovak Republic has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

11. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange of information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

12. The Slovak Republic has the necessary domestic legal basis to exchange information spontaneously. The Slovak Republic notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

13. The Slovak Republic has international agreements permitting spontaneous exchange of information, including being a party to the Convention, the Directive 2011/16/EU with all other European Union Member States, and double tax agreements in force with 64 jurisdictions.[1] In total, this network of agreements covers 104 jurisdictions.

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

14. In order to share the required information with other jurisdictions, the template contained in Annex C of the Action 5 Report (OECD, 2015) was completed by the relevant local tax officers responsible for identifying the rulings which are in scope. The officers fill out the form both in word and draft XML formats. The completed forms are submitted to the Competent Authority for exchange of information and are subsequently translated into English. The Slovak Republic ensures that the completed forms are made available to the Competent Authority in a timely way for future rulings by issuing guidelines which require the person issuing the ruling to inform the Competent Authority not later than three weeks from date of issuance of the new ruling. The Competent Authority always checks the form and signal possible irregularities to the tax office which issued the ruling.

15. The timeliness of exchanges is as follows. Note that these statistics reflect the fact that information was only required to be exchanged with OECD/G20 countries, and not with new members of the Inclusive Framework, and that the Slovak Republic did in fact only exchange information with OECD/G20 countries for the year in question.

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2016	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2016	Reasons for the delays	Any other comments
	1	0	N/A	

Future rulings in the scope of the transparency framework	Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted	Delayed exchanges		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	Reasons for the delays	Any other comments
	1[2]	0	N/A	
Total	2	0		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	0

Conclusion on section B

16. The Slovak Republic has the necessary legal framework and administrative process in place for exchanging information on rulings. The Slovak Republic has timely exchanged all rulings within scope of the transparency framework. The Slovak Republic has met all of the terms of reference for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

17. The statistics for the 2016 review are as follows.

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	N/A	N/A
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	N/A	
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	Included in *de minimus*	N/A
Permanent establishment rulings	Included in *de minimus*	N/A
Related party conduit rulings	N/A	N/A
De minimis rule	2	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	N/A	N/A
Total	2	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

18. The Slovak Republic does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made

Notes

1. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Slovak Republic also has Double Tax Agreements with Australia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, China (People's Republic of), Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Kazakhstan, Korea, Kuwait, Latvia, Libya, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Moldova, Montenegro, Netherlands, Nigeria, Norway, Poland, Portugal, Romania, Russia, Serbia, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Turkey, Turkmenistan, Ukraine, United Kingdom, United States, Uzbekistan and Viet Nam.

2. The other future APA issued in 2016 was transmitted in March 2017, which was within three months of the ruling becoming available to the Competent Authority.

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Slovenia

Slovenia has met all of the terms of reference (ToR) for the year in review except for ensuring information on all potential exchange jurisdictions for future rulings is always obtained (ToR I.4.2.1). However, no recommendations are made as Slovenia has already remedied this issue. Slovenia has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Slovenia can legally issue the following two types of rulings within the scope of the transparency framework: (1) permanent establishment rulings; and (2) related party conduit rulings.[1] In Slovenia, rulings are issued by different financial offices, namely the General Financial Office, Special Financial Office and Regional Financial Offices.

In practice, Slovenia issued eight past rulings. For the period 1 April 2016-1 February 2017, Slovenia did not issue any future rulings. Rulings are not published.

No peer input was received in respect of the exchanges of information on rulings received from Slovenia.

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Introduction

1. This peer review covers Slovenia's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. In April 2016 the General Financial Office issued an instruction for the local financial offices which issue rulings. The instruction described the process for gathering past rulings. Each financial office manually checked a centralised database which is where all documents of the Financial Administration are registered. The search of the database was for the past rulings issued in the period 2010-16 using different criteria such as type of transactions and transaction with a foreign jurisdiction. Individual taxpayer files were also searched. In order to identify the category of the ruling and whether it was within the scope of the transparency framework, the office had to read the content of the ruling. All identified past rulings were then sent to the General Financial Office for a final review to verify that they were within the period of "past rulings" and were in the scope of the transparency framework.

6. In order to identify potential exchange jurisdictions, the ruling itself was first consulted. Rulings would normally contain information on relevant related parties to a transaction covered by the ruling. Where a ruling did not contain sufficient information to enable identification of all potential exchange jurisdictions, the "best efforts approach" was used. This involved the Financial Administration checking the information that it has in its possession, such as the taxpayer register and information from the Court Register and the Central Population Register. Slovenia notes that in most cases this allowed for the identification of all potential exchange jurisdictions.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

7. For the year in review, the procedure of identification is the same as described for past rulings. All identified future rulings are sent to the General Financial Office for a final review to verify that they are within the scope of the transparency framework.

8. In order to identify potential exchange jurisdictions for future rulings, the text of the ruling is consulted, as per the process used for past rulings. For the year in review, if information on all potential exchange jurisdictions was not contained in the ruling, the information in the possession of the Financial Administration was consulted, such as the taxpayer register and information from the Court Register and the Central Population Register. This may not ensure that information on all potential exchange jurisdictions is always obtained. However, it is noted that from 1 January 2017, Slovenia has already amended its ruling practice to require all information on potential exchange jurisdictions from the taxpayer.

Review and supervision mechanism (ToR I.4.3)

9. The General Financial Office which is responsible for a uniform interpretation of tax legislation has informed responsible financial offices about the obligation to report information under the transparency framework. Instructions were issued and meetings were held with the heads of responsible units in order to ensure that all relevant information on tax rulings would be captured accurately. In addition, the General Financial Office performs a second review of the identified rulings to ensure that they are within the scope of the transparency framework.

Conclusion on section A

10. For future rulings for the year in review, it is not certain that information on all potential exchange jurisdictions was always obtained. Slovenia has already amended its ruling practice to ensure that this information is provided by the taxpayer. Slovenia has met all of the terms of reference for the information-gathering process except for identifying all potential exchange jurisdictions (ToR I.4.2.1), however no recommendations are made as this issue has already been remedied from 1 January 2017.

B. The exchange of information

11. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

12. Slovenia has the necessary domestic legal basis to exchange information spontaneously. Slovenia notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

13. Slovenia is a party to international agreements permitting spontaneous exchange of information, including being a party to the Convention, the Directive 2011/16/EU with all other European Union Member States, and double tax agreements in force with 58 jurisdictions.[2] In total, this network of agreements covers 115 jurisdictions.

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

14. In order to share the required information with other jurisdictions, the template contained in Annex C of the Action 5 Report (OECD, 2015) was completed by the General Financial Office. The content of each template was reviewed by the exchange of information

personnel to ensure it was complete. In order to provide the completed templates to the Competent Authority, a manual process is used to check that information has been submitted in a timely manner. Templates were provided to the Competent Authority in a week or two after the General Financial Office received the past rulings from local financial offices, or accessed the information on future rulings from the intranet.

15. The timeliness of exchanges is as follows. Note that these statistics reflect the fact that information was only required to be exchanged with OECD/G20 countries, and not with new members of the Inclusive Framework, and that Slovenia did in fact only exchange information with OECD/G20 countries for the year in question.

		Delayed exchanges		
Past rulings in the scope of the transparency framework	**Number of exchanges transmitted by 31 December 2016**	**Number of exchanges not transmitted by 31 December 2016**	**Reasons for the delays**	**Any other comments**
	8	0	N/A	
		Delayed exchanges		
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority**	**Reasons for the delays**	**Any other comments**
	N/A	N/A		
Total	8	N/A		

Follow-up requests received for exchange of the ruling	**Number**	**Average time to provide response**	**Number of requests not answered**
	0	N/A	0

Conclusion on section B

16. Slovenia has the necessary legal framework and administrative process in place for exchanging information on rulings. Slovenia has timely exchanged all rulings within scope of the transparency framework. Slovenia has met all of the terms of reference for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

17. The statistics for the 2016 review are as follows:

Category of ruling	**Number of exchanges**	**Jurisdictions exchanged with**
Ruling related to a preferential regime	N/A	N/A
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	N/A	N/A

Category of ruling	Number of exchanges	Jurisdictions exchanged with
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	N/A	N/A
Permanent establishment rulings	8	Austria, Bulgaria, Canada, Czech Republic, Germany, Italy, Switzerland
Related party conduit rulings	N/A	N/A
De minimis rule	N/A	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	N/A	N/A
Total	8	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

18. Slovenia does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
For future rulings for the year in review, it is not certain that information on all potential exchange jurisdictions was always obtained.	No recommendation is made as Slovenia has already amended its ruling practice to ensure that this information is provided by the taxpayer.

Notes

1. On January 1 2017 Slovenia has introduced an APA programme. As this is after the 2016 period of review, this is outside the scope of this peer review and the transparency framework as it relates to the APAs will be reviewed in the 2018 peer review.

2. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Slovenia also has Double Tax Agreements with Albania, Armenia, Austria, Azerbaijan, Belgium, Belarus, Bosnia and Herzegovina, Bulgaria, Canada, China (People's Republic of), Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Hungary, Iceland, India, Iran, Ireland, Isle Of Man, Israel, Italy, Korea, Kosovo, Kuwait, Latvia, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Qatar, Romania, Russia, Serbia, Montenegro, Singapore, Slovak Republic, Spain, Sweden, Switzerland, Thailand, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States and Uzbekistan.

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South Africa

South Africa has met all aspects of the terms of reference (ToR) for the year in review and no recommendations are made. South Africa has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

South Africa can legally issue only one type of ruling within the scope of the transparency framework: rulings on preferential regimes (related to the tonnage tax regime and headquarters regime). In South Africa, rulings are issued by the rulings division, a centralised department within the legal advisory division of South Africa's Tax Administration.

In practice, South Africa issued one past ruling. For the period 1 April 2016-1 February 2017, South Africa has issued no future rulings. Anonymised copies of rulings are published on South Africa's Tax Administration website.[1]

No exchange of information was required for the year in review as the relevant ruling related only to an Inclusive Framework jurisdiction for which exchange is required to occur in 2017. Therefore no peer input was received in respect of the exchanges of information on rulings received from South Africa.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

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Introduction

1. This peer review covers South Africa's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. In South Africa, ruling requests are received and processed by the Advance Tax Rulings Unit which is within the legal advisory division. A database of all issued rulings is kept by the Unit. The Unit was consulted in order to establish whether or not any rulings had been issued since 1 January 2010. As the only type of ruling which is within the scope of the transparency framework is rulings on a preferential regime, these were identifiable from the database that contains all rulings.

6. In order to identify potential exchange jurisdictions, the past rulings which were on preferential regimes were read. The relevant ruling contained information on all potential exchange jurisdictions, including the immediate and ultimate parent company. The "best efforts approach" was not necessary as information on all potential exchange jurisdictions was part of the ruling application.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

7. The Advance Tax Rulings Unit is also responsible for identifying any future rulings for exchange purposes. South Africa has updated its ruling procedure to require the responsible manager to verify and sign off as to whether a ruling falls within the scope of the transparency framework before finalising a ruling. This ensures that any future rulings will be identified in a timely manner. Rulings will therefore be identified as and when the request is received.

8. The same process for identifying potential exchange jurisdictions will be used for future rulings as is used for past rulings. South Africa has confirmed that it will ensure that information on all potential exchange jurisdictions, including the immediate and ultimate parent, is part of the ruling application for all future rulings.

Review and supervision mechanism (ToR I.4.3)

9. South Africa notes that the accuracy of the information-gathering process is ensured because the Advance Tax Rulings Unit has the responsibility for issuing the rulings as well as reviewing and capturing the information for the purposes of the transparency framework. Their work is then reviewed by senior management.

Conclusion on section A

10. South Africa has a process for identifying the rulings and potential exchange jurisdictions which is appropriate for the small size of the rulings programme in South Africa. South Africa has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

11. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

12. South Africa has the necessary domestic legal basis to exchange information spontaneously. South Africa notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

13. South Africa is a party to international agreements permitting spontaneous exchange of information, including the Convention and double tax agreements in force with 65 jurisdictions. In total, this network of agreements covers 114 jurisdictions.[2]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

14. In order to share the required information with other jurisdictions, the template contained in Annex C of the Action 5 Report (OECD, 2015) would be filled in by the Advance Tax Rulings Unit personnel. The completed templates would then be reviewed by senior management. Senior management would then forward the completed template to the Competent Authority for exchange of information. A review is undertaken by the Competent Authority prior to the actual exchange of information. The ruling template will be completed simultaneously while the unit is preparing the ruling for publishing, that is, 90 business days after issuing the ruling.

15. In the case of the one ruling which was identified as being in the scope of the transparency framework, the only potential exchange jurisdiction was not an OECD or G20 member. As per the timelines agreed for the transparency framework, South Africa was not required to complete any exchanges of information for the year in review. South Africa notes that information on the ruling will be exchanged with the new member of the Inclusive Framework as a matter of urgency.

Conclusion on section B

16. South Africa has the necessary legal framework and administrative process in place for exchanging information on rulings. South Africa has met all of the terms of reference for the exchange of information process that can be met in the absence of exchange of information being required in practice and no recommendations are made.

C. Statistics (ToR IV)

17. As there were no rulings required to be exchanged by South Africa in 2016, no statistics can be reported.

D. Matters related to intellectual property regimes (ToR I.4.1.3)

18. South Africa does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made

Notes

1. Available at: www.sars.gov.za (accessed on 10 November 2017).

2. Parties to the Multilateral Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. South Africa also has Double Tax Agreements with Algeria, Australia, Austria, Belarus, Belgium, Botswana, Brazil, Bulgaria, Canada, Chile, China (People's Republic of), Croatia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Egypt, Ethiopia, Finland, France, Ghana, Greece, Hong Kong (China), Hungary, India, Indonesia, Iran, Ireland, Italy, Japan, Kenya, Korea, Lesotho, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Mozambique, Namibia, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Poland, Portugal, Qatar, Rwanda, Saudi Arabia, Seychelles, Singapore, Slovak Republic, Spain, Swaziland, Sweden, Tanzania, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States and Zimbabwe.

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Spain

Spain has met all aspects of the terms of reference (ToR) for the year in review, except for applying the "best efforts" approach to identify potential exchange jurisdictions for certain past rulings (ToR I.4.2.2), identifying all potential exchange jurisdictions for certain future rulings (ToR I.4.2.1), and the timelines by which information on rulings is provided to the Competent Authority for exchange of information (ToR II.5.5). Spain is recommended to apply the best efforts approach for all past rulings, to continue with its proposal to amend its rulings practice for all future rulings to require taxpayers to provide information on all potential exchange jurisdictions as part of the ruling process, and to reduce the timelines for providing the information to the Competent Authority. Spain has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Spain can legally issue the three following types of rulings within the scope of the transparency framework: (1) preferential regimes (partial exemption for income from certain intangible assets, shipping regime); (2) 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; and (3) permanent establishment rulings. Depending on the type of ruling, such decisions are made/co-ordinated either by two national offices: the General Directorate for Taxation (Ministry of Finance) and the International Taxation Office (Spanish Tax Agency) or by one of four subnational offices in Basque Country and Navarra.

In practice, Spain has issued 146 past rulings. For the period 1 April 2016-31 December 2016, Spain issued 28 future rulings. Rulings which are not APAs are published in anonymised form.[1]

Peer input was received from seven jurisdictions in respect of the exchanges of information on rulings received from Spain. The input noted that information was in the correct format. Several peers noted that information on past rulings was received on time but one peer noted that three exchanges on past rulings were received after 31 December 2016. No peers had received information on future rulings. One peer also commented that in their view the summaries of the ruling in the exchanges received from Spain were not sufficient to identify the outcome of the ruling.

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Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers Spain's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. Each office in charge of issuing rulings maintained a list of all rulings issued. This list included the name of the taxpayer and the period of validity of the ruling. In order to identify whether the rulings in the list were in one of the categories of rulings in the scope of the transparency framework, each office undertook a manual review of each ruling which was located in the taxpayer file. They then determined if the ruling was a cross-border ruling or a wholly domestic ruling.

6. In order to identify all potential exchange jurisdictions, the offices responsible for identifying the rulings manually read all of the tax rulings covered by the transparency framework. Spain states that the "best efforts approach" was used to gather information that was not mentioned in the rulings themselves. In the case of APAs, this consisted of searching for the parent company in Orbis database. For PE rulings and rulings on preferential regimes, Spain generally relied only on the information in the ruling and did not take additional steps to identify the immediate parent and ultimate parent company.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

7. The information-gathering process for future rulings continued to be undertaken by each competent tax office issuing rulings. For future rulings, all officials are required to identify whether the ruling being issued is in the scope of the transparency framework and whether they are cross-border rulings.

8. In order to ensure that potential exchange jurisdictions were identified for such rulings, the Spanish Tax Agency started ensuring that all such related parties were identified. For APAs, the process of issuing the ruling has been adapted to require that the official issuing the ruling must collect information on all potential exchange jurisdictions, including the immediate parent and ultimate parent company, and this information is included in the APA itself. In relation to the other rulings, Spain has proposed an amendment to the relevant regulations which would require that information on all potential exchange jurisdictions be provided by the taxpayer when applying for a ruling.

Review and supervision mechanism (ToR I.4.3)

9. The review and supervision process for ensuring all relevant information is captured accurately is as follows. Three co-ordination meetings were held among all competent national and subnational tax offices as well as the Competent Authority for exchange of information and IT teams involved in the implementation of the transparency framework. This was undertaken to explain the requirements of the transparency framework and facilitate the operational aspects of implementation such translating into the XML Schema.

10. There was also an internal review of the information-gathering process within each tax office issuing rulings. This was done by having three persons involved in the process of identifying rulings and potential exchange jurisdictions, whereby one person was responsible for identifying the rulings, one of them extracting the relevant data and at least one person responsible for supervising the work undertaken.

Conclusion on section A

11. Spain has met all the terms of reference except for applying the best efforts approach to obtain information on potential exchange jurisdictions for past rulings which were preferential regime or PE rulings (ToR I.4.2.2) and Spain does not yet collect information on all potential exchange jurisdictions for future rulings which are preferential regimes or PE rulings (ToR I.4.2.1). Spain is recommended to apply the best efforts approach for past rulings, such as by using publicly available information, financial statements, corporate register information or other accessible information. Spain is recommended to continue with its proposal to amend its rulings practice for all future rulings to require taxpayers to provide information on all potential exchange jurisdictions as part of the ruling process.

B. The exchange of information

12. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

13. Spain has the necessary domestic legal basis to exchange information spontaneously. Spain notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

14. Spain has international agreements permitting spontaneous exchange of information, including being a party to the Convention, the Directive 2011/16/EU with all other European Union Member States, and double tax agreements in force with 92 jurisdictions.[2] In total, this network of agreements covers 129 jurisdictions.

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

15. In order to share the required information with other jurisdictions, Spain developed an IT tool in accordance with the OECD *XML Schema and User Guide* (OECD, 2017b). A template is first filled out and then converted into an XML document. For past rulings, the templates were completed by "ad hoc" appointed officers. For future rulings, templates were completed by the officers who issue the ruling. The document is checked for validity and completeness by the IT team in charge of generating the XML documents before the

information is actually exchanged. In addition, in some cases a substantive review was undertaken by the offices issuing the rulings and the IT Department.

16. The Competent Authority for exchange of information is provided with an encrypted e-mail containing the XML files to be exchanged. For past rulings, this was provided to the Competent Authority before 31 December 2016. For future rulings issued from 1 April 2016 to 31 December 2016, the XML files were provided to the Competent Authority by 31 March 2017. Spain plans that on a going forward basis, it will provide the XML files to the Competent Authority at six monthly intervals each year so that the Competent Authority can exchange by 30 September (for rulings issued from 1 January to 30 June) and by 31 March (for rulings issued from 1 July to 31 December). This was chosen to align with the timelines set out in the EU Directive, although these timelines are longer than necessary for the transparency framework.

17. The timeliness of exchanges is as follows. Note that Spain was able to undertake exchanges of information not only with OECD/G20 countries as required, but also with new members that joined the Inclusive Framework in 2016.

Past rulings in the scope of the transparency framework		Delayed exchanges		
	Number of exchanges transmitted by 31 December 2016	Number of exchanges not transmitted by 31 December 2016	Reasons for the delays	Any other comments
	241	64	1. Work burden and novelty of new exchanges. 2. Some templates not received in time by the EOI office.	Information on the delayed past rulings was exchanged by 24 February 2017
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Delayed exchanges**		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	**Reasons for the delays**	**Any other comments**
	0	0	Application of the EU DAC 3 deadlines	69 exchanges on future rulings issued in 2016 were transmitted in March-April 2017, which was within three months of being made available to the Competent Authority
Total[3]	241	64		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	N/A

18. Spain explains the delays that have occurred in the transmission of exchanges regarding past rulings because there was a learning curve for adapting to the new standard, and a scarcity of human resources. These issues have been resolved as the officials have gained more experience, and all information on past rulings was exchanged by 24 February 2017, which is a relatively short delay and which is not a recurring issue. With respect to future rulings,

Spain decided to abide by the EU Directive deadlines, meaning that the exchanges regarding rulings issued between 1 April 2016 and 31 December 2016 were due to occur before April 2017, and in practice they were all exchanged by 6 April 2017. To assist in aligning with the transparency framework requirements, Spain will provide the information on future rulings to the Competent Authority at six monthly intervals, just before the EU exchange deadlines, meaning that the exchanges occur within three months of being provided to the Competent Authority as required by the transparency framework.

Conclusion on section B

19. Spain has the necessary legal framework and administrative process in place for exchanging information on rulings. Spain experienced some delays with respect to past rulings. Spain has taken steps to remedy the issue and all information on past rulings was exchanged within a short period of 31 December 2016. However, no exchanges on future rulings were undertaken in 2016 because the timing for providing information on such rulings to the Competent Authority was arranged to align with the EU Directive deadlines. Spain has met all of the terms of reference for the exchange of information process except for the timelines by which information on future rulings is provided to the Competent Authority (ToR II.5.5). Spain is recommended to reduce the timelines for providing the information on future rulings to the Competent Authority.

C. Statistics (ToR IV)

20. The statistics for the 2016 review are as follows:[4]

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	36	Brazil, China (People's Republic of), Czech Republic, France, Germany, Hungary, India, Korea, Mexico, Poland, Portugal, Sweden, Turkey, United Kingdom, United States.
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	218	Argentina, Austria, Australia, Belgium, Bulgaria, Brazil, Canada, Chile, China (People's Republic of), Croatia, Czech Republic, Germany, Denmark, Finland, France, Greece, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, Lithuania, Luxembourg, Mexico, Netherlands, Norway, Poland, Portugal, Romania, Russia, Sweden, Slovakia, South Africa, Turkey, Ukraine, United Kingdom, United States, Uruguay
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	N/A	N/A
Permanent establishment rulings	51	Andorra, Belgium, Brazil, Chile, Colombia, Denmark, Finland, France, Germany, India, Indonesia, Italy, Japan, Netherlands, Norway, Portugal, Sweden, Turkey, United Kingdom, United States, Uruguay.
Related party conduit rulings	N/A	N/A
De minimis rule	N/A	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	Information not available on 31 December 2016; see paragraph 24 for details	N/A
Total	305	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

21. Spain offers three intellectual property regimes that are subject to transparency requirements under the Action 5 Report (OECD, 2015) (IP regime; IP regime Navarra, IP regime Basque Country). It states that the identification of the benefitting taxpayers will occur as follows:

- ***New entrants benefitting from the grandfathered IP regime***: specific provisions were included in the corporate income tax returns as of 2016, which apply starting with the 2015 tax period. Specific provisions for the subnational regimes were also included in their 2016 corporate income tax returns. The first tax returns were filed by 25 July 2016 for taxpayers on a calendar year. Spain completed eight exchanges of information on new entrants for the year 2015 in May 2017. Information from taxpayers which use a non-calendar year for tax purposes and file their return later will be exchanged in the next year. Spain plans to send information on new entrants on an annual basis. A new tax form was adopted in August 2017 in order to include, among other items, information about new entrants benefiting from the grandfathered IP regime. This tax return will be submitted by taxpayers using the calendar year by the end of November. Therefore, as soon as information on new entrants for tax year 2016 is submitted and reviewed by the Tax Agency, it will be sent on an annual basis.
- ***Third category of IP assets***: not applicable, as this option has not been incorporated in any of the three Spanish IP regimes.
- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption***: not applicable, as this option has not been incorporated in any of the three Spanish IP regimes.

22. The Action 5 Report (OECD, 2015) requires that information on new entrants be exchanged no later than the earlier of (i) three months after the date on which the information becomes available to the Competent Authority of the jurisdiction providing benefits under the IP regime (and jurisdictions should put in place appropriate systems to ensure that this information is transmitted to the competent authority without undue delay), or (ii) one year after the tax return was filed with the jurisdiction providing benefits under the IP regime. Although Spain was able to exchange within one year after the tax return was filed, Spain is encouraged to put in place a system to ensure the Competent Authority receives information on new entrants to the IP regime without undue delay and that information be exchanged no later than three months after such information is available to the Competent Authority.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Spain did not appear to apply the best efforts approach to obtain information on potential exchange jurisdictions for past rulings which were preferential regime or PE rulings.	Spain is recommended to apply the best efforts approach for all past rulings, such as by using publicly available information, financial statements, corporate register information or other accessible information.
Spain does not yet collect information on all potential exchange jurisdictions for future rulings which are preferential regimes or PE rulings.	Spain has a public proposal to expand the information that the taxpayer must provide when asking for a ruling, including all the information required to identify potential exchange jurisdictions. Spain is recommended to continue with its proposal to amend its rulings practice for future rulings to require taxpayers to provide information on all potential exchange jurisdictions as part of the ruling process.

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Spain transmits information on future rulings to the Competent Authority at six monthly intervals each year, to align with the EU Directive deadlines, which are longer than necessary. It is noted that the approach taken by Spain reflected its understanding at the time that such timelines would be consistent with the terms of reference for the transparency framework.	Spain is recommended to reduce the timelines for providing the information on future rulings to the Competent Authority.

Notes

1. For rulings issued by the General Directorate of Taxation, available at http://petete.minhafp.gob.es/consultas/ (accessed on 10 November 2017).

2. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Spain also has Double Tax Agreements with: Spain has Double Tax Agreements with Albania, Algeria, Andorra, Argentina, Armenia, Australia, Austria, Barbados, Belarus, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, China (People's Republic of), Colombia, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Hong Kong (China), Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Moldova, Morocco, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Philippines, Poland, Portugal, Romania, Russia, Saudi Arabia, Senegal, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Sweden, Switzerland, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Venezuela and Viet Nam.

3. Spain notes that these figures reflect the number of exchanges as at 20 April, on account of a transitional issue with regard to calculating exchanges and which will not be a recurring issue.

4. Spain notes that these figures reflect the number of exchanges as at 20 April.

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OECD (2017b), *Country-by-Country Reporting XML Schema: User Guide for Tax Administrations*, www.oecd.org/tax/beps/country-by-country-reporting-xml-schema-user-guide-for-tax-administrations.pdf (accessed on 10 November 2017).

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Sweden

Sweden has met all of the terms of reference (ToR) for the year in review except for identifying all potential exchange jurisdictions for future rulings (ToR I.4.2.1). Sweden has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Sweden can legally issue the following three types of rulings within the scope of the transparency framework: (1) rulings related to a preferential regime (shipping regime); (2) permanent establishment rulings; and (3) related party conduit rulings.[1] In Sweden, rulings are issued by the National Board of Advance Tax Rulings, as well as by the Swedish Tax Agency.

In practice, Sweden issued 24 past rulings. For the period 1 April 2016-1 February 2017, Sweden issued five future rulings. Some of these rulings are published in anonymised form.[2]

Peer input was received from two jurisdictions in respect of the exchanges of information on rulings received from Sweden. It was positive; noting that information was complete and in the correct format, and that the summary provided a very good overview. One peer noted that some information on past rulings was received in February 2017, after the deadline of 31 December 2016. As noted below in section B, this was a relatively minor delay and was resolved quickly.

Introduction

1. This peer review covers Sweden's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. A dedicated work group was formed to identify the relevant past rulings. The work group was led by a small group of experienced officers in the Large Taxpayers Department, and included officers from the Legal Department and the Competent Authority for exchange of information. The work group conducted its search for relevant rulings according to the date of issue, which was possible because all rulings are registered with a specific case number based on the date they were issued. The Legal Department of the tax administration was responsible for identifying the rulings it had issued and rulings issued by the National Board of Advance Tax Rulings. The Large Taxpayers' Department was responsible for identifying the rulings it had issued as well as any other possible rulings issued by another office of the Swedish Tax Agency.

6. The officers, supported by the work group, then manually reviewed all answers previously provided to taxpayers to see if the answer was a "ruling" under the transparency framework. If so, the officers read the ruling, categorised it and determined if it was within the period defined as a "past ruling."

7. In order to identify potential exchange jurisdictions, the information in the ruling was consulted. Sweden reports that for past rulings, the information on all relevant parties would not necessarily be included. Sweden used the "best efforts approach," which involved searching information submitted by the taxpayer, information from registers and records held by the Swedish tax administration, and searches on the internet.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

8. Future rulings which may be in the scope of the transparency framework are identified by using the same process which was devised by the dedicated work group. In addition, the tax administration drafted a brochure, short manuals and checklists for the tax

administration personnel in order to help them determine whether or not a ruling is in the scope of the transparency framework at the point when a ruling is issued.

9. In addition, a new category of ruling was introduced on 20 October 2016 (related to a preferential regime, namely the tonnage tax) and as such fall within the definition of future ruling. These rulings are handled at the Large Taxpayers Office in Gothenburg and registered in a certain way which makes them readily identifiable. The tax officials working with tonnage tax cases are provided the same manuals and information as other tax officials in order to identify and determine the tax rulings within scope. In addition, one tax officer has been specially appointed to be responsible for the tonnage tax cases. No rulings on tonnage tax were issued before 31 December 2016.

10. In order to identify potential exchange jurisdictions for future rulings, the text of the ruling was consulted. As above, rulings do not necessarily contain information on all potential exchange jurisdictions. Sweden notes that it is considering introducing a change to the rulings practice to obtain this information in the future.

Review and supervision mechanism (ToR I.4.3)

11. All concerned tax offices were made aware of the requirements of the transparency framework and how they related to the Swedish context. In addition, the formation of the working group with the relevant expertise assisted in ensuring that all relevant rulings were accurately identified.

Conclusion on section A

12. Sweden has met all of the terms of reference for the information-gathering process except for identifying all potential exchange jurisdictions for future rulings (ToR I.4.2.1). Sweden is recommended to amend its rulings practice to require taxpayers to provide that information as part of the ruling process.

B. The exchange of information

13. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

14. Sweden has the necessary domestic legal basis to exchange information spontaneously. Sweden notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

15. Sweden is a party to international agreements permitting spontaneous exchange of information, including the Convention, the Directive 2011/16/EU with all other European Union Member States, the Nordic Convention on Assistance in Tax Matters, and double tax agreements in force with 54 jurisdictions.[3] In total, this network of agreements covers 105 jurisdictions.

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

16. In order to share the required information with other jurisdictions, the template contained in Annex C of the Action 5 Report (OECD, 2015) is filled in by experienced tax officers. The template is then reviewed by two other experienced officers to ensure that the information was correct and understandable. The review included comparing the template to the text of the relevant ruling.

17. Sweden ensures that the ruling summary template is made available to the Competent Authority for exchange of information in a timely way for past rulings by conducting the whole process through the work group, which included the Competent Authority for exchange of information. The templates were provided to the Competent Authority in one batch once the process for completing the templates was functioning well. For future rulings, the work group is currently reviewing the process to ensure that an appropriate system to transmit the rulings to the Competent Authority is put in place, with the intention that template be completed at the time the ruling is issued and immediately provided to the Competent Authority.

18. The timeliness of exchanges is as follows. Note that these statistics reflect the fact that information was only required to be exchanged with OECD/G20 countries, and not with new members of the Inclusive Framework, and that Sweden in fact did only exchange information with OECD/G20 countries for the year in question.

Past rulings in the scope of the transparency framework		Delayed exchanges		
	Number of exchanges transmitted by 31 December 2016	Number of exchanges not transmitted by 31 December 2016	Reasons for the delays	Any other comments
	22	4	A mistake in the process, caused by human error.	The mistake was discovered and the information was sent on 1 February 2017.
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Delayed exchanges**		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	**Reasons for the delays**	**Any other comments**
	3	1	Difficulties in identifying the ruling.	
Total	25	5		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	0

19. Sweden notes that it is currently reviewing the procedures to ensure that the information will be exchanged in a timely manner in the future. In order to achieve this, educational seminars are planned, as well as plans to provide additional information in the staff manuals and educational material.

Conclusion on section B

20. Sweden has the necessary legal framework and administrative process in place for exchanging information on rulings. Sweden has timely exchanged the information on rulings within scope of the transparency framework, with a small number of delays which were swiftly remedied. Sweden has met all of the terms of reference for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

21. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	0	N/A
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	N/A	N/A
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	N/A	N/A
Permanent establishment rulings	0	
Related party conduit rulings	25	Belgium, Finland, Germany, Latvia, Luxembourg, Netherlands, Poland, Spain, United Kingdom
De minimis rule	N/A	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	N/A	N/A
Total	25	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

22. Sweden does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
For future rulings, Sweden did not obtain information on all potential exchange jurisdictions in all cases.	Sweden is recommended to amend its rulings practice to require taxpayers to provide information on all potential exchange jurisdictions as part of the ruling process.

Notes

1. In October 2016, Sweden introduced new tonnage taxation rules. However, no ruling on tonnage taxation were issued up until 31 December 2016.

2. Available at www.skatterattsnamnden.se (accessed on 10 November 2017).

3. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Parties to the Nordic Convention on Assistance in Tax Matters are Denmark, Faroe Islands, Finland, Iceland and Sweden. Sweden also has Double Tax Agreements with Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China (People's Republic of), Croatia, Czech Republic, Egypt, Estonia, France, Georgia, Germany, Greece, Hungary, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Kenya, Korea, Latvia, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Netherlands, New Zealand, Nigeria, Pakistan, Poland, Portugal, Romania, Russia, Saudi Arabia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Switzerland, Turkey, Ukraine, United Kingdom and United States.

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Switzerland

Switzerland has taken steps to implement the legal basis for the transparency framework and to commence administrative preparations to ensure that information on rulings is exchanged pursuant to the new legal basis. Switzerland has met all of the terms of reference (ToR) for the year in review that can be met in the absence of the legal framework for spontaneous exchange of information on rulings and no recommendations are made. Switzerland has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

Swiss tax authorities can legally issue the following four types of rulings within the scope of the transparency framework: (1) preferential regimes (auxiliary company regime (previously referred to as domiciliary company regime), mixed company regime, commissionaire ruling regime, holding company regime (cantonal level), licence box (Canton of Nidwalden only); (2) cross-border unilateral APAs and any other cross-border unilateral tax ruling (such as an ATR) covering transfer pricing or the application of transfer pricing principles; (3) permanent establishment rulings and (4) related party conduit rulings. In Switzerland, rulings are issued by the cantonal and federal tax authorities.

In practice, Switzerland did not have the necessary domestic and international legal framework for spontaneous exchange of information for the year of review. As such, no exchanges were permitted to occur.[1] The domestic legal framework for spontaneous exchange of information entered into force Switzerland on 1 January 2017, as did the Convention.[2] In accordance with that legal framework, exchange of information on rulings will commence from 1 January 2018. This will include rulings issued since 1 January 2010, provided that they are in effect when the international legal framework becomes applicable on 1 January 2018. Switzerland has undertaken administrative and organisational preparations to be ready to exchange information pursuant to the new legal framework.

As no exchanges could be undertaken under Switzerland's legal framework, no peer input was received in respect of the exchanges of information on rulings received from Switzerland.

Introduction

1. This peer review covers Switzerland's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. As Switzerland did not have the legal basis to exchange rulings in 2016, this section could not be assessed. It is noted that Switzerland completed its peer review questionnaire explaining the progress that has been made to identify all relevant rulings and potential exchange jurisdictions in 2017, which includes the following.

5. Each of the cantonal and federal tax authorities is responsible for identifying rulings for which spontaneous exchange of information is required. Pursuant to the Tax Administrative Assistance Ordinance (TAAO), these authorities have created an organisational structure to jointly implement spontaneous exchange of information on tax rulings. Each authority is required to designate an administrative unit which acts as a point of contact for the Competent Authority for exchange of information and which ensures the conduct of the spontaneous exchange within its authority.

6. The cantonal and federal tax authorities have begun identifying their relevant rulings. With respect to past rulings, in many cases internal groups staffed with legal, audit and IT personnel were set up to launch and steer the identification process in their tax authority. Past rulings are being inventoried and the relevant information for spontaneous exchange is being gathered.

7. Potential exchange jurisdictions are being identified from ruling and other information available to the authorities, and several cantons have submitted the Annex C template to taxpayers for completion.

8. Swiss law already requires rulings issued on or after 1 January 2017 to be checked whenever they are in the scope of the transparency framework, and information on all potential exchange jurisdictions has to be provided to the Competent Authority. However, they only may be exchanged as future rulings if still in force on 1 January 2018.

Conclusion on section A

9. For the year in review, Switzerland did not have the necessary legal framework in place for exchanging information on rulings. It is noted that Switzerland has already started identifying all relevant rulings and potential exchange jurisdictions, which is supported by

an organisational structure to facilitate the implementation of this process. Switzerland has met all of the terms of reference for the exchange of information process that can be met in the absence of the domestic legal framework and no recommendations are made.

B. The exchange of information

10. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

11. Switzerland did not have the necessary domestic legal basis to exchange information spontaneously. The domestic legal basis has been amended, with the revisions to the Tax Administrative Assistance Act and the Tax Administrative Assistance Ordinance entering into force on 1 January 2017 and which allow for spontaneous exchanges from 1 January 2018.

12. Switzerland's international agreement permitting spontaneous exchange of information is the Convention.[3]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

13. As Switzerland has not yet started the exchange of information, this section could not be assessed for the year in review. It is noted that Switzerland completed its peer review questionnaire explaining the progress that has been made to implement the exchange process, which includes the following.

14. The Swiss federal tax authority has developed an IT tool to simplify the information-gathering process. This tool allows taxpayers to enter the required information for past rulings, which is checked and, if necessary, corrected or completed by the responsible tax authority prior to forwarding the information to the Competent Authority for exchange of information. Information on past rulings is to be submitted by 30 September 2018 and information on future rulings must be submitted within 60 days of issuing a ruling. The Competent Authority will conduct a final check before sending the information. A similar system is being developed for future rulings.

Conclusion on section B

15. For the year in review, Switzerland did not have the necessary legal framework in place for exchanging information on rulings. It is noted that Switzerland has already started putting in place the administrative practices for the completion and exchange of templates on rulings. Switzerland has met all of the terms of reference for the exchange of information process that can be met in the absence of the domestic legal framework and no recommendations are made.

C. Statistics (ToR IV)

16. As there is no legal basis for exchange, no statistical data can be reported.

D. Matters related to intellectual property regimes (ToR I.4.1.3)

17. Switzerland has an intellectual property regime that is subject to transparency requirements under the Action 5 Report (OECD, 2015) (the Nidwalden Patent Box). It states that the identification of the benefitting taxpayers will occur as follows:

- ***New entrants benefitting from the grandfathered IP regime***: any entrants are being identified during tax assessment. It is noted that no spontaneous exchanges can occur on account of the lack of the international legal basis to do so, although information can be exchanged as of 1 January 2018. As per 1 March 2017, no new entrants which would have triggered a spontaneous exchange have been identified.
- ***Third category of IP assets***: not applicable, as there is no provision in the regime allowing this benefit.
- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption***: not applicable, as there is no provision in the regime allowing this benefit.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made

Notes

1. The Action 5 Report (OECD, 2015) notes that jurisdictions which do not currently have the necessary legal framework in place for spontaneous exchange of information on rulings will need to put in place such a framework in order to comply with the obligations under Action 5, but that in such cases the timelines are subject to a country's legal framework.
2. Tax Administrative Assistance Act (TAAA) and the Tax Administrative Assistance Ordinance (TAAO), which are underpinned by an explanatory document to the TAAO published by the State Secretariat for International Financial Affairs.
3. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm.

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Turkey

Turkey has met all aspects of the terms of reference (ToR) for the year in review except for completing exchanges on past rulings in a timely way (ToR II.5.6) and identifying and exchanging information on new entrants to the grandfathered IP regime (ToR I.4.1.3). However, all information on past rulings was exchanged within two months of the deadline and this is not a recurring issue and as such no recommendation is made on this point. Turkey is recommended to ensure that information on new entrants to the grandfathered IP regimes are swiftly identified and exchanged.

Turkey can legally issue the one type of ruling within the scope of the transparency framework: 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. Turkey notes that they are able to issue "written comments" to taxpayers on specific provisions in the tax law, but these are not binding on the tax administration or the taxpayer, and as such they are outside the scope of the transparency framework.[1] In Turkey, unilateral APAs are issued by the transfer pricing unit in the headquarters of the Turkish Revenue Administration.

In practice, Turkey issued three past rulings. For the period 1 April 2016-1 February 2017, Turkey did not issue any future rulings. The rulings are not published.

As no exchanges on rulings occurred for the year in review, no peer input was received in respect of the exchanges of information on rulings received from Turkey.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers Turkey's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and new rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. All unilateral APAs are issued by the transfer pricing unit in the headquarters of the Turkish Revenue Administration. The officials in the unit were required to identify the APAs which had been issued since 2010 and they are in charge of the information-gathering process. With regard to identifying past rulings, the process was as follows.

6. In order to determine if the APA was in the scope of the transparency framework, the officials reviewed each unilateral APA, which included verifying the issue date to determine if it was within the period of validity for past rulings.

7. The process for identifying the potential exchange jurisdictions consisted of reviewing the relevant APAs. The APA file contained sufficient information (e.g. the taxpayer's name, tax identification number, ultimate parent company, immediate parent company, and all related parties which entered a transaction covered by the APA) and as such the "best efforts approach" was not required to be used.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

8. Future APA rulings are identified by the Transfer Pricing Unit in the same way as for past rulings. After April 2016, all officials in the unit checked and reviewed each unilateral APA file to determine if they were within the scope of the transparency framework.

9. As was the case for past rulings, the APA file contains sufficient information (e.g. taxpayer's name, tax identification number, ultimate parent company, immediate parent company, and all related parties which entered a transaction covered by the APA) to enable identification of all potential exchange jurisdictions.

Review and supervision mechanism (ToR I.4.3)

10. The process for ensuring all relevant information is captured accurately involves the Head of Group supervising and reviewing the data collected by the officials in the transfer pricing unit. The officials are held accountable for identifying and submitting the correct documents.

Conclusion on section A

11. Turkey has a process for identifying the rulings and relevant jurisdictions with which to exchange under the transparency framework, which is appropriate for the small size of the rulings programme in Turkey. Turkey has met all the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

12. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange of information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

13. Turkey has the necessary domestic legal basis to exchange information spontaneously. Turkey notes that there are no legal or practical impediments that prevent the spontaneous exchange information on rulings as contemplated in the Action 5 minimum standard.

14. Turkey has double tax agreements in force with 83 jurisdictions which permit spontaneous exchange of information.[2] In addition, Turkey has signed the Convention and it was ratified by the Turkish Parliament on 20 May 2017. Turkey expects that the process to Convention entry into force will be completed soon.

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

15. In order to share the required information with other jurisdictions, the process is as follows. With respect to past and future APA rulings, the officials in the Transfer Pricing Unit filled out the template in the form of Annex C. The transfer pricing unit then sent the Annex C template to the Competent Authority which exchanges the information with the relevant jurisdictions in accordance with the double tax agreement.

16. The timeliness of exchanges is as follows. Note that the table reflects the numbers of exchanges of information not only with OECD/G20 countries as required, but also with new members of the Inclusive Framework.

		Delayed exchanges		
Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2016	Number of exchanges not transmitted by 31 December 2016	Reasons for the delays	Any other comments
	0	4	Procedural problems	All information on past rulings was exchanged by February 2017

Future rulings in the scope of the transparency framework	Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted	Delayed exchanges		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	Reasons for the delays	Any other comments
	0	0	N/A	N/A
Total	0	4		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	N/A	N/A	N/A

Conclusion on section B

17. Turkey has the necessary legal basis for spontaneous exchange of information, and a process for completing the templates in the required form. Turkey did not exchange any information on past rulings for the year in review. However all information on past rulings was exchanged within two months of the deadline and this is not a recurring issue. Turkey has met all of the terms of reference for the exchange of information process except with respect to delays in the timeliness of exchanges (ToR II.5.6), and no recommendation is made as this issue has been remedied and is not a recurring issue.

C. Statistics (ToR IV)

18. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	N/A	N/A
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	0	
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	N/A	N/A
Permanent establishment rulings	N/A	N/A
Related party conduit rulings	N/A	N/A
De minimis rule	N/A	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	0	
Total	0	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

19. Turkey has two intellectual property regimes that are subject to transparency requirements under the Action 5 Report(OECD, 2015). These are the Technology Development Zone Regime (which is being amended) and the Corporate Tax Law Provision 5/B Regime. It states that the identification of the benefitting taxpayers will occur as follows:

Technology Development Zone Regime

20. Turkey has not yet been able to identify and exchange information on new entrants to the grandfathered IP regime (ToR I.4.1.3). Turkey notes that it is making best efforts to amend the regime, including with respect to transparency on new entrants.

Corporate Tax Law Provision 5/B Regime

- ***New entrants***: as this is a new IP regime rather than a grandfathered IP regime, transparency on new entrants was not required.
- ***Third category of assets***: this regime does not grant benefits to the third category of assets.
- ***Rebuttable presumption***: the regime does not allow the rebuttable presumption.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
No exchanges of information on past rulings occurred for the year in review.	No recommendation is made because Turkey completed the exchange of all past rulings by February 2017 and this is not a recurring issue.
Turkey has not been able to identify and exchange information on new entrants to the grandfathered IP regime.	Turkey is recommended to ensure that information on new entrants to the grandfathered IP regime are swiftly identified and exchanged.

Notes

1. The written comments are made available in anonymised form at www.gib.gov.tr (accessed on 10 November 2017).

2. Albania, Algeria, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, China (People's Republic of), Croatia, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Finland, France, Former Yugoslav Republic of Macedonia, Georgia, Germany, Greece, Hungary, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kyrgyzstan, Korea, Kosovo, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Moldova, Mongolia, Montenegro, Morocco, Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, Spain, Sudan, Sweden, Switzerland, Syria, Thailand, Tajikistan, the Philippines, South Africa, Tunisia, Turkish Republic of Northern Cyprus, Turkmenistan, Ukraine, Oman, United Arab Emirates, United Kingdom, United States, Uzbekistan and Yemen. This list was provided by Turkey and its reproduction here is without prejudice to the status of the listed territories under international law.

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United Kingdom

The United Kingdom has met all aspects of the terms of reference (ToR) for the year in review except that new assets of existing taxpayers benefiting from the grandfathered IP regime was not collected and therefore not exchanged (ToR I.4.1.3). As it is not practicable for the United Kingdom to obtain this information, the United Kingdom is recommended to exchange information on new assets of existing taxpayers benefiting from the grandfathered IP regime to the extent that such information becomes available in the future. The United Kingdom has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

The United Kingdom can legally issue the following three types of rulings within the scope of the transparency framework: (1) preferential regimes (patent box and shipping); (2) 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; and (3) permanent establishment rulings. Rulings on preferential regimes are issued by specialist team in the tax administration (HMRC). Rulings on APAs are issued by a Delegated Competent Authority in HMRC's Head Office Transfer Pricing Team, and rulings which are Advanced Thin Capitalisation Agreements (a form of unilateral APA for financing issues) are generally signed by a HMRC International Tax Specialist or a Customer Relationship Manager in the field office, normally in the Large Business team. PE Rulings are issued by the Tax Specialist who has reviewed the application, whether on a Customer Team, one of HMRC's Specialist Units or Head Office Functions.

In practice, the United Kingdom issued around 600 past rulings. For the period 1 April 2016-31 December 2016, the United Kingdom issued 71 new rulings. Rulings are not published.

Peer input was received from nine jurisdictions in respect of exchanges of information received from the United Kingdom. The input was positive, noting that information was complete, in the correct format and timely.

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Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers the United Kingdom's implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and new rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. All APAs were recorded on a central database, which was created prior to 2010. In addition, a specific transfer pricing database has been used since 2009 which includes all APAs and ATCAs and which is accessible to the Large Business team. The database was searched to identify all APAs and ATCAs. The period of validity of the rulings was also verified from information in the database.

6. Rulings related to preferential regimes and to permanent establishments were identified by the relevant specialist teams who searched their records. The Large Business team searched their electronic files, with reference to spreadsheets recording all rulings if this was kept. In Head Office, both electronic files and paper files were searched for rulings. The period of validity of the rulings was manually verified, although in most cases there was no time limit for the validity of the PE rulings.

7. In order to identify all potential exchange jurisdictions, the information in the ruling was first consulted. When necessary, the "best efforts approach" was used. This involved going through the application or through the correspondence with the applicant, or by using the personal knowledge of the Customer Relationship Manager for the Group, if one had been appointed.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

8. Relevant future rulings are identified at the point at which they are issued. In order to do this, HMRC's information systems were adapted for rulings which mean that a case is flagged as relevant for the transparency framework when it is entered on the information system. The case cannot be closed until the relevant officer confirms that the ruling has been sent for exchange.

9. In order to identify all potential exchange jurisdictions, HMRC amended its guidance on rulings. This new guidance ensures that a ruling is not issued by HMRC unless the necessary information is provided by the taxpayer.

Review and supervision mechanism (ToR I.4.3)

10. In order to ensure that the information-gathering process was effective, the United Kingdom created a national project team to manage the process. The information-gathering process was developed by a national project team, and which was reviewed and agreed by the Large Business Senior Management Team, including the Director of the Large Business Directorate. The national project team provided written instructions to all operational areas which may have issued rulings, published material in internal publications and held regular conference calls to discuss progress and share lessons learned. All Customer Relationship Managers in Large Business had to personally confirm that the records for their groups had been searched.

11. In addition, a guidance manual for rulings was developed for staff and for the public.[1] Specialist training was also provided to staff to ensure they identified rulings correctly.

Conclusion on section A

12. The United Kingdom has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

13. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

14. The United Kingdom has the necessary domestic legal basis to exchange information spontaneously. The United Kingdom notes that there are no legal or practical impediments that prevent the spontaneous exchange information on rulings as contemplated in the Action 5 minimum standard.

15. The United Kingdom has international agreements permitting spontaneous exchange of information, including being a party to the Convention, the Directive 2011/16/EU with all other European Union Member States, double tax agreements in force with 121 jurisdictions and TIEAs with six jurisdictions. In total, this network of agreements covers 157 jurisdictions.[2]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

16. In order to share the required information with other jurisdictions, a template very similar to that contained in Annex C of the Action 5 Report (OECD, 2015) is used, which also accommodates the exchanges under the EU Directive. The template is completed by a case-worker. This process is supervised to ensure all relevant information is captured accurately, using two or three levels of review depending on the business size of the relevant taxpayer. The template is reviewed by the relevant Customer Relationship Manager (if the taxpayer is in the Large Business office), and a final review by the Competent Authority within the Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC) EOI team.

17. The United Kingdom ensures that the template is made available to the competent authority for exchange of information in a timely way by adapting its administrative procedure for future rulings so that a rulings case cannot be closed until there is confirmation that the template has been submitted to the Competent Authority for exchange. For past rulings, the completed templates were provided to the Competent Authority as they were completed over the course of 2016.

18. The timeliness of exchanges is as follows. Note that the United Kingdom was able to undertake exchanges of information not only with OECD/G20 countries as required, but also with new members that joined the Inclusive Framework at 20 October 2016.

		Delayed exchanges		
Past rulings in the scope of the transparency framework	**Number of exchanges transmitted by 31 December 2016**	**Number of exchanges not transmitted by 31 December 2016**	**Reasons for the delays**	**Any other comments**
	579	20	See below	These 20 cases were exchanged by March 2017.
		Delayed exchanges		
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority**	**Reasons for the delays**	**Any other comments**
	61	0		
Total	640	20		

	Number	**Average time to provide response**	**Number of requests not answered**
Follow-up requests received for exchange of the ruling	1	107 days – NB with agreement of the requesting Competent Authority, the UK did not exchange the ruling but more relevant information that had to be sourced.	0

19. The United Kingdom notes that there were a small number of rulings identified later in the process because they had been misfiled. As soon as such rulings were identified as being within the scope of the transparency framework, they were prepared for exchange. As any further exchanges come to light they are also being exchanged.

Conclusion on section B

20. The United Kingdom has the necessary legal basis for spontaneous exchange of information, a process for completing the templates in a timely way and has completed most exchanges on time. The United Kingdom encountered a relatively small delay on account of misfiled rulings, and which is being remedied as such cases are identified. The United Kingdom has met all of the terms of reference for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

21. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	Included in *de minimus*	
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	411	Australia, Austria, Belgium, Bulgaria, Canada, Chile, China (People's Republic of), Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Guernsey, Hong Kong (China), Hungary, India, Indonesia, Ireland, Italy, Japan, Jersey, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Singapore, Slovak Republic, South Africa, South Korea, Spain, Sweden, Switzerland, Turkey, United States
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	N/A	N/A
Permanent establishment rulings	223	Australia, Austria, Belgium, Canada, China, Denmark, Estonia, Finland, France, Germany, Guernsey, Hong Kong (China), Ireland, Isle of Man, Israel, Italy, Jersey, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Singapore, South Africa, Spain, Sweden, Switzerland, United States
Related party conduit rulings	N/A	N/A
De minimis rule	4	
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	2	
Total	640	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

22. The United Kingdom offers an intellectual property regime that is subject to transparency requirements under the Action 5 Report (OECD, 2015) (the Patent Box). It states that the identification of the benefitting taxpayers will occur as follows:

- ***New entrants benefitting from the grandfathered IP regime***: New entrants benefitting from the grandfathered patent box are identified as claimants benefitting from the grandfathered IP regime from February 2015 onwards were required to submit an election into the Patent Box for an earlier period. However, new assets of existing claimants benefitting from the grandfathered IP regime cannot be identified as the Patent Box regime did not previously require any specific identification of qualifying IP assets when electing into it, HMRC did not require specific notification of these acquisitions, and acquisitions are not identifiable in the taxpayer's accounts. The United Kingdom considered alternative ways to obtain data on existing companies who obtained new IP assets during this time, however

this will not be possible without opening a formal investigation into each company. It is noted that it would not be practicable for the United Kingdom to open a formal investigation solely to obtain this information. The United Kingdom notes that it is ensuring that income from new assets does not enter into the grandfathered IP regime after 30 June 2016 and there are provisions to restrict this from occurring.

- ***Third category of IP assets***: Not applicable, as this option has not been incorporated in the United Kingdom IP regime.
- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption***: It is possible for taxpayers to treat the nexus ratio as a rebuttable presumption. Such taxpayers are identified because in order to use the rebuttable presumption, the taxpayer must make an election to do when they submit the tax return. These tax returns will be filed for the first time in 2017 and information on such taxpayers will be exchanged thereafter.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
The United Kingdom has not exchanged information on new assets of existing taxpayers benefiting from the grandfathered IP regime, as this information was not able to be collected other than in the case of a formal investigation. It is noted that it would not be practicable for the United Kingdom to open a formal investigation solely to obtain this information.	The United Kingdom is recommended to exchange information on new assets of existing taxpayers benefiting from the grandfathered IP regime to the extent that such information does become available in the future.

Notes

1. Available at www.gov.uk/hmrc-internal-manuals/international-exchange-of-information/ieim510000 (accessed on 10 November 2017).

2. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. The United Kingdom also has Double Tax Agreements with: Albania, Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belize, Bolivia, Bosnia and Herzegovina, Botswana, British Virgin Islands, Brunei, Bulgaria, Cayman Islands, Chile, China (People's Republic of), Colombia, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Falkland Islands, Faroe Islands, Fiji, Finland, Former Yugoslav Republic of Macedonia, Gambia, Georgia, Ghana, Greece, Grenada, Guernsey, Guyana, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Jamaica, Japan, Jersey, Jordan, Kazakhstan, Kenya, Kiribati, Korea, Kosovo, Kuwait, Latvia, Lesotho, Libya, Lithuania, Malawi, Malaysia, Malta, Mauritius, Mexico, Moldova, Mongolia, Montenegro, Montserrat, Morocco, Myanmar, Namibia, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Senegal, Serbia, Sierra Leone, Singapore, Slovak Republic, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Saint Kitts and Nevis, Sudan, Swaziland, Chinese Taipei, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, United Arab Emirates, United States, Uruguay, Uzbekistan, Venezuela, Viet Nam, Zambia and Zimbabwe. The TIEAs with Anguilla, British Virgin Islands, Gibraltar, Guernsey, Jersey and Turks and Caicos Islands also permit spontaneous exchange of information.

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United States

The United States has met all aspects of the terms of reference (ToR) for the year in review and no recommendations are made. The United States has answered the peer review questionnaire and the follow-up questions asked by the Secretariat in a timely manner.

The United States can legally issue the following three types of rulings within the scope of the transparency framework: (1) 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; (2) permanent establishment rulings; and (3) related party conduit rulings. In the United States, APAs are issued by a specific office, the IRS's Advance Pricing Mutual Agreement (APMA) programme. The other types of rulings are issued by the IRS's Office of Associate Chief Counsel, with specific offices dedicated to international issues, financial institutions and products, partnerships and special industries, corporate, and tax exempt and governmental entities. The United States notes that PE rulings and related party conduit rulings are not ordinarily issued unless there are unique and compelling circumstances.

In practice, the United States issued 114 past rulings. For the period 1 April 2016-31 December 2016, the United States issued 21 future rulings, templates for three of which were required to be exchanged before 1 January 2017. These rulings were not published, although other types of rulings can be published.

Peer input was received from ten jurisdictions in respect of the exchanges of information on rulings received from the United States. The peer input was positive, noting that information was in the correct format, complete, timely and one peer noted that the summary provided a good overview of the ruling.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

1. This peer review covers the United States' implementation of the BEPS Action 5 transparency framework for the year 2016. The report has four parts, each relating to a key part of the Terms of Reference. Part A looks at the process to gather the required information on all relevant rulings. Part B relates to the legal basis and administrative process for the exchange of information on rulings. Part C reports the required statistics on exchanges under the transparency framework for the year in review. Part D relates to the transparency requirements that apply for certain intellectual property regimes in connection with the Action 5 "nexus approach".

2. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information-gathering process

3. This section relates to the adequacy of the process used to collect information relating to the tax rulings that are in the scope of the transparency framework, both past and future rulings, as well as the jurisdictions with which information on rulings should be exchanged.

4. The process for gathering information about past rulings is explained first, followed by the process for gathering information about future rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

5. For unilateral APAs, a centralised recording procedure exists, which includes all records of completed APAs since the start of the IRS's Advance Pricing Mutual Agreement (APMA) programme. When APMA issues a unilateral APA, an executed copy of the agreement is sent electronically to the APMA Case Intake Coordinator. This person catalogues the execution date of the unilateral APA within APMA's case inventory management system. In order to identify the past rulings, the APMA Case Intake Coordinator went through the APA case inventory management system to prepare a list of unilateral APAs executed during the applicable time period. APAs are not published.

6. In order to identify all potential exchange jurisdictions, the APMA Case Intake Coordinator and personnel within the Exchange of Information (EOI) office read each unilateral APA itself. Where needed, the "best efforts approach" was used. This involved searching other available information, such as financial statements and lists of corporate subsidiaries.

7. With respect to the two other categories of rulings that can be issued, the IRS's Office of Associate Chief Counsel International (ACCI) contacted the highest level of the relevant branches responsible for specific topics, such as the treaties branch which would deal with all PE issues, and the cross-border financial products branch which handles conduit issues. Each branch conducted a search of records relating to its own office, including a manual search of physical records and an electronic search. The electronic search was possible because all private letter rulings since 1999 were required to be published in redacted form. These were identified using a legal research database, filtering according to the date of issuance and using search terms such as "permanent establishment" or "conduit." No such rulings were identified.

8. The Office of ACCI also contacted other relevant offices which are responsible for issuing rulings in their respective areas (financial institutions and products, partnerships and special industries, corporate, and tax exempt and governmental entities). Although

these offices are not dedicated to international issues, it was possible that they may have issued a ruling involving cross-border issues. No such rulings were identified.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

9. APAs which are future rulings are also identified by the APMA Case Intake Coordinator using the APA case inventory management system. In 2016 the centralised administration process applicable to unilateral APAs was amended to ensure all potential exchange jurisdictions are identified. Each responsible APMA team leader has been instructed to obtain and document the identities of all related parties to the taxpayer, including by asking the taxpayer for this information in the course of evaluating the taxpayer's request for an APA. This is followed by a review by the APMA director prior to signature of the APA. These procedures are set out in guidelines for APMA staff.

10. With respect to other types of future rulings, a formal centralised identification process was put into place to identify all potentially relevant cross-border rulings within the scope of the transparency framework. Every Associate Chief Counsel office that is authorised to issue a legal ruling must complete a processing check-sheet when finalising a ruling. Instructions were added to the processing check-sheet so that if the ruling is a cross-border ruling, it must be verified whether the ruling falls within one of the transparency framework categories. If so, a box is checked and the ruling will be referred to the Special Counsel for ACCI for confirmation. If the ruling is covered by the transparency framework, this person is also responsible for ensuring that information on all potential exchange jurisdictions is obtained.

Review and supervision mechanism (ToR I.4.3)

11. In order to ensure that all relevant rulings were identified, a specific communication plan was conducted by ACCI with all other manager attorneys in the relevant branches that can issue rulings. ACCI also held a training session for the groups outside of ACCI to educate the attorneys from other offices on the transparency framework.

12. The process for searching for past APAs was co-ordinated by the APMA Case Intake Coordinator, who was overseen by the APMA Director. The process of searching for other rulings was conducted and managed by one of the Special Counsels for ACCI.

Conclusion on section A

13. The United States has met all of the terms of reference for the information-gathering process and no recommendations are made.

B. The exchange of information

14. This section relates to how jurisdictions have adequately complied with the obligation to spontaneously exchange information on the tax rulings within the scope of the transparency framework.

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

15. The United States has the necessary domestic legal basis to exchange information spontaneously. The United States notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

16. The United States is a party to international agreements permitting spontaneous exchange of information, including the Convention, double tax agreements in force and Tax Information Exchange Agreements. In total, this network of agreements covers 64 jurisdictions that were members of the Inclusive Framework as of 31 December 2016.[1]

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

17. In order to share the required information with other jurisdictions, the template contained in Annex C of the Action 5 Report (OECD, 2015) is prepared by the APMA team leader when the unilateral APA is being finalised, and the template is reviewed by the APMA Director together with the final draft of the APA. For other types of rulings, if issued in the future, the Office of ACCI would complete the template. Once templates are completed, they are sent to EOI office personnel for review, including by comparing the template against the APA (or other ruling) and verifying the existence of exchange of information agreements with the identified potential exchange jurisdictions. A second review is undertaken by an EOI manager, including by comparing the template against the APA (or other ruling), and a final review is undertaken for approval of the exchange. The template is then uploaded into the EOI inventory management system and signed and sent to the relevant jurisdictions.

18. The United States ensures that the template is made available to the Competent Authority for exchange of information in a timely way by organising an electronic transmission between APMA (or ACCI if the situation occurs) and EOI personnel once the ruling is executed. For past rulings, the templates were submitted by APMA to the EOI office on a rolling basis beginning in mid-October 2016. For future rulings, the process of finalising the issuance of the ruling includes a process for ensuring the template is provided to the EOI personnel. Instructions on the process of completing the exchange have been issued, which includes a checklist of relevant issues and a template exchange letter.

19. The timeliness of exchanges is as follows. Note that the United States was able to undertake exchanges of information not only with OECD/G20 countries as required, but also with new members that joined the Inclusive Framework in 2016.

		Delayed exchanges		
Past rulings in the scope of the transparency framework	**Number of exchanges transmitted by 31 December 2016**	**Number of exchanges not transmitted by 31 December 2016**	**Reasons for the delays**	**Any other comments**
	364	0		
		Delayed exchanges		
Future rulings in the scope of the transparency framework	**Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted**	**Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority**	**Reasons for the delays**	**Any other comments**
	13	0		13 of these exchanges were made later than three months of the issuance of the unilateral APA, although within three months of the APAs being presented to the EOI office.
Total	377	0		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0		

20. Although no exchanges were later than required by the transparency framework, the United States notes that the APMA and EOI offices together have clarified that their expectation is that the exchange of information on future unilateral APAs will occur within three months of the unilateral APA being issued. The APMA and EOI offices instituted joint procedures to adhere to this expectation, including monitoring the timeliness of exchanges. All exchanges of future rulings made in 2017 have since been made within three months of the execution date of the unilateral APA by APMA.

Conclusion on section B

21. The United States has the necessary legal basis for spontaneous exchange of information, a process for completing the templates in a timely way and has completed all exchanges on time. The United States has met all of the terms of reference for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

22. The statistics for the 2016 review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	0	N/A
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	377	Australia, Austria, Bangladesh, Belgium, Brazil, Canada, China (People's Republic of), Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Jersey, Korea, Latvia, Lithuania, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Panama, Peru, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Turkey, United Kingdom
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	0	N/A
Permanent establishment rulings	Included in *de minimus* rule	N/A
Related party conduit rulings	0	N/A
De minimis rule	3	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	0	N/A
Total	377[2]	

D. Matters related to intellectual property regimes (ToR I.4.1.3)

23. The United States does not have an intellectual property regime for which transparency requirements were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made

Notes

1. Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. In addition, the United States has agreements permitting spontaneous exchange of information with Aruba, Australia, Austria, Bangladesh, Belgium, Bermuda, Brazil, Canada, China (People's Republic of), Colombia, Costa Rica, Croatia, Curaçao, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Guernsey, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Jamaica, Japan, Jersey, Kazakhstan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Monaco, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Turkey, Ukraine and United Kingdom.
2. The United States explained that three PE rulings templates identified in the question 23 table above relate to unilateral APAs and were exchanged on combined templates that identified two categories of rulings. Because these were included on combined templates, we have excluded the PE rulings from the total to avoid double counting.

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Annex A

Glossary

For the purposes of this peer review, these terms have the following meanings:

1. "**best efforts approach**" means the efforts undertaken by tax administrations to obtain information on the potential exchange jurisdictions in relation to past rulings, where such information was not included in the ruling itself. The best efforts approach does not require the tax administration to contact the taxpayer to obtain this information;
2. "**Competent Authority**" means for each respective jurisdiction, the persons and authorities which are responsible for exchanging the information on rulings;
3. "**confidentiality**" means a legal right that both the jurisdiction exchanging information and its taxpayers have to expect that information exchanged pursuant to the transparency framework is protected and used only for authorised purposes and disclosed only to authorised persons. All treaties and exchange of information instruments should contain provisions regarding the obligation to keep information exchanged confidential;
4. "**Convention**" means the multilateral Convention on Mutual Administrative Assistance in Tax Matters developed by the OECD and Council Of Europe;
5. "**de minimus rule**" applies for those jurisdictions which conducted fewer than five exchanges of information on rulings in a specific category, whereby they have to list in section D of the report (Statistics) only the number of exchanges in that category and not the jurisdictions with which the information on rulings was exchanged;
6. "**future ruling**" means, for jurisdictions which are reviewed in this annual report, a ruling which was issued on or after 1 April 2016;[1]
7. "**grandfathered IP regime**" means an IP regime which was not consistent with the nexus approach and is treated as abolished, but where certain existing taxpayers in the regime can continue to receive benefits under that regime for a certain period of time
8. "**international agreement**" means exchange of information agreements which permit spontaneous exchange of information. This includes, but is not limited to, the Convention (in the circumstances enumerated in Article 7 thereof); double tax conventions based on Article 26 of the OECD Model Tax Convention on Income and on Capital or Article 26 of the United Nations Model Double Taxation Convention, and regional agreements such as the Council Directive 2011/16/EU on administrative co-operation in the field of taxation between European Union member states. A Tax Information Exchange Agreement (TIEA) that is based on the 2002 OECD Model will permit spontaneous exchange of information only if it includes Article 5B contained in the 2015 Protocol, or otherwise explicitly provides for spontaneous exchange of information;

9. "**IP regime**" means preferential regimes offering tax benefits in respect of income from intellectual property;

10. "**new entrants**" means for the purposes of grandfathered IP regimes, new taxpayers that more recently entered the regime for the first time as well as IP assets which were more recently brought into the regime but were owned by taxpayers already benefitting from the regime. For the purposes of the transparency requirements for jurisdictions reviewed in this annual report, new entrants were generally those taxpayers or assets that entered the regime between 6 February 2015 and 30 June 2016;

11. "**nexus approach**" means the requirements set out in Chapter 4 of the Action 5 Report (OECD, 2015) in respect of IP regimes;

12. "**number of exchanges**" means the number of exchanges of information on rulings, 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;

13. "**past ruling**" means, for jurisdictions which are reviewed in this annual report, a ruling which was issued either on or after 1 January 2010 and was still in effect as at 1 January 2014; or on or after 1 January 2014 but before 1 April 2016;[2]

14. "**peer input**" means feedback provided by other FHTP members on their experience with a jurisdiction. Peers invited to provide input are those which have the legal framework in place for spontaneous exchange of information with the jurisdiction and which received information exchanges under the transparency framework from the jurisdiction. The peer input was collected by way of a questionnaire seeking feedback on issues such as the completeness, format and timeliness of exchanges. It is noted that for future rulings, the peer providing input should know the date of issuance of the ruling but would not know when the information on the ruling became available to the Competent Authority, and as such could not opine on whether exchanges on future rulings were late. However, if peers reported consistently long time lags between the issuance of future rulings and the exchanges of information, this would give cause to consider the issue more closely.

15. "**potential exchange jurisdictions**" means the jurisdictions with which information on rulings is to be exchanged as set out in Table 5.1 of the Action 5 Report (OECD, 2015), which are (i) 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; (ii) the jurisdiction of residence of the immediate parent of the taxpayer; (iii) the jurisdiction of residence of the ultimate parent of the taxpayer; (iv) for PE rulings, the jurisdiction of the head office or of the PE, as the case may be; (v) for related party conduit rulings, the jurisdiction of residence of the ultimate beneficial owner of the payment;

16. "**preferential regime**" means a regime that applies a preferential tax treatment to certain types of income or activities. Under the transparency framework, there is an obligation to spontaneously exchange information on cross-border taxpayer-specific rulings related to regimes that (i) are within the scope of the work of Forum on Harmful Tax Practices (as described in chapter 3 of the Action 5 Report (OECD, 2015)); (ii) are preferential; and (iii) meet the low or no effective tax rate factor. Preferential regimes which meet these conditions are thus within the scope of the transparency framework irrespective of whether the regime is determined to have any harmful features;

17. "**rebuttable presumption**" means an optional feature of IP regimes, whereby taxpayers have the ability to prove that more income should be permitted to benefit from the IP regime in exceptional circumstances where taxpayers that have undertaken substantial qualifying research and development activity in developing a qualifying IP asset or product can establish that the application of the nexus fraction leads to an outcome where the level of income eligible for a preferential IP regime is not commensurate with the level of their research and development activity, as described in paragraphs 67-69 of the Action 5 Report (OECD, 2015);

18. "**ruling**" means any advice, information or undertaking provided by a tax authority to a specific taxpayer or group of taxpayers concerning their tax situation and on which they are entitled to rely;

19. "**rulings within the scope of the transparency framework**" means the five types of taxpayer-specific rulings described in paragraphs 95-119 of the Action 5 Report (OECD, 2015), which are (1) rulings related to preferential regimes; (2) cross-border unilateral advance pricing agreements (APAs) and any other cross-border unilateral tax ruling (such as an advance tax ruling (ATR)) covering transfer pricing or the application of transfer pricing principles; (3) cross-border rulings giving a unilateral downward adjustment to the taxpayer's taxable profits in the country giving the ruling; (4) permanent establishment rulings; and (5) related party conduit rulings;

20. "**third category of IP assets**" means an optional feature of IP regimes, whereby income from certain IP assets may benefit from the IP regime if they share features of patents and are certified as such in a transparent certification process by a competent government agency that is independent from the tax administration, and provided that the taxpayer does not exceed certain revenue thresholds, as described in paragraph 37 of the Action 5 Report (OECD, 2015).

Notes

1. See 2015 Action 5 Report (OECD, 2015), footnote 11 and 13 of Chapter 5.
2. See 2015 Action 5 Report (OECD, 2015), footnote 11 and 13 of Chapter 5.

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BEPS Action 5 is one of the four BEPS minimum standards which all Inclusive Framework members have committed to implement. One part of the Action 5 minimum standard is the transparency framework for compulsory spontaneous exchange on certain rulings which, in the absence of transparency, could give rise to BEPS concerns. Over 100 jurisdictions have joined the Inclusive Framework and will take part in a peer review to assess their compliance with the transparency framework.

Specific terms of reference and a methodology have been agreed for the peer reviews to assess a jurisdiction's implementation of the minimum standard. The review of the transparency framework assesses countries against the terms of reference which focus on five key elements: i) information gathering process, ii) exchange of information, iii) confidentiality of the information received; iv) statistics on the exchanges of rulings; and v) transparency on certain aspect of intellectual property regimes.

This report reflects the outcome of the first peer review of the implementation of the Action 5 minimum standard. It covers the jurisdictions which participated in the BEPS Project prior to the creation of the Inclusive Framework, and it assesses implementation for the 1 January 2016 – 31 December 2016 period.

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