1 Introduction

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

The Action 5 Report (OECD, 2015[1]) is one of the four BEPS minimum standards. It involves two distinct aspects: a review of certain preferential tax regimes and substantial activities in no or only nominal tax jurisdictions to ensure they are not harmful, and 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 FHTP and approved by the Inclusive Framework on BEPS. It covers all Inclusive Framework members as well as Jurisdictions of relevance, i.e. jurisdictions that have not become members of the Inclusive Framework, but whose adherence to the standards is necessary to ensure a level playing field is achieved.

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 effective implementation of the standard.[1]

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.

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[1])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[1]).

Outline of the key aspects assessed in the annual report

This annual report contains the findings of the seventh annual peer review of jurisdictions' compliance with the transparency framework. It assesses the implementation of the transparency framework for the period 1 January 2022 - 31 December 2022.

The reports on each reviewed jurisdiction cover each of the aspects of the terms of reference. These capture the key elements of the transparency framework which are briefly described below. Where recommendations from prior years' peer review reports were not addressed, the report specifically notes this. Jurisdictions are urged to address these recommendations that have remained in place for more than one review.

A. The information gathering process

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. 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

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 pursuant to the relevant deadline outlined in each jurisdiction's report.[2] 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[1]) or the OECD XML Schema. Adequate completion of the summary section in the Annex C template or the OECD XML Schema should be ensured through adherence to the instruction sheet to the summary section or the internal FHTP suggested guidance, or an alternate process that allows the summary section to contain sufficient detail for the receiving jurisdiction's tax administration to appropriately assess the potential base erosion and profit shifting risks posed by the ruling where applicable.

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 summary 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.

With respect to the international exchange of information, the terms of reference required jurisdictions to exchange information with Inclusive Framework members being reviewed for the same year, to the extent that an exchange of information agreement was in force for such exchanges and subject to the recipient jurisdiction demonstrating that it would keep the information received confidential.[3]

C. Statistics

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.

D. Exchange of information on IP regimes

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, irrespective of whether a tax ruling is provided, identifying and exchanging information on taxpayers which benefit from the third category of IP assets (as defined in paragraph 37 of the Action 5 Report (OECD, 2015[1])), and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption (as defined in paragraphs 67- 69 of the Action 5 Report (OECD, 2015[1])). 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.

Spontaneous exchange of information is also required with respect to new entrants benefiting from grandfathered IP regimes (regardless of whether a ruling is provided). This applies with respect to IP regimes that were not compliant with the nexus approach, and where jurisdictions have taken steps to abolish the regime, or amend it, as part of the FHTP's regime review process. In some cases, when introducing those legislative changes, jurisdictions have chosen to provide grandfathering to existing taxpayers to provide time to transition to the new rules. Additional spontaneous exchange of information on the taxpayers benefiting from this grandfathering is required where taxpayers or new IP assets were transferred into a non-nexus IP regime in the period between the announcement of forthcoming changes and those changes taking place. The timelines for which enhanced transparency applies vary according to the time at which the FHTP reviewed the regime, and are set out in Annex A of the 2017 Progress Report on Preferential Regimes (OECD, 2017[2]).

Response to the report

In addition, jurisdictions had the option to include a response to the report and update on recent developments which occurred after the 2022 year in review. Where included, this reflects the individual jurisdiction's views, and not those of the FHTP or the OECD Secretariat.

References

OECD (2017), *Harmful Tax Practices - 2017 Progress Report on Preferential Regimes: Inclusive Framework on BEPS: Action 5*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/9789264283954-en. [2]

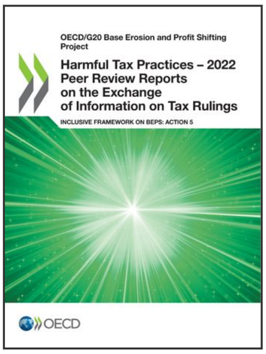
OECD (2015), *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/9789264241190-en. [1]

Notes

[1] Terms of Reference and Methodology for the review available at www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf (OECD, 2021).

[2] 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.

[3] 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, although Inclusive Framework members are encouraged to expand their exchange of information agreements where relevant.



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