

Panama

Panama has met all aspects of the terms of reference (OECD, 2017^[3]) (ToR) for the calendar year 2018 (year in review) except for having in place an effective review and supervision mechanism to ensure that all relevant information is captured adequately (ToR I.4.3). Panama receives one recommendation on this point for the year in review.

In the prior year report, Panama did not receive any recommendations. For the year in review, a new recommendation has been added.

Panama can legally issue one type of rulings within the scope of the transparency framework. In practice, Panama issued rulings within the scope of the transparency framework as follows:

- One past ruling;
- For the period 1 April 2017 - 31 December 2017: no future rulings; and
- For the year in review: no future rulings.

As no exchanges took place during the year in review, no peer input was received in respect of the exchanges of information on rulings received from Panama.

Introduction

This peer review covers Panama's implementation of the BEPS Action 5 transparency framework for the year 2018. The report has four parts, each relating to a key part of the ToR. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information gathering process

For the year in review, Panama could legally issue one type of ruling within the scope of the transparency framework: rulings related to preferential regimes.¹

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

For Panama, past rulings are any tax rulings within scope that are issued either: (i) on or after 1 January 2015 but before 1 April 2017; or (ii) on or after 1 January 2012 but before 1 January 2015, provided they were still in effect as at 1 January 2015.

In the prior year peer review report, it was determined that Panama's process in place to identify past rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. However, during the year in review, Panama did not in practice identify the jurisdictions of residence of related parties to transactions for which a preferential treatment is granted or which gives rise to income from related parties benefiting from a preferential treatment. This was brought to Panama's attention in the course of the peer review process in August 2019. It is noted that Panama immediately took steps to identify the remaining exchange jurisdictions.

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

For Panama, future rulings are any tax rulings within scope that are issued on or after 1 April 2017.

In the prior year peer review report, it was determined that Panama's undertakings to identify future rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. Panama's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

Review and supervision (ToR I.4.3)

In the prior year peer review report, it was determined that Panama's review and supervision mechanism was sufficient to meet the minimum standard. As noted above, during the year in review certain potential exchange jurisdictions were not identified, and this issue was not detected and resolved in the year in review through the review and supervision mechanism. Panama is therefore recommended to strengthen its review and supervision mechanism to ensure that the information gathering process is working effectively.

Conclusion on section A

For the year in review, Panama has met the ToR for the information gathering process, except for having in place a review and supervision mechanism to ensure that all relevant information is captured adequately (ToR I.4.3). Panama is recommended to strengthen its review and supervision mechanism to ensure that the information gathering process is working effectively.

B. The exchange of information

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

Panama has the necessary domestic legal basis to exchange information spontaneously. Panama 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.

Panama has international agreements permitting spontaneous exchange of information, including being a party to the (i) *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011^[4]) (“the Convention”), and (ii) double tax agreements in force with 17 jurisdictions,² however spontaneous exchange of information under these agreements is not authorised by Panama’s domestic law.

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

In the prior year peer review report, it was determined that Panama’s process for the completion and exchange of templates was sufficient to meet the minimum standard in absence of a legal framework in place for spontaneously exchanging information on rulings. Domestic legislation implementing the Convention was introduced in 2017 and permits spontaneous exchange of information under the Convention for taxable periods beginning on or after 1 January 2018.

For the year in review, the timeliness of exchanges is as follows:

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2018	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2018	Reasons for the delays	Any other comments
	0	3	Determination of the effective application of the information exchange instruments.	The information on the past ruling was exchanged in May 2019 with the jurisdiction of residence of the ultimate parent company. Exchanges with the jurisdictions of residence of two related parties have been performed in August 2019.
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		
Total	0	3		

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

During the year in review, Panama experienced some delays in the process of completing and exchanging the template for the one identified past ruling due to an error in the review and supervision mechanism with regard to the information gathering process identified in part A above, as well as uncertainty in determining whether the Convention allowed the spontaneous exchange of information on tax rulings, given the Convention applied for taxable periods from 1 January 2018. Information on the one identified past ruling was exchanged in May 2019 with the jurisdiction of residence of the ultimate parent company, as soon as the issue concerning the Convention was resolved. Exchanges with the jurisdictions of residence of two related parties have been performed in August 2019, quickly after the issue concerning the identification of the relevant exchange jurisdictions has been identified and resolved.

Conclusion on section B

Panama has the necessary legal basis for spontaneous exchange of information but experienced some delay in the process of completing and exchanging the templates in a timely way. However, given that these issues have been resolved, the exchanges were completed quickly after the underlying issues have been identified and resolved and as of 2019, Panama cannot legally issue any type of rulings within the scope of the transparency framework, it is concluded that Panama has met all of the ToR for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

As there was no information on rulings exchanged by Panama for the year in review, no statistics can be reported.

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

Panama offers an intellectual property regime (IP regime)³ that is not subject to the transparency requirements under the Action 5 Report (OECD, 2015^[5]), because:

- **New entrants benefitting from the grandfathered IP regime:** this regime has been amended by implementing the nexus approach from 27 December 2018. Taxpayers benefitting from the previous regime cannot benefit from grandfathering. As such, no enhanced transparency requirements apply.
- **Third category of IP assets:** not applicable as the regime does not allow the third category of IP assets to qualify for the benefits.
- **Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption:** not applicable as the regime does not allow the nexus ratio to be treated as a rebuttable presumption.

Panama introduced a new IP regime⁴ which came into effect from 27 December 2018. It is noted that this regime is not subject to transparency requirements under the Action 5 Report (OECD, 2015^[5]), because:

- **New entrants benefitting from the grandfathered IP regime:** as this is a new IP regime rather than a grandfathered IP regime, transparency on new entrants is not relevant.
- **Third category of IP assets:** not applicable as the regime does not allow the third category of IP assets to qualify for the benefits.

- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption:*** not applicable as the regime does not allow the nexus ratio to be treated as a 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
Panama did not identify the jurisdictions of residence of related parties to transactions for which a preferential treatment is granted or which gives rise to income from related parties benefiting from a preferential treatment with regard to the one identified past ruling. This issue was not identified through the review and supervision mechanism.	Panama is recommended to strengthen its review and supervision mechanism to ensure that the information gathering process is working effectively.
Panama experienced some delays in exchanging information on the one identified past ruling due to an error in the review and supervision mechanism with regard to the information gathering process as well as uncertainty in the determination of the effective application of the information exchange instruments.	No recommendation is made because Panama completed the exchanges on the one identified past ruling quickly after the issues were identified and resolved, and this is not a recurring issue.

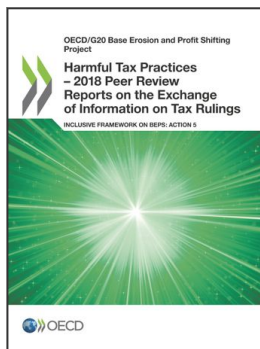
Notes

¹ With respect to the following preferential regime: Multinational Companies Headquarters' regime (i.e. MHQ/SEM). These rulings are known as "fiscal agreements". Law 57 of 2018, entered into force on 1 January 2019, repealed the provision that included the possibility for Multinational headquarters (MHQ) Licensed Companies to obtain a fiscal agreement. Therefore as of 2019, Panama cannot legally issue any type of rulings within the scope of the transparency framework.

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. Panama also has double tax agreements with Barbados, Czech Republic, France, Ireland, Israel, Italy, Korea, Luxembourg, Mexico, Netherlands, Portugal, Qatar, Singapore, Spain, United Arab Emirates, United Kingdom and Viet Nam.

³ This regime is the City of knowledge technical zone.

⁴ This regime is the General IP regime.



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