

Gibraltar

Gibraltar has met all aspects of the terms of reference (OECD, 2021^[3]) (ToR) for the calendar year 2020 (year in review) that can be met in the absence of rulings being issued in practice and no recommendations are made.

This is Gibraltar's first review of implementation of the transparency framework.

Gibraltar can legally issue four types of rulings within the scope of the transparency framework.

In practice, Gibraltar issued no rulings within the scope of the transparency framework.

As no rulings were issued, no exchanges were required to take place, and no peer input was received in respect of the exchanges of information on rulings received from Gibraltar.

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

485. Gibraltar can legally issue the following four types of rulings within the scope of the transparency framework: (i) 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; (ii) rulings providing for unilateral downward adjustments; (iii) permanent establishment rulings; and (iv) related party conduit rulings. Rulings are issued by the Commissioner of Income Tax (hereafter “the Commissioner”), under the domestic procedure set out in the Income Tax Rules (Tax Rulings) of 2018 (hereafter “the Rules”).

Past rulings (ToR I.A.1.1, I.A.1.2, I.A.2.1, I.A.2.2)

486. For Gibraltar, past rulings are any tax rulings issued prior to 1 March 2020. However, there is no obligation for Gibraltar to conduct spontaneous exchange information on past rulings.

Future rulings (ToR I.A.1.1, I.A.1.2, I.A.2.1)

487. For Gibraltar, future rulings are any tax rulings within scope that are issued on or after 1 March 2020.

488. The ruling process in Gibraltar encompasses an assessment of whether the ruling issued by the Commissioner is within the scope of the transparency framework. All relevant information, including information on relevant exchange jurisdictions, needs to be provided by the taxpayer at the time the request for a ruling is submitted to the ITO. In this regard, Gibraltar notes that the Rules requires extensive documentation to be submitted with any ruling application including, but not limited to: i) a comprehensive description of the facts and circumstances which give rise to the request; ii) a description of the underlying business activities to which the tax ruling relates including the nature and place of the activities, the place of effective management of the business, the human and technical means used (or intended to be used) by the applicant in pursuing the business activities and the classes of customers at which the business activities are targeted or intended to be targeted; and iii) sufficient evidence to support any assertion made in the application, including benchmarks or thresholds applied for determining arms-length equivalence or other matters. If the ruling is identified as within the scope of the transparency framework, information on the jurisdiction of residence of related parties, ultimate and immediate parent entities, head office charged with effective management and ultimate beneficial owners covered by the ruling would also be sought. The Commissioner can request any additional information deemed necessary for the exchange of information directly to the applicant or through the issuance of a statutory notice for gathering such information.

489. To date no rulings within the scope of the transparency framework have been issued as no applications have been submitted by taxpayers requiring the issuance of such rulings. As such, there was no need to identify potential exchange jurisdictions.

Review and supervision (ToR I.A.3)

490. The accuracy of the information gathering process and the identification of rulings within the scope of the transparency framework is supervised by the corporate tax team within ITO. Taxpayers can send their ruling applications electronically to a dedicated email address. Applications are reviewed by the corporate tax team with the oversight of both the head of the corporate tax section and a senior counsel, who advise on technical and substantive matters relating to procedural aspects of the domestic process, requirements under the transparency framework, adherence to legislative timeframes and requirements, and finally the content of the ruling applications. Prior to the issuance of any ruling, an internal control is in place to ensure that all relevant information needed for the purpose of the exchange of information under the transparency framework is adequately captured. If needed, requests for further information can be

made in accordance with the Rules. Given the expected small volumes of ruling applications in the jurisdiction, Gibraltar is able to ensure a meticulous supervision and monitoring process of all ruling applications made.

Conclusion on section A

491. Gibraltar has met all of the ToR for the information gathering process that can be met in the absence of rulings being issued in practice and no recommendations are made.

B. The exchange of information (ToR II.B)

Legal basis for spontaneous exchange of information (ToR II.B.1, II.B.2)

492. Gibraltar has the necessary domestic legal basis to exchange information spontaneously. Gibraltar 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.

493. Gibraltar has international agreements permitting spontaneous exchange of information, including participating in (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011^[4]) (“the Convention”) following the territorial extension of this convention to Gibraltar by the United Kingdom, (ii) bilateral agreements in force with one jurisdiction and (iii) tax information exchange agreements in force with four jurisdictions.¹

Completion and exchange of templates (ToR II.B.3, II.B.4, II.B.5, II.B.6, II.B.7)

494. Although Gibraltar issued no future rulings, Gibraltar has indicated that the Commissioner is the competent authority for Gibraltar for the purposes of exchanging information under the transparency framework. In the event that a relevant ruling is issued, the rulings team within ITO is in charge of the preparation of the information exchanges with the supervision and guidance by both the head of the corporate tax section and a senior counsel and in close coordination with the Commissioner. Exchanges would either be sent via encrypted email to the corresponding competent authority of the relevant exchange jurisdiction(s) or made available for download by the same jurisdiction(s) via Her Majesty's Government of Gibraltar's cloud facility. Gibraltar indicated its intention to complete the templates in the form of Annex C of the BEPS Action 5 Report (OECD, 2015^[1]) and to exchange them in PDF template format. The various levels of supervision and monitoring would ensure that the summary section of the template is completed in line with the internal FHTP suggested guidance and each of the mandatory fields of information required in the Annex C template are present in the information exchanged. Given the expected small volumes of ruling applications in the jurisdiction, Gibraltar is able to ensure a meticulous supervision and monitoring process of applicable procedures and timelines. To this end, internal communication functions, including email-based reminders and diary functions, are used as well. Finally, the close coordination between the rulings team and the Commissioner ensures that information is readily available to the Competent Authority (i.e. the Commissioner) to be exchanged according to the FHTP agreed timelines and in any case within a period of 3 months from the date of issue of the ruling.

495. As Gibraltar did not issue any rulings within the scope of the transparency framework in the relevant period, Gibraltar was not required to exchange any information on rulings in the year in review and no data on the timeliness of exchanges can be reported.

Conclusion on section B

496. Gibraltar has the necessary legal basis for spontaneous exchange of information and a process for completing the templates in a timely way. Gibraltar has met all of the ToR 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)

497. As no rulings were issued, no statistics can be reported.

D. Matters related to intellectual property regimes (ToR I.A.1.3)

498. Gibraltar does not offer an intellectual property regime for which transparency requirements under the Action 5 Report (OECD, 2015^[1]) 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.

References

- OECD (2021), *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 Publishing, Paris, <http://www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf>. [3]
- OECD (2015), *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241190-en>. [1]
- OECD (ed.) (2017b), *Harmful Tax Practices - 2017 Progress Report on Preferential Regimes*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264283954-en>. [2]
- OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264115606-en>. [4]

Notes

¹ Participating jurisdictions to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Gibraltar also has a bilateral agreement with the United Kingdom and tax information exchange agreements with Guernsey, Isle of Man, United Kingdom and United States.



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