

# Malaysia

Malaysia has met all aspects of the terms of reference (OECD, 2021<sup>[3]</sup>) (ToR) for the calendar year 2020 (year in review), except for identifying all potential exchange jurisdictions for future rulings (ToR I.A.2.1) and for providing information on rulings to the Competent Authority without undue delay and undertaking spontaneous exchange of information on all future tax rulings within the scope of the transparency framework (ToR II.B). Malaysia receives two recommendations on these points for the year in review.

In the prior year report, Malaysia received the same recommendation to identify all potential exchange jurisdictions for future rulings. In the prior year report, as well as in the 2017 and 2018 peer reviews, Malaysia had received the same recommendation to provide information on rulings to the Competent Authority without undue delay and to undertake spontaneous exchange of information on all future tax rulings within the scope of the transparency framework, but also with regard to past rulings. Malaysia resolved the issue with regard to past rulings and therefore the recommendation no longer relates to past rulings. In the prior year report, as well as in the 2017 and 2018 peer reviews, Malaysia had received a recommendation to identify and exchange information on new entrants to the grandfathered regime. Malaysia resolved this issue and therefore this recommendation is now removed.

Malaysia can legally issue five types of rulings within the scope of the transparency framework.

In practice, Malaysia issued rulings within the scope of the transparency framework as follows:<sup>1</sup>

Type of ruling	Number of rulings
Past rulings	249
Future rulings in the period 1 September 2017 – 31 December 2017	7
Future rulings in the calendar year 2018	12
Future rulings in the calendar year 2019	17
Future rulings in the year in review	40

Peer input was received from two jurisdictions in respect of the exchanges of information on rulings received from Malaysia. The input was generally positive, noting that overall information was complete and in a correct format. However, one peer indicated that exchanges on rulings were not timely.

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

764. Malaysia can legally issue the following five types of rulings within the scope of the transparency framework: (i) preferential regimes;<sup>2</sup> (ii) 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; (iii) rulings providing for unilateral downward adjustments; (iv) permanent establishment rulings; and (v) related party conduit rulings.

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

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

766. In the prior years' peer review reports, it was determined that Malaysia's undertakings to identify past rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. Malaysia's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

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

767. For Malaysia, future rulings are any tax rulings within scope that are issued on or after 1 September 2017.

768. In the prior year's peer review report, it was determined that Malaysia's undertakings to identify past and future rulings and all potential exchange jurisdictions have met all the ToR, except for identifying all potential exchange jurisdictions for future rulings (ToR I.A.2.1). Therefore, Malaysia was recommended to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings.

769. During the year in review, Malaysia was still in the process of putting in place new requirements for taxpayers to provide the information required for completing the Annex C template upfront, including information on potential exchange jurisdictions. Malaysia is therefore recommended to continue its efforts to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings.

### ***Review and supervision (ToR I.A.3)***

770. In the prior years' peer review reports, it was determined that Malaysia's review and supervision mechanism was sufficient to meet the minimum standard. Malaysia's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

### ***Conclusion on section A***

771. Malaysia has met all of the ToR for the information gathering process except for identifying all potential exchange jurisdictions for future rulings (ToR I.A.2.1). Malaysia is recommended to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings.

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

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

772. Malaysia has the necessary domestic legal basis to exchange information spontaneously. Malaysia 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.

773. Malaysia has international agreements permitting spontaneous exchange of information, including being a party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011<sup>[4]</sup>) (“the Convention”) and (ii) bilateral agreements in force with 73 jurisdictions.<sup>3</sup>

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

774. In the prior year peer review report, it was determined that Malaysia’s internal policies, processes and procedures for the completion and exchange of templates were sufficient to meet the minimum standard, except for the provision of information on rulings to the Competent Authority without undue delay, and the timely spontaneous exchange of information on past and future rulings (ToR II.B). It should be noted that for the peer input, one peer indicated that the summary box of the template was not sufficient.

775. Malaysia’s internal procedures and timelines to provide information on rulings to the Competent Authority remain unchanged, and therefore the recommendation to reduce the timelines for providing information on rulings to the Competent Authority without undue delay remains.

776. During the year in review, Malaysia prioritised resources for the exchange of information on past rulings and completed the exchanges on all 160 past rulings. However, Malaysia was not able to complete the exchanges of information on future rulings during the year in review. Therefore, the recommendation to complete the templates for all relevant future rulings and to ensure that the exchanges of information on rulings occur as soon as possible remains. The same recommendation for past rulings has now been removed.

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

Past rulings within the scope of the transparency framework	Number of exchanges transmitted by 31 December 2020	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2020	Reasons for the delays	Any other comments
	360	0	N/A	N/A
Future rulings within 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	31	N/A	N/A
<b>Total</b>	360	31		

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

778. Malaysia has the necessary legal basis to undertake spontaneous exchange of information. Malaysia is recommended to continue its efforts to reduce the timeliness for providing the information on rulings to the Competent Authority and to complete the templates for all relevant future rulings and to ensure that the exchanges of information on future rulings occur as soon as possible (ToR II.B).

## C. Statistics (ToR IV)

779. The statistics for the year in review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	391	Australia, Belgium, Brazil, Brunei Darussalam, Canada, China (People's Republic of), Czech Republic, Denmark, Egypt, Finland, France, Germany, Hong Kong (China), Hungary, India, Indonesia, Ireland, Italy, Japan, Korea, Liechtenstein, Luxembourg, Myanmar, Macau (China), Mexico, Mauritius, Netherlands, New Zealand, Norway, Pakistan, Panama, Poland, Portugal, Qatar, Romania, Russia, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Chinese Taipei, Thailand, Tunisia, Turkey, United Kingdom, Viet Nam
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	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	0	N/A
Permanent establishment rulings	0	N/A
Related party conduit rulings	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
<b>Total</b>	<b>391</b>	

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

780. Malaysia offered three intellectual property regimes (IP regime)<sup>4</sup> that were abolished as of 1 July 2018 and are subject to transparency requirements under the Action 5 Report (OECD, 2015<sup>[1]</sup>) It states that the identification of the benefitting taxpayers will occur as follows:

- **New entrants benefitting from the grandfathered IP regime:** Transparency obligations apply for the three regimes, because grandfathering is provided to entrants that entered the regime after the

relevant date from which enhanced transparency obligations apply. Malaysia confirms that it has not granted any new approvals into the regime (both new taxpayers and new IP assets from existing taxpayers) after the cut-off date of 16 October 2017. Therefore, the recommendation to identify and exchange information on all new entrants to the grandfathered IP regime as soon as possible (ToR I.A.1.3) can be removed.

- **Third category of IP assets:** not applicable as the IP regimes have been abolished.
- **Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption:** not applicable as the IP regimes have been abolished.

## Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Malaysia experienced difficulties in identifying all potential exchange jurisdictions for future rulings.	Malaysia is recommended to continue its efforts to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings. This recommendation remains unchanged since the prior year peer review report.
Malaysia experienced delays in the provision of rulings to the Competent Authority and did not undertake spontaneous exchange of information on all future tax rulings within the scope of the transparency framework during the year in review.	Malaysia is recommended to continue its efforts to reduce the timeliness for providing the information on rulings to the Competent Authority and to complete the templates for all relevant future rulings and to ensure that the exchanges of information on future rulings occur as soon as possible. This recommendation remains unchanged since the 2017, 2018 and 2019 peer review reports.

## 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]
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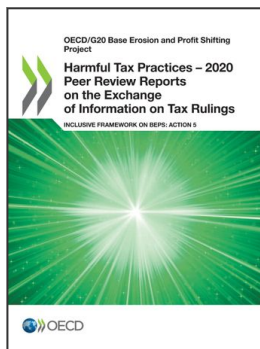
## Notes

<sup>1</sup> During the year in review, it was concluded that Malaysia had included rulings that are not cross-border in the prior years' peer review reports. As these rulings do not fall within the scope of the BEPS Action 5 transparency framework, these rulings are no longer counted for the purpose of the annual peer review.

<sup>2</sup> 1) Pioneer status – contract R&D, 2) Biotechnology industry, 3) Principal hub, 4) MSC Malaysia, 5) Green technology services and 6) Special economic regions, 7) High technology regime and 8) Treasury management centre.

<sup>3</sup> 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](http://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm). Malaysia also has bilateral agreements with Albania, Argentina, Australia, Austria, Bahrain, Bangladesh, Belgium, Bosnia and Herzegovina, Brunei Darussalam, Canada, Chile, China (People's Republic of), Croatia, Czech Republic, Denmark, Egypt, Fiji, Finland, France, Germany, Hong Kong (China), Hungary, India, Indonesia, Iran, Ireland, Italy, Japan, Jordan, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Laos, Lebanon, Luxembourg, Malta, Mauritius, Mongolia, Morocco, Myanmar, Namibia, Netherlands, New Zealand, Norway, Pakistan, Papua New Guinea, Philippines, Poland, Qatar, Romania, Russia, San Marino, Saudi Arabia, Seychelles, Singapore, South Africa, Spain, Slovak Republic, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Turkey, Turkmenistan, United Arab Emirates, United Kingdom, Uzbekistan, Venezuela, Viet Nam, Zimbabwe.

<sup>4</sup> These regimes are: 1) Biotechnology industry, 2) MSC Malaysia and 3) Principal hub.



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