# France

France has met all aspects of the terms of reference (OECD, 2017[3]) (ToR) for the calendar year 2019 (year in review), except for identifying and exchanging information on new entrants to the grandfathered IP regime and or taxpayers benefitting from the third category of IP assets (ToR I.4.1.3). France receives one recommendation on this point for the year in review.

In the prior year report, as well as in the 2016, 2017 and 2018 peer reviews, France had received the same recommendation. As it has not been addressed, the recommendation remains in place.

France can legally issue three types of rulings within the scope of the transparency framework.

In practice, France issued rulings within the scope of the transparency framework as follows:

- 45 past rulings;
- For the period 1 April 2016 - 31 December 2016: four future rulings;
- For the calendar year 2017: six future rulings,
- For the calendar year 2018: six future rulings, and
- For the year in review: 16 future rulings.

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

## A. The information gathering process

398. France can legally issue the following three types of rulings within the scope of the transparency framework: (i) preferential regimes;[1] (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; and (iii) permanent establishment rulings.

399. For France, past rulings are any tax rulings within scope that are issued either: (i) on or after 1 January 2014 but before 1 April 2016; or (ii) on or after 1 January 2010 but before 1 January 2014, provided they were still in effect as at 1 January 2014. Future rulings are any tax rulings within scope that are issued on or after 1 April 2016.

400. In the prior years' peer review reports, it was determined that France's undertakings to identify past and future rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. In addition, it was determined that France's review and supervision mechanism was sufficient to meet the minimum standard. France's implementation remains unchanged, and therefore continues to meet the minimum standard.

401. France has met all of the ToR for the information gathering process and no recommendations are made.

## B. The exchange of information

402. In the prior years' peer review reports, it was determined that France's process for the completion and exchange of templates were sufficient to meet the minimum standard. With respect to past rulings, no further action was required. France's implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

403. France 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"), (ii) the Directive 2011/16/EU with all other European Union Member States and (iii) bilateral agreements in force with 125 jurisdictions.[2]

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

| 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 |
| | 16 | 0 | N/A | 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 | N/A |

405. France 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. France has met all of the ToR for the exchange of information process and no recommendations are made.

## C. Statistics (ToR IV)

406. 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 | *De minimis rule* applies | 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 | *De minimis rule* applies | N/A |
| Permanent establishment rulings | 9 | Germany, Japan, Luxembourg, Sweden, United Kingdom, United States |
| *De minimis rule* applies | 7 | |
| 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** | 16 | |

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

407. France offers an intellectual property regimes (IP regime)[3] that is subject to the transparency requirements under the Action 5 Report (OECD, 2015[1]). This regime was amended with effect from 1 January 2019 and is compliant with the nexus approach. It states that the identification of the benefitting taxpayers will occur as follows:

- ***New entrants benefitting from the grandfathered IP regime***: With respect to the previous form of the regime that existed until 31 December 2018, France should have information available and exchanged on new entrants after the relevant date from which enhanced transparency obligations apply. France has not identified information on new entrants to the previous IP regime, and as such has not exchanged information on these taxpayers. Therefore, France is recommended to identify and exchange information on all new entrants to the IP regime. This recommendation was included in the 2016, 2017 and 2018 peer review reports, and has not yet been acted upon. The recommendation is therefore retained.
- ***Third category of IP assets***: The previous form of the regime provided 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[1]). France has not implemented all of the requirements associated with this category of IP assets, thus the transparency requirements described in paragraph 37 would still apply to this case. France did not identify taxpayers benefiting from the third category of IP assets, and as such, has not exchanged information on these taxpayers. This recommendation was included in the 2016, 2017 and 2018 peer review reports, and has not been acted upon. The recommendation is therefore retained.

  In addition, the amended IP regime will allow benefits for the third category of IP assets.[4] Taxpayers benefiting from the regime have to provide a list of relevant assets in their tax return. Based on the tax return, France can identify the taxpayers benefiting from the third category of IP assets.
- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption***: The amended IP regime allows for the option to treat the nexus ratio as a rebuttable presumption.

Taxpayers opting to do so must obtain a ruling from the tax administration, and are required to list the specific assets for which the presumption was rebutted in their tax return. France confirms that no taxpayer elected to treat the nexus approach 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 |
|---|---|
| France did not identify or exchange information on new entrants to the IP regime or taxpayers benefitting from the third category of IP asset with respect to the former IP regime. | France is recommended to identify and exchange information on all new entrants to the IP regime, and to identify and exchange information on taxpayers benefitting from the third category of IP assets. This recommendation remains unchanged since the 2016, 2017 and 2018 peer review reports. |

## References


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 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/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]

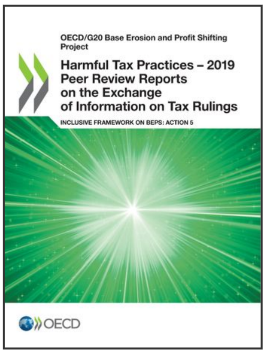
## Notes

[1] With respect to the following preferential regime: Shipping regime.

[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. France also has bilateral 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), Chinese Taipei, Congo, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Ecuador, Egypt, Estonia, Ethiopia, Finland, 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, North Macedonia, Norway, Oman, Pakistan, Panama, Philippines, Poland, Portugal, Qatar, 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, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Venezuela, Viet Nam, Zambia and Zimbabwe.

[3] Reduced corporation tax rate on IP income, formerly known as Reduced rate for long term capital gains and profits from the licensing of IP rights.

[4] The regime provides for the third category of IP assets (article 238(I)(5) of the French General Tax Code), but will only entry into force by a decree (article 37(III)(2) of the Finance Law for 2020) that was not yet published in 2019.

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