

## Spain

Spain has met all aspects of the terms of reference (OECD, 2017<sup>[3]</sup>) (ToR) for the calendar year 2018 (year in review) except for collecting and exchanging information on new assets of existing taxpayers benefitting from the grandfathered IP regime (ToR I.4.1.3). Spain receives one recommendation on this point for the year in review.

In the prior year report, Spain received the same recommendation. As it has not been addressed, the recommendation remains in place.

Spain can legally issue three types of rulings within the scope of the transparency framework. In practice, Spain issued rulings within the scope of the transparency framework as follows:

- 146 past rulings;
- For the period 1 April 2016 - 31 December 2016: 28 future rulings;
- For the calendar year 2017: 46 future rulings, and
- For the year in review: 22 future rulings.

Rulings excluding APAs are published in anonymised form.<sup>1</sup>

Peer input was received from four jurisdictions in respect of the exchanges of information on rulings received from Spain. The input was generally positive, noting that information was complete, in a correct format and received in a timely manner.

## Introduction

This peer review covers Spain'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

Spain can legally issue the following three 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; and (iii) permanent establishment rulings.

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

For Spain, 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.

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

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

For Spain, future rulings are any tax rulings within scope that are issued on or after 1 April 2016.

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

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

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

## B. The exchange of information

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

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

Spain is a party to international agreements permitting spontaneous exchange of information, including (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010*

*Protocol* (OECD/Council of Europe, 2011) (“the Convention”), (ii) the Directive 2011/16/EU with all other European Union Member States and (iii) double tax agreements in force with 93 jurisdictions.<sup>3</sup>

### **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 Spain’s process for the completion and exchange of templates were sufficient to meet the minimum standard. Spain’s implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

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   |
|   | 2  | 0   | N/A                    | The exchanges took place with a jurisdiction with whom the Convention came into force in 2018. |
| 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   |
|   | 75   | 0   | N/A                    | N/A  |
| <b>Total</b>  | <b>77</b>  | <b>0</b>  |                        |  |

| 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**

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

## **C. Statistics (ToR IV)**

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   | 0                   | 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 | 57                  | Austria, Belgium, Canada, China (People’s Republic of), Czech Republic, Denmark, France, Germany, Greece, Hungary, Indonesia, Ireland, Italy, Japan, Korea, Latvia, Luxembourg, Malaysia, Netherlands, Poland, Portugal, Romania, Russia, |

|  |           |   |
|--|-----------|---|
|  |           | Singapore, Slovak Republic, Sweden, Switzerland, United Kingdom, United States  |
| 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   | N/A       | N/A   |
| Permanent establishment rulings  | 20        | Andorra, Belgium, Colombia, France, Germany, Ireland, Luxembourg, Malta, Netherlands, United Kingdom  |
| Related party conduit rulings  | N/A       | N/A   |
| <i>De minimis</i> rule   | N/A       | 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 | 21        | Argentina, Belgium, Brazil, Chile, Colombia, Germany, India, Ireland, Italy, Luxembourg, Mexico, Netherlands, Portugal, Turkey, United Kingdom, Uruguay |
| <b>Total</b>   | <b>98</b> |   |

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

Spain offers three intellectual property regimes (IP regime)<sup>4</sup> that are subject to the transparency requirements under the Action 5 Report (OECD, 2015<sup>[5]</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 regime, because grandfathering is provided to entrants that entered the regime after the relevant date from which enhanced transparency obligations apply. In the previous year peer review report, it was explained that Spain adopted a new tax form in August 2017 so that it could identify the new taxpayers for which the enhanced transparency requirements apply. However, Spain was not able to identify new IP assets entering the regime after the relevant date and benefiting from grandfathering. Spain was therefore recommended to identify and exchange relevant information on new assets of existing taxpayers benefitting from the grandfathered IP regime.

In order to act on this recommendation, Spain tried to include a new reporting obligation in the tax form that was adopted in August 2017. However, in October 2017 the tax form was the subject of an appeal before the National Court and the judicial procedure is still under way. As such, this information has not been able to be collected for exchange. Therefore, the prior year recommendation remains.

- **Third category of IP assets:** not applicable as the regimes do 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 regimes do 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  |
|---|---|
| Spain has not exchanged information on new assets of existing taxpayers benefitting from the grandfathered regime as this information was not available during the year in review. It is noted that Spain has already started to take steps to amend the tax form adopted in August 2017 to address this, but the tax form was appealed before the National Court and proceedings remained underway for the year in review. | Spain is recommended to continue its efforts to identify and exchange relevant information on new assets of existing taxpayers benefitting from the grandfathered IP regime. This recommendation remains unchanged since the prior year peer review report. |

### Notes

<sup>1</sup> Rulings issued by the General Directorate of Taxation are available at <http://petete.minhafa.gob.es/consultas>.

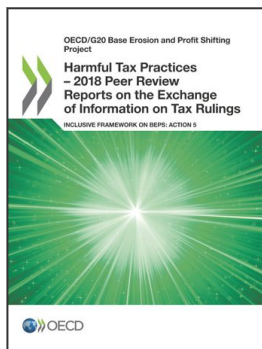
<sup>2</sup> With respect to the following preferential regimes: 1) Partial exemption for income from certain intangible assets and 2) Shipping regime.

<sup>3</sup> Parties to the Convention are available here: <http://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm>. Spain also has double tax agreements with: Albania, Algeria, Andorra, Argentina, Armenia, Australia, Austria, Barbados, Belarus, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, China (People's Republic of), Colombia, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Georgia, Germany, Greece, Hong Kong (China), Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Moldova, Morocco, Netherlands, New Zealand, Nigeria, North Macedonia, Norway, Oman, Pakistan, Panama, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Senegal, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Sweden, Switzerland, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Venezuela and Viet Nam.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union. The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

<sup>4</sup> These regimes are the partial exemptions for income from certain intangible assets for: 1) Federal regime, 2) Basque country and 3) Navarra.



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