

Poland

Poland has met all aspects of the terms of reference (OECD, 2017^[3]) (ToR) for the calendar year 2018 (year in review) except for identifying all potential exchange jurisdictions for future rulings other than APAs (ToR I.4.2.1). Poland receives one recommendation on this point for the year in review.

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

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

- 84 past rulings;
- For the period 1 April 2016 - 31 December 2016: six future rulings;
- For the calendar year 2017: 20 future rulings, and
- For the year in review: 16 future rulings.

Poland publishes their tax rulings, except for APA rulings, in redacted form on Poland's Ministry of Finance website.¹

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

Introduction

This peer review covers Poland'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

Poland 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.

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

For Poland, 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 Poland's undertakings to identify past rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. Poland'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 Poland, 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 Poland's undertakings to identify future rulings and all potential exchange jurisdictions have met the ToR, except for identifying all potential exchange jurisdictions for future rulings other than APAs (ToR I.4.2.1). Therefore, Poland was recommended to ensure that all potential exchange jurisdictions are identified swiftly for future rulings other than APAs. With effect from 30 April 2019, Poland addressed the recommendation by amending its legislation. According to the amended provisions, taxpayers requesting cross-border rulings are now obliged to include information related to all potentially affected jurisdictions in the ruling request form. However, during the year in review Poland still experienced problems in identifying the potential exchange jurisdictions and therefore the prior year recommendation remains. This is a continuing recommendation from the two prior years.

Review and supervision (ToR I.4.3)

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

Conclusion on section A

Poland has met all of the ToR for the information gathering process, except for identifying all potential exchange jurisdictions for all future rulings other than APAs (ToR I.4.2.1). As such, Poland is recommended to ensure that all potential exchange jurisdictions are identified swiftly for future rulings other than APAs.

B. The exchange of information

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

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

Poland 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) double tax agreements in force with 88 jurisdictions.²

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 Poland's process for the completion and exchange of templates were sufficient to meet the minimum standard. Poland'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
	8 ³	0		These exchanges relate to delayed exchanges reported in the prior year peer review report and were exchanged by February 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
	23	2		The two delayed exchanges relate to delayed exchanges reported in the prior year peer review report and were exchanged by February 2018.
Total	31	2		

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

Poland has the necessary legal basis for spontaneous exchange of information, and a process for completing the templates in a timely way. Poland addressed the delays and completed outstanding exchanges early in the year in review. All additional exchanges were completed in a timely way and the prior year recommendation is removed. Poland has met all 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	N/A	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	10	Austria, Belgium, Germany, Italy, Malta, Netherlands, United Kingdom
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	1	<i>De minimis</i> rule applies
Permanent establishment rulings	4	<i>De minimis</i> rule applies
Related party conduit rulings	18	Canada, Chile, Korea, Switzerland, Turkey, United States
<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	N/A	N/A
Total	33	

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

Poland introduced a new intellectual property regime (IP regime)⁴ which came into effect from 1 January 2019. Although this is after the year in review, 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
During the year in review, Poland encountered delays in identifying all potential exchange jurisdictions for future rulings other than APAs.	Poland is recommended to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings other than APAs. This recommendation remains unchanged since the prior year peer review report.

Notes

¹ Available at: <http://sip.mf.gov.pl/>

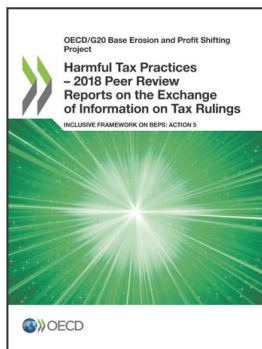
² Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Poland also has bilateral agreements with Albania, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Chile, China (People's Republic of), Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Guernsey, Hungary, Iceland, India, Indonesia, Iran, Ireland, Isle of Man, Israel, Italy, Jamaica, Japan, Jersey, Jordan, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Moldova, Mongolia, Montenegro, Morocco, Netherlands, New Zealand, North Macedonia, Norway, Pakistan, Peru, Philippines, Portugal, Qatar, Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syria, Chinese Taipei, Tajikistan, Thailand, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Vanuatu, Viet Nam and Zimbabwe.

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.

³ The prior year peer review report noted that there were nine delayed exchanges of past rulings, but Poland indicates that one of these rulings was not in the scope of the Action 5 transparency framework.

⁴ IP box.



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