

Spain

Spain has met all aspects of the terms of reference (OECD, 2021^[3]) (ToR) for the calendar year 2021 (year in review), and no recommendations are made.

In the prior year's peer review report, as well as in the 2017-2019 peer review reports, Spain had received a recommendation for collecting and exchanging information on new assets of existing taxpayers benefitting from the grandfathered IP regime (ToR I.A.1.3). Spain has resolved this issue and therefore the recommendation is now removed.

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:

Type of ruling	Number of rulings
Past rulings	146
Future rulings in the period 1 April 2016 – 31 December 2016	28
Future rulings in the calendar year 2017	46
Future rulings in the calendar year 2018	22
Future rulings in the calendar year 2019	19
Future rulings in the calendar year 2020	43
Future rulings in the year in review	21

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 overall information was complete, in a correct format and received in a timely manner.

Information gathering process (ToR I.A)

1147. Spain 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.

1148. 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. Future rulings are any tax rulings within scope that are issued on or after 1 April 2016.

1149. In the prior years' peer review reports, it was determined that Spain'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 Spain's review and supervision mechanism was sufficient to meet the minimum standard. Spain's implementation remains unchanged, and therefore continues to meet the minimum standard.

1150. Spain has met all of the ToR for the information gathering process and no recommendations are made.

Exchange of information (ToR II.B)

1151. 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.

1152. Spain has 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^[1]) ("the Convention"), (ii) the Directive 2011/16/EU with all other European Union Member States and (iii) bilateral agreements in force with 95 jurisdictions.²

1153. For the year in review, the timeliness of exchanges is as follows:

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
	71	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
	1	55 days	0

1154. In the prior years' peer review reports, it was determined that Spain'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. Spain's implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

1155. 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.

Statistics (ToR IV.D)

1156. 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	1	<i>De minimis</i> rule applies
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	63	Argentina, Australia, Belgium, Brazil, Bulgaria, Canada, France, Germany, Hong Kong (China), Ireland, Italy, Japan, Luxembourg, Malaysia, Mexico, Netherlands, Norway, Peru, Portugal, Romania, Russia, Seychelles, Singapore, Switzerland, Türkiye, United Kingdom, United States, Uruguay
Permanent establishment rulings	7	Andorra, Germany, Hong Kong (China), Italy, Switzerland, Türkiye
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	32 ³	Argentina, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China (People's Republic of), Colombia, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, Mexico, Netherlands, Peru, Poland, Portugal, Romania, Russia, Switzerland, Türkiye, United Kingdom, United States
Total	103	

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

1157. Spain offers three intellectual property regimes (IP regime)⁴ that are subject to the transparency requirements under the Action 5 Report (OECD, 2015^[2]). 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 regimes, because grandfathering is provided to entrants that entered the regime after the relevant date from which enhanced transparency obligations apply. In the previous years' peer review reports, 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. However, as the proposal was still pending in the court, Spain has taken alternative steps to address the issue. Based on an IT search, Spain confirms that it has identified all taxpayers able to benefit from grandfathering during the relevant period. As indicated in the statistics above, Spain has exchanged the information on those taxpayers with the relevant jurisdictions during the year in review, and therefore the recommendation can now be removed.

- **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
	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://doi.org/10.1787/9789264241190-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://doi.org/10.1787/9789264115606-en>. [1]

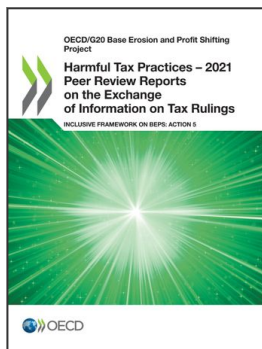
Notes

¹ 1) Partial exemption for income from certain intangible assets and 2) 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. Spain also has bilateral agreements with: Albania, Algeria, Andorra, Argentina, Armenia, Australia, Austria, Azerbaijan, Barbados, Belarus, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Cabo Verde, 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, Türkiye, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Venezuela and Viet Nam.

³ Exchanges that are made related to IP regimes are not counted as issued rulings, therefore, there is a difference between the number of exchanges and the number of issued rulings.

⁴ Partial exemptions for income from certain intangible assets for: 1) Federal regime, 2) Basque country and 3) Navarra.



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