

Hungary

Hungary has met all aspects of the terms of reference (OECD, 2017^[3]) (ToR) for the calendar year 2018 (year in review) except that Hungary did not apply the best efforts approach for past rulings (ToR I.4.2.2) and did not identify or exchange information on new entrants to the IP regime or taxpayers benefitting from the third category of IP assets (ToR I.4.1.3). Hungary receives two recommendations on these points for the year in review.

In the prior year report, Hungary received three recommendations. One recommendation been addressed and is removed. The other two recommendations from the prior year report, as well as from the 2016 peer review, have not been addressed and remain in place.

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

- 77 past rulings;
- For the period 1 April 2016 - 31 December 2016: four future rulings;
- For the calendar year 2017: nine future rulings, and
- For the year in review: 11 future rulings.

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

Introduction

This peer review covers Hungary'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

Hungary can legally issue the following four 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; (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 Hungary, 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 Hungary had not used the best efforts approach to identify potential exchange jurisdictions, meaning that Hungary had only identified potential exchange jurisdictions for around half of the past ATRs, although it had identified most potential exchange jurisdictions for APAs but not necessarily the ultimate parent company jurisdiction. Therefore, Hungary was recommended to continue to apply the "best efforts approach" to identify potential exchange jurisdictions for all past rulings.

Hungary has not been able to take additional steps during the year in review. As such the recommendation is retained.

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

For Hungary, 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 Hungary's undertakings to identify future rulings and all potential exchange jurisdictions have met all the ToR, except for requiring the taxpayers to provide information on potential exchange jurisdictions (ToR I.4.2.1). Therefore, Hungary was recommended to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings.

With respect to ATRs, Hungary has amended its legislation and its ruling practice with effect of 1 January 2018, requiring the taxpayer to provide information on immediate and ultimate parent company when applying for a ruling. Information on other potential exchange jurisdictions was already captured by the ruling application itself.

With respect to APAs, the application form was amended in the year in review, to ensure that it also captures information on the ultimate parent company. Other information was already captured by the ruling application itself.

This ensures that all relevant information is obtained with respect to both ATRs and APAs. As such, the recommendation is now removed.

Review and supervision (ToR I.4.3)

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

Conclusion on section A

Hungary has met all of the ToR for the information gathering process, except for applying the "best efforts approach" to identify potential exchange jurisdictions for all past rulings.

B. The exchange of information

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

In the prior year peer review report, Hungary identified that it only had the domestic legal basis to exchange information with EU Member States and was therefore not able to exchange information with all members of the Inclusive Framework, as required by the transparency framework. Hungary has now introduced the legal basis to exchange information on all relevant rulings issued after 1 January 2010 with all members of the Inclusive Framework, from 1 January 2018.

As such, Hungary has the necessary domestic legal basis to exchange information spontaneously. Hungary 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.

Hungary 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 80 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 Hungary's process for the completion and exchange of templates met all the ToR, except for the timely submission of the information to the Competent Authority (ToR II.5.5) and the timely exchange of information on rulings (ToR II.5.6). Therefore, Hungary was recommended to ensure that all information on future rulings is exchanged as soon as possible. It was also determined that Hungary only exchanged information with EU member states under EU timelines.

During the year in review, Hungary transmitted the delayed exchanges from the prior years by July 2018. Hungary has also taken steps to meet the timelines for forwarding information to the Competent Authority, whereby rulings are provided within three months of issue of the ruling, and the Competent Authority send regular reminders to the relevant officials in the Ministry of Finance or the National Tax and Customs Administration ("NCTA").

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
	92	0	N/A	N/A
Future rulings in the scope of the	Number of exchanges transmitted within three	Delayed exchanges		
		Number of exchanges	Reasons for the	Any other

transparency framework	months of the information becoming available to the competent authority or immediately after legal impediments have been lifted	transmitted later than three months of the information on rulings becoming available to the competent authority	delays	comments
	26	0	N/A	N/A
Total	118	0		

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

Hungary 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. As the issues regarding the timely submission of the information to the Competent Authority (ToR II.5.5) and the timely exchange of information on rulings (ToR II.5.6) have been resolved, these recommendations are now removed. Hungary 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	6	France, Luxembourg, Netherlands, Switzerland, United States
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	80	Austria, Belgium, Brazil, Canada, Croatia, Cyprus, ³ France, Germany, Ireland, Japan, Korea, Malta, Mexico, Netherlands, Poland, Romania, Russia, Serbia, Slovak Republic, Slovenia, South Africa, Sweden, Ukraine, 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	32	Canada, France, Ireland, Korea, Luxembourg, Mexico, Netherlands, Norway, Poland, Singapore, Switzerland, Uruguay, United States
Related party conduit rulings	0	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	0	x
Total	118	

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

Hungary offers an intellectual property regime (IP regime)⁴ that is subject to the transparency requirements under the Action 5 Report (OECD, 2015^[5]) (IP Regime for royalties and capital gains). It states that the identification of the benefitting taxpayers will occur as follows:

- **New entrants benefitting from the grandfathered IP regime:** Taxpayers that are new entrants to the IP regime can be identified in the tax return. The first tax returns containing information on new entrants have been filed after the relevant date from which enhanced transparency obligations apply. Hungary is currently trying to identify new taxpayers by analysing previous tax returns of taxpayers who have opted into the grandfathered regime. However, new IP assets cannot be identified in the absence of the relevant data in the tax returns and the identification of the new IP assets requires detailed inspection of each taxpayer benefitting from the IP regime. Therefore, Hungary has not exchanged information on new entrants to the grandfathered regime yet. Hungary intends to exchange the information on a retroactive basis as soon as it has identified the new entrants (i.e. both new taxpayers and new IP assets).
- **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 the regime does not allow the nexus ratio to be treated as a rebuttable presumption.

Hungary is recommended to continue its efforts to identify and exchange information on all new entrants to the IP regime as soon as possible (ToR I.4.1.3)

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Hungary did not yet apply the “best efforts approach” to indemnify potential exchange jurisdictions for all past rulings.	Hungary is recommended to continue to apply the “best efforts approach” to identify potential exchange jurisdictions for all past rulings. This recommendation remains unchanged since the 2016 peer review report and the 2017 peer review report.
Hungary did not identify or exchange information on new entrants to the grandfathered IP regime.	Hungary is recommended to continue its efforts to identify and exchange information on all new entrants to the grandfathered IP regime. This recommendation remains unchanged since the 2016 peer review report and the 2017 peer review report.

Notes

¹ With respect to the following preferential regime: IP regime for royalties and capital gains.

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. Hungary also has double tax agreements with Albania, Armenia, Australia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, China (People’s Republic of), Chinese Taipei, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hong Kong (China), Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Kazakhstan, Korea, Kosovo, Kuwait, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Moldova, Mongolia, Montenegro, Morocco, Netherlands, North Macedonia, Norway, Oman, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden,

Switzerland, Thailand, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan and Viet Nam.

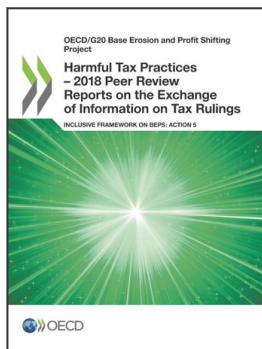
Note by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and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

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⁴ IP Regime for royalties and capital gains.



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