

# Philippines

The Philippines is taking steps to implement the legal basis for exchange under the transparency framework, and by commencing administrative preparations to ensure that information on rulings will be exchanged once the new legal basis is in place. The Philippines has met all aspects of the terms of reference (OECD, 2021<sup>[3]</sup>) (ToR) for the calendar year 2020 (year in review), except for identifying all potential exchange jurisdictions for both past and future rulings (ToR I.A.2.1 and ToR I.A.2.2) and having in place a domestic legal framework allowing spontaneous exchange of information on rulings by ensuring the timely exchange of information on rulings in the form required by the transparency framework (ToR II.B). The Philippines receives three recommendations on this point for the year in review.

In the prior year report, as well as in the 2017 and 2018 peer reviews, the Philippines had received four recommendations. The Philippines has resolved the issue regarding the review and supervision mechanism, and therefore this recommendation is now removed. As the other issues have not been addressed, the recommendations remain in place.

Philippines can legally issue one type of rulings within the scope of the transparency framework.

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

Type of ruling	Number of rulings
Past rulings	78
Future rulings in the period 1 September 2017 – 31 December 2017	4
Future rulings in the calendar year 2018	30
Future rulings in the calendar year 2019	10
Future rulings in the year in review	15

As no exchanges took place, no peer input was received in respect of the exchanges of information on rulings received from the Philippines.

## A. The information gathering process (ToR I.A)

884. The Philippines can legally issue the following type of rulings within the scope of the transparency framework: permanent establishment rulings.

### ***Past rulings (ToR I.A.1.1, I.A.1.2, I.A.2.1, I.A.2.2)***

885. For the Philippines, past rulings are any tax rulings within scope that are issued either: (i) on or after 1 January 2015 but before 1 September 2017; or (ii) on or after 1 January 2012 but before 1 January 2015, provided they were still in effect as at 1 January 2015.

886. In the prior years' peer review reports, it was determined that the Philippines' undertakings to identify past rulings met the ToR. However, the Philippines was recommended to apply the "best efforts approach" to identify potential exchange jurisdictions, in particular for the ultimate parent company, as this was the only type of information on potential exchange jurisdictions that was not provided by the taxpayer upon application.

887. During the year in review, the Philippines experienced similar problems and therefore the prior years' recommendation remains. The Philippines notes that it is currently addressing these issues, including capacity building and working in co-operation with the Department of Finance.

### ***Future rulings (ToR I.A.1.1, I.A.1.2, I.A.2.1)***

888. For the Philippines, future rulings are any tax rulings within scope that are issued on or after 1 September 2017.

889. In the prior years' peer review reports, it was determined that the Philippines' undertakings in respect of future rulings met the ToR, except for identifying all potential exchange jurisdictions (ToR I.A.2.1). As for past rulings, the only required information on potential exchange jurisdictions that was not provided by the taxpayer upon application was related to the ultimate parent company. Therefore, the Philippines was recommended to ensure that all potential exchange jurisdictions are identified swiftly for future rulings.

890. During the year in review, the Philippines experienced similar problems and therefore the prior years' recommendation remains. The Philippines notes that it is currently addressing these issues, including capacity building and working in co-operation with the Department of Finance.

### ***Review and supervision (ToR I.A.3)***

891. In the prior years' peer review reports, it was not clear whether the Philippines had a review and supervision process in place (ToR I.A.3). Therefore, the Philippines was recommended to have in place a review and supervision mechanism to ensure that all relevant information is captured adequately.

892. During the year in review, the Philippines clarified that the process for ensuring all relevant information is captured accurately is guided by the Revenue Memorandum Order No. (RMO) 72-2010, and involves the Office of the Commissioner reviewing the data collected by the International Tax Affairs Division and the Legal Service. Therefore, the prior years' recommendation is now removed.

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

893. The Philippines has met all of the ToR for the information gathering process, except for applying the "best efforts approach" for past rulings (ToR I.A.2.2), identifying all potential exchange jurisdictions for future rulings (ToR I.A.2.1). The Philippines is recommended to apply the best efforts approach for past

rulings with respect to identifying the ultimate parent company, and to ensure that all potential exchange jurisdictions are identified swiftly for future rulings.

## B. The exchange of information (ToR II.B)

### **Legal basis for spontaneous exchange of information (ToR II.B.1, II.B.2)**

894. The Philippines does not have the necessary domestic legal basis to exchange information on rulings spontaneously. This is because the Philippines is legally prohibited from sharing information on, or copies of, rulings other than to the applicant taxpayer. The Philippines is currently in the process of issuing regulations to allow the Philippines to spontaneously exchange information on rulings.

895. The Philippines has international agreements permitting spontaneous exchange of information, including double tax agreements with 43 jurisdictions.<sup>1</sup> The Philippines signed the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011<sup>[4]</sup>) (“the Convention”), which is currently with the Philippine Senate for concurrence. Once the Convention enters into force, the spontaneous exchange of information could also be undertaken with jurisdictions that are covered by the Convention.

### **Completion and exchange of templates (ToR II.B.3, II.B.4, II.B.5, II.B.6, II.B.7)**

896. As the Philippines does not yet have the legal basis for exchanges, the process for the completion and exchange of templates has not been put in place. The Philippines is recommended to put in place a process for the completion and exchange of templates to ensure the exchanges can take place as soon as the legal basis is in force.

897. For the year in review, as there is no domestic legal basis for exchange, no data on the timeliness of exchanges can be reported.

### **Conclusion on section B**

898. The Philippines is recommended to continue its efforts to put in place a domestic legal framework allowing spontaneous exchange of information on rulings and to ensure the timely exchange of information on rulings in the form required by the transparency framework (ToR II.B).

## C. Statistics (ToR IV)

899. As there was no information on rulings exchanged by the Philippines for the year in review, no statistics can be reported.

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

900. The Philippines does not offer an intellectual property regime for which transparency requirements under the Action 5 Report (OECD, 2015<sup>[1]</sup>) were imposed.

## Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
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The Philippines does not currently collect information on all potential exchange jurisdictions, particularly the ultimate parent company for past rulings.	The Philippines is recommended to apply the "best efforts approach" to identify potential exchange jurisdictions for all past rulings. This recommendation remains unchanged since the 2017, 2018 and 2019 peer review reports.
The Philippines does not currently collect information on all potential exchange jurisdictions, particularly the ultimate parent company for future rulings.	The Philippines is recommended to ensure that all potential exchange jurisdictions are identified swiftly for future rulings. This recommendation remains unchanged since the 2017, 2018 and 2019 peer review reports.
The Philippines does not yet have the necessary domestic legal framework in place for exchanging information on rulings or a process in place to ensure the timely exchange of information on rulings in the form required by the transparency framework.	The Philippines is recommended to continue to put in place a domestic legal framework allowing spontaneous exchange of information on rulings and to ensure the timely exchange of information on rulings in the form required by the transparency framework. This recommendation remains unchanged since the 2017, 2018 and 2019 peer review reports.

## 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://dx.doi.org/10.1787/9789264241190-en>. [1]
- OECD (ed.) (2017b), *Harmful Tax Practices - 2017 Progress Report on Preferential Regimes*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264283954-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://dx.doi.org/10.1787/9789264115606-en>. [4]

## Notes

<sup>1</sup> The Philippines has bilateral agreements in force with Australia, Austria, Bahrain, Bangladesh, Belgium, Brazil, Canada, China (People's Republic of), Czech Republic, Denmark, Finland, France, Germany, Hungary, India, Indonesia, Israel, Italy, Japan, Korea, Kuwait, Malaysia, Mexico, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Poland, Qatar, Romania, Russia, Singapore, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Turkey, United Arab Emirates, United Kingdom, United States and Viet Nam.



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