Spain

Spain has met all aspects of the terms of reference (OECD, 2017[3]) (ToR) for the calendar year 2019 (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, as well as in the 2017 peer review, Spain had 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;
- For the calendar year 2018: 22 future rulings; and
- For the year in review: 19 future rulings.

Rulings excluding APAs are published in anonymised form.

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

A. The information gathering process

1034. 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.

1035. 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.

1036. 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.

1037. Spain has met all of the ToR for the information gathering process and no recommendations are made.

B. The exchange of information

1038. 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.

1039. Spain 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) bilateral agreements in force with 93 jurisdictions.[2]

1040. For the year in review, the timeliness of exchanges is as follows:

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
	173	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
	0	N/A	N/A

1041. 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)

1042. 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	170	Argentina, Australia, Austria, Barbados, Belgium, Brazil, Bulgaria, Canada, Chile, China (People's Republic of), Colombia, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hong Kong (China), Hungary, India, Indonesia, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, South Africa, Sweden, Switzerland, Turkey, United Kingdom, United States, Uruguay
Permanent establishment rulings	*De minimis rule* applies	N/A
De minimis rule	3	
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	N/A
Total	173	

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

1043. Spain offers three intellectual property regimes (IP regime)[3] that are subject to the transparency requirements under the Action 5 Report (OECD, 2015[1]). 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 that was adopted in August 2017. However, in October 2017 the tax form was the subject of an appeal before the National Court. Spain notes that the appeal to the National Court has been resolved in June 2020 and the judicial procedure is now at the level of the Supreme Court. As such, this information has not been able to be collected for exchange. Therefore, the prior years' 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 2017 and 2018 peer review reports.

References

OECD (2017), *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]

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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]

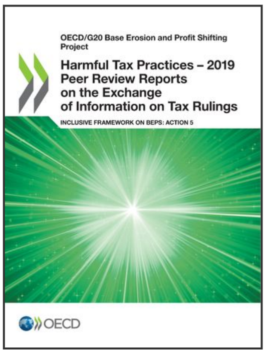
Notes

[1] With respect to the following preferential regimes: 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, 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.

[3] These regimes are the partial exemptions for income from certain intangible assets for: 1) Federal regime, 2) Basque country and 3) Navarra.



From:

Harmful Tax Practices – 2019 Peer Review Reports on the Exchange of Information on Tax Rulings

Inclusive Framework on BEPS: Action 5

Access the complete publication at:

https://doi.org/10.1787/afd1bf8c-en

Please cite this chapter as:

OECD (2020), "Spain", in *Harmful Tax Practices – 2019 Peer Review Reports on the Exchange of Information on Tax Rulings: Inclusive Framework on BEPS: Action 5* , OECD Publishing, Paris.

DOI: https://doi.org/10.1787/393b9a6e-en