

## United States

The United States has met all aspects of the terms of reference (OECD, 2017<sup>[3]</sup>) (ToR) for the calendar year 2018 (year in review) and no recommendations are made.

In the prior year report, the United States did not receive any recommendations.

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

- 114 past rulings;
- For the period 1 April 2016 - 31 December 2016: 21 future rulings;
- For the calendar year 2017: 30 future rulings;<sup>1</sup> and
- For the year in review: 27 future rulings.<sup>2</sup>

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

## Introduction

This peer review covers the United States' 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

The United States can legally issue the following four types of rulings within the scope of the transparency framework: (i) preferential regimes;<sup>3</sup> (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 the United States, 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 years' peer review reports, it was determined that the United States' undertakings to identify past rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. The United States' 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 the United States, future rulings are any tax rulings within scope that are issued on or after 1 April 2016.

In the prior years' peer review reports, it was determined that the United States' undertakings to identify future rulings and all potential exchange jurisdictions was sufficient to meet the minimum standard. The United States' implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

### ***Review and supervision (ToR I.4.3)***

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

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

The United States has met all of the ToR for the information gathering process and no recommendations are made.

## B. The exchange of information

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

The United States has the necessary domestic legal basis to exchange information spontaneously. The United States 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.

The United States has international agreements permitting spontaneous exchange of information, including being a party to the (i) *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011<sup>[4]</sup>) (“the Convention”), (ii) tax information exchange agreements and (iii) double tax agreements in force with 48 jurisdictions.<sup>4</sup>

### **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 the United States’ process for the completion and exchange of templates were sufficient to meet the minimum standard. The United States’ 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
	0	0	N/A	N/A
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
	122	0	N/A	N/A
<b>Total</b>	122	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**

The United States 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. The United States 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	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	122	Argentina, Australia, Austria, Belgium, Brazil, Canada, China <sup>a</sup> People's Republic of, Colombia, Costa Rica, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Kazakhstan, Luxembourg, Mauritius, Mexico, Netherlands, New Zealand, Norway, Pakistan, Peru, Poland, Portugal, Romania, Russia, Slovenia, South Africa, Spain, Sweden, Thailand, Turkey, Ukraine, 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	N/A	N/A
Permanent establishment rulings	3	<i>De minimis</i> rule applies
Related party conduit rulings	N/A	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	N/A	N/A
<b>Total</b>	122 <sup>b</sup>	

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

The United States offers an intellectual property regime (IP regime).<sup>6</sup> The regime was under review by the FHTP from late in the year in review. No transparency requirements applied for the year in review.

## 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.

## Notes

<sup>1</sup> One of them qualifying both as an APA and as a PE ruling.

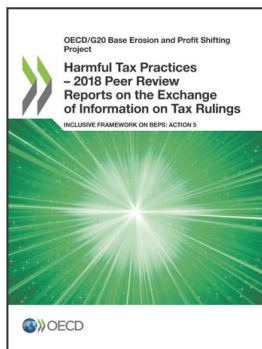
<sup>2</sup> Three of them qualifying both as an APA and as a PE ruling.

<sup>3</sup> With respect to the following preferential regime: Foreign derived intangible income regime.

<sup>4</sup> Parties to the Convention are available here: [www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm](http://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm). The United States also has double tax agreements with Australia, Austria, Barbados, Belgium, Bulgaria, Canada, China (People's Republic of), Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Thailand, Turkey, Ukraine and United Kingdom.

<sup>5</sup> The three exchanges on PE rulings also qualified as unilateral APAs and were exchanged on templates that identified those two categories of rulings. As these were included on combined templates, the PE rulings were excluded from the total to avoid double counting.

<sup>6</sup> This is the Foreign derived intangible income regime.



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