

Malaysia

Malaysia has met all aspects of the terms of reference (OECD, 2021^[3]) (ToR) for the calendar year 2021 (year in review), except for identifying all potential exchange jurisdictions for future rulings (ToR I.A.2.1) and for providing information on rulings to the Competent Authority without undue delay and undertaking spontaneous exchange of information on all future tax rulings within the scope of the transparency framework (ToR II.B). Malaysia receives two recommendations on these points for the year in review.

In the prior year's peer review report, as well as in the 2019 peer review report, Malaysia had received the same two recommendations. As they have not been addressed, the recommendations remain in place.

Malaysia can legally issue five types of rulings within the scope of the transparency framework.

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

Type of ruling	Number of rulings
Past rulings	249
Future rulings in the period 1 September 2017 – 31 December 2017	23
Future rulings in the calendar year 2018	51
Future rulings in the calendar year 2019	69
Future rulings in the calendar year 2020	40
Future rulings in the year in review	3

Peer input was received from five jurisdictions in respect of the exchanges of information on rulings received from Malaysia. The input was generally positive, noting that overall information was complete, and in a correct format. However, peer input indicated that exchanges on rulings were not timely. This is reflected in the report.

Information gathering process (ToR I.A)

808. Malaysia can legally issue the following five 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) rulings providing for unilateral downward adjustments; (iv) permanent establishment rulings; and (v) related party conduit rulings.

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

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

810. In the prior years' peer review reports, it was determined that Malaysia's undertakings to identify past rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. Malaysia's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

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

811. For Malaysia, future rulings are any tax rulings within scope that are issued on or after 1 September 2017.

812. In the prior years' peer review reports, it was determined that Malaysia's undertakings to identify past and future rulings and all potential exchange jurisdictions have met all the ToR, except for identifying all potential exchange jurisdictions for future rulings (ToR I.A.2.1). Therefore, Malaysia was recommended to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings.

813. During the year in review, Malaysia was still in the process of putting in place new requirements for taxpayers to provide the information required for completing the Annex C template upfront, including information on potential exchange jurisdictions. Malaysia is therefore recommended to continue its efforts to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings.

Review and supervision (ToR I.A.3)

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

Conclusion on section A

815. Malaysia has met all of the ToR for the information gathering process except for identifying all potential exchange jurisdictions for future rulings (ToR I.A.2.1). Malaysia is recommended to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings.

Exchange of information (ToR II.B)

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

816. Malaysia has the necessary domestic legal basis to exchange information spontaneously. Malaysia 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.

817. Malaysia 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”) and (ii) bilateral agreements in force with 73 jurisdictions.²

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

818. In the prior year’s peer review report, it was determined that Malaysia’s internal policies, processes and procedures for the completion and exchange of templates were sufficient to meet the minimum standard, except for the provision of information on rulings to the Competent Authority without undue delay, and the timely spontaneous exchange of information on past and future rulings (ToR II.B).

819. Malaysia’s internal procedures and timelines to provide information on rulings to the Competent Authority remain unchanged, and therefore the recommendation to reduce the timelines for providing information on rulings to the Competent Authority without undue delay remains.

820. During the year in review, Malaysia commenced its exchanges on future rulings, but still experienced some delays, thus exchanges have not yet been completed. Therefore, the recommendation to complete the templates for all relevant future rulings and to ensure that the exchanges of information on rulings occur as soon as possible remains. With respect to past rulings, no further action was required.

821. 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
	0	20	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

Conclusion on section B

822. Malaysia has the necessary legal basis to undertake spontaneous exchange of information. Malaysia is recommended to continue its efforts to reduce the timeliness for providing the information on rulings to the Competent Authority and to complete the templates for all relevant future rulings and to ensure that the exchanges of information on future rulings occur as soon as possible (ToR II.B).

Statistics (ToR IV.D)

823. 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	20	Australia, Belgium, China (People's Republic of), France, Indonesia, Korea, Luxembourg, Netherlands, New Zealand, Singapore, Switzerland, Chinese Taipei, Thailand
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	0	N/A
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	0	N/A
Permanent establishment rulings	0	N/A
Related party conduit rulings	0	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	N/A
Total	20	

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

824. In the prior year's peer review report, it was determined that Malaysia's information gathering and exchange of information processes for matters related to intellectual property regimes³ were sufficient to meet the minimum standard. Malaysia's implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Malaysia experienced difficulties in identifying all potential exchange jurisdictions for future rulings.	Malaysia is recommended to continue its efforts to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings. This recommendation remains unchanged since the 2019 and 2020 year peer review reports.
Malaysia experienced delays in the provision of rulings to the Competent Authority and did not undertake spontaneous exchange of information on all future tax rulings within the scope of the transparency framework during the year in review.	Malaysia is recommended to continue its efforts to reduce the timeliness for providing the information on rulings to the Competent Authority and to complete the templates for all relevant future rulings and to ensure that the exchanges of information on future rulings occur as soon as possible. This recommendation remains unchanged since the 2017, 2018, 2019 and 2020 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://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) Pioneer status – contract R&D, 2) Biotechnology industry, 3) Principal hub, 4) MSC Malaysia, 5) Green technology services and 6) Special economic regions, 7) High technology regime and 8) Treasury management centre.

² Participating jurisdictions to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Malaysia also has bilateral agreements with Albania, Argentina, Australia, Austria, Bahrain, Bangladesh, Belgium, Bosnia and Herzegovina, Brunei Darussalam, Canada, Chile, China (People's Republic of), Croatia, Czech Republic, Denmark, Egypt, Fiji, Finland, France, Germany, Hong Kong (China), Hungary, India, Indonesia, Iran, Ireland, Italy, Japan, Jordan, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Laos, Lebanon, Luxembourg, Malta, Mauritius, Mongolia, Morocco, Myanmar, Namibia, Netherlands, New Zealand, Norway, Pakistan, Papua New Guinea, Philippines, Poland, Qatar, Romania, Russia, San Marino, Saudi Arabia, Seychelles, Singapore, South Africa, Spain, Slovak Republic, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Türkiye, Turkmenistan, United Arab Emirates, United Kingdom, Uzbekistan, Venezuela, Viet Nam, Zimbabwe.

³ 1) Biotechnology industry, 2) MSC Malaysia and 3) Principal hub.



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