

Portugal

Portugal has met all aspects of the terms of reference (OECD, 2017^[3]) (ToR) for the calendar year 2019 (year in review) and no recommendations are made.

Portugal can legally issue two types of rulings within the scope of the transparency framework.

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

- 24 past rulings;
- For the period 1 April 2016 - 31 December 2016: two future rulings;
- For the calendar year 2017: 11 future rulings,
- For the calendar year 2018: 11 future rulings, and
- For the year in review: six future rulings.

No peer input was received in respect of the exchanges of information on rulings received from Portugal.

A. The information gathering process

860. Portugal can legally issue two types of rulings within the scope of the transparency framework: (i) 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 (ii) permanent establishment rulings.

861. For Portugal, 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.

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

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

B. The exchange of information

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

865. Portugal 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 78 jurisdictions.¹

866. 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
	13	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

867. Portugal 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. Portugal has met all of the ToR for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

868. The statistics for the year in review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
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	13	Belgium, France, Germany, Hong Kong (China), Netherlands, Poland, Sweden, Switzerland, United States, Viet Nam
Permanent establishment 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	13	

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

869. Portugal offers an intellectual property regime (IP regime)² that is 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:** Portugal did not identify any new entrants benefitting from the grandfathered IP regime that should be subject to spontaneous exchange of information with other jurisdictions.
- **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 as the regime does 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
	No recommendations are made.

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]

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/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 Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Portugal also has bilateral agreements in force with Algeria, Andorra, Angola, Austria, Bahrain, Barbados, Belgium, Brazil, Bulgaria, Cabo Verde, Canada, Chile, China (People's Republic of), Colombia, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Estonia, Ethiopia, France, Georgia, Germany, Greece, Guinea-Bissau, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, Kuwait, Latvia, Lithuania, Luxembourg, Macau (China), Malta, Mexico, Moldova, Montenegro, Morocco, Mozambique, Netherlands, Norway, Oman, Pakistan, Panama, Peru, Poland, Qatar, Romania, Russia, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela and Viet Nam.

² Partial exemption for income from patents and other industrial property rights.



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