

Malaysia

Malaysia has met all aspects of the terms of reference (OECD, 2017^[3]) (ToR) for the calendar year 2019 (year in review) except for identifying all potential exchange jurisdictions for future rulings (ToR I.4.2.1), timeliness in providing information on rulings to the Competent Authority and undertaking spontaneous exchange of information on all tax rulings within the scope of the transparency framework (ToR II.5) and identifying and exchanging information on new entrants to the grandfathered IP regime (ToR I.4.1.3). Malaysia receives three recommendations on these points for the year in review.

In the prior year report, as well as in the 2017 peer review, Malaysia had received two recommendations. As they have not been addressed, the recommendations remain in place. In addition, there were new circumstances that came to light during the peer review process, and therefore one additional recommendation has been made as relevant.

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:

- 455 past rulings;¹
- For the calendar year 2017: 23 future rulings,²
- For the calendar year 2018: 51 future rulings,³ and
- For the year in review: 69 future rulings.

Peer input was received from two jurisdictions in respect of the exchanges of information on rulings received from Malaysia. The input was generally positive, noting that information was complete and in a correct format. Some peers noted that the exchange of information on rulings from Malaysia was delayed.

A. The information gathering process

710. Malaysia can legally issue the following five types of rulings within the scope of the transparency framework: (i) preferential regimes;⁴ (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.

711. 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. Future rulings are any tax rulings within scope that are issued on or after 1 September 2017.

712. 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 were sufficient to meet the minimum standard. In addition, it was determined that Malaysia's review and supervision mechanism was sufficient to meet the minimum standard. During the year in review, it has come to light that the previous processes used by Malaysia were not sufficient to identify all potential exchange jurisdictions in a timely manner. Malaysia has recognised this issue, and is working on amending and improving its processes to more efficiently identify all potential exchange jurisdictions for future rulings. The key issue encountered were obstacles in compelling the required information for the Annex C template from taxpayers. For past rulings, Malaysia has utilised the best efforts approach, by requesting the additional information directly from taxpayers. For future rulings, Malaysia is in the process of putting in place new requirements to make it a condition that taxpayers provide the information required for the Annex C template upfront, including data on potential exchange jurisdictions, and this condition will be stated in their approval letter for a preferential regime. Malaysia is therefore recommended to continue its efforts to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings.

713. Malaysia has met all of the ToR for the information gathering process except for identifying all potential exchange jurisdictions for future rulings (ToR I.4.2.1). Malaysia is recommended to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings.

B. The exchange of information

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

714. 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.

715. Malaysia 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") and (ii) double tax agreements in force with 71 jurisdictions.⁵

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

716. In the prior year 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.5).

717. 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. During the year in review, Malaysia prioritised resources for the exchange of information on past rulings. Whilst 92 exchanges on past rulings were conducted during the year in review, there still remain 160 past rulings that have not been exchanged. Furthermore, Malaysia has not exchanged information on any future rulings, which includes 69 rulings issued in 2019, 53 rulings issued in 2018, and 21 rulings issued in 2017. Therefore, the recommendation to complete the templates for all relevant past and future rulings and to ensure that the exchanges of information on rulings occur as soon as possible, remains.

718. 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 2019 | Delayed exchanges | | |
|---|--|---|--|--|
| | | Number of exchanges not transmitted by 31 December 2019 | Reasons for the delays | Any other comments |
| | 92 | 160 | N/A | There are approximately 160 past rulings yet to be exchanged. The precise number of delayed exchanges will be assessed in the next year's peer review process. |
| 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 |
| | 0 | 0 | Malaysia has prioritised completing the exchanges for past rulings, and therefore, no exchanges for future rulings have been conducted thus far. | There are approximately 143 future rulings yet to be exchanged. The precise number of delayed exchanges will be assessed in the next year's peer review process. |
| Total | 92 | 160 | | |

| 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

719. Malaysia has the necessary legal basis to undertake spontaneous exchange of information. Malaysia is recommended to continue its efforts to reduce the timelines for providing the information on rulings to the Competent Authority and to complete the templates for all relevant rulings and to ensure that the exchanges of information on rulings occur as soon as possible (ToR II.5).

C. Statistics (ToR IV)

720. 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 | 92 | Australia, Canada, China (People's Republic of), Denmark, Finland, France, Hong Kong (China), India, Indonesia, Japan, Jordan, Korea, Luxembourg, Mauritius, Netherlands, New Zealand, Singapore, Switzerland, Thailand, United Kingdom, Vietnam |
| 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 | 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 | 92 | |

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

721. Malaysia offered three intellectual property regimes (IP regime)⁶ that were abolished as of 1 July 2018 and are subject to 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 three regimes, because grandfathering is provided to entrants that entered the regime after the relevant date from which enhanced transparency obligations apply. Malaysia has not yet been able to identify these new entrants. Malaysia is therefore recommended to identify and exchange information on all new entrants to the grandfathered IP regime as soon as possible (ToR I.4.1.3).
- **Third category of IP assets:** not applicable as the IP regimes have been abolished.
- **Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption:** not applicable as the IP regimes have been abolished.

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. |
| Malaysia experienced delays in the provision of rulings to the Competent Authority and did not undertake spontaneous exchange of information on all tax rulings within scope of the transparency framework during the year in review. | Malaysia is recommended to continue its efforts to reduce the timelines for providing the information on rulings to the Competent Authority and to complete the templates for all relevant rulings and to ensure that the exchanges of information on rulings occur as soon as possible. This recommendation remains unchanged since the 2017 and 2018 peer review reports. |
| Malaysia did not identify or exchange information on new entrants to the grandfathered IP regime. | Malaysia is recommended to identify and exchange information on all new entrants to the grandfathered IP regime as soon as possible. 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]
- 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 In the previous year peer review report, it was stated that there were 428 past rulings were issued by Malaysia. However, Malaysia has reported a further 27 past rulings due to an omission of rulings from the Treasury management centre and High technology regimes.

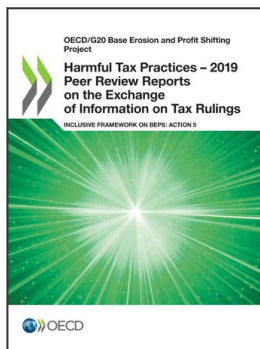
² In the previous year peer review report, it was stated that 21 future rulings were issued in 2017. However, Malaysia has reported a further two future rulings for 2017 due to an omission of rulings from the High technology regime.

³ In the previous year peer review report, it was stated that 53 future rulings were issued in 2018. However, Malaysia has now amended this number to 51 future rulings issued in 2018. This error was due to an accidental duplication of records.

⁴ 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.

⁵ Parties 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, 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, The 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, Syria, Thailand, Turkey, Turkmenistan, United Arab Emirates, United Kingdom, Uzbekistan, Venezuela, Viet Nam, Zimbabwe.

⁶ These regimes are: 1) Biotechnology industry, 2) MSC Malaysia and 3) Principal hub.



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), “Malaysia”, 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/10.1787/52c4fd38-en>

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area. Extracts from publications may be subject to additional disclaimers, which are set out in the complete version of the publication, available at the link provided.

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at <http://www.oecd.org/termsandconditions>.