

Andorra

Andorra has met all aspects of the terms of reference (OECD, 2017^[3]) (ToR) for the calendar year 2018 (year in review), except for identifying potential exchange jurisdictions for future rulings (ToR I.4.2.1) and for undertaking spontaneous exchange of information on rulings (ToR II.5). Andorra receives two recommendations on these points for the year in review.

In the prior year report, Andorra received three recommendations. One of these recommendations has been addressed and is removed. The other two recommendations have not been addressed and remain in place.

Andorra can legally issue five types of rulings within the scope of the transparency framework. In practice, Andorra issued rulings within the scope of the transparency framework as follows:

- 177 past rulings;
- For the period 1 April 2017 - 31 December 2017: 44 future rulings; and
- For the year in review: 51 future rulings.

Rulings issued in the form of written inquiries (binding consultations) are published online in anonymised form. Rulings issued in the form of special agreements are published in the Andorran official gazette.¹

As no exchanges took place, no peer input was received in respect of the exchanges of information on rulings received from Andorra.

Introduction

This peer review covers Andorra's 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

Andorra can legally issue the following five types of rulings within the scope of the transparency framework: (i) preferential regimes;² (ii) cross-border unilateral advance pricing arrangements (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.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

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

In the prior year peer review report, it was determined that past rulings were able to be identified but that Andorra was not able to obtain information on potential exchange jurisdictions.

For the year in review, the tax authority and the EOI division reviewed the database list of issued rulings, the information contained in the ruling request and related annexes in order to extract information about the potential exchange jurisdictions. Andorra also used information from third-party sources (e.g. official registers). Andorra has used the "best efforts approach" for all past rulings and the recommendation is removed. In addition, although Andorra was able to obtain all relevant information in most cases using the best efforts approach, Andorra is considering taking steps beyond the best efforts approach, by approaching the taxpayer to obtain any outstanding information on potential exchange jurisdictions.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

For Andorra, future rulings are any tax rulings within scope that are issued on or after 1 April 2017.

In the prior year peer review report, it was determined future rulings were able to be identified, but that the information on potential exchange jurisdictions was not always being collected, and instead this was being performed by the application of the "best efforts approach." The prior year report noted that Andorra intended to amend the application process to require the taxpayer to identify all relevant jurisdictions when requesting the ruling. However, this amendment did not take place during the year in review. Andorra 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.4.3)

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

Conclusion on section A

Andorra 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). Andorra 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)

Andorra has the necessary domestic legal basis to exchange information spontaneously. Andorra 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.

Andorra 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 27 jurisdictions.³

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 Andorra’s process for the completion and exchange of templates met the ToR, except for undertaking spontaneous exchange of information on tax rulings within scope of the transparency framework (ToR II.5). Therefore, Andorra was recommended to complete the templates for all relevant rulings and to ensure that the exchanges of information on rulings occur as soon as possible.

During the year in review, no further steps were taken to finalise the completion and exchange of templates. Andorra intends to require taxpayers to provide all relevant information needed to complete the template contained in Annex C of the 2015 Action 5 Report. This obligation is being considered for inclusion in an amendment to the relevant regulations in 2019. Andorra also intends to prepare an internal note to ensure that information on rulings is made available to the Competent Authority responsible for exchange of information without undue delay.

As there were no exchanges for the year in review, no data on the timeliness of exchanges can be reported.

Conclusion on section B

Andorra has met all of the ToR for the information gathering process except for undertaking spontaneous exchange of information on tax rulings within scope of the transparency framework (ToR II.5) and Andorra is recommended to complete the templates for all relevant rulings and to ensure that all information on past and future rulings is exchanged as soon as possible.

C. Statistics (ToR IV)

As there was no information on rulings exchanged by Andorra for the year in review, no statistics can be reported.

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

Andorra offers an intellectual property regime (IP regime)⁴ that is subject to the transparency requirements under the Action 5 Report (OECD, 2015^[5]). It states that the identification of the benefitting taxpayers will occur as follows:

- **New entrants benefitting from the grandfathered IP regime:** No enhanced transparency requirements apply, as follows. During the year in review, Andorra amended the IP regime by implementing the nexus approach. The previous regime has been closed-off, and although grandfathering was provided, it only applies to entrants that benefited from the regime prior to the relevant date from which enhanced transparency obligations would apply.
- **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
Andorra experienced difficulties in identifying all potential exchange jurisdictions for future rulings.	Andorra is recommended to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings. This recommendation remains unchanged since the prior year peer review report.
Andorra did not undertake spontaneous exchange of information on tax rulings within scope of the transparency framework during the year in review.	Andorra is recommended to continue its efforts to complete the templates for all relevant rulings and to ensure that all information on past and future rulings is exchanged as soon as possible. This recommendation remains unchanged since the prior year peer review report.

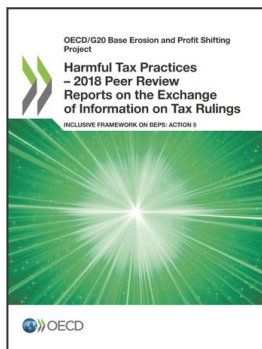
Notes

¹ Available at <https://www.impostos.ad/comunicats-tecnics-i-consultes-vinculants>

² With respect to the following preferential regimes: 1) Holding company regime, 2) Intercompany and financing regime, 3) Companies involved in international trade and 4) Companies involved in the international exploitation of intangible assets regime.

³ Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm Andorra also has double tax agreements with Argentina, Australia, Austria, Belgium, Czech Republic, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Iceland, Italy, Korea, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, San Marino, Spain, Sweden, Switzerland and United Arab Emirates.

⁴ Special regime for exploitation of certain intangible assets.



From:

Harmful Tax Practices – 2018 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/10.1787/7cc5b1a2-en>

Please cite this chapter as:

OECD (2020), “Andorra”, in *Harmful Tax Practices – 2018 Peer Review Reports on the Exchange of Information on Tax Rulings: Inclusive Framework on BEPS: Action 5*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/54f5b55d-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>.