

Poland

Poland 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.

In the prior year report, as well as in the 2016 and 2017 peer reviews, Poland had received one recommendation. Poland has resolved this issue and therefore this recommendation is removed.

Poland can legally issue four types of rulings within the scope of the transparency framework.

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

- 84 past rulings;
- For the period 1 April 2016 - 31 December 2016: six future rulings;
- For the calendar year 2017: 20 future rulings,
- For the calendar year 2018: 16 future rulings, and
- For the year in review: 100 future rulings.

Poland publishes their tax rulings, except for APA rulings, in redacted form on Poland's Ministry of Finance website.

Peer input was received from 2 jurisdictions in respect of the exchanges of information on rulings received from Poland. The input was positive, noting that information was complete, in a correct format and received in a timely manner.

A. The information gathering process

845. Poland can legally issue the following four 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; (ii) rulings providing for unilateral downward adjustments; (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)

846. For Poland, 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.

847. In the prior years' peer review reports, it was determined that Poland's undertakings to identify past rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. Poland's 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)

848. For Poland, future rulings are any tax rulings within scope that are issued on or after 1 April 2016.

849. In the prior years' peer review reports, it was determined that Poland's undertakings to identify future rulings and all potential exchange jurisdictions have met all the ToR, except for identifying all potential exchange jurisdictions for future rulings other than APAs (ToR I.4.2.1). Therefore, Poland was recommended to ensure that all potential exchange jurisdictions are identified swiftly for future rulings other than APAs.

850. During the year in review, Poland addressed the recommendation by amending its legislation to require taxpayers requesting cross-border rulings to include information related to all potentially affected jurisdictions in the ruling request form. Therefore, the recommendation is now removed.

Review and supervision (ToR I.4.3)

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

Conclusion on section A

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

B. The exchange of information

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

854. Poland 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) bilateral agreements in force with 88 jurisdictions.¹

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

856. 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
	62	0	N/A	A large proportion of rulings were issued in the latter half of the year in review, and therefore a further 76 exchanges were transmitted in January and February 2020. These exchanges were transmitted in a timely manner, and will be accounted for in the next year’s peer review.

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

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

C. Statistics (ToR IV)

858. 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	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	21	Australia, Canada, Georgia, Israel, Korea, Norway, Russia, Serbia, Switzerland, United States
Permanent establishment rulings	0	N/A
Related party conduit rulings	41	Australia, Canada, Korea, Singapore, Switzerland, United States
Total	62	

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

859. Poland offers an intellectual property regime (IP regime)² that is not subject to the transparency requirements under the Action 5 Report (OECD, 2015^[1]), because:

- **New entrants benefitting from the grandfathered IP regime:** as this is a new IP regime rather than a grandfathered IP regime, transparency on new entrants is not relevant.
- **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 the use of the option to treat the nexus ratio as a rebuttable presumption:** not applicable 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.

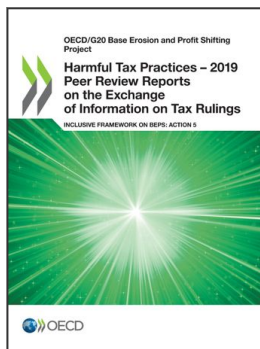
References

- 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. Poland also has bilateral agreements with Albania, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Chile, China (People's Republic of), Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Guernsey, Hungary, Iceland, India, Indonesia, Iran, Ireland, Isle of Man, Israel, Italy, Jamaica, Japan, Jersey, Jordan, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Moldova, Mongolia, Montenegro, Morocco, Netherlands, New Zealand, North Macedonia, Norway, Pakistan, Peru, Philippines, Portugal, Qatar, Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syria, Chinese Taipei, Tajikistan, Thailand, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Vanuatu, Viet Nam and Zimbabwe.

² IP box.



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