

## Germany

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

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

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

- 30 past rulings;
- For the period 1 April 2016 - 31 December 2016: seven future rulings;
- For the calendar year 2017: 10 future rulings,
- For the calendar year 2018: 10 future rulings, and
- For the year in review: eight future rulings.

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

## A. The information gathering process

432. Germany can legally issue five types of rulings within the scope of the transparency framework: (i) preferential regimes;<sup>1</sup> (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.

433. For Germany, 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.

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

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

## B. The exchange of information

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

437. Germany 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<sup>[4]</sup>) ("the Convention"), (ii) the Directive 2011/16/EU with all other European Union Member States and (iii) double tax agreements in force with 95 jurisdictions.<sup>2</sup>

438. 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
	8	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

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

## C. Statistics (ToR IV)

440. 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	<i>De minimis</i> rule applies	N/A
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	7	Canada, Hong Kong (China), Switzerland, United Kingdom, United States
Related party conduit rulings	0	N/A
<i>De minimis</i> rule applies	1	
<b>Total</b>	<b>8</b>	

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

441. Germany does not offer an intellectual property regime for which transparency requirements under the Action 5 Report (OECD, 2015<sup>[1]</sup>) were imposed.

## 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.

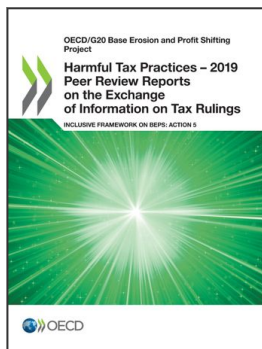
## References

- 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

<sup>1</sup> With respect to the following preferential regimes: 1) Tonnage tax regime.

<sup>2</sup> Parties to the Convention are available here: [www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm](http://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm). Germany also has bilateral agreements in force with Albania, Algeria, Argentina, Armenia, Australia, Austria, Bangladesh, Belarus, Belgium, Bolivia, Bosnia and Herzegovina, Bulgaria, Canada, China (People's Republic of), Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Finland, France, Georgia, Ghana, Greece, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jersey, Kazakhstan, Kenya, Korea, Kosovo, Kuwait, Kyrgyzstan, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Morocco, Mauritius, Mexico, Moldavia, Mongolia, Montenegro, Namibia, Netherlands, New Zealand, North Macedonia, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Russia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syria, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Venezuela, Viet Nam, Zambia, Zimbabwe.



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), “Germany”, 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/10.1787/61bbc517-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>.