

Poland

Poland has met all aspects of the terms of reference (OECD, 2021^[3]) (ToR) for the calendar year 2020 (year in review), and no recommendations are made.

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

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

Type of ruling	Number of rulings
Past rulings	84
Future rulings in the period 1 April 2016 – 31 December 2016	6
Future rulings in the calendar year 2017	20
Future rulings in the calendar year 2018	16
Future rulings in the calendar year 2019	100
Future rulings in the year in review	108

Peer input was received from four jurisdictions in respect of the exchanges of information on rulings received from Poland. The input was generally positive, noting that overall information was complete, in a correct format and received in a timely manner. One peer recommended to provide information on the duration of rulings.

A. The information gathering process (ToR I.A)

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

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.

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

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

B. The exchange of information (ToR II.B)

904. Poland has international agreements permitting spontaneous exchange of information, including being a party to (i) the *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 89 jurisdictions.¹

905. For the year in review, the timeliness of exchanges is as follows:

Future rulings within 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
	245	3	COVID-19 pandemic	Suspended shipment to some jurisdictions

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

906. 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.

907. 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. Only small proportion of

exchanges were delayed as a direct impact of the COVID-19 pandemic, and as it is not expected to be a recurring problem once normal conditions resume, no recommendation is given for the delayed exchanges. Poland has met all of the ToR for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

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

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Rulings related to a preferential regime	4	<i>De minimis</i> rule applies
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	1	<i>De minimis</i> rule applies
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	112	Australia, Canada, China (People's Republic of), Georgia, Iceland, India, Indonesia, Israel, Japan, Korea, Kuwait, Mexico, Morocco, New Zealand, North Macedonia, Norway, Russia, Serbia, Singapore, South Africa, Switzerland, Chinese Taipei, Thailand, Turkey, Ukraine, United States, Viet Nam
Permanent establishment rulings	7	Korea, Switzerland, United States
Related party conduit rulings	124	Australia, Canada, Chile, China (People's Republic of), Egypt, Greenland, India, Indonesia, Israel, Japan, Kazakhstan, Korea, Liechtenstein, Malaysia, Mexico, Morocco, New Zealand, Norway, Pakistan, Philippines, Qatar, Russia, Serbia, Singapore, South Africa, Switzerland, Turkey, United States
Total	248	

D. Matters related to intellectual property regimes (ToR I.A.1.3)

909. 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 (2021), *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 (ed.) (2017b), *Harmful Tax Practices - 2017 Progress Report on Preferential Regimes*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264283954-en>. [2]
- 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, Ethiopia, 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, Syrian Arab Republic, 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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