

# India

India has met all aspects of the terms of reference (OECD, 2017<sup>[3]</sup>) (ToR) for the calendar year 2019 (year in review), except for ensuring that information on future APA rulings is exchanged as soon as possible (ToR II.5.6). India receives one recommendation on this point for the year in review.

In the prior year report, as well as in the 2017 peer review, India had received the same recommendation. A number of steps were taken in the year in review to address this, although a significant number of exchanges remained delayed for the year in review. As such, the recommendation remains in place.

India can legally issue two types of rulings within the scope of the transparency framework.

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

- 69 past rulings;
- For the period 1 April 2016 - 31 December 2016: 55 future rulings;
- For the calendar year 2017: 73 future rulings,
- For the calendar year 2018: 44 future rulings, and
- For the year in review: 137 future rulings.

PE rulings are published unless it is stated to be confidential by the Authority issuing the ruling, whereas unilateral APAs are not.

Peer input was received from seven jurisdictions in respect of the exchanges of information on rulings received from India. The input generally positive, noting that information was complete, in a correct format and almost all received in a timely manner. Some peers noted that the information was received with a delay.

## A. The information gathering process

512. India can legally issue the following to 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; and (ii) permanent establishment rulings.

513. For India, 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.

514. In the prior year peer review report, it was determined that India'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 India's review and supervision mechanism was sufficient to meet the minimum standard. India's implementation remains unchanged, and therefore continues to meet the minimum standard.

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

## B. The exchange of information

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

516. India has the necessary domestic legal basis to exchange information spontaneously. India 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.

517. India 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 South Asian Association for Regional Cooperation (SAARC) Agreement and (iii) bilateral agreements in force with 100 jurisdictions.<sup>1</sup>

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

518. In the prior years' peer review reports, it was determined that India's process for the completion and exchange of templates met all the ToR, except for ensuring that information on future APA rulings is exchanged as soon as possible (ToR II.5.6). Therefore, India was recommended to ensure the timely exchange of information on future APA rulings. With respect to past rulings, no further action was required.

519. 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
	150	761	See below.	N/A
<b>Total</b>	150	761		

Follow up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	4	120 days	0

520. During the year in review, India continued to encounter delays with respect to the exchange of information on future APAs. This was mostly due to the fact that India had to use the “best efforts approach” to identify potential exchange jurisdictions, for APAs issued before 16 June 2017. It is noted that new ruling application templates requiring this information came into effect from 16 June 2017 (for APAs). In addition, India faced difficulties in carrying out exchanges due to the increased number of issued rulings. Therefore, India is still recommended to continue to ensure the timely exchange of information on future APA rulings (ToR II.5.6).

521. India notes that during the year in review, India made an analysis of the workload management and in response to that, redistributed work in the centralised office (the competent authority) to a higher number of divisions and made changes to the workflow. In addition, India issued guidance to tax administration officers for the timely preparation and forwarding of templates to the competent authority, amended taxpayer’s application forms to capture all relevant information at the application stage, created a central data warehouse to store the templates, followed up with the relevant officers in cases of delay, and created a Standard Operation Procedure to deal with procedural delays. This procedure includes periodic communication with the responsible authorities to ensure accurate and timely reporting of data to the competent authority. In addition, it includes steps on rectification of a template in case there was inaccurate information. In that case, communication takes place with the relevant officer, and the rectified template (by the competent authority) will be exchanged within the appropriate timeframe.

522. In addition, India will issue additional internal guidance for officers within the tax administration and the competent authority. India envisages that these new procedures, guidance and internal processes that have been put in place will ensure that the completion and exchange of templates will occur in an accurate and timely manner going forward, and this will be assessed in the next year’s peer review process.

### **Conclusion on section B**

523. India has met all of the ToR for the information gathering process except for ensuring that information on future APA rulings is exchanged as soon as possible (ToR II.5.6). India is recommended to continue to ensure the timely exchange of information on future APA rulings.

## **C. Statistics (ToR IV)**

524. 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	905	Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China (People’s Republic of), Colombia, Croatia, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Guatemala, Bailiwick of Guernsey, Hong Kong (China), Hungary, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Kenya, Korea, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Morocco, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Panama, Poland, Portugal, Qatar,

		Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, Turkey, Ukraine, United Kingdom, United States
Permanent establishment rulings	6	Austria, Italy, Luxembourg, United Kingdom
<b>Total</b>	<b>911</b>	

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

525. India offers an intellectual property regime (IP regime)<sup>2</sup> that is not subject to the transparency requirements under the Action 5 Report (OECD, 2015<sup>[1]</sup>), because:

- **New entrants benefitting from the grandfathered IP regime:** the regime is a new nexus-compliant regime and therefore there is no grandfathered IP regime for which enhanced transparency requirements will 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 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
India experienced delays in the exchange of information on future APAs.	India is recommended to continue its efforts to ensure that all information on future APAs is exchanged as soon as possible. This recommendation remains unchanged since the 2017 and 2018 peer review reports.

#### References

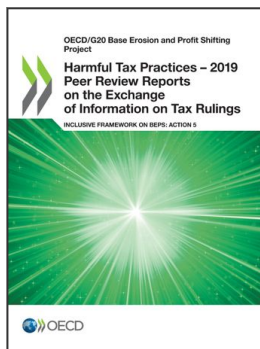
- OECD (2017), *BEPS Action 5 on Harmful Tax Practices - Terms of Reference and Methodology for the Conduct of the Peer Reviews of the Action 5 Transparency Framework*, OECD Publishing, Paris, <http://www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf>. [3]
- 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

<sup>1</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). India also has bilateral agreements with Albania, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bangladesh, Belarus, Belgium, Bhutan, Botswana, Brazil, Brunei Darussalam, Bulgaria, Canada, China (People's Republic of), Colombia, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Faroe Islands, Fiji, Finland, France, Georgia, Germany, Greece, Grenada, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Kyrgyzstan, Latvia, Libya, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Moldova, Mongolia, Morocco, Montenegro, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, North Macedonia, Norway, Oman, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syria, Chinese Taipei, Tajikistan, Tanzania, Thailand, Trinidad and Tobago, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Vanuatu and Zambia.

The SAARC was entered into force on 19 May 2010 and provides for exchanges with Bangladesh, Bhutan, Maldives, Nepal, Pakistan and Sri Lanka.

<sup>2</sup> Tax on income from patent.



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), “India”, 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/10.1787/7e9cdb05-en>

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