

# Korea

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

Korea can legally issue one type of rulings within the scope of the transparency framework.

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

- 45 past rulings;
- For the period 1 April 2016 - 31 December 2016: one future ruling;
- For the calendar year 2017: four future rulings,
- For the calendar year 2018: five future rulings, and
- For the year in review: five future rulings.

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

## A. The information gathering process

656. Korea can legally issue the following type of ruling within the scope of the transparency framework: 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.

657. For Korea, 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.

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

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

## B. The exchange of information

660. In the prior years' peer review reports, it was determined that Korea'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.

661. The National Tax Service (NTS) completes the templates according to Annex C of the BEPS Action 5 report (OECD, 2015<sup>[1]</sup>) and converts them into PDF to send through electronic mail. The NTS is planning to move to exchange in the XML format. As such, it has been testing the OECD Common Transmission System to exchange rulings, and confirmed that the XML files have no functional problems with several partner jurisdictions. The NTS is still developing additional in-house interfaces to ensure stable exchanges of information. This is currently under review by the NTS, and in the interim will continue exchanges in PDF format via electronic mail.

662. Korea 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") and (ii) bilateral agreements in force with 93 jurisdictions.<sup>1</sup>

663. 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
	5	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

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

### C. Statistics (ToR IV)

665. 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	5	Hong Kong (China), Singapore, United States
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	0	N/A
<b>Total</b>	<b>5</b>	

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

666. Korea offers an intellectual property regime (IP regime)<sup>2</sup> that is subject to the transparency requirements under the Action 5 Report (OECD, 2015<sub>[1]</sub>). It states that the identification of the benefitting taxpayers will occur as follows:

- **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:** the regime provides benefits to the third category of IP assets. The process on the collection of information is described in the previous year peer review report and meets the ToR. In practice, no taxpayers have applied for the corporate income tax benefits for the third category of IP assets, and as such no exchanges were required to take place.
- **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
	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> 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). Korea also has bilateral agreements with Albania, Algeria, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Brazil, Brunei Darussalam, Bulgaria, Canada, Chile, China (People's Republic of), Colombia, Croatia, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Georgia, Germany, Greece, Hong Kong (China), Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Laos, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Mongolia, Morocco, Myanmar, Nepal, Netherlands, New Zealand, Norway, Oman, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Thailand, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Venezuela and Viet Nam.

<sup>2</sup> Special taxation for transfer, acquisition, etc. of technology.



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