Australia

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

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

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

Type of ruling	Number of rulings
Past rulings	202
Future rulings in the period 1 April 2016 – 31 December 2016	15
Future rulings in the calendar year 2017	13
Future rulings in the calendar year 2018	10
Future rulings in the calendar year 2019	15
Future rulings in the calendar year 2020	17
Future rulings in the year in review	2

Peer input was received from one jurisdiction in respect of the exchanges of information on rulings received from Australia. The input was generally positive, noting that overall information was complete, in a correct format and received in a timely manner.

Information gathering process (ToR I.A)

99.   Australia can legally issue the following four types of rulings within the scope of the transparency framework: (i) preferential regimes;[1] (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; (iv) permanent establishment rulings; and (v) related party conduit rulings.

100.   For Australia, 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.

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

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

Exchange of information (ToR II.B)

103.   Australia has the necessary domestic legal basis to exchange information spontaneously. Australia 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.

104.   Australia has international agreements permitting spontaneous exchange of information, including: (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011[1]) ("the Convention") and (ii) bilateral agreements in force with 45 jurisdictions.[2]

105.   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
	4	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

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

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

Statistics (ToR IV.D)

108.   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	0	N/A
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	*De minimis* rule	N/A
Permanent establishment rulings	*De minimis* rule	N/A
Related party conduit rulings	0	N/A
De minimis rule	4	N/A
Total	4	

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

109.   Australia does not offer an intellectual property regime for which transparency requirements under the Action 5 Report (OECD, 2015[2]) were imposed.

Summary of recommendations on implementation of the transparency framework

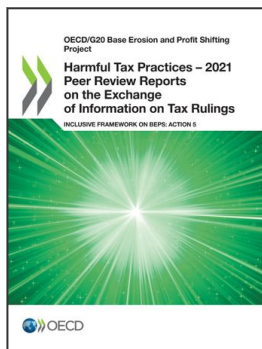| Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made.

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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://doi.org/10.1787/9789264241190-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://doi.org/10.1787/9789264115606-en.   [1]

Notes

[1] 1) Offshore banking unit regime and 2) Conduit foreign income regime.

[2] Participating jurisdictions to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Australia also has bilateral agreements with Argentina, Austria, Belgium, Canada, Chile, China (People's Republic of), Czech Republic, Denmark, Fiji, Finland, France, Germany, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Kiribati, Korea, Malaysia, Malta, Mexico, Netherlands, New Zealand, Norway, Papua New Guinea, Philippines, Poland, Romania, Russia, Singapore, Slovak Republic, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Chinese Taipei, Thailand, Türkiye, United Kingdom, United States and Viet Nam.