

India

India has met all aspects of the terms of reference (OECD, 2021^[3]) (ToR) for the calendar year 2021 (year in review), except for the timely exchange of information on future rulings (ToR II.B.6.2). India receives one recommendation on this point for the year in review.

In the prior year's peer review report, as well as in the 2017-2019 peer review reports, India had received the same recommendation. During the year in review, a number of exchanges remained delayed, and therefore 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:

Type of ruling	Number of rulings
Past rulings	69
Future rulings in the period 1 April 2016 – 31 December 2016	55
Future rulings in the calendar year 2017	73
Future rulings in the calendar year 2018	44
Future rulings in the calendar year 2019	137
Future rulings in the calendar year 2020	28
Future rulings in the year in review	37

Peer input was received from six jurisdictions in respect of the exchanges of information on rulings received from India. The input was generally positive, noting that overall information was complete, in a correct format and almost all received in a timely manner. However, one peer indicated that exchanges on rulings were not timely.

Information gathering process (ToR I.A)

594. India can legally issue the following two 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.

595. 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.

596. In the prior year's 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.

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

Exchange of information (ToR II.B)

Legal basis for spontaneous exchange of information (ToR II.B.1, II.B.2)

598. 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.

599. India 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"), (ii) the South Asian Association for Regional Cooperation (SAARC) Agreement and (iii) bilateral agreements in force with 96 jurisdictions.¹

Completion and exchange of templates (ToR II.B.3, II.B.4, II.B.5, II.B.6, II.B.7)

600. 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.B.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.

601. 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
	37	206	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

602. During the year in review, India continued to encounter delays with respect to the exchange of information on future APAs. This was due to the fact that India had to use the “best efforts approach” to identify potential exchange jurisdictions for APAs filed before 16 June 2017. In addition, India notes that it faced delays as a consequence of the Covid-19 pandemic. Therefore, India is still recommended to continue to ensure the timely exchange of information on future APA rulings (ToR II.B.6).

Conclusion on section B

603. 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.B.6). India is recommended to continue to ensure the timely exchange of information on future APA rulings.

Statistics (ToR IV.D)

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

Category of ruling	Number of exchanges	Jurisdictions exchanged with
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	242	Argentina, Australia, Austria, Azerbaijan, Belgium, Brazil, Canada, Chile, China (People's Republic of), Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Guatemala, Guernsey, Hong Kong (China), Hungary, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Jersey, Korea, Latvia, Lithuania, Luxembourg, Malaysia, Mexico, Netherlands, New Zealand, Norway, Pakistan, Panama, Poland, Portugal, Russia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Türkiye, Ukraine, United Kingdom, United States
Permanent establishment rulings	1	<i>De minimis</i> rule applies
Total	243	

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

605. In the prior years' peer review reports, it was determined that the India's information gathering and exchange of information processes for matters related to intellectual property regimes² were sufficient to meet the minimum standard. India's implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

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, 2018, 2019 and 2020 peer review reports.

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 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. India also has bilateral agreements with Albania, Armenia, Australia, Austria, Bangladesh, Belarus, Belgium, Bhutan, Botswana, Brazil, Bulgaria, Canada, China (People's Republic of), Colombia, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Fiji, Finland, France, Georgia, Germany, Greece, Hong Kong (China), Hungary, Iceland, Indonesia, Iran, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Kyrgyzstan, Latvia, Libya, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, 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, Syrian Arab Republic, Chinese Taipei, Tajikistan, Tanzania, Thailand, Trinidad and Tobago, Türkiye, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Viet Nam, 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.

² Tax on income from patents.



From:

Harmful Tax Practices – 2021 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/10.1787/4034ce42-en>

Please cite this chapter as:

OECD (2023), “India”, in *Harmful Tax Practices – 2021 Peer Review Reports on the Exchange of Information on Tax Rulings: Inclusive Framework on BEPS: Action 5*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/8a5ac553-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>.