

Malta

Malta has met all aspects of the terms of reference (OECD, 2021^[1]) (ToR) for the calendar year 2022 (year in review), and no recommendations are made.

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

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

Type of ruling	Number of rulings
Past rulings	7
Future rulings in the period 1 April 2017 – 31 December 2017	4
Future rulings in the calendar year 2018	7
Future rulings in the calendar year 2019	15
Future rulings in the calendar year 2020	17
Future rulings in the calendar year 2021	13
Future rulings in the year in review	33

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

Information gathering process (ToR I.A)

800. Malta can legally issue the following four 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; (ii) rulings providing for unilateral downward adjustments; (iii) permanent establishment rulings; and (iv) related party conduit rulings.

801. For Malta, past rulings are any tax rulings within scope that are issued either: (i) on or after 1 January 2015 but before 1 April 2017; and (ii) on or after 1 January 2012 but before 1 January 2015, provided they were still in effect as at 1 January 2015. Future rulings are any tax rulings within scope that are issued on or after 1 April 2017.

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

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

Exchange of information (ToR II.B)

804. Malta has the necessary domestic legal basis to exchange information spontaneously. Malta 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.

805. Malta 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^[2]) ("the Convention"), (ii) Directive 2011/16/EU with all other EU Member States and (iii) bilateral agreements in force with 78 jurisdictions.¹

806. 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
	62	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

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

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

Statistics (ToR IV.D)

809. 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	2	<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	0	N/A
Permanent establishment rulings	6	Curacao, Germany, Hungary, Malaysia, Netherlands, United Kingdom
Related party conduit rulings	54	Austria, Belgium, Cyprus, Czechia, Germany, Gibraltar, Hungary, Ireland, Isle of Man, Italy, Jersey, Luxembourg, Mexico, Netherlands, Panama, Poland, Singapore, Switzerland, Türkiye, United Kingdom, 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
Total	62	

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

810. In the prior years' peer review reports, it was determined that Malta's information gathering and exchange of information processes for matters related to intellectual property regimes² were sufficient to meet the minimum standard. Malta'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
	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, <https://www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf>. [1]
- 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>. [3]
- 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>. [2]

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. Malta also has bilateral agreements with Albania, Andorra, Armenia, Australia, Austria, Azerbaijan, Bahrain, Barbados, Belgium, Botswana, Bulgaria, Canada, China (People's Republic of), Croatia, Cyprus, Czechia, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Guernsey, Hong Kong (China), Hungary, Iceland, India, Ireland, Isle of Man, Israel, Italy, Jersey, Jordan, Korea, Kosovo, Kuwait, Latvia, Lebanon, Libya, Liechtenstein, Lithuania, Luxembourg, Malaysia, Mauritius, Mexico, Moldova, Monaco, Montenegro, Morocco, Netherlands, Norway, Pakistan, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Türkiye, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay and Viet Nam.

² Patent box deduction rules.



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