

# Australia

Australia has met all aspects of the terms of reference (ToR) for the calendar year 2018 (year in review) and no recommendations are made.

In the prior year report, Australia did not receive any recommendations.

Australia can legally issue four types of rulings within the scope of the transparency framework. In practice, Australia has issued rulings within the scope of the transparency framework as follows:<sup>1</sup>

- 202 past rulings;
- For the period 1 April 2016 - 31 December 2016: 15 future rulings;
- For the calendar year 2017: 13 future rulings, and
- For the year in review: 10 future rulings.

Australia publishes edited anonymised versions of private rulings on the ATO Legal Database (excluding the unilateral APAs which are not published due to privacy reasons).<sup>2</sup>

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

## Introduction

This peer review covers Australia's implementation of the BEPS Action 5 transparency framework for the year 2018. The report has four parts, each relating to a key part of the ToR. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

### A. The information gathering process

Australia can legally issue the four following types of rulings within the scope of the transparency framework: (i) rulings related to preferential regimes;<sup>3</sup> (ii) cross-border unilateral advance pricing arrangements (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; (iii) permanent establishment rulings; and (iv) related party conduit rulings.

#### **Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)**

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.

In the prior years' peer review reports, it was determined that Australia's undertakings to identify past rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. Australia's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

#### **Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)**

For Australia, future rulings are any tax rulings within scope that are issued on or after 1 April 2016.

In the prior years' peer review reports, it was determined that Australia's undertakings to identify future rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. Australia's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

#### **Review and supervision (ToR I.4.3)**

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

#### **Conclusion on section A**

Australia 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)**

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.

Australia is a party to 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) (“the Convention”) and (ii) double tax agreements in force with 43 jurisdictions.<sup>4</sup>

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

In the prior years’ peer review reports, it was determined that Australia’s completion and exchange of templates were sufficient to meet the minimum standard. Australia’s implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

For the year in review, the timeliness of exchanges is as follows:

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2018	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2018	Reasons for the delays	Any other comments
	77	2	N/A	The exchanges on past rulings includes 50 delayed exchanges from the prior year report.
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
	45	2	A small amount of delayed rulings result from minor administrative oversight.	N/A
Total	122	4		

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

### **Conclusion on section B**

Australia has the necessary legal basis for spontaneous exchange of information and a process for completing the templates in a timely way. Australia has completed exchanges in a timely manner generally, with some minor delays due to minor administrative oversight or the recipient jurisdiction not having confirmed whether there are systems in place to receive exchanges. Australia has met all of the ToR for the exchange of information process and no recommendations are made.

## C. Statistics (ToR IV)

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	2	<i>De minimis</i> rule applies
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	98	Argentina, Brazil, Canada, China (People's Republic of), Denmark, France, Germany, Guernsey, India, Ireland, Israel, Italy, Jersey, Korea, Luxembourg, Malaysia, Malta, Netherlands, Philippines, Russia, Singapore, Switzerland, United Kingdom, United States
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	21	Denmark, France, Germany, Ireland, New Zealand, Singapore, Switzerland, United States
Related party conduit rulings	1	<i>De minimis</i> rule applies
<i>De minimis</i> rule	N/A	N/A
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	N/A	N/A
<b>Total</b>	<b>122</b>	

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

Australia does not offer an intellectual property regime for which transparency requirements under the Action 5 Report (OECD, 2015<sup>[5]</sup>) 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.

## Notes

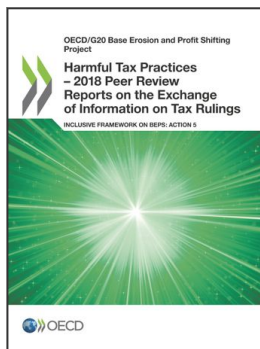
<sup>1</sup> In the prior years' peer review reports, Australia reported that it had 208 past rulings, nine future rulings for the period 1 April 2016 – 31 December 2016, and 22 future rulings for the calendar year 2017. However, upon subsequent review, Australia has provided revised number of rulings for both past and future rulings due to a record-keeping error. This clerical error with regard to statistics does not impact the correct

identification and exchange of the relevant rulings. This issue has been rectified, and all rulings in scope of the transparency framework will now be recorded on one register.

<sup>2</sup> Available at <https://www.ato.gov.au/law/#Law>.

<sup>3</sup> With respect to the following preferential regimes: 1) Offshore banking unit regime and 2) Conduit foreign income regime.

<sup>4</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). 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, 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, Turkey, United Kingdom, United States and Viet Nam.



From:

## Harmful Tax Practices – 2018 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/10.1787/7cc5b1a2-en>

### Please cite this chapter as:

OECD (2020), "Australia", in *Harmful Tax Practices – 2018 Peer Review Reports on the Exchange of Information on Tax Rulings: Inclusive Framework on BEPS: Action 5*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/8d878c01-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>.