

United States

The United States has met all aspects of the terms of reference (OECD, 2017^[3]) (ToR) for the calendar year 2019 (year in review) and no recommendations are made.

The United States can legally issue four types of rulings within the scope of the transparency framework.

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

- 114 past rulings;
- For the period 1 April 2016 - 31 December 2016: 21 future rulings;
- For the calendar year 2017: 30 future rulings;
- For the calendar year 2018: 27 future rulings; and
- For the year in review: 30 future rulings.

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

A. The information gathering process

1130. The United States can legally issue three 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) permanent establishment rulings; and (iii) related party conduit rulings.

1131. For the United States, 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.

1132. In the prior years' peer review reports, it was determined that the United States' 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 the United States' review and supervision mechanism was sufficient to meet the minimum standard. The United States' implementation remains unchanged, and therefore continues to meet the minimum standard.

1133. The United States has met all of the ToR for the information gathering process and no recommendations are made.

B. The exchange of information

1134. In the prior years' peer review reports, it was determined that the United States' 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. The United States' implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

1135. The United States has international agreements permitting spontaneous exchange of information, including being a party to the (i) *Multilateral Convention on Mutual Administrative Assistance in Tax Matters*¹ ("the Convention") and (ii) bilateral agreements in force with 49 jurisdictions.²

1136. 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
	37	1	This delay was due to the U.S. government shutdown, and was exchanged as soon as possible and within the year in review.	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

1137. The United States 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. The United States has met all of the ToR for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

1138. 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 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	38	Argentina, Brazil, Canada, China (People's Republic of), Finland, France, Germany, Israel, Italy, Japan, Luxembourg, Mexico, Netherlands, New Zealand, South Africa, United Kingdom
Permanent establishment rulings	0	N/A
Related party conduit rulings	0	N/A
Total	38	

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

1139. The United States does not offer an intellectual property regime for which transparency requirements under the Action 5 Report (OECD, 2015^[1]) 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
The United States experienced some delays in exchanging information on one future ruling.	No recommendation is made because the United States completed the exchange on the delayed future ruling quickly after the issues were identified and resolved, and this is not a recurring issue.

References

OECD (2017), BEPS Action 5 on Harmful Tax Practices - Terms of Reference and Methodology [3] 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>.

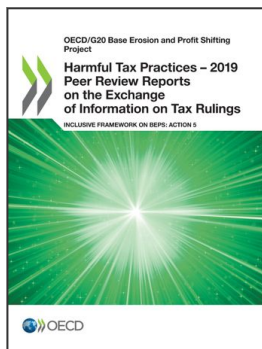
OECD (2015), Countering Harmful Tax Practices More Effectively, Taking into Account [1] Transparency and Substance, Action 5 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241190-en>.

OECD/Council of Europe (2011), The Multilateral Convention on Mutual Administrative Assistance [4] in Tax Matters: Amended by the 2010 Protocol, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264115606-en>.

Notes

¹ The United States is a Party to the original Convention but not the amended Convention. The United States signed the Protocol in 2010 which amends the original Convention but the Protocol has not yet entered into force.

² Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. The United States also has bilateral agreements with Australia, Austria, Barbados, Belgium, Bulgaria, Canada, China (People's Republic of), Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Turkey, Ukraine and the United Kingdom.



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