

Germany

Germany has met all aspects of the terms of reference (OECD, 2017^[3]) (ToR) for the calendar year 2018 (year in review) and no recommendations are made.

In the prior year report, Germany did not receive any recommendations. Germany can legally issue five types of rulings within the scope of the transparency framework. In practice, Germany issued rulings within the scope of the transparency framework as follows:

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

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

Introduction

This peer review covers Germany'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

Germany can legally issue the following five types of rulings within the scope of the transparency framework: i) preferential regimes;² (ii) 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; (iii) rulings providing for unilateral downward adjustments; (iv) permanent establishment rulings; and (v) related party conduit rulings.

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

For Germany, 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 Germany's undertakings to identify past rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. Germany'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 Germany, 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 Germany's undertakings to identify future rulings and all potential exchange jurisdictions was sufficient to meet the minimum standard. Germany'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 Germany's review and supervision mechanism was sufficient to meet the minimum standard. Germany's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

Conclusion on section A

Germany 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)

Germany has the necessary domestic legal basis to exchange information spontaneously. Germany 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.

Germany has international agreements permitting spontaneous exchange of information, including being a party to the (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (“the Convention”), (ii) the Directive 2011/16/EU with all other European Union Member States and (iii) double tax agreements in force with 95 jurisdictions.³

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

In the prior year peer review report, it was determined that Germany's process for the completion and exchange of templates were sufficient to meet the minimum standard. Germany'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
	0	0	N/A	N/A
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
	10	0	N/A	N/A
Total	10	0		

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

Germany 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. Germany 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	1	<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	1	<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	8	France, Slovak Republic, Switzerland, United Kingdom, United States
Related party conduit rulings	0	N/A
<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
Total	10	

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

Germany does not offer an intellectual property regime for which transparency requirements under the Action 5 Report (OECD, 2015^[5]) 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

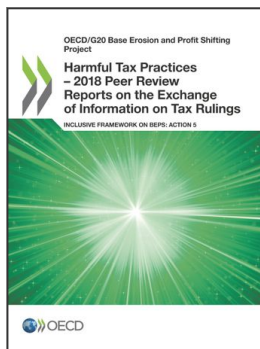
¹ Including one that falls into more than one category under the BEPS Action 5 report.

² With respect to the following preferential regime: tonnage tax regime.

³ Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Germany also has bilateral agreements in force with Albania, Algeria, Argentina, Armenia, Australia, Austria, Bangladesh, Belarus, Belgium, Bolivia, Bosnia and Herzegovina, Bulgaria, Canada, China (People's Republic of), Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Finland, France, Georgia, Ghana, Greece, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jersey, Kazakhstan, Kenya, Korea, Kosovo, Kuwait, Kyrgyzstan, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Morocco, Mauritius, Mexico, Moldavia, Mongolia, Montenegro, Namibia, Netherlands, New Zealand, North Macedonia, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Russia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syria, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Venezuela, Viet Nam, Zambia, Zimbabwe.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union. The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.



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