

# Malaysia

Malaysia has met all aspects of the terms of reference (OECD, 2021<sup>[1]</sup>) (ToR) for the calendar year 2022 (year in review), except for identifying all potential exchange jurisdictions for future rulings (ToR I.A.2.1) and for providing information on rulings to the Competent Authority without undue delay and undertaking spontaneous exchange of information on all future tax rulings within the scope of the transparency framework (ToR II.B). Malaysia receives two recommendations on these points for the year in review.

In the prior year report, as well as in the 2019 and 2020 peer reviews, Malaysia had received the same recommendations. As they have not been addressed, the recommendations remain in place.

Malaysia can legally issue five types of rulings within the scope of the transparency framework.

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

Type of ruling	Number of rulings
Past rulings	249
Future rulings in the period 1 April 2017 – 31 December 2017	23
Future rulings in the calendar year 2018	51
Future rulings in the calendar year 2019	69
Future rulings in the calendar year 2020	40
Future rulings in the calendar year 2021	3
Future rulings in the year in review	0

No peer input was received in respect of the exchanges of information on rulings received from Malaysia.

## Information gathering process (ToR I.A)

784. Malaysia can legally issue the following five types of rulings within the scope of the transparency framework: (i) preferential regimes;<sup>1</sup> (ii) 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; (iii) rulings providing for unilateral downward adjustments; (iv) permanent establishment rulings; and (v) related party conduit rulings.

### **Past rulings (ToR I.A.1.1, I.A.1.2, I.A.2.1, I.A.2.2)**

785. For Malaysia, past rulings are any tax rulings within scope that are issued either (i) on or after 1 January 2015 but before 1 September 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.

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

### **Future rulings (ToR I.A.1.1, I.A.1.2, I.A.2.1)**

787. For Malaysia, future rulings are any tax rulings within scope that are issued on or after 1 September 2017.

788. In the prior years' peer review reports, it was determined that Malaysia's undertakings to identify past and future rulings and all potential exchange jurisdictions have met all the ToR, except for identifying all potential exchange jurisdictions for future rulings (ToR I.A.2.1). Therefore, Malaysia was recommended to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings.

789. Malaysia notes that during the year in review, a process has been created for identifying potential exchange jurisdictions. Taxpayers need to provide the information required in the Annex C template upon approval of the preferential regime. The promotional agency of Malaysia will monitor the information provided by the taxpayer. However, Malaysia notes that in case taxpayers do not provide the information required in the Annex C template, it will identify potential exchange jurisdictions using the "best efforts approach". As Malaysia cannot ensure that potential exchange jurisdictions are always identified through the process of requiring taxpayers to provide the Annex C template, the recommendation is not yet resolved. Malaysia is therefore recommended to continue its efforts to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings. Malaysia notes that it started improving this process in 2023, and this will be taken into account in next year's peer review.

### **Review and supervision (ToR I.A.3)**

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

### **Conclusion on section A**

791. Malaysia has met all of the ToR for the information gathering process except for identifying all potential exchange jurisdictions for future rulings (ToR I.A.2.1). Malaysia is recommended to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings.

## Exchange of information (ToR II.B)

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

792. Malaysia has the necessary domestic legal basis to exchange information spontaneously. Malaysia 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.

793. Malaysia 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<sup>[2]</sup>) (“the Convention”) and (ii) bilateral agreements in force with 73 jurisdictions.<sup>2</sup>

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

794. In the prior year’s peer review report, it was determined that Malaysia’s internal policies, processes and procedures for the completion and exchange of templates were sufficient to meet the minimum standard, except for the provision of information on rulings to the Competent Authority without undue delay, and the timely spontaneous exchange of information on future rulings (ToR II.B).

795. Malaysia’s internal procedures and timelines to provide information on rulings to the Competent Authority remain unchanged, and therefore the recommendation to reduce the timelines for providing information on rulings to the Competent Authority without undue delay remains.

796. During the year in review, no exchanges were required to take place and no data on the timeliness of exchanges is reported. However, as there were delays on the exchange of information on future rulings in previous years and Malaysia reports that internal processes to ensure timely exchanges still need to be further developed, the recommendation to ensure that the exchanges of information on future rulings occur as soon as possible remains. This will be reassessed in next year’s peer review.

### **Conclusion on section B**

797. Malaysia has the necessary legal basis to undertake spontaneous exchange of information. Malaysia is recommended to continue its efforts to reduce the timeliness for providing the information on rulings to the Competent Authority and to complete the templates for all relevant future rulings and to ensure that the exchanges of information on future rulings occur as soon as possible (ToR II.B).

## **Statistics (ToR IV.D)**

798. As no rulings were issued, no statistics can be reported.

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

799. Malaysia does not offer an intellectual property regime for which transparency requirements under the Action 5 Report (OECD, 2015<sup>[3]</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
Malaysia experienced difficulties in identifying all potential exchange jurisdictions for future rulings.	Malaysia is recommended to continue its efforts to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings. This recommendation remains unchanged since the 2019, 2020 and 2021 year peer review reports.
Malaysia experienced delays in the provision of rulings to the Competent Authority and did not undertake spontaneous exchange of information on all future tax rulings within the scope of the transparency framework during the year in review. Malaysia is in process of identifying future rulings that need to be exchanged and is estimating that the rulings will be exchanged via OECD XML Schema in 2023.	Malaysia is recommended to continue its efforts to reduce the timeliness for providing the information on rulings to the Competent Authority and to complete the templates for all relevant future rulings and to ensure that the exchanges of information on future rulings occur as soon as possible. This recommendation remains unchanged since the 2017, 2018, 2019, 2020 and 2021 peer review reports.

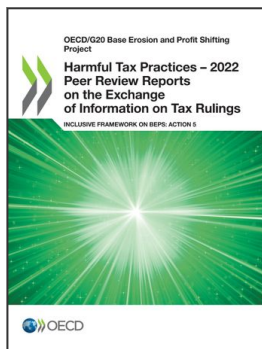
## References

- 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, <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

<sup>1</sup> 1) Pioneer status – contract R&D, 2) Biotechnology industry, 3) Principal hub, 4) MSC Malaysia, 5) Green technology services and 6) Special economic regions, 7) High technology regime and 8) Treasury management centre.

<sup>2</sup> 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](http://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm). Malaysia also has bilateral agreements with Albania, Argentina, Australia, Austria, Bahrain, Bangladesh, Belgium, Bosnia and Herzegovina, Brunei Darussalam, Canada, Chile, China (People's Republic of), Croatia, Czechia, Denmark, Egypt, Fiji, Finland, France, Germany, Hong Kong (China), Hungary, India, Indonesia, Iran, Ireland, Italy, Japan, Jordan, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Laos, Lebanon, Luxembourg, Malta, Mauritius, Mongolia, Morocco, Myanmar, Namibia, Netherlands, New Zealand, Norway, Pakistan, Papua New Guinea, Philippines, Poland, Qatar, Romania, Russia, San Marino, Saudi Arabia, Seychelles, Singapore, South Africa, Spain, Slovak Republic, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Türkiye, Turkmenistan, United Arab Emirates, United Kingdom, Uzbekistan, Venezuela, Viet Nam, Zimbabwe.



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