

Hungary

Hungary has met all aspects of the terms of reference (OECD, 2017^[3]) (ToR) for the calendar year 2019 (year in review), except for applying the best efforts approach to identify potential exchange jurisdictions for all past rulings (ToR I.4.2.2), the timely exchange of information on future rulings (ToR II.5.6) and identifying or exchanging information on new entrants to the grandfathered IP regime (ToR I.4.1.3). Hungary receives three recommendations on these points for the year in review.

In the prior year report, as well as in the 2016 and 2017 peer reviews, Hungary had received the same recommendations with respect to the exchange on past rulings and the grandfathered IP regime. As they have not been addressed, the recommendations remain in place. A new recommendation with respect to the exchange on future rulings has been added.

Hungary can legally issue four types of rulings within the scope of the transparency framework. In practice, Hungary issued rulings within the scope of the transparency framework as follows:

- 77 past rulings;
- For the period 1 April 2016 - 31 December 2016: four future rulings;
- For the calendar year 2017: nine future rulings,
- For the calendar year 2018: 11 future rulings, and
- For the year in review: 21 future rulings.

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

A. The information gathering process

485. Hungary can legally issue the following four types of rulings within the scope of the transparency framework: (i) preferential regimes;¹ (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) 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)

486. For Hungary, 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.

487. In the prior years' peer review reports, it was determined that Hungary had not used the best efforts approach to identify potential exchange jurisdictions, meaning that Hungary had only identified potential exchange jurisdictions for around half of the past ATRs, although it had identified most potential exchange jurisdictions for APAs but not necessarily the ultimate parent company jurisdiction. Therefore, Hungary was recommended to continue to apply the "best efforts approach" to identify potential exchange jurisdictions for all past rulings.

488. During the year in review, Hungary has not been able to take additional steps. As such, the recommendation remains.

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

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

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

Review and supervision (ToR I.4.3)

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

Conclusion on section A

492. Hungary has met all of the ToR for the information gathering process except for applying the best efforts approach for past rulings (ToR I.4.2.2) and Hungary is recommended to continue to apply the "best efforts approach" to identify potential exchange jurisdictions for all past rulings.

B. The exchange of information

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

493. Hungary has the necessary domestic legal basis to exchange information spontaneously. Hungary 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.

494. Hungary has international agreements permitting spontaneous exchange of information, including being a party to the (i) *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011^[4]) (“the Convention”), (ii) the Directive 2011/16/EU with all other European Union Member States and (iii) bilateral agreements in force with 81 jurisdictions.²

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

495. In the prior year peer review report, it was determined that Hungary’s process for the completion and exchange of templates was sufficient to meet the minimum standard. Hungary’s implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

496. 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
	20	5	See below	N/A

Follow up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	2	12 days	0

497. During the year in review, Hungary experienced some delays for future rulings. Hungary explained it was due to a review at the beginning of 2020, 3 more future rulings (5 exchanges) are required to be exchanged. Hungary conducted these outstanding exchanges at the beginning of April 2020. Hungary is recommended to ensure that all information on future rulings is exchanged as soon as possible.

Conclusion on section B

498. Hungary 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. Hungary has met all of the ToR for the exchange of information process except for the timely exchange of information on future rulings (ToR II.5.6) and Hungary is recommended to ensure that all information on future rulings is exchanged as soon as possible.

C. Statistics (ToR IV)

499. 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	<i>De minimis rule applies</i>	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	12	China (People’s Republic of), France, Germany, Ireland, Luxembourg, Netherlands, Russia, Switzerland, United States
Permanent establishment rulings	<i>De minimis rule applies</i>	N/A

Related party conduit rulings	0	N/A
<i>De minimis rule</i>	8	
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	14	Austria, Croatia, Czech Republic, France, Slovak Republic, United States
Total	34	

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

500. Hungary offers an intellectual property regime (IP regime)³ that is subject to the transparency requirements under the Action 5 Report (OECD, 2015_[1]). It states that the identification of the benefitting taxpayers will occur as follows:

- ***New entrants benefitting from the grandfathered IP regime:*** Taxpayers that are new entrants to the IP regime can be identified in the tax return. The first tax returns containing information on new entrants have been filed after the relevant date from which enhanced transparency obligations apply. Hungary is currently trying to identify new taxpayers by analysing previous tax returns of taxpayers who have opted into the grandfathered regime and intends to exchange the information on a retroactive basis as soon as it has identified the new entrants (i.e. both new taxpayers and new IP assets). It is noted in Hungary some new entrants resulting in 14 exchanges have already been identified during tax audits for the year in review.
- ***Third category of IP assets:*** not applicable as the regime does not allow the third category of IP assets to qualify for the benefits.
- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption:*** not applicable as the regime does not allow the nexus ratio to be treated as a rebuttable presumption.

501. Hungary is recommended to continue its efforts to identify and exchange information on all new entrants to the grandfathered IP regime as soon as possible (ToR I.4.1.3).

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Hungary did not yet apply the “best efforts approach” to identify potential exchange jurisdictions for all past rulings.	Hungary is recommended to continue to apply the “best efforts approach” to identify potential exchange jurisdictions for all past rulings. This recommendation remains unchanged since the 2016, 2017 and 2018 peer review reports.
Hungary experienced some delays for the exchange of future rulings.	Hungary is recommended to ensure that all information on future rulings is exchanged as soon as possible.
Hungary did not identify or exchange all information on new entrants to the grandfathered IP regime.	Hungary is recommended to continue its efforts to identify and exchange information on all new entrants to the grandfathered IP regime. This recommendation remains unchanged since the 2016, 2017 and 2018 peer review reports.

References

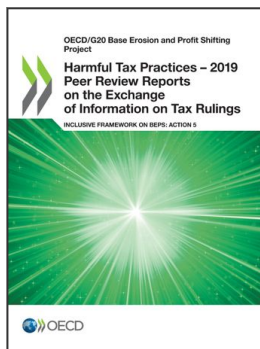
- OECD (2017), *BEPS Action 5 on Harmful Tax Practices - Terms of Reference and Methodology for the Conduct of the Peer Reviews of the Action 5 Transparency Framework*, OECD Publishing, Paris, <http://www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf>. [3]
- 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://dx.doi.org/10.1787/9789264241190-en>. [1]
- OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264115606-en>. [4]

Notes

¹ With respect to the following preferential regime: IP regime for royalties and capital gains.

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. Hungary also has bilateral agreements with Albania, Armenia, Australia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, China (People's Republic of), Chinese Taipei, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hong Kong (China), Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Kazakhstan, Korea, Kosovo, Kuwait, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Moldova, Mongolia, Montenegro, Morocco, Netherlands, North Macedonia, Norway, Oman, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan and Viet Nam.

³ IP regime for royalties and capital gains.



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