

Malta

Malta 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.

Malta can legally issue four types of rulings within the scope of the transparency framework.

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

- Seven past rulings;
- For the period 1 April 2017 - 31 December 2017: four future rulings;
- For the calendar year 2018: seven future rulings, and
- For the year in review: 15 future rulings.

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

A. The information gathering process

722. Malta can legally issue the following four 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) rulings providing for unilateral downward adjustments; (iii) permanent establishment rulings; and (iv) related party conduit rulings.

723. For Malta, past rulings are any tax rulings within scope that are issued either: (i) on or after 1 January 2015 but before 1 April 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. Future rulings are any tax rulings within scope that are issued on or after 1 April 2017.

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

725. Malta has met all of the ToR for the information gathering process and no recommendations are made.

B. The exchange of information

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

727. Malta 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^[41]) ("the Convention") and (ii) bilateral agreements in force with 76 jurisdictions.¹

728. 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
	11 ²	0	N/A	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

729. Malta 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. Malta has met all of the ToR for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

730. The statistics for the year in review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
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	0	N/A
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	<i>De minimis rule applies</i>	N/A
Related party conduit rulings	8	Canada, Curaçao, Hungary, Netherlands, United Kingdom, United States
<i>De minimis rule</i>	3	
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	0	N/A
Total	11	

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

731. Malta offers an intellectual property regime (IP regime)³ that is subject to the transparency requirements under the Action 5 Report (OECD, 2015_[11]). It states that the identification of the benefitting taxpayers will occur as follows:

- **New entrants benefitting from the grandfathered IP regime:** as this is a new IP regime rather than a grandfathered IP regime, transparency on new entrants is not relevant.
- **Third category of IP assets:** the regime provides benefits to the third category of IP assets. Malta Enterprise is the government authority that is responsible for the certification process of the third category of IP assets. Malta Enterprise provides the tax authorities with information on confirmations issued to taxpayers once these are issued, including a confirmation describing the particular qualifying IP asset and confirming that the qualifying IP asset is actually in existence. This is how the tax authorities identify the taxpayers using the third category of IP assets. In addition, from the year of assessment 2020 (i.e. the year of assessment that covers financial year 2019, and which is the first year for which the IP regime was in effect) a new attachment to the corporate tax return has been introduced. This attachment requires the taxpayer to declare the type of qualifying IP assets and provide the confirmation reference number and date issued by Malta Enterprise and declare that the company falls within the definition of a 'small entity' as defined in the legislation. This data can be extracted from the tax returns as these are filed electronically. Once the tax return for the relevant period is filed, showing the benefit claimed, such taxpayers would be requested to provide any further necessary details to enable spontaneous exchange of information under the transparency framework. Once received, this information will be sent to the Competent Authority for exchange with the jurisdictions involved. Malta confirms that for the year

in review, there were no taxpayers benefitting from the third category of IP assets. As such, no exchanges needed to take place.

- **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.

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.

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 Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Malta also has bilateral agreements with Albania, Andorra, Australia, Austria, Azerbaijan, Bahrain, Barbados, Belgium, Botswana, Bulgaria, Canada, China (People's Republic of), Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Israel, Italy, Jersey, Jordan, Korea, Kosovo, Kuwait, Latvia, Lebanon, Libya, Liechtenstein, Lithuania, Luxembourg, Malaysia, Mauritius, Mexico, Moldova, Monaco, Montenegro, Morocco, Netherlands, Norway, Pakistan, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Syria, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay and Viet Nam.

² The number of exchanged information on rulings is bigger than the number of issued rulings. This is because some rulings were issued at the end of 2019 and only exchanged in 2020.

³ Patent box deduction rules.



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