

United States

The United States has met all aspects of the terms of reference (OECD, 2021^[3]) (ToR) for the calendar year 2020 (year in review), and no recommendations are made.

The United States can legally issue three 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:

Type of ruling	Number of rulings
Past rulings	114
Future rulings in the period 1 April 2016 – 31 December 2016	21
Future rulings in the calendar year 2017	30
Future rulings in the calendar year 2018	27
Future rulings in the calendar year 2019	30
Future rulings in the year in review	18

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

A. The information gathering process (ToR I.A)

1161. 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.

1162. 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.

1163. 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.

1164. The United States has met all of the ToR for the information gathering process and no recommendations are made.

B. The exchange of information (ToR II.B)

1165. The United States has international agreements permitting spontaneous exchange of information, including being a party to (i) the original *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011^[4]) ("the Convention") and (ii) bilateral agreements in force with 49 jurisdictions.¹

1166. For the year in review, the timeliness of exchanges is as follows:

Future rulings within 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
	78	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

1167. 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. It should be noted that for the peer input, two peers indicated that information included in the summary section of Annex C of the Action 5 report was not sufficient for risk assessment purposes in all cases, whilst one peer noted that the information provided resulted in the instigation of an investigation with favourable results.

1168. 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)

1169. 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 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	78	Australia, Austria, Belgium, Canada, China, Columbia, Croatia, Czech Republic, Denmark, Dominican Republic, Finland, France, Germany, Honduras, Hungary, Indonesia, Italy, Japan, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Russia, Slovenia, South Africa, Spain, Sweden, Thailand Turkey, Ukraine, United Kingdom
Permanent establishment rulings	0	N/A
Related party conduit rulings	0	N/A
Total	78	

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

1170. 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
	No recommendations are made.

Jurisdiction's response and recent developments

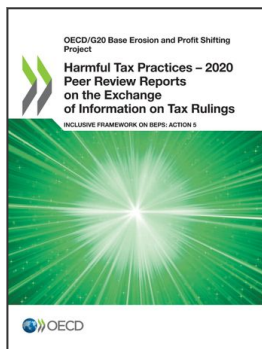
1171. With respect to peer input indicating insufficiency for risk assessment purposes, the United States reviewed the exchanged templates and confirmed that all required elements of the standard were included. The United States, following its established practices for exchanging templates, consistently monitors the quality and content of outgoing templates.

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, <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 (ed.) (2017b), *Harmful Tax Practices - 2017 Progress Report on Preferential Regimes*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264283954-en>. [2]
- 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 Participating jurisdictions to the original 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.



From:

Harmful Tax Practices – 2020 Peer Review Reports on the Exchange of Information on Tax Rulings

Inclusive Framework on BEPS: Action 5

Access the complete publication at:

<https://doi.org/10.1787/f376127b-en>

Please cite this chapter as:

OECD (2021), “United States”, in *Harmful Tax Practices – 2020 Peer Review Reports on the Exchange of Information on Tax Rulings: Inclusive Framework on BEPS: Action 5*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/c6700d32-en>

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