

## Congo

Congo did not provide a completed peer review questionnaire to the Secretariat. It is not known whether Congo has met all aspects of the terms of reference (OECD, 2017<sup>[3]</sup>) (ToR) for the calendar year 2019 (year in review). Congo receives two recommendations covering the information gathering process (ToR I.4) and exchange of information (ToR II.5) for the year in review.

In the prior year report, as well as in the 2017 peer review, Congo had received the same two recommendations. As it is not known whether they have been addressed, the recommendations remain in place.

Congo can legally issue two types of rulings within the scope of the transparency framework.

In practice, Congo did not issue any type of rulings within the scope of the transparency framework in previous years. For the year in review, it is not known whether Congo issued any type of rulings within the scope of the transparency framework.

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

## A. The information gathering process

239. Congo can legally issue the following two types of rulings within the scope of the transparency framework: i) 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 and ii) permanent establishment rulings.

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

240. For Congo, 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.

241. In the prior year peer review report, it was noted that in Congo, rulings are issued by the directorate of Legislation, within the Tax Administration. This unit is responsible for storing and reviewing such rulings and has reviewed its files, being able to confirm that no past rulings have been issued. Congo indicated no past rulings in scope of the transparency framework have been issued. As such there was no need to identify potential exchange jurisdictions.

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

242. For Congo, future rulings are any tax rulings within scope that are issued on or after 1 April 2017.

243. In the prior year peer review report, Congo indicated that there were no processes in place for the record keeping of rulings for the purposes of the transparency framework. It was noted that Congo intended to implement guidelines and practices to make sure the necessary information to meet the requirements of the transparency framework is required in all cases. Congo was recommended to finalise its information gathering process as soon as possible.

244. During the year in review, as it is not known whether Congo has finalised its information gathering process, the recommendation remains in place.

### ***Review and supervision (ToR I.4.3)***

245. In the prior year peer review report, it was determined that Congo did not yet have a review and supervision mechanism under the transparency framework. Congo was in the process of considering the implementation of a revision and supervision mechanism for ensuring implementation of the transparency framework. As it is not known whether Congo has put in place a review and supervision mechanism under the transparency framework for the year in review, the recommendation remains in place.

### ***Conclusion on section A***

246. Congo is recommended to finalise its information gathering process, with a review and supervision mechanism, as soon as possible (ToR I.4).

## B. The exchange of information

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

247. In the prior year peer review report, Congo was currently in the process of putting in place the necessary domestic legal basis to exchange information spontaneously. It is not known whether Congo

has already put in place the necessary domestic legal basis to exchange information spontaneously for the year in review.

248. Congo is not a party of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011<sup>[4]</sup>) (“the Convention”). Congo has bilateral agreements in force with 3 jurisdictions.<sup>12</sup> Congo is encouraged to continue its efforts to expand its international exchange of information instruments to be able to exchange information on rulings. It is noted, however, that jurisdictions are assessed on their compliance with the transparency framework in respect of the exchange of information network in effect for the year of the particular annual review.

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

249. In the prior year peer review report, it was noted that Congo was still developing a process to complete the templates on relevant rulings, to make them available to the Competent Authority for exchange of information, and to exchange them with relevant jurisdictions. As it is not known whether exchanges took place in the year of review, no data on the timeliness of exchanges can be reported.

### **Conclusion on section B**

250. Congo is recommended to put in place a domestic legal framework allowing spontaneous exchange of information on rulings and to continue its efforts to complete the templates for all relevant rulings and to ensure that the exchanges of information on rulings occur as soon as possible (ToR II.5).

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

251. As the Secretariat is not aware whether information on rulings was exchanged by Congo for the year in review, no statistics can be reported.

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

252. Congo does not offer an intellectual property regime for which transparency requirements under the Action 5 Report (OECD, 2015<sup>[1]</sup>) were imposed.

## **Summary of recommendations on implementation of the transparency framework**

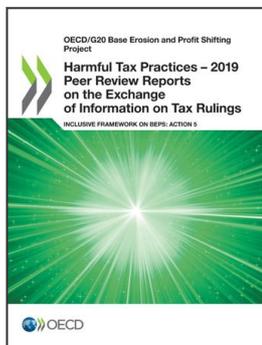
<b>Aspect of implementation of the transparency framework that should be improved</b>	<b>Recommendation for improvement</b>
It is not known whether Congo has finalised the steps to have in place its necessary information and gathering process.	Congo is recommended to finalise its information gathering process, with a review and supervision mechanism, as soon as possible. This recommendation remains unchanged since the 2017 and 2018 peer review reports
It is not known whether Congo has finalised the steps to have effective compulsory spontaneous exchange of information on the tax rulings within the scope of the transparency framework.	Congo is recommended to continue to put in place a domestic legal framework allowing spontaneous exchange of information on rulings and to continue its efforts to complete the templates for all relevant rulings and to ensure that the exchanges of information on rulings occur as soon as possible. This recommendation remains unchanged since the 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

- <sup>1</sup> Congo has bilateral agreements with France, Italy and Mauritius.



**From:**  
**Harmful Tax Practices – 2019 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/afd1bf8c-en>

**Please cite this chapter as:**

OECD (2020), “Congo”, in *Harmful Tax Practices – 2019 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/c6f4dd4d-en>

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