

France

France has met all aspects of the terms of reference (OECD, 2017^[3]) (ToR) for the calendar year 2018 (year in review) except that France did not identify or exchange information on new entrants to the IP regime or taxpayers benefitting from the third category of IP assets (ToR I.4.1.3). France receives one recommendation on this point for the year in review.

In the prior year report, as well as in the 2016 peer review, France received the same recommendation. As it has not been addressed, the recommendation remains in place.

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

- 45 past rulings;
- For the period 1 April 2016 - 31 December 2016: four future rulings;
- For the calendar year 2017: six future rulings, and
- For the year in review: six future rulings.

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

Introduction

This peer review covers France's implementation of the BEPS Action 5 transparency framework for the year 2018. The report has four parts, each relating to a key part of the ToR. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information gathering process

France can legally issue the following three 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; and (iii) permanent establishment rulings.

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

For France, past rulings are any tax rulings within the 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.

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

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

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

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

Review and supervision (ToR I.4.3)

In the prior years' peer review reports, it was determined that France's review and supervision mechanism was sufficient to meet the minimum standard. France notes that in order to improve relations between services, the competent authority has organized meetings with the services that issue decisions covered by the transparency framework. France's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

Conclusion on section A

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

B. The exchange of information

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

France has the necessary domestic legal basis to exchange information spontaneously. France 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.

France 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) double tax agreements in force with 125 jurisdictions.²

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

In the prior years’ peer review reports, it was determined that France’s process for the completion and exchange of templates met all the ToR except that France was not able to exchange all information on future rulings by the timelines set out in the transparency framework (ToR II.5.6). During the year in review, all the exchanges on future rulings met the timelines set out in the transparency framework, thus the recommendation is removed.

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

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2018	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2018	Reasons for the delays	Any other comments
	0	0	N/A	N/A
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
	10	0	N/A	N/A
Total	10	0		

Follow up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	N/A	N/A	N/A

Conclusion on section B

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

C. Statistics (ToR IV)

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 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	6	Belgium, Germany, Switzerland, United Kingdom, United States
Cross-border rulings providing for a unilateral downward adjustment to the	N/A	N/A

taxpayer's taxable profits that is not directly reflected in the taxpayer's financial / commercial accounts		
Permanent establishment rulings	4	<i>De minimis</i> rule applies
Related party conduit rulings	N/A	N/A
<i>De minimis</i> rule	N/A	N/A
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	10	

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

France offers an intellectual property regime (IP regime)³ that is subject to the transparency requirements under the Action 5 Report (OECD, 2015^[5]). This regime was amended with effect from 1 January 2019 and is compliant with the nexus approach. It states that the identification of the benefitting taxpayers will occur as follows:

- **New entrants benefitting from the grandfathered IP regime:** With respect to the previous form of the regime that existed until 31 December 2018, France should have information available and exchanged on new entrants after the relevant date from which enhanced transparency obligations apply. France has not identified information on new entrants to the previous IP regime, and as such has not exchanged information on these taxpayers. Therefore, France is recommended to identify and exchange information on all new entrants to the IP regime. This recommendation was included in the 2016 peer review report and the 2017 peer review report, and has not yet been acted upon, and the recommendation is therefore retained.
- **Third category of IP assets:** The previous form of the regime provided benefits to income from patentable inventions, which appear to be a type of the “third category of IP asset” described in paragraph 37 of the Action 5 report (OECD, 2015). France has not implemented all of the requirements associated with this category of IP assets, thus the transparency requirements described in paragraph 37 would still apply to this case. France did not identify taxpayers benefitting from the third category of IP asset, and as such has not exchanged information on these taxpayers. This recommendation was included in the 2016 peer review report and the 2017 peer review report, and has not been acted upon, and the recommendation is therefore retained.

It is noted that the amended nexus compliant regime allows benefits for the third category of assets and therefore transparency requirements will apply. As the new regime was only in force from 1 January 2019, this will be assessed in next year's peer review.

- **Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption:** The amended nexus compliant regime allows taxpayers to treat the nexus ratio as a rebuttable presumption and therefore transparency requirements apply. As the new regime was only in force from 1 January 2019, this will be assessed in next year's peer review.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
France did not identify or exchange information on new entrants to the IP regime or taxpayers benefitting from the third category of IP asset with respect to the former IP regime.	France is recommended to identify and exchange information on all new entrants to the IP regime, and to identify and exchange information on taxpayers benefitting from the third category of IP assets. This recommendation remains unchanged since the 2016 peer review report and the 2017 peer review report.

Notes

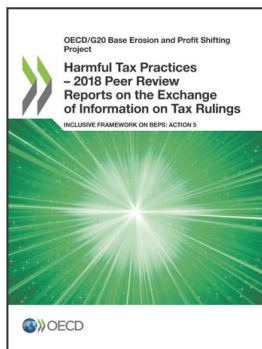
¹ With respect to the following preferential regime: shipping regime.

² Parties to the Convention are available here: <http://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm>. France also has double tax agreements with Albania, Algeria, Andorra, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chile, China (People's Republic of), Chinese Taipei, Congo, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Ecuador, Egypt, Estonia, Ethiopia, Finland, French Polynesia, Gabon, Georgia, Germany, Ghana, Greece, Guinea, Hong Kong (China), Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Korea, Kosovo, Kuwait, Kyrgyzstan, Latvia, Lebanon, Libya, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Montenegro, Morocco, Namibia, Netherlands, New Caledonia, New Zealand, Niger, Nigeria, North Macedonia, Norway, Oman, Pakistan, Panama, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Senegal, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Saint Martin, Saint Pierre and Miquelon, Sweden, Switzerland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Venezuela, Viet Nam, Zambia and Zimbabwe.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union. The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

³ Reduced corporation tax rate on IP income, formerly known as Reduced rate for long term capital gains and profits from the licensing of IP rights.



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