

India

India has met all aspects of the terms of reference (ToR) for the calendar year 2018 (year in review) except for the timely exchange of information on future APAs (ToR II.5.6). India receives one recommendation on this issue for the year in review.

In the prior year report, India received three recommendations. Two recommendations have been addressed and are removed. The other recommendation has not been addressed and remains in place.

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

- 69 past rulings;
- For the period 1 April 2016 - 31 December 2016: 55 future rulings;
- For the calendar year 2017: 73 future rulings, and
- For the year in review: 44 future rulings.

PE rulings are published unless it is stated to be confidential by the Authority issuing the ruling, whereas unilateral APAs are not.¹

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

Introduction

This peer review covers India'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

India can legally issue the following two types of rulings within the scope of the transparency framework: (i) cross-border unilateral APAs and (ii) permanent establishment rulings.

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

For India, 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.

In the prior years' peer review reports, it was determined that India's undertakings to identify past rulings have met the ToR, except that India was recommended to apply the "best efforts approach" to identify the immediate parent and ultimate parent companies for all relevant past PE rulings and past APAs. India obtained additional information by reviewing tax filings and in cases where information could be obtained, further exchanges have been made.

During the year in review, it is determined that India's best effort approach is sufficient to identify past rulings and all potential exchange jurisdictions and meets the minimum standard and the recommendation is now removed.

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

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

In the prior years' peer review reports, India was recommended to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings (ToR I.4.2.1). India has amended its application forms for rulings, which now include details of the immediate parent and ultimate parent company in the application with effect from 16 June 2017 for APAs and from 13 July 2018 for PE rulings. Where future rulings have been issued prior to the amendment to the application forms, additional guidance has been issued to all officers who are responsible for completing these templates, including identification of potential exchange jurisdictions using the "best efforts approach."

As such, India's procedures to identify future rulings and all potential exchange jurisdictions are sufficient to meet the minimum standard and therefore the recommendation is removed.

Review and supervision (ToR I.4.3)

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

Conclusion on section A

India 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)

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

India 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) double tax agreements and (iii) the South Asian Association for Regional Cooperation (SAARC) Agreement.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 year peer review report, it was determined that India’s process for the completion and exchange of templates met all the ToR, except for ensuring that information on rulings is transmitted to the competent authority without undue delay and that information is transmitted to the relevant jurisdictions in accordance with the applicable timelines (ToR II 5.5 and ToR II. 5.6). India was recommended to ensure that all information on past and future APAs is exchanged as soon as possible.

To some extent, the delay was caused by the delay in identifying potential exchange jurisdictions, which is noted above in Part A. Furthermore, there were delays in the centralised office in the Competent Authority due to the volume of past and future rulings. As mentioned in the prior year’s report, India exchanged information pertaining to the remaining 51 past rulings by June 2018 and experienced continuing delays in the exchange of all future APAs. This was mostly due to the timely completion of the exchange templates. India has issued additional guidance to the responsible officers on the completion of exchange templates to ensure that the timelines are met for the exchange of information on future rulings. India expects no further delays in the exchange of future rulings.

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
	135	0	N/A	These exchanges relate to past rulings where the ultimate and immediate parent company has been identified during the year of review enhancing India’s best effort approach.
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
	132	208	N/A	The delays relate to future rulings

			that have been issued before the application process was amended and time taken for the identification of ultimate and immediate parent companies using the best effort approach.
Total	267	208	

Follow up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	8	90 days	0

With respect to follow up requests, India took on average 90 days to respond or to provide a status update. For one follow up request, India sought clarification from the FHTP Secretariat pertaining to foreseeable relevance, leading to a slightly longer time to provide a response to the requesting treaty partner.

Conclusion on section B

India 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. As India continued to experience delays it is determined that India has met all of the ToR for the exchange of information process except for ensuring that information on future APA rulings is exchanged as soon as possible (ToR II.5.6). India is recommended to ensure the timely exchange of information on future APA rulings.

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	N/A	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	454	Argentina, Australia, Austria, Bangladesh, Barbados, Belgium, Botswana, Brazil, Bulgaria, Cameroon, Canada, Chile, Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Dominican Republic, Egypt, Estonia, Finland, France, Germany, Ghana, Greece, Guatemala, Hong Kong (China), Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Japan, Jordan, Kenya, Korea, Lebanon, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Morocco, Mozambique, Netherlands, New Zealand, Nigeria, North Macedonia, Norway, Oman, Philippines, Poland, Portugal, Qatar, Russia, Saudi Arabia, Senegal, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Taiwan, Tanzania, Thailand, Tunisia, Turkey, Uganda, United Kingdom, United States, Uruguay, Viet Nam, Zambia

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	N/A	N/A
Permanent establishment rulings	21	Belgium, France, Germany, Saudi Arabia, Switzerland, United Kingdom, United States
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	N/A	N/A
Total	475	

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

India offers an intellectual property regime (IP regime)³ that is not subject to the transparency requirements under the Action 5 Report (OECD, 2015^[5]), because:

- **New entrants benefitting from the grandfathered IP regime:** the regime is a new nexus-compliant regime and therefore there is no grandfathered IP regime for which enhanced transparency requirements will apply.
- **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 the use of the option to treat the nexus ratio as a rebuttable presumption:** not applicable 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
India experienced delays in the exchange of information on future APAs.	India is recommended to continue its efforts to ensure that all information on future APAs is exchanged as soon as possible. This recommendation remains unchanged since the prior year peer review report.

Notes

¹ Available at: www.aarrulings.in.

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. India also has bilateral agreements with Albania, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Bhutan, Botswana, Brazil, Bulgaria, Canada, China (People's Republic of), Colombia, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Faroe Islands, Fiji, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Kyrgyzstan, Latvia, Libya, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Moldova, Mongolia, Morocco, Montenegro, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, North Macedonia, Norway, Oman, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Serbia, , Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syria, Chinese Taipei, Tajikistan, Tanzania, Thailand, Trinidad and Tobago, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, and Zambia. The SAARC was entered into force on 19 May 2010 and provides for exchanges with Bangladesh, Bhutan, Maldives, Nepal, Pakistan and Sri Lanka.

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 Tax on income from patent.



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