

Korea

Korea has met all aspects of the terms of reference (OECD, 2017^[3]) (ToR) for the calendar year 2018 (year in review) and no recommendations are made.

In the prior year report, Korea did not receive any recommendations.

Korea can legally issue one type of rulings within the scope of the transparency framework. In practice, Korea issued rulings within the scope of the transparency framework as follows:

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

Peer input was received from five jurisdictions in respect of the exchanges of information on rulings received from Korea. The input was generally positive, noting that information was complete, in a correct format and received in a timely manner. One peer noted that the information provided in the summary section was too brief. Korea is reviewing the particular case to consider whether further changes to its practice should be made.

Introduction

This peer review covers Korea'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

Korea can legally issue the following type of rulings within the scope of the transparency framework: 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.

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

For Korea, 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 Korea's undertakings to identify past rulings and all potential exchange jurisdictions have met all the ToR.

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

For Korea, 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 Korea's undertakings to identify future rulings and all potential exchange jurisdictions have met all the ToR.

Review and supervision (ToR I.4.3)

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

Conclusion on section A

Korea 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)

As of 13 February 2018, Korea has the necessary domestic legal basis to exchange information spontaneously. Korea 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.

Korea 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) ("the Convention") and (ii) double tax agreements in force with 93 jurisdictions.¹

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 Korea's process for the completion and exchange of templates were sufficient to meet the minimum standard. Korea's implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

The year in review was the first time exchanges were able to take place. The National Tax Service ("NTS") is still in contact with other jurisdictions in order to test the exchange through the OECD Common Transition System. Until that is confirmed, information on rulings is exchanged in the form of Annex C of the 2015 Action 5 Report (OECD, 2015^[5]) and sent via electronic and postal mail.

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	No domestic basis in previous years for the exchange of information.	As of 13 February 2018, the domestic basis for the exchange of information is in place and Korea exchanged the information within two months after this.
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
	45	0	N/A	N/A
Total	180	0		

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

Conclusion on section B

Korea 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. Korea 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	N/A	N/A
Cross-border unilateral advance pricing	180	Argentina, Australia, Belgium, Brazil,

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		Canada, China (People's Republic of), Czech Republic, Denmark, France, Germany, Hong Kong (China), India, Indonesia, Ireland, Italy, Japan, Luxembourg, Malaysia, Mauritius, Mexico, Netherlands, New Zealand, Philippines, Saudi Arabia, Singapore, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom, United States, Viet Nam
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	N/A	N/A
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	180	

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

Korea offers an intellectual property regime (IP regime)² that is subject to the transparency requirements under the Action 5 Report (OECD, 2015^[5]). 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. The process on the collection of information is described in the previous year peer review report and meets the ToR. In practice, no taxpayers have applied for the corporate income tax benefits for the third category of IP assets, and as such no exchanges were required 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.

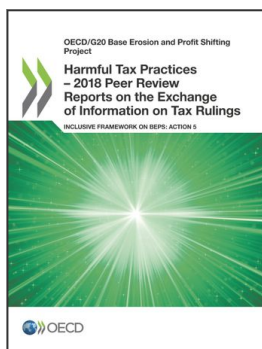
Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made.

Notes

¹ 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>. Korea also has double tax agreements with Albania, Algeria, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Brazil, Brunei Darussalam, Bulgaria, Canada, Chile, China (People's Republic of), Colombia, Croatia, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Georgia, Germany, Greece, Hong Kong (China), Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Laos, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Mongolia, Morocco, Myanmar, Nepal, Netherlands, New Zealand, Norway, Oman, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Thailand, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Venezuela and Viet Nam.

² Special taxation for transfer, acquisition, etc. of technology.



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