

Andorra

Andorra has met all aspects of the terms of reference (OECD, 2021^[3]) (ToR) for the calendar year 2020 (year in review), except for identifying all potential exchange jurisdictions for future rulings (ToR I.A.2.1) and for ensuring that the information is completed in the required form (II.B.4) and exchanges are performed in accordance with the timelines (ToR II.B.5 and II.B.6). Andorra receives two recommendations on these points for the year in review.

In the prior year report, as well as in the 2017 and 2018 peer reviews, Andorra had received the same two recommendations. As they have not been addressed, the recommendations remain in place.

Andorra can legally issue five types of rulings within the scope of the transparency framework.

In practice, Andorra issued no rulings within the scope of the transparency framework.¹

As no exchanges were required to take place, no peer input was received in respect of the exchanges of information on rulings received from Andorra.

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

15. Andorra can legally issue the following five types of rulings within the scope of the transparency framework: (i) preferential regimes;² (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; (iii) rulings providing for unilateral downward adjustments; (iv) permanent establishment rulings; and (v) related party conduit rulings.

Past rulings (ToR I.A.1.1, I.A.1.2, I.A.2.1, I.A.2.2)

16. For Andorra, 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.

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

Future rulings (ToR I.A.1.1, I.A.1.2, I.A.2.1)

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

19. In the prior years' peer review reports, it was determined future rulings were able to be identified, but that the information on potential exchange jurisdictions was not always being collected, and instead this was being performed by the application of the "best efforts approach." The prior years' reports noted that Andorra intended to amend the application process to require the taxpayer to identify all relevant jurisdictions when requesting the ruling. However, this amendment did not take place during the year in review. Andorra is therefore recommended to continue its efforts to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings.

Review and supervision (ToR I.A.3)

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

Conclusion on section A

21. Andorra has met all of the ToR for the information gathering process except for identifying all potential exchange jurisdictions for future rulings (ToR I.A.2.1). Andorra is recommended to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings.

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

Legal basis for spontaneous exchange of information (ToR II.B.1, II.B.2)

22. Andorra has the necessary domestic legal basis to exchange information spontaneously. Andorra 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.

23. Andorra has international agreements permitting spontaneous exchange of information, including being a party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters*:

Amended by the 2010 Protocol (OECD/Council of Europe, 2011^[4]) (“the Convention”) and (ii) bilateral agreements in force with 28 jurisdictions.³

Completion and exchange of templates (ToR II.B.3, II.B.4, II.B.5, II.B.6, II.B.7)

24. In the prior years’ peer review reports, it was determined that Andorra’s process for the completion and exchange of templates met all the ToR, except for undertaking spontaneous exchange of information on tax rulings within the scope of the transparency framework (ToR II.B). Therefore, Andorra was recommended to complete the templates for all relevant rulings and to ensure that the exchanges of information on rulings occur as soon as possible.

25. In the prior year peer review report, it was determined that Andorra’s previously issued rulings related to preferential regimes were related to wholly domestic taxpayers without any related parties in a foreign jurisdiction, and therefore, no exchange of information needed to take place. However, in the event that a relevant ruling is issued in future, Andorra will need to have the processes in place to complete the templates and conduct the exchanges in accordance with the transparency framework.

26. In the prior years’ peer review reports, it was noted that Andorra intends to require taxpayers to provide all relevant information needed to complete the template contained in Annex C of the BEPS Action 5 Report (OECD, 2015^[1]). Andorra intends to include such an obligation in future tax reforms.

27. As these issues have not been addressed, the recommendation remains in place. In particular, Andorra is recommended to ensure that the information on future rulings is completed in the form of the template contained in Annex C of the Action 5 Report (OECD, 2015^[1]) (ToR II.B.4), to put in place appropriate systems to ensure that information on rulings is transmitted to the competent authority responsible for international exchange of information without undue delay (ToR II.B.5) and to ensure that the information to be exchanged is transmitted to the relevant jurisdictions in accordance with the agreed timelines (ToR II.B.6).

28. As there were no exchanges for the year in review, no data on the timeliness of exchanges can be reported.

Conclusion on section B

29. Andorra has met all of the ToR for the exchange of information process except for ensuring that the information is completed in the required form (II.B.4) and having a process in place to ensure any exchanges will be performed in accordance with the timelines (ToR II.B.5 and II.B.6). Andorra is recommended to continue its efforts to put in place the necessary process to complete the information in the form of Annex C of the Action 5 Report (OECD, 2015^[1]), to ensure that information is submitted to the Competent Authority without undue delay and exchanges are performed in accordance with the timelines. These recommendations remain unchanged since the 2017, 2018 and 2019 peer review reports.

C. Statistics (ToR IV)

30. As no rulings were issued, no statistics can be reported.

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

31. Andorra offers an intellectual property regime (IP regime)⁴ that is not subject to the transparency requirements under the Action 5 Report (OECD, 2015^[1]), because:

- **New entrants benefitting from the grandfathered IP regime:** no enhanced transparency requirements apply, as explained in the prior year peer review report.
- **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
Andorra still experiences difficulties in identifying all potential exchange jurisdictions for future rulings.	Andorra is recommended to continue its efforts to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings. This recommendation remains unchanged since the 2017, 2018 and 2019 peer review reports.
Andorra is still developing a process to ensure that the information is completed in the required form and exchanges are performed in accordance with the timelines.	Andorra is recommended to continue its efforts to put in place the necessary process to complete the information in the form of Annex C of the BEPS Action 5 Report, to ensure that information is submitted to the Competent Authority without undue delay and exchanges are performed in accordance with the timelines. These recommendations remain unchanged since the 2017, 2018 and 2019 peer review reports but since the 2019 peer review report they are targeted to specific aspects of the ToR that still need to be put in place.

Jurisdiction's response and recent developments

32. Andorra notes that during the year 2021, it has drafted internal guidance on the steps that the Andorran Tax Administration must take when issuing a ruling within the scope of the transparency framework, including how to complete the Annex C template. This will be described in more detail in next year's peer review report. In addition, the Government of Andorra is working on a Law Draft on Direct Tax Reform Measures which includes a new additional disposition to Law 21/2014 on Taxation which relates specifically to the spontaneous exchange of rulings. It is expected that this Law Draft will enter into parliamentary procedure in the course of August or September, and that it will be approved before the end of the year.

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]

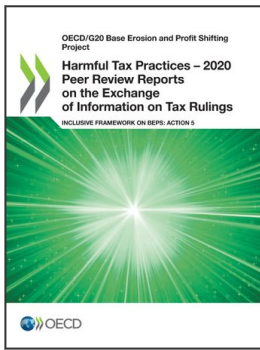
Notes

¹ In the prior years' peer review reports, it was noted that Andorra had issued 169 past and 58 future rulings. All those rulings were related to preferential regimes, but all taxpayers were domestic taxpayers (not part of a multinational group) and therefore no exchanges on these rulings were required for the Action 5 transparency framework.

² These regimes are: 1) Holding company regime and 2) Special regime for exploitation of certain intangibles.

³ Participating jurisdictions to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Andorra also has bilateral agreements with Argentina, Australia, Austria, Belgium, Cyprus, Czech Republic, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Iceland, Italy, Korea, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, San Marino, Spain, Sweden, Switzerland and United Arab Emirates.

⁴ Special regime for exploitation of certain intangibles.



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), “Andorra”, 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/10.1787/2522fb52-en>

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