

Botswana

Botswana is taking steps to implement the legal basis for the transparency framework and to commence administrative preparations (in line with the terms of reference (OECD, 2017^[3]) (ToR)) to ensure that it finalises its information gathering process (ToR I.4) and information on rulings will be identified and exchanged in a timely manner (ToR II.5). Botswana receives two recommendations on these points for the year in review.

This is Botswana's first review of implementation of the transparency framework.

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

- 10 past rulings;
- For the period 1 April 2018 - 31 December 2018: one future ruling.

As no exchanges took place, no peer input was received in respect of the exchanges of information on rulings received from Botswana.

Introduction

This peer review covers Botswana'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

Botswana 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. Both the Tax Authority and the Ministry of Finance and Economic Development can issue rulings.

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

For Botswana, past rulings are any tax rulings within scope that are issued either (i) on or after 1 January 2016 but before 1 April 2018; and (ii) on or after 1 January 2014 but before 1 January 2016, provided still in effect as at 1 January 2016.

Rulings with respect to the International financial services company ("IFSC") regime are issued by the Minister of Finance and Economic Development ("the Minister"). Companies apply for the IFSC certificate with the IFSC Certification Committee. The Committee will assess the application according to the criteria laid out under the Income Tax Act and then make a recommendation to the Minister. The Minister will then approve the application and issue the IFSC certificate. A copy of the certificate is kept by the Minister and by the IFSC Certification Committee. The Tax Policy (International Tax Unit) team manually reviewed the file of the certificates to identify the rulings falling within the period of validity defined as past rulings.

When an IFSC applies for a certificate, it is required to disclose the relevant structure including all related companies and parent companies. As such, information on all potential exchange jurisdictions was available and Botswana did not need to apply the "best efforts approach" for these rulings.

APAs and permanent establishment rulings fall under scope of the Commissioner General, who considers and processes the requests and stores them in a manual filing system. The Tax Treaties and Agreements team in the tax administration reviewed all the files according to the date of issue to identify rulings falling within the period of validity defined as past rulings. Botswana does not have a process in place for identifying the potential exchange jurisdictions for APAs and permanent establishment rulings and did not yet apply the best efforts approach.

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

For Botswana, future rulings are any tax rulings within scope that are issued on or after 1 April 2018.

The process for future rulings is similar to the process for past rulings. Each time an IFSC certificate is issued, the Tax Policy (International Tax Unit) team will flag it as being relevant for the purposes of the transparency framework, and would verify that the information on the potential exchange jurisdictions has been obtained.

With respect to APAs and PE rulings, the Tax Treaties and Agreements team would identify the ruling at the point it is issued to flag it as being relevant for the purposes of the transparency framework. The ruling application process does not require the taxpayer to provide information on all potential exchange jurisdictions. The Commissioner General has the authority to require this information from the taxpayer and would do so to obtain information on all potential exchange jurisdictions.

Review and supervision (ToR I.4.3)

Botswana did not yet have a review and supervision mechanism for past or future rulings under the transparency framework for the year in review. Botswana is discussing the implementation of a revision and supervision mechanism for future rulings, including appropriate training for the relevant tax officers.

Conclusion on section A

Botswana is recommended to apply the best efforts approach to identify all potential exchange jurisdictions for APA and PE rulings and to put in place 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)

Botswana does not have the necessary domestic legal basis to exchange information spontaneously. Botswana can only exchange information on request. Botswana is undergoing a comprehensive reform of its tax laws. Botswana notes that new tax laws, including with respect to the spontaneous exchange of information, will likely be implemented in July 2020.

Botswana has international agreements permitting spontaneous exchange of information, including bilateral agreements in force with 24 jurisdictions.² Botswana is encouraged to continue its efforts to expand its international exchange of information instruments to be able to exchange rulings. It is however noted 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)

Botswana is currently 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 no exchanges took place for the year in review, no data on the timeliness of exchanges can be reported.

Conclusion on section B

Botswana is recommended to continue to put in place a domestic legal framework allowing spontaneous exchange of information on rulings and to ensure the timely exchange of information on rulings in the form required by the transparency framework (ToR II.5).

C. Statistics (ToR IV)

As there was no information on rulings exchanged by Botswana for the year in review, no statistics can be reported.

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

Botswana offered an intellectual property regime (IP regime)³ that was abolished as of 1 January 2019 and 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:** as there were no taxpayers benefitting from the IP regime and no grandfathering provisions have been provided, and therefore no enhanced transparency requirements apply.
- **Third category of IP assets:** not applicable as the IP regime has been abolished.
- **Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption:** not applicable as the IP regime has been abolished.

Summary of recommendations on implementation of the transparency framework

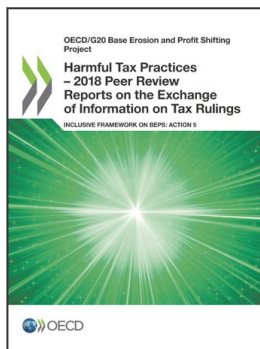
Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Botswana has not yet finalised the steps to have in place its necessary information and gathering process.	Botswana is recommended to apply the best efforts approach to identify all potential exchange jurisdictions for APA and PE rulings and to put in place a review and supervision mechanism, as soon as possible.
Botswana does not yet have the necessary legal framework in place for exchanging information on rulings and a process in place to ensure the timely exchange of information on rulings in the form required by the transparency framework.	Botswana is recommended to continue to put in place a domestic legal framework allowing spontaneous exchange of information on rulings and to ensure the timely exchange of information on rulings in the form required by the transparency framework.

Notes

¹ With respect to the following preferential regime: International financial services company.

² Botswana has bilateral agreements with Barbados, China (People's Republic of), Denmark, Eswatini, Faroe Islands, Finland, France, Greenland, Iceland, India, Ireland, Isle of Man, Malta, Mauritius, Mozambique, Namibia, Norway, Russia, Seychelles, South Africa, Sweden, United Kingdom, Zambia and Zimbabwe.

³ International financial services company.



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