

# Switzerland

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

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

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

- 831 past rulings;
- For the calendar year 2017: 300 future rulings, and
- For the year in review: 228 future rulings.

Peer input was received from eight jurisdictions in respect of the exchanges of information on rulings received from Switzerland. The input was generally positive. The majority of jurisdictions noted that the information was complete and received in a timely manner, but some jurisdictions have stated that they have not received information from Switzerland in a timely manner. However, this appears to be a misunderstanding about the timelines that Switzerland followed to conduct the spontaneous exchange of information which reflect the applicable domestic and international legal framework, including on rulings that were issued in prior years. Follow-up communications with these jurisdictions has taken place to clarify the issue.

## Introduction

This peer review covers Switzerland'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

Switzerland can legally issue the following four types of rulings within the scope of the transparency framework: (i) preferential regimes;<sup>1</sup> (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) related party conduit rulings; and (iv) permanent establishment rulings.

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

For Switzerland, past rulings are any tax rulings within scope that are issued on or after 1 January 2010 until 31 December 2016, provided they were still in effect as at 1 January 2018.

In the prior years' peer review reports, it was determined that Switzerland's process to identify past rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. Switzerland'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 Switzerland, future rulings are any tax rulings within scope that are issued on or after 1 January 2017, provided they are still in effect on or after 1 January 2018.

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

#### ***Conclusion on section A***

Switzerland 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)***

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

Switzerland has international agreements permitting spontaneous exchange of information, including being a party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011<sup>[4]</sup>) (“the Convention”).<sup>2</sup> The necessary domestic and international legal framework for spontaneous exchange of information entered into force on 1 January 2017, allowing for exchanges from 1 January 2018.

### **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 Switzerland had put in place a process to exchange information on rulings in accordance with the forms and timelines required by the transparency framework. This includes the use of an IT tool that facilitates the collection of information from taxpayers. This information is verified and / or completed by the responsible tax authority. For past rulings, the Tax Administrative Assistance Ordinance (TAAO), which governs the exchange of information on rulings, provides for the submission of the information to the competent authority within nine months after the entry into force of the legal basis enabling spontaneous exchange of information (i.e. 30 September 2018). For future rulings, the TAAO provides for the submission of the information to the competent authority by 60 days after issuing a ruling. The Swiss competent authority provides for a final check before sending the information. Information is to be exchanged within three months of receiving the information from the responsible tax authority.

Switzerland has started exchanging information on its rulings on 1 January 2018, meaning that this is the first year this section is assessed with regard to Switzerland. The IT tool was developed in order to facilitate the completion and exchange of templates. In most cases, taxpayers entered the required information in the IT system. This information was then checked and, if necessary, completed by the responsible tax authority prior to forwarding the information to the competent authority for information exchange with the relevant jurisdictions. The templates were thus reviewed twice in order to ensure the completeness of the templates and the adherence with the Action 5 minimum standard. In order to ensure a harmonised approach, meetings and training sessions were organized for the concerned units. Guidance on how to fill out the summary is also available and included directly in this IT tool.

Switzerland has ensured that the information on rulings is made available to the competent authority in a timely way by means of the domestic legal basis which provides for fixed deadlines for the transmission to the competent authority. The IT system enabled the tracking of ruling reports and their current status (for example, to be transmitted by the cantonal tax authorities / transmitted to the competent authority etc.). In case of incomplete or incorrect templates, the competent authority reverted to the responsible tax authorities. The transmission of the templates occurred periodically, on average every 3-4 weeks.

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

Past rulings in the scope of the transparency framework <sup>3</sup>	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
	2 149	352	Need to substantiate summaries and revert to cantonal tax authorities; finalisation of IT system.	352 exchanges were transmitted in the first quarter of 2019.
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	Delayed exchanges		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to	Reasons for the delays	Any other comments

	impediments have been lifted	the competent authority		
	400	0	N/A	N/A
<b>Total</b>	2 549	352		

Follow up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	5 <sup>4</sup>	127 days	0

Switzerland encountered some delays with respect to past rulings. This was on account of the volume of exchanges on past rulings in this first year that exchanges were permitted to take place, some technical issues encountered with the IT system, as well as cases where the information provided by the cantonal authorities in the ruling template needed to be verified. As the information was ultimately exchanged within the first three months of the 2019, and this is not a recurring issue, no recommendation is made. In addition, Switzerland encountered some delays in responding to the follow up request for further information. This was a reflection of the increased workload of the competent authority in managing with the volume of exchanges in 2018 and is not expected to be a recurring issue.

### **Conclusion on section B**

Switzerland 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 within a short time after the end of the year in review. Switzerland 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	1 381	Argentina, Armenia, Aruba, Austria, Azerbaijan, Barbados, Belgium, Brunei Darussalam, Bulgaria, Cameroon, Canada, Chile, China (People's Republic of), Colombia, Costa Rica, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Guernsey, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Kazakhstan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Moldova, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Panama, Peru, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Saudi Arabia, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Tunisia, Turkey, Ukraine, United Kingdom, Uruguay
Cross-border unilateral advance pricing agreements (APAs) and any other cross-border unilateral tax rulings (such	1 330	Argentina, Armenia, Aruba, Austria, Azerbaijan, Barbados, Belgium, Bulgaria, Brunei Darussalam,

as an advance tax ruling) covering transfer pricing or the application of transfer pricing principles		Cameroon, Canada, Chile, China (People's Republic of), Colombia, Costa Rica, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Gibraltar, Ghana, Greece, Guernsey, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Kazakhstan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Moldova, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Panama, Peru, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Samoa, Saudi Arabia, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Tunisia, Turkey, Ukraine, United Kingdom, Uruguay
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	323	Albania, Argentina, Australia, Austria, Barbados, Belgium, Brazil, Canada, Chile, China (People's Republic of), Colombia, Costa Rica, Cyprus, Czech Republic, Denmark, Finland, France, Georgia, Germany, Gibraltar, Greece, Hong Kong (China), Hungary, India, Ireland, Italy, Japan, Jersey, Korea, Liechtenstein, Luxembourg, Malta, Mexico, Netherlands, Nigeria, Norway, Pakistan, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Singapore, Slovak Republic, South Africa, Sweden, Tunisia, Ukraine, United Kingdom
Related party conduit rulings	8	Belgium, Cyprus, France, Germany, Isle of Man, Liechtenstein, United Kingdom
<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	0
<b>Total</b>	<b>3 042<sup>5</sup></b>	

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

Switzerland offered one intellectual property regime (Canton of Nidwalden – License box) that was amended as of 1 January 2016 and is subject to transparency requirements under the Action 5 Report (OECD, 2015<sup>[5]</sup>). It states that the identification of the benefitting taxpayers occur as follows:

- ***New entrants benefitting from the grandfathered IP regime:*** No enhanced transparency requirements apply, as follows. The Canton of Nidwalden is a grandfathered IP regime, but there

were no new entrants in the period after the relevant date from which the enhanced transparency obligations 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 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
Switzerland experienced some delays in exchanging information on past rulings.	No recommendation is made because Switzerland completed exchanges on the delayed past rulings in early 2019 and this is not a recurring issue.

## Notes

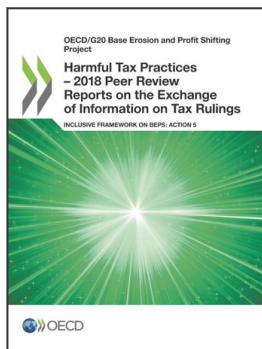
<sup>1</sup> With respect to the following preferential regimes: 1) Auxiliary company regime (previously referred to as domiciliary company regime, 2) Mixed company regime, 3) Commissionaire ruling regime, 4) Holding company regime (cantonal level), 5) Licence box (Canton of Nidwalden only).

<sup>2</sup> Parties to the Convention are available here: [www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm](http://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm).

<sup>3</sup> For the purposes of the year in review, exchanges relating to rulings issued in 2017 are included in this table in the column relating to past rulings. Although such rulings would fall in the category of future rulings for the purposes of the timelines for the transparency framework, the information on these rulings was not permitted to be exchanged by Switzerland until 2018, due to legal impediments. Therefore such rulings were exchanged alongside other past rulings.

<sup>4</sup> The five requests all concern the same ruling.

<sup>5</sup> Switzerland explained that in many cases the rulings templates identified in the statistics on exchanges above fall in two or more categories which has led to some multiple counting in this table. For the year in review, 2 549 individual exchanges took place.



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