

# Switzerland

Switzerland has met all aspects of the terms of reference (OECD, 2021<sup>[3]</sup>) (ToR) for the calendar year 2020 (year in review), except for identifying all past rulings within the scope of the transparency framework (ToR I.A.1.2) and the timely exchange of information on past and future rulings (ToR II.B.6). Switzerland receives two recommendations on this point for the year in review.

In the prior year report, Switzerland had received three recommendations. Switzerland resolved the recommendation regarding the timely provision of information on rulings to the Competent Authority and therefore this recommendation is now removed. Efforts have been made during the year in review to address the other two recommendations, although the issues have not been fully addressed for the year in review. As such, these recommendations remain in place.

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:

Type of ruling	Number of rulings
Past rulings	882 <sup>1</sup>
Future rulings in the calendar year 2017	300
Future rulings in the calendar year 2018	228
Future rulings in the calendar year 2019	293
Future rulings in the year in review	214

Peer input was received from eight jurisdictions in respect of the exchanges of information on rulings received from Switzerland. The input was generally positive, noting that overall information was complete, in a correct format and almost all received in a timely manner. However, some peer input indicated that not all exchanges on rulings were conducted in a timely manner.

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

1096. Switzerland can legally issue the following four types of rulings within the scope of the transparency framework: (i) preferential regimes;<sup>2</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) permanent establishment rulings; and (iv) related party conduit rulings.

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

1097. 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.

1098. In the prior year peer review report, it was determined that Switzerland's undertakings to identify past rulings and all potential exchange jurisdictions have met all the ToR, except for identifying all past rulings within the scope of the transparency framework (ToR I.A.1.2). Therefore, Switzerland was recommended to strengthen its information gathering process identifying all past rulings within the scope of the transparency framework.

1099. During the year in review, Switzerland identified eleven additional past rulings. Switzerland also notes that no further past rulings have been identified since, and only one past ruling still has to be exchanged. Although this indicates that Switzerland is strengthening its information gathering process to identify all past rulings, the prior year recommendation remains in place in order to ensure that similar issues are not encountered in future.

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

1100. 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.

1101. In the prior years' peer review reports, it was determined that Switzerland's undertakings to identify future rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. Switzerland's undertakings in this regard remain unchanged, and therefore continue to meet the minimum standard.

### ***Review and supervision (ToR I.A.3)***

1102. In the prior year peer review reports, Switzerland was recommended, as part of the efforts to enhance the information gathering process, to strengthen its review and supervision mechanism to ensure that the information gathering process is working effectively. During the year in review, Switzerland identified additional past rulings compared to those reported in the prior year report. Although this indicates that Switzerland is strengthening its review and supervision mechanism to ensure that the information gathering process is working effectively, the prior year recommendation remains in place in order to ensure that similar issues are not encountered in future.

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

1103. Switzerland has met all of the ToR for the information gathering process except for identifying all past rulings within the scope of the transparency framework (ToR I.A.1.2). Switzerland is recommended to strengthen its information gathering process by identifying all past rulings within the scope of the transparency framework and its review and supervision mechanism to ensure that the information gathering process is working effectively.

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

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

1104. 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.

1105. Switzerland's international agreement permitting spontaneous exchange of information is 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"). 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.B.3, II.B.4, II.B.5, II.B.6, II.B.7)**

1106. In the prior year peer review report, it was determined that Switzerland's process for the completion and exchange of templates met all the ToR, except for the timely provision of information on rulings to the Competent Authority (ToR II.B.5) and the timely exchange of information on past and future rulings (ToR II.B.6).

1107. During the year in review, Switzerland continued to experience recurring delayed exchanges for both past rulings and future rulings. However, additional steps have been taken to receive information on rulings from the cantonal authorities without undue delay and to ensure quality and accuracy of the information received. Accordingly, Switzerland confirmed these delays relate to the identification of past rulings, as described above, and to the timely exchange of information on past and future rulings, as described below. Therefore, the recommendation to continue its efforts to strengthen its process and allocation of resources and to ensure the accurate and timely completion of the template summaries, in order to reduce the timeliness for providing the information on past and future rulings to the Competent Authority (ToR II.B.5) is now removed.

1108. For the year in review, the timeliness of exchanges is as follows:

Past rulings within the scope of the transparency framework	Number of exchanges transmitted by 31 December 2020	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2020	Reasons for the delays	Any other comments
	184	30	See below	N/A
Future rulings within 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
	174	395	See below	N/A
<b>Total</b>	<b>358</b>	<b>425</b>		

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

1109. Switzerland encountered delays with the exchange of information on both past rulings and future rulings due to legal impediments, consultation with the cantonal tax authorities and the COVID-19 pandemic. Regarding legal impediments, Switzerland indicates that there were pending proceedings as a result of objections raised by taxpayers. With respect to the consultation with the cantonal tax authorities, Switzerland notes that the process was delayed because the Competent Authority had to revert to the cantonal tax authorities, which, in turn, needed to revert to taxpayers in some cases. In relation to the COVID-19 pandemic, Switzerland notes that both the Competent Authorities and the cantonal tax authorities experienced delays due to restricted working conditions.

1110. In the prior year peer review report, it was determined that the Competent Authority had internally reorganised to respond to the increased workload. New staff had been recruited and new teams had been set up, with less diversified and more clearly defined tasks. Furthermore, the IT System had been enhanced so that the steps of the transmission can be monitored more accurately. During the year in review, the efforts of the Competent Authority to enhance the process were impacted by the COVID-19 pandemic. Switzerland notes that in 2021 the situation normalised and the Competent Authority has been able to resume a more timely schedule. Switzerland also indicates that the implementation of the Common Transmission System and the set-up of a ticketing service to efficiently address technical problems related to the IT platform should allow the Competent Authority to enhance the process henceforth.

1111. Therefore, the recommendation to continue to ensure that all information on past and future rulings is exchanged as soon as possible (ToR II.B.6) remains in place.

### **Conclusion on section B**

1112. Switzerland has met all of the ToR for the exchange of information process except for the timely exchange of information on past and future rulings (ToR II.B.6). Switzerland is recommended to continue to ensure that all information on past and future rulings is exchanged as soon as possible.

## **C. Statistics (ToR IV)**

1113. 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	373	Argentina, Australia, Austria, Azerbaijan, Barbados, Belgium, Brazil, Canada, Chile, China (People's Republic of), Colombia, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Faroe Islands, France, Germany, Guernsey, Greece, Greenland, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Mauritius, Mexico, Netherlands, New Zealand, Nigeria, Norway, Panama, Poland, Portugal, Russia, Saudi Arabia, Singapore, Slovak Republic, South Africa, Spain, Sweden, Turkey, United Kingdom, Uruguay
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	366	Austria, Australia, Belgium, Brazil, Canada, Cameroon, China (People's Republic of), Cyprus, Czech Republic, Denmark, Finland, France, Germany, Guernsey, Hong Kong (China), Hungary, India, Ireland, Italy, Japan,

		Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Marshall Islands, Mauritius, Malaysia, Mexico, Netherlands, New Zealand, Nigeria, Norway, Panama, Poland, Portugal, Russia, Saudi Arabia, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turkey, United Kingdom, Uruguay
Permanent establishment rulings	151	Argentina, Australia, Austria, Barbados, Belgium, Brazil, Canada, Chile, China (People's Republic of), Colombia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Guernsey, Hong Kong (China), Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Mauritius, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Russia, Saudi Arabia, Singapore, South Africa, Spain, Sweden, United Kingdom
Related party conduit rulings	20	Australia, Denmark, France, Germany, Ireland, Italy, Japan, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Russia, Singapore, Spain, Sweden, United Kingdom
<b>Total</b>	<b>910<sup>3</sup></b>	

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

1114. Switzerland offers a patent box, an intellectual property regime (IP regime)<sup>4</sup> that was introduced as of 1 January 2020. According to the FHTP, the patent box is designed in compliance with FHTP standards and therefore concluded “not harmful”.

- **New entrants benefitting from the grandfathered IP regime:** not applicable.
- **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 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 identified additional past rulings that were not previously captured.	Switzerland is recommended to strengthen its information gathering process by identifying all past rulings within the scope of the transparency framework and its review and supervision mechanism to ensure that the information gathering process is working effectively. This recommendation remains unchanged since the prior year peer review report.
Switzerland experienced delays in the exchange of information on past and future rulings.	Switzerland is recommended to continue to ensure that all information on past and future rulings is exchanged as soon

---

as possible. This recommendation remains unchanged since the prior year peer review report.

---

## 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]

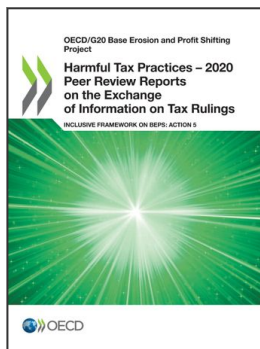
## Notes

<sup>1</sup> Switzerland identified an additional eleven past rulings during the year in review.

<sup>2</sup> Until 31 December 2019, the following preferential regimes were available: 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). As per 1 January 2020, Switzerland abolished said regimes and simultaneously, introduced an IP regime at cantonal level. This regime, which is mandatory for all of the Swiss cantons, replaced the previous Canton of Nidwalden licence box regime, which the FHTP had reviewed and found to be nexus compliant before (see comments under E.).

<sup>3</sup> Switzerland explained that in some cases the ruling templates identified in the statistics on exchanges above fall in two or more categories (107 in two categories, 1 in three categories, 16 in four categories) which has led to some multiple counting in this table. For the year in review, 753 individual exchanges took place.

<sup>4</sup> See footnote 2 and conclusion of FHTP as per update November 2020.



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), “Switzerland”, 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/10.1787/468e6566-en>

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area. Extracts from publications may be subject to additional disclaimers, which are set out in the complete version of the publication, available at the link provided.

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at <http://www.oecd.org/termsandconditions>.