

Switzerland

Switzerland has met all aspects of the terms of reference (OECD, 2021^[3]) (ToR) for the calendar year 2021 (year in review), except for the timely exchange of information on past and future rulings (ToR II.B.6). Switzerland receives one recommendation on this point for the year in review.

In the prior year's peer review report, Switzerland had received two recommendations. Switzerland has resolved one issue related to the identification of past rulings, and the recommendation is removed. In addition, efforts have been made during the year in review to address the other recommendation, but as the issue has not yet been fully resolved, the recommendation remains 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 ¹
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 calendar year 2020	214
Future rulings in the year in review	234

Peer input was received from seven jurisdictions in respect of the exchanges of information on rulings received from Switzerland. The input was generally positive, noting that overall information was complete and in a correct format. However, peer input indicated that exchanges on rulings were not timely. This is reflected in the report.

Information gathering process (ToR I.A)

1187. Switzerland can legally issue the following four 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) 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)

1188. 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.

1189. In the prior year's 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.

1190. Switzerland confirms that no additional past rulings have been identified during the year in review, and that the identification of all past rulings is now completed. Therefore, the prior year recommendation is removed.

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

1191. 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.

1192. 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)

1193. In the prior years' 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. As noted above, Switzerland has now completed the identification of all past rulings. Therefore, the prior year recommendation is removed.

Conclusion on section A

1194. Switzerland has met all of the ToR for the information gathering process and no recommendations are made.

Exchange of information (ToR II.B)

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

1195. 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.

1196. 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^[1]) ("the Convention").³ 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)

1197. In the prior years' peer review reports, it was determined that Switzerland's process for the completion and exchange of templates met all the ToR, except for timely exchange of information on past and future rulings (ToR II.B.6).

1198. 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 2021	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2021	Reasons for the delays	Any other comments
	40	0	See below.	These past rulings were identified in 2020 and exchanged in 2021.
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
	483	136	See below.	N/A
Total	523	136		

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

1199. Switzerland encountered delays with the exchange of information on both past rulings and future rulings due to legal impediments, modernisation of the SEOI platform 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 modernisation of the SEOI platform, the Competent Authority took further steps in its IT system, by making dates of rulings more visible which, as a result, mitigates delayed exchanges. In relation to the Covid-19 pandemic, Switzerland notes that it experienced delays due to restricted working conditions at the beginning of the year in review but notes that in the same year, the Covid-19 situation normalised, and the Competent Authority has been able to resume a timelier schedule. For the mentioned reasons, the number of delayed exchanges could be reduced. However, as there were still delays during the year in review, the recommendation remains in place, and the situation will be further reviewed during next year's peer review.

1200. Switzerland still encountered delays regarding the exchange of information on past and future rulings. 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

1201. 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.

Statistics (ToR IV.D)

1202. 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	172	Argentina, Australia, Austria, Barbados, Belgium, Brazil, Canada, Chile, China (People's Republic of), Colombia, Croatia, Cyprus, Czech Republic, Denmark, Germany, Finland, France, Greece, Guernsey, Hong Kong (China), Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, Latvia, Luxembourg, Mauritius, Mexico, Netherlands, New Zealand, Norway, Panama, Poland, Portugal, Russia, Saudi Arabia, Singapore, Slovenia, Slovak Republic, South Africa, Spain, Sweden, Türkiye, 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	454	Argentina, Austria, Australia, Barbados, Belgium, Brazil, Canada, Chile, China (People's Republic of), Colombia, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Guernsey, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Korea, Liechtenstein, Luxembourg, Malaysia, Malta, Mexico, Netherlands, New Zealand, Norway, Panama, Peru, Poland, Portugal, Russia, Saudi Arabia, Singapore, Slovenia, Slovak Republic, South Africa, Spain, Sweden, Türkiye, United Kingdom
Permanent establishment rulings	106	Argentina, Austria, Australia, Barbados, Belgium, Brazil, Canada, Chile, China (People's Republic of), Colombia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Guernsey, Hong Kong (China), Hungary, India, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Korea, Latvia, Liechtenstein, Luxembourg, Mauritius, Mexico, Netherlands, New Zealand, Norway, Panama, Poland, Portugal, Russia, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Türkiye, United Kingdom
Related party conduit rulings	<i>De minimis</i> rule applies	N/A
<i>De minimis</i> rule	2	N/A
Total	734	

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

1203. In the prior year's peer review report, it was determined that Switzerland's information gathering and exchange of information processes for matters related to intellectual property regimes⁴ were sufficient to meet the minimum standard. Switzerland's implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

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 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 2019 and 2020 peer review reports.

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://doi.org/10.1787/9789264241190-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://doi.org/10.1787/9789264115606-en>. [1]

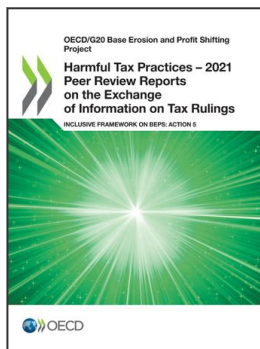
Notes

¹ Out of these 882 rulings, 225 fall in two or more categories.

² Patent box.

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.

⁴ Patent box.



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