

Eswatini

Eswatini is taking steps to implement the aspects of the terms of reference (OECD, 2021^[3]) (ToR) for the transparency framework and to commence administrative preparations to ensure that it establishes an information gathering process (ToR I.A) and that information on rulings will be identified and exchanged in a timely manner (ToR II.B). Eswatini receives two recommendations on these points for the year in review.

In the prior year's peer review report, Eswatini had received the same two recommendations. As they have not been addressed, the recommendations remain in place.

Eswatini can legally issue four types of rulings within the scope of the transparency framework.

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

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

Information gathering process (ToR I.A)

416. Eswatini can legally issue the following four types of rulings within the scope of the transparency framework: (i) rulings on preferential regimes;¹ (ii) rulings providing for unilateral downward adjustments; (iii) permanent establishment rulings; and (iv) related party conduit rulings. According to the Income Tax Order, the Commissioner General (CG) could issue private rulings regarding the application of the Order to a transaction proposed by the taxpayer.

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

417. For Eswatini, past rulings are any tax rulings issued prior to 1 March 2020. However, there is no obligation for Eswatini to conduct spontaneous exchange information on past rulings.

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

418. For Eswatini, future rulings are any tax rulings within scope that are issued on or after 1 March 2020.

419. No future rulings were issued by Eswatini during the year in review. During the year in review, the CG only issued rulings advising a taxpayer on a particular provision or administrative practice not falling in any of the four categories mentioned above. However, nothing would prevent the CG to issue rulings in one of the above mentioned categories in scope of the transparency framework.

420. Eswatini does not yet have processes in place to ensure the identification of all relevant rulings and all potential exchange jurisdictions but is currently taking steps to ensure the implementation of the obligations relating to the transparency framework.

Review and supervision (ToR I.A.3)

421. Eswatini does not yet have a review and supervision mechanism under the transparency framework but is currently taking steps to ensure the implementation of the obligations relating to the transparency framework.

Conclusion on section A

422. Eswatini is currently taking steps to ensure the identification of all relevant rulings and all potential exchange jurisdictions as well as to have a review and supervision mechanism under the transparency framework.

423. Eswatini is recommended to put in place its information gathering process for identifying all relevant rulings and all potential exchange jurisdictions, with a review and supervision mechanism, as soon as possible (ToR I.A).

Exchange of information (ToR II.B)

424. Eswatini has the necessary domestic legal basis to exchange information spontaneously. Eswatini 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.

425. Eswatini has international agreements permitting spontaneous exchange of information, including: (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010*

Protocol (OECD/Council of Europe, 2011^[1]) (“the Convention”), (ii) bilateral agreements in force with seven jurisdictions and (iii) tax information exchange agreements in force with two jurisdictions.²

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

426. Eswatini does not yet have a process in place for the completion and exchange of information on rulings in accordance with the form and timelines required by the transparency framework but is currently taking steps to ensure the implementation of the obligations relating to the transparency framework.

427. During the year in review, no exchanges were required to take place and no data on the timeliness of exchanges is reported.

Conclusion on section B

428. Eswatini has the necessary legal basis for spontaneous exchange of information. Eswatini has met all of the ToR for the exchange of information process except for having a process in place for the completion and exchange of information on rulings. Eswatini is recommended to develop a process to complete the templates on relevant rulings and to ensure that the exchanges of information on rulings occur in accordance with the form and timelines under the transparency framework (ToR II.B).

Statistics (ToR IV.D)

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

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

430. Eswatini does not offer an intellectual property regime for which transparency requirements under the Action 5 Report (OECD, 2015^[2]) were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Eswatini is currently taking steps to ensure the identification of all relevant rulings and all potential exchange jurisdictions as well as to have a review and supervision mechanism under the transparency framework.	Eswatini is recommended to put in place its information gathering process for identifying all relevant rulings and all potential exchange jurisdictions, with a review and supervision mechanism, as soon as possible. This recommendation remains unchanged since the prior year's peer review report.
Eswatini is currently taking steps to put a process in place for the completion and exchange of information on rulings in accordance with the form and timelines required by the transparency framework.	Eswatini is recommended to develop a process to complete the templates on relevant rulings and to ensure that the exchanges of information on rulings occur in accordance with the form and timelines under the transparency framework. This recommendation remains unchanged since the prior year's 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://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 Special Economic Zones regime.

² 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. Eswatini also has bilateral agreements with Botswana, Lesotho, Mauritius, Seychelles, South Africa, Chinese Taipei, United Kingdom. The TIEAs with Isle of Man and Guernsey also permit for the spontaneous exchange of information.



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