

Switzerland

Switzerland has met all aspects of the terms of reference (OECD, 2017^[3]) (ToR) for the calendar year 2019 (year in review), except for identifying all past rulings in scope of the transparency framework (ToR I.4.1.2), the timely provision of information on rulings to the Competent Authority (ToR II.5.5) and the timely exchange of information on past and future rulings (ToR II.5.6). Switzerland receives three recommendations on this point for the year in review.

In the prior year report, no recommendations were made. However, as there were new circumstances, recommendations have been made as relevant.

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:

- 871 past rulings;
- For the calendar year 2017: 300 future rulings,
- For the calendar year 2018: 228 future rulings, and
- For the year in review: 293 future rulings.

Peer input was received from six jurisdictions in respect of the exchanges of information on rulings received from Switzerland. The input was generally positive, noting that information was complete, in a correct format and almost all received in a timely manner. Some peers noted that the exchange of information on rulings from Switzerland was delayed.

A. The information gathering process

1066. Switzerland can legally issue the following four 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; (iii) permanent establishment rulings; and (iv) related party conduit rulings.

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

1067. 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.

1068. In the prior years' peer review reports, it was determined that Switzerland's undertakings to identify past rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. However, during the year in review, the 26 Swiss cantons (which have competence to issue rulings and are each responsible for identifying rulings in accordance with the domestic law) identified an additional 40 past rulings that had not otherwise been identified in the prior year. Although this is a small error relative to the overall volume of past rulings issued by Switzerland, in order to ensure that similar issues are not encountered in future, Switzerland is recommended to strengthen its information gathering process identifying all past rulings in scope of the transparency framework.

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

1069. 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.

1070. 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.4.3)

1071. In the prior years' peer review reports, it was determined that Switzerland's review and supervision mechanism was sufficient to meet the minimum standard. As noted above, during the year in review, Switzerland identified an addition 40 past rulings. As part of the efforts to strengthen the information gathering process, Switzerland is therefore recommended to strengthen its review and supervision mechanism to ensure that the information gathering process is working effectively.

Conclusion on section A

1072. Switzerland has met all of the ToR for the information gathering process except for identifying all past rulings in scope of the transparency framework (ToR I.4.1.2). Switzerland is recommended to strengthen its information gathering process identifying all past rulings in 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

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

1073. 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.

1074. Switzerland 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^[4]) ("the Convention").² 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)

1075. In the prior years' peer review reports, it was determined that Switzerland's process for the completion and exchange of templates were sufficient to meet the minimum standard. However, during the year in review, Switzerland experienced recurring delayed exchanges for both past rulings and future rulings.

1076. Switzerland indicates that rulings may be issued both by cantonal and federal tax authorities. As noted above, during the year in review, Switzerland identified 40 additional past rulings. The Competent Authority exchanged the information on these additional rulings as soon as it received them. In addition, with respect to other rulings, exchanges were delayed because the Competent Authority, had to revert to the cantonal tax authorities in order to guarantee the quality of the text in the summary box in the template for the recipient jurisdictions. In some cases, the cantonal tax authorities needed to revert to the taxpayers, to request additional information in order to complete the template (e.g. to complete the text in the summary box, and/or other additional information on the affected entities, such as their addresses and tax identification numbers). As taxpayers are usually required to fill out the template before a future ruling is approved by the tax authority, this was generally expected to be less of an issue for future rulings than for past rulings, but in practice, the Competent Authority had to revert to the cantonal authorities for both past and future rulings.

1077. Switzerland notes that as more experience is gained with filling out the templates correctly, the need for the Competent Authority to revert to cantons is expected to become less frequent. Switzerland further notes that it considered the additional time taken to be important in order to ensure a better quality of the information transmitted.

1078. Switzerland notes that information on past rulings still may become available from the cantons. Therefore, it cannot guarantee that all information on past rulings has yet been exchanged.

1079. Switzerland is recommended 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 timelines for providing the information on past and future rulings to the Competent Authority (ToR II.5.5).

1080. For the year in review, the timeliness of exchanges is as follows:

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2019	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2019	Reasons for the delays	Any other comments

	442 ³	128	See below.	108 exchanges were transmitted by the end of February 2020 and further 20 exchanges were transmitted by mid July 2020.
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 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
	338	174	Need to substantiate summaries and revert to cantonal tax authorities; number of exchanges for the year in review considerably higher than expected.	N/A
Total	780	302		

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

1081. Switzerland encountered delays with the exchange of information on both past rulings and future rulings. This was due to issues regarding completion of the templates as described above and also personnel issues. Switzerland indicates that the workload of the Competent Authority has significantly increased over the last few years. This concerns both spontaneous exchange of information on rulings and other forms of exchanges. For spontaneous exchange of information on rulings, the number of exchanges on future rulings for the year in review was considerably higher than initially expected, because of an unexpected demand by taxpayers for rulings. The Competent Authority has internally reorganised in the fall of 2019 to respond to these challenges and have the appropriate human resources and processes in place. New staff has been recruited and new teams have been set up.⁴ In order to optimise processes, members of staff have more clearly defined and less diversified tasks, which enables those responsible for spontaneous exchange of information to focus more on this work stream. Furthermore, the IT System has been enhanced so that the steps of the transmission can be monitored more accurately.

1082. Switzerland is recommended to continue to ensure that all information on past and future rulings is exchanged as soon as possible (ToR II.5.6).

Conclusion on section B

1083. Switzerland has met all of the ToR for the information gathering process except for the timely provision of information on rulings to the Competent Authority (ToR II.5.5) and the timely exchange of information on past and future rulings (ToR II.5.6). Switzerland is recommended to continue its efforts to strengthen its process and allocation of resources and to ensure the accurate and timely completion of the summary templates, in order to reduce the timelines for providing the information on future rulings to the

Competent Authority. In addition, 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)

1084. 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	514	Albania, Argentina, Australia, Austria, Azerbaijan, Barbados, Belgium, Brazil, Bulgaria, Canada, Chile, China (People's Republic of), Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Ghana, Greece, Guernsey, Hong Kong (China), Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Jersey, Kazakhstan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Moldova, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Poland, Portugal, Romania, Russia, Saudi Arabia, 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 as an advance tax ruling) covering transfer pricing or the application of transfer pricing principles	408	Albania, Argentina, Australia, Austria, Azerbaijan, Barbados, Belgium, Brazil, Bulgaria, Canada, Chile, China (People's Republic of), Colombia, Costa Rica, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Ghana, Greece, Guernsey, Hong Kong (China), Hungary, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Kazakhstan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Moldova, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Panama, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Saudi Arabia, Senegal, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Tunisia, Turkey, Ukraine, United Kingdom, Uruguay
Permanent establishment rulings	162	Albania, Argentina, Australia, Austria, Azerbaijan, Barbados, Belgium, Brazil, Bulgaria, Canada, Chile, China (People's Republic of), Colombia, Costa Rica, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Ghana, Greece, Guernsey, Hong Kong (China), Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Jersey, Kazakhstan, Korea, Latvia, Lithuania, Luxembourg, Malaysia, Mauritius, Mexico, Moldova, Netherlands, New

		Zealand, Nigeria, Norway, Poland, Portugal, Romania, Russia, Saudi Arabia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Tunisia, Ukraine, United Kingdom
Related party conduit rulings	3	<i>De minimis</i> rule applies
Total	1 087⁵	

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

1085. Switzerland offered an intellectual property regime (IP regime)⁶ that was amended as of 1 January 2016 and is not subject to the transparency requirements under the Action 5 Report (OECD, 2015^[1]), because:

- **New entrants benefitting from the grandfathered IP regime:** the IP regime 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 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 identifying all past rulings in scope of the transparency framework and its review and supervision mechanism to ensure that the information gathering process is working effectively.
Switzerland experienced delays in the provision of rulings to the Competent Authority, as additional steps were required in order to ensure the summary templates provided to the Competent Authority were complete and correct.	Switzerland is recommended to continue its efforts to strengthen its process and allocation of resources and to ensure the accurate and timely completion of the summary templates, in order to reduce the timelines for providing the information on past and future rulings to the Competent Authority.
Switzerland experienced some delays in exchanging 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.

References

- OECD (2017), *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/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

¹ 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).

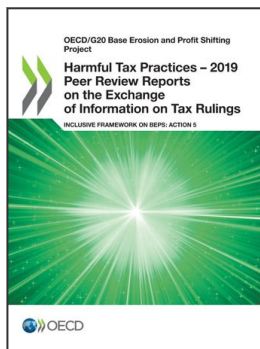
² Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm.

³ The 2018 peer review report noted a total number of 352 delayed exchanges by 31 December 2018. The difference between the total delayed exchanges of past rulings in 2018 and the total exchanges of past rulings in 2019 is due to the fact that during the year in review, Switzerland exchanged further past rulings already identified by the end of 2018 and identified additional past rulings that led to additional exchanges.

⁴ Switzerland notes that it has a federalist structure and that the cantons therefore have organisational autonomy. Hence, the Competent Authority has no insight into the specific (re-)organisations in the cantons.

⁵ Switzerland explained that in some cases the ruling templates identified in the statistics on exchanges above fall in two or more categories (42 in two categories, 1 in three categories) which has led to some multiple counting in this table. For the year in review, 815 individual exchanges took place.

⁶ Canton of Nidwalden – License box.



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