

Botswana

Botswana is taking steps to implement the legal basis for the transparency framework and to commence administrative preparations to ensure that it finalises its information gathering process (ToR I.4) and that information on rulings will be identified and exchanged in a timely manner (ToR II.5). Botswana receives two recommendations on these points for the year in review.

In the prior year report, Botswana had received the same two recommendations. As they have not been addressed, the recommendations remain in place.

Botswana can legally issue three types of rulings within the scope of the transparency framework.

In practice, Botswana issued rulings within the scope of the transparency framework as follows:

- 10 past rulings;
- For the period 1 April 2018 - 31 December 2018: one future ruling; and
- For the year in review: three future rulings.

As no exchanges took place, no peer input was received in respect of the exchanges of information on rulings received from Botswana.

A. The information gathering process

146. Botswana can legally issue the following three 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; and (iii) permanent establishment rulings.

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

147. For Botswana, past rulings are any tax rulings within scope that are issued either (i) on or after 1 January 2016 but before 1 April 2018; and (ii) on or after 1 January 2014 but before 1 January 2016, provided still in effect as at 1 January 2016.

148. In the prior year peer review report, it was noted that Botswana does not have a process in place for identifying the potential exchange jurisdictions for APAs and permanent establishment rulings and did not yet apply the best efforts approach. Therefore, Botswana was recommended to apply the best efforts approach to identify all potential exchange jurisdictions for APA and PE rulings, as soon as possible.

149. During the year in review, no additional work was undertaken and therefore, the prior year recommendation remains.

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

150. For Botswana, future rulings are any tax rulings within scope that are issued on or after 1 April 2018.

151. In the prior year peer review report, it was determined that Botswana's undertakings to identify future rulings and all potential exchange jurisdictions was sufficient to meet the minimum standard. Botswana's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

Review and supervision (ToR I.4.3)

152. In the prior year peer review report, it was noted that Botswana did not yet have a review and supervision mechanism for past or future rulings under the transparency framework for the year in review. Therefore, Botswana was recommended to put in place a review and supervision mechanism, as soon as possible.

153. During the year in review, no additional work was undertaken and therefore, the prior year recommendation remains.

Conclusion on section A

154. Botswana is recommended to apply the best efforts approach to identify all potential exchange jurisdictions for APA and PE rulings and to put in place a review and supervision mechanism, as soon as possible (ToR I.4).

B. The exchange of information

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

155. Botswana does not have the necessary domestic legal basis to exchange information spontaneously. Botswana can only exchange information on request. Botswana is undergoing a comprehensive reform of its tax laws. Botswana notes that it has commenced a review of the exchange of information legislative framework with the support of the African Tax Administration Forum (ATAF) with a view to correcting identified shortcomings in this area by December 2020.

156. Botswana has international agreements permitting spontaneous exchange of information, including bilateral agreements in force with 24 jurisdictions.² Botswana is encouraged to continue its efforts to expand its international exchange of information instruments to be able to exchange rulings. It is noted, however, that jurisdictions are assessed on their compliance with the transparency framework in respect of the exchange of information network in effect for the year of the particular annual review.

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

157. Botswana is currently developing a process to complete the templates on relevant rulings, to make them available to the Competent Authority for exchange of information, and to exchange them with relevant jurisdictions.

158. As no exchanges took place for the year in review, no data on the timeliness of exchanges can be reported.

Conclusion on section B

159. Botswana is recommended to continue to put in place a domestic legal framework allowing spontaneous exchange of information on rulings and to ensure the timely exchange of information on rulings in the form required by the transparency framework (ToR II.5).

C. Statistics (ToR IV)

160. As there was no information on rulings exchanged by Botswana for the year in review, no statistics can be reported.

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

161. Botswana offered an intellectual property regime (IP regime)³ that was abolished as of 1 January 2019 and that is not subject to the transparency requirements under the Action 5 Report (OECD, 2015^[1]) because:

- ***New entrants benefitting from the grandfathered IP regime:*** as there were no taxpayers benefitting from the IP regime and no grandfathering provisions have been provided, no enhanced transparency requirements apply.
- ***Third category of IP assets:*** not applicable as the IP regime has been abolished.
- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption:*** not applicable as the IP regime has been abolished.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Botswana has not yet finalised the steps to have in place it necessary information gathering process.	Botswana is recommended to apply the best efforts approach to identify all potential exchange jurisdictions for APA and PE rulings and to put in place a review and supervision mechanism, as soon as possible. This recommendation remains unchanged since the prior year peer review report.
Botswana does not yet have the necessary legal framework in place for exchanging information on rulings and a process in place to ensure the timely exchange of information on rulings in the form required by the transparency framework.	Botswana is recommended to continue to put in place a domestic legal framework allowing spontaneous exchange of information on rulings and to ensure the timely exchange of information on rulings in the form required by the transparency framework. This recommendation remains unchanged since the prior year peer review report.

Jurisdiction's response and recent developments

162. Botswana notes that it has engaged with ATAF in developing a framework for the exchange of information on tax rulings under the Action 5 transparency framework, including on the identification on potential exchange jurisdictions, Botswana's review and supervision mechanism and the completion and exchange of templates. In addition, Botswana is reforming its tax laws including on the spontaneous exchange of information. It is envisaged that this framework will be in place by mid-2021.

References

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]

Notes

¹ With respect to the following preferential regime: International financial services company.

² Botswana has bilateral agreements with Barbados, China (People's Republic of), Denmark, Eswatini, Faroe Islands, Finland, France, Greenland, Iceland, India, Ireland, Isle of Man, Malta, Mauritius, Mozambique, Namibia, Norway, Russia, Seychelles, South Africa, Sweden, United Kingdom, Zambia and Zimbabwe.

³ International financial services company.



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