

# Botswana

Botswana has met all aspects of the terms of reference (OECD, 2021<sup>[3]</sup>) (ToR) for the calendar year 2021 (year in review), except for having in place a review and supervision mechanism (ToR I.A.3) and having a domestic legal basis for spontaneous exchange of information and exchanging information on the tax rulings in accordance with the form and timelines under the transparency framework (ToR II.B). Botswana receives two recommendations on these points for the year in review.

In the prior year's peer review report, as well as in the 2018 and 2019 peer review reports, 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:

Type of ruling	Number of rulings
Past rulings	10
Future rulings in the period 1 April 2018 – 31 December 2018	1
Future rulings in the calendar year 2019	3
Future rulings in the calendar year 2020	2
Future rulings in the year in review	0

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

## Information gathering process (ToR I.A)

171. Botswana can legally issue the following three types of rulings within the scope of the transparency framework: (i) preferential regimes;<sup>1</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; and (iii) permanent establishment rulings.

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

172. 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.

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

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

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

175. In the prior years' peer review reports, it was determined that Botswana's implementation of a new system 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.A.3)***

176. In the prior years' peer review reports, it was determined that Botswana did not yet have a review and supervision mechanism for past and future rulings under the transparency framework. Therefore, Botswana was recommended to put in place a review and supervision mechanism as soon as possible.

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

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

178. Botswana has met all of the ToR for the information gathering process except for having in place a review and supervision mechanism. Botswana is recommended to put in place a review and supervision mechanism, as soon as possible (ToR I.A.3).

## Exchange of information (ToR II.B)

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

179. In the prior years' peer review reports, it was determined that Botswana did 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. Due to the Covid-19 pandemic, this review has been delayed.

180. Botswana 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<sup>[11]</sup>) (“the Convention”) and (ii) bilateral agreements in force with 27 jurisdictions.<sup>2</sup> Botswana signed the Convention on 29 September 2020 and deposited its instrument of ratification on 15 June 2021. The Convention entered into force on 1 October 2021 and will have effect for administrative assistance related to taxable periods beginning on or after 1 January 2022. No exchanges could occur under the Convention for the year in review.

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

181. In the prior years’ peer review reports, it was determined that 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.

182. During the year in review, no exchanges took place and no data on the timeliness of exchanges is reported.

### **Conclusion on section B**

183. Botswana is recommended to continue its efforts to put in place a domestic legal framework allowing spontaneous exchange of information on rulings and to complete the templates for all relevant rulings and to ensure that the exchanges of information on rulings occur as soon as possible (ToR II.B).

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

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

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

185. In the prior years’ peer review reports, it was determined that Botswana’s information gathering and exchange of information processes for matters related to intellectual property regimes<sup>3</sup> were sufficient to meet the minimum standard. Botswana’s implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

## **Summary of recommendations on implementation of the transparency framework**

<b>Aspect of implementation of the transparency framework that should be improved</b>	<b>Recommendation for improvement</b>
Botswana does not have a review and supervision mechanism in place.	Botswana is recommended to put in place a review and supervision mechanism, as soon as possible. This recommendation remains unchanged since the 2018, 2019 and 2020 peer review reports.
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 its efforts to put in place a domestic legal framework allowing spontaneous exchange of information on rulings and to complete the templates for all relevant rulings and to ensure that the exchanges of information on rulings occur as soon as possible. This recommendation remains unchanged since the 2018, 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

<sup>1</sup> International financial services company.

<sup>2</sup> 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](http://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm). Botswana also has bilateral agreements with Barbados, China (People's Republic of), Czech Republic, Denmark, Eswatini, Faroe Islands, Finland, France, Greenland, Iceland, India, Ireland, Isle of Man, Lesotho, Luxembourg, Malta, Mauritius, Mozambique, Namibia, Norway, Russia, Seychelles, South Africa, Sweden, United Kingdom, Zambia and Zimbabwe.

<sup>3</sup> International financial services company.



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