

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 1
Legal and Regulatory Framework

SWITZERLAND



Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Switzerland 2011

PHASE 1

June 2011
(reflecting the legal and regulatory framework
as at March 2011)



Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities (<i>ToR A.1</i>)		
The element is not in place.	Bearer shares may be issued by SAs and SCAs, and mechanisms to ensure that the owners of such shares can be identified, are not systematically in place for all bearer shares.	Switzerland should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares in all instances.
	Companies incorporated outside of Switzerland but having their effective management in Switzerland which gives rise to a permanent establishment are not required to provide information identifying their owners as a part of registration requirements. Therefore, the availability of information that identifies any owners of such companies will generally depend on the law of the jurisdiction in which the company is incorporated and so may not be available in all cases.	In such cases, Switzerland should ensure that ownership and identity information is available.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Banking information should be available for all account-holders (<i>ToR A.3</i>)		
The element is in place.	Some bearer savings books remain in existence although they may no longer be issued and must be cancelled upon physical presentation of the bearer savings book at the bank.	Switzerland should ensure that there are measures to identify the owners of any remaining bearer savings books.
Competent authorities should have the power to obtain and provide information that is the subject of a request under and exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (<i>ToR B.1.</i>)		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Switzerland does not have powers to access bank information in respect of requests made under agreements that entered into force prior to 1 October 2010, except in the cases of tax fraud when it is provided for under the specific agreement.	Switzerland should ensure that it has access to bank information in respect of EOI requests made pursuant to all of its EOI agreements (regardless of their form).
	Switzerland's access powers for the agreements which it has, and will, update in line with its commitment to the standard, are only applicable to requests made under double tax conventions.	Switzerland should ensure that its competent authority has the power to obtain all relevant information pursuant to requests under all exchange of information agreements (regardless of their form).
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2.</i>)		

Determination	Factors underlying recommendations	Recommendations
<p>The element is in place, but certain aspects of the legal implementation of the element need improvement.</p>	<p>Under Swiss law, a person concerned by the request must be notified of the request and has the right to inspect the EOI file. The exceptions to this notification rule only permit notification to be delayed until after the information is accessed. The person concerned must still be notified before the information can be exchanged with the EOI partner.</p>	<p>Switzerland should ensure that there are appropriate exceptions to the right of notification and right to inspect the EOI file which are consistent with the standard.</p>
<p>Exchange of information mechanisms should provide for effective exchange of information (<i>ToR C.1</i>)</p>		
<p>The element is not in place.</p>	<p>Some of the New Agreements establish identification requirements for the person concerned and the holder of information that are inconsistent with the standard for effective exchange. In addition, with respect to all of the New Agreements, Switzerland's interpretation of the identification requirements is inconsistent with the standard.</p>	<p>Switzerland should ensure that the identification requirements in some of the New Agreements, as well as its interpretation of the identification requirements in all of these agreements, are in line with the standard for effective exchange, and all of those agreements should be brought into force quickly.</p>
	<p>EOI agreements that were negotiated prior to 13 March 2009 are not consistent with the standard.</p>	<p>Switzerland should ensure that each of its EOI agreements that were negotiated prior to 13 March 2009 allows for the exchange of information in line with the standard.</p>
<p>The jurisdiction's network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2.</i>)</p>		

Determination	Factors underlying recommendations	Recommendations
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Switzerland has acted promptly on its commitment to bring its network of EOI agreements, covering all relevant partners, to the standard. Notwithstanding this, none of these EOI agreements are currently fully in line with the standard.	Switzerland should continue to rapidly update and develop its network to ensure it has agreements (regardless of their form) for exchange of information to the standard with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
The element is in place.		
The jurisdiction should provide information under its network of agreements in a timely manner (<i>ToR C.5</i>)		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction’s Response to the Review Report*

Switzerland wishes to express its gratitude and appreciation for the excellent and conscientious work carried out by the assessment team in evaluating the Swiss legal and regulatory framework. Notwithstanding the very limited timeframe within which the assessment team was performing its examinations, the evaluation took place in a cordial atmosphere of ongoing dialogue and cooperation.

We believe this report demonstrates that Switzerland is committed to the international standards for transparency and exchange of information. Switzerland acknowledges that the Swiss legal and regulatory framework contains deficiencies and will give careful consideration to the recommendations included in the report. We would also like to emphasize that the peer review of Switzerland was given high priority, both in the Federal Department of Finance and in the Federal Tax Administration.

The decision of the Federal Council of the 13 March 2009 to adopt the OECD standard in the area of exchange of information for tax purposes was a very important step for Switzerland. Immediately after the decision of the Federal Council, Switzerland started to renegotiate its agreements to include the standard on exchange of information, with as objective to renegotiate all its existing treaties. Priority for negotiations was given to relevant economic partners, being EU Member States, OECD and G20 countries. Switzerland furthermore continues to engage with other jurisdictions that are interested in concluding such agreements. It was important for Switzerland to provide a clear framework for the exchange of information within each of the double tax treaties and to include procedural aspects in order to ensure the efficient exchange of information.

When Switzerland negotiated these agreements, it acted in good faith that requiring the name and address of not only the taxpayer but also the holder of the information in the administrative assistance request was compliant with the standard. However, in January 2011, it was brought to the attention

* This Annex presents the Jurisdiction’s response to the review report and shall not be deemed to represent the Global Forum’s views.

of Switzerland that these requirements were too restrictive and could lead to a formalistic interpretation of these texts thereby resulting in a potential obstacle to an effective exchange of information.

Therefore, in February 2011, the Swiss Government decided that the requirements contained in the agreements regarding the identification of the person under examination or investigation and of the person believed to be in possession of the requested information are to be interpreted in a wider sense, allowing to comply with a request in which the taxpayer and the information holder are identified by other means than by the name and the address, provided that it is otherwise demonstrated that the request does not constitute a fishing expedition.

In order to implement its decision, the Federal Council has taken several steps to ensure that the agreements in the process of being ratified and those that have entered into force will be subject to the more liberal interpretation. The necessary legislative acts have been submitted to parliament for approval to ensure enforcement. The details of this process have been described in Section C.1. of the report.

Switzerland has acted expeditiously in implementing its extended policy concerning the exchange of information and will continue to do so in order to ensure that the standard is complied with and applied correctly, thereby ensuring a “level playing field”, which is an essential element of the peer review process.

Annex 2: List of all Exchange-of-Information Mechanisms

	Jurisdiction	Type of Eol Arrangement	Date Signed	Date Entered Into Force
1.	Albania	DTC	12 November 1999	21 December 2000
2.	Algeria	DTC	3 June 2006	9 February 2009
3.	Argentina	DTC	23 April 1997	1 January 2001
		Protocol to DTC	7 August 2006	
4.	Armenia	DTC	12 June 2006	7 November 2007
5.	Australia	DTC	28 February 1980	13 February 1981
6.	Austria	DTC	30 January 1974	4 December 1974
		Protocol to DTC	3 September 2009	1 March 2011
7.	Azerbaijan	DTC	23 February 2006	13 July 2007
8.	Bangladesh	DTC	10 December 2007	13 December 2009
9.	Barbados*	DTC	20 August 1963	1963
10.	Belarus	DTC	26 April 1999	28 December 1999
11.	Belgium	DTC	28 August 1978	26 September 1980
12.	Bulgaria	DTC	28 October 1991	10 November 1993
13.	Canada	DTC	5 May 1997	21 April 1998
		Protocol to DTC	22 October 2010	
14.	Chile	DTC	2 April 2008	5 May 2010
15.	China (People's Rep.)	DTC	6 July 1990	27 September 1991
16.	Colombia	DTC	26 October 2007	
17.	Côte d'Ivoire	DTC	23 November 1987	30 December 1990
18.	Croatia	DTC	12 March 1999	20 December 1999
19.	Czech Republic	DTC	4 December 1995	23 October 1996
20.	Denmark	DTC	23 November 1973	15 October 1974
		Protocol to DTC	21 August 2009	22 November 2010
21.	Ecuador	DTC	28 November 1994	22 December 1995

	Jurisdiction	Type of Eol Arrangement	Date Signed	Date Entered Into Force
22.	Egypt	DTC	20 May 1987	14 July 1988
23.	Estonia	DTC	11 June 2002	12 July 2004
24.	Faroe Islands	DTC	20 March 1978	1 January 1975
		Protocol to DTC	22 September 2009	29 November 2010
25.	Finland	DTC	16 December 1991	26 December 1993
		Protocol to DTC	22 September 2009	19 December 2010
26.	France	DTC	9 September 1966	26 July 1967
		Protocol to DTC	27 August 2009	4 November 2010
27.	Georgia	DTC	15 June 2010	
28.	Germany	DTC	11 August 1971	29 December 1972
		Protocol to DTC	27 October 2010	
29.	Ghana	DTC	23 July 2008	30 December 2009
30.	Greece	DTC	16 June 1983	21 February 1985
		Protocol to DTC	4 November 2010	
31.	Hong Kong, China	DTC	6 December 2010	
32.	Hungary	DTC	9 April 1981	27 June 1982
33.	Iceland	DTC	3 June 1988	20 June 1989
34.	India	DTC	2 November 1994	29 December 1994
		Protocol to DTC	30 August 2010	
35.	Indonesia	DTC	29 August 1988	24 October 1989
36.	Iran	DTC	27 October 2002	31 December 2003
37.	Ireland	DTC	8 November 1966	16 February 1968
		Protocol to DTC		
38.	Israel	DTC	2 July 2003	22 December 2003
39.	Italy	DTC	9 March 1976	27 March 1979
40.	Jamaica	DTC	6 December 1994	27 December 1995
41.	Japan	DTC	19 January 1971	26 December 1971
		Protocol to DTC	21 May 2010	
42.	Kazakhstan	DTC	21 October 1999	24 November 2000
		Protocol to DTC	3 September 2010	
43.	Korea	DTC	12 February 1980	22 April 1981
		Protocol to DTC	28 December 2010	

	Jurisdiction	Type of Eol Arrangement	Date Signed	Date Entered Into Force
44.	Kuwait	DTC	16 February 1999	31 May 2000
45.	Kyrgyzstan	DTC	26 January 2001	5 June 2002
46.	Latvia	DTC	31 January 2002	18 December 2002
47.	Liechtenstein	DTC	22 June 1995	17 December 1996
48.	Lithuania	DTC	27 May 2002	18 December 2002
49.	Luxembourg	DTC	21 January 1993	19 February 1994
		Protocol to DTC	25 August 2009	19 November 2010
50.	Macedonia	DTC	14 April 2000	27 December 2000
51.	Malaysia	DTC	30 December 1974	8 January 1976
52.	Malta	DTC	25 February 2011	
53.	Mexico	DTC	3 August 1993	8 September 1994
		Protocol to DTC	18 September 2009	23 December 2010
54.	Moldova	DTC	13 January 1999	22 August 2000
55.	Mongolia	DTC	20 September 1999	25 June 2002
56.	Montenegro	DTC	13 April 2005	10 July 2007
57.	Morocco	DTC	31 March 1993	27 July 1995
58.	Netherlands	DTC	12 November 1951	9 January 1952
		DTC (new)	26 February 2010	
59.	New Zealand	DTC	6 June 1980	21 November 1981
60.	Norway	DTC	7 September 1987	2 May 1989
		Protocol to DTC	31 August 2009	22 December 2010
	Oman	DTC		
61.	Pakistan	DTC	19 July 2005	24 November 2008
62.	Philippines	DTC	24 June 1998	30 April 2001
63.	Poland	DTC	2 September 1991	25 September 1992
		Protocol to DTC	20 April 2010	
64.	Portugal	DTC	26 September 1974	17 December 1975
65.	Qatar	DTC	24 September 2009	15 December 2010
66.	Romania	DTC	25 October 1993	27 December 1994
		Protocol to DTC	28 February 2011	
67.	Russia	DTC	15 November 1995	17 April 1997
68.	Saint Kitts and Nevis*	DTC	26-August 1963	01 January 1961

	Jurisdiction	Type of Eol Arrangement	Date Signed	Date Entered Into Force
69.	Serbia	DTC	13 April 2005	5 May 2006
70.	Singapore	DTC	25 November 1975	17 December 1976
		DTC (new)	24 February 2011	
71.	Slovak Republic	DTC	14 February 1997	23 December 1997
		Protocol to DTC	8 February 2011	
72.	Slovenia	DTC	12 June 1996	1 December 1997
73.	South Africa	DTC	8 May 2007	27 January 2009
74.	Spain	DTC	26 April 1966	2 February 1967
		Protocol to DTC		
75.	Sri Lanka	DTC	11 January 1983	14 September 1984
76.	Sweden	DTC	7 May 1965	6 June 1966
		Protocol to DTC	28 Februar 2011	
77.	Tajikistan	DTC	23 June 2010	
78.	Thailand	DTC	12 February 1996	19 December 1996
79.	Trinidad and Tobago	DTC	1 February 1973	20 March 1974
80.	Tunisia	DTC	10 February 1994	28 April 1995
81.	Turkey	DTC	18 June 2010	
82.	Ukraine	DTC	30 October 2000	22 February 2002
	United Arab Emirates	DTC		
83.	United Kingdom	DTC	8 December 1977	7 October 1978
		Protocol to DTC	7 September 2009	15 December 2010
84.	United States	DTC	2 October 1996	19 December 1997
		Protocol to DTC	23 September 2009	
85.	Uruguay	DTC	18 October 2010	
86.	Uzbekistan	DTC	3 April 2002	15 August 2003
87.	Venezuela	DTC	20 December 1996	23 December 1997
88.	Vietnam	DTC	6 May 1996	12 October 1997

Status of EOI mechanisms as at 28 February 2011.

*Switzerland's double tax conventions with Barbados and Saint Kitts and Nevis, arise from the ongoing application of Switzerland's 1954 double tax convention with the UK, to those two jurisdictions.

Annex 3: List of all Laws, Regulations and Other Material Received

Tax laws and regulations

- Loi fédérale sur l'impôt fédéral direct (LIFD)
- Loi fédérale régissant la taxe sur la valeur ajoutée (LTVA)
- Loi fédérale sur les droits de timbre (LT)
- Loi fédérale sur l'impôt anticipé (LIA)
- Circulaire 30 de la Conférence suisse des impôts
- Loi fédérale sur l'harmonisation des impôts directs des cantons et des communes (LHID)

Laws, regulations and other materials relating to Financial Markets

- Loi sur l'Autorité fédérale de surveillance des marchés financiers (LFINMA)
- Loi fédérale sur les placements collectifs de capitaux (LPCC)
- Loi fédérale sur les banques et les caisses d'épargne (LB)
- Ordonnance du 17 mai 1972 sur les banques et les caisses d'épargne (OB)
- Convention relative à l'obligation de diligence des banques (CDB 08)
- Loi fédérale concernant la lutte contre le blanchiment d'argent et le financement du terrorisme dans le secteur financier (LBA)
- Pratique de l'Autorité de contrôle en matière de lutte contre le blanchiment d'argent relative à l'art. 2, al. 3, LBA
- Règlement LBA de l'OAR de l'ASG

Ordonnance de l’Autorité fédérale de surveillance des marchés financiers du 6 novembre 2008 sur la prévention du blanchiment d’argent et du financement du terrorisme dans les autres secteurs financiers (OBA-FINMA 3)

Ordonnance du 18 novembre 2009 sur l’activité d’intermédiaire financier exercée à titre professionnel (OIF)

Commercial laws, regulations and other materials

Constitution fédérale de la Confédération Suisse (Cst.)

Loi fédérale complétant le Code civil suisse (CO)

Ordonnance sur le registre du commerce (ORC)

Ordonnance concernant la tenue et la conservation des livres de comptes (Olico)

Code civil suisse (CC)

Loi fédérale sur le droit international privé (LDIP)

Loi fédérale sur les titres intermédiés (LTI)

Code pénal suisse (CP)

Convention relative à loi applicable au trust et à sa reconnaissance

Loi fédérale du 23 juin 2000 sur la libre circulation des avocats (LLCA)

Laws, regulations and other materials relating to the exchange of information

Ordonnance du 1^{er} septembre 2010 relative à l’assistance administrative d’après les conventions contre les doubles impositions (OACDI)

Loi fédérale du 20 mars 1981 sur l’entraide internationale en matière pénale (EIMP)

Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: SWITZERLAND

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions which participate in the work of the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. "Fishing expeditions" are not authorised, but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please visit www.oecd.org/tax/transparency.

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