

## Fact Sheet

### Spontaneous Exchange of Information on Swiss Rulings – Recent Developments

*Since 2009, Switzerland has adopted several OECD standards on Exchange of Information. Starting with exchange of information on request, later also including group requests, Switzerland subsequently also introduced automatic exchange of information on financial account information.*

*Most recently Switzerland committed to expand tax transparency on corporations through spontaneous exchange of information on tax rulings and automatic exchange of information on country-by-country reporting. For details on country-by-country reporting ("CbCR") and transfer pricing documentation requirements, please refer to our separate factsheet.*

#### Spontaneous Exchange of Information

Spontaneous Exchange of Information is the provision of information to another contracting party, that is foreseeably relevant to that other party, and that has not been previously requested. It hence relies on the active co-operation of tax authorities.

In Switzerland, the legal basis for spontaneous exchange of information is art. 7 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC) in combination with the federal Tax Administrative Assistance Act (TAAA) and the revised Tax Administrative Assistance Ordinance (TAAO), expected to enter into force on 1 January 2017.

#### Exchange of Information on Swiss Rulings

Following the recommendations in the 2015 Final Report on BEPS Action 5 (on Harmful Tax Practices) forming part of the "minimum standard", Switzerland will also adopt compulsory, spontaneous exchange of information on certain types of rulings.

##### Definition of a Ruling

According to art. 8 TAAO, a tax ruling contains information, confirmation or assurance by a tax authority provided **upon request** of a taxpayer, concerning the **fiscal consequences** of a set of facts, on which the taxpayer can **rely**.

The form (oral or in writing), timing (pre or post transaction) or actual implementation of the ruling is generally not relevant.

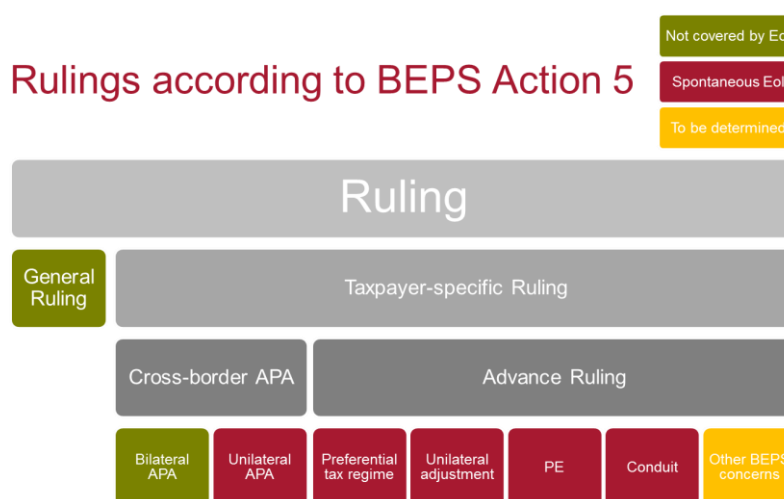
## Types of Rulings to be Exchanged

Switzerland will spontaneously exchange information on Swiss rulings covering:

- a) preferential regimes, tax incentives on IP income, and international allocation of income for principal companies;
- b) unilateral cross-border transfer pricing determination;
- c) unilateral cross-border adjustment of taxable income;
- d) domestic or foreign PEs and/or profit allocation; and
- e) cross-border related party conduit rulings.

At a later stage, other rulings "giving rise to BEPS concerns" (as referred to by the OECD) may be included in the above list, depending on international consensus.

## Rulings according to BEPS Action 5



## Timeline for Switzerland

The OECD suggested that compulsory, spontaneous exchange of information should be put in place effective by the end of 2016 for rulings issued on or after 1 January 2010, to the extent they were still in force on 1 January 2014.

However, in order to avoid retroactive implementation, Switzerland will generally only exchange information on existing rulings to the extent they still have legal effect in 2018. Exceptionally, for some countries rulings with legal effect in 2017 may already be exchanged.

In any case, there will be no spontaneous exchange of information for rulings which were issued before 1 January 2010, which are no longer in place (e.g. where the ruling "expired" earlier) or where the tax authorities already revoked the ruling (which may also happen at the request of the taxpayer).

## Process and Authority

Federal and cantonal tax authorities will submit their rulings and the requested information to the Service for Exchange of Information in Tax Matters (SEI), a division of the Federal Tax Authority, within 60 days of issuance. The SEI will analyze the submission and will forward a summary (not the ruling itself) within 3 months to the respective counterparty. In general, the taxpayer is notified before the exchange of information takes place and may launch an appeal.

## Recipient Countries

In all cases, the tax authorities of the ultimate holding and the immediate holding company of the taxpayer at question will be informed. In addition, tax authorities of the related parties entering into transactions covered by the ruling, or – in rulings covering profit allocation – of the headquarters or PE location(s) will be informed as well.

## Recommendations

As a general rule, it is prudent to simply assume that all rulings concluded in an international context may be subject to transparency rules sooner than later. In a broader context, multinational enterprises may hence consider to proactively communicate their tax strategy and how they contribute to the tax revenues in the countries in which they operate. In concluding new rulings, the OECD template will need to be taken into account. Going forward, the tax authorities will likely expect the taxpayer to provide the necessary information together with the ruling request.

Since Switzerland will have no domestic legal basis in place for spontaneous exchange of information before 2017, it is recommended to review and/or renew existing rulings still in 2016. Another option is to "waive" existing rulings to the extent the desired level of taxation can simply be obtained by application of existing legal provisions and/or election in the tax return. However, exchange of information may still be available "on request" of foreign tax authorities with regard to certain earlier rulings. In both case, taxpayers may also take legal action against a decision to exchange information, if it is considered unwarranted.

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