

Botswana

Botswana has met all aspects of the terms of reference (OECD, 2021^[3]) (ToR) for the calendar year 2020 (year in review), except for having in place a review and supervision mechanism (ToR I.A.3) and having in place a domestic legal framework allowing spontaneous exchange of information on rulings by ensuring the timely exchange of information on rulings in the form required by the transparency framework (ToR II.B). Botswana receives two recommendations on these points for the year in review.

In the prior year report, as well as in the 2018 peer review, Botswana had received two recommendations. One of these recommendations has been partially addressed, but remains in place for the other part. The other recommendation has not been addressed and remains 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 year in review	2

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 (ToR I.A)

164. 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.A.1.1, I.A.1.2, I.A.2.1, I.A.2.2)

165. 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.

166. In the prior year peer review report, it was noted that Botswana did 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 permanent establishment rulings, as soon as possible.

167. During the year in review, Botswana used documentation that they taxpayer submitted when applying for a ruling, annual reports and tax returns and other available information to identify the potential exchange jurisdictions. Botswana confirms that this process has now been completed and this part of the recommendation can be removed.

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

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

169. 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.A.3)

170. 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.

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

Conclusion on section A

172. Botswana is recommended to put in place a review and supervision mechanism, as soon as possible (ToR I.A.3).

B. The exchange of information (ToR II.B)

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

173. 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. Due to the Covid-19 pandemic, this review has been delayed.

174. Botswana has international agreements permitting spontaneous exchange of information, including bilateral agreements in force with 27 jurisdictions.² Botswana signed the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011^[4]) (“the Convention”) on 29 September 2020 and ratified on 15 June 2021. The Convention entered into force on 1 October 2021. No exchanges could occur under the Convention for the year in review.³

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

175. 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.

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

Conclusion on section B

177. 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.B).

C. Statistics (ToR IV)

178. 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.A.1.3)

179. Botswana offered an intellectual property regime (IP regime)⁴ 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]), as described in the prior year peer review report.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
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 and 2019 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 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 2018 and 2019 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://dx.doi.org/10.1787/9789264241190-en>. [1]
- OECD (ed.) (2017b), *Harmful Tax Practices - 2017 Progress Report on Preferential Regimes*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264283954-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://dx.doi.org/10.1787/9789264115606-en>. [4]

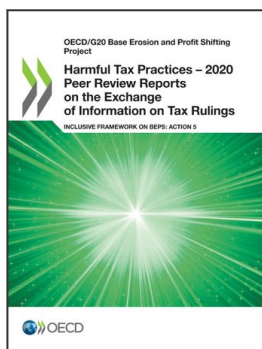
Notes

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

² Botswana has bilateral agreements with Barbados, China (People's Republic of), 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.

³ 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.

⁴ International financial services company.



From:
**Harmful Tax Practices – 2020 Peer Review Reports
on the Exchange of Information on Tax Rulings
Inclusive Framework on BEPS: Action 5**

Access the complete publication at:

<https://doi.org/10.1787/f376127b-en>

Please cite this chapter as:

OECD (2021), “Botswana”, in *Harmful Tax Practices – 2020 Peer Review Reports on the Exchange of Information on Tax Rulings: Inclusive Framework on BEPS: Action 5*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/5ea611b4-en>

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