Global Forum on Transparency
and Exchange of Information for Tax Purposes

Supplementary Peer Review Report
Phase 1
Legal and Regulatory Framework

SWITZERLAND

OECD

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About the Global Forum

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 120 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international 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. The standards have also been incorporated into 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 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. 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 refer to www.oecd.org/tax/transparency and www.eoi-tax.org.

Executive Summary

1. This report summarises the legal and regulatory framework for the transparency and exchange of information in Switzerland. The international standard which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information partners.

2. This is a supplementary report, which complements the Phase 1 Review report that was adopted and published by the Global Forum on Transparency and Exchange of Information for Tax Purposes in June 2011 (the 2011 Report). The present report assesses the changes made by Switzerland to its legal and regulatory framework for transparency and exchange of information since the 2011 Report.

3. In June 2014, Switzerland asked for a supplementary peer review report pursuant to paragraph 58 of the Global Forum's Methodology for Peer Reviews and Non-member Reviews, based mainly on progress with regard to the introduction of an exception to its prior notification procedure (element B.2), as well as improvements to its network of exchange of information (EOI) agreements (element C.2). This supplementary report therefore assesses the changes made by Switzerland to address the recommendations made in the 2011 Report.

4. To ensure the availability of relevant information, Switzerland has a legal and regulatory framework which includes obligations in its civil code, commercial code, tax laws and its laws concerning anti-money laundering/counter-financing of terrorism. In respect of trusts, whilst they may not be created under Swiss law, Switzerland is a signatory to the Hague Convention on Trusts which means that foreign trusts are recognised in Swiss law.

5. Essential element A.1 was found to be "not in place" in the 2011 Report. With regard to element A.3, a small number of bearer savings books remain in Switzerland, although Switzerland has been very active in ensuring these are phased out after the issue was noted in the 2005 report on

Switzerland by the Financial Action Task Force. Considering that there have been no changes with regard to availability of ownership, identity, accounting and banking information since the 2011 Report, the recommendations made in the Phase 1 report are maintained and the determination of element A.1 remains "not in place" whilst the determination of elements A.2 and A.3 remain "in place".

6. The 2011 Report determined that element B.1 (access to information) was "in place, but certain aspects of the legal implementation of the element need improvement" because Switzerland did not have powers to access bank information in respect of requests made under agreements that entered into force prior to October 2010, except in cases of tax fraud when it was provided for under the specific agreement. In addition, Switzerland's access powers for the agreements which it had updated in line with its commitment to the standard, were only applicable to requests made under double tax conventions (DTCs). It was therefore recommended that Switzerland 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). It was also recommended that Switzerland 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).

7. A new law on access powers in Switzerland entered into force on 1 February 2013 and was amended recently (the amendments entered into force on 1 August 2014). This law replaces the Ordinance that was analysed in the 2011 Report. The powers to access information are generally the same, but some changes have been introduced. The new law still requires that the equivalent to paragraph 5 of Article 26 of the OECD Model Tax Convention be included in a treaty to allow exchange of bank information. Since certain agreements concluded by Switzerland do not include the equivalent of paragraph 5, the result is that the new law provides complete access powers (including powers to collect bank information) only to treaties that have the equivalent of paragraph 5. Therefore, the first recommendation made under element B.1 remains. Nevertheless, the new law is applicable to all its EOI agreements, regardless of their form and thus, the second recommendation made in the 2011 Report is removed and the determination of the element remains "in place, but certain aspects of the legal implementation of the element need improvement".

8. Switzerland has a strong system of rights and safeguards for taxpayers and other persons concerned by an EOI request, and in some instances these rights are protected by the Swiss Constitution. However, the 2011 Report noted that there was no exception to prior notification of certain persons, including the taxpayer, as required by the standard. The 2011 Report also noted that the taxpayers and other persons concerned by a request had a

right to inspect the file, without any applicable exceptions. A recommendation for Switzerland to ensure that there are appropriate exceptions to the right of notification and the right to inspect the file was made. The new law on administrative assistance now includes an exception to the prior notification and to the right to inspect the file, in appropriate cases. Considering that the exceptions that have been introduced are in line with the standard, the recommendation made under element B.2 in the 2011 Report is removed and the element is now upgraded to "in place".

9. The first C.1 recommendation from the 2011 Report referred to the identification requirements in the 29 agreements that had been signed after Switzerland withdrew its reservation to Article 26 of the OECD Model Tax Convention on 13 March 2009 and before the 2011 Report (referred to as the "New Agreements" in the 2011 Report). These agreements established identification requirements for the person concerned by the request and the holder of information that were inconsistent with the standard. In addition, Switzerland's interpretation of the identification requirements was also inconsistent with the standard. Switzerland has modified its interpretation of the identification requirements, as confirmed by the Swiss Parliament, and updated the New Agreements in line with the standard. The first recommendation is therefore removed. The second recommendation made under element C.1 stated that the EOI agreements that were negotiated prior to 13 March 2009 did not allow for exchange of information in line with the standard. Switzerland still has 35 agreements that were negotiated prior to March 2009 and that have not been updated, therefore the second recommendation is maintained. Element C.1 is upgraded to "in place, but certain aspects of the legal implementation of the element need improvement".

10. Since the 2011 Report, Switzerland has taken active steps to update its network of EOI agreements by signing new agreements and protocols to existing agreements that include the language of paragraphs 4 and 5 of Article 26 of the OECD Model Tax Convention. Switzerland now has exchange of information mechanisms with 127 jurisdictions and continues negotiating new DTCs and TIEAs (see Annex 3). Of these, 127 agreements, 92 meet the standard, and of these 92 agreements, 42 are currently in force. The Phase 1 factor underlying recommendation is therefore removed and the determination of element C.2 is upgraded to "in place".

11. Finally, with regard to element C.3 (confidentiality), the new law on access powers in Switzerland provides that every person concerned by a request must be notified (unless the exception applies). A foreign resident must also be notified. The broad scope of notification – both in terms of the persons who are notified and the means of notification may raise issues regarding confidentiality. However, the notification rules themselves do not specify or require that any particular information be disclosed, other that the

main parts of the request (which is not defined) and the confidentiality provisions of an EOI agreement will prevail over domestic legislation. Therefore, the confidentiality guaranteed in the EOI agreements is respected.

12. In light of the actions undertaken by Switzerland to address the recommendations made in the 2011 Report, Switzerland is in a position to move to Phase 2. Switzerland's response to the determinations, factors and recommendations made in this report, as well as the application of the legal and regulatory framework to the practice of its competent authority, will be considered in detail in the Phase 2 Peer Review, which is scheduled for the second half of 2015.

Introduction

Information and methodology used for the supplementary review of Switzerland

13. The assessment of Switzerland's legal and regulatory framework made through this supplementary peer review report was prepared pursuant to paragraph 58 of the Global Forum's Methodology for Peer Reviews and Non-Member Reviews, and considers recent changes to the legal and regulatory framework of Switzerland based on the international standards for transparency and exchange of information as described in the Global Forum's Terms of Reference. This supplementary report was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at 12 December 2014, and information supplied by Switzerland. It follows the Phase 1 Report on Switzerland which was adopted and published by the Global Forum in June 2011 ("the 2011 Report").

14. Switzerland informed the Peer Review Group of the progress made with regard to the signature of new exchange of information (EOI) agreements that will be in line with the standard once they enter into force. Switzerland also signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) on 15 October 2013. In addition, a new law on international administrative assistance in tax matters (to collect information for international tax purposes) entered into force on 1 February 2013. This law was amended to introduce exceptions to the prior notification process on 1 August 2014. The introduction of an exception to the prior notification procedure and the new EOI agreements signed by Switzerland appeared likely to lead to an upgrade of the determination of elements B.2 and C.2 to "the element is in place", and triggered the present assessment.

15. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. In respect of each essential element a determination is made regarding Switzerland's legal and

regulatory framework that either: *(i)* the element is in place, *(ii)* the element is in place but certain aspects of the legal implementation of the element need improvement, or *(iii)* the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In particular, this report considers changes in Switzerland's legal and regulatory framework which relate to essential elements B.2 and C.2.

16. The assessment was conducted by an assessment team, which consisted of two expert assessors and one representative of the Global Forum Secretariat: Ms. Shauna Pittman, Counsel, Canada Revenue Agency and Harald Piérard, Advisor, Federal Public Service Finance, Belgium; Ms Mélanie Robert from the Global Forum Secretariat.

17. An updated summary of determinations and factors underlying recommendations in respect of the 10 essential elements of the Terms of Reference, which takes into account the conclusions of this supplementary report, can be found at the end of this report.

Overview of Switzerland[1]

18. Located at the heart of Western Europe, Switzerland is surrounded by five neighbouring jurisdictions: Austria, Liechtenstein, Germany, France and Italy. The capital of Switzerland is Berne, and the largest cities are Zurich and Geneva with the country having a total population of 8.1 million. German, French, Italian and Romansh are all national languages and the currency is the Swiss franc (CHF 1 equivalent to EUR 0.83 as at 9 October 2014).

19. In 2013, Switzerland had a gross domestic product of 635 billion CHF (or EUR 527 billion), giving a per capita GDP of 78 539 CHF (EUR 65 187), making its standard of living amongst the highest across OECD countries. It has a competitive and highly industrialised economy, and since 2009, it has ranked first in the World Economic Forum's global competitiveness index. Important industries include engineering, chemicals and pharmaceuticals as well as financial services. The European Union (EU) is Switzerland's main trading partner, accounting for more than 74% of its imports and 55% of its exports. Other important trading partners are the United States and the People's Republic of China (China).

1. Office fédéral de la statistique and other sources provided for by Switzerland's State Secretariat for International Financial Matters.

General information on Switzerland's government, legal and taxation systems

Legal system

20. The Swiss Confederation consists of 26 cantons which are sovereign in so far as their sovereignty is not limited by the Federal Constitution. They exercise all of the rights which have not been delegated to the Confederation (art. 3, Constitution (Cst)). All of the cantons are in turn sub-divided into political "communes". The Constitution also gives the people the right to participate in decision-making through "initiatives" instigated through the support of a specified number of voters (art. 138-139, Cst), or through referendums on several items such as acts proposed by the Parliament, international treaties or modifications of the Constitution (art. 140-141, Cst).

21. Switzerland recognises a separation of powers between the different branches of government. Legislative power is exercised by Parliament constituted by two houses, being the National Council (consisting of deputies), and the Council of States (formed by deputies representing the cantons). All of the deputies are elected by direct universal suffrage, according to different methods depending on the house. Executive power belongs to the government, being the Federal Council, composed of seven Federal Councillors, elected by Parliament for four years. The President of the Swiss Confederation is appointed for a one year term from amongst the Federal Council, and has certain representative responsibilities. As "first among equals" however, the President is not the head of state or of the government, roles which are instead assumed collectively by the Federal Council.

22. The Swiss legal system is founded on Roman law, also known as civil law and is thus based on a codified system.[2] The hierarchy of Swiss laws must be considered in two contexts: for one part, the hierarchy of federal, to cantonal, to communal laws; and on the other, from the Constitution, to laws and in turn regulations.[3] Federal law will always have primacy over cantonal or communal laws, regardless of whether it is a federal law or regulation (principle of "primacy of federal law"). However, the Confederation has only the rights vested in it by the Federal Constitution. In other words the cantons

2. All federal laws are numbered, and are preceded by the acronym RS, meaning "*recueil systématique*"(standardised collection): www.admin.ch/ch/f/rs/rs.html.
3. The Federal Constitution of the Swiss Confederation of 18 April 2009, represents in Swiss the "fundamental law" (www.admin.ch/ch/f/rs/1/101.fr.pdf). Laws in the formal sense are acts enunciated by Parliament. Ordinances (the civil law parallel of regulations) are established by the executive branch of government (the Federal Council, cantonal governments) and administrative departments under a more simplified process.

are sovereign except to the extent that their sovereignty is limited by the Federal Constitution (art. 3, Cst). The Confederation is thus generally responsible for those tasks which exceed the areas of responsibility of the cantons or which require a uniform regulation across the Confederation (principle of subsidiarity).

23. The civil and commercial law (Civil Code and Commercial Code), financial law, and criminal law (including anti-money laundering legislation), are part of the federal law, but their application can be arranged at the cantonal level. It is possible for certain subjects to be regulated in parallel between the Confederation and the cantons, for example both the Confederation and the cantons may make laws in respect of taxation (although taxes are predominantly imposed under cantonal law).[4]

24. Business may be conducted through a variety of legal forms including corporations, limited liability companies, investment companies, as well as limited and general partnerships. It is also possible to create foundations under Swiss law. Corporations and limited liability companies are the most common legal forms for business purposes. Entities carrying out commercial activities must be registered in the Commercial Register. Some types of entities may issue bearer shares as well as registered shares.

25. Further to the internal hierarchy of laws, in respect of international obligations, Swiss law provides as a principle that the norms of international law prevail over domestic law (articles 193(4) and 194(2) Cst, contain explicit rules regarding the primacy of mandatory international law). Moreover, Swiss law explicitly obliges the Confederation and the cantons to respect international law (article 5(4), Cst.). In addition, the provisions of an international agreement, when they are sufficiently clear and intended to have immediate application, will apply directly as a part of Swiss legislation without the need for any implementing domestic legislation. Consequently, where provisions of a treaty are clear and unconditional, they prevail over any conflicting rule in domestic law.

26. Foreign affairs falling within the jurisdiction of the Confederation are within the responsibility of the Federal Council (cf. article 184, Cst.). However, treaties signed by the Federal Council, must be approved by the Federal Assembly before they are ratified by the Council (art. 54 and 184, Cst). A treaty is submitted to a referendum if it: *(1)* is of indefinite duration and cannot be renounced; *(2)* concerns Switzerland's membership of an international organisation; *(3)* contains important provisions which either create laws or which would require the adoption of new federal laws; and *(4)* if either 50 000 citizens with the right to vote or 8 cantons request a referendum

4. Heading III, Chapter 1 of the Constitution (articles 42-49, 122 al. 2, 123 al. 2, 128 al. 4).

within 100 days from the official publication of the treaty. If a referendum is requested, the vote takes place after the approval of the treaty by the Federal Assembly but before ratification by the Federal Council. Where, upon referendum, a treaty is rejected, it may not be ratified and therefore will not enter into force for Switzerland.[5]

27. After the signature of a double tax convention (DTC – or any other type of EOI agreements), the Federal Council adopts a message which is sent to the Parliament. Thereupon the Parliament approves the DTC and agrees that the Federal Council ratify the treaty. The decision to submit a DTC or any other type of agreements to an optional referendum therefore belongs to the Parliament, under the circumstances foreseen by the Constitution. By definition, a DTC or TIEA contains important provisions that create legal obligations and therefore meets condition (3) described in paragraph 26 and is therefore subject to an optional referendum. That means that either 50 000 citizens or 8 cantons will have the opportunity within 100 days to request a referendum to be held. If none of the conditions described in paragraph 26 is met, the Parliament has no discretionary power to put the treaty to an optional referendum. The practice has been to subject EOI arrangements to optional referendums. None of the DTC or TIEA in line with the OECD standard signed by Switzerland so far has ever been the object of a referendum.

28. The judiciary is headed by the Federal Tribunal at Lausanne. Matters relating to violations of international law are dealt with by this Court as a last-instance tribunal. Two first-instance tribunals exist at the federal level: the Federal Criminal Tribunal which deals with first-instance criminal matters, and the Federal Administrative Tribunal which deals with matters concerning public law under the jurisdiction of the federal administration. Matters of international exchange of information are subject to the appeal to the Federal Administrative Tribunal rather than to the Federal Tribunal (art. 83 let. h LTF – *Loi sur le tribunal fédéral*, RS 173.110). However, according to recently introduced art. 84a of the LTF, the Federal Tribunal may rule on matters of international exchange of information when the case touches upon fundamental legal principles or when the case in question is particularly important.

5. The request for a referendum is a two-step process. First the act in question must meet one of the conditions set in article 141 of the Constitution (for example, it is a federal act or a treaty containing important provisions that create legal obligations, which is the case with an EOI arrangement) and then, 50 000 citizens or 8 cantons can request a referendum.

Taxation system

29. As a result of the federal structure described above, the cantons have the right to levy all taxes which are not otherwise explicitly attributed exclusively to the Confederation under the Constitution. In respect of customs duties and value added tax (VAT) the Confederation has exclusive jurisdiction (art. 128 and 133, Cst). However, Swiss law recognises parallel jurisdiction in matters of income tax on natural persons, and of taxation on profits and capital of legal persons. Thus the Confederation and each of the cantons have jurisdiction to tax the income of individuals and corporations. In doing so however, they are compelled to respect the principles of the *Loi fédérale sur l'harmonisation des impôts directs des cantons et des communes* (Federal Act on the Harmonisation of the Direct Taxes of Cantons and Communes Act).

30. All resident corporations are taxed on worldwide income although income from foreign permanent establishments and foreign real property is exempt. Corporations that are incorporated in Switzerland or have their place of effective management there are considered to be resident for tax purposes in Switzerland. Effective combined federal, cantonal and communal income taxes on corporations varied from 12.52% to 24.3% based on 2013 rates. Lower tax rates can be achieved for particular types of companies such as holding, domiciliary, auxiliary because of more favourable tax regimes. The Swiss Government has launched a reform on Swiss corporate taxation, wherein it has proposed to abolish the aforementioned regimes and to align any new measures with international standards. The aim of the latest corporate tax reform is to consolidate international acceptance of Switzerland as a business location. This will provide clarity for companies with respect to the key legal parameters. The project intends to abolish existing arrangements that will no longer be in keeping with international standards. These primarily include the cantonal tax statuses for holding, domiciliary and mixed companies. In addition, a package of measures should improve the tax legislation system. These include the abolition of the issue tax on equity capital, adjustments to participation deductions and the offsetting of losses, as well as comprehensive rules for the disclosure of hidden reserves. In addition to taxes on income, corporations are subject to tax on their net equity at rates ranging from 0.1% to 0.6% depending on the canton. Non-resident companies are liable to tax on Swiss source income.

31. Individuals are subject to taxes on income and net wealth. Resident individuals are taxable on their worldwide income, non-residents on Swiss source income. Federal and cantonal tax rates applicable to individuals are progressive. The maximum federal rate is 11.5%; the applicable cantonal and communal rates depend on the commune of residence.[6] In 21 cantons and at the federal level, a

6. Taking into account the requirements of the Harmonisation of the Direct Taxes of Cantons and Communes Act, which formally aligns the tax assessment basis

special lump sum tax regime is available to resident aliens who are not carrying out a lucrative activity in Switzerland. Under this regime a deemed taxable income is calculated which at minimum is equivalent to five times the rental expense for the persons principal residence. The deemed tax base is subject to tax at ordinary rates.[7] The Federal Council has recently toughened the rules applicable to this kind of taxation. Thus, from 2016 on, the deemed taxable income will be at minimum equivalent to seven times the rental expense. Furthermore, a threshold of CHF 400 000 (EUR 332 000) is introduced for the Direct Federal Tax. The concerned cantons also have to introduce their own thresholds. Over the last five years, 5 cantons have abolished the special lump sum tax regime.

32. In Switzerland, taxation on income and wealth is based on the tax return which is sent to each taxpayer. If the taxpayer does not then file their tax return (with all necessary attachments) they will be taxed on the basis of an estimate. In that case, the administration will calculate the amount due and collect the tax, with collection being undertaken at the cantonal level.

33. A 35% withholding tax applies to payments of dividends by Swiss companies, payments of interest from Swiss sources such as bonds or deposits at Swiss banks and distributions of income from Swiss funds. A refund procedure operates which allows Swiss residents or residents of countries with which Switzerland has a DTC to obtain credit or a refund of the tax withheld. Intercompany interest is generally not subject to withholding tax.

34. In addition to taxes on income and wealth, Switzerland has had a value added tax since 1995. The standard rate is 8% with a reduced rate of 2.5% for certain goods such as food, medicines and newspapers. A special rate of 3.8% applies for accommodation services. Other indirect taxes include vehicle ownership tax and stamp duty on certain legal transactions.

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amongst the cantons, the 26 cantons establish their own tax laws, with the level of deductions and tax thresholds varying from canton to canton. For the majority of cantons, the tax thresholds are based on simple rates (base rates or unit rates). The quota therefore represents a multiple (expressed in units or percentages) of the rates fixed in law. These multiplier are in general amended annually to take into account the needs of the public accounts (cantonal and communal). With the intention of avoiding significant differences between the tax charge in richer and poorer areas, Switzerland applies an equalisation approach inter-cantonal and inter-communal. In this way, the cantons and communes which are financially weaker will benefit from compensating transfers which allow them to avoid having to increase the level of tax charges.

7. The tax base must be at least equivalent to actual lifestyle expenses and the amount of tax must be at least equivalent to the amount of tax payable on Swiss assets and Swiss source income and foreign income for which the benefits of a double tax treaty are requested.

35. Switzerland has a wide network of DTCs, and its competent authority for the exchange of information (EOI) is the Federal Tax Administration (*Administration Fédérale des Contributions*, or AFC). Until March 2009 Switzerland had a reservation on Article 26 of the OECD Model Tax Convention. Its treaty network did not provide for EOI to the internationally agreed standards, as information exchange was generally limited to exchange for the purposes of the application of the treaty. In some DTCs with OECD and EU Member States, Switzerland also provides for the exchange of information with respect to tax fraud matters and acts of similar gravity. Swiss law distinguishes between tax fraud and tax evasion. In addition, in certain of these DTCs, Switzerland also agreed to provide to its treaty partners exchange of information for holding companies. On 13 March 2009, the international standard on EOI for tax purposes was adopted by Switzerland and it has moved rapidly to update its bilateral treaties. Since then, Switzerland has continued to develop its EOI network to the standard with relevant partners, and has currently exchange of information mechanisms with 127 jurisdictions and continues negotiating new DTCs and TIEAs (see Annex 3). Of these 127 agreements, 92 meet the standard, and of these 92 agreements, 42 are currently in force.

Overview of the financial services industry and relevant professions

36. The financial services industry is a key pillar in Switzerland's economy both in terms of jobs (5.9%) and wealth creation (10.5% of GDP), and according to conservative estimates, is responsible for generating about 7.4% of tax collected in Switzerland (from taxes on income and company profits). It is made up of a number of sectors, principally banking, insurance and private wealth management. At the end of 2013, the total securities holdings in client accounts in the banking sector was 5 097 billion CHF (or EUR 4 231 billion),[8] making it one of the biggest international financial centres in the world.

37. Although the banking sector consists of 283 different Swiss and foreign institutions (in 2013, 98 were in foreign control), two banks in particular dominate the market: UBS and Credit Suisse. They both have strong roots in Switzerland and extensive foreign activities. Together they account for 43% of Swiss banking sector deposits and 18% of capital.

38. Other sectors of the financial services industry are also aimed predominantly at the international market. Switzerland is one of the top wealth management centres in the world. Its 25% share of the offshore private banking sector makes it the world leader. In addition to the two main global banks,

8. This figure includes individual, commercial and institutional account holders with the 3rd category representing close to 75% of the deposits.

private wealth management includes many private and foreign banks along with a few thousand of independent asset managers.

39. According to certain studies, the two global banks rank amongst the world's top ten by assets under management. In the insurance sector, Switzerland also holds an important global role due to the leading position of Swiss Reinsurance Company Ltd ("Swiss Re").

40. Switzerland is a significant player in commodity trading. Viewed overall, its prominent positions in financial and internationally traded service activities have made Zurich and Geneva key global financial centres.

41. Switzerland has been a member of both the OECD and FATF since their inception. It has participated in the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes since its new mandate in 2009. Although not a member of the EU, it is a member of the European Free Trade Association and has many other agreements with the EU. Switzerland is also a member of other international organisations, including the United Nations (UN), the International Monetary Fund (IMF) and the World Trade Organization (WTO). It also hosts many international organisations such as the United Nations, WTO, and the International Committee of the Red Cross.

Regulation of the financial services industry and the anti-money laundering regime

42. Since January 2009, the Federal authority for the supervision of financial markets (*l'autorité fédérale de surveillance des marches financiers*, or FINMA) is the principal regulator and supervisor of financial services providers including in respect of the anti-money laundering and counter-financing of terrorism obligations (the anti-money laundering/counter-financing of terrorism [AML] regime).[9] The customer due diligence and record keeping requirements that are imposed on the financial services industry arise from the AML regime. The Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector of 10 October 1997 (Anti-Money Laundering Act, AMLA)[10] sets out measures to combat money laundering and terrorist financing as defined in the Swiss Penal Code.

9. The three former supervisory authorities in this area were the Federal Bank Commission (CFB), the Federal Office of Private Insurance (OFAP) and the Anti-money laundering Control Authority (AdC). These three authorities merged on 1 January 2009, forming FINMA pursuant to the Federal Act on the Swiss Financial Market Supervisory Authority (FINMASA).

10. *Loi fédérale du 10 octobre 1997 sur le blanchiment d'argent*, LBA.

The law applies to all persons deemed to be "financial intermediaries" under article 2 of the AMLA, including:

- banks as defined under the federal Bank Act;[11]
- fund managers to the extent that they manage share accounts and offer or distribute shares in collective investment vehicles;
- sociétés d'investissement à capital variable (SICAVs), sociétés d'investissement à capital fixe (SICAFs), societies en commandite de placements collectifs (SCPCs) and private wealth managers (as defined in the law of 23 June 2006 on Collective Investment Vehicles) to the extent that they manage share accounts and offer or distribute shares in collective investment vehicles;
- insurance companies that have life insurance activities or engage in the marketing of collective investment vehicles;
- securities dealers; and
- casinos as defined in the Gambling Act of 18 December 1998.

43. In addition, an inclusive definition of persons deemed to be financial intermediaries is set out in article 2(3), being persons who, in a professional capacity, accept, keep on deposit or assist in the investment or sale of assets belonging to a third party, in particular those persons who carry out credit transactions, provide services related to payment transactions, manage assets, make investments as investment advisers and those persons who deal in money,[12] commodities, or securities as well as their derivatives. Other persons considered to be financial intermediaries are described in Article 6 of the *Ordonnance sur l'activité d'intermédiaire financier exercée à titre professionnel* of 18 November 2009. In particular, this includes a person carrying out the activities of a body of a domiciliary company ("sociétés de domicile"). Entities considered to be domiciliary companies include: legal persons, companies, foundations, trusts, fiduciary enterprises and similar arrangements which are not exercising a trade or manufacturing activity in Switzerland or any other country (Article 6(2)).[13]

44. A financial intermediary acts in a "professional capacity" if at least one of the following conditions is met (art. 7, *Ordonnance sur l'activité d'intermédiaire financier exercée à titre professionnel*):

11. *Loi fédérale du 8 novembre 1934 sur les banques et les caisses d'épargne* (*Loi sur les banques*, LB).
12. Which includes banknotes, coins, money market instruments, foreign exchange and precious metals.
13. New provisions in respect of the requirements to keep ownership information in respect of domiciliary companies were introduced on 1 January 2011.

- generate gross profits of more than CHF 20 000 (EUR 16 500) in a calendar year;
- establish business relationships of whatever kind with more than 20 clients during the calendar year, or maintain at least 20 such relationships in that period;
- at any given time, has the dispositive power of unlimited duration over assets with a value in excess of CHF 5 million (EUR 4.1 million); or
- engage in transactions with a total value in excess of CHF 2 million (EUR 1.65 million) during the calendar year.

45. The Ordinance on the activities of a professional financial intermediary provides further guidance on the definition of "financial intermediary".

46. Certain financial intermediaries are regulated directly by FINMA (such as the banking and insurance sectors), whilst others must either obtain authorisation directly from FINMA or be affiliated with a self-regulating organisation (SRO). Each SRO is itself subject to FINMA regulation and supervision (art. 18, AMLA), which includes approval by FINMA of the regulations they impose on their members.[14]

Recent Developments

47. In February 2013, a bill proposing legislative measures of transparency for bearer shares was launched for consultation. This bill was submitted to Parliament at the end of 2013. The final version of the bill was approved by the Swiss Parliament in December 2014.

48. On 22 October 2014, the Federal Council launched the consultation procedure on the Federal Act on the Unilateral Application of the OECD Standard on the Exchange of Information (GASI). The law should allow Switzerland to comply with the international standard for the exchange of information upon request. The parliamentary process should start by the end of 2015.

49. Following its statement on automatic exchange of information at the plenary of the Global Forum that it intends to collect data from 2017 and exchange it for the first time in 2018 on 19 November 2014, the Swiss Competent Authority signed a Declaration whereby they accepted the MCAA, joining the 51 jurisdictions that had already done so in Berlin at the

14. The 2009 FATF follow-up report on Switzerland noted that there were currently 11 self-regulatory bodies (organismes d'autorégulation, or OARs) governing financial intermediaries in the non-banking sector.

end of October 2014. In addition, on 14 January 2015, the Federal Council launched two consultation procedures. The first one concerns the ratification of the Multilateral Convention. The second one relates to the introduction of the necessary legal framework for the implementation of the common reporting standard on automatic exchange of information. The parliamentary process on these two projects will begin in the course of 2015.

Compliance with the Standard

A. Availability of Information

Overview

50. Effective exchange of information requires the availability of reliable information. This report considers the legal and regulatory framework in Switzerland as regards the availability of ownership information, accounting records and banking information.

51. The 2011 Report concluded that element A.1 (availability of ownership information) was found to be "not in place" because of concerns with respect to: *(i)* the identification of owners of bearer shares which may be issued by SAs and SCAs; and *(ii)* the availability of ownership information for foreign incorporated companies with their effective management in Switzerland which gives rise to a permanent establishment in Switzerland. Switzerland has not yet made any progress with respect to the deficiencies identified under element A. 1 and the element remains "not in place".

52. Element A.2 (availability of accounting information) was found to be "in place" and no recommendations were made. As for element A.3 (bank information), it was found to be "in place", but a recommendation was made in the 2011 Report to Switzerland in order to ensure that there are measures to identify the owners of any remaining bearer savings books. However, it appears that no progress has been made on the implementation of the recommendations under element A.3.

A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

Companies (ToR[15] A.1.1) Bearer shares (ToR A.1.2), Partnerships (ToR A.1.3), Trusts (ToR A.1.4), Foundations (ToR A.1.5) and Enforcement provisions to ensure availability of information (ToR A.1.6)

53. The 2011 Report identified some deficiencies concerning *(i)* the identification of owners of bearer shares which may be issued by SAs and SCAs; *(ii)* and the availability of ownership information for foreign incorporated companies which have their effective management in Switzerland that gives rise to a permanent establishment.

54. Accordingly, it was recommended that Switzerland address these shortcomings to ensure that identity information on the shareholders of foreign incorporated companies which have their effective management in Switzerland that gives rise to a permanent establishment and on owners of bearer shares is available in all circumstances. Switzerland has not yet made any progress with respect to the deficiencies identified under element A.1 and the element remains "not in place". For upcoming changes to Swiss legislation on this topic, please see recent developments section in the introduction above.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place	
Factors underlying recommendations	**Recommendations**
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.

15. Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.

Phase 1 determination	
The element is not in place	
Factors underlying recommendations	**Recommendations**
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 part of a 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.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

General requirements (ToR A.2.1), Underlying documentation (ToR A.2.2) and 5-year retention standard (ToR A.2.3)

55. The 2011 Report found that Switzerland had a legal framework in place to ensure the availability of accounting records for all relevant entities. This element was assessed as being in place and no recommendations were made. No relevant legislative changes have been made since the 2011 Report and the determination therefore remains the same.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place

A.3. Banking information

Banking information should be available for all account-holders.

56. The 2011 Report found that Switzerland had a legal framework in place to ensure the availability of relevant banking information for all account holders. However, a recommendation was made regarding bearer savings books with unknown beneficial ownership that are still in circulation in Switzerland. The determination for A. 3 was "in place" and since no relevant legislative changes have been made since the 2011 Report, the determination therefore remains the same.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
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.

B. Access to Information

Overview

57. A variety of information may be needed in respect of the administration and enforcement of the relevant tax laws and jurisdictions should have the authority to access all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Switzerland's legal and regulatory framework gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards would be compatible with effective exchange of information.

58. The 2011 Report determined that element B.1 (access to information) was "in place, but certain aspects of the legal implementation of the element need improvement". Switzerland did not have powers to access bank information in respect of requests made under agreements that entered into force prior to October 2010, except in cases of tax fraud when it is provided for under the specific agreement. In addition, Switzerland's access powers for the agreements which it had updated in line with its commitment to the standard, were only applicable to requests made under double tax conventions (DTCs). It was therefore recommended that Switzerland 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). It was also recommended that Switzerland 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).

59. There have been changes to the legislation with regard to access of information and notification requirements since the time of the Phase 1 Review. A new law on international administrative assistance, the *Loi fédérale du 28 septembre 2012 sur l'assistance administrative internationale en matière fiscale* (LAAF, Federal Act of 28 September 2012 on International

Administrative Assistance in Tax Matters), has entered into force and provides broad access powers to the Swiss tax authorities. This law replaces the Ordinance of 1 September 2010 "*Ordonnance relative à l'assistance administrative d'après les conventions contre les doubles impositions*" (OACDI) that was analysed in the 2011 Report. The new law still requires that the equivalent to paragraph 5 of Article 26 of the OECD Model Tax Convention be included in a treaty to allow exchange of bank information. Since certain agreements concluded by Switzerland do not include the equivalent of paragraph 5, the result is that the new law provides complete access powers (including powers to collect bank information) only for treaties that have the equivalent of paragraph 5 and thus, the first recommendation made under element B.1 remains but was slightly redrafted in a more general wording.

60. The 2011 Report noted that Switzerland's access powers were only applicable to requests made under DTCs. The new law now specifically states that in addition to DTCs, it is applicable to other international agreements containing an EOI provision. The second recommendation made under element B.1 is therefore removed.

61. Element B.2 (notification requirements and rights and safeguards) was also found to be "in place, but certain aspects of the legal implementation of the element need improvement" in the 2011 Report since the person concerned by the request was required to be notified of the request and had the right to inspect the EOI file. A recommendation was made in the 2011 Report for Switzerland to ensure that there are appropriate exceptions to the right of notification and to the right to inspect the EOI file which are consistent with the standard.

62. The LAAF now includes an exception to the prior notification and to the right to inspect the file in appropriate cases. The recommendation made under element B.2 in the 2011 Report is removed and the element is now upgraded to "in place".

B.1. Competent Authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an 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).

63. The access powers evaluated in the 2011 Report were contained in the OACDI. The 2011 Report noted some deficiencies with regard to access powers in the OACDI. First, it was found that Switzerland did not have powers to access bank information in respect of requests made under agreements that entered into force prior to October 2010, except in cases of tax

fraud when it is provided for under the specific agreement. In addition, it was noted that Switzerland's access powers for the agreements which it had updated in line with its commitment to the standard, were only applicable to requests made under DTCs. Hence, two recommendations were made in the 2011 Report to address these issues and the element was determined to be "in place, but certain aspects of the legal implementation of the element need improvement".

64. While the OACDI had the force of law, an ordinance is not a permanent legislative measure, and therefore it was necessary that it be replaced in due course with a law. The OACDI was replaced by the LAAF, which came into force on 1 February 2013. The LAAF was further amended on 21 March 2014, and these amendments came into force on 1 August 2014.

Access to ownership information (B.1.1), Accounting information (B.1.2)

65. The LAAF governs the execution of administrative assistance in respect of DTCs and any other international agreements that provide for exchange of information for tax purposes (LAAF, art. 1). Therefore, the access powers now also apply in respect of requests made under agreements other than DTCs, including TIEAs or the Multilateral Convention. As noted above, the Phase 1 Report found that the OACDI was limited to requests made under DTCs. Consequently, this recommendation made by the 2011 Report has been addressed.

66. The LAAF identifies the Federal Tax Administration (*Administration fédérale des contributions*, or AFC) as the competent authority for the purposes of handling EOI requests (LAAF, art. 2). The AFC is also responsible for making requests for information under Switzerland's EOI agreements.

General Principles

67. The LAAF includes a number of principles that guide the exchange of information process generally. The terms of the LAAF should be read in light of the provisions of its article 1(2), which provides that the LAAF is "subject to the derogations of individual applicable agreements". Therefore, should there be a discrepancy between the provisions of an EOI agreement and the LAAF, the provisions of the EOI agreement will prevail over the LAAF.

68. Article 4 of the LAAF provides that administrative assistance is only granted upon request (article 4(1)) and that it should be carried out swiftly (article 4(2)).

69. Article 4(3) states that it is forbidden to provide information on persons not concerned by the request. *Le Message du 6 juillet 2011 concernant l'adoption d'une loi sur l'assistance administrative fiscale* (the explanatory report of 6 July 2011 concerning the adoption of the law on administrative assistance, or the explanatory report) refers to information on persons who are clearly not involved in the case under investigation[16] and it gives as example a person whose name appears on documents related to the person concerned but who is not himself concerned with the procedure, such as co-signatories of a bank account (*cotitulaires de comptes*). However, the explanatory report also mentions that if the deletion of the information related to the person not concerned makes the response to the EOI request useless for the requesting jurisdiction, it can be possible to provide such information. Switzerland has confirmed that this provision is not intended to restrict the exchange of information that is foreseeably relevant to the investigation and that it will apply it in accordance with the standard. The standard requires that all foreseeably relevant information be provided. Whether this provision is applied in line with the standard should be further examined during the Phase 2 Review.

70. The Swiss authorities have explained that when information is requested on a bank account with co-signatories and the co-signatory has no link to the situation as described in the request, all the information of the bank account is provided to the requesting jurisdiction but the name of the co-signatory is blacked out. In cases where the person concerned by the request is the beneficial owner of the account, the name of the account owner is then also provided and both the legal owner and the beneficial owner are considered to have a right to appeal. The scope and interpretation to be given to this provision should be further examined during the Phase 2 Review.

71. Section 2 of the LAAF provides for the elements to be taken into account in the preliminary review of the request, if not provided for in the agreement (article 6) and the basis for declining a request (article 7). Article 7 indicates that a request will not be considered if:

(a) it constitutes a fishing expedition;

(b) it requests information not covered by the administrative assistance provisions of the applicable agreement;

(c) it violates the principles of good faith, particularly if it is based on information obtained through a criminal offense under Swiss law.

72. Some guidance is given on the interpretation of these points in the explanatory report and in particular on the concept of good faith and

16. *Des personnes qui, manifestement, ne sont pas impliquées dans l'affaire faisant l'objet d'une enquête.*

information obtained through a criminal offense. Banking data obtained illegally and then given or sold to another state is given as an example of information obtained through a criminal offence. As concerns the principle of good faith, the Swiss explanatory report refers to the principles enunciated in the Vienna Convention on the Law of Treaties:

> The principle of good faith in international law is defined in art. 31 of the Vienna Convention. Based on this article, a treaty must be interpreted with good faith and following the ordinary meaning of the words of the treaty in their context and in light of its subject and purpose. The rule mentioned in let. c clearly states that a request that would be based on bank information obtained illegally would be contrary to the meaning and purpose of a DTC and would therefore need to be qualified as contrary to the principle of good faith (unofficial translation from the Secretary of the Global Forum).[17]

73. The explanatory report could be interpreted as too broad as regards the exception to EOI. It should be noted, however, that the explanatory report predates the enactment of article 7(c) of the LAAF and is a tool of interpretation amongst others. The Swiss Authorities also indicate this does not result in a systematic refusal to provide information, but that the application of this article is done on a case by case basis. The Swiss authorities should ensure that article 7(c) is applied in line with the standard.

74. A similar article was contained in the OACDI, although in that case the criteria that the request be contrary to good faith or that it violate Swiss law were contained in separate subsections. The Phase 1 Report concluded that, in so far as this reference to "good faith" in the OACDI goes no further than this concept as enunciated in the Vienna Convention (to which all EOI agreements will be subject), it is consistent with the standard. However, the 2011 Report went on to conclude that, "to the extent that article 5(2)(c) of the OACDI may go beyond the concept of "good faith", it may create an additional threshold which is not consistent with the standard.

75. Whether or not this provision (7(c) of the LAAF) and its application are inconsistent with the standard should be evaluated in the Phase 2 Review of Switzerland.

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17. Le principe de la bonne foi dans le droit international est défini à l'art. 31 de la Convention de Vienne. Selon cette disposition, un traité doit être interprété de bonne foi suivant le sens ordinaire à attribuer aux termes du traité dans leur contexte et à la lumière de son objet et de son but. La règle énoncée à let. c indique clairement qu'une demande qui serait fondée sur des données bancaires acquises de façon illégale serait contraire au sens et au but d'une CDI et devrait donc être qualifiée de contraire au principe de la bonne foi.

76. Article 8 of the LAAF sets out a number of general principles that apply to the exercise of its access powers. Article 8(1) states that for the purpose of collecting information, only measures which are in accordance with Swiss law for the assessment and enforcement of the tax claims referred to in the request may be taken. The explanatory note indicates that this provision is intended to reflect the exception to the exchange of information contained in the OECD Model Tax Convention, art. 26(3)(a), which provides that a Contracting State is not required to "carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State".

77. According to article 8(1) Switzerland may rely on its domestic powers for the assessment and enforcement of the tax claims to obtain information for exchange purposes. The extent to which Switzerland will use its domestic powers matches the taxes covered by the EOI provision in the relevant treaty. If the relevant treaty only provides for EOI related to income and capital tax, Switzerland will only use its available domestic powers for the assessment and enforcement of these taxes. Conversely, if the EOI clause applies to all taxes, then the other domestic powers come into play, for instance those linked to the assessment of indirect or inheritance taxes. As Switzerland may not normally have access to bank information for domestic tax purposes, most of its treaties and the LAAF itself explicitly provide for access to bank information for exchange purposes[18]. In these cases, article 8(2) applies.

78. Article 8(2) provides that information that is in the possession of a bank, another financial institution, a mandated or authorised person or a fiduciary, or information concerning a participation in a legal entity may be requested if the applicable agreement provides for the transfer of such. As discussed under section C.1, below, most of Switzerland's treaties explicitly provide for the exchange of these types of information and so this provision would not restrict the exchange of information in those cases. There do remain 35 treaties that have not been updated to meet the international standard (of which 23 contain an EOI provision), and in those cases the exchange of bank and other information would not be possible since these agreements do not contain the equivalent of paragraph 5 of the OECD Model Tax

18. Switzerland currently has exchange of information mechanisms with 127 jurisdictions. Of these 127 agreements, 92 meet the standard. Therefore, 35 agreements are not to the standard. Of these 35, 12 do not contain an EOI agreements. The 22 agreements left do not have the equivalent of paragraph 5 of Article 26 of the OECD Model Tax Convention. Therefore, exchange of bank information is not possible with 34 jurisdictions. It should be noted that for the agreement with Qatar, the agreement contains the equivalent of paragraph 26(5) therefore exchange of bank information is possible, however, the agreement is not in line with the standard because of identification requirements that go beyond the standard.

Convention and the provision is limited to the application of the convention. This issue is dealt with in detail in section C.1, and the first recommendation under B.1 is therefore maintained.

79. Article 8(3) provides that the AFC can contact the persons and authorities mentioned in articles 9 to 12 (the person concerned, a third party holder of information, the cantonal tax authorities and other Swiss authorities). The explanatory report specifically indicates that the AFC can ask these persons and authorities "simultaneously" and there is no specific order to respect when requesting the information from these persons and authorities.

Access Powers

80. Switzerland's competent authority – the AFC – may access information from the person concerned, from the holder of information, or from the cantonal tax administration or other Swiss authorities, using the powers described in articles 9 to 12 of the LAAF. A "person concerned" is defined as the person who is the subject of the request for information, in other words, the taxpayer being investigated. The holder of the information in this context is the person who possesses the information requested (article 3(b) of the LAAF). However, article 10(3) of the LAAF specifies that an information holder is also the person who has the control over the information.

81. The AFC can ask the person concerned or the holder of information to provide the information, allowing a period of time to do so (articles 9 and 10). The information is requested through a decision sent by registered letter and the AFC will inform the person concerned or the holder of information about the essential elements of the request, when necessary (although the Swiss authorities have confirmed that it will not provide a copy of the request itself).

82. Article 9(1) of the LAAF provides that the AFC can collect information from the person concerned if the person concerned "has limited or unlimited tax liability in Switzerland". This condition is only applicable in respect of the person concerned, not in respect of the information holder. This should not have any impact on EOI in practice, since if a "person concerned" has no tax liability in Switzerland, yet possesses information required to answer an EOI request, then that person would simply be a holder of information and the provisions of article 10 would apply. The application of this article in practice should be further considered in Phase 2.

83. Information in the possession of the cantonal tax authorities may be requested by the AFC, including the complete tax file, if necessary. The entire EOI request may be communicated to the cantonal tax authorities and the AFC fixes a period in which the information should be provided (article 11).

84. Where information is held by another Swiss authority (whether federal, cantonal or communal), the AFC may demand the transmission of such information. In such cases, the AFC will inform the authority of the essential elements of the request (although the Swiss authorities have confirmed that it will not provide a copy of the request itself) and will fix a period in which the information should be provided (article 12).

Use of information gathering measures absent domestic tax interest (ToR B.1.3)

85. The powers to obtain information under articles 9-12 of the LAAF apply specifically for the purpose of exchange of information under international agreements entered into by Switzerland (article 1(1)). There is no condition that Swiss authorities require the requested information for their own tax purposes in order for the access powers to apply.

Enforcement provisions to compel production and access to information (ToR B.1.4)

86. Where there is intentional non-compliance by the person concerned or the holder of information with the request of the AFC, the person will be liable to a fine of a maximum of CHF 10 000 (EUR 8 264), pursuant to articles 9 and 10 of the LAAF. The Swiss authorities have confirmed that the penalty can be applied more than once if the person is not co-operative. These powers are supplemented by search and seizure powers, or summons powers, in certain instances.

87. Pursuant to article 13(2) of the LAAF, the AFC can use the following compulsory measures to obtain information:

(a) the search of rooms or of objects, documents and records in written form or on image and data carriers;

(b) the seizure of objects, documents and records in written form or on image and data carriers;

(c) the enforced appearance of duly summoned witnesses.

88. However, article 13(1) indicates that compulsory measures may be ordered in two cases: if such measures are provided for under Swiss law; or if the provision of ownership, identity or bank information is required. The explanatory report notes that compulsory measures will be provided for under Swiss law where there are reasonable grounds to establish tax fraud or serious tax infractions. However, for information that is not ownership, identity or bank information, compulsory measures cannot be ordered if the information is requested for "ordinary avoidance of tax" (*soustraction*

d'impôt ordinaire) as understood under Swiss law. For example, as a general matter, transfer pricing documentation could not be obtained by means of search and seizure.

89. These coercive measures may only be ordered by the Director of the AFC or his authorised representative. In cases where there is a risk that the compulsory measure cannot be ordered in time or where there is a risk of delay, the agent of the AFC in charge of collecting the information can take such measures on his own initiative, but it will be valid only if ratified by the Director of the AFC or his authorised representative within three days. Finally, the exercise of these coercive powers is subject to articles 42, 45-50 of the *loi fédérale du 22 mars 1974 sur le droit pénal administratif* (Federal Law of 22 March 1974 on Administrative Criminal Law), which sets out certain rights and safeguards. In particular, these provisions require that searches must be undertaken in a manner which respects the principles of administrative criminal law and which provides the utmost regard to safeguarding professional secrecy. Professional secrecy does not cover documents related to the activities of a lawyer or another professional in his capacity as a financial intermediary, for example when the person is acting as a trustee (see section B.1.5 below).

B.1.5 Secrecy

90. As noted in the 2011 report, three applicable forms of secrecy are found in Swiss Law: bank secrecy; "professional secrecy" that applies to certain classes of people including lawyers, clergymen, notaries, patent attorneys, auditors and other professions; and "*secret de fonction*" applying to persons exercising roles of a public character.

91. As with the access powers contained in the OACDI, the rules under the LAAF will prevail over bank secrecy rules for the purpose of exchange of information under Switzerland's EOI agreements. As noted above, where provisions of a treaty are clear and unconditional, they prevail over any conflicting rule in domestic law. Bank secrecy may be lifted where information is required based on an agreement that includes the equivalent of paragraph 5 of Article 26 of the OECD Model Tax Convention, as required by article 8(2) of the LAAF. This is because these agreements expressly include a provision that the contracting parties may not decline to exchange such information notwithstanding any contrary domestic legislation.

92. Legal privilege, falling with the definition of "professional secrecy" under Swiss law[19], encompasses information that has been confided to a lawyer in the normal exercise of its function. Swiss Courts have found that a lawyer

19. Defined in article 321of the Swiss Criminal Code.

acting in the capacity of an asset manager (ATF 112 Ib 606), director or member of the board of a company (ATF 114 III 107, ATF 115 Ia 197), or payment agent (ATF 120 Ib 118) is not exercising the normal activities of a lawyer, and these activities would qualify as financial intermediation. A lawyer acting as a trustee is also a financial intermediary and is not exercising the normal activity of a lawyer (ATF 5A.620/207 – SJ 2010, 579, 1232 II 109). Confidential information obtained in the course of such activities will thus not be covered by the privilege.

93. Information relating to confidential communications where the lawyer is acting as a trustee or guardian is therefore available to be exchanged and does not fall within the exception for "professional secrets" in Article 26(3) of the OECD Model Tax Convention.

94. "*Secret de fonction*" applies to employees of public administrations, for example the tax authorities, in the performance of their duties. In case of an EOI request, the fiscal authorities are compelled to co-operate with Switzerland's competent authority in accordance with federal law.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
~~Switzerland does not have powers to access bank information in respect of requests made under agreements 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 does not have powers to access bank information in respect of requests made under some of its agreements.	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 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)~~

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
The explanatory report could be interpreted as too broad as regards the exception to EOI contained in article 7(c) of the LAAF. It should be noted, however, that the explanatory report predates the enactment of article 7(c) of the LAAF and is a tool of interpretation amongst others. The Swiss authorities also indicate this does not result in a systematic refusal to provide information, but that the application of this article is done on a case by case basis.	The Swiss authorities should ensure that article 7(c) of the LAAF is applied in line with the standard.

B.2. Notification requirements and rights and safeguards

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.

Not unduly prevent or delay exchange of information *(ToR B.2.1)*

95. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

96. The LAAF sets out the rights and safeguards available to interested person, including the person who is the subject of the investigation and the holder of information, for all EOI agreements concluded by Switzerland. A legal challenge to the AFC's exercise of its powers or the exchange of the information has the effect of suspending the AFC's decision. This means that the information will not be exchanged pending resolution of the appeal by the Federal Administrative Court (article 19(3) of the LAAF).[20]

20. The LAAF itself does not specify that the information must not be exchanged pending the appeal, this obligation is established by article 44 and following of the Administrative Procedure Act (PA).

97. The 2011 Report identified two issues under element B.2. As explained in the 2011 Report, the OACDI provided for *(i)* prior notification, and *(ii)* a right to inspect the file. The notification needed to be done by the AFC when the request was received, before the collection of the information or before exchanging the information. The person concerned as well as all persons entitled to appeal needed to be notified by writing, of the nature and extent of information to be transmitted to the EOI partner. Persons entitled to appeal are defined in article 48 of the the *Loi fédérale sur la procédure administrative* (Federal Act on Administrative Procedure Act, PA) and include persons specifically affected by the decision concerned. There were no exceptions to this prior notification or to the right to inspect the file under the OACDI that was in line with the standard as the only possible exception (in certain instances) was to notify after the information was collected but before exchanging the information. A recommendation was therefore made that Switzerland ensure that appropriate exceptions consistent with the standard be introduced for both the prior notification and for the right to inspect the file.

Prior notification

98. The amendments to the LAAF that entered into force on 1 August 2014 introduced an exception to the prior notification process (article 21a of the LAAF).

99. The prior notification requirement is maintained under the LAAF. The LAAF provides that the AFC is required to notify, in writing, the person concerned[21] about the essential elements of the request (article 14(1) of the LAAF). Article 14(2) also indicates that the AFC must inform the persons that might have a legal recourse be entitled to appeal[22] (which may include the information holder) of the administrative assistance procedure. A person entitled to appeal that is resident abroad must also be notified, either by notification to an intermediary entitled to receive the notification (article 14(3)), or by direct notification to the foreign resident if the requesting jurisdiction so accepts that this person be directly notified abroad (14(4)). If the foreign resident cannot be contacted, then the notification takes place by way of the

21. A "person concerned" is defined as the person who is the subject of the request for information, in other words, the taxpayer being investigated.

22. Persons entitled to appeal are defined in article 48 PA and include persons specifically affected by the decision concerned: *(i)* a person that has participated or has been refused the opportunity to participate in the proceedings before the lower instance; *(ii)* a person that has been specifically affected by the contested ruling; and *(iii)* a person that has an interest that is worthy of protection in the revocation or amendment of the ruling.

requesting authority or by the publication of a notice in the federal gazette (*Feuille fédérale*), pursuant to article 14(5) of the LAAF.

100. If the person concerned and the persons entitled to appeal recourse give written permission to the AFC, the AFC can transmit the information to the EOI partner, pursuant to article 16 of the LAAF (the simplified procedure). Once given, the consent is irrevocable.

101. Where consent is refused or if consent is not received, the AFC must render a decision on whether to exchange the information[23] (the ordinary procedure), pursuant to article 17 of the LAAF. Article 17(1) states that the AFC shall serve to each person with a legal recourse (including the person concerned), the final decree stating why administrative assistance is being provided and specifying the extent of the information to be transmitted. A foreign resident must also be notified of this decision, by a notification to the intermediary entitled to receive the notifications (17(3) of the LAAF). If no such intermediary is designated, then the notification should take place by the publication of a notice in the federal gazette (*Feuille fédérale*). The application of article 17(1) in practice and whether it gives rise to impediments should be considered in the context of a Phase 2 Review. The AFC is also required to notify interested cantonal tax authorities (article 17(4) of the LAAF).

102. The decision is subject to appeal in accordance with Swiss domestic law governing appeals from administrative decisions (article 19 of the LAAF), as described above.

103. Article 21a of the LAAF provides for an exception to this prior notification requirement. Article 21a states:

> Exceptionally, the Swiss Federal Tax Administration shall notify the persons entitled to appeal about a request by means of a decree after the information has been transmitted if the requesting authority demonstrates that the purpose of the administrative assistance would be defeated and the success of its investigation would be thwarted by prior notification.[24]

23. This ruling will be made by the AFC in application of the general provisions for administrative rulings stated in the PA.

24. There are no binding English translations of Swiss Laws; translations are provided for information purposes only and have no legal force. The official French text reads as follows: *Exceptionnellement, l'AFC n'informe d'une demande les personnes habilitées à recourir par une décision qu'après la transmission des renseignements, lorsque l'autorité requérante établit de manière vraisemblable que l'information préalable des personnes habilitées à recourir* ***compromettrait le but de l'assistance administrative*** *et* ***l'aboutissement de son enquête*** (emphasis added by the assessment team).

104. The explanatory note of 16 October 2013 on the modification (*le message du 16 octobre 2013 sur la modification de la loi sur l'assistance administrative en matière fiscale*) explains that the first condition ("the administrative assistance would be defeated") can include cases where the prior notification could encourage the person concerned to destroy evidence, and that the second condition ("the success of its investigation would be thwarted") can include cases of an urgent nature.

105. When the exception applies, the notification is made after the exchange of information, but the law does not set any deadlines to do so. The Swiss authorities have explained that this is a discretionary power of the AFC and it will be applied on a case by case basis. The Swiss authorities have confirmed that they will consult with the requesting authority before notifying, when the exception is applied. In addition, the explanatory note to the modification states that the requesting states must make out a plausible case (*établir de manière vraisemblable*) that the conditions for the exception are met.

106. Article 21a of the LAAF also provides for an anti-tipping off provision that applies to the holder of information and the authorities that have been informed of the request. These persons are forbidden to inform the person with a legal recourse, until the person has been notified by the AFC (i.e. after the information has been exchanged). A sanction of a maximum of CHF 10 000 (EUR8 264) is applicable for failure to comply with the anti-tipping off provision (article 21a(3) of the LAAF).

107. There may be some interpretative issues that arise in respect of the exception. First, article 21a and the explanatory note to the modification clearly states that this exception must be applied only in exceptional cases. The explanatory note mentions that the exception should be applied with restraint (*retenue*). This could be interpreted as saying that the exception should be applied restrictively. Swiss authorities indicate that they analyse whether the conditions for the exception to prior notification are present (namely, that notification would impede effective exchange of information) on a case-by-case basis. In other words, the position of the Swiss authorities is that if the conditions set by the LAAF are met, the AFC applies the exception to prior notification. Each case is assessed on its own merits, regardless of the number of times the exception may already have been applied in other cases.

108. Another issue raised is the fact that the two conditions named are cumulative. In other words, prior notification must compromise both the goal of the investigation *and* the success of the investigation. However, these concepts appear to overlap in any event and it is not clear how one of these conditions would be fulfilled without the other also being fulfilled. The Swiss authorities have confirmed that the conditions overlap and that a single situation, such as urgency, could meet both conditions. The text of the new exception on its face is not inconsistent with the standard and the questions

raised about its interpretation and application appear to be issues of practice that should be considered in the context of a Phase 2 Review. If the Phase 2 assessment reveals issues in practice, it will be assessed whether this is a problem with the letter of the law or rather its application and an appropriate recommendation will be made.

Right to Inspect the File

109. In order to allow the persons entitled to appeal (which includes the person concerned) to properly exercise their right to be heard in respect of the AFC decision to exchange the information, the LAAF provides for a right to inspect the file (article 15(1) of the LAAF). The Swiss authorities have confirmed that the right to inspect the file does not include the right to consult the request itself.

110. The LAAF (art. 15(2)) now also provides that the right to inspect the file can be dispensed with where the requesting party demonstrates grounds for secrecy (*des motifs vraisemblables*) for maintaining the confidentiality of the process or with respect to certain contents of the file. This is consistent with Switzerland's domestic law generally, as article 27 of the PA provides for exceptions to the right to inspect the files where there are essential public or private interests. Switzerland has advised that these exceptions would include cases where its EOI partner would not permit the release of the request because, for example, it may impede the ongoing investigation of the person's tax affairs.[25] The impact of the right to inspect the file on confidentiality will be analysed in section C.3 below.

Conclusion

111. The recommendation made in the 2011 Report referred both to prior notification and the right to inspect the file. Considering that exceptions to notify and to inspect the file have been introduced in the LAAF and are in line with the standard, the recommendation made under Phase 1 is removed.

25. The explanatory note to the LAAF states: *Conformément à l'art. 27 PA, qui s'applique également en l'espèce (cf. art. 5, al. 1), l'AFC peut refuser la consultation des pièces si des intérêts publics importants de la Confédération ou des cantons, des intérêts privés importants ou l'intérêt d'une enquête non encore close exigent que le secret soit gardé* (In accordance with article 27 PA, which is also applicable in the present case (cf. art. 5, al. 1), the AFC can refuse the consultation of the file if essential public interests of the Confederation or the cantons, essential private interests or the interests of an open official investigation require that secrecy be kept – unofficial translation provided by Switzerland).

However, the application of these exceptions in practice and should be further examined during the Phase 2 Review.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place~~, but certain aspects of the legal implementation of the element need improvement.~~	
Factors underlying recommendations	**Recommendations**
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.	~~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.~~

C. Exchanging Information

Overview

112. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Switzerland, the legal authority to exchange information is derived from bilateral mechanisms (double tax conventions (DTCs) and tax information exchange agreements (TIEAs)), as well as the Multilateral Convention. This section of the report examines whether Switzerland has a network of information exchange that would allow it to achieve effective exchange of information.

113. The 2011 Report found elements C.3 (confidentiality) and C.4 (rights and safeguards of taxpayers and third parties) to be "in place". Element C.1 (exchange of information mechanisms) was found to be "not in place", and element C.2 (network of exchange of information mechanisms) was found to be "in place, but certain aspects of the legal implementation of the element need improvement". Element C.5 involves issues of practice that will be assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.

114. Switzerland currently has exchange of information mechanisms with 127 jurisdictions and continues negotiating new DTCs and TIEAs (see Annex 3). Of these, 127 agreements, 92 meet the standard, and of these 92, 42 are currently in force.

115. The first Phase 1 recommendation from the 2011 Report, under element C.1, referred to the identification requirements in the 29 agreements that had been signed after Switzerland withdrew its reservation to Article 26 of the OECD Model Tax Convention on 13 March 2009 and before the 2011 Report (referred to as the "New Agreements" in the 2011 Report). These agreements established identification requirements for the person concerned by the request and the holder of information that were inconsistent with the standard. In addition, Switzerland's interpretation of the identification requirements was also inconsistent with the standard. Switzerland has modified its interpretation of the identification requirements, as confirmed

by the Swiss Parliament and all but two of these New Agreements have been upgraded to the standard by way of a protocol or an exchange of letters. Of the two jurisdictions, one has not answered Switzerland's request to upgrade the treaty. The revision launched with the other one has not been completed but his partner is nevertheless covered by the Multilateral Convention. The first Phase 1 recommendation is therefore removed.

116. The second recommendation made under element C.1 stated that each of Switzerland's EOI agreements negotiated prior to 13 March 2009 should allow for the exchange of information in line with the standard. Switzerland still has 35[26] agreements negotiated prior to March 2009 that have not been updated. The second Phase 1 recommendation is therefore maintained.[27]

117. Element C.1 is upgraded to "in place, but certain aspects of the legal implementation of the element need improvement".

118. It was also recommended, under element C.2, that Switzerland continue to rapidly update and develop its network to ensure that it has agreements (regardless of their form) with all relevant partners. Since the 2011 Report, Switzerland has signed 26 agreements in line with the standard, of which 9 protocols to update existing agreements and 17 new agreements (7 TIEAs and 10 DTCs). Each of these agreements are in line with the standard.

119. Switzerland also signed the Multilateral Convention[28] which updates 23 EOI agreements[29] that were not to the standard and provides 15 new EOI

26. The DTC of 30 September 1954 between Switzerland and the UK still applies to 10 jurisdictions for which the EOI relationship has not been updated: Antigua and Barbuda, Barbados, Dominica, Gambia, Grenada, Malawi, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and Zambia. In the context of this report, each EOI relationship counts as a separate agreement. While the DTC of 30 September 1954 also applies to Anguilla, Belize, the British Virgin Islands and Montserrat, these jurisdictions are covered by the Multilateral Convention. A TIEA has been initialled with Belize and negotiations for a TIEA are ongoing with Anguilla, Barbados, the British Virgin Islands, Grenada, Montserrat and Saint Kitts and Nevis.
27. For upcoming changes to Swiss legislation on this topic, please see recent developments section in the introduction above.
28. Switzerland has not yet ratified the Multilateral Convention.
29. Albania, Anguilla, Azerbaijan, Belize, British Virgin Islands, Chile, Columbia, Croatia, Georgia, Indonesia, Italy, Latvia, Liechtenstein, Lithuania, Mexico, Moldova, Montserrat, Morocco, New Zealand, Philippines, South Africa, Tunisia and Ukraine.

relationships[30] to Switzerland. The factor underlying the recommendation is removed and element C.2 is therefore upgraded to "in place".

120. With regard to element C.3 (confidentiality), the *Loi fédérale sur l'assistance administrative internationale en matière fiscale* (LAAF, Federal Law on International Administrative Assistance in Tax Matters) provides that every person concerned by a request must be notified (unless the exception applies). A foreign resident must also be notified. The broad scope of notification – both in terms of the persons who are notified and the means of notification, as well as the right to see the file may raise issues regarding confidentiality. However, the notification rules themselves do not specify or require that any particular information be disclosed and the confidentiality provisions of an EOI agreement will prevail over domestic legislation. Therefore, the confidentiality guaranteed in the EOI agreements is respected. The application of the notification in practice, and whether confidentiality is respected in all cases of notification, should be further examined during the Phase 2 Review.

121. The 2011 Report found that Switzerland's exchange of information mechanisms respect the rights and safeguards of the taxpayers and third parties and no recommendations were made. The determination for C.4 was, and remains, "in place".

C.1. Exchange of information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

122. Since the 2011 Report, Switzerland has taken active steps to update its network of EOI agreements by signing new agreements and protocols to existing agreements that include the language of paragraphs 4 and 5 of Article 26 of the OECD Model Tax Convention. Switzerland has signed 9 protocols to existing agreements (with Belgium, Czech Republic, Estonia, Ghana, Ireland, Portugal, Russian Federation (Russia), Slovenia and Uzbekistan), that are in line with the standard.

123. Switzerland also signed 17 new agreements (10 DTCs and 7 TIEAs) which are in line with the standard. The new agreements were signed with Andorra (TIEA), Argentina (DTC), Australia (DTC), Bulgaria (DTC), China (DTC), Greenland (TIEA), Bailiwick of Guernsey (Guernsey) (TIEA), Cyprus[31]

30. Aruba, Bermuda, Brazil, Cayman Islands, Cameroon, Costa Rica, Curaçao, Gabon, Gibraltar, Guatemala, Monaco, Nigeria, Saudi Arabia, Sint Marteens and Turks and Caicos Islands.

31. Footnote from Turkey: The information in this document with reference to "Cyprus" relates to the southern portion of the Island. There is no single

(DTC), Hungary (DTC), Iceland (DTC), Isle of Man (TIEA), Bailiwick of Jersey (Jersey) (TIEA), Peru (DTC), San Marino (TIEA), Seychelles (TIEA), Turkmenistan (DTC) and United Arab Emirates (DTC).

124. Further, Switzerland is a signatory to the Multilateral Convention (which has not been ratified yet). With the Multilateral Convention, Switzerland now has an agreement to the standard with 15 new partners[32] with which it does not have a bilateral agreement. In addition, 23 existing EOI relationships[33] are now to the standard with the Multilateral Convention.

125. As a result, Switzerland now has an EOI relationship with 127 jurisdictions, of which 92 are to the standard.[34] Of the 92 relationships to the standard, 42 are currently in force. Switzerland has also started to negotiate new bilateral agreements for EOI with 16 existing or new partners (Albania, Anguilla, Barbados, Brazil, British Virgin Islands, Costa Rica, Ecuador, Israel, Liechtenstein, Lithuania, Montserrat, Philippines, Saudi Arabia, South Africa, St Kitts and Nevis and Turks and Caicos Islands). Furthermore, first contact have been established with Kenya, and Zambia with the view of negotiating an agreement covering EOI. The agreements with Belize, Colombia, Grenada, Oman, Pakistan and Ukraine have been initialled.

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authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

32. Aruba, Bermuda, Brazil, Cameroon, Cayman Islands, Costa Rica, Curacao, Gabon, Gibraltar, Guatemala, Monaco, Nigeria, Saudi Arabia, Sint Maartens and Turks and Caicos Islands.

33. Albania, Anguilla, Azerbaijan, Belize, British Virgin Islands, Chile, Colombia, Croatia, Georgia, Indonesia, Italy, Latvia, Liechtenstein, Lithuania, Mexico, Moldova, Montserrat, Morocco, New Zealand, Philippines, South Africa, Tunisia and Ukraine.

34. 53 by bilateral agreements (27 "New agreements" of the 2011 Report, 9 new protocols, 10 new DTCs, 7 new TIEAs), 38 by the Multilateral Convention and Chinese Taipei that needs to be added as it was missing from the Phase 1 report (the agreement is in line with the standard).

Foreseeably relevant standard (ToR C.1.1)

126. The international standard for EOI envisages information exchange upon request to the widest possible extent. Nevertheless it does not allow "fishing expeditions," i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in Article 26(1) of the OECD Model Tax Convention set out below:

> The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out of the provisions this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

127. The commentary to Article 26 of the OECD Model Tax Convention, paragraph 5, refers to the standard of "foreseeable relevance" and states that the Contracting States may agree to an alternative formulation for this standard that is consistent with the scope of the Article, for instance by replacing "foreseeably relevant" with "necessary" or "relevant".

128. Article 4(3) of the LAAF states that it is forbidden to provide information on persons not concerned by the request. Article 17(2) of the LAAF notes that information which is not "foreseeably relevant" will not be exchanged; the information will be extracted or will be made illegible in any documents exchanged. Switzerland has confirmed that the provision will be applied in line with the internationally agreed standard, including Article 26 of the OECD Model Tax Convention and its commentary.

Agreements signed since the 2011 Report

129. All agreements concluded by Switzerland since the 2011 Report[35] provide for the exchange of information that is "foreseeably relevant" to the administration and enforcement of the domestic laws of the Contracting Parties. The Multilateral Convention also uses the expression "foreseeably relevant".

35. There have been 26 bilateral agreements signed since the 2011 Report (either new agreements or protocols): Andorra, Argentina, Australia, Belgium, Bulgaria, China, Czech Republic, Estonia, Ghana, Greenland, Guernsey, Cyprus, Hungary, Iceland, Ireland, Isle of Man, Jersey, Peru, Portugal, Russia, San Marino, Seychelles, Slovenia, Turkmenistan, United Arab Emirates and Uzbekistan. Switzerland also signed the Multilateral Convention on 15 October 2013.

Agreement signed after 13 March 2009 but before the 2011 Report

130. The 2011 Report noted that all the agreements that had been signed after Switzerland withdrew its reservation to Article 26 of the OECD Model Tax Convention on 13 March 2009 (thereafter referred to as the "New Agreements" in the 2011 Report) were not in line with the standard as they reflected Switzerland's initial interpretation of the obligation, for an EOI partner, to provide specific identity information (name and address) on the person concerned by the EOI request and the holder of the information.

131. There were 29[36] agreements in the 2011 Report that had been signed after 13 March 2009 and that were considered to be "New Agreements" (Austria, Canada, Denmark, Faroe Islands, Finland, France, Germany, Greece, Hong Kong (China), India, Japan, Kazakhstan, Korea, Luxembourg, Malta, Mexico, Netherlands, Norway, Poland, Qatar, Romania, Singapore, Slovak Republic, Spain, Sweden, Turkey, United Kingdom, United States and Uruguay). These "New Agreements" contained a provision to provide specific identity information that was too restrictive and was considered incompatible with the standard.

132. The 2011 Report also mentioned that Switzerland had modified its initial interpretation and intended to apply these "New Agreements" fully in line with the standard, particularly in respect of the identification requirements for valid requests. The 2011 Report stated that this new interpretation needed to be confirmed by Parliament.

133. Since the 2011 Report, the Swiss Parliament has confirmed this interpretation for all the 29 "New Agreements". In addition, Switzerland has modified the identification requirement in these "New Agreements" by protocol, memorandum of understanding or exchange of letters with 27 of the 29 jurisdictions concerned, such that 27 of the 29 "New Agreements" are now in line with the standard. Qatar has not replied to Switzerland's request to amend the agreement in order to modify the identification requirement. It has not been possible to reach an agreement with Mexico as Mexico requested amendments to the DTC with regard to provisions that are unrelated to EOI. However, Mexico is now covered by the Multilateral Convention. As a consequence, the first Phase 1 recommendation to ensure that the identification requirements are in line with the standard is removed.

36. There are two other agreements that were signed after 13 March 2009 but that were not considered as "New Agreements": Georgia, signed on 15 June 2010 and Tajikistan, signed on 23 June 2010. These agreements do not meet the standard, but Georgia is now covered by the Multilateral Convention and the agreement with Tajikistan does not include an EOI provision.

Agreements signed before 13 March 2009 and not updated

134. Up until 2000, EOI provisions in Switzerland's DTCs were negotiated on the basis that administrative assistance to the EOI partner would only be provided to the extent that it related to the application of the treaty. That is, it did not extend to assistance in the administration or enforcement of the domestic tax laws of the EOI partner, except to the extent the assistance related to determining the application of provisions of the DTC. Therefore, the agreements signed by Switzerland prior to 13 March 2009, which do not include an EOI provision based on the standard, do not meet the foreseeably relevance standard. In the period from 2000 to 2009, agreements allowed for EOI for tax fraud, although they all have been fixed, please refer to section C.1.5.

135. Of the agreements concluded by Switzerland prior to 13 March 2009, 35 have still not been upgraded and therefore do not respect the foreseeably relevance standard. These are the agreements signed with Algeria, Antigua and Barbuda, Armenia, Bangladesh, Barbados, Belarus, Côte d'Ivoire, Dominica, Ecuador, Egypt, Former Yugoslavian Republic of Macedonia (FYROM), Gambia, Grenada, Iran, Israel, Jamaica, Kyrgyzstan, Kuwait, Malaysia, Malawi, Mongolia, Montenegro, Pakistan, Qatar, Serbia, Sri Lanka, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Tajikistan,[37] Thailand, Trinidad and Tobago, Venezuela, Viet Nam and Zambia. 12[38] of these 35 agreements do not include an EOI provision. A new DTC was initialled with Pakistan in August 2014 and negotiations with Ecuador and Israel are ongoing.

136. As a consequence, the recommendation that Switzerland should ensure that each of its EOI agreements negotiated prior to 13 March 2009 allows for the exchange of information in line with the standard is maintained.

In respect of all persons *(ToR C.1.2)*

137. For EOI to be effective it is necessary that a jurisdiction's obligations to provide information are not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason, the international standard for EOI envisages that EOI mechanisms will provide for EOI in respect of all persons.

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37. This agreement was actually signed on 23 June 2010 but it is included in the category of agreements signed prior to 13 March 2009 for the purpose of this report. This agreement does not contain an EOI provision.
38. Belarus, Côte d'Ivoire, Ecuador, Egypt, Jamaica, Kuwait, Malaysia, Sri Lanka, Tajikistan, Trinidad and Tobago, Venezuela and Viet Nam.

138. None of the agreements signed since the 2011 Report, or any of the 29 "New Agreements" are restricted for EOI purposes by the "persons covered" article in the agreement (equivalent to Article 1 of the OECD Model Convention). In addition, there is no such restriction in the Multilateral Convention. Accordingly, Switzerland has 92 agreements that are in line with the standard in relation to the provision of EOI in respect of all persons.

139. Of the 35 agreements negotiated prior to 13 March 2009 that have not been upgraded by either a protocol, a new DTC or by the Multilateral Convention, 23 are restricted to requests concerning persons otherwise covered by the Convention.

Obligation to exchange all types of information *(ToR C.1.3)*

Bank information

140. Jurisdictions cannot engage in effective EOI if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the OECD Model Tax Convention and the Model Agreement on Exchange of Information, which are authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

141. All agreements concluded by Switzerland since the 2011 Report as well as the 29 "New Agreements" and the Multilateral Convention expressly include a provision that the requested State may not decline to supply information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person. The express inclusion of this provision concerning information held by banks or other financial institutions ensures that bank secrecy will not apply for the exchange of information under these agreements. These agreements are in line with the standard in regards to the obligation to exchange all types of information.

142. Further, the following paragraph was included in most of the bilateral agreements that are in line with the standard, but was not included in the 7 TIEAs, the DTC with Belgium, the DTC with Estonia, the DTC with Ghana, the DTC with Iceland and the Multilateral Convention:

> In order to obtain such information [i.e. information held by a bank, financial institute, nominee, or person acting in an agency or fiduciary capacity], the tax authorities of the requested Contracting State, if necessary to comply with its obligations

under this paragraph, shall have the power to enforce the disclosure of information covered by this paragraph, notwithstanding paragraph 3 or any contrary provisions in its domestic laws.

143. This sentence was added in the EOI agreements signed by Switzerland to ensure a legal basis for Switzerland to collect these types of information. Since the LAAF was introduced, the legal basis is now clear and this sentence is no longer necessary in the EOI agreements signed by Switzerland which are in line with the standard.

144. Of the 35 agreements negotiated prior to 13 March 2009 that have not been upgraded by either a protocol, a new DTC or by the Multilateral Convention, 12 do not include an EOI provision. In the case of 22 of the 23[39] remaining agreements which were negotiated prior to March 2009, bank secrecy will apply to limit the exchange of information to the standard. The DTC with Qatar contains the equivalent of Article 26(5) but contains identification requirements that go beyond the standard.

Absence of domestic tax interest (ToR C.1.4)

145. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. EOI partners must be able to use their information gathering measures even though they are invoked solely to obtain and provide information to the requesting jurisdiction.

146. Each of the agreements signed since the 2011 Report as well as the 29 "New Agreements" and the Multilateral Convention include an express provision (equivalent to Article 26(4) of the OECD Model Tax Convention) that information shall be exchanged by the requested party notwithstanding that they may have no domestic tax interest in such information.

147. Of the 35 agreements negotiated prior to 13 March 2009 that have not been upgraded by either a protocol, a new DTC or by the Multilateral Convention, 12 do not include an EOI provision. The remaining 23 agreements that were negotiated prior to March 2009 do not include such an express provision but are interpreted by Switzerland such that no domestic tax interest requirement applies.

39. Algeria, Antigua and Barbuda, Armenia, Bangladesh, Barbados, Dominica, Gambia, Grenada, Iran, Israel, Kyrgyzstan, FYROM, Malawi, Mongolia, Montenegro, Pakistan, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Serbia, Thailand and Zambia.

Absence of dual criminality principles (ToR C.1.5)

148. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested jurisdiction if it had occurred in the requested jurisdiction. In order to be effective, EOI should not be constrained by the application of the dual criminality principle.

149. None of the agreements signed since the 2011 Report, the 29 "New Agreements", or the Multilateral Convention apply the dual criminality principle to restrict the exchange of information.

150. From its commitment to the CFA report on Improving Access to Bank Information in March 2000, until 13 March 2009, Switzerland's position was that in respect of exchange of information for the purposes of domestic law of the requesting state (that is, not in regard to the application of the agreement), it would agree to exchange information in cases of "tax fraud" as defined in Swiss law, thereby effectively incorporating a dual criminality standard on this point. During the Phase 1 Review, it was found that nine agreements had incorporated this language and were not in line with the standard. Six of these agreements have been renegotiated and the three remaining jurisdictions (Chile, Colombia and South Africa) are now covered by the Multilateral Convention. Therefore, none of the exchange of information flows that have been put in place by Switzerland are restricted by the dual criminality principle.

Exchange of information in both civil and criminal tax matters (ToR C.1.6)

151. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters").

152. All information exchange mechanisms concluded since the 2011 Report as well as the 29 "New Agreements" of the 2011 Report and the Multilateral Convention provide for EOI in both civil and criminal matters. The remaining agreements[40] are restricted to civil tax matters.

40. The 35 agreements negotiated prior to 13 March 2009 that have not been upgraded by either a protocol, a new DTC or by the Multilateral Convention. 12 of these 35 agreements do not include an EOI provision.

Provide information in specific form requested *(ToR C.1.7)*

153. EOI mechanisms should allow for the provision of information in the specific form requested (including depositions of witnesses and production of authenticated copies of original documents) to the extent possible under a jurisdiction's domestic laws and practices.

154. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

155. There are no impediments in Swiss law which would prevent the information being obtained in the form, for example, of an authenticated copy of original document to the extent that this is consistent with domestic law. In the case of the latter, such a request may, however, necessarily affect the speed with which the request can be met.

In force *(ToR C.1.8)*

156. EOI cannot take place unless a jurisdiction has EOI arrangements in force. The international standard requires that jurisdictions take all steps necessary to bring information arrangements that have been signed into force expeditiously.

157. Since the 2011 Report, the existing protocols signed with Canada, Germany, Greece, India, Japan, Kazakhstan, Korea, Poland, Romania, Singapore, Slovak Republic, Spain and Sweden have all entered into force and they are all in line with the standard. The existing DTCs signed with Georgia, Hong Kong (China), Malta, Netherlands, Tajikistan, Turkey and Uruguay have all entered into force.

158. In addition, Switzerland has signed 9 new protocols to existing agreements (with Belgium, the Czech Republic, Estonia, Ghana, Ireland, Portugal, Russia, Slovenia and Uzbekistan), that are in line with the standard, 5 of which have entered into force (the protocols with Belgium, Estonia, Ghana and Uzbekistan have not yet entered into force) and 7 of the 10 DTCs signed since the 2011 Report have entered into force and are in line with the standard (with Australia, Bulgaria, China, Hungary, Peru, Turkmenistan and United Arab Emirates). Furthermore, the first TIEAs negotiated by Switzerland have entered into force in October 2014 (with the Isle of Man, Jersey and

Guernsey). The timeframe for ratification in Switzerland has improved significantly and in general, the agreements are ratified within 12 to 18 months after signature.

159. Further, Switzerland is a signatory to the Multilateral Convention (since 15 October 2013). The Multilateral Convention has not yet been ratified by Switzerland. The Swiss authorities indicate that the procedures necessary to ratify the Multilateral Convention will start in early 2015. Some domestic laws, including the LAAF, will have to be amended in order to ratify the convention.

In effect *(ToR C.1.9)*

160. For information exchange to be effective, the parties to an EOI arrangement need to enact legislation necessary to comply with the terms of the arrangement. Switzerland has enacted the LAAF, which appears to enable it to meet the standard. The LAAF, which entered into force on 13 February 2013, is applicable to all treaties[41] containing an EOI provision:

> (1) This Act governs the execution of administrative assistance:
>
> a. in accordance with agreements for the avoidance of double taxation;
>
> b. in accordance with other international agreements that provide for the exchange of information regarding tax matters.

161. Switzerland signed the Multilateral Convention on 15 October 2013. It is recommended that Switzerland expeditiously ratify the Multilateral Convention.

41. However, 12 agreements negotiated prior to 13 March 2009 that have not been upgraded by either a protocol, a new DTC or by the Multilateral Convention do not contain an EOI provision. Therefore, the LAAF will apply to these agreements once they have been updated and include an EOI provision.

Determination and factors underlying recommendations

Phase 1 determination	
The element is ~~not~~ in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
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.	~~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.~~
EOI agreements that were negotiated prior to March 2009 are not consistent with the standard.	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.

C.2. Exchange of information mechanisms with all relevant partners

The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

162. The international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce their tax laws, it may indicate a lack of commitment to implement the standards.

163. On 13 March 2009 the Federal Council decided that in respect of the negotiation of EOI provisions, Switzerland would base such negotiation on the standard set out in Article 26 of the OECD Model Tax Convention. This decision was to be undertaken through the revision of existing agreements

as well as the negotiation of new agreements. In the 2011 Report, 29[42] signed agreements incorporating the standard were considered (the "New Agreements"). All the agreements signed since the 2011 Report are based on the standard and include the equivalent of paragraphs 4 and 5 of Article 26 of the OECD Model Tax Convention.

164. Since the 2011 Report, Switzerland has taken active steps to update its network of EOI agreements by signing 9 protocols to existing agreements (with Belgium, Czech Republic, Estonia, Ghana, Ireland, Portugal, Russia, Slovenia and Uzbekistan), that are in line with the standard and 5 have entered into force (except for the protocols with Belgium, Estonia, Ghana and Uzbekistan).

165. Switzerland also signed 17 new agreements (10 DTCs and 7 TIEAs) which are in line with the standard. The new agreements were signed with Andorra (TIEA), Argentina (DTC), Australia (DTC), Bulgaria (DTC), China (DTC), Cyprus (DTC), Greenland (TIEA), Guernsey (TIEA), Hungary (DTC), Iceland (DTC), Isle of Man (TIEA), Jersey (TIEA), Peru (DTC), San Marino (TIEA), Seychelles (TIEA), Turkmenistan (DTC) and United Arab Emirates (DTC). The DTCs with Australia, Bulgaria, China, Hungary, Peru, Turkmenistan and United Arab Emirates have entered into force.

166. Further, Switzerland is a signatory to the Multilateral Convention. With the Multilateral Convention, Switzerland now has signed an agreement to the standard with 15 new partners[43] with which it does not have bilateral agreements. In addition, 23 existing EOI relationships[44] are now to the standard with the Multilateral Convention.

167. In addition, the existing protocols signed with Canada, Germany, Greece, India, Japan, Kazakhstan, Korea, Poland, Romania, Singapore, Slovak Republic, Spain and Sweden have all entered into force and are all in line with the standard. The existing DTCs signed with Georgia, Hong Kong

42. Austria, Canada, Denmark, Faroe Islands, Finland, France, Germany, Greece, Hong Kong, India, Japan, Kazakhstan, Korea, Luxembourg, Malta, Mexico, the Netherlands, Norway, Poland, Romania, Qatar, Singapore, Slovak Republic, Spain, Sweden, Turkey, United Kingdom, United States and Uruguay.
43. Aruba, Bermuda, Brazil, Cameroun, Cayman Islands, Costa Rica, Curaçao, Gabon, Gibraltar, Guatemala, Monaco, Nigeria, Saudi Arabia, Sint Maartens and Turks and Caicos Islands.
44. Albania (DTC), Anguilla (DTC), Azerbaijan (DTC), Belize (DTC), British Virgin Islands (DTC), Chile (DTC), Colombia (DTC), Croatia (DTC), Georgia (DTC), Indonesia (DTC), Italy (DTC), Latvia (DTC), Liechtenstein (DTC), Lithuania (DTC), Mexico (DTC), Moldova (DTC), Montserrat (DTC), Morocco (DTC), New Zealand (DTC), Philippines (DTC), South Africa (DTC), Tunisia (DTC) and Ukraine (DTC).

(China), Malta, the Netherlands, Tajikistan, Turkey and Uruguay have all entered into force. The agreement with Georgia is not in line with the standard, but Georgia is covered by the Multilateral Convention. The agreement with Tajikistan does not include an EOI provision.

168. As a result, Switzerland now has an EOI relationship with 127 jurisdictions, of which 92[45] are to the standard. Of the 92 relationships to the standard, 42 are currently in force.

169. The Swiss treaty network covers to date:

- its 5 neighbour countries;[46]
- all EU members;
- all G20 members but one; and
- 99 Global Forum members.

170. Switzerland is currently negotiating protocols to DTCs and new agreements (including TIEAs) with a number of jurisdictions in order to establish a legal basis with additional partners for exchange of information to the standard. Switzerland has started to negotiate new agreements with Albania (DTC), Anguilla (TIEA), Barbados (TIEA), Brazil (TIEA), British Virgin Islands (TIEA), Costa Rica (DTC), Ecuador (DTC), Israel (DTC), Liechtenstein (DTC), Lithuania (DTC), Montserrat (TIEA), Philippines (DTC), Saudi Arabia (DTC), South Africa (DTC), St Kitts and Nevis (TIEA), and Turks and Caicos Islands (TIEA). Furthermore, first contacts have been established with Kenya and Zambia with the view of negotiating an agreement covering EOI. Six agreements have already been initialled (Belize, Colombia, Grenada, Oman, Pakistan and Ukraine).

171. The 92 agreements that are in line with the standard cover 95% of Swiss exports and 97% of its imports.

172. The 2011 Report contain a recommendation that 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. Considering that Switzerland currently has 92 relationships to the standard, which represents 95% of its exports and 97% of its imports, and considering that Switzerland has concluded agreements or is negotiating agreements with all those jurisdictions that have expressed an

45. 53 by bilateral agreements (27 "New agreements" of the 2011 Report, 9 new protocols, 10 new DTCs, 7 new TIEAs), 38 by the Multilateral Convention and Chinese Taipei that needs to be added as it was missing from the Phase 1 report (the agreement is in line with the standard).

46. Austria, France, Germany, Italy and Liechtenstein.

interest in negotiating an agreement that respects the international transparency standard with Switzerland, the recommendation is removed.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place~~, but certain aspects of the legal implementation of the element need improvement~~.	
Factors underlying recommendations	**Recommendations**
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.~~
	Switzerland should continue to develop its EOI network to the standard with all relevant partners.

C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

173. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

174. Each of the EOI agreements concluded by Switzerland provides for confidentiality in accordance with Article 26(2) of the OECD Model Tax Convention, which provides:

> Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information

> obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrate bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

175. Moreover, article 1(2) of the LAAF clearly states that the provision of applicable agreements prevail over the LAAF in case of conflicts.

176. In addition, Swiss domestic tax law contains provisions to ensure the confidentiality of information exchanged, namely a professional secrecy provision applicable to tax officers, and provisions to protect both the public and private interests in maintaining confidentiality of tax information. Article 110 of the *Loi fédérale sur l'impôt fédéral direct* (Federal Act on Direct Federal Taxation, LIFD) and article 39 of the *Loi fédérale sur l'harmonisation des impôts directs des cantons et des communes* (Federal Act on the Harmonisation of the Direct Taxes of Cantons and Communes) provide: [47]

> (1) Persons responsible for applying this law or in connection with its application, must keep secret the information which they obtain in the exercise of their functions, as well as the deliberations of the authorities, and must not allow third parties to see any tax files.
>
> (2) Information may be communicated in so far as that disclosure is expressly provided for under federal or cantonal law.

177. Violations of tax secrecy laws may be sanctioned using disciplinary measures, or through civil or criminal sanctions.

178. Article 14 of the LAAF provides that every person concerned by a request must be notified (unless the new exception under article 21a of the LAAF applies). Switzerland will seek the requesting jurisdiction's consent to directly contact the taxpayer. In case of consent and where the taxpayer lives in a third jurisdiction, Switzerland will also seek the approval of this jurisdiction (usually the competent authority) to directly contact the taxpayer. A foreign resident must also be notified, by a notification to the intermediary

47. Equivalent provisions may be found in the Swiss laws concerning value added tax (art. 74, *Loi fédérale régissant la taxes sur la valeur ajoutée*, Federal Act on Value Added Tax); concerning the withholding tax on income from movable capital, lottery winnings and insurance benefits (art. 37, *Loi fédérale sur l'impôt anticipé*, Federal Act on Withholding Tax); and stamp duty (art. 33, *Loi fédéral sur les droits de timbre*, Federal Act on Stamp Tax).

entitled to receive the notifications (article 14(3)), by a direct notification to the foreign resident if the requesting jurisdiction accepts (14(4)) or if the foreign resident cannot be contacted, then the notification should take place by the publication of a notice in the federal gazette (*Feuille fédérale*), pursuant to article 14(5) of the LAAF. Article 17 of the LAAF also provides for a notification of a foreign resident by the publication of a notice in the federal gazette when there is no intermediary designated. The notification through the federal gazette is a measure that only takes place when all other means to contact the person concerned by the request have been unsuccessful.[48]

179. The broad scope of the means of notification – (in particular the possible use of *Feuille fédérale* and the requirement to obtain the consent of a third jurisdiction, if the person concerned is resident abroad, in another jurisdiction than the requesting jurisdiction) – may raise issue regarding confidentiality. However, the notification rules themselves do not specify or require that any particular information be disclosed other than notification about the main parts of the request, which is not defined. Moreover, article 1(2) of the LAAF provides that the LAAF is "subject to the derogations of individual applicable agreements". Therefore, should there be a discrepancy between the confidentiality provisions of an EOI agreement and the LAAF, the provisions of the EOI agreement will prevail. Accordingly, the confidentiality guaranteed in the EOI agreements is respected.

180. In order to allow the persons entitled to appeal (which includes the person concerned) to properly exercise their right to be heard in respect of the AFC decision to exchange the information, the LAAF provides for a right to inspect the file (article 15(1) of the LAAF). This means that both the person under investigation in the requesting jurisdiction and persons with legal recourse (including the information-holder) have a right to access the file. However, the Swiss authorities have confirmed that as a change of policy since the 2011 Report, the EOI request and the documents accompanying the request are not provided.

181. The LAAF (art. 15(2)) now also provides that the right to inspect the file can be dispensed with where the requesting party provides reasonable justification (*des motifs vraisemblables*) to maintain the confidentiality of the process or with respect to certain contents of the file. This is consistent with Switzerland's domestic law generally, as Article 27 PA provides for exceptions to notification where there are essential public or private interests. Switzerland has advised that these exceptions would include cases where its

48. This is a cascading process : the notification through the official gazette will only take place if all other means to inform the person (ie, through the information holder or directly with the authorisation of the requesting jurisdiction) have failed.

EOI partner would not permit the release of the request because, for example, it may impede the ongoing investigation of the person's tax affairs.[49]

182. Therefore, the information that is accessible to persons with a right to appeal is limited by the confidentiality provision of the treaties concluded by Switzerland. Article 1(2) of the LAAF states that this Act is subject to the derogations of individual applicable agreements. The application of the notification in practice, and whether confidentiality is respected in all cases of notification, should be further examined during the Phase 2 Review.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

183. The 2011 Report did not identify any gap with respect to this element and it was determined to be "in place".

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

The Responses within 90 days (ToR C.5.1)

184. In order for exchange of information to be effective it needs to be provided in a time frame which allows tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time the information may no longer be of use to the requesting authorities. This is particularly important in the context of international

49. See footnote 24.

co-operation as cases in this area must be of sufficient importance to warrant making a request.

185. A review of the practical ability of Switzerland's competent authority to respond to requests in a timely manner will be conducted in the course of its Phase 2 Review.

Organisational process and resources (ToR C.5.2)

186. A review of Switzerland's organisational process and resources in practice will be conducted in the context of its Phase 2 Review.

Absence of restrictive conditions on exchange of information (ToR C.5.3)

187. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. Whether this is the case in Switzerland will be considered in the context of Switzerland's Phase 2 Review.

Determination and factors underlying recommendations

Determination
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.

Summary of Determinations[50] 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. *(ToR A.1)*		
Phase 1 determination: 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.

50. The ratings will be finalised as soon as a representative subset of Phase 2 reviews is completed.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
Phase 1 determination: The element is in place.		
Banking information should be available for all account-holders. *(ToR A.3)*		
Phase 1 determination: 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 an 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). *(ToR B.1)*		
Phase 1 determination: 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 some of its agreements.	Switzerland should ensure that it has access to bank information in respect of EOI requests made pursuant to all of its EOI agreements.
	The explanatory report could be interpreted as too broad as regards the exception to EOI contained in article 7(c) of the LAAF. It should be noted, however, that the explanatory report predates the enactment of article 7(c) of the LAAF and is a tool of interpretation amongst others. The Swiss authorities also indicate this does not result in a systematic refusal to provide information, but that the application of this article is done on a case by case basis.	The Swiss authorities should ensure that article 7(c) of the LAAF is applied in line with the standard.

Determination	Factors underlying recommendations	Recommendations
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. *(ToR B.2)*		
Phase 1 determination: The element is in place.		
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement	EOI agreements that were negotiated prior to 13 March 2009 are not consistent with the standard.	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.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
Phase 1 determination: The element is in place.		Switzerland should continue to develop its EOI network 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. *(ToR C.3)*		
Phase 1 determination: The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
Phase 1 determination: The element is in place.		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
Phase 1 determination: This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		

Annex 1: Jurisdiction's response to the supplementary review[51]

Switzerland agrees with the conclusions of its supplementary report. The document reflects Switzerland's legal and regulatory framework and takes stock of the substantial progress achieved since the 2011 Phase 1 review. The supplementary report rightly concludes that Switzerland has fulfilled the conditions to move to a phase 2 review.

Switzerland will continue its efforts towards complying with the recommendations made by the Global Forum. Switzerland is currently developing its EOI network, including through the recently-started ratification process of the Multilateral Convention on mutual tax assistance. Furthermore, measures aimed at identifying the owners of bearer shares should enter into force in the course of 2015. Switzerland will also keep responding to EOI requests from its partners in a timely and effective manner in line with the requirements of the EOI standard. Switzerland reiterates its readiness to discuss with its partners any issue that may arise in the course of their cooperation on tax matters. Looking to the future, Switzerland committed to automatic exchange of information on the occasion of the Global Forum meeting in Berlin in October 2014. In line with this commitment, Switzerland launched its internal legislative process in January 2015.

Switzerland expresses its thanks to the assessment team and the secretariat of the Global Forum for their outstanding work in preparing the supplementary review. Switzerland looks forward to working with them on its phase 2 review.

51. This Annex presents the jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

Annex 2: Request for a supplementary report received from Switzerland[52]

Dear Mr d'Aubert,

I am following up on my letter dated 20 December 2013 that requested a supplementary report in light of the likely upgrade of element C.2 to "in place" following the signature by Switzerland of the Multilateral Convention on Administrative Assistance (MAC). This request was not received favorably by the Bureau of the Peer Review Group (PRG) owing to the absence of consensus between its members. I now have once again the pleasure to inform you of additional improvements which have been introduced in Switzerland's legal and regulatory framework for transparency and the exchange of information (EOI) for tax purposes. These improvements provide a solid basis for a new request for a supplementary report.

On 21 March 2014, the Swiss Parliament approved the proposed amendments to the Tax Administrative Assistance Act (TAAA), the legal instrument regulating the procedure for administrative assistance and access powers in tax matters in Switzerland. These amendments introduce exceptions to prior notification in the TAAA in response to the recommendation contained in Switzerland's Phase 1 report. It is expected that no referendum will be petitioned within the given timeframe running until 10 July 2014 as no such referendum has been announced against the proposed changes. The amended TAAA should accordingly enter into force on 1 August 2014. The new provisions will be applicable not only to all future EOI requests sent to Switzerland but also to all EOI requests pending at the time of entry into force of the TAAA. These changes are likely to result in an upgrade in the determination of the essential element B.2 to "in place".

Since my letter of 20 December 2013, Switzerland has continued to extend its network of exchange of EOI agreements in line with the standard on a bilateral basis. Thus, no fewer than two Double Taxation Agreements (DTAs) have entered into force and three more have been signed. In addition, Switzerland has signed four Tax Information Exchange Agreements (TIEAS) with new

52. Annexes to the Switzerland request are not reproduced in this document.

partners. This brings the total of Switzerland's signed bilateral EOI arrangements in line with the standard to 52, of which 38 are in force. Switzerland and France are in the process of signing a protocol to their DTA so that it fully complies with the standard. Negotiations are also moving forward with Italy, another important relevant partner. Moreover, a number of initialed DTAs will be signed in the course of July 2014 (with Cyprus, Iceland and Uzbekistan). Finally, on 19 February 2014 the Swiss Federal Council mandated the Federal Department of Finance to prepare a draft law extending, on a unilateral basis, the OECD EOI standard to all the partners with which the DTA is not yet in line with the standard. In light of the determinations that have been obtained by a number of jurisdictions in a similar situation for this element, Switzerland is confident that it has taken the necessary measures to comply with the recommendations made under essential element C.2. The determination of this essential element is therefore also likely to be upgraded to "in place".

A detailed report of these and other developments addressing the relevant recommendations in the Swiss peer review report is attached to this letter. These developments include the draft legislation currently debated in the Swiss Parliament to ensure that the owners of bearer shares are identified based on the recommendation made under essential element A.1.

In accordance with the methodology, I would therefore like to request a supplementary report so that the PRG and the Global Forum may assess the progress accomplished by Switzerland since its Phase 1 report. Taking into account the practice developed by the Global Forum and the treatment given to other jurisdictions, I firmly believe that this report will result in an upgrade of the elements B.2 and C.2 to "in place". In addition, the determinations for other elements may also be found to be improved. Switzerland trusts that the decision as regards its request for a supplementary report will be based on transparent, fair and objective criteria in line with the Global Forum methodology and will duly take into account the precedents established by the Global Forum in similar situations.

Should, against all the odds, no consensus be reached on Switzerland's request within the Bureau of the PRG, I would ask you to inform Switzerland in writing of the reasons behind the rejection and to formally put this matter before the PRG for deliberation at its next meeting that will take place from 30 June until 3 July 2014 in Paris. A positive decision at the next PRG meeting would enable the presentation of the supplementary report at the September 2014 meeting after the entry into force of the amended TAAA.

Yours sincerely,
State Secretariat for International Financial Matters SIF
Jacques de Watteville
State Secretary

Annex 3: List of all exchange of information mechanisms

Agreements

- The table below contains the list of information exchange agreements (TIEA) and tax treaties (DTC) signed by Switzerland as of 12 December 2014.
- Switzerland is a signatory to the Multilateral Convention. The status of the Multilateral Convention as 12 December 2014 is set out in the table below.

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force
1	Albania	DTC	12 November 1999	12 December 2000
		Multilateral Convention	Signed	1 December 2013
2	Algeria	DTC	3 June 2006	9 February 2009
3	Andorra	TIEA	17 March 2014	
		Multilateral Convention	Signed	Not yet in force in Andorra
4	Anguilla[a]	DTC		26 August 1963
		Multilateral Convention[b]		1 March 2014
5	Antigua and Barbuda[a]	DTC		26 August 1963
6	Argentina	DTC	23 April 1997	
		DTC (new)	20 March 2014	
		Multilateral Convention	Signed	1 January 2013
7	Armenia	DTC	12 June 2006	7 November 2007
8	Aruba	Multilateral Convention[c]		1 September 2013

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force
9	Australia	DTC	28 February 1980	13 February 1981
		DTC (new)	30 July 2013	14 October 2014
		Multilateral Convention	Signed	1 December 2012
10	Austria	DTC	30 January 1974	4 December 1974
		Protocol to DTC	3 September 2009	1 March 2011
		Multilateral Convention	Signed	1 December 2014
11	Azerbaijan	DTC	23 February 2006	13 July 2007
		Multilateral Convention	Signed	Protocol not yet in force in Azerbaijan
12	Bangladesh	DTC	10 December 2007	13 December 2009
13	Barbados[a]	DTC		26 August 1963
14	Belarus	DTC	26 April 1999	28 December 1999
15	Belgium	DTC	28 August 1978	26 September 1980
		Protocol to DTC	10 April 2014	
		Multilateral Convention	Signed	Protocol not yet in force in Belgium
16	Belize[a]	DTC		30 September 1954
		Multilateral Convention	Signed	1 September 2013
17	Bermuda[e]	Multilateral Convention		1 March 2014
18	Brazil	Multilateral Convention	Signed	Not yet in force in Brazil
19	British Virgin Islands[f]	DTC		30 September 1954
		Multilateral Convention		1 March 2014
20	Bulgaria	DTC	28 October 1991	10 November 1993
		DTC (new)	19 September 2012	18 October 2013
21	Cameroon	Multilateral Convention	Signed	Not yet in force in Cameroon
22	Canada	DTC	5 May 1997	21 April 1998
		Protocol to DTC	22 October 2010	16 December 2011
		Multilateral Convention	Signed	1 March 2014
23	Cayman Islands[g]	Multilateral Convention		1 January 2014
24	Chile	DTC	2 April 2008	5 May 2010
		Multilateral Convention	Signed	Not yet in force in Chile

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force
25	China	DTC	6 July 1990	27 September 1991
		DTC (new)	25 September 2013	15 November 2014
		Multilateral Convention	Signed	Not yet in force in China
26	Colombia	DTC	26 October 2007	11 September 2011
		Multilateral Convention	Signed	1 July 2014
27	Costa Rica	Multilateral Convention	Signed	1 August 2013
28	Côte d'Ivoire	DTC	23 November 1987	30 December 1990
29	Croatia	DTC	12 March 1999	20 December 1999
		Multilateral Convention	Signed	1 June 2014
30	Curaçao[c]	Multilateral Convention		1 September 2013
31	Cyprus[d]	DTC	27 July 2014	
		Multilateral Convention	Signed	Not yet in force in Cyprus
32	Czech Republic	DTC	4 December 1995	23 October 1996
		Protocol to DTC	11 September 2012	11 October 2013
		Multilateral Convention	Signed	1 February 2014
33	Denmark	DTC	23 November 1973	15 October 1974
		Protocol to DTC	21 August 2009	22 November 2010
		Multilateral Convention	Signed	1 June 2011
34	Dominica[a]	DTC		26 August 1963
35	Ecuador	DTC	28 November 1994	22 December 1995
36	Egypt	DTC	20 May 1987	14 July 1988
37	Estonia	DTC	11 June 2002	12 July 2004
		Protocol to DTC	25 August 2014	
		Multilateral Convention	Signed	1 November 2014
38	Faroe Islands[h]	DTC		20 March 1978
		Protocol to DTC		29 November 2010
		Multilateral Convention		1 June 2011
39	Finland	DTC	16 December 1991	26 December 1993
		Protocol to DTC	22 September 2009	19 December 2010
		Multilateral Convention	Signed	1 June 2011

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force
40	France	DTC	9 September 1966	26 July 1967
		Protocol to DTC	27 August 2009	4 November 2010
		Multilateral Convention	Signed	1 April 2012
41	FYROM	DTC	14 April 2000	27 December 2000
42	Gabon	Multilateral Convention	3 July 2014	Not yet in force in Gabon
43	Gambia[a]	DTC		26 August 1963
44	Georgia	DTC	15 June 2010	5 August 2011
		Multilateral Convention	Signed	1 June 2011
45	Germany	DTC	11 August 1971	29 December 1972
		Protocol to DTC	27 October 2010	21 December 2011
		Multilateral Convention	Signed	Not yet in force in Germany
46	Ghana	DTC	23 July 2008	30 December 2009
		Protocol to DTC	22 May 2014	
		Multilateral Convention	Signed	1 September 2013
47	Gibraltar[i]	Multilateral Convention		1 March 2014
48	Greece	DTC	16 June 1983	21 February 1985
		Protocol to DTC	4 November 2010	27 December 2011
		Multilateral Convention	Signed	1 September 2013
49	Greenland[j]	TIEA	7 March 2014	
		Multilateral Convention		1 June 2011
50	Grenada[a]	DTC		26 August 1963
51	Guatemala	Multilateral Convention	Signed	Not yet in force in Guatemala
52	Guernsey[k]	TIEA	11 September 2013	3 November 2014
		Multilateral Convention		14 October 2014
53	Hong Kong, China	DTC	4 October 2010	15 October 2012
54	Hungary	DTC	9 April 1981	27 June 1982
		DTC (new)	12 September 2013	9 November 2014
		Multilateral Convention	Signed	Not yet in force in Hungary

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force
55	Iceland	DTC	3 June 1988	20 June 1989
		DTC (new)	10 July 2014	
		Multilateral Convention	Signed	1 February 2012
56	India	DTC	2 November 1994	29 December 1994
		Protocol to DTC	30 August 2010	7 October 2011
		Multilateral Convention	Signed	1 June 2012
57	Indonesia[l]	DTC	29 August 1988	24 October 1989
		Multilateral Convention	Signed	Not yet in force in Indonesia
58	Iran	DTC	27 October 2002	31 December 2003
59	Ireland	DTC	8 November 1966	16 February 1968
		Protocol to DTC	26 January 2012	14 November 2013
		Multilateral Convention	Signed	1 September 2013
60	Isle of Man[m]	TIEA	28 August 2013	14 October 2014
		Multilateral Convention		1 March 2014
61	Israel	DTC	2 July 2003	22 December 2003
62	Italy	DTC	9 March 1976	27 March 1979
		Multilateral Convention	Signed	1 May 2012
63	Jamaica	DTC	6 December 1994	27 December 1995
64	Japan	DTC	19 January 1971	26 December 1971
		Protocol to DTC	21 May 2010	30 December 2011
		Multilateral Convention	Signed	1 October 2013
65	Jersey[n]	TIEA	16 September 2013	14 October 2014
		Multilateral Convention		1 June 2014
66	Kazakhstan	DTC	21 October 1999	24 November 2000
		Protocol to DTC	3 September 2010	26 February 2014
		Multilateral Convention	Signed	Not yet in force in Kazakhstan
67	Korea	DTC	12 February 1980	22 April 1981
		Protocol to DTC	28 December 2010	25 July 2012
		Multilateral Convention	Signed	1 July 2012
68	Kuwait	DTC	16 February 1999	31 May 2000
69	Kyrgyzstan	DTC	26 January 2001	5 June 2002

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force
70	Latvia	DTC	31 January 2002	18 December 2002
		Multilateral Convention	Signed	1 November 2014
71	Liechtenstein	DTC	22 June 1995	17 December 1996
		Multilateral Convention	Signed	Not yet in force in Liechtenstein
72	Lithuania	DTC	27 May 2002	18 December 2002
		Multilateral Convention	Signed	1 June 2014
73	Luxembourg	DTC	21 January 1993	19 February 1994
		Protocol to DTC	25 August 2009	19 November 2010
		Multilateral Convention	Signed	1 November 2014
74	Malaysia	DTC	30 December 1974	8 January 1976
75	Malawi[o]	DTC		21 September 1961
76	Malta	DTC	25 February 2011	6 July 2012
		Multilateral Convention	Signed	1 September 2013
77	Mexico	DTC	3 August 1993	8 September 1994
		Protocol to DTC	18 September 2009	23 December 2010
		Multilateral Convention	Signed	1 September 2012
78	Moldova	DTC	13 January 1999	22 August 2000
		Multilateral Convention	Signed	1 March 2012
79	Monaco	Multilateral Convention	Signed	Not yet in force in Monaco
80	Mongolia	DTC	20 September 1999	25 June 2002
81	Montenegro	DTC	13 April 2005	10 July 2007
82	Montserrat[p]	DTC		30 September 1954
		Multilateral Convention		1 October 2013
83	Morocco	DTC	31 March 1993	27 July 1995
		Multilateral Convention	Signed	Not yet in force in Morocco
84	Netherlands	DTC	12 November 1951	9 January 1952
		DTC (new)	26 February 2010	9 November 2011
		Multilateral Convention	Signed	1 September 2013

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force
85	New Zealand	DTC	6 June 1980	21 November 1981
		Multilateral Convention	Signed	1 March 2014
86	Nigeria	Multilateral Convention	Signed	Not yet in force in Nigeria
87	Norway	DTC	7 September 1987	2 May 1989
		Protocol to DTC	31 August 2009	22 December 2010
		Multilateral Convention	Signed	1 June 2011
88	Pakistan	DTC	19 July 2005	24 November 2008
89	Peru	DTC	21 September 2012	10 March 2014
90	Philippines	DTC	24 June 1998	30 April 2001
		Multilateral Convention	Signed	Not yet in force in the Philippines
91	Poland	DTC	2 September 1991	25 September 1992
		Protocol to DTC	20 April 2010	17 October 2011
		Multilateral Convention	Signed	1 October 2011
92	Portugal	DTC	26 September 1974	17 December 1975
		Protocol to DTC	25 June 2012	21 October 2013
		Multilateral Convention	Signed	Not yet in force in Portugal
93	Qatar	DTC	24 September 2009	15 December 2010
94	Romania	DTC	25 October 1993	27 December 1994
		Protocol to DTC	28 February 2011	16 July 2012
		Multilateral Convention	Signed	1 November 2014
95	Russia	DTC	15 November 1995	18 April 1997
		Protocol to DTC	24 September 2011	9 November 2012
		Multilateral Convention	Signed	Not yet in force in Russia
96	Saint Kitts and Nevis[a]	DTC		26 August 1963
97	Saint Lucia[a]	DTC		26 August 1963
98	Saint Vincent and the Grenadines[a]	DTC		26 August 1963

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force
99	San Marino	TIEA	16 May 2014	
		Multilateral Convention	Signed	Not yet in force in San Marino
100	Saudi Arabia	Multilateral Convention	Signed	Not yet in force in Saudi Arabia
101	Serbia	DTC	13 April 2005	5 May 2006
102	Seychelles	TIEA	26 May 2014	
103	Singapore	DTC	25 November 1975	17 December 1976
		DTC (new)	24 February 2011	1 August 2012
		Multilateral Convention	Signed	Not yet in force in Singapore
104	Sint Maarten[c]	Multilateral Convention		1 September 2013
105	Slovak Republic	DTC	14 February 1997	23 December 1997
		Protocol to DTC	8 February 2011	8 August 2012
		Multilateral Convention	Signed	1 March 2014
106	Slovenia	DTC	12 June 1996	1 December 1997
		Protocol to DTC	7 September 2012	14 October 2013
		Multilateral Convention	Signed	1 June 2011
107	South Africa	DTC	8 May 2007	27 January 2009
		Multilateral Convention	Signed	1 March 2014
108	Spain	DTC	26 April 1966	2 February 1967
		Protocol to DTC	27 July 2011	24 August 2013
		Multilateral Convention	Signed	1 January 2013
109	Sri Lanka	DTC	11 January 1983	14 September 1984
110	Sweden	DTC	7 May 1965	6 June 1966
		Protocol to DTC	28 February 2011	5 August 2012
		Multilateral Convention	Signed	1 September 2009
111	Chinese Taipei	DTC (private convention)	8 October 2007	13 December 2011
112	Tajikistan	DTC	23 June 2010	26 October 2011
113	Thailand	DTC	12 February 1996	19 December 1996
114	Trinidad and Tobago	DTC	1 February 1973	20 March 1974
115	Tunisia	DTC	10 February 1994	28 April 1995
		Multilateral Convention	Signed	1 February 2014

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force
116	Turkey	DTC	18 June 2010	8 février2012
		Multilateral Convention	Signed	Not yet in force in Turkey
117	Turkmenistan	DTC	8 October 2012	11 December 2013
118	Turks and Caicos Islands[q]	Multilateral Convention		1 December 2013
119	Ukraine	DTC	30 October 2000	22 February 2002
		Multilateral Convention	Signed	1 September 2013
120	United Arab Emirates	DTC	6 October 2011	21 October 2012
121	United Kingdom	DTC	30 September 1954	23 February 1955
		DTC (new)	8 December 1977	7 October 1978
		Protocol to DTC	7 September 2009	15 December 2010 and 134.
		Multilateral Convention	Signed	1 October 2011
122	United States	DTC	2 October 1996	19 December 1997
		Protocol to DTC	23 September 2009	
		Multilateral Convention	Signed	Not yet in force in the United States
123	Uruguay	DTC	18 October 2010	28 December 2011
124	Uzbekistan	DTC	3 April 2002	15 August 2003
		Protocol to DTC	1 July 2014	
125	Venezuela	DTC	20 December 1996	23 December 1997
126	Viet Nam	DTC	6 May 1996	12 October 1997
127	Zambia[r]	DTC		21 September 1961

The text of most DTCs is available on the website of the Switzerland's State Secretariat for International Financial Matters at: https://www.sif.admin.ch/sif/fr/home/themen/internationale-steuerpolitik/doppelbesteuerung-und-amtshilfe.html.

a. Extension of the DTC of 30 September 1954 between United Kingdom and Switzerland by exchange of notes of 20/26 August 1963.

b. Extension of the Multilateral Convention by United Kingdom (receipt by Depositary on 13 November 2013 and entry into force on 1 March 2014).

c. Extension by the Netherlands (receipt by Depositary on 29 May 2013 and entry into force on 1 September 2013).

d. See footnote 31, page 45.

e. Extension by the United Kingdom (receipt by Depositary on 13 November 2013 and entry into force on 1 March 2014).

f. Extension of the DTC of 30 September 1954 between United Kingdom and Switzerland by exchange of notes of20/26 August 1963. Extension of the Multilateral Convention by the United Kingdom (receipt by Depositary on 13 November 2013 and entry into force on 1 March 2014).

g. Extension by United Kingdom (receipt by Depositary on 25 September 2013 and entry into force on 1 January 2014).

h. Extension of the DTC of 23 November 1973 and the Protocol of 21 August 2009 by Denmark (exchange of letter of 20 March 1978 and 29 November 2011).

i. Extension by United Kingdom (receipt by Depositary on 13 November 2013 and entry into force on 1 March 2014).

j. Extension by Denmark (receipt by Depositary on 28 January 2011 and entry into force on 1 June 2011).

k. Extension by United Kingdom (receipt by Depositary on 17 April 2014 and entry into force on 1 August 2014).

l. Indonesia has ratified the Multilateral Convention, it will enter into force in Indonesia on 1 May 2015.

m. Extension by United Kingdom (receipt by Depositary on 21 November 2013 and entry into force on 1 March 2014).

n. Extension by United Kingdom (receipt by Depositary on 17 February 2014 and entry into force on 1 June 2014).

o. Extension of the DTC of 30 September 1954 between United Kingdom and Switzerland by exchange of notes of 7 April/3 May 1965.

p. Extension of the DTC of 30 September 1954 between United Kingdom and Switzerland by exchange of notes of 20/26 August 1963. Extension of the Multilateral Convention by United Kingdom (receipt by Depositary on 25 June 2013 and entry into force on 1 October 2013).

q. Extension by United Kingdom (receipt by Depositary on 20 August 2013 and entry into force on 1 December 2013).

r. Extension of the DTC between United Kingdom and Switzerland by exchange of notes of 14 October 1965.

Annex 4: List of all laws, regulations and other material received

Legislation

Loi fédérale sur l'assistance administrative internationale en matière fiscale, telle que modifiée

For more information

Global Forum on Transparency and Exchange of Information for Tax Purposes

www.oecd.org/tax/transparency

www.eoi-tax.org

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