GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

# Peer Review Report Phase 2 Implementation of the Standard in Practice

## SWITZERLAND

OECD

# Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Switzerland 2016

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

July 2016
(reflecting the legal and regulatory framework
as at May 2016)

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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 130 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.

# Abbreviations

| | |
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| **AFC** | Federal tax administration (*Administration Fédérale des Contributions*) |
| **AML** | Anti-money laundering/counter-financing of terrorism |
| **AMLA** | Federal Law on the Prevention of Money Laundering in the Financial Sector of 10 October 1997 (*Loi fédérale concernant la lutte contre le blanchiment d'argent et le financement du terrorisme, LBA)* |
| **CC** | Civil Code (*Code civil*) |
| **CDB 16** | Swiss banks' code of conduct with regard to the exercise of due diligence 2016 (*Convention relative à l'obligation de diligence des banques 2016*) |
| **CIV** | Collective Investment vehicles |
| **CO** | Commercial Code (*Code des Obligations*) |
| **CP** | Swiss Penal Code (*Code pénal suisse*) |
| **DTC** | Double Tax Convention |
| **EOI** | Exchange of Information |
| **EOI Unit** | Exchange of Information Unit (*le Service d'Échange d'Informations)* |
| **EU** | European Union |
| **FAOA** | Federal Audit Oversight Authority |
| **FINMA** | Federal authority for the supervision of financial markets (*l'autorité fédérale de surveillance des marches financiers)* |
| **FINMASA** | Federal Act on the Swiss Financial Market Supervisory Authority (*Loi sur la surveillance des marchés financiers*, LFINMA) |

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| **LAAF** | Law on international administrative assistance (*Loi fédérale du 28 septembre 2012 sur l'assistance administrative internationale en matière fiscale, telle que modifiée*) |
| **LB** | Banking law (*Loi fédérale sur les banques et les caisses d'épargne*) |
| **LIFD** | Federal direct tax law (*Loi sur l'impôt fédéral direct*) |
| **LHID** | *Loi fédérale sur l'harmonisation des impôts directs des cantons et des communes* |
| **LTI** | *Loi fédérale sur les titres intermédiés (*Federal law on intermediated securities*)* |
| **LTF** | *Loi sur le tribunal fédéral (*Law on the Federal Tribunal*)* |
| **LBVM** | *Loi fédérale sur les bourses et le commerce des valeurs mobilières* (Federal Law on stock exchanges and security trading) |
| **LPCC** | The Swiss Federal Act of 23 June 2006 on Collective Capital Investments (*Loi fédérale du 23 juin 2006 sur les placements collectifs de capitaux*) |
| **MCAA** | Multilateral Competent Authority Agreement |
| **Multilateral Convention** | Convention on Mutual Administrative Assistance in Tax Matters |
| **OACDI** | Ordinance concerning administrative assistance in respect of double tax conventions (*Ordonnance relative à l'assistance administrative d'après les conventions contre les doubles impositions*) |
| **OBA** | *Ordonnance sur le blanchiment d'argent of 11 Novembre 2015* (Anti-Money Laundering Ordinance of 11 November 2015) |
| **OBA-FINMA** | *Ordonnance de la FINMA sur le blanchiment d'argent, 3 juin 2015* (FINMA's Anti-Money Laundering Ordinance of 3 June 2015) |
| **OPCC** | Ordinance of 22 November 2006 on Collective Investments (*Ordonnance du 22 novembre 2006 sur les placements collectifs de capitaux)* |
| **ORC** | Ordinance on the Commercial Registry (*Ordonnance sur le registre du commerce*) |

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| **OSRev** | Ordinance on Accreditation and Oversight of Auditors (*Ordonnance sur l'agrément et la surveillance des réviseurs*) |
| **PA** | Federal Act on Administrative Procedure Act (*Loi fédérale sur la procédure administrative*) |
| **S.à.r.l** | *Société à responsabilité limitée* (limited liability company) |
| **SA** | *Société anonyme (*public limited company) |
| **SC** | *Société en commandite (*limited partnership) |
| **SCA** | *Société en commandite par actions (*partnership limited by shares) |
| **SCPC** | *Société en commandite de placements collectifs (*limited partnership for collective investment) |
| **SEI** | EOI Unit *(Service d'échange d'information)* |
| **SICAF** | *Société d'investissement à capital fixe (*Closed-ended investment company) |
| **SICAV** | *Société d'investissement à capital variable (*open-ended investment company) |
| **SNC** | *Société en nom collectif (*general partnership or unlimited company) |
| **SRO** | *Self-regulating organisation* |
| **SS** | *Société simple (*simple company or simple partnership) |
| **TIEA** | Tax Information Exchange Agreement |
| **ToR** | Terms of Reference |
| **VAT** | Value Added Tax |

# Executive summary

1. This report summarises the legal and regulatory framework for the transparency and exchange of information in Switzerland as well as Switzerland's practice in relation to transparency and exchange of information for tax purposes. 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. Switzerland's approach to exchange of information for tax purposes has changed significantly over the past three years. Having historically adopted a restrictive approach, Switzerland withdrew its reservation to Article 26 of the OECD Model Tax Convention on 13 March 2009. Since then, it has moved rapidly to update its network of Double Tax Conventions (DTCs) having the intention that information may be exchanged, in line with the international standard. Switzerland signed the Multilateral Convention on 15 October 2013. Switzerland has started preparing its secondary legislation and reservations to the Multilateral Convention. These steps are necessary before Switzerland can deposit the instruments of ratification, which is planned for the fall of 2016 at the latest.

3. Under Swiss law, companies, partnerships and foundations can be formed, with *sociétés anonymes* (SA) and *sociétés à responsabilité limitée* (SARL) being the most popular form of corporate vehicle. 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.

4. Reliable ownership information for relevant entities is generally available for Exchange of Information (EOI) purposes, and comments received from peers confirm that ownership information has been provided

in the vast majority of cases where it has been requested. However some issues remain, including in respect of ownership information for bearer shares which can be issued by some types of Swiss companies and also with regard to foreign entities carrying on business or with a permanent establishment in Switzerland. Switzerland has taken steps to address the gap that was identified in respect of bearer shares by creating a new regime to identify the owners of bearer shares and the Swiss authorities believe that in most instances owners of bearer shares issued by non-listed companies are likely to identify themselves with the company as required by the new measures. However, the lack of sufficient incentives and sanctions under the provisions does not ensure that from 1 July 2015 the identity of all holders of shares in unlisted joint-stock companies will be known in all instances. The Phase 1 recommendation on bearer shares is modified. It is now recommended that Switzerland ensure that appropriate reporting mechanisms are in place to effectively ensure the identification of the owners of bearer shares in all cases. In addition, a Phase 2 recommendation for Switzerland to ensure that its system of oversight for SAs and SCAs is effective is made. The rating of element A.1 is found to be Partially Compliant.

5. Switzerland's legal framework ensures the availability of accounting records and underlying documents for all relevant entities for a minimum of ten years. In addition, although a small number of bearer savings books remain in 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. Legal obligations are respected by legal entities in Switzerland, effective enforcement measures and monitoring activities taken by the supervisory bodies have ensured practical availability of the relevant, accounting and banking information; and information is provided when requested. Elements A.2 and A.3 are rated Compliant.

6. Pursuant to the *Loi fédérale sur l'assistance administrative internationale en matière fiscale* (LAAF) which entered into force on 1 February 2013 with subsequent amendments in August 2014, access powers in Switzerland have been revised to reflect its commitment to exchange all foreseeably relevant information in line with the standard. The new law 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 in relation to treaties that have the equivalent of paragraph 5. In practice, Switzerland obtains the requested information from other government authorities or from third parties. During the period under review (July 2012 to June 2015), Switzerland received more than 3 000 EOI requests from more than 50 treaty partners and has used its powers to collect the information requested. However, there

are still 32 agreements not to the standard and a Phase 1 recommendation for Switzerland to ensure that it has access to bank information for requests made pursuant to all agreements remains. Accordingly, element B.1 is rated Largely Compliant.

7. 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 its Constitution. The LAAF provides for a notification of the person concerned by the request and any persons with a right to appeal before the information can be exchanged and a right for the person concerned by the request and any persons with a right to appeal to inspect the file. However, some peers mentioned that they could not obtain information in relation to deceased persons. Switzerland explained that the information on deceased persons cannot be exchanged in all circumstances, because of the impossibility to notify the deceased person or the deceased person's estate. A recommendation for Switzerland to ensure that information about deceased persons can be exchanged in all cases is made and Since July 2014, the LAAF also includes exceptions to these two rights (notification and right to inspect the file). The application of these exceptions in practice was limited. Only six of the 24 requests received since the introduction of these new exceptions included an application for the notification exception, where the requesting party provided a justification for the exception to apply (required under article 21a of the LAAF). A recommendation is made for Switzerland to monitor the application of the exception to notification to ensure the application of the exception is in line with the standard, and element B.2 is rated Largely Compliant.

8. Switzerland is continuing to work to quickly upgrade its information exchange network, and has negotiated several new agreements. However, it remains that EOI agreements that were negotiated prior to 2009 do not allow for exchange of information in line with the standard. Switzerland still has 32 agreements that have not been updated and a Phase 1 recommendation has been issued in this regard and is maintained. Switzerland had a restrictive approach to the concept of foreseeable relevance, which created delays in the treatment of the requests and limited the exchange of information in certain cases. However, this practice has changed towards the end of the review period. Switzerland is recommended to monitor its interpretation of the foreseeable relevance concept to ensure it is in line with the standard. Therefore, element C.1 is rated Largely Compliant.

9. In recent years, 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. Once the Multilateral Convention is in force in Switzerland, Switzerland will have exchange of information

mechanisms with 134 jurisdictions and it continues to negotiate new DTCs and Tax Information Exchange Agreements (TIEAs – see Annex 3). Of these, the arrangements with 102 jurisdictions will meet the standard, and 53 are currently in force. Therefore, element C.2 is rated Compliant.

10. 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. A recent judgment of the federal Court allows the disclosure to any person with a right to appeal who exercises his/her right to see the file, of the file of the person concerned by the request, including the request letter itself. This is not in accordance with the principle that the request letter should be kept confidential as required by the standard. Switzerland is recommended to ensure that it does not exceed the confidentiality requirements as provided for under the international standard. In addition, although Switzerland has indicated that the application of the exception of the right to see the file (including the request letter) would be broadly interpreted, the exception has not yet been applied in practice and this approach is very recent and has not been tested. Switzerland is recommended to monitor its new approach to the application of the exception to the right to see the file (including the request letter) and that the application of the exception are applied effectively in practice. Element C.3 is rated Largely Compliant.

11. Under element C.4, Switzerland's approach regarding the application of the concept of good faith has had a significant impact on EOI in practice. In practice the exception based on good faith came up exclusively in relation to the issue of stolen data. Switzerland refuses EOI based on its understanding of the concept of good faith in all cases where it considers that the requests are solely based on stolen data. In such cases, its policy takes no account of the circumstances in which the requesting jurisdiction came into possession of the information. A recommendation for Switzerland to modify its law and/or practice as appropriate to ensure that it can give effect to the obligations under its EOI mechanisms is made and element C.4 is rated Partially Compliant.

12. Switzerland has improved its organisational processes and resources dedicated to its EOI system to ensure timely responses, and the competent authority staff maintains high professional standards and expertise in relation to EOI. Nevertheless, delays were noted in the EOI process during the period under review. Switzerland is therefore recommended to further improve its resources and streamline its processes for handling EOI requests to ensure that all EOI requests are responded to in a timely manner. Element C.5 is rated Largely Compliant.

13. Switzerland has been assigned a rating for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements

are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Switzerland's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Switzerland has been assigned the following ratings: Compliant for elements A2, A.3 and C.2; Largely Compliant for elements B.1, B.2, C.1, C.3 and C.5; and Partially Compliant for elements A.1, and C.4. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Switzerland is Largely Compliant.

14. A follow up report on the steps undertaken by Switzerland to answer the recommendations made in this report should be provided to the PRG within twelve months after the adoption of this report.

# Introduction

## Information and methodology used for the peer review of Switzerland

15. The assessment of the legal and regulatory framework of Switzerland as well as its practical implementation was based on the international standards for transparency and exchange of information on request as described in the Global Forum's Terms of Reference, and was prepared using the Global Forum's Methodology for Peer Reviews and Non-Member Reviews. The original Phase 1 assessment was based on the laws, regulations and exchange of information mechanisms in force or effect as at March 2011, other materials supplied by Switzerland and information supplied by partner jurisdictions. The Phase 1 report was adopted and published by the Global Forum in June 2011.

16. The Supplementary report, which followed Switzerland's Phase 1 report, was based on the laws, regulations and exchange of information arrangements in force as at December 2014, and information supplied by partner jurisdictions. The Supplementary report was prepared pursuant to paragraph 58 of the Global Forum's methodology and was adopted by the Global Forum in March 2015.

17. The assessment of Switzerland has been conducted in two stages: the 2011 Phase 1 review read with the 2015 Supplementary Phase 1 review provides an assessment of Switzerland's legal and regulatory framework for the exchange of information as at December 2014, while this Phase 2 review assesses the practical implementation of this framework during a three year period (1 July 2012 to 30 June 2015) as well as amendments made to this framework since the Phase 1/Supplementary review, up to 17 May 2016. The following analysis is based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at 17 May 2016 and information supplied by Switzerland and its partner jurisdictions and other relevant sources as well as explanations provided by Switzerland during the on-site visit that took place from 18-22 January 2016. During the on-site visit, the assessment team met a

wide range of officials and representatives of the Ministry of Finances, State Secretary for International Financial Affairs, the federal and two cantonal tax authorities, the federal and two cantonal Commercial Registries as well as the Financial Market Supervisory Authority, amongst others.

18. The Terms of Reference (ToR) breaks 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. This review assesses Switzerland's legal and regulatory framework and its application in practice against these elements and each of the enumerated aspects. In respect of each essential element a determination is made 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 addition, to reflect the Phase 2 component, recommendations are made concerning Switzerland's practical application of each of the essential elements and a rating of either: *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. As outlined in the Note on Assessment Criteria, an overall "rating" is assigned to reflect the jurisdiction's level of compliance with the standards (see the Summary of Determinations and Factors Underlying Recommendations at the end of this report).

19. The Phase 1 assessment was conducted by an assessment team which consisted of two expert assessors: Mr. Juan Pablo Barzola, tax advisor in the International Tax Division of the Argentinean Tax Administration and Mr. Torsten Fensby, Project Manager, Denmark; and one representative of the Global Forum Secretariat: Miss Caroline Malcolm. The Supplementary assessment was conducted by Ms. Shauna Pittman, Counsel, Canada Revenue Agency, Harald Piérard, Advisor, Federal Public Service Finance, Belgium and Ms Mélanie Robert from the Global Forum Secretariat.

20. The Phase 2 assessment was conducted by a team consisting of two assessors and one representative of the Global Forum Secretariat: Advocate Laura de Lisle, Legislative Counsel for the Law Officers of the Crown in Guernsey, and Ms Wendy Roelandt Advisor, Federal Public Service Finance Belgium; and Mélanie Robert for the Global Forum Secretariat. The team evaluated the implementation and effectiveness of Switzerland's legal and regulatory framework for transparency and exchange of information and its relevant information exchange mechanisms.

## Overview of Switzerland[1]

21. 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 (1 CHF equivalent to EUR 0.91 as at 22 February 2016).

22. In 2014, Switzerland had a gross domestic product of 642 billion CHF (or EUR 584 billion), giving a per capita GDP of 77 965 CHF (EUR 70 948), 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 73% of imports and 55% of its exports. Other important trading partners are the United States and the People's Republic of China (China).

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

#### *Legal system*

23. 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 (article 3, 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 or cantons (article 138-139, Cst), or through referendums on motions proposed by the Parliament (article 140-141, Cst).

24. 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

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

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.

25. 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 are sovereign except to the extent that their sovereignty is limited by the federal Constitution (article 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).

26. 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]

27. 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

2. All federal laws are numbered, and are preceded by the acronym RS, meaning "*recueil systematique*"(standardised collection): https://www.admin.ch/gov/fr/accueil/droit-federal/recueil-systematique.html.
3. The Federal Constitution of the Swiss Confederation of 18 April 2009, represents in Swiss the "fundamental law" (https://www.admin.ch/opc/fr/classified-compilation/19995395/201601010000/101.pdf. Laws in the formal sense are acts adopted 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.
4. Heading III, Chapter 1 of the Constitution (articles 42-49, 122 al. 2, 123 al. 2, 128(4))

activities must be registered in the Commercial Registry. Some types of entities may issue bearer shares as well as registered shares.

28. 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.

29. 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 (article 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; or *(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 eight cantons request a referendum 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]

30. After the signature of a DTC – or any other type of Exchange of Information agreement (EOI agreement), 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 agreement to an optional referendum therefore belongs to the Parliament, under the circumstances foreseen by the Constitution. By definition, a DTC or a TIEA contains important provisions that create legal obligations and therefore meets condition (3) described in the paragraph above and is therefore subject to an optional referendum. That

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 eight cantons can request a referendum.

means that either 50 000 citizens or eight cantons will have the opportunity within 100 days to request a referendum to be held. If none of the conditions described above 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 signed by Switzerland so far which are in line with the OECD standard have ever been subject to a referendum.

31. 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 (article 83 let. h LTF *Loi sur le tribunal fédéral*, RS 173.110). However, according to article 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.

### *Taxation system*

32. 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 (article 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 Confederations 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 Harmonization of the Direct Taxes of Cantons and Communes – LHID).

33. 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 12.3% to 24.2% based on 2014. 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, particularly with those elaborated under the OECD Base Erosion and Profit Shifting (BEPS) project. The aim of this 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 are no longer in line with international standards. These primarily include the cantonal tax statuses for holding, domiciliary and mixed companies. 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.

34. Individuals are subject to taxes on income and net wealth. A Swiss resident is a person who resides in Switzerland with the intention of settling (article 23(1) of the Swiss Civil Code and article 3(1) of the Federal Direct Tax Law).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 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. Since 2016, the deemed taxable income is at minimum equivalent to seven

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 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 multipliers 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.

times the rental expense or CHF 400 000 (EUR 364 000) (depending on the higher of these two amounts) is introduced for the direct federal tax. The concerned cantons also have to introduce their own thresholds. Over the last six years, five cantons have abolished the special lump sum tax regime.

35. 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.

36. 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.

37. In addition to taxes on income and wealth, Switzerland has had a VAT since 1995. The standard rate is 8% with a reduced rate of 2.8% 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.

38. Switzerland has a wide network of DTCs, and its competent authority for 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 once the Multilateral Convention is in force, Switzerland will have exchange of information mechanisms with 134 jurisdictions and it continues to negotiate new DTCs and TIEAs (see Annex 3). Of these, the arrangements with 102 will meet the standard and 53 are currently in force.

*Overview of the financial services industry and relevant professions*

39. The financial services industry is a key pillar in Switzerland's economy both in terms of jobs (5.9 %) and wealth creation (9.5 % 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 2014, the total securities holdings in client accounts in the banking sector was 5 565 billion CHF (or EUR 5 064 billion), making it one of the most important international financial centres in the world.

40. Although the banking sector consists of 275 different Swiss and foreign institutions (in 2014, 91 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.

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

42. 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").

43. 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.

44. 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 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 UN, WTO, and the International Committee of the Red Cross.

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

45. 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. FINMA is tasked, among other things, with the implementation of an effective anti-money laundering countering the financing of terrorism (AML/CFT) regime.[8] 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)[9] sets out measures to combat money laundering and terrorist financing as defined in the Swiss Penal Code. The AMLA applies to all persons deemed to be "financial intermediaries" under its article 2, including:

- banks as defined under the federal Bank Act;[10]
- 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'invetissement à capital fixe (SICAFs), sociétés 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 pursue 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.

8. The three former supervisory authorities in this area were the Federal Bank Commission, the Federal Office of Private Insurance and the Anti-money laundering Control Authority. These three authorities merged on 1 January 2009, forming FINMA pursuant to the Federal Act on the Swiss Financial Market Supervisory Authority (FINMASA).
9. *Loi sur le blanchiment d'argent*, AMLA. The AMLA and other legal texts have recently been modified to take account of the recommendations made by the Financial Action Task Force (FATF). The modifications entered into force on 1 July 2015 and on 1 January 2016.
10. *Loi fédérale du 8 novembre 1934 sur les banques et les caisses d'épargne* (*Loi sur les banques*, LB)

46. In addition, an inclusive definition of persons deemed to be a financial intermediary is set out in article 2(3) AMLA, 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,[11] commodities, or securities as well as their derivatives. Other activities considered to be activities of financial intermediaries are described in article 6 of the *Ordonnance sur le blanchiment d'argent* of 11 Novembre 2015 (Anti-Money Laundering Ordinance – OBA). In particular, this includes a person carrying out the activities as a body of a domiciliary company ("*société de domicile*"). Entities considered as domiciliary companies include: legal persons, companies, institutions, 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)).

47. A financial intermediary acts in a "professional capacity" if, during the calendar year (article7, OBA): he generates gross profits of more than CHF 50 000 (EUR 45 500); or establishes or maintains business relationships with more than 20 clients, or has indefinite power of attorney over third-party assets worth more than CHF 5 million (EUR 4.5 million); or engages in transactions with a total value in excess of CHF 2 million (EUR 1.82 million).

48. Certain financial intermediaries are regulated directly by FINMA (such as the banking insurance and collective investments scheme 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 (article18, AMLA).

## Recent developments

49. Following its statement on automatic exchange of information at the October 2014 plenary of the Global Forum held at Berlin 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 Multilateral Competent Authority Agreement (MCAA), joining the 51 jurisdictions that had already done so at Berlin at the sidelines of the Global Forum plenary. In addition, on 14 January 2015, the federal Council launched two consultation procedures. The first one concerns the ratification of the Convention on Mutual Administrative Assistance in Tax Matters, as

11. Which includes banknotes, coins, money market instruments, foreign exchange and precious metals.

amended (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 two draft pieces of legislation were approved by the Swiss Parliament on 18 December 2015. Following the publication of the approval of the Multilateral Convention and its accompanying laws in the federal gazette, the Swiss have had time to collect signatures to launch a referendum. The expiration date for the referendum was 9 April 2016. No referendum was launched against the ratification of the Multilateral Convention. Since the expiration of the date for a referendum, Switzerland has started preparing its secondary legislation and reservations to the Multilateral Convention. These steps are necessary before Switzerland can deposit the instruments of ratification, which is planned for the fall of 2016 at the latest.

50. Switzerland indicated that on 10 June 2016, the Swiss government adopted the dispatch on amending the Tax Administrative Assistance Act for the attention of Parliament. The draft bill aims to enable Switzerland to exchange information for requests based on stolen data when the information was received by the requesting jurisdictions by regular means, such as receiving it under an exchange of information instrument from another EOI partner jurisdiction. The draft bill should be presented to Parliament before the end of 2016. Switzerland is also working on another draft bill with a package of measures that should improve the tax legislation. It includes the introduction of a patent box regime that Switzerland intends to be in accordance with OECD principles, increased deductions for research and development costs as well as comprehensive rules for the disclosure of hidden reserves. The draft bill is expected to be passed by the Swiss Parliament in the summer of 2016. The reform is planned to become effective as of 2019 provided that a referendum is not being called against it.

# Compliance with the Standards

## A. Availability of information

### Overview

51. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If the information is not kept or it is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report assesses the adequacy of Switzerland's legal and regulatory framework on availability of information and its implementation in practice.

52. In Switzerland, all entities including foreign-incorporate entities, which are carrying on commercial activities in Switzerland, are required to register in the Commercial Registry. The legal and regulatory framework governing the Commercial Registry establishes many of the relevant ownership and accounting obligations under Swiss law. However for foreign entities, these requirements do not clearly require that ownership information is kept, and certain types of Swiss companies may still issue bearer shares. For SAs and SCAs, the requirement is with the register of shares kept by the company itself. During the period under review, Switzerland has not addressed its Phase 1 recommendation to ensure that ownership and identity information for foreign companies is available in all circumstances, therefore this recommendation remains. With regard to bearer shares, Switzerland

introduced new provisions to identify the holders of bearer shares. However, the mechanisms to identify such holders of bearer shares may not be sufficient as the lack of sufficient incentives and sanctions do not ensure that the identity of all holders will be known in all instances. The Phase 1 recommendation is therefore modified for Switzerland to ensure that appropriate reporting mechanisms are in place to effectively ensure the identification of the owners of bearer shares in all cases. In addition, a Phase 2 recommendation for Switzerland to ensure that its system of oversight for SAs and SCAs is effective is made.

53. In respect of trusts, Switzerland is a signatory to the Hague Convention on trusts and it is incorporated into the Swiss international private law. Thus, whilst trusts may not be created under Swiss law, trustees resident in Switzerland will be subject to the laws of the jurisdiction which governs the trust, and for trustees there are additional identity information obligations established by Swiss tax and anti-money laundering laws.

54. Overall, Switzerland has a network of intersecting laws to ensure, in most instances, the availability of ownership and identity information relating to relevant companies, partnerships, trusts and foundations. These obligations arise from laws and ordinances including the civil code, commercial code, tax laws, and the AML/CFT regime. In practice, the source of up-to-date ownership information is with the company (register of shareholders) for SAs and SCAs and both with the legal entity and with the Commercial Registry for SARL and partnerships. In addition, ownership information for trusts is available with the professional trustee while information on foundations is available with the supervisory authority. These obligations are supervised at various levels, including by the external auditors, the tax authorities and the AML supervisory authorities. However, for SAs and SCAs, the supervision of the obligation to maintain a register of shares and the effectiveness of the enforcement provisions should be improved as there are currently no clear penalties to maintain a register of shares.

55. Similar to ownership information, obligations to maintain relevant accounting records stem from a number of different laws. In sum, this legal framework ensures accounting records will be kept for a minimum of ten year period for all relevant entities and arrangements. The obligation to keep accounting records, including underlying documents, is verified by the tax authorities. Switzerland's laws ensure the availability of banking information in respect of all account holders. Practical availability of banking information is supervised by FINMA. Supervisory measures taken ensure that banking information in line with the standard is available in Switzerland.

56. During the period under review, Switzerland received more than 500 EOI requests for ownership and identity information, 320 requests for accounting information and 1 974 requests for banking information. Most

requests were in relation to more than one type of information. Switzerland confirmed that the information was available in the vast majority of the cases (except for bearer shares and legal entities that no longer existed (liquidation of the company for absence of valid address, activity and non-fulfilment of its obligations), which happened in less than five cases).

57. Overall, ownership, accounting and bank information is in practice available in Switzerland as confirmed in exchange of information and by peer input. Effective enforcement measures and monitoring activities are taken by the supervisory bodies to ensure availability of information. Three recommendations are made under elements A.1 (foreign companies, bearer shares and system of oversight) and therefore the element is rated Partially Compliant. There are no recommendations made for elements A.2 and A.3 which are both rated Compliant.

## 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.

58. Swiss law distinguishes between "*sociétés de personnes*" (*entreprise individuelle, société en commandite et société en nom collectif*) and "*sociétés de capitaux*" (for example, *sociétés anonymes and sociétés à responsabilité limitée*). The most important and popular form of legal entity in Switzerland is the *Société anonyme* (SA), followed by the *société à responsabilité limité* (SARL).

59. All entities (including foreign-incorporate entities operating in Switzerland) who are carrying on commercial activities in Switzerland, are required to register in the Commercial Registry: article 52(1), CC (Civil Code); article 934 (1), CO (Commercial Code). These commercial entities and arrangements only become separate legal entities once they are entered into the Commercial Registry. There is no requirement to register for public (i.e. state-owned) entities. Where information is required to be registered in the Commercial Registry, any changes to the registered information must be notified to the Registry (article 937, CO and article 27, ORC – Ordinance on the Commercial Registry).

60. The Commercial Registry is regulated under federal law (CO, CC, and the ORC) and a federal registry is maintained by the federal Commercial Registry Office with many of the records available online through the Zefix database. However, separate registers are in fact maintained at the cantonal or district[12] level with each entity required to register in the canton in which their registered office is located or the relevant business is carried out.

12. In the 26 cantons, there are some 28 commercial register offices in total.

### ***Companies*** *(ToR A.1.1)*

61. Under Swiss law, the following types of "companies" may be created:

- *société anonyme* – SA
- *société à responsabilité limité* – SARL
- *société en commandite par actions* – SCA
- investment companies**:** The Swiss federal Act of 23 June 2006 on Collective Capital Investments (LPCC – *Loi fédérale du 23 juin 2006 sur les placements collectifs de capitaux*) regulates three forms of legal entities for collective investment funds:
  - *société d'investissement à capital variable* – SICAV
  - *société d'investissement à capital fixe* – SICAF
  - *société en commandite de placements collectifs* – SCPC[13] : governed by the same law as SICAVs and SICAFs.

#### *Société Anonyme (SA)*

62. The SA is a separate legal entity from its members, with its capital (minimum CHF 100 000 or EUR 91 000) subdivided into shares and each owner's liability limited to their contribution. At least one person authorised to represent the company (a board member or manager) must have his domicile in Switzerland. Shares may be issued in either bearer or nominal form (article 622, al. 1, CO). An SA must be registered in the Commercial Registry, providing their articles of incorporation including the name and address of the founding shareholders or their representatives, as well as the names of the directors. There is no requirement to advise the Commercial Registry of changes to the original, founding shareholders.

63. However, in respect of nominal shares, each SA must maintain a register of those shareholders which includes the name and address of the legal owner of the share, and any person holding a beneficial interest in the share (article 686(1), CO). In respect of bearer shares, see section A.1.2 below. Both nominative and bearer shares issued by an SA (article 622, CO) may be held as "intermediated securities" (*titres intermediés*), that is, where the security is held by a financial intermediary and this scenario is discussed further below. As of 1 January 2016, there were 209 228 SAs registered in Switzerland.

13. As they are governed by the same law as SICAVs and SICAFs, SCPCs are dealt with under the "companies" section of this report, although they may be more accurately categorised as a form of partnership.

### *Société à responsabilité limitée (SARL)*

64. After the SA, the SARL is the most common legal form of businesses in Switzerland. It is a separate legal entity which must be created by one or more individuals or legal persons (article 772, CO). Members are referred to as partners ("*associé"*). The minimum share capital of a SARL is CHF 20 000 (EUR 18 200) and each owner's liability is in principle limited to their contribution (article 795, CO). At least one person employed in a body of the SARL (e.g. a manager) must be domiciled in Switzerland, and there is no board of directors. A SARL must be registered in the Commercial Registry, providing information including its articles of incorporation including the name, address and nationality of all founding members as well as the number and nominal value of the share ("*part sociale"* similar to a share[14]) held by each members (article 73(1), ORC). A SARL may not issue bearer shares, and must register all transfers of shares in the Commercial Registry (article 82(1), ORC).

65. In addition, each SARL must maintain a register of members (article 790(1), CO) indicating the name and address of each member and the number, value and category of interest held. The register also contains the names and addresses of usufructuaries and any charge creditors of the SARL. In addition, each SARL must provide up-to-date information on its members to the Commercial Registry indicating the name, domicile and place of origin (nationality in respect of non-Swiss members), as well as their ownership interest in the company (articles 73(1), 119, ORC; article 937, CO). A total of 169 249 SARLs were registered in Switzerland on 1 January 2016.

### *Société en commandite par actions (SCA)*

66. An SCA is an entity limited by shares, which combines the characteristics of both the limited company (SA) and the limited partnership (SC). An SCA has a separate legal personality from its members, however, one or more of its members must have unlimited liability for the company's debts (article 764 (1) CO). An SCA must be registered in the Commercial Registry and provide its articles of incorporation containing information on its founding members or their representatives, as well as the name and address of members with unlimited liability. There is no requirement to provide identity or ownership information on "passive" members ("*commanditaires*"), being those with limited liability.

67. The rules relating to an SA, including the requirement to maintain a register of shareholders, apply to a SCA *mutatis mutandis* (article 764(2), CO) as well as the ability hold nominative or bearer shares (article 622, CO) as

14. A "*part social*" is similar to a share, but the term refers specifically to shares which may not be freely traded on an organised stock market.

"intermediated securities" (*titres intermediés*). However where an SCA's capital is divided into parts which do not take the form of shares but which are created uniquely to determine the ownership proportions between members (i.e. are more similar to a partner's share in a partnership), then the rules of an SC apply (article 764(3), CO). In that case, each member is responsible for ensuring the SCA is registered in the Commercial Registry (article 594(3), CO), which include an up-to-date list of each of the partners (articles 41(2)(f) and (g), ORC). There were nine SCAs registered in Switzerland on 1 January 2016.

### Investment Companies

68. The LPCC governs collective investment vehicles (CIVs) regardless of their legal form (article 2(1), LPCC).[15] It requires that whoever administers collective investments must be authorised by FINMA.[16] In addition to the types of entities identified elsewhere in this report, a CIV may take the form of a SICAV, SICAF or SCPC whose formation is specifically provided for in the LPCC.[17] These three types of CIVs are all directly subject to the requirements of the AML regime (article 2(b$^{bis}$) of the federal Law on the Prevention of Money Laundering in the Financial Sector of 10 October 1997 (*Loi fédérale concernant la lutte contre le blanchiment d'argent et le financement du terrorisme – Loi sur le blanchiment d'argent – AML*). Whilst CIVs in other legal forms (such as SAs or SCAs) are not directly subject to the AML regime, a person who is a financial intermediary acting in a professional capacity who carries on a business of asset management, making investments, or holding or managing securities is subject to the AML regime (articles 2(3)(e-g), AMLA).

#### *(i) Société d'investissement à capital variable (SICAV)*

69. A SICAV is an open-ended (i.e. share capital not fixed) collective investment company which may issue new shares at any time, and shareholders may redeem their shares. Shareholders may be either "entrepreneurial shareholders" or "investor shareholders" (investors): article 36, LPCC[18]. As an

15. A collective investment vehicle which is in the form of an SA is limited to qualified investors, issues only nominative shares and an audit company regulated by FINMA annually declares that these conditions are met, is exempt from the LPCC requirements (article 2(3), LPCC).
16. Article 13, LPCC. Persons who must be authorised include, amongst others, the managing body of the CIV; SICAVs, SICAFs and SCPCs in their own right; and the wealth manager for Swiss CIVs.
17. For SICAVs, see article 36; SICAFs, article 110; and SCPCs, article 98 of the LPCC.
18. Article 41 of the LPCC defines the rights and obligations of entrepreneurial shareholders. Article 10 does the same for a "qualified investor" whilst Section 3

investment vehicle, it is the entrepreneurial shareholders who contribute capital to establish the entity (minimum capital of CHF 500 000, or EUR 455 000, to establish a self-managed SICAV or an externally managed SICAV that delegates administration to an authorised fund management company and portfolio management to another asset manager of collective investment schemes pursuant to article 54(1) of the Ordinance of 22 November 2006 on Collective Investments (*ordonnance du 22 novembre 2006 sur les placements collectifs de capitaux* – OPCC. The amount is CHF 250 000 (EUR 227 500) for a SICAV with the same authorised external investment management pursuant to article 54(2), whilst investor shares are comparable to units in an investment trust fund. A SICAV is treated as transparent for Swiss tax purposes and taxation is applied exclusively and directly to the investors. The minimum capital upon formation is CHF 500 000 (EUR 455 000) which is paid by the entrepreneurial shareholders. The SICAV may issue "investor shares" to the investor shareholders against payment of capital contributions.

70. The rules regarding the establishment of an SA apply to a SICAV. Accordingly, it must be registered in the Commercial Registry, and provide its articles of incorporation including the name and address of its founding members or their representatives, although as with SAs, there is no requirement to notify of later changes to members.[19] However, a SICAV is required to maintain an up to date register containing the name and address of each entrepreneurial shareholder and of each investor nominative shareholder. This will not include identity information relating to owners of bearer shares where the SICAV is in the form of an SA or SCA. As of 31 December 2015, there were 12 SICAVs registered in Switzerland. The assets under management of the authorised SICAVs amounted to CHF 2.6 billion (EUR 2.3 billion) at the end of 2015.

### (ii) Société d'investissement à capital fixe (SICAF)

71. A SICAF is a closed-ended (i.e. share capital is fixed) investment company (artcle110, LPCC), and the laws applicable to an SA apply to a SICAF in the absence of any contrary requirements in the LPCC (article 112, LPCC). Accordingly, the SICAF must be registered in the Commercial Registry, providing its articles of incorporation including the names and

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of the LPCC (article 78 and following) covers the rights and obligations of investors (which for non-listed companies, may be limited to "qualified" investors: article 40, with a "qualified investor" defined in article 10(3)). The shares of an entrepreneurial shareholder must be held nominatively (article 40).

19. Further, article 42 of the LPCC specifically provides that following the issue of new shares or re-purchase of shares, no notification to the inscription in the Commercial Registry is required.

addresses of its founding shareholders, or their representatives. In addition, a SICAF must maintain an up to date register of nominative shareholders[20] including their names and addresses. This will not include identity information relating to owners of bearer shares where the SICAF is in the form of an SA or SCA. The SICAF, unlike the SICAV, is not taxed on a pass-through basis but is subject to income tax as a separate entity in its own right and it is not divided into entrepreneurial and investor shareholders. There were no SICAF registered in Switzerland on 31 December 2015.

### (iii) Société en commandite de placements collectifs (SCPC)

72. An SCPC is a legal form used predominantly for providing risk capital and may only have limited partners, "*commanditaires",* who are "qualified investors"[21] (article 98(3), LPCC). There must be at least one partner of the SCPC with unlimited liability, and all partners with unlimited liability must be Swiss SAs. The rules in the Commercial Code applicable to SCs apply to SCPCs, unless there is an express provision to the contrary in the LPCC (article 99, LPCC). Accordingly, an SCPC must be registered in the Commercial Registry (article100, LPCC), providing information including the partnership agreement (articles 98 and 99, ORC), which contains the name and address of each partner with unlimited liability and sets requirements regarding the keeping of the register of the limited partners (articles 102 (1)(c) and (g), LPCC). There is an obligation for the SCPC to keep a register of partners, including the limited partners, in line with the rules applicable to SCs generally. There were 18 SCPC registered in Switzerland on 31 December 2015.

### Publicly listed companies

73. A shareholder in a company whose shares, or a portion thereof, are listed on the Swiss stock exchange must, separately (i.e. separate from any obligations relating to the Commercial Registry) declare to the company and stock exchange certain changes in share holdings[22]. This information must be published by the company (article 124, LBVM and if the company suspects that the shareholder has not complied with this obligation, it must be reported to FINMA (article 122 LBVM).

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20. For SICAFs, there is no division of shareholders into entrepreneurial shareholders, and investor shareholders.
21. "Qualified investor" defined in article 10(3), LPCC.
22. Being changes where the holding exceeds or is reduced below the thresholds of 3, 5, 10, 15, 20, 25, 33⅓, 50 or 66 %.

### Domiciliary companies

74. Domiciliary companies ("*société de domicile*") is a term that refers to an entity which has only limited, "administrative", activities in Switzerland (i.e. does not exercise commercial activities in Switzerland) and may only earn foreign income.[23] Customarily, they are used for the benefit of foreign companies. Entities considered as domiciliary companies include: legal persons, companies, foundations, trusts, fiduciary enterprises and similar arrangements which are not exercising a trade or manufacturing activity (article 6(2), OBA-FINMA).They will be subject to the ownership and identity requirements applicable to their legal form under Swiss law. All legal entities with their headquarter or effective management in Switzerland have to file a tax return, including domiciliary companies.

75. In addition, the managing body of a domiciliary company is considered a financial intermediary and therefore is subject to the AML regime's requirements (Federal Law on the Prevention of Money Laundering in the Financial Sector of 10 October 1997 (*Loi fédérale concernant la lutte contre le blanchiment d'argent et le financement du terrorisme* – AMLA) and article 6(1)(d) OBA). Since 1 January 2016, article 4(1) AMLA requires that a financial intermediary identifies the beneficial owner. Therefore, when the client of a financial intermediary is a domiciliary company, the financial intermediary must request a written declaration identifying the beneficial owner, which forces the financial intermediary to identify the individual controlling the domiciliary company (article 4(2)(b) AMLA). Moreover, domiciliary companies are considered to be entities with a higher risk (article 13(2)(h) of the *Ordonnance de la FINMA sur le blanchiment d'argent, 3 June 2015* – OBA-FINMA) for which additional enhanced due diligence is required including information on the source of funds and their intended use (article 15 OBA-FINMA). In addition, a domiciliary company will also be subject to the ownership information requirements of the federal tax law although in the case of a foreign entity or where bearer shares are issued, this does not include an obligation to disclose all relevant ownership information.

76. Therefore, for domiciliary companies, the overlap of Commercial Registry, AML regime and tax law requirements means that ownership information will be available for companies incorporated under Swiss law. With regard to bearer shares, a new regime was introduced, see section A.1.2 below.

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23. It is noted that whether an entity is merely managing wealth or is carrying out commercial activity is a question of fact which must be considered on a case to case basis. Guidance on the relevant factors is set out in article 6(2) of the Ordinance on the activity as financial intermediary carried out on a professional basis and the FINMA-Circular 11/1, marg. 103-109.

### In practice

77. All entities which are carrying on commercial activities in Switzerland are required to register with the Commercial Registry. Legal entities (including domiciliary companies) which are required to register, only obtain legal personality upon their registration with the Commercial Registry.

78. The registration must be done at the cantonal Commercial Registry where the registered office is located or the relevant business is carried out. Upon registration, the authorised person (designated by the board, for legal entities) or the individual for an individual enterprise, must identify itself (with a passport or an identity card) and must sign. The copy of the identification document and the signature are kept by the cantonal Commercial Registry. Other documents needed for the registration are the articles of incorporation, including the name, address and nationality of all founding members.

79. The verification of the documents is always done at two levels. First, the cantonal Commercial Registry who receives the application to register (or the modification) verifies that all required documents are provided and are in accordance with the law. Then the file is sent to the federal Commercial Registry who does a second level verification. The federal Commercial Registry does a quality control on inscriptions/modifications sent by cantonal Commercial Registries, by verifying that the documents are complete, they are in accordance with the law, etc. All registrations are verified by the two levels (cantonal and federal).

80. Each cantonal Commercial Registry maintains all documents in relation to registration (inscription and modification) that is done in its canton. The information maintained by each canton is publicly available and free. The federal Commercial Registry maintains an online central database of all registrations from each canton, with a link to the information available in the appropriate canton. The federal Commercial Registry is available online at www.Zefix.ch.

81. The federal Commercial Registry also has a supervisory duty over the cantons. They perform regular inspection of each canton's Commercial Registry whereby they verify a consistent practice by cantonal registries followed by a report and recommendations. The federal Commercial Registry performs inspections of three or four cantonal Commercial Registry per year.

82. All registered entities have an obligation to inform the cantonal Commercial Registry of any changes in the information provided to the Commercial Registry (except for SAs and SCAs in relation to changes to shareholders – see below). As for the inscription, the authorised person must identify itself and sign the form when a modification is made. The copy

of the identification documents and the signature are kept by the cantonal Commercial Registry. As for the inscription, any changes made to the information in the cantonal Commercial Registry must be verified both at the cantonal level and then at the federal level. The cantonal Commercial Registry must maintain all documents provided in support of the changes. The documents are available to the public (but there are exceptions such as copies of identity cards). SARLs must report any transfers of shares, but SA and SCA are not legally required to report the changes of shareholders to the Commercial Registry.

83. Switzerland considers that inscription and modifications are generally made to the Commercial Registry as the information will not be legally valid and will not have any legal impact if it is not registered. A failure to register or failure to update the information in the cantonal Commercial Registry is generally communicated by other authorities such as the VAT and the tax authorities (federal or cantonal). In addition, the Business Directory of Geneva transmits between 700 and 800 information about changes each year to the Geneva cantonal Registry alone.

84. The Commercial Registries always keep a public record of all of the entries that are made in the Registry, even after an entry has been changed. For example, if a person becomes director then this is recorded and if he retires then this fact is also recorded along with the information concerning the replacement. This includes changes in location, capital, business objectives, so that the life of the entity can be viewed on the site of the federal Commercial Registry.

85. If an enterprise begins its commercial activities without being registered with the cantonal Commercial Registry, a letter will be sent requiring the inscription within 30 days and a fine of CHF 500 is applicable (EUR 455). The same fine of CHF 500 (EUR 455) is applicable if a modification is not reported. Entities that carry out a commercial activity without being registered with the Commercial Registry also commit a criminal offence and face imprisonment (article 153 of the Swiss Criminal Code – CP). During the period 2012-14, 18 criminal sanctions have been applied for entities carrying out commercial activity without being registered. Other sanctions are applicable (fines or dissolution, or both) in case the address is not updated, there is a problem with the organisation of the company or the entity does not have any assets or activities. If false information is provided to the Commercial Registry or the information that has to be registered is not provided, it can be punished by criminal penalties, including fines and imprisonment (up to three years). For the period 2014-15 there have been approximately 3 400 cases for problem with the organisation of the company, and 2 900 cases because the address is no longer valid or the entity does not have any assets or activities which led to a dissolution/liquidation of the company.

86. All companies are required by law to maintain and update a register of shares (for bearer shares, see section A.1.2 below). Registers of shares kept by legal entities are available to the tax authorities as they can be verified by the cantonal tax authorities during tax audits. In addition, the external auditors systematically verify the register of share during their annual audit as this is part of the audit programme (although some small companies are exempted from audited financial statements). In practice, during the period under review, Switzerland received 466 requests about information on ownership and identity information of companies. Switzerland's authorities have confirmed that the requested information on identity and ownership of companies is always available and provided when requested which was also confirmed by peers, except for the cases mentioned below (some cases of bearer shares see section A.1.2).

### Foreign-incorporated entities (including foreign companies)

87. A foreign-incorporated entity or arrangement, including a foreign company, that transfers its headquarters (article 161, IPL, as well as articles 126 and 146, ORC), or has a branch (article 935(2) CO; and article113 ORC) in Switzerland, must be registered in the Commercial Registry. Such a foreign entity will need to file information including an official excerpt from the Commercial Registry from the jurisdiction in which it is registered as well as an official copy of the statutes of the company (articles 113(1)(a) and (b), ORC), which may contain the name of the owners of the foreign entity. However, there is no express requirement for information relating to the ownership of the foreign entity to be included. Once a foreign entity or arrangement carries out business or earns income in Switzerland, it has a permanent establishment in Switzerland pursuant to Swiss tax law. The tax law obligations will apply to foreign entities where they have an economic link to Switzerland but similarly this does not include an obligation to disclose all relevant ownership information. There were 3 912 foreign companies registered in Switzerland on 1 January 2016.

88. In sum therefore, a foreign incorporated company which has its effective management in Switzerland that gives rise to a permanent establishment, is not subject to comprehensive requirements to maintain all relevant ownership information.

89. A Phase 1 recommendation for Switzerland to ensure that ownership and identity information is available for companies incorporated outside Switzerland but having their effective management in Switzerland was made in 2011. Switzerland has not modified its legislation and therefore, has not addressed this recommendation. However, during the period under review, Switzerland has received more than 3 000 EOI requests, of which 726 concerned foreign companies. This number includes not only foreign

companies as defined by the ToR but also foreign entities that don't have a sufficient nexus with Switzerland. Of this number, approximately 20 requests were in relation to identity or ownership information of foreign companies. Switzerland has confirmed that the information was available and provided in all cases and no comments from peers were made on foreign companies.

### *Nominees*

90. Under Swiss law, the nominee relationship has a contractual basis under which the nominee must manage the affairs of the beneficiary in the manner agreed in the contract. Whilst there is no requirement for the nominee contract to be in writing, Switzerland advises that in practice, the contract is in writing. In the case where the contract was in writing, it would include the names of the contracting parties.[24]

91. Further, in order to avoid tax obligations in respect of the assets, the binding circular issued by the AFC, Notice on Fiduciary Relationships[25] is clear that to establish the proper attribution of assets to a third person, the name and address of the person for whom the nominee acts must be mentioned in the nominee contract which must be in writing.

92. Nominees are not subject to obligations under Swiss anti-money laundering laws. However once the nominee meets the conditions of article 2(3) AMLA, due to for example maintaining possession of the share certificates or acting on behalf of the shareholder in the management of the company in a professional capacity[26] (article 2(3)(g), AMLA), the nominee becomes a financial intermediary and is subject to the AML regime. This will include the ownership and identity information requirements. This means that where a person is acting merely as a nominee, even in a professional capacity, he is not subject to any express obligation to keep identity or ownership information on the person for whom he acts. Where they carry out other regulated financial services in a professional capacity for their clients, nominees will be considered as financial intermediaries subject to AML requirements.

93. A type of fiduciary relationship is the *treuhand*, which is a relationship based on contract law, under which one person agrees to hold the legal title to assets for the economic benefit of another person. The legal and

24. In addition, all nominee relationships are subject to the obligations set out in section 13 CO (article 394 and following) although there are no express requirements therein to know the identity of the person for whom they act.
25. AFC Notice on fiduciary relationships, dated October 1967.
26. Article 7 of OBA details the criteria for a financial intermediary to be considered acting as a professional capacity.

regulatory framework described above for nominees, will also apply to *treuhand* relationships.

94. In sum therefore, in most cases the nominee contract will be in writing, and further, as a matter of practice, the nominee will know the person for whom he acts (in order, for instance, to be able to take instructions from them). In addition, to avoid tax obligations in respect of the assets, the nominee must be able to produce a contract which includes the name and address of the person for whom they act. Finally, Switzerland has advised that most professional nominees are also carrying out additional financial activities for the client such as holding the share certificates, and as a result will be subject to the AML regime which meets the identity information requirements of the standard. Only a limited number of nominees would fall outside the sum of these obligations.

95. Distinct but similar to a nominee relationship are the rules governing "intermediated securities" (*titres intermediés*), which may be issued by SAs or SCAs (article 622(1), CO), and which are governed by the *Loi fédérale du 3 octobre 2008 sur les titres intermédiés*). Intermediated securities, which may be either nominative or to bearer, are securities which are deposited by the titleholder to the credit of an account managed by a depository (i.e. agent) in the name of the titleholder (article 3, LTI) on behalf of the titleholder (*titulaire*). The titleholder of an account is defined as the person in whose name the depositor maintains the account.

96. Moreover, only certain types of persons may act as custodians in respect of intermediated securities (article 4(2), LTI, which include:

- banks;
- securities traders; and
- investment fund managers, to the extent that they hold share accounts for clients.

97. In general, custodians will be subject to the AML regime's obligations to maintain customer identity information.[27]

98. In practice, the majority of person acting as nominees (which may include lawyers, accountants, notaries and company service providers) usually hold the power of attorney over their clients' assets, for example as the management body of a domiciliary company, and as such are considered as financial intermediaries subject to the AML obligations. Lawyers/notaries

27. Depositories may also include the Swiss National Bank which is not subject to Switzerland's AML regime. The accounts of the Swiss National Bank are open only to other banks, to the Federal Government and cantonal administrations, to certain state-owned entities and to the bank's own employees.

that carry out financial intermediary activities subject to the AMLA may not invoke the exception under article 9(2) AMLA. In fact, the professional secrecy of lawyers and notaries does not extend to financial intermediary and other commercial activities as was confirmed by a decision of the Federal Tribunal.

99. According to the Swiss authorities, non-professional nominees or professional nominees that would act merely as a nominee without performing any other activities and thus would not qualify as financial intermediaries under the AMLA are rare and the potential gap is very limited in practice. Within FINMA's Enforcement Division, an investigation unit called "activities carried out without right" proactively identifies persons, including lawyers, engaged in financial intermediation activities without being authorised to do so. Pursuant to article 27 AMLA, the SRO must also immediately inform FINMA of the resignations, exclusions or denials to affiliate. Moreover, if the SRO has lawyers/notaries as members, it must control that they have taken measures to correctly segregate files regarding their financial intermediary activities from any other non-financial intermediary activities.

100. However, the commercial relationship between nominees acting as financial intermediary and the external auditors in charge of reviewing their compliance with AML obligations may pose risk to the auditors' objectivity (see section Financial Intermediaries and the anti-money laundering regime below). It is therefore recommended that Switzerland monitors supervision of financial intermediaries' compliance with their AML obligations, and more specifically for nominees considering strong reliance on their AML obligations.

101. Nevertheless, during the period under review, Switzerland received less than five requests about nominees (*mandataires*). In all cases, they were nominees acting as financial intermediaries subject to AML obligations, the information requested was available and provided and no comments from peers were made on nominees.

### *Tax law*

102. The following persons will be subject to tax under the federal direct tax law (LIFD):

- Natural persons (*personnes physiques*) who have either a personal or economic link to Switzerland (articles 3-4, LIFD)[28] or who satisfy

28. A personal link as defined in article 3 of the LIFD, include persons who reside or stay in Switzerland for at least 30 days per tax year if they are carrying out activity for profit, or 90 days without carrying out such activities. An economic link as defined in article 4 of the LIFD, includes persons who are owners, partners

either criteria (article 5 LIFD) including carry on an activity for profit in Switzerland (article 5, LIFD).

- Legal persons (*personnes morales*), that is "*societes de capitaux*",[29] societies co-operatives, associations, foundations and other legal persons, which have a personal (article 50, LIFD)[30] or economic (article 51, LIFD)[31] link to Switzerland.

103. For entities and arrangements treated as separate legal entities from their members for tax purposes which are required to file a tax return in Switzerland, the tax return will include some ownership information such as information concerning transactions with or compensation paid to a member, or the names of the members of companies that primarily hold real estate. However, there is no general obligation to include comprehensive ownership information on the entity or arrangement in its tax return. A foreign company that has its effective management, or a permanent establishment in Switzerland will be required to file a tax return, however, the tax return does not include comprehensive ownership information on the company.

### *In practice*

104. In Switzerland, the federal tax administration (AFC) is responsible for the taxation and collection of indirect taxes (VAT), stamp duties and withholding tax. The AFC has a system of verification for the taxes they are responsible for. They have a team of 60 persons, that is in charge of approximately 380 000 taxpayers (approximately 30 000 companies). The verification system is based on a risk analysis, and between 6 000 and 8 000 taxpayers are verified each year, of which around 1 000 taxpayers are controlled by an on-site visit.

105. The AFC also has the responsibility of tax crime investigations in matters of withholding tax, stamp duty and VAT. The AFC is competent to investigate and to condemn any kind of tax crime related to these taxes. With

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or beneficiaries of a business in Switzerland, have a permanent establishment in Switzerland, or are owners of (or have beneficial rights in respect of) real estate located in Switzerland.

29. SAs, SCAs, and SARLs. Also SICFs which, by virtue of article 49(2) of the LIFD are treated as *societes de capitaux*.

30. A personal link defined in article 50 of the LIFD, refers to legal persons, which have their headquarters or effective management in Switzerland.

31. An economic link as defined in article 51 of the LIFD, includes legal persons which are partners of a business established in Switzerland, have a permanent establishment in Switzerland, are owners of (or enjoy beneficial rights in respect of) real property located in Switzerland.

regard to direct tax (income and profit tax), the AFC is only competent for investigations in case of severe tax evasion and tax fraud. In this situation, the sanctioning powers remain with the cantons. Serious tax evasion refers to important amounts involved, tax evasion over many years and/or covering more than one canton or with an international aspect. The AFC carries out between 15 and 20 investigations on serious tax evasion and deals with 300 cases related to withholding tax each year.

106. The 26 cantonal tax administrations are responsible for all taxes not specifically attributed to the AFC, mainly the taxation and collection of direct federal and cantonal taxes. The cantons are also in charge of estate and gift taxes. Therefore, each taxpayer files only one tax return for both direct federal tax and direct cantonal tax, with the canton where he is resident.

107. If a return is not filed on time, the system automatically generates a reminder, which is sent to the taxpayer with a ten day deadline to file its tax return. If the taxpayer does not file its tax return during this additional deadline, the cantonal tax administration in charge of the taxpayer will issue an estimated assessment. A fine can also be issued.

108. The Zurich tax administration, which is in charge of 1 071 658 taxpayers[32] – 1 001 466 individual and 70 192 legal entities (approximately 17% of all companies in Switzerland are in the canton of Zurich), issues approximately 30 000 estimated assessments per year, 3 000 of which are for legal entities. In the canton of Zurich, approximately 600 fines, for a total of approximately CHF 120 000 (EUR 109 200) are issued by the cantonal tax administration each year; the majority of the fines are applied for late filing.

109. The Geneva tax administration, which is in charge of 321 862 taxpayers[33] 290 340 individual and 31 522 legal entities (approximately 8% of all companies in Switzerland are in the canton of Geneva), issues approximately 30 000 estimated assessments per year, 4 000 of which are for legal entities. The annual average number of tax penalties for the canton of Geneva is approximately 16 700 (for an annual average of CHF 6 400 000 (EUR 5 824 000)). However, the statistics are not broken down per infraction; they are calculated for all penalties issued by the tax administration of the canton.

110. The Swiss tax system is not based on a self-declaration process, which means that each tax returns needs to be reviewed before the taxation is determined by the canton. The verification of each return is done at two levels, first automatically by the system and secondly it is verified by an agent. In addition, each cantonal tax administration has a system of audit.

32. As of 2014
33. As of 2014

The selection of the files to audit is based on the regular review of the return, a risk analysis, information received from third party or from the federal tax administration, etc. Audits can be desk based or by way of an on-site visit. The share register held by the company may be verified during the audit if it is necessary for the taxation of the company.

111. The Geneva tax audit department audits approximately 1 100 to 1 300 taxpayers per year, between 100 and 150 with an on-site visit. A reassessment can be issued for the last ten years with interest, and a fine, up to three times the amount of the tax reassessed, can be issued.

### *Financial Intermediaries and the anti-money laundering regime*

112. The key relevant obligations on the financial services industry stem from Switzerland's anti-money laundering regime based on the AMLA. Persons subject to the regime are described as "financial intermediaries" and must carry out the client identity measures set out below. The modifications of the AMLA, which entered into force on 1 January 2016, also apply to professional dealers, meaning to natural and legal persons that conduct sales transactions on a professional basis and who accept cash in this context (article 2(1)(b) AMLA). New article 8a of the AMLA provides the new obligations for dealers.

113. The principle government regulatory body for AML requirements is FINMA who will also issue regulations establishing the specific obligations to implement the general requirements described in the AMLA. Banks, securities dealers and collective investment funds must all obtain authorisation directly from FINMA before commencing their activities, and are regulated and overseen by FINMA. This is also the case for the insurance industry (life, damages and reinsurance). Other financial intermediaries not part of the banking or insurance sectors are required to either obtain authorisation from FINMA, or be affiliated to a self-regulating organisation (SRO). Each SRO is itself subject to FINMA supervision (article 18 AMLA), which includes approval by FINMA of the regulations they impose on their members (article 18(1)(c)AMLA).[34]

34. There are currently 12 SROs governing financial intermediaries in the non-banking sector. In its 2005 report, FATF noted that an assessment of the resources available to SROs to ensure compliance by its members with the regulations was difficult to determine, and the 2009 follow-up report noted difficulties in verifying the regulations established by SROs.

*Client/customer identification and ownership information*

114. The AMLA requires (article 3) a financial intermediary to identify and verify the identity of their customer at the time of establishing a business relationship, and in respect of legal entities, must acknowledge the provisions regulating the power to bind the legal entity, and verify the identity of the person who is acting on the legal entity's behalf.

115. A financial intermediary is required to identify the beneficial owner with the appropriate diligence (article 4(1) AMLA). A financial intermediary is also required to obtain a written declaration from the customer identifying the client's beneficial owner if (article 4 (2), AMLA):

- The customer is not the beneficial owner or if there is any doubt as to whether the client is the beneficial owner;
- The customer is a domiciliary company or a legal person carrying on an operational activity; or
- A cash transaction of a significant amount[35] is involved.

116. The requirements which are described generally in the AMLA are then set out in more detail in OBA (for dealers), FINMA executive dispositions and in SRO's regulations. For financial intermediaries subject to the supervision of FINMA, the relevant regulation is the OBA-FINMA.[36] Chapter 4 of the OBA-FINMA details the specific requirements for compliance with articles 3 and 4 of the AMLA. For banks and investment dealers the Ordinance declares the regulations of the Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB 16), which contains similar binding requirements, will be applicable (article 35, OBA-FINMA). The insurance sector is subject to a similar code.[37]

117. Where a financial intermediary is required to identify the beneficial owner of the client under article 4 of the AMLA, then the information

35. The threshold of a "significant amount" is determined by FINMA, the Federal Gaming Board and the self-regulatory organisations (Article 3 al. 5 AMLA), and can vary according to the type of transaction. In most cases it is CHF 25 000 (EUR 22 750).
36. Article 3 of the OBA-FINMA provides that it is applicable to financial intermediaries as defined in article 2(2) (a to d) AMLA as well as to financial intermediaries defined in article 2(3) AMLA that are directly supervised by FINMA pursuant to article 14 AMLA.
37. The code is made pursuant to article 37 of the AMLA : *Règlement de l'organisme d'autorégulation de l'Association Suisse d'Assurances pour la lutte contre le blanchiment d'argent* (OA-ASA) *du 12 June 2015 that has entered into force on 1 January 2016.*

concerning the beneficial owner must be provided in writing by the client and be signed either by the client, or by a person holding power of attorney for the client.[38] There is an obligation on financial intermediaries to repeat the verification of the identity of the customer and beneficial owners when doubts on the veracity of the previously provided information arise in the course of the business relationship (article 5, AMLA).[39]

118. All client identity documents must be maintained for at least ten years from the date of the end of the business relationship or the date of the transaction (article 7(3), AMLA). Enforcement measures in place to ensure that the requirements of the AML regime are met are set out in the Federal Act on the Swiss Financial Market Supervisory Authority (FINMASA) and include declaratory rulings and prohibitions on financial intermediaries carrying out certain activities. Further details of these measures are described in part A.1.6 of this report.

119. Pursuant to article 4(2)(b) AMLA, financial intermediaries must identify beneficial owners of legal persons as defined in article 2a (3), that is, the natural persons who ultimately control the legal person in that they directly or indirectly, alone or in concert with third parties, hold at least 25 per cent of the capital or voting rights in the legal person or otherwise control it. Article 3 AMLA provides that the financial intermediary must verify the identity of the customer. These identification requirements under article 3, will not apply for cash transactions or insurance institutions unless the transaction, or a series of linked transactions that appear to be connected involve a significant financial value (articles 3(2)-(3), AMLA)[40] which in most cases will be CHF 25 000 (EUR 22 750).

38. For beneficial owners, the identification information includes: their name, date of birth, address and nationality for other organised groups of persons, trusts or other arrangements that have no defined beneficial owner, the identity of the settlor, the persons with authority to instruct the financial intermediary, the persons capable of becoming beneficiaries, the guardians, protectors and other persons holding similar authority in respect of the arrangement: articles 60 and 64 of the OBA-FINMA. These sections of the OBA-FINMA apply only to non-banking non-insurance financial intermediaries subject to the direct supervision (IFSDs). The requirements imposed by OARs, which must be approved by FINMA, impose equivalent requirements: see for example, articles 14 to 16 of the regulations of the Swiss Association for Private Wealth Managers (ASG), which is a SRO.

39. In addition, in the case of insurance contracts which are susceptible to being re-sold, the insurance institution must re-verify the identity of the beneficial owner at the time of re-selling or claim on the policy, the previously identified beneficial owner is not the person mentioned in the relevant contract.

40. Except where a suspicion of money-laundering or terrorist financing arises.

120. Further, in respect of business relationships which are limited to asset holdings of minimal value, unless there are indicators of money laundering or terrorist financing, the above obligations concerning customer due diligence and transaction records are not required to be followed (article7a, AMLA). The threshold for "minimal value" (*faible valeur*) is determined in article 11(1), OBA-FINMA, however it can be used as an exception only in respect to very limited activities,[41] e.g. issuing debit cards, credit cards, and in respect of leasing activities.

121. Finally, there is a blanket exception to the AMLA for a financial intermediary acting in a professional capacity if they provide services exclusively to entities that are themselves deemed to be financial intermediaries or to foreign financial intermediaries that are subject to equivalent oversight (article 2(4) including article 2(4)(d), AMLA).[42] The Swiss-based financial intermediary is therefore not required to identify the foreign financial intermediary provided that the foreign intermediary is subject to equivalent supervision abroad. The foreign financial intermediary is not a relevant entity by virtue of having an account in Switzerland. However, if the foreign financial intermediary is establishing an account in the name of one of its client which is not a financial intermediary, than this exception does not apply and the regular AML obligations apply.

122. In other cases (i.e. where the client is not a foreign financial intermediary), a Swiss financial intermediary may delegate the client identity requirements of the AMLA to a third person, subject to certain strict conditions (article 28, OBA-FINMA). However, in those cases the financial intermediary remains responsible for compliance with the law, i.e. they may delegate the task, but not the responsibility (article 29, OBA-FINMA).

### In practice

123. The federal authority for the supervision of financial markets, FINMA, is the principal supervisor of financial services providers including in respect of AML. The AMLA applies to all persons deemed to be "financial intermediaries" under article 2 of the AMLA, including banks fund, managers (to the extent that they manage share accounts or offer or distribute shares in collective investment vehicles), SICAVs, SICAFs, SCPCs, and asset managers (to the extent that they offer or distribute shares in collective investment vehicles), insurance companies that have life insurance activities

41. See article 11, OBA-FINMA.
42. Switzerland has advised that despite the information not being in Switzerland, competent authorities in Switzerland can obtain the information from the equivalent authority through international assistance.

or engage in the marketing of collective investment vehicles, securities dealers; and casinos.

124. In addition, financial intermediaries includes any person who, in a professional capacity, accepts, keeps on deposit or assists 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, commodities, or securities as well as their derivatives. It also includes a person carrying out the activities of a body of a domiciliary company (*sociétés de domicile*).

125. A financial intermediary acts in a professional capacity if at least one of the following conditions is met (article 7 OBA):

- generates gross profits of more than CHF 50 000 (EUR 45 500) in a calendar year;
- establishes business relationships of whatever kind with more than 20 clients during the calendar year, or maintains 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 4.55 million); or
- engages in transactions with a total value in excess of CHF 2 million (EUR 1.82 million) during the calendar year.

126. Professionals (lawyers, notaries, accountant and auditors) acting outside their typical activities (examples of atypical activities are mentioned above) will likely fall under the definition of financial intermediary and in such cases will be subject to AML obligations.

127. 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 SRO. Each SRO is itself subject to FINMA regulation and supervision, which includes approval by FINMA of the regulations they impose on their members, in order to ensure consistency in AML supervision.

128. Financial intermediaries that are member of an SRO are directly supervised by this SRO for AML purposes. The SRO is also responsible for mandatory AML training for its members. The affiliation to an SRO is optional; it is a decision of the financial intermediaries, but each financial intermediary must either be a member of an SRO or directly supervised by FINMA. Each SRO is responsible for the verification of the compliance of its members with the AML obligations, including the respect of customer due

diligence rules and AML training obligation. SROs require in principle an annual audit on their members, which includes the verification of compliance with the AML obligations.

129. The frequency of the audit varies according to the risk categorisation of the member. For a member with low AML risk, the audit can for example be performed every two years. It should be noted that SROs review the assessment of their members' risk profile on a regular basis. The risk assessment is based on the inherent risk in the activity carried out by the financial intermediary, as well as measures taken by the financial intermediary to reduce this risk (coherent risk analysis). The audits are usually performed on behalf of the SRO by external auditors which must be approved to exercise AML audit by the Federal Audit Oversight Authority (FAOA). In line with article 11a (2) of the *Ordonnance sur l'agrément et la surveillance des réviseurs* (Ordinance on Accreditation and Oversight of Auditors; OSRev), SROs grant licenses to audit companies and accredit auditors that exclusively audit financial intermediaries affiliated with a SRO. Some SROs do not use external auditors but their own auditors to assess their members. The licensed entity is able to nominate the auditor that conducts the review from the list of approved auditors.

130. It is also possible in practice that the same audit company provides advisory and AML audit services simultaneously to its client as long as the legal independence requirements are fulfilled (article 11 of the *Loi fédérale sur l'agrément et la surveillance des réviseurs* (Law on Accreditation and Oversight of Auditors) and article 11 OSRev) and the advisory services has no limiting impact on the audit services (see article 7 of the *Ordonnance sur les audits des marchés financiers* (Ordinance on audits of financial markets)). For example, the audit company is not allowed to provide prudential such as AML advisory services when it provides AML audit services. There are currently 80 external auditors agreed by FAOA to perform AML audits.

131. It remains possible for a financial intermediary that has been excluded from one SRO to join and become affiliated with another SRO. In order to help mitigate this risk, when a financial intermediary wishes to join a new SRO, it must always indicate in its admission request whether it was already a member of an SRO and the reasons why it had to leave this SRO. Accordingly, SROs carry out a check on financial intermediaries before they can join. If an SRO has a doubt about a financial intermediary, it can (but is not required to) contact FINMA for further information. Under article 27 (2) AMLA the SROs report to FINMA a) the resignation of members, b) the decisions in which they refused affiliation, c) decisions of exclusion and the pattern, d) the opening of sanctions proceedings that may lead to exclusion. In light of the foregoing FINMA is aware of the sanctions procedures and sanctions decisions pronounced by the SROs so that in cases where it has

been contacted by an SRO for further information in relation to a particular financial intermediary, it can intervene in case of breach of the financial markets laws and help prevent the affiliation to another SRO.

132. However, in some cases, the commercial relationship between nominees and trustees acting as financial intermediaries and the external auditors in charge of reviewing their compliance with AML obligations may pose risk to the auditors' objectivity. It is therefore recommended that Switzerland monitors supervision of financial intermediaries' compliance with their AML obligations, and more specifically for nominees and trustees considering strong reliance on their AML obligations.

133. The auditor's annual report is provided simultaneously to the financial intermediary and to the SRO who analyses the report and its conclusions. The SRO has reviewing and sanctioning powers. It can order a new audit by an auditor of its choice or by one of its internal auditors, such reviews are based on a risk analysis or on the conclusions of the annual audit report. SROs can issue warnings, recommendations, apply financial sanctions (up to CHF 1 000 000 (EUR 910 000)), and it can also exclude a member. Any criminal cases will be reported directly to FINMA, who may decide to start an investigation and will report to the prosecutor.

134. For the period 2012-14, there have been 560 sanctions applied to members of SROs or to financial intermediaries directly supervised by FINMA, of which 93 included a warning or a reprimand, 206 included a fine, 117 financial intermediaries were excluded from their SRO and the other sanctions were in relation with non-compliance of the member with various obligations of the SRO.

135. As of 1 January 2016, there were 12 SROs in Switzerland. Each SRO is itself reviewed by FINMA. FINMA monitors recognised SROs in the context of the AML/CFT framework. Depending on the structure of their members, their organisation and their supervision policy, FINMA assigns SROs to risk categories. FINMA has developed a risk concept for this purpose. Furthermore, FINMA monitors SROs to ensure that the provisions on anti-money laundering and the fight against terrorism financing are complied with.

136. The process is as follow: First, FINMA annually analyses and classifies all SROs in risk categories in order to define priorities within a risk-based framework. Then FINMA conducts on-site inspections on all SROs. Depending on FINMA's risk assessment of the SRO, the on-site inspection is conducted every year (for nine SROs) or every two years (for three SROs). The risk assessment also impacts the intensity of the on-site inspection. FINMA also conducts supervisory interviews with SROs and the frequency of such interviews depends on the risks to which the SRO is exposed.

FINMA analyses the SRO's annual report. The SRO's report describes the SRO's own activities and controls, including the audits performed, deficiencies found with its members, the sanctions applied and the exclusion of members, if any. Finally, FINMA organises working meeting with SROs on an operational level to deal with current AML issues. FINMA also has the power to investigate a financial intermediary directly, even if it is affiliated with a SRO, in particular if there is suspicion that the member has breached financial market laws other than the AMLA.

137. Financial intermediaries not affiliated to a SRO are directly supervised by FINMA for the respect of its AML obligations. There were approximately 6 000 financial intermediaries in Switzerland on 1 January 2016 and 227 were directly supervised by FINMA (these figures exclude financial institutions which must be directly supervised by FINMA, see section A.3 below). The others are supervised by a SRO. When a financial intermediary is directly supervised by FINMA, the same procedure is applicable. The financial intermediary has to provide FINMA with an annual audit report, which is analysed by FINMA. FINMA also has sanctioning powers against financial intermediaries.

### ***Bearer shares*** *(ToR A.1.2)*

138. Bearer shares may be issued by SAs and SCAs. Founding shareholders, whether holding nominal or bearer shares, must be identified at the time the company is registered in the Commercial Registry. It has not been possible to get any information regarding the number of Swiss companies that have issued bearer shares.

139. The federal Act of 12 December 2014 for Implementing the Revised Financial Action Task Force (FATF) Recommendations of 2012 (*la loi fédérale du 12 décembre 2014 sur la mise en oeuvre des recommendations du GAFI, révisées en 2012*) came into force on 1 July 2015 with regard to the provisions on bearer shares, and introduces a new regime for bearer shares by the modification of various laws, such as the Code des Obligations.

140. In accordance with the new provisions, anybody who acquires bearer shares from a company in Switzerland that is not listed on a stock exchange must report the acquisition (his/her name and address with the valid corresponding documents) within one month of the acquisition (article 697i CO). The reporting of the acquisition must be done to the company issuing the bearer shares, but the board of the company can name a financial intermediary (as defined by the AMLA) to act as depositary for reports on bearer shares. The depository has to notify the company on an ongoing basis, about the reporting done on bearer shares (article 697k CO).

141. The company must maintain a share register of *(i)* all holders of bearer shares with the name, address, nationality and date of birth, along with the corresponding documents (article 697i CO) and *(ii)* all beneficial owners (25% or more of holding; article 697j CO). The documents must be kept for a period of ten year after the moment the person is deleted from the bearer share register. The bearer share register must be kept in Switzerland and accessible by the authorities (article 697l CO).

142. If the acquisition of bearer shares has not been reported to the company or to the depositary within one month of the acquisition, the holder loses the rights attached to the shares (right to vote and to receive dividends) from that date. The holder of the bearer shares will be entitled to recover his rights upon the notification of the disclosure of his identity (however any dividends declared during the period before he reported his shareholding are lost and the rights to any dividends will only resume from the date of the notification (see article 697m CO)).

143. Article 3 of the transitory dispositions of the 12 December 2014 (*Dispositions transitoires de la modification du 12 décembre 2014*) provides that all persons holding bearer shares at the entry into force of the law (1 July 2015) have a period of six months to report to the company or to the depositary.

144. The register of bearer shares maintained by the company is verified by the auditors during their annual audit. Any compliance issues found will be reported by the auditors to the company and to the company's shareholders, however, there is no reporting obligation external to the company in the event of non-compliance of the reporting obligations. Moreover, holders of bearer shares that have not announced their holding can recover some of their rights (dividends paid before the announcement cannot be recovered) in the future by announcing their shareholding without penalties.

145. In addition to the loss of rights for the shareholder, directors may be held responsible under articles 717 and 754 CO for damages to the company. Switzerland's law does not provide for any criminal or administrative penalties in the event that the shareholder does not report its acquisition, or if the reporting is not carried out within the requisite timeframe, or if the company fails to register the individual in the event that they do make the necessary disclosure notification. There is no possibility for the company to redeem and cancel the bearer shares, even if the holder does not report its acquisition after an extensive period of time.

146. Although Switzerland has made some efforts in seeking to ensure the availability of ownership information relating to bearer shares, the review of the provisions has highlighted that the safeguards that have been built into the new system, to ensure its success, are not as strong as they could be. There

are no requirements on the company to oblige the holders of bearer shares to comply with the new legal requirements and no criminal or administrative sanctions for a shareholder not complying with these obligations.

147. The Swiss authorities consider that since it will not be possible to utilise the voting rights, trade these shares, or benefit from the payment of dividends, shareholders will comply with these requirements and report the acquisition.

148. Even prior to the enactment of the obligations to identify the holder of bearer shares, there were already certain circumstances where the holder of a bearer share must be identified. The following laws may create either an obligation to disclose bearer share ownership, or impose adverse consequences on non-disclosure:

- The obligation to report to the Stock Exchange whenever certain thresholds of ownership[43] in publicly traded companies are passed apply also to bearer share holders (article 120, FMIA).
- Beneficiaries (including holders of bearer shares) in receipt of income, including non-residents, are subject to income tax under Swiss law (articles 20 (1 let. c), 20 (1 bis) and 20a LIFD) and therefore must complete a tax declaration.
- A withholding tax (anticipatory tax) of 35% is imposed on dividends paid by Swiss companies, and to obtain a credit or reimbursement, shareholders (whether residents or non-residents) must declare their share ownership to the tax authorities.[44]
- Where a financial intermediary that is subject to the AML regime manages the purchase or transfer of such shares, or maintains possession of the bearer share certificates, the financial intermediary will be required to know the identity (name and address) of the holder.

149. In practice, Switzerland received approximately 78 EOI requests in relation to the identity of the holders of bearer shares during the period under review. Switzerland indicated that the information was available and exchanged in approximately 85% of the cases. In the other cases, the information could not be provided, as mentioned by peers. These requests were all received before the introduction of the new regime on bearer shares.

43. Those thresholds are, when a shareholder's voting power reaches any of the following points: 3%, 5%, 10%, 15%, 20%, 25%, 33.3%, 50% or 66.6 %.

44. Their respective cantonal tax authorities in respect of natural persons resident in Switzerland, or the federal tax authority in respect of legal persons or other commercial entities.

150. In conclusion, it may be said that Switzerland has taken some steps to address the gap that was identified in respect of bearer shares and the Swiss authorities believe that in most instances owners of bearer shares issued by non-listed companies are likely to identify themselves with the company as required by the new measures. However, bearer shares can be owned and transferred, without being cancelled, even if the announcement obligation is not respected. A holder of a bearer share could in effect remain anonymous until the point where it was necessary to exercise his/her rights in the company, due to the possibility of the re-activation of shareholders rights at a later date. In addition, Switzerland's law does not provide for any criminal or administrative penalties[45] in the event that the shareholder does not report its acquisition, or if the reporting is not carried out within the requisite timeframe, or if the company fails to register the individual in the event that they do make the necessary disclosure notification. The result is a lack of sufficient incentives and sanctions which do not ensure that from 1 July 2015 the identity of all holders of shares in unlisted joint-stock companies will be known in all instances. It is therefore recommended that Switzerland put in place the appropriate reporting mechanisms and take measures to ensure that information on holders of bearer shares is available in all cases.

### ***Partnerships*** *(ToR A.1.3)*

151. Swiss law recognises ordinary partnerships, general partnerships and limited partnerships, all of which are governed by the Commercial Code. In addition, co-operative societies and associations, which have characteristics of both companies and partnerships, are dealt with in this section.

#### *Société Simple (SS)*

152. The civil/ordinary partnership (articles 530 et seq.,CO) is a contractual association between at least two persons uniting their efforts or resources for a common purpose. It is not a separate legal entity and is not required to register in the Commercial Registry. A partnership is only an SS when it does not exhibit any of the distinctive characteristics of any other type of partnership governed by the Commercial Code (article 530, al. 1, CO). Accordingly, whenever a partnership carries on a commercial activity, which is a characteristic of the partnerships described below, it will be subject to the rules applying to that type of partnership. As a result, an SS is often used for activities of a short duration or for specific projects only. This type of

45. In relation to bearer shares, if a company does not maintain information on the holders or if the register of holders is not up to date, members of the managing body can be held responsible for the damages caused to the company (article 717 CO) or to third party (article 754 CO).

partnership does not carry on business, it cannot have any income, credits or deductions for tax purposes (see discussion of tax law requirements below), and is not a limited partnership. Therefore it does not fall within the partnerships relevant to the ToR.

### *Société en nom collectif (SNC)*

153. The SNC or general partnership (articles 552 et seq., CO) is formed by two or more individuals entering into a contract of association, in order to operate a commercial enterprise. Although it can acquire rights, incur liabilities, take legal action and be sued, the general partnership is not in itself a legal entity and partners are jointly and severally liable for all the debts of the partnership. Each partner of an SNC is required to ensure the SNC is registered with the Commercial Registry which will include its business name and headquarters' address, an updated list of each of the partners and the persons designated to represent the SNC (article 552, al. 2, CO; and article 41(1), ORC). There were 11 604 SNCs in Switzerland on 1 January 2016.

### *Société en commandite (SC)*

154. A SC or limited partnership (articles 594 et seq., CO) has one or more general partners, who are personally liable for the debts and obligations of the partnership. In addition, there are limited partners (*commanditaires*) who have limited liability for the debts and obligations of the SC. Only individuals may be partners with unlimited liability whereas partners with limited liability may also be legal entities, for example corporations. Since the limited partnership is derived from the general partnership, their other characteristics such as rights and duties, etc. are the same as described for the general partnership. Each partner of an SC is responsible for ensuring the SC is registered in the Commercial Registry (article 594(3), CO), which must include an updated list each of the partners (articles 41(2)(f) and (g), ORC). As of 1 January 2016, there were 1 771 SCs in Switzerland.

### *Société cooperative*

155. A co-operative society is formed by any number of persons to further the economic interests of its members (article 828(1), CO) and is similar to a joint venture. It must be registered in the Commercial Registry, including its business name and headquarters' address, and the personal details of each of the founding members and their representatives (articles 84-85, ORC). A *société cooperative* must maintain a list which includes the name and address of all members and this list must be accessible at all time in Switzerland (article 837 CO). In addition, a list of members responsible for the debts of the *société cooperative* or subject to additional payments to the *société*

*cooperative* must be filed with the Commercial Registry (article 877(1) CO as well as 84(1)(h) and 88 ORC. There were 9 019 *Sociétés cooperatives* in Switzerland on 1 January 2016.

156. All entities carrying on a commercial activity in Switzerland are required to register with the Commercial Registry, including partnerships (except for *société simple* that cannot carry any commercial activities, see above). The registration must be done at the cantonal level, in the canton in which their registered office is located or the relevant business is carried out and the information of the partners must be provided upon the creation and updated when there is a change.

157. Information on partnerships provided upon the original registration and subsequent changes is verified by the Commercial Registry upon registration (by both the cantonal Registry and by the federal Registry) since the registration requirements for partnerships are the same as for any other legal entities (see section A.1.1 above on companies). The Commercial Registry's role in maintaining the information and the sanctions applicable for failure to register or for not reporting a change to the information provided to the Commercial Registry are the same as for companies. Entities that carry out a commercial activity without being registered with the Commercial Registry also commit a criminal offence and face imprisonment (article 153 of the Swiss Criminal Code – CP). During the period 2012-14, 18 criminal sanctions have been applied for entities carrying out commercial activity without being registered. In addition, if false information is provided to the Commercial Registry or the information that has to be registered is not provided, it can be punished by criminal penalties, including fines and imprisonment (up to three years).

### *Tax Law and partnerships*

158. Swiss partnerships are transparent for federal income tax purposes and partnerships are not required to submit tax returns (article 10(1), LIFD). Each partner subject to tax in Switzerland is required to report their partnership income in their tax return, and on request from tax authorities (federal or cantonal) must supply information regarding their legal relationship with other partners, for instance concerning their partnership share, claims and earnings (article 128, LIFD, article 44, LHID).

159. Foreign partnerships and other arrangements without separate legal personality that have an economic link with Switzerland are subject to tax in Switzerland in the same manner as a company. "Economic link" means that the partnership or other arrangement is connected with a business established in Switzerland, that it has a permanent establishment in Switzerland or holds certain rights in real property (articles 11 and 51, LIFD).

160. In practice, for tax purposes, partnerships are taxed directly in the hands of the partners. Each partnership must complete and file to the tax authorities a form including its annual profits and losses as well as the name of each partner and their share of the profit. Annual financial statements must be attached to this form (article 129(1)5c) LIFD). Then, each partner, individual or legal entity must therefore include its partnership income in its tax return that is filed at the cantonal level. As for companies, each tax return is systematically verified twice, first automatically by the system and secondly it is verified by an agent. In addition, each cantonal tax administration has a system of audit. The selection of the files to audit is based on the regular review of the return, a risk analysis, information received from third party or from the federal tax administration, etc. Audits can be desk based or by way of an on-site visit. Switzerland does not have statistics on partnerships since the tax return is filed directly by the partners.

### *Financial Intermediaries and partnerships*

161. Partnerships which engage a financial intermediary will also be subject to the ownership and identity requirements carried out by the financial intermediary and described in section A.1.1 above.

162. In practice, for the period under review, Switzerland received three EOI requests for partnerships and the Swiss authorities confirmed that in all cases the information was available and provided.

### ***Trusts*** *(ToR A.1.4)*

163. While Swiss law does not allow for the creation of trusts, there are no restrictions on persons in Switzerland acting as a trustee or providing other services to trusts created under foreign law. A number of trust companies operate in Switzerland, and Swiss lawyers and asset managers regularly act as trustees of foreign trusts. Moreover, Swiss courts have dealt with trust issues on a number of occasions in the past.

164. The ratification by Switzerland on 1 July 2007 of the Hague Convention on the international recognition of trusts created stronger legal foundations for the trustee business. In addition to ratification of the Convention, the Swiss federal Council enacted parallel amendments to Swiss federal legislation on international private law (the IPL) and debt enforcement and bankruptcy. At the same time, the "*Conférence Suisse des impôts*" issued Circular number CI 30 on 22 August 2007[46] which established a common set of rules across the cantons and the federation with regard to the taxation of trusts.

46. This Circular is binding and is written in conjunction with the cantonal authorities, and the federal tax authority.

165. The amendments to the IPL established that the seat or domicile of a trust is its place of administration appointed in the deed or, where no such place is appointed, its place of effective management. The second amendment was the introduction of the new chapter 9a to the IPL (from articles 149a to 149e) entitled "The Trust". Among other things, these provisions allow for the registration in public registers of certain types of trust assets and provide for the recognition of foreign judgments concerning trusts. The Hague Convention (articles 6-7) and the IPL (article 149c) provide that the laws governing the trust are those designated by the settlor (apparent from the trust deed), and where not so designated, those of the jurisdiction to which the trust has the closest connection. Therefore, if the trust is governed by UK or Jersey law, for example, then the obligations and rights under these laws will apply and the Swiss trustee will need to scrupulously comply with these laws including identity and account record-keeping requirements.

166. Swiss law does not require trusts to be registered, which includes no registration in the Commercial Registry.[47] However, where the trust holds property that is itself required to be registered – namely real estate, ships or aircraft – the existence of a trust relationship would be recorded in the appropriate registry (article 149d, IPL and article 12 of the *Convention relative à la loi applicable au trust et à sa reconnaissance*). Furthermore a trust relationship can be registered in the various public registers for the protection of intellectual property rights (article 149d(2), IPL). If a trust relationship is not registered in these registries, it cannot be claimed against a third party that has acted in good faith (article 149d(3), IPL).

### *Tax Law and trusts*

167. Following the ratification of the Hague Convention in 2007, the "*Conférence Suisse des impôts*" issued Circular number CI 30 "Taxation of Trusts", to ensure a uniform interpretation to the existing practice of cantonal and federal tax authorities for the taxation of trusts.

168. The Circular highlights that for Swiss tax purposes, profits are considered to be derived only when the taxpayer receives a right to income or acquires the right of disposition. As a trustee has no right to the assets or income of a trust (in spite of legal ownership), a Swiss trustee is never taxable in respect of trust income or capital provided it can prove that it holds the trust property as a trustee. These principles are taken into account to identify

47. However, where for example the trustee was a company carrying out commercial activities on behalf of the trust, than that company would be required to be registered. Even in that case however, the ownership and identity requirements of the ORC would only apply to that company, not the trust more broadly.

the taxpayer in the case of a trust (either the settlor or beneficiary) according to the type of trust involved.

169. In the case of a revocable trust, where the settlor has the power to revoke the trust and obtain the trust fund, the trust is considered fiscally transparent (binding Circular on Taxation of Trusts issued by AFC) and a settlor domiciled in Switzerland, but not a foreign settlor, will remain subject to tax in Switzerland on trust assets and income.

170. In the case of an irrevocable trust, the settlor effectively loses his rights to the assets of the trust. At the time of a distribution of trust funds or the time at which, the beneficiaries can claim the distribution (irrespective of any effective distribution), it is regarded as income of the beneficiary and an income tax charge will arise on the beneficiaries where they are resident in Switzerland.

171. Where the irrevocable trust is a discretionary trust, the beneficiaries have only the right to be considered as potential recipients of distributions by the trustee, and the trustee has the right to decide on what distributions to make. Once this power is exercised and a distribution is made it is regarded as income of the beneficiary and an income tax charge will arise on the beneficiaries where these are resident in Switzerland. No liability to tax will arise in relation to foreign beneficiaries unless the trust is in receipt of Swiss source income, which may be subject to withholding tax.

172. There is no express requirement under tax law for trustees resident in Switzerland to know the settlors or beneficiaries of foreign trusts. However, to ensure that the trust assets are not attributed to the trustee for tax purposes, it must be able to prove the trust relationship. The Circular on Taxation of Trusts provides that settlors, trustees or beneficiaries liable to tax in Switzerland are required to provide all necessary information and submit documents, vouchers or certifications of third parties to prove the existence of a trust and distributions of a corresponding value, or expenses.[48] In principle, however, a trustee will never be liable to tax in respect of trust income and the settlor and beneficiary may not be liable either if they are not resident in Switzerland. In addition to the Circular, the AFC's binding Notice on Fiduciary Relationships[49] makes clear that to establish the attribution of assets to a third person, the name and address of the settlor must be mentioned in the contract (i.e. trust deed) which must be in writing. Finally,

48. It should be noted that the tax authority's Circular provides that in the context of an examination of relevant facts during an external tax audit, the trustee may not invoke professional secrecy and must disclose all documents relating to the trust. This also applies to cases in which the trustee is a lawyer since the administration of a trust does not form part of a lawyer's activity in strict terms.

49. AFC Notice on fiduciary relationships, published October 1967.

the tax authorities could use their powers to ask the trustee for information about the settlor or the beneficiary in order to ensure that they do not have tax liabilities in Switzerland.

### *Financial Intermediaries and trusts*

173. In addition to the tax law requirements, AML legislation has a broad application to trustees in Switzerland who act in a professional capacity, as they are considered to be a "financial intermediary". Such a trustee would therefore be subject to the duties of a financial intermediary, including customer identification (article 3 AMLA), identification of beneficial owners (article 4 AMLA) and record keeping requirements (article 7 AMLA).

174. Financial intermediaries, which are under the direct supervision of FINMA, are subject to article 64 of the OBA-FINMA[50] and under these provisions a financial intermediary must identify the following persons in the case of a trust for which beneficiaries have not yet been appointed:

- the settlor;
- persons with the authority to instruct the financial intermediary;
- the category of persons who are capable of becoming a beneficiary;
- the guardian, protectors and other persons holding similar authority in respect of the trust.

175. For a trust with a defined beneficiary, the person or entity would be required to be identified. For revocable trusts, the persons authorised to exercise the revocation are considered as the beneficial owners.

176. Financial intermediaries, not directly supervised by FINMA, are subject to similar provisions as described above, based on regulations of SROs.

177. A trustee that does not act in a professional capacity would not fall within the AML regime and therefore not be subject to these requirements although the tax law requirements may still apply.

178. Overall, in view of the obligations under the tax laws, the AML regime as well as the obligations found in the law which governs the trust,[51] there will generally be available information on the identity of the settlor,

50. The regulations applicable to persons who are supervised by SROs must be verified by FINMA and they impose equivalent requirements. The same rules are applicable to banks (see the Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB 16), marg. 41.

51. *E.g.* UK law. This law would bind a Swiss-resident trustee, noting Switzerland's ratification of the Hague Convention and its domestic IPL.

trustee and beneficiaries for trusts which are administered or have the trustee resident in Switzerland.

179. In practice, all professionals acting as financial intermediaries are subject to AML obligations and therefore, required to identify the settlor, the beneficiaries and the guardian, if any. The respect of the AML obligations by a trustee will be supervised either by the SRO where he is affiliated or directly by FINMA if he is not member of any SRO. The supervision process for all financial intermediaries is the same, see section A.1.1 above. Trust activities are supervised by FINMA or by the SRO responsible for the AML supervision, and will therefore be subject to scrutiny by the external auditors selected by the trustee. FINMA has identified a general higher AML risk concerning trusts but has not observed any particular issue regarding AML obligations, including customer due diligence rules with trustees in Switzerland. Generally, the annual evaluation by an authorised auditor, the annual report to the SRO or to FINMA and the annual frequency of inspections carried out by the SRO or FINMA should help ensure the necessary supervision with their compliance with AML obligations, including the customer due diligence measures. However, the commercial relationship between the financial intermediary and the external auditors may pose risk to the auditors' objectivity, especially considering the risk of sanctions by the AML supervisory authorities (the SRO or FINMA) based on the auditors' report on compliance with AML obligations. It is therefore recommended that Switzerland monitors supervision of financial intermediaries' compliance with their AML obligations, especially for trustees considering the strong reliance on their AML obligations.

180. It is also conceivable that non-professionals or professionals not acting as financial intermediaries act as trustees of a foreign trust but according to the Swiss authorities overall the business is handled mainly by professional trustees. Further, the Swiss authorities have stated that non-professional trustees are extremely rare. During the three years under evaluation, only one EOI request concerning trust (from a professional trustee was received and the information was available and exchange, as confirmed by the requesting partner.

### ***Foundations*** *(ToR A.1.5)*

181. Swiss law allows for the establishment of foundations (article 80, CC) which must be created for the object of allocating assets to a particular purpose. Both public and private foundations may be created. A body of assets may be tied to a family by means of a family foundation created in order to meet the costs of education, the establishment and support of family members or for similar purposes (article 335, CC). Foundations *"d'entretien"* are forbidden. Private foundations are often used for charitable purposes. Public

law foundations are established and incorporated through federal, cantonal or municipal legislature or administrative act and are often referred to as "*Anstalt"* or *"établissement"*. These are entities in the form of foundations that serve public purposes and are not to be confused with private law entities, also called *"Anstalt"* as found in Liechtenstein.

182. Private foundations are established by a notarial deed or by will and inheritance (article 81(1), CC) and the foundation charter must stipulate amongst other things, the purposes of the foundation, the way these purposes will be realised and how the foundation is organised and managed (article 83, CC). In addition, the foundation deed must be authorised by a notary, and the notary must verify certain matters relating to the foundation, including the identity of the parties to the foundation deed including the founder.

183. The beneficiaries can be named in the deed, or be referred to as a class of person relating to the purpose of the foundation. A foundation beneficiary has no rights against the foundation assets unless the foundation charter stipulates specific benefits and the particular beneficiary can be sufficiently clearly identified. Once transferred to the foundation, assets may not be returned to the founder. Once created, the purpose of the foundation cannot in principle be changed, either by the founder or by the foundation council although it is possible for the founder to reserve the right to make such modifications. If the foundation statute allows for modifications, such modifications require approval by the relevant oversight authority.

184. Foundations acquire legal personality upon registration in the Commercial Registry (articles 52(1) and (2), CC). Since 1 January 2016, all foundations are required to register with the Commercial Registry. Foundations that were already in existence on 1 January 2016 and that were not registered with the Commercial Registry have five years to comply with the new measure. Family foundations may only be established for the purposes of education fees, the establishment and support of family members, or similar purposes (article 335(1), CC). To register in the Commercial Registry, certain information must be provided including the name of the foundation, the names of all persons forming part of the management of the foundation (the foundation council) as well as the names of the persons with the power to represent the foundation (article 94, ORC); and this information must be kept up to date (article 27, ORC).

185. All foundations are supervised by a federal, cantonal or municipal oversight authority[52] (article 84, CC) with the exception of religious or family foundations, or foundations which are contingency funds. At the federal level,

52. Whether a foundation's oversight authority is federal, cantonal or municipal will depend on where the foundation council is situated, and also the jurisdiction within which it will carry out its purposes. Each supervisory authority issues

the oversight authority is *Surveillance fédérale des fondations*. Each oversight authority maintains a register of the foundations which they supervise, but the register does not include comprehensive information regarding the identity of founders, and beneficiaries. The oversight authorities as well as the Register of Commerce will in all cases have the information on the members of the foundation council (article 95(1)(i), ORC) and the oversight authorities are required to ensure that the assets of the foundation are used in accordance with its purpose (article 84(2), CC) and it can require certain information to be provided to it for that purpose, including identity information on the beneficiaries. The information provided annually does not appear to include information on the identity of the founder. There were 17 170 foundations in Switzerland on 1 January 2016 (this number does not take into account religious and family foundations).

186. The supervisory authorities for foundations play an important role in the supervision of foundations in Switzerland. They verify that legal conditions are met before the creation of the foundation. The first verification of a foundation will include the verification of the founders and of the capital devoted to the foundation (origin and availability). Once a foundation was created, each year the foundations will have to submit to its supervisory authority a report from an authorised auditor, which will be reviewed by the supervisory authority to ensure the foundation still meets all the legal requirements, for instance to ensure the foundation respects the objective for which it was created. The annual verification also includes a verification of the financial statements, the beneficiaries (which must be mentioned both in the annual report and in the financial statements) and the foundation council. The supervisory authority also has the power to send its own investigators to verify the foundation, if they are not satisfied with the annual report itself or with the financial statements as reviewed by the auditors.

187. The supervisory authority has various sanctioning powers. If the annual report is late, the supervisory authority will send a reminder. On average, 80% of the foundations meet their filing requirements on time and 10% request an extension of the deadline. A reminder is sent to 10% of the foundations and the majority of them comply with their filing obligations after the first reminder. After the third reminder, if the annual report is not filed with the supervisory authority, the supervisory authority can denounce the situation to the prosecutor to fine the foundation. This is done twice a year on average. If a deficiency is found, the supervisory authority can also send a commissionaire to manage the foundation. On average, the supervisory authority designates eight commissionaires per year. It also has the power to request the dissolution of the foundation (for instance in case of

regulations which supplement the Civil Code and Commercial Code provisions relating to foundations.

absence of activities). Foundations are not allowed to act as financial intermediaries. They can have a small commercial activity, but only to pursue their objectives.

### *Tax Law and foundations*

188. Foundations (other than charitable or religious foundations) established under Swiss law or those whose effective administration is in Switzerland, are required to file a tax return (articles 124, 125(2), LIFD; article 42(3), LHID). Foundations, which are separate legal entities (i.e. are registered in the Commercial Registry) are required to file a tax return in Switzerland. Swiss federal tax law requires in all cases that any information, including the identity of the beneficiaries, regarding distributions must be provided to the tax authorities (article 129(1)(a), LIFD).

189. Tax returns of foundations are treated by the cantonal tax administration, like any other tax return. Taxation of foundations is based on the attributions made to the beneficiaries, except for exempted attributions. Each tax return is systematically verified twice, first automatically by the system and secondly it is verified by an agent. In addition to the regular two levels verification system, each cantonal tax administration has a system of audit. In case of late filing, the cantonal tax administration will use the same sanctions as for companies, first a reminder, followed by an estimated assessment and a fine.

### *Financial Intermediaries and foundations*

190. Financial intermediaries who are providing services to the foundation must verify the identity of their clients, and any person authorised to represent them, in accordance with the customer due diligence obligations described above. In particular, a member of the foundation council will become subject to the AMLA when they act in a professional capacity carrying out "financial intermediation" activities.[53] In particular, for a foundation with defined beneficiaries, this would be the name, date of birth and address of that person, or where the foundation does not have a defined beneficiary then the information required to be maintained includes (article 64, OBA-FINMA):

- the identity of the founder;
- the identity of those persons with the authority to instruct the financial intermediary;

53. "Financial intermediation" activities in this context include where they conduct fiduciary activities or asset management on behalf of a third party, or where they do not exercise a commercial activity: see article 6(1) OBA.

- the category of persons who are capable of becoming a beneficiary;
- the guardian, protectors and other persons holding similar authority (including, for example, the foundation council).

191. Where the financial intermediary, for example the notary, is not acting in a professional capacity (or is not otherwise a "financial intermediary"), these requirements will not apply.

192. Therefore, in most instances foundations which are formed under Swiss law will have information available on the identity of the founders, members of the foundation council and any beneficiaries as a result of the obligations found in the AML regime and Swiss tax laws. As noted above, since 1 January 2016, all foundations are required to register with the Commercial Registry. Excerpts from the Commercial Registry pertaining to a foundation must be provided at the beginning of a business relationship with a financial intermediary. In addition, the foundation deed must be authorised by a notary, and the notary must verify certain matters relating to the foundation, including the identity of the parties to the foundation deed. In authorising the deed before the notary, the founder may be represented by an agent and in those cases, it is not clear that the identity of the founder themselves, as well as the agent, must be verified. Nevertheless, the information about the founder is available with the supervisory authority.

193. In conclusion, there is a strong supervision of foundations in Switzerland, with annual verification of the compliance with legal conditions, respect of the objectives, beneficiaries and financial statements. In addition, information on the founder and the foundation council are available with the supervisory authority. Moreover, each foundation must file a tax return which is verified by the cantonal tax authorities and such tax return must include the name of the beneficiaries and the financial statements. Finally, financial intermediaries acting for the foundation have identity requirements based on their AML obligations. In practice, during the period under review, two requests concerning foundations were received. The information was available and transmitted in both cases.

### *Other relevant entities or arrangements*

194. Switzerland or its peers have not identified any other relevant entities and arrangements which may be formed under its laws.

### *Enforcement provisions to ensure the availability of information (ToR A.1.6)*

195. In respect of the obligations of the AML regime in regards to ownership information and accounting records, the enforcement measures available to FINMA are set out in the FINMASA. In general, enforcement measures follow a 3-stage process beginning with preliminary enquiries, followed by administrative proceedings and finally, implementation of any measures ordered by FINMA. Measures include an order requiring restitution of the breach (article 31); a declaratory ruling (where a breach occurred, but restitution is no longer required: article 32), or a prohibition against an individual continuing to carry out a profession (article 33).

196. With regard to the supervision of SROs by FINMA, there are currently 12 SROs in Switzerland. FINMA also has the power to investigate a financial intermediary directly. This also applies for members of SROs if there is a suspicion that the member has breached a financial market laws other than AMLA (for example the banking law). If the suspicion concerns a breach of AMLA due diligence duties, the usual process is that the SRO first investigates, sanctions and/or excludes its member, and then FINMA intervenes if necessary to liquidate the company. FINMA requires SROs to establish appropriate sanctions in their regulations (article 25(3)(c), AMLA) and report annually to FINMA the sanctions decisions pronounced on their members (article 27(3), AMLA). Concerning sanctions, for the period 2012-14, there have been 560 sanctions applied to members of SROs or to financial intermediaries directly supervised by FINMA, of which 93 included a warning or a reprimand and 206 included a fine.

197. Where the financial intermediary is regulated by an SRO, the SRO may terminate the membership of a financial intermediary which has broken the applicable rules, withdrawing thus the right to act as financial intermediary under that SRO (although this does not automatically remove the financial intermediary's ability to apply to act as a financial intermediary for another SRO). In 2012, 46 financial intermediaries were sanctioned and thus excluded from a SRO, 44 in 2013 and 27 in 2014. In addition, most SROs may impose financial sanctions on their members for non-compliance with AML obligations.[54]

54. For example, the Regulations of VQF (Financial Services Standards Association) probably the biggest SRO with 1 300 members, state the following:

The Supervisory Commission may impose the following types of sanction on members:

a. Censure.

b. Penalty of up to CHF 250 000 (EUR 227 500)

c. Exclusion from the Association.

198. With regard to SROs, penalties and sanctions for failure to respect the AML obligations are applied directly by each SRO. For example, the Self-regulating organisation for the Swiss federation of Lawyers and the Swiss federation of Notaries (*Organisme d'autoréglementation de la Fédération Suisse des Avocats et de la federation Suisse des Notaires*), which comprises approximately 850 members, issued 19 sanctions in 2013, including fines between CHF 400 (EUR 364) and CHF 10 000 (EUR 9 100) as well as the exclusion of some members and six sanctions in 2014, including fines between CHF 2 000 (EUR 1 820) and CHF 60 000 (EUR 54 600). For its part the VQF (Financial Services Standards Association) imposed 215 penalties related to AML obligations in 2014 for an amount of CHF 24 000 (EUR 21 840) on average (lowest fins CHF 3 000 (EUR 2 730) and highest fine of 84 500 (EUR 76 895)). In 2014, it imposed 108 penalties related to AML obligations for an amount of CHF 18 000 (EUR 16 380) on average.

199. In respect of obligations to register or update information contained in the Commercial Registry, persons responsible may be liable for any damage which results (article 942, CO) and may be fined an administrative penalty of up to CHF 500 Suisse (EUR 455) or even a penal sanction (article 153, CP). According to article 153 CP, a person who causes an authority responsible for the Commercial Register to make a false entry in the Register or withholds from such an authority information that is required to be entered in the Register is liable to a custodial sentence not exceeding three years, or to a monetary penalty. A person using falsified documents when registering or obtaining false certification from the Commercial Registry in order to defraud another person can be punished with fines or imprisonment of up to five years (article 251 CP). Further, if a person causes by fraudulent means a public official (e.g. the registrar of the Commercial Registry) or a person acting in an official capacity to certify an untrue fact of substantial legal significance, and in particular to certify a false signature or an incorrect copy as genuine, this person is liable to a custodial sentence not exceeding five years, or to a monetary penalty (article 253, CP). Moreover, if some issues appear after the registration of the legal person, such as resignation of all members of the board or absence of domicile, the Commercial Registry can intervene to ensure the problem is resolved. If the required information is not transmitted in the deadline, the liquidation of the legal entity can be required (articles 731(B) CO, 941(a) CO and 152 and following ORC). For the period 2014-15 there have been approximately 3 400 cases where there was a problem with the organisation of the company (article 731(B) CO), and 2 900 cases because the address is no longer valid or the entity does not have any assets or activities (article 153b ORC) which led to the dissolution/liquidation of the company.

200. In respect of accounting record obligations, a failure to keep the required accounts can also imply a penal sanction (article 166, CP). The

person who fails to keep the accounting records required under the CO can also be fined by the tax authorities (see for example article 174, LIFD). In practice, financial statements are filed with the tax returns of legal entities and this is verified by the tax authorities.

201. In respect of bearer shares, as detailed in A.1.2, the lack of sufficient sanctions does not ensure that the identity of the holder of bearer shares is known in all instances.

202. For tax obligations in respect of ownership and accounting information, a person who intentionally or negligently does not provide information required under the LIFD, may be fined up to CHF 10 000 (EUR 9 100) (article 174(1)(b), LIFD). The Swiss authorities have confirmed that this fine can be applied several times. With regard to fines applied by tax authorities, the annual average number of penalties for the canton of Zurich is approximately 16 700 (for an annual average of CHF 6 400 000 (EUR 5 824 000)), the annual average number for the canton of Berne is 22 700 (for an annual average of CHF 8 400 000 (EUR 7 644 000)) and the annual average number of penalties for Bâle-Ville is 7 300 (for an annual average of 1 500 000 (EUR 1 365 000)). However, the statistics are not broken down per infraction; they are calculated for all penalties issued by the tax administration of the canton.

203. Under the CO and CC, which will apply to each type of entity and arrangement described in the report with the exception of trusts, if a member of the board of a company (or other person responsible for the management of the entity) breaches his or her duties[55] each and every such person may have unlimited liability for any damages that result. Such liability maybe enforced against the person by the owners or partners of the entity, or in the case of bankruptcy, any creditor in a civil case (article 754, CO). Furthermore, members of the managing body of an entity may be prosecuted for mismanagement of the entity and sanctioned with fines (article 34, CP: unless the law provides otherwise, a monetary penalty amounts to a maximum of 360 daily penalty units) or imprisonment of up to five years (article 158, CP). The court decides on the number of daily penalty units according to the culpability of the offender and a daily penalty unit amounts to a maximum of CHF 3 000 (EUR 2 730). The court decides on the value of the daily penalty unit according to the personal and financial circumstances of the offender at the time of conviction, and in particular according to his income and capital, living expenses, any maintenance or support obligations and the minimum subsistence level. If a company does not maintain its register of shares or if the register of shares is not up to date, members of the managing body can be held responsible for the damages caused to the company (article 717 CO)

55. A breach will include a negligent act or omission.

or to third party (article 754 CO). Furthermore, the auditors of the company would report the violation of the law to the general assembly of the entity (articles 728b and 728c CO). However, there is no system in place to verify the compliance of companies with the obligation to keep a register of shares. This is important mainly for SAs and SCAs as they have the responsibility to keep a register of shares and have no obligation to report the change of ownership to the Commercial Registry.

204. The Commercial Registries do not have the mandate to verify the register of shares kept by companies and there are no clear penalties applicable by a regulatory body for default to comply with the obligation to keep a register of shares, there is only a private litigation for damages caused to the company and to the shareholders. Switzerland is thus recommended to ensure that its system of oversight is effective.

205. In general, the enforcement measures in place in Switzerland are strong and reinforce the obligations to keep all relevant information, except in certain cases mentioned such as bearer shares and with regard to the obligations for companies to keep a register of shares.

206. The supervision of the obligation for certain companies (SAs and SCAs) to maintain a register of shares, and the effectiveness of the enforcement provisions should be improved, as there are currently no clear penalties to maintain a share register. Switzerland is recommended to ensure that its system of oversight for SAs and SCAs is effective.

**Determination and factors underlying the 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** |
| Although legal requirements have been introduced for the reporting of ownership information in relation to bearer shares, these reporting mechanisms do not sufficiently ensure that the owners of such shares can be identified within the stipulated timeframes of the reporting regime. | Switzerland should ensure that appropriate reporting mechanisms are in place to effectively ensure the identification of the owners of bearer shares in all cases. |

| Phase 1 determination | |
|---|---|
| **The element is in place but certain aspects of the legal implementation of the element need improvement**. | |
| **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 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. |

| Phase 2 rating | |
|---|---|
| **Partially compliant.** | |
| **Factors underlying recommendations** | **Recommendations** |
| The supervision of the obligation for certain companies (SAs and SCAs) to maintain a register of shares, and the effectiveness of the enforcement provisions should be improved, as there are currently no clear penalties for failure to maintain a register of shares | Switzerland should ensure that its system of oversight for SAs and SCAs is effective. |

## 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)*

207. The main accounting record requirements under Swiss law are found in the Commercial Code under articles 957 to 964 as well as under tax law.

### *Commercial Code*

208. The Commercial Code was modified as of 1 January 2013 with regard to accounting obligations. Pursuant to new articles 957 to 964 of the CO, all persons carrying commercial activity in Switzerland are required to hold and keep accounting records that meet recognised accounting principles, as necessary according to the nature and extent of the entity's business; being those that reflect the financial situation of the business including annual financial statements. This includes a requirement to keep books,[56] "accounting records" (*pieces comptables*) and correspondence, which may be kept in written, electronic or other suitable, readable form, whilst the annual earnings report and balance sheet must be kept in written, signed form (article 958, CO).[57] This obligation is not linked to the obligation to register with the Commercial Registry. The Swiss Commercial Code describes the general documents which must be retained as the documents necessary to reflect properly the financial situation of the business and to determine the liabilities and claims as well as the operating results of each business year. article 957a(3) CO confirms that this will include business related documents which are of importance to the company and possibly to third parties and includes invoices and copies of invoices that have been sent out, delivery notes, receipts, bank statements, internal documents if these are accounting records, letters, faxes, electronic correspondence, contracts of any kind, organisation plans and regulations, judgements, settlements, etc.

209. All of the records referred to under articles 957a and 958 must be kept for a minimum 10 year period, generally counted from the end of the financial year to which they relate (article 958f, CO). The Ordinance on the retention of accounting records (*Ordonnance concernant la tenue et la conservation des livres de comptes*) provides further details on the requirements under article 958f of the CO; in particular, the specified details required in the accounting "books" as well as the manner of retaining records.

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56. The reference to "books" is described further in article 1 of *Ordonnance concernant la tenue et la conservation des livres de comptes*. In all cases, a person must retain "books" which include accounts structured logically by groups or themes which would allow earnings reports and balance sheets to be prepared, and also a journal in which all transactions are recorded. In some cases, additional "books" are required, including all information necessary to establish the financial situation of the business, the debts and credits of the business, and the annual accounts: article 1(3) *Ordonnance concernant la tenue et la conservation des livres de comptes*.

57. These documents must be prepared in line with general accounting principles, representing in the most precise manner possible the financial situation of the business: articles 957a and 958, CO).

*Tax Law*

210. Persons subject to federal tax in Switzerland are subject to the requirements to retain accounting records set out in article 126 of the LIFD. These requirements are based on the general principle that the taxpayer must do everything necessary to ensure that tax is fully and precisely imposed. In particular (article 126(2), LIFD):

> On request by the federal tax authority, they must furnish information orally or in writing, present their accounting books, supporting documents and any other certificates as well as documents relating to their business affairs.

211. The records referred to in article 126 of the LIFD must be retained at least 10 years (articles 148 and 152 (1), LIFD).

212. There are additional requirements for taxpayers that are individuals who are carrying out an activity for profit, and legal entities (article 126(3), LIFD) who are not required by the Commercial Code to keep accounting records in the specified form set forth in article 958, CO. These taxpayers must keep for 10 years the books and statements referred to in article 125(2), as well as the supporting documents in respect of their business activities. The books and statements referred to in article 125(2) of the LIFD are the documents which must be annexed to the tax return of those persons, being:

> Signed extracts from the accounts (balance sheet, profit and loss statements and earnings report) for the tax period, or in the absence of accounting records which confirm to commercial usage, a record of assets and liabilities, a statement of receipts, expenditure, deductions and private investments in the business.

213. There are also requirements imposed on third parties to produce certain accounting records, which on request may be produced directly to the tax authorities. This includes information on the assets and income of taxpayers that is held by fiduciaries, private wealth managers, secured creditors, trustees and guardians, and other people with possession or administration of a taxpayer's assets (article 127, LIFD). However in respect of this requirement, professional secrecy obligations (see Part B.1) are reserved.

214. Under the federal law concerning harmonisation of direct taxes between the cantons (LHID), each canton must, under cantonal direct tax law, impose accounting records requirements on taxpayers which match those found in articles 125-127 of LFID and described above: article 42-45, LHID.

215. In addition, for VAT purposes, the taxpayer is also required to retain for at least ten years the books of account and relevant underlying documentation, business correspondence and other documents (article 52(2), VAT Act).

216. Therefore, in order to meet the obligations of article 126 and noting the broad scope of persons subject to the federal tax law as well as persons subject to VAT and cantonal tax laws, all the accounting records described in element A.2.1 and A.2.2 of the ToR are required to be kept by these persons. The penalties which apply if these obligations are not met are eventually a fine (article 174, LIFD) or even a penal sanction (article 325, CP).

### *Financial Intermediaries and the anti-money laundering regime*

217. The AMLA sets out the requirements of the AML regime, which are then prescribed in further detail in regulations and guidance issued by FINMA or the relevant SRO. The AMLA prescribes in article 7 that a financial intermediary must keep records relating to transactions in such a manner that a third party expert would be in a position to have an objective understanding of the transactions and the business relationships and of compliance with the provisions of this Act.[58] These documents must be retained for 10 years from the end of the business relationship or the transaction (article 958f(1) CO). It is not clear that these requirements would capture all relevant accounting records, particularly underlying documentation, for transactions conducted through a financial intermediary consistent with the *Terms of Reference*.

### *Companies*

218. For each accounting period, companies (article 957, CO) are required to prepare a report which includes annual financial report to give a sufficiently clear presentation of the holdings and results of the company, and will include profit and loss statements and balance sheets (article 958 CO). There are also additional requirements imposed on companies whose shares are traded on the Swiss Exchange, and accounts for those companies generally must comply with IFRS, US GAAP or SWISS GAAP RPC standards. Companies are required to prepare audited financial statements annually.

219. Accounting record-keeping obligations described above pursuant to the CO, tax laws and the AML regime are applicable to all types of companies.

### *Partnerships*

220. Partnerships that have an annual turnover of more than CHF 500 000 (EUR 455 000) in their last financial year have the same accounting record

58. The regulations associated with the AMLA provide very little further detail to outline the precise transaction documents that are to be kept. For example, article 62 of the OBA-FINMA notes only that the documents relative to the transaction should be maintained, and they must allow each transaction to be reconstructed.

obligations as companies (article 957(1) CO). Partnerships that have an annual turnover of less than CHF 500 000 (EUR 455 000) must keep a detail of income, expenses and assets (article 957(2)(1) CO). Partnerships are also subjects to accounting record keeping obligations of the tax laws and the AML regime.

*Trusts*

221. As the institution of the trust is not governed by Swiss private law, the obligation to maintain accounting records under the Commercial Code does not generally apply.[59] The Swiss resident trustee will themselves be subject to the general accounting obligations as provided under the Commercial Code (described above).

222. Under the tax law, in order to establish that the trustee is not liable to tax on the trust income, the trustee is required to maintain information relating to the trust and its assets (as discussed in Part A1.4 *Trusts)*. Further, the Notice on Fiduciary Relationships provides that the fiduciary is required to maintain a balance sheet which clearly indicates the assets held for third parties. These books will be produced separately from the accounting books of the fiduciary, in such a way that the tax authorities may at any time be informed on the composition of assets and any subsequent changes thereto. These documents will fall under the account retention requirements under Swiss tax law which is 10 years (article 126 LIFD). Furthermore, the tax law provides that fiduciaries, wealth managers, or any persons that manage or administer the assets of a specific taxpayer are required to provide a written statement regarding the assets held and income generated therefrom to the taxpayer (article 127(1)(d), LIFD).

223. Under the AML regime moreover, a professional trustee is subject to the anti-money laundering requirements for accounting records described above. Those documents must be kept for at least 10 years from the time the transaction took place or the end of the business relationship (article 7(3), AMLA). As noted in section A.1, the anti-money laundering law contains important exceptions for trustees not acting in a professional capacity or who act exclusively for foreign financial intermediaries, and so this requirement does not apply in all cases. Moreover, the requirements to maintain records for AML purposes may not capture all relevant accounting records including underlying documentation consistent with the ToR.

59. However, where for example the trustee was a company carrying out commercial activities on behalf of the trust, than that company would be required to be registered. Even in that case however, the accounting record requirements of the ORC would only apply to that company, not the broader activities of the trust.

224. Finally, Swiss resident trustees will be subject to the obligations on trustees under the law governing the trust *(*e.g. UK law), and this will include the account record-keeping requirements of the governing law.

225. In respect of trusts administered in Switzerland or where the trustee is resident in Switzerland, the obligations found in the Commercial Code, tax laws and the AML regime will ensure that there are comprehensive requirements to maintain the accounting information required under the standard.

### *Foundations*

226. Foundations are overseen by regulatory authorities to ensure compliance with the obligations of the CC[60] and on an annual basis the federal regulatory authority requires certain accounting records including balance sheet, earnings report (with explanatory notes) as well as an auditor's report.[61] To seek exemption from the audit requirement, a foundation must have a balance sheet total of less than CHF 200 000 (EUR 182 000) for two consecutive years.

227. In addition, all foundations will be subject to the accounting record requirements described above pursuant to articles 957(1)(2) CO[62] and as applicable, under the tax laws[63] and the AML regime. Further, in all cantons, foundations which are exempt from tax must nonetheless submit the accounting records required by the regulator (see above paragraph) to the tax authorities.[64]

### In practice

228. All persons carrying out commercial activity in Switzerland are required to keep accounting records that meet recognised accounting principles, as necessary according to the nature and extent of the entity's business. This requirement also includes underlying documents. In general, companies in Switzerland must have audited financial statements by external auditors,

60. Articles 80-89 of the Civil Code.
61. Cantonal regulators of foundations have similar obligations to produce annual accounting records.
62. Article 83a of the Civil Code requires all foundations, even if they are not required to be registered in the Commercial Register, to maintain the accounting records described in the ORC.
63. Foundations (other than charitable or religious foundations) established under Swiss law or those whose effective administration is in Switzerland, are required to file a tax return.
64. See for example in respect of the Vaud canton, article 11(3) of the *Règlement vaudois du 30 avril 2008 sur la surveillance des fondations*.

who are subject to AML requirements. The auditor must audit annual financial statements and has a responsibility to ensure compliance with the accounting and reporting standards by the audited entity or arrangement. Companies can opt out of the obligation to have audited financial statements. In order to opt out and only keep non audited financial statements, a company must satisfy two of the following three criteria: *(1)* have less than CHF 20 million of balance sheet (EUR 18.2 million); *(2)* less than CHF 40 million of turnover (EUR 36.4 million); or *(3)* less than ten employees. Financial statements of companies whose shares are listed on the stock exchange are available online via the Swiss Official Gazette of Commerce (article 958e CO).

229. The verification of financial statements is done at the cantonal tax administration level. All legal entities and individuals carrying on a business in Switzerland must prepare financial statements and file them with their tax returns at the cantonal tax administration. For partnerships, each partnership must complete and file to the tax authorities a form including its annual profits and losses as well as the name of each partner and their share of the profit. Annual financial statements must be attached to this form (article 129(1)5c) LIFD). Since the taxation is done at the level of the partners, each partner must file the financial statements of the partnership along with its individual tax return and his share in the partnership.

230. The verification of the financial statements is part of the verification of the tax return. As previously mentioned, each tax return is verified in a two steps process, first automatically by the system and secondly it is verified by an agent. The presence of complete financial statements is part of the automatic verification by the system. If the financial statements are not filed or are not complete, the cantonal tax authorities in charge of the taxpayer will issue first a reminder and if the entities does not comply, an estimated assessment with a fine.

231. Taxpayers must also file their financial statements with the federal tax administration for taxation of federal taxes and VAT. The financial statements are therefore verified and available at both cantonal and federal tax administration level for entities subject to these federal taxes.

232. The record keeping requirement pursuant to AML obligations is supervised by the AML supervisory authority (either the SRO to which the financial intermediary is affiliated or FINMA for financial intermediaries directly supervised by FINMA (such as financial institutions)). There has been one sanction applied by FINMA to a financial intermediary (a bank) during the period under review, for failure to organise the documentation in order to be able to provide it when requested.

233. With regard to trusts, when a trust is carrying on a commercial activity, the trustee must keep accounting records that meet recognised accounting

principles for a period of ten years (articles 957 to 964 CO). The trustee, on behalf of the trust, will have to file the financial statements, along to the tax returns on an annual basis pursuant to article 50 LIFD. For trusts not carrying on commercial activity, in order to avoid taxation in the assets and income of the trust, the trustee must keep accounting records separated from his own activities (article 125(2) LIFD) and if the trustee is a financial intermediary, he has an obligation to keep accounting records pursuant to article 7 AMLA. However, these accounting records do not need to be filed to the tax authorities and therefore, are not subject to the verification of the tax authorities.

234. Therefore, in cases where trusts do not carry on commercial activity, there is no systematic monitoring on whether trustees of foreign trusts in Switzerland keep accounting records that meet the international standard. During the three-year period under review, Switzerland did not receive any requests concerning accounting records of trusts. Switzerland is recommended to monitor whether Swiss resident trustees keep accounting records that fully meet that international standard and that those records are kept for at least five years in all cases.

235. Financial statements of foundations must be filed with the supervisory authorities of the foundations together with the annual report of the foundation for review and analysis by the supervisory authority. The detailed review of the financial statements is an important element of the verification done by the supervisory authority, so as to ensure that the objectives of the foundation are respected and that the income is linked to the objectives and that the expenses are reasonable. The financial statements of foundations must be audited by external auditors. In case the financial statements of a foundation are not filed with the supervisory authority, this will be considered as late filing of the annual report, which will trigger the same sanction as mentioned in section A.1.5 above (reminder, sanctions and possible dissolution). In addition, foundations must file their financial statements with the tax authorities, which are subject to the same verification than for any other taxpayers.

### Conclusion

236. The obligation to maintain accounting records in Switzerland is supervised mainly by the tax administrations (both at the cantonal and federal level), by the supervisory authority for foundations and by the AML authority for trusts. Generally, financial statements must be audited by external auditors who ensure compliance with the accounting and reporting standards. The obligations to maintain accounting records also include underlying documentation and the tax authorities, as well as the supervisory authority for foundations, are entitled to access the underlying documentation. Finally, the accounting records must be kept for a period of ten years.

237. During the period under review, Switzerland received 320 requests for accounting information. In the vast majority of the cases, the information was available and exchanged. In less than five cases, the Swiss tax authorities were unable to provide all the accounting information requested but a part of it to the requesting partners because of bankruptcy or because the company no longer existed (liquidation of the company for absence of valid address, activity and non-fulfilment of its obligations). In all cases but one where the accounting information could not be obtained, the requesting partner was informed with the reason for the absence of accounting information.

**Determinations and factors underlying recommendations**

| Phase 1 determination |
|---|
| **The element is in place** |

| Phase 2 rating |
|---|
| **Compliant** |

## A.3. Banking information

Banking information should be available for all account-holders.

### *Record-keeping requirements (ToR A.3.1)*

238. Banks are "financial intermediaries" and are therefore subject to Switzerland's anti-money laundering regime. The term "bank" for the purposes of the AML regime and the Banking Law (*Loi fédérale sur les banques et les caisses d'épargne* – LB), includes banks, private bankers and savings institutions (article 1, LB) and any person not falling within this definition may not accept deposits from the public on a professional basis.[65] The supervisory authority for banks in respect of the AML obligations is FINMA.

239. As described in section A.1.1 above, in respect of customer identity information, banks must verify the client's identity from documentary evidence. For clients which are legal persons, the bank must verify the identity of the person establishing the account or undertaking the transaction in the name of the legal person (article 3(1) AMLA). In respect of beneficiaries of the account, the obligations described above apply, including that the bank

65. The Federal Council may provide for exceptions to allow other persons to accept such deposits, if they are guaranteed. Further, the granting of loans is not considered as the acceptance of deposits in a professional capacity for these purposes: article 1(2) LB.

must obtain a written declaration from the client identifying persons with beneficiary's rights on the account (article 4(2), AMLA):

- the client is not the beneficiary or there is a doubt as to whether the client is the beneficiary;
- the client is a domiciliary company or a legal person carrying on an operating activity;
- a cash transaction of a significant amount[66] is involved.

240. Where, in the course of the business relationship doubts arise over the identity of the client or the beneficiary, identity verification procedures must be undertaken again.

241. In respect of transaction records, all financial intermediaries are required to maintain all transaction documents as well as any clarifying documents, such that a third party may be able to have an clear understanding of the transactions and the business relationship (article 7, AMLA).

242. All client identity and transaction documents must be maintained for at least ten years from the end of the business relationship or of the transaction (article 7(3), AMLA). In respect of business relationships limited to asset holdings of minimal value, unless there are indicators of money laundering or terrorist financing, the above obligations concerning customer due diligence and transaction records are not required to be followed (article 7a, AMLA). The threshold for "minimal value" (*faible valeur*) is determined in article 11, OBA-FINMA. It can be used only in very limited activities, i.e. issuance of means of electronic payment, credit card issuance and leasing activities.

243. The requirements of the AMLA are further detailed in the OBA-FINMA. In particular, article 35 of the OBA-FINMA notes that banks[67] are subject to the stringent client identification processes in respect of beneficiaries of a client, set out in the CDB 16.

244. Despite the rules described above, it appears that bearer savings books with unknown beneficial ownership are still in circulation in Switzerland. Following article 5 of the CDB 16, existing bearer savings books must be cancelled the first time they are physically presented, and the identity of the person making withdrawals must be verified. Switzerland advises

66. The threshold of a "significant amount" is determined by FINMA, the Federal Gaming Board and the self-regulatory organisations (article 3 al. 5 AMLA), and can vary according to the type of transaction. In most cases, it will be CHF 25 000 (EUR 22 750).

67. Banks and stockbrokers: article 35 OBA-FINMA.

that between 2005 and 2015, the total assets held in such accounts reduced by 85%.[68]

### In practice

245. All banks and other financial institutions in Switzerland according to article 2(2) AMLA are directly supervised by FINMA for compliance with the AML obligations, including customer due diligence measures and record-keeping requirements. As described in section A.1.1, banks and financial institutions must have an annual verification by an external auditor to assess its compliance with the AML obligations. The verification of the respect of the customer due diligence rules is a fundamental part of this verification. The annual verification for respect of AML obligations is a separate evaluation than the audit for the financial statements, but both can be done by the same auditor that is agreed by the FAOA, which is a Swiss government body.

246. The annual report by the auditor along with the audited financial statements, are sent to FINMA for its review and analysis. Every year, FINMA reviews the annual report of all 350 financial institutions (some financial institutions are comprised of multiple entities). The review is done on a risk based approach, taking into consideration the type of transactions and clients of the financial institutions. FINMA can also perform on-site visits. In the period between 2012 and 2014, FINMA has conducted 17 supervisory reviews in the context of the supervision of AML/CFT obligations. The review of the financial statements is also performed in the annual verification by FINMA. During the period under review, there has been one sanction applied by FINMA to a financial intermediary (a bank), for failure to organise the documentation in order to be able to provide it when requested.

247. A report with recommendations, if needed, is issued after the end of the review by FINMA. If a minor deficiency is found, FINMA will enter into a dialogue with the financial institution to help them solve the issue. Generally, the issue will be verified again in the next annual verification. In some cases, the recommendations come with a specific timeframe to implement correctional measures and a follow up is done at the end of the deadline granted. If the correction has not been made, the file is transferred to the enforcement department.

248. In case major deficiencies are found, an investigation will be triggered by the enforcement department. Such investigations can also be triggered by complaints from the public, information received from criminal

68. The total assets held in bearer savings accounts amounts to about 0.022% of the total assets held in Swiss bank accounts.

authorities and market monitoring (for instance from the stock exchange surveillance). The investigation can cover the institution, but also the senior management, if needed. The investigation can be desk based, but on-site visits are also performed.

249. FINMA has a vast range of powers to restore compliance with the requirements; it can issue a warning, accrue surveillance, confiscate the gains, withdraw the authorisation to exercise the licence, and force the liquidation of the entity. Nevertheless, FINMA has no power to apply financial sanctions, but it can refer the case to the Federal Department of Finance, which has the power to apply financial sanctions. Finally, in case any criminal activity is detected, FINMA has to inform the general prosecutor. For the period 2012-14, 136 issues were identified with regard to the respect of AML obligations by banks and other financial institutions. There have been nine enforcement proceedings concluded for banks/securities dealers in 2014 and five in 2015.

250. Most Swiss banks, as well as foreign banks doing business in Switzerland, are also members of the Swiss Bankers Association (*Association des Banques Suisses*), which is an association, approved by FINMA for self-regulation with regard to prudential regulation. Membership is voluntary and non-member banks are supervised directly by FINMA. Members of the Swiss Bankers Association are party to the Swiss banks' code of conduct (CDB 16), which is approved by FINMA and made mandatory by the OBA-FINMA. This means that also non-member banks have to adhere to the CDB 16.The obligations are drawn from the AMLA as well as from FATF. One key element of this code of conduct is the obligation for all banks to identify their customers and their beneficial owners. This obligation is in addition to the obligation from the AML regime.

251. The Swiss Bankers Association has a separate and independent surveillance commission (*commission de surveillance*), which is in charge of ensuring the respect of the code of conduct by the banks (CDB 16). Non-member banks still need to adhere to the CDB 16. They are however not sanctioned by the surveillance commission but directly by FINMA. The surveillance commission can apply monetary fines up to CHF 10 000 000 (EUR 9 100 000) in the event that a member bank breaches its obligations (cf. article 64, CDB 16). Their sanctions can be made public. Their surveillance is based on the annual auditor's report, but also on denunciations from other authorities. The sanctions from the surveillance commission are in addition to other sanctions, such as sanctions by FINMA for breaches of AML obligations or criminal sanctions for violation of the duty to report. The Swiss Bankers Association also provides several training activities to its members in the field of AML/CFT. During the period 2012-14, there have been 29 sanctions for non-respect of the CDB by banks.

252. With regard to bearer savings book, the Swiss Bank Association has made a survey on its members and as of 31 December 2015, the total assets held in such accounts have been significantly reduced and no requests in relation to bearer saving books were received during the period under review.

253. In conclusion, the combination of the supervision of AML obligations by FINMA and the regulatory supervision by the Swiss Bank Association ensures the availability of banking information including accounting records as well as to related financial and transactional information. During the period under review, Switzerland received 1 974 requests in relation to banking information, of which 1 812 were answered during the period under review and 162 were still pending as of 30 June 2015. Switzerland has confirmed that the banking information was available in all cases.

**Determination and factors underlying the 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. |

| **Phase 2 rating** |
|---|
| **Compliant.** |

# B. Access to information

## Overview

254. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain 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 Switzerland's legal and regulatory framework and the effectiveness of its practice and whether it 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.

255. With regards to access to information, 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), entered into force in 2013 with subsequent amendments in August 2014, providing broad access powers to the Swiss tax authorities. Nevertheless, this law 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, a recommendation has been made in this regard in the Phase 1 evaluation and this recommendation is maintained.

256. *Le Service d'Echange d'Informations* (SEI), which is part of the AFC, is Switzerland's EOI unit and is in charge of processing the requests and collecting the information. During the period under review (July 2012 to June 2015), Switzerland received more than 3 000 EOI requests from more than 50 treaty partners and has used its powers to collect the information requested. In responding to these requests the SEI obtained information from

a variety of sources, including banks and other information holders, cantonal tax authorities, and Commercial Registries.

257. In practice, a large majority of requests receives by Switzerland are in relation to banking information. This means that in practice, and in comparison for instance with many other jurisdictions, the Fiscal Authority has to often request the information from third parties. Switzerland indicated that it did not encounter any practical difficulties with the application of access powers employed for EOI purposes with third parties, including banks. However, there are still 32 agreements not to the standard and a Phase 1 recommendation for Switzerland to ensure that it has access to bank information for requests made pursuant to all agreements remains. Accordingly, element B.1 is rated Largely Compliant.

258. Regarding notification requirements and rights and safeguards, the persons concerned by the request as well as any persons with an interest in the procedure have a right to appeal. During the period under review, Switzerland received more than 3 000 EOI requests, of these 3 000, 1 898 were treated by Switzerland and of all these requests, 87 were appealed to the federal Administrative Tribunal. The Swiss authorities have indicated that a judgment is rendered in the first instance (by the federal Administrative Tribunal) in 213 days on average and in relation to the appeal in the second instance (by the federal tribunal) in 100 days on average (which is in addition to the 213 days of the first instance judgment).

259. The LAAF includes an exception to prior notification and to the right to inspect the file in appropriate cases. However, some peers mentioned that they could not obtain information in relation to deceased persons. Switzerland explained that the information on deceased persons cannot be exchanged in all circumstances, because of the impossibility to notify the deceased person or the estate of the deceased person, based on Swiss jurisprudence. During the period under review, Switzerland received less than 50 requests for deceased persons and although a solution was agreed with some partners, the information cannot be obtained in certain circumstances. A Phase 1 recommendation is thus made for Switzerland to ensure that information in relation to deceased persons can be exchanged in all cases. Of the 24 requests received since the introduction of the new exceptions only six included a request for the application of the exception to notification, where the requesting party provided a justification for the exception to apply (required under article 21a of the LAAF). As a consequence, it is recommended that Switzerland monitors the application of the exception to notification to ensure the application is in line with the standard. Element B.2 is rated Largely Compliant.

## 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).

### *Ownership and identity information (ToR B.1.1) and accounting records (ToR B.1.2)*

260. The competent authority for Switzerland in respect of EOI is the *Administration Fédérale des Contributions* (AFC, the federal tax administration), or the Commissioner of the AFC. The competence for matters related exchange information on request has been delegated to the Exchange of Information Unit (*Service d'échange d'informations*, SEI) of the AFC. The SEI comprises more than 40 employees. Contact information for Switzerland's competent authority is fully identifiable in the Global Forum's secure Competent Authority database, as well as on the Fiscal Authority's public website. These official sources indicate all relevant contact information. Moreover, the official SEI website gives access to a lot of information regarding the EOI procedure in Switzerland (https://www.estv.admin.ch/estv/en/home/internationales-steuerrecht/themen/amtshilfe-nach-dba.html). Most of this information is available in several languages (French, German, Italian and English).

261. Following the federal Council's decision of 13 March 2009, Switzerland renounced its previous reservations to the exchange of information article (Article 26) of the OECD Model Tax Convention. Therefore, Switzerland will exchange information not only for the carrying out of the provisions of the double tax convention but also for the administration and enforcement of the domestic laws of the requesting contracting state.

262. To reflect this change, Switzerland first brought into effect a regulation (ordinance), *"Ordonnance relative à l'assistance administrative d'après les convention contre les doubles impositions*" (OACDI, Ordinance concerning administrative assistance in respect of double tax conventions) which came into force from 1 October 2010. While the OACDI had the force of law, an ordinance is not a permanent legislative measure, and therefore it 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)*

263. 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, article 1). Therefore, the access powers apply in respect of requests made under agreements other than DTCs, including TIEAs or the Multilateral Convention.

264. The LAAF identifies the federal tax administration (AFC) as the competent authority for the purposes of handling EOI requests (LAAF, article 2). The AFC is also responsible for making requests for information under Switzerland's EOI agreements.

#### *General principles*

265. 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.

266. 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)).

267. 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[69] 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 (such as *cotitulaires de comptes* but not bank employees). 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

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

standard. The standard requires that all foreseeably relevant information be provided (see section C.1 below).

268. 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 (see section C.1.1 below on this aspect).

269. 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, article 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".

270. 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. In these cases, article 8(2) applies.

271. 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 32 treaties that have not been updated to meet the international standard (of which 20 contain an EOI provision), and in 19 of these 20 agreements, 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 Convention and the provision is limited to the application of the convention. The agreement with Qatar contains the equivalent of paragraph 5 of Article 26 of the OECD Model Tax Agreement which means that exchange of bank information with Qatar is possible, but this agreement also contains identity requirements that are not in line with the standard. This issue is dealt with in detail in section C.1, and the first recommendation under B.1 is therefore maintained.

272. 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.

273. Article 7 of the LAAF indicates that a request will not be considered if it violates the principles of good faith, particularly if it is based on information obtained through a criminal offence under Swiss law. The question of the principles of good faith and its application to requests based on stolen data, which were discussed under this section in the previous assessments, are now discussed under section C.4 below.

### *Access Powers*

274. 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.

275. 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.

276. 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. During the three year period under review, Switzerland received more than 3 000 EOI requests. According to the Swiss authorities, there have been no cases where article 9(1) of the LAAF has precluded the exchange of information.

277. 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).

278. 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).

### *Obtaining information in practice*

279. Exchange of information in practice is managed by the SEI which is within the AFC. When requests are received by the AFC they are dealt with by the SEI and verified for action. This process is described in section C.5 below. Where the request is validated, the SEI decides from whom the information must be requested. First the SEI sends a notice to the information holder. Once the information has been collected or during the collection (depending on the circumstances of the situation and on a risk analysis), the SEI has to notify the person concerned by the request (see sections B.2 on the notification process), unless an exception to notification is required by the requesting jurisdiction. The SEI may approach multiple sources, for example, ownership information may reside with both the cantonal tax authority and the cantonal Commercial Registry.

### *Obtaining information from another government authority*

280. In Switzerland, the SEI has access to information from the AFC such as information on VAT and withholding taxes. The information from the AFC is available within one or two days. All other tax information is available from the cantonal tax authorities (for federal and cantonal direct taxes, land tax, communal tax) or with other Swiss government authorities (for example the State Secretariat for Migrations). If the holder of the information is the cantonal tax authority, the SEI drafts a disclosure order enclosing a copy of the request, asking the cantonal tax authority to provide

the information within a time period of 14 days. If the information is with another government authority, the SEI drafts a disclosure order but the request is not enclosed. Dedicated personnel within each tax authority are in charge of dealing with requests and reported having direct and frequent contact with the SEI. In the event that there was any difficulty in understanding the information requested the tax authority will contact the SEI by telephone to obtain clarification.

281. Information requested to the Swiss tax authorities or other government authorities is almost always received in the 14 day deadline provided. In rare cases where the cantonal tax authority requires more time this is discussed with the SEI before the expiration of the deadline. It should be noted that the cantonal tax authorities provide information that is already in their possession, and so do not have to obtain it from the taxpayer directly – as this power lies with the SEI, including the power to take compulsory measures (article 13 LAAF). Consequently, there is generally no impediment to obtaining information quickly.

282. The SEI requested information from cantonal tax authorities in about 10% of all cases. The most frequent cantons involved were: Geneva, Valais, Vaud, Zug and Zurich. Generally, these requests pertained to fiscal residence, financial statements and taxes paid. The SEI requested information from other government authorities in 250 cases. Generally, these requests pertained to issues of residency.

283. In addition, as described under section A.1 of the report, certain ownership information in relation to some companies (SARL) and partnerships is directly available to the SEI from the Commercial Registry. If the information is available electronically, it can be obtained in the same day otherwise the paper information is requested to the cantonal Commercial Registry and is received in less than a week.

284. Over the period of review Switzerland received over 3 000 requests for information. In responding to these requests the SEI obtained information from a variety of sources, including banks and other information holders, cantonal tax authorities, and Commercial Registries. The information requested generally related to bank information, ownership and identity information, tax information (such as the residence status of individuals and companies) and accounting information.

285. Peers overall reported having received the information requested and were satisfied with the responses, though several peers reported difficulties obtaining information in receiving copies of tax returns and in respect of deceased taxpayers.

286. Two peers have indicated that Switzerland do not provide tax returns of their taxpayers. Switzerland indicated that the EOI unit do collect tax

returns from the cantonal tax authorities, however they do not provide a copy of the tax return to the requesting partner but instead the EOI provides the relevant information contained in the return, which was confirmed by other peers. The Swiss tax authorities also indicated to the assessment team that they can provide all the relevant information from the tax return to the requesting partner, if so requested, but their policy is not to provide a copy of the tax return itself

287. With regard to the collection of information in relation to companies that were liquidated or bankrupted, the SEI consults the Commercial Registry or the bankruptcy office in order to know the identity of the person in charge of the liquidation/bankruptcy. Information on companies liquidated or bankrupt have to be kept for ten years by the Commercial Registry. In addition, accounting information must be kept for a period of ten years. In the vast majority of the cases, the Swiss authorities obtained the information on companies liquidated or bankrupt and exchanged the information. In less than five cases, the Swiss tax authorities have been unable to provide the accounting information to the requesting partners because of bankruptcy or because the company no longer existed (liquidation of the company for absence of valid address, activity and non-fulfilment of its obligations – for example because the bankruptcy procedure has been suspended) and the liquidator can no longer be found or does not have the requisite information. Nevertheless, the practice to provide information in relation to liquidated/bankrupt companies was developed during the period under review. One peer indicated that it did not receive the information on a liquidated/bankrupt company and Switzerland confirmed that this case was at the beginning of the review period and that the SEI is in contact with this partner to provide the information.

### *Obtaining information from third parties*

288. If the SEI requests the information from a third party, including the person concerned by the request, a disclosure order is issued and contains the minimum information necessary to obtain the information requested (name of the taxpayers, information needed, tax years covered and applicable EOI agreement).

289. The information holder, upon receipt of the request for information, has ten days to respond. In the vast majority of cases this timeframe is respected. There is the possibility to extend the deadline but this must be justified and the extension is a further ten days with no possibility of a further extension. In exceptional cases, shorter deadlines can be established and this has been done in a number of cases

290. Once the initial notice to provide information is sent, a reminder letter is sent five days later to ensure a timely response. The SEI reports that there have been no issues with receiving information within the prescribed deadlines. This process has been aided by the regular communication with the major banks. The SEI also notes that they have made considerable efforts to familiarise other holders of information to the requirements of EOI and their obligations under the federal law.

### *Obtaining bank information*

291. Switzerland received 1 974 requests for bank information during the review period, which was by far the most frequently requested type of information. There are regular meetings between the SEI and the banks to discuss procedures and outstanding issues.

292. To obtain bank information, a disclosure order is issued to the bank with a deadline of ten days to provide the requested information. In urgent cases, the deadline has been reduced to five days. It is possible for the SEI to obtain bank information even if the name of the bank is not in the request, provided that bank account number is known.

293. Of the 1 974 requests for bank information received during the period under review, Switzerland answered to 589 in less than 90 days, to 301 in less than 180 days and to 486 in less than a year and to 476 in more than a year. As of 11 April 2016, 122 requests for banking information were still pending. It should be noted that at the beginning of the period under review, Switzerland took longer to answer to EOI requests. The answering process has greatly improved in the last year of the review period. For the period July 2014 to June 2015, Switzerland received 596 requests for banking information, 219 were answered in less than 90 days, 197 in less than 180 days, 88 in less than a year, eight in more than a year and 84 are still pending.

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

294. 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.

295. There have been no issues in practice regarding the application of access powers despite the lack of a Swiss tax interest in the information requested.

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

296. 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 9 100), 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.

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

1. the search of rooms or of objects, documents and records in written form or on image and data carriers;
2. the seizure of objects, documents and records in written form or on image and data carriers;
3. the enforced appearance of duly summoned witnesses.

298. 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.

299. 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).

300. In practice, the SEI sends the disclosure order to the person concerned or the information holder including that the information must be provided within ten days. If the SEI does not receive the information requested on time, it sends a reminder with an additional period of time to comply with the order to the person concerned or the information holder including reference to fines that may be applied if the information holder does not respond to the disclosure order within the additional deadline. In most cases, the SEI receives all requested information after issuing this reminder. If the SEI does not receive the requested information, it may issue a fine up to CHF 10 000 (EUR 9 100). The fine can be cumulative. Moreover, the SEI's competence to issue fines to information holders who do not provide the requisite information was recently confirmed by the federal Supreme Court.[70]

301. So far, the SEI has not experienced many difficulties in receiving the requested information and has not had to use any compulsory measures to receive the information it requested. During the review period there were two cases where the information holder initially refused to provide the requested information. However, in each case the information was ultimately provided by the information holder before the application of the sanction.

### *Secrecy provisions (ToR B.1.5)*

302. Three applicable forms of secrecy are found in Swiss Law: bank secrecy; "professional secrecy" that applies to certain classes of people including lawyers; and "*secret de fonction*" applying to persons exercising roles of a public character.

303. 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.

70. Ruling *2C_941/2014* (20 August 2015).

304. As noted above under B.1.1 the SEI has processed a large number of requests for bank information and the bank secrecy rules have not been raised as a bar to the access powers under the LAAF.

305. Legal privilege, falling with the definition of "professional secrecy" under Swiss law[71], encompasses information that has been confided to a lawyer in the normal exercise of its function. Swiss Courts have found that a lawyer 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.

306. 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.

307. In practice there were was only one case where legal privilege was raised as a bar to access to information, but it had no impact in practice as the information was obtained by other means. The functions of lawyers are separated between "typical" legal services – for which legal privilege applies – and "atypical" services such as acting as a financial intermediary – for which no legal privilege applies.

308. Switzerland has received 20 requests for information held by lawyers, notaries or accountants. In one case professional secrecy was raised as a bar to obtaining information. However, the SEI was able to obtain the information through other channels and it was not necessary to compel the production from the professional service provider in that case.

309. "*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.

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

**Determinations 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 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. |

| Phase 2 rating |
|---|
| **Largely Compliant** |

## 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)*

310. 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).

311. Two issued were previously identified under element B.2. The previous legislation (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. This has been addressed by the enactment of the LAAF.

312. 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).[72]

### *Prior Notification*

313. A prior notification requirement is provided for under the LAAF. The LAAF provides that the AFC is required to notify, in writing, the person concerned[73] 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 be entitled to appeal[74] (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 requesting authority or by the publication of a notice in the federal gazette (*Feuille fédérale*), pursuant to article 14(5) of the LAAF.

314. If the person concerned and the persons entitled to appeal 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.

315. Where consent is refused or if consent is not received, the AFC must render a decision on whether to exchange the information[75] (the ordinary

72. 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).

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

74. 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.

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

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 AFC is also required to notify interested cantonal tax authorities (article 17(4) of the LAAF).

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

317. 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.[76]

318. 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.

319. 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

76. 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)**.**

that they will consult with the requesting authority before notifying (for post notification), 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.

320. 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 (EUR 9 100) is applicable for failure to comply with the anti-tipping off provision (article 21a(3) of the LAAF).

321. 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.

322. 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.

### *Notification in practice*

323. With regard to deceased taxpayers, some peers have mentioned that they could not obtain information in relation to deceased persons. Switzerland explained that deceased persons were an issue under their notification procedure as they could not notify a deceased person, based on Swiss jurisprudence. Switzerland indicated that they found a solution with several partner jurisdictions where this jurisdiction sends the request under the name of the heirs, who are responsible for the tax debts of the person deceased in that jurisdiction, and who can be notified. One partner jurisdiction has confirmed that this solution was found and applied. Nevertheless, this solution

is not applicable to all jurisdictions since in many jurisdictions, the estate of the deceased person is responsible for the tax situation of the deceased person and the Swiss authorities have confirmed that this solution is not applicable if the request is concerning the estate.

324. As a consequence, the information on deceased persons cannot be exchanged in all circumstances, because of the impossibility to notify the deceased person or the estate of the deceased person. During the period under review, Switzerland received less than 50 requests for deceased persons and agreed a solution to make the exchange possible with several partners. It is therefore recommended that Switzerland ensure that information in relation to deceased persons can be exchanged in all cases.

### *Exception to notification in practice*

325. During the review period Switzerland received approximately 350 requests in which the requesting jurisdiction stipulated that the taxpayer should not be notified. A large number of these requests were received prior to the change of law allowing for an exception to notification (July 2014). A number of these requests were not processed as other conditions for EOI were not met (for example the EOI instruments did not allow for EOI in line with the standard). In some cases the requesting jurisdiction authorised the notification of the taxpayer after the clarifications were given by the SEI.

326. 299 of these 350 requests were made by one jurisdiction prior to the change of law allowing for an exception to notification. There was a long delay (approximately two years) during which the SEI discussed the situation with the partner, which eventually withdrew its stipulation and asked that the requests be processed. As the Swiss authorities were not able to fulfil this stipulation, the requests remained pending during these two years. Once it was agreed that the requesting partner would withdraw its stipulation, the requests were then responded to (with notification to the taxpayer) and the SEI mobilised extra resources to deal with the outstanding cases as quickly as possible. Although Switzerland made efforts to solve this issue and quickly respond to the request once the stipulation was withdrawn, a number of requests proceeded without the exception to notification, because this exception was not yet available.

327. During the period since the change of law in July 2014 Switzerland has received 24 requests to apply the exception to notification out of the approximately 1200 total requests received during that time. In six cases the exception to notification was granted. In these cases the SEI was satisfied that the justification provided was adequate. The reasons given by its partners included urgency or a suspicion that the taxpayer may destroy evidence. The expiration of a limitation period was considered on its own sufficient to

justify the exception. The exception to the notification procedure includes a notification post the exchange of information, but the law does not set any deadlines to do so. The Swiss authorities stated that this post notification is a discretionary power that is exercised on a case by case basis. The Swiss authorities have explained that in the six cases where the exception was granted, they have followed up with the partner jurisdiction, in the status update, to know when it is possible to notify. As of January 2015, only one post notification had been done as it was accepted by the partner jurisdiction, the five other cases are still awaiting an approval from the partner jurisdictions.

328. In 17 of the 24 cases the requesting jurisdiction did not provide sufficient justification for the application of the exception to notification. In these cases, the SEI has reverted to the requesting jurisdiction and asked for further clarification and a justification, including providing guidance as to what sorts of reasoning has been provided in other cases in order to justify the use of the exception. The Swiss authorities are in some of these cases awaiting a response from the requesting partner. One partner indicated that the exception was not provided although the request was urgent, however Switzerland explained that the request did not include a specific explanation in relation to this particular case, but only provided a generic explanation. Switzerland has contacted this partner in order to explain to them the reasonable grounds that would meet the Swiss requirement.

329. In one case received in 2015, the requesting jurisdiction asked for an exception to the notification, however this same request had been sent one year earlier from the same requesting partner without asking for the exception. Upon receiving the second request in 2015, Switzerland had already notified the person concerned by the request and issued a final decree regarding the first request from 2014. In 2015, the partner jurisdiction requested the exception to the notification on the ground of urgency, but the two applicable limitation periods cited expired in 2016 and 2020. This was not considered to be a sufficient justification considering that the notification had been made only one year earlier and that the first request had been withdrawn by the requesting state. In practice, the notification process does not on the whole introduce lengthy delays even in cases where the person concerned appeals the decision to exchange information (see below).

### *Right to inspect the file*

330. 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).

331. The LAAF (article 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.[77] The impact of the right to inspect the file on confidentiality will be analysed in section C.3 below. However, during the period under review, Switzerland did not receive any specific request which included a demand to apply this exception. Further, Switzerland has indicated that as of June 2016, when a person exercises the right to see the file, the Swiss authorities will swiftly contact the requesting partner to inform them that the right will be exercised and the possibility for the requesting partner to ask for the application of the exception (if they have not done so earlier in the process).

### *Conclusion*

332. The rights and safeguards in Switzerland are in line with the standard as there are exceptions to notify and to inspect the file contained in the LAAF. However, the application of these exceptions in practice was limited. Only six of the 24 requests received since the introduction of these new exceptions included an application for the notification exception, where the requesting party provided a justification for the exception to apply (required under article 21a of the LAAF). Therefore, Switzerland does not have much experience in this regard and it is recommended that Switzerland monitors the application of the notification exception to ensure the application is in line with the standard.

77. 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).*

### *Appeal procedure*

333. The persons concerned by the request as well as any person with a particular interest in the procedure (such as the co-signatory on the account) have a right to appeal the decision of the SEI to exchange the information. The appeal is made to the federal Administrative Tribunal (*Tribunal administratif fédéral*). This decision can then be appealed to the federal Tribunal (*Tribunal fédéral*) which is the higher instance court.

334. During the three year period under review, Switzerland received more than 3 000 EOI requests and only 87 were appealed to the federal Administrative Tribunal (which represents approximately 2.4% of all requests received). Approximately 40% of the cases were in relation to the scope of the information to be exchanged, 20% of the cases were in relation to the same request involving doubts on the source of the data on which the request was based and 40% on procedural aspects, such as the right to appeal and to inspect the file. In the vast majority of the cases, the federal Tribunal supported the SEI's initial decision, except in relation to the question of the right to inspect the file and to have access to the complete file (see section C.3 below). Recent decisions by the federal Administrative Tribunal and the Federal Tribunal have moreover confirmed a broad interpretation of the concept of foreseeable relevance and confirmed the practice of Switzerland's competent authority. Of the 87 cases heard by the federal Administrative Tribunal, 30 were appealed to the federal Tribunal. In the majority of the cases, the appeal was made by the SEI in order to defend the exchange of information to the requesting partner.

335. A decision from the federal Administrative Tribunal takes approximately 213 days, whilst a decision from the federal Tribunal takes 100 days to be rendered on average during the period under review. Switzerland has indicated that the number of appeals and the average time currently taken for a decision from the federal Administrative Tribunal is decreasing. Switzerland has indicated that the average time is now between two to five months. Given the fact that the possibility to appeal a decision of the federal Administrative Tribunal to the federal Tribunal is only possible when principle questions of law is raised or for another reason if the case if of high importance (article 84a LTF), the number of appeals is expected to decrease in the future as more questions of principle are settled by the Federal Tribunal.

### Determinations and factors underlying recommendations

| Phase 1 determination | |
|---|---|
| **The element is in place** | |
| Information on deceased persons cannot be exchanged in all circumstances in Switzerland, because of the impossibility to notify the deceased person or the deceased person's estate, under Swiss jurisprudence. | Switzerland should ensure that information in relation to deceased persons can be exchanged in all cases. |

| Phase 2 rating | |
|---|---|
| **Largely Compliant** | |
| **Factors underlying recommendation** | **Recommendation** |
| Although Switzerland introduced an exception to notification, during the period under review a number of requests were proceeded with without the exception to notification, because this exception was not yet available. In addition, the application of the exception to notification in practice was limited. Only six of the 24 requests received since the introduction of the new exception included an application for the notification exception, where the requesting party provided a justification for the exception to apply. | Switzerland should monitor the application of the exception to notification to ensure the application is in line with the standard. |

# C. Exchange of information

## Overview

336. 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 derives from bilateral mechanisms (DTCs and TIEAs), as well as the Multilateral Convention which it signed in October 2013. This section of the report examines whether Switzerland has a network of information exchange that would allow it to achieve effective exchange of information.

337. Once the Multilateral Convention is in force, Switzerland will have exchange of information mechanisms with 134 jurisdictions and it continues to negotiate new DTCs and TIEAs (see Annex 2 for more details of these agreements). Of these, the arrangements with 102 jurisdictions will meet the standard and 53[78] are currently in force.

338. For the older agreements which have not yet been updated to include an EOI provision in line with the standard, they do not expressly provide for the exchange of information held by banks, or persons acting in a fiduciary or agency capacity, and a Phase 1 recommendation has been made in this regard. In addition, at the beginning of the period under review, Switzerland had a restrictive approach to the concept of foreseeable relevance, which created delays in the treatment of the requests and limited the exchange of information in certain cases. Switzerland is therefore recommended to

78. Andorra, Argentina, Australia, Austria, Bulgaria, Canada, China, Chinese Taipei, Cyprus, Czech Republic, Denmark, Estonia, Germany, Faroe Islands, Finland, France, Greece, Greenland, Guernsey, Hong Kong, Hungary, Iceland, India, Ireland, Isle of Man, Japan, Jersey, Kazakhstan, Korea, Luxembourg, Malta, Mexico, Netherlands, Norway, Peru, Poland, Portugal, Qatar, Romania, Russia, San Marino, Seychelles, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Turkey, Turkmenistan, United Arad Emirates, Uruguay, United Kingdom and Uzbekistan.

monitor its interpretation of the foreseeable relevance concept to ensure it is in line with the standard and element C.1 is rated Largely Compliant.

339. In regards to its network of EOI agreements, since February 2015, Switzerland has signed eight agreements in line with the standard, of which three protocols to update existing agreements (with Albania, Italy and Norway) and five new agreements (two DTCs with Liechtenstein and Oman and three TIEAs with Belize, Brazil and Grenada). Each of these agreements is in line with the standard. Switzerland also signed the Multilateral Convention[79] in 2013 which will update 21 older EOI agreements[80] that were not to the standard and will provide 21 new EOI relationships[81] to Switzerland. Element C.2 is thus rated Compliant.

340. With regard to element C.3 (confidentiality), each of Switzerland's agreements includes a confidentiality provision and in addition Switzerland has a strong domestic confidentiality regime applicable to persons who in the course of their public duties have access to tax information (element C.3.). The LAAF provides that every person concerned by a request must be notified (unless the exception applies). A foreign resident must also be notified. A recent judgment of the federal Court allows the disclosure to any person with a right to appeal who exercises his/her right to see the file, of the file of the person concerned by the request, including the request letter itself. This is not in accordance with the principle that the request letter should be kept confidential as required by the standard. Switzerland is thus recommended to ensure that it does not exceed the confidentiality requirements as provided for under the international standard. In addition, although Switzerland has indicated that the application of the exception of the right to see the file (including the request letter) would be broadly interpreted, the exception has not yet been applied in practice and this approach is very recent and has not been tested. Switzerland is recommended to monitor its new approach to the application of the exception to the right to see the file (including the request letter) and that the application of the exception are applied effectively in practice. Element C.3 is rated Largely Compliant.

341. Under element C.4, Switzerland's approach regarding the application of the concept of good faith has had a significant impact on EOI in practice. In practice the exception based on good faith came up exclusively in relation

79. Switzerland has not yet ratified the Multilateral Convention.

80. Anguilla, Azerbaijan, Barbados, British Virgin Islands, Chile, Columbia, Croatia, Georgia, Indonesia, Israel, Latvia, Lithuania, Mexico, Moldova, Montserrat, Morocco, New Zealand, Philippines, South Africa, Tunisia and Ukraine.

81. Aruba, Bermuda, Brazil, Cameroun, Cayman Islands, Costa Rica, Curaçao, El Salvador, Gabon, Gibraltar, Guatemala, Kenya, Mauritius, Monaco, Nigeria, Niue, Saudi Arabia, Senegal, Sint Marteens, Turks and Caicos Islands and Uganda.

to the issue of stolen data. Switzerland refuses EOI based on the concept of good faith in all cases where it considers that the requests are solely based on stolen data. In such cases, its policy takes no account of the circumstances in which the requesting jurisdiction came into possession of the information. A recommendation for Switzerland to modify its law and/or practice as appropriate to ensure that it can give effect to the obligations under its EOI mechanisms is made and element C.4 is rated Partially Compliant.

342. Switzerland has improved its organisational processes and resources to its EOI system to ensure timely responses and the competent authority staff maintains high professional standards and expertise in relation to EOI. Nevertheless, some delays were noted in the EOI process during the period under review. Switzerland is therefore recommended to further improve its resources and streamline its processes for handling EOI requests to ensure that all EOI requests are responded to in a timely manner. Element C.5 is rated Largely Compliant.

## C.1. Exchange-of-information mechanisms

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

### *Summary*

343. Switzerland has recently 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. Since February 2015, Switzerland has signed three protocols to existing agreements (with Albania, Italy and Norway), that are in line with the standard.

344. Switzerland also signed two new DTCs with Liechtenstein and Oman and three TIEAs with Belize, Brazil and Grenada. Switzerland also signed the "Amending protocol to the Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments", which should enter into force in Switzerland in January 2017.

345. Further, Switzerland signed the Multilateral Convention in October 2013 (which as of May 2016, has not yet been ratified). With the Multilateral Convention, Switzerland will have an agreement to the standard with 21 partners[82] with which it does not have a bilateral agreement. In addition,

82. Aruba, Bermuda, Brazil, Cameroon, Cayman Islands, Costa Rica, Curacao, El Salvador, Gabon, Gibraltar, Guatemala, Kenya, Mauritius, Monaco, Nigeria,

21 existing EOI relationships[83] will be brought up to the standard with the Multilateral Convention.

346. As a result, Switzerland will have an EOI mechanism with 134 jurisdictions (which include those covered by the MAC), of which 102 will be to the standard. Of the arrangements with 102 jurisdictions to the standard, 53 are currently in force. Switzerland has also started to negotiate new bilateral agreements for EOI with six partners (Algeria, Israel, Pakistan, Qatar, Vietnam and Zambia). Furthermore, first contacts have been established with Egypt, Kuwait, Malaysia and Sri Lanka, with the view of negotiating an agreement covering EOI. In addition, Switzerland has sent diplomatic notes aimed at starting discussions on the update of the existing EOI agreements with Bangladesh, Iran, Kirghizstan, Serbia, Tajikistan and Thailand. Switzerland has also contacted Mongolia for this purpose but Mongolia indicated their internal legal framework did not allow for EOI in line with the standard. The agreement with Ecuador has been initialled.

347. During the period under review (1July 2012 to 30 June 2015), Switzerland received more than 3 000 requests from more than 50 different partner jurisdictions.

### *Foreseeably relevant standard (ToR C.1.1)*

348. The international standard for exchange of information envisages information exchange 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 paragraph of Article 26 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.

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Niue, Saudi Arabia, Senegal, Sint Maartens, Turks and Caicos Islands and Uganda.

83. Anguilla, Azerbaijan, Barbados, British Virgin Islands, Chile, Colombia, Croatia, Georgia, Indonesia, Israel, Latvia, Lithuania, Mexico, Moldova, Montserrat, Morocco, New Zealand, Philippines, South Africa, Tunisia and Ukraine.

349. 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".

350. In practice, in a few cases, the request was declined for lack of foreseeable relevance, as mentioned by some peers. The SEI generally seeks further clarifications before giving a negative answer, and when the request is declined, the SEI gives an explanation as to why the information could not be provided. However, some peers mentioned that during the period under review, Switzerland had a restrictive interpretation of the concept of foreseeable relevance and requested a lot of information from its partner jurisdictions before accepting the request, which limited or prevented the exchange of information in certain cases. One peer also indicated that Switzerland refused to provide information on residents of third countries that were taxable in its jurisdiction which would not be in line with the standard. Switzerland has indicated that it has taken steps to identify and tackle this issue.

351. Switzerland indicated that since the beginning of the review period, they have significantly improved their practice, they now have a team of more than 40 employees that are fully trained, they have gained experience and therefore they have improved their practice, including their interpretation of the concept of foreseeable relevance. In addition, recent decisions by the Federal Administrative Tribunal and the Federal Tribunal confirm a broad understanding of the concept of foreseeable relevance that is in line with the international standard[84] and which clearly states that the concept of foreseeable relevance must be interpreted in a broad manner in Switzerland in accordance with the international standard:

> The appreciation of the foreseeable relevance of the information requested is primarily a matter for the requesting State (…). Therefore, the foreseeable relevance requirement does not represent an important obstacle to a request.[85]

In summary, the concept of foreseeable relevance must allow exchange of information as broad as possible except for cases of fishing expedition, and

84. See for example decision 2C_1174/2014 of September 2015.

85. *L'appréciation de la pertinence vraisemblable des informations demandées est en premier lieu du ressort de l'Etat requérant. (...) L'exigence de la pertinence vraisemblable ne représente donc pas un obstacle très important à la demande administrative* (2C_1174/2014, para 2.1.1) Non official translation by the Secretariat of the Global Forum.

it is only required that the usefulness of the requested information be reasonably conceivable.[86]

These two judgements confirmed that there must be a broad interpretation of the concept of foreseeable relevance by the Swiss authorities, which is in line with the standard.

352. In addition, at the beginning of the period under review, if a request was received about a Swiss resident (with unlimited tax liability in Switzerland) in relation to possible residence in the requesting partner, Switzerland would transmit information about the person's tax status in Switzerland but would not answer the whole request at once. If the requesting partner provided more information to ascertain the tax liability in the requesting partners, further information was transmitted. Switzerland confirmed that since 2014, they have changed their practice and they now provide all the requested information without considering the residence of the person concerned by the request.

353. Switzerland had a restrictive approach to the concept of foreseeable relevance, which created delays in the treatment of the requests and limited the exchange of information in certain cases. However, this practice has changed towards the end of the review period. Switzerland is recommended to monitor its interpretation of the foreseeable relevance concept to ensure it is in line with the standard.

354. Switzerland withdrew its reservation to Article 26 of the OECD Model Tax Convention on 13 March 2009. Therefore, its treaty network is analysed as follows:

### *Agreements signed since 2009*

355. All agreements concluded by Switzerland since 2009 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".

356. 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

86. *En résumé, la notion de pertinence vraisemblable doit permettre un échange d'information aussi large que possible, les cas de fishing expeditions étant réservés, et il suffit que l'utilité des renseignements demandés soit raisonnablement envisageable* (A7188/2014, 7 April 2015). Non official translation by the Secretariat of the Global Forum.

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.

357. Switzerland's authorities have confirmed that in cases where the information to be exchanged included information on persons that are clearly not concerned by the matter that is the subject of the request, such information is rendered unreadable by the SEI. In practice, this is often the case with bank statements indicating the name of the employee of the bank in charge of this account. In these cases, Switzerland will blackout the information on the statement and in the transmission letter to the requesting partner, and indicate the nature of the information that was blacked out and it is stamped with the AFC logo, so the requesting partner knows the nature of the information that has been blacked out and that the information was verified and blacked out by the SEI. Switzerland confirmed that where the information collected, such as the bank statement, includes the name of the account holder's partner or their children, they will not black out the information. They will also leave the information visible if the co-signatory of the account is the partner in a partnership with the person concerned by the request. However, one peer indicated that this practice has created some issues during the period under review.

### *Agreements not updated to the standard*

358. 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.

359. Of all agreements concluded by Switzerland, 32 have still not been upgraded and therefore are not in line with the standard. These are the agreements signed with Algeria, Antigua and Barbuda, Armenia, Bangladesh, Belarus, Côte d'Ivoire, Dominica, Ecuador, Egypt, Former Yugoslavian Republic of Macedonia (FYROM), Gambia, Iran, Jamaica, Kyrgyzstan, Kuwait, Malaysia, Malawi, Mongolia, Montenegro, Pakistan, Qatar, Serbia, Sri Lanka, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Tajikistan, Thailand, Trinidad and Tobago, Venezuela, Viet Nam and Zambia. 12[87] of these 32 agreements do not include an EOI provision. However, Switzerland has taken several steps to improve the situation. A protocol with Ecuador has been initialled. Furthermore, negotiations aimed

87. Belarus, Côte d'Ivoire, Ecuador, Egypt, Jamaica, Kuwait, Malaysia, Sri Lanka, Tajikistan, Trinidad and Tobago, Venezuela and Viet Nam.

at updating the existing EOI agreement are ongoing with Algeria, Pakistan Qatar, Vietnam and Zambia. Switzerland has also established first contacts with Egypt, Kuwait, Malaysia and Sri Lanka and has sent diplomatic notes to Bangladesh, Iran, Kirghizstan, Serbia, Tajikistan and Thailand. Furthermore, Dominica, Jamaica, Saint Kitts and Nevis and Saint Lucia should all become parties to the Multilateral Convention in the near future, It has not been possible to establish contact with the competent authorities of Gambia and Malawi, neither of which are members of the Global Forum. Finally, Mongolia has informed Switzerland that it is not in a position to exchange information in line with the standard owing to limitations in its domestic law.

360. Therefore a recommendation has been made in the Phase 1 report that Switzerland should ensure that each of its EOI agreements allows for the exchange of information in line with the standard. Considering that there are still 32 agreements not in line with the standard, this recommendation remains.

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

361. For exchange of information 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 exchange of information envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

362. None of its agreements signed since 13 March 2009 are restricted for EOI purposes by the "persons covered" article in the DTC (equivalent to Article 1 of the OECD Model Convention). In addition, there is no such restriction in the Multilateral Convention. Accordingly, once the Multilateral Convention is in force, Switzerland will have exchange of information mechanisms with 102 jurisdictions that are in line with the standard in relation to the provision of EOI in respect of all persons.

363. Of the 32 agreements that have not been upgraded by either a protocol, a new DTC or by the Multilateral Convention, 20 are restricted to requests concerning persons otherwise covered by the Convention.

364. In practice, except for the issues identified above in section C.1.1, no other issues restricting the exchange of information in respect of the residence or nationality of the person concerned by the request or the information holder have been indicated by the Swiss authorities or by the peers.

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

*Bank information*

365. Jurisdictions cannot engage in effective exchange of information 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 OECD Model TIEA, which are primary 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.

366. All agreements concluded by Switzerland since 2009 as well as 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.

367. Of the 32 agreements 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 19 of the 20[88] 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.

368. In practice, during the period under review, Switzerland has not declined a request because the information was held by a bank, other financial institution, nominees or persons acting in an agency or fiduciary capacity or because the information related to an ownership interest.

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

### *Absence of domestic tax interest (ToR C.1.4)*

369. 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 invoked solely to obtain and provide information to the requesting jurisdiction.

370. Each of the agreements signed since 2009 as well as 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.

371. Of the 32 agreements 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 20 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.

### *Absence of dual criminality principles (ToR C.1.5)*

372. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to the 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, exchange of information should not be constrained by the application of the dual criminality principle.

373. None of the agreements signed since 2009 nor the Multilateral Convention apply the dual criminality principle to restrict the exchange of information.

374. From its commitment to the OECD 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. However, it should be noted that some of these agreements had not yet entered into force during the period under review.

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

375. 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").

376. Each of the agreements signed since 2009 as well as the Multilateral Convention extends the exchange of information to civil and criminal tax matters. The remaining agreements[89] are restricted to civil tax matters.

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

377. 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.

378. 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.

379. 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 could be met.

89. Algeria, Antigua and Barbuda, Armenia, Bangladesh, Dominica, Gambia, Iran, Kyrgyzstan, FYROM, Malawi, Mongolia, Montenegro, Pakistan, Serbia, Saint-Kitts and Nevis, Saint-Lucia, Saint-Vincent and the Grenadines, Thailand and Zambia. Switzerland also has 12 agreements that do not include an EOI provision.

380. The Swiss authorities have stated that they can exchange information in the form requested to the extent permitted by Swiss laws and administrative practices. According to comments received from Switzerland's treaty partners, there do not seem to have been any instances where Switzerland was not in a position to provide the information in the specific form requested.

### *In force (ToR C.1.8)*

381. EOI cannot take place unless a jurisdiction has EOI arrangements in force. The international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

382. Since February 2015, protocols signed with Estonia and Uzbekistan, the new DTCs signed with Argentina, Cyprus[90] and Iceland as well as the TIEAs signed with Andorra, Greenland, San Marino and Seychelles have all entered into force and are all in line with the standard. The timeframe for ratification in Switzerland has improved significantly and in general, the agreements are ratified within 12 to 18 months after signature.

383. Further, Switzerland is a signatory to the Multilateral Convention (since 15 October 2013). The Multilateral Convention has not yet been ratified by Switzerland (see section C.1.9 below).

384. Once agreed and initialled, an agreement (DTC, TIEA or protocol to an existing agreement) is sent to the cantons and interested economic circles for consultations. The text is then presented to the federal Council (*Conseil fédéral*) for approbation of signature. The agreement must be translated in the three official languages, French, German and Italian. After the signature, the text of the agreement is sent to the Parliament for final approbation with an explanatory report (*message*). The approbation by the Parliament is confirmed by the publication of a federal decree (*arrêté fédéral*). This decree can be subject to a referendum under the condition that 50 000 citizens ask for such referendum within 100 days from its official publication. So far, no referendums have ever been requested for an EOI agreement.

90. Footnote by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single 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.

385. After the 100 day period expired or after the decree was approved in the referendum the approval process is completed. The other party to the agreement is then informed, generally by diplomatic note, that internal procedures for the entry into force of the agreement have been completed.

### *Be given effect through domestic law (ToR C.1.9)*

386. For information exchange to be effective the parties to an exchange of information arrangements need to enact any legislation necessary to comply with the terms of the arrangement. Switzerland has implemented the LAAF, which enables it to meet the standard. The LAAF, which entered into force on 13 February 2013, is applicable to all treaties[91] 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.

387. Switzerland signed the Multilateral Convention on 15 October 2013. The draft legislation for the implementation of the Multilateral Convention was approved by the Swiss Parliament on 18 December 2015. Following the publication of the approval of the Multilateral Convention and its accompanying laws in the federal gazette, the Swiss public have had time to collect signatures to launch a referendum. The expiration date for the referendum was 9 April 2016. No referendum was launched against the ratification of the Multilateral Convention. Since the expiration of the date for a referendum, Switzerland has started preparing its secondary legislation and reservations to the Multilateral Convention. These steps are necessary before Switzerland can deposit the instruments of ratification, which is planned for the fall of 2016 at the latest. Accordingly, it is recommended that Switzerland expeditiously deposit its instruments of ratification for the Multilateral Convention.

91. 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.

**Determinations 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** |
| 32 EOI agreements are not consistent with the standard. | Switzerland should ensure that each of its EOI agreements allows for the exchange of information in line with the standard. |

| Phase 2 Rating | |
|---|---|
| **Largely Compliant** | |
| Switzerland had a restrictive approach to the concept of foreseeable relevance, which created delays in the treatment of the requests and limited the exchange of information in certain cases. However, this practice has changed towards the end of the review period. | Switzerland is recommended to monitor its interpretation of the foreseeable relevance concept to ensure it is 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.

388. Ultimately, 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 its tax laws, it may indicate a lack of commitment to implement the standards.

389. On 13 March 2009 the federal Council decided that in respect of the negotiation of DTCs and in particular the EOI provisions, that 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 in negotiating new agreements.

Further, since 2009, all signed EOI agreements are based on the standard and include the equivalent of paragraphs 4 and 5 of Article 26 of the OECD Model Tax Convention.

390. In recent years, Switzerland has taken active steps to update its network of EOI agreements. Since February 2015, Switzerland signed three protocols to existing agreements (with Albania, Italy and Norway, that are in line with the standard. Switzerland also signed two new DTCs with Liechtenstein and Oman and three TIEAs with Belize, Brazil and Grenada which are in line with the standard.

391. Further, Switzerland is a signatory to the Multilateral Convention. With the Multilateral Convention, Switzerland will have an agreement to the standard with 21 partners[92] with which it does not have bilateral agreements. In addition, 21 existing EOI relationships[93] will be to the standard with the Multilateral Convention. Moreover, the protocols with Estonia and Uzbekistan, the new DTCs with Argentina, Cyprus and Iceland and the TIEAs with Andorra, Greenland, San Marino and Seychelles have all entered into force.

392. As a result, Switzerland will have an EOI mechanism with 134 jurisdictions when the Multilateral Convention is in force, of which 10 to the standard. Of these agreements with 102 jurisdictions to the standard, 53 are currently in force.

393. The Swiss treaty network covers to date:

- its five neighbour countries;[94]
- all EU members;
- all G20 members but one; and
- 109 Global Forum members.

394. 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 Israel, Pakistan and Qatar. Furthermore, first contacts have been established with

92. Aruba, Bermuda, Brazil, Cameroon, Cayman Islands, Costa Rica, Curaçao, El Salvador, Gabon, Gibraltar, Guatemala, Kenya, Mauritius, Monaco, Nigeria, Niue, Saudi Arabia, Senegal, Sint Maartens, Turks and Caicos Islands and Uganda.

93. Anguilla, Azerbaijan, Barbados, British Virgin Islands, Chile, Colombia, Croatia, Georgia, Indonesia, Israel, Latvia, Lithuania, Mexico, Moldova, Montserrat, Morocco, New Zealand, Philippines, South Africa, Tunisia and Ukraine.

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

Egypt and Zambia with the view of negotiating an agreement covering EOI. The agreement with Ecuador has already been initialled.

395. Considering that Switzerland will have an EOI mechanism with 102 jurisdictions to the standard when the Multilateral Convention is in force, 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 interest in negotiating an agreement that respects the international transparency standard, Switzerland is found to have a sufficiently wide network of EOI mechanisms in place.

**Determination and factors underlying recommendations**

| Phase 1 determination | |
|---|---|
| **The element is in place**. | |
| | Switzerland should continue to develop its EOI network to the standard with all relevant partners. |

| Phase 2 Rating |
|---|
| **Compliant** |

## C.3. Confidentiality

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

### *Information received: disclosure, use, and safeguards (ToR C.3.1) and All other information exchanged (ToR C.3.2)*

396. 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.

397. Each of the EOI agreements concluded by Switzerland, provide 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.

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

399. 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 LIFD and article 39 of the *Loi fédérale sur l'harmonisation des impôts directs des cantons et des communes* (federal Act on the Harmonization of the Direct Taxes of Cantons and Communes) provide: [95]

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.

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

401. 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.

95. Equivalent provisions may be found in the Swiss laws concerning value added tax (article 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 (article 37, *Loi fédérale sur l'impôt anticipé*, Federal Act on Withholding Tax); and stamp duty (article 33, *Loi fédérale sur les droits de timbre*, Federal Act on Stamp Tax).

A foreign resident must also be notified, by a notification to the intermediary 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.[96]

402. 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.

403. 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 in certain cases) have a right to access the file.

404. The LAAF (article 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

96. 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.

405. 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.

### Confidentiality in practice

406. Switzerland has implemented a number of measures to ensure confidentiality in its EOI processes and practices. The EOI documents are kept separate from all other tax files, with the SEI. Electronic documents and emails are stored in a separate electronic folder, to which only the personnel involved in EOI has access. Switzerland's servers are secure and firewalled. Access to the premises of the SEI is secured by electronic badge and all employees dealing with EOI are subject to security clearance before starting their employment. Information is sent by registered mail/package with a tracking number, and encrypted e-mail is used for other correspondence. If large amounts of documents are sent by post, they are encrypted on a USB stick.

407. The EOI process in Switzerland includes a notification procedure to the person concerned by the request. In case this person is not resident in Switzerland, Switzerland will contact the person concerned to inform him/her of the main elements of the request according to the procedure. When the decision to exchange the information is taken, the person concerned by the request has to be informed of this decision and can either consent to the exchange of information or appeal the decision to exchange the information. If the person could not be reached by any of the means provided in the LAAF (ie, notification through the information holder, direct notification with the consent of the requesting jurisdictions or notification through the federal gazette), the formal decision of the competent authority to exchange the information also needs to be notified in the federal gazette.

408. At the beginning of the review period, the notifications in the federal gazette comprised information which was not necessary for the public notification and which was not in line with the standard (such as the name of the requesting jurisdiction). Since 2015, Switzerland has modified its practice and since then, the information that is provided in the notifications in the federal gazette is minimal, the information only concerns the identification of the person (its name, date of birth to the extent it is available and nationality) and the fact that this person should contact the ministry of finances. This new practice only discloses the minimum information necessary for the notification and is in line with the standard. Switzerland confirmed that

it has notified in the federal gazette with the new practice approximately 400 times from the moment the practice changed until the end of the review period (30 June 2015).

409. Since 2011 Switzerland's policy with regard to the right to inspect the file, did not include the request, which means that the request and the documents accompanying the request were not accessible to the persons exercising its right to appeal. However, in August 2015, a decision of the federal Tribunal[97], which is the highest instance in Switzerland, gave a ruling that this policy was not correct. In this case, the person concerned by the request appealed the decision to exchange the information and requested the right to see the file. The Swiss authorities requested to the first instance tribunal (federal Administrative Tribunal) that only essential elements of the request be disclosed to the person concerned by the request and that the request itself should not be provided.

410. The federal Administrative Tribunal rejected the request of the Swiss authorities and granted the person concerned by the request, the right to see the request itself. The Swiss authorities have therefore provided the file to the person concerned by the request on an encrypted USB key, but with the name and contact detail of the contact persons in the requesting jurisdiction blacked out. The Swiss authorities appealed the decision of the first instance tribunal to the Federal Tribunal, in order to limit the disclosure to essential elements of the request only and to ensure that the information on the name and contact detail of the contact persons in the requesting jurisdiction are not available to the person concerned by the request.

411. The federal Tribunal rejected the appeal of the Swiss authorities and gave the person concerned by the request, complete access to the request including the name and contact details of the contact person in the requesting jurisdiction. The federal Tribunal recognised that exception can be applied, for instance, if required by the requesting partner under article 15(2) of the LAAF (with justifications), but the general rule is the right to see the file in totality if the person concerned so requests. In this case, the requesting partner did not request that the exception to the right to see the file be applied, therefore the application of this exception was not discussed by the federal Administrative Tribunal and thus was not part of the decision of the federal tribunal.

412. As a result of the federal Tribunal's decision in August 2015, the process in respect of the inspection of the file has changed and is now as follows: *(i)* once a request is received by the Swiss authorities, Switzerland collects the necessary information; *(ii)* Switzerland then notifies the person concerned by the request and any persons with a right to appeal unless an exception to prior

97. 2C_112/2015 (27 August 2015).

notification is applicable; *(iii)* once notified, the aforementioned persons may decide to exercise their right to see the file; *(iv)* if a person decides to exercise their right to see the file, the requesting partner can apply for an exception to the right to see the file so that the request is kept confidential and the application must set out the grounds for secrecy. Switzerland indicated that this exception can also be requested at the moment the EOI request is sent.

413. If the grounds for secrecy are accepted by the Swiss authorities in line with the approach described below, the request letter will not be disclosed. However, in the event that the grounds for secrecy are declined by the Swiss authorities, the request letter will be disclosed unless the requesting partner withdraws its request. It should be noted that the above process occurs before a person has lodged an appeal.

414. Switzerland has indicated that as of June 2016, when a person exercises the right to see the file as mentioned in *(iv)* above, the Swiss authorities will swiftly contact the requesting partner to inform them that the right is being exercised and about the possibility for the requesting partner to ask for the application of the exception (if the partner jurisdiction has not already requested the exception in its EOI request).

415. The person who has a right to see the file includes the person concerned by the request, but also a person with a right to appeal. A person with a right to appeal does not include the information holder, but would include a person with an interest in the procedure, such as the co-signatory on the account.

416. Following this decision, Switzerland's authorities have contacted their EOI partners to inform them about the new decision and reminded them of the possibility to request the exception to the right to inspect the file and inform them of the possibility to send requests from a generic e-mail, so that their requests do not include the name and contact details of the persons in charge of the request in the requesting jurisdiction. Since the new judgment in August 2015 and since Switzerland has informed its treaty partners, it has not received any specific request where the application of the exception to the right to inspect the file was requested. Switzerland has been proactively looking for pragmatic solutions to accommodate the concerns expressed by some of its partners about the effect of the judgment and the obligation under its tax treaty that the request letter be kept confidential.

417. Switzerland has confirmed that the requirement to provide grounds for secrecy when requesting the exception will be interpreted by its authorities in a broad manner. In addition, it has also confirmed that it will follow a practice that if the initial EOI request or a subsequent request for an exception includes a statement confirming that the exception is requested on the grounds that an official investigation is ongoing or that this is required in

order to safeguard the secrecy needs of the officials of the requesting competent authority (in accordance with articles 27 (1)(b) or (c) of PA), the exception should be accepted and the request letter kept confidential. This process takes into account the August 2015 judgement of the federal Tribunal in relation to the right to see the file. As a result, Switzerland considers that the international standard can be satisfied as the threshold for requesting an exception is low and it can already be requested at the time the request letter is sent.

### Conclusion

418. An exception to the right to see the file exists, as mentioned under section B.2 and Switzerland indicated that this exception can be requested by the requesting partner at the moment the EOI request is sent. If this exception is not requested at that point, and that later in the process a person concerned by the request or with a right to appeal exercises its right to see the file, the Swiss authorities have indicated that their practice from June 2016 is that they will swiftly contact the requesting jurisdiction to inform them about the exercise of this right and the possibility for the requesting jurisdiction to ask for the application of the exception, if it has not already been asked for at the time the request letter was sent. In order for the exception to apply, the requesting partner has to provide grounds for secrecy, which means that a reason for the request to be kept confidential has to be provided.

419. Although Switzerland has indicated that the application of the exception will be broadly interpreted and that the Swiss authorities considers that under the Swiss administrative procedure, the phase following the collection of the information is the beginning of the judicial process, this is not in accordance with the standard which requires that the request letter should be considered confidential as a general principle and does not envisage any exceptions except for public court proceedings or judicial decisions (Article 26(2) of the OECD Model Tax Convention). Furthermore, the scope of the persons who can access the file and ultimately see the request letter is not in accordance with the standard as the standard only provides for the disclosure to the person concerned by the request, his proxy or to witnesses in the context of a judicial process. The impact is that requesting partners that want their request letters to be kept confidential will have to request the application of the exception providing reasons and there is a possibility that this exception will be rejected. This is not in accordance with the principle that the request letter should be kept confidential as required by the standard. Switzerland is recommended to ensure that it does not exceed the confidentiality requirements as provided for under the international standard.

420. Although Switzerland has indicated that exception to the right to see the file (including the request letter) would be broadly interpreted, the exception has not yet been applied in practice and this approach is very recent

and has not been tested. Switzerland is recommended to monitor that the new approach to the application of the exception to the right to see the file (including the request letter) and the application of the exception are applied effectively in practice.

**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.** | |
| Any person concerned by the request or with a right to appeal can exercise his/her right to see the file, including the request letter, subject to exceptions. This is not in accordance with the principle that the request letter should be kept confidential as required by the standard. | Switzerland is recommended to ensure that it does not exceed the confidentiality requirements as provided for under the international standard. |

| Phase 2 Rating | |
|---|---|
| **Largely Compliant** | |
| Although Switzerland has indicated that the application of the exception to the right to see the file (including the request letter) would be broadly interpreted, the exception has not yet been applied in practice and this approach is very recent and has not been tested. | Switzerland is recommended to monitor that its new approach to the application of the exception to the right to see the file (including the request letter) and the application of the exception are applied effectively in practice. |

## 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.

### *Exceptions to requirement to provide information (ToR C.4.1)*

421. The international standard allows requested parties not to supply information in response to a request in certain identified situations. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many countries.

422. However, communications between a client and an attorney or other admitted legal representative are, generally, only privileged to the extent that, the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Where attorney – client privilege is more broadly defined it does not provide valid grounds on which to decline a request for exchange of information. To the extent, therefore, that an attorney acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, exchange of information resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule.

423. A provision equivalent to the exception in Article 26(3) of the OECD Model Tax Convention which allows a State to decline to exchange certain types of information, including that which would disclose any trade, business, industrial, commercial or professional secret or trade process, appears in Switzerland's DTCs.

424. Switzerland confirmed that during the period under review, over 20 cases where the information was requested from a professional, there has only been one case where the attorney-client privilege has been claimed. In this particular case, there has been no impact on the process as Switzerland authorities have been able to obtain the required information by another means.

### *The exception based on the principle of good faith under the LAAF*

425. The concept of good faith and the impact on requests based on stolen data was discussed under section B.1 in the previous assessment of Switzerland and a Phase 1 recommendation was made under that section. However, for consistency with other reports on the same subject, the analysis of the application of the concept of good faith under the LAAF and its application to requests based on stolen data is now discussed in section C.4 Rights and safeguards of taxpayers and third parties.

426. 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:

1. it constitutes a fishing expedition;
2. it requests information not covered by the administrative assistance provisions of the applicable agreement;
3. it violates the principles of good faith, particularly if it is based on information obtained through a criminal offence under Swiss law.

427. Some guidance is given on the interpretation of these points in the explanatory report and in particular on the concept of good faith and 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 Secretariat of the Global Forum).[98]

428. The Phase 1 Supplementary report of March 2015 mentioned that 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. A Phase 1 recommendation was accordingly made for the Swiss authorities to ensure that article 7(c) is applied in line with the standard.

429. The Phase 1 recommendation made under B.1 in relation to the exception of good faith in the LAAF and the interpretation made by the supplementary report is removed, as the issue has now been evaluated in practice. In light of the practice and the conclusions reached, a Phase 2 recommendation is made that deals with the issue.

430. Switzerland's approach regarding the application of the concept of good faith has had a significant impact on EOI in practice. In practice the exception based on good faith came up exclusively in relation to the issue of

98. Le principe de la bonne foi dans le droit international est défini à l'article 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.

stolen data. During the period under review, Switzerland received a total of 349 requests that were based on stolen data, from three partners.

431. Switzerland explained that the mere fact that a person was part of a dataset that was stolen does not constitute sufficient grounds for the Swiss authorities to refuse a request. Switzerland states that a request will only be denied on the grounds that it violates the principles of good faith in cases the request "is solely based on stolen data". They add that this means that information can and will be exchanged in other cases and circumstances where "independent elements" have been demonstrated and when the general EOI requirements are met. In most of the cases of stolen data, Switzerland indicated that it was clear from the request that it was based on stolen data (most of the requests were only providing the name and the bank account number without any other particular information). As of 2009, it became notorious that a large amount of data had been stolen from the Swiss subsidiary of a foreign bank. The office of the attorney general immediately opened a criminal investigation against the employee author of the theft. The author of the theft was condemned in November 2015 to five years in prison by the federal Tribunal Court. Certain peers have furthermore confirmed in written that their request was based on the information originally stolen from the bank.

432. If it is not clear that a request is based on stolen data, the Swiss authorities proceed with the request but this objection can always be raised by the person concerned by the request or by the information holder. In any case, if Switzerland suspects that the request is based on stolen data, they inform the requesting jurisdiction and ask for further clarification and specifically whether the request is based on "independent elements". If the requesting jurisdiction confirms that its request does not rely on stolen data, Switzerland will proceed with the request based on the premise that official declarations of partner governments should be trusted according to the principle of good faith.

433. Switzerland explained that the application of its policy is not dependent upon the circumstances in which the requesting jurisdiction came into possession of the information grounding the request. This would include situations where the requesting state acquired the data through lawful channels, such as receiving it under an exchange of information instrument from another EOI partner jurisdiction. Switzerland indicated that it is currently working on a draft bill to exchange information for requests based on stolen data when the information was received by the requesting jurisdictions by regular means and lawful channels.

434. The majority of the requests were received from one partner between in 2012 and 2013. After various exchanges, including letters at ministerial level, these requests were thoroughly discussed during a competent authority meeting in February 2014 and later during a high-level meeting held in

October 2014 between officials of Switzerland and its partner. It was agreed that the partner would provide additional clarifications for some of the requests "for which investigations have been carried out independently from what the Swiss government considers as data obtained in breach of Swiss law" (according to the joint statement signed by both parties at the end of the meeting). Switzerland agreed to deal with these requests as a matter of priority. This agreement was confirmed on the occasion of the meeting at the ministerial level in January 2015. In late January 2015, the partner submitted 16 requests and Switzerland responded to 15 of them by providing the partner with answers, including banking information for a number of cases, in general within 90 days. One of the requests could not be closed yet because of an appeal procedure. Following the ministerial meeting, the partner submitted approximately 60 other requests for which investigations had been carried out independently till 30 June 2015. Not all of those requests contained sufficient information on independent elements. At the request of Switzerland, the partner provided additional elements regarding a certain number of the cases. Approximately 20 of these requests have been settled. Some of them could not be processed because of valid reasons, as agreed by the partner, and 13 answers were sent for which no bank account existed within the temporal scope of application of the EOI agreement. The remaining requests are still pending. Some of these, for which the partner has also provided independent elements at a later stage, are being processed. For some other cases, the partner is still expected to produce independent elements. The competent authorities have regular status updates where they discuss the pending cases and the best way to deal with these. The Swiss authorities have indicated that requests based on stolen data submitted before 2015 are considered closed and that the partner was duly informed of this decision. The Swiss authorities have confirmed that they are ready to reopen the cases for which independent elements will be provided and process them accordingly. The partner authorities have mentioned that for them, the unanswered requests are still pending and the partner is of the view that they should be answered even without additional independent elements.

### *Conclusion*

435. Switzerland refuses EOI based on the concept of good faith in all cases where it considers that the requests are solely based on stolen data. In such cases, its policy takes no account of the circumstances in which the requesting jurisdiction came into possession of the information. This is based on a strict interpretation and application of article 7 of the LAAF which provides that a request will not be considered if it as based on information obtained through a criminal offence under Swiss law, which is considered by Switzerland to violate the concept of good faith. In practice, it will ask the

requesting jurisdiction to clarify that the information in its request is based on "independent elements".

436. Switzerland's approach regarding the application of the concept of good faith has had a significant impact on EOI in practice. During the period under review, Switzerland received 349 requests based on stolen data, the majority of which came from one partner. It is therefore recommended that Switzerland should modify its law and/or practice as appropriate to ensure that it can give effect to the obligations under its EOI mechanisms.

**Determination and factors underlying recommendations**

| Phase 1 determination |
|---|
| **The element is in place.** |

| Phase 2 Rating | |
|---|---|
| **Partially Compliant** | |
| Switzerland's approach regarding the application of the concept of good faith has had a significant impact on EOI in practice. | Switzerland should modify its law and/or practice as appropriate to ensure that it can give effect to the obligations under its EOI mechanisms. |

## C.5. Timeliness of responses to requests for information

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

### *Responses within 90 days (ToR C.5.1)*

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

438. Since 2012, Switzerland has made considerable efforts to organise the treatment of EOI requests and to accelerate the process by restructuring the SEI that centralises and manages the reception and treatment or transmission of requests, and by hiring and training more than 30 new employees to manage the increasing number of requests received.

439. A database has also been developed to track the requests by monitoring the deadlines. With the new system, the SEI is now able to generate statistics on the response timeframe to monitor the progress. This system is very comprehensive and also generates statistics on the type of request received, the information requested, the type of person concerned by the request, whether the information was exchanged and if not, the reason why, the date the request for clarification was sent, etc.

440. During the three year period under review (1 July 2012-30 June 2015), Switzerland received a total of 3 070 EOI requests, from 51 partner jurisdictions. In addition, Switzerland received six group requests concerning more than 1 500 persons. Of the 3 070 request received, 1 898 were processed by Switzerland while 1 172 were either declined for valid reason or based on stolen data (of the 1 172 not processed, 823 were declined for valid reasons – see explanations below and 349 were based on stolen data, see section C.4 above).

441. The table on page 136 shows the time taken to send the final response to incoming EOI requests excluding the time taken by the requesting jurisdiction to provide clarification (if asked) over the 3 year period from 1 July 2012 to 30 June 2015 for the requests processed by Switzerland. Requests declined for valid reasons and requests based on stolen data are excluded from the first table. They are shown in the second table (requests not processed).

442. The table shows all the requests Switzerland received on stolen data from three partners. The 349 requests based on stolen data were received in 2012 (75 cases), in 2013 (213 cases), in 2014 (59 cases) and in 2015 (2). These requests are dealt with under section C.4 above. These 349 requests based on stolen data are mentioned as such in the second table. The requests for which a partner submitted independent elements of investigation (76 requests) are not mentioned under "stolen data" but are included in the first table as the SEI has processed these requests.

443. In 2013, Switzerland also received a request with a list of 540 names (540 requests since Switzerland counts one request per person) which was not legally valid. These requests are also shown in the section "Declined for valid reason" in 2013 of the table.

444. During the period under review, of the 823 cases that were "declined for valid reason", 55% were cases where the EOI instrument was not in line with the standard, 24% of the cases concerned information that was out of the scope of the applicable period, 18% of the cases concerned requests that were withdrawn by the EOI partner and approximately 3% were based on cases for which the tax fraud threshold was not met. In 2015, 35% of the cases were cases where the EOI instrument was not in line with the standard. This improvement can be explained by the increasing number of EOI instruments in line with the standard that entered into force during the period under review.

| | 2012 (from 1 July) | | 2013 | | 2014 | | 2015 (until 30 June) | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|
| | num. | % | num. | % | num. | % | num. | % | num. | % |
| Total number of requests processed | 354 | 100 | 446 | 100 | 581 | 100 | 517 | 100 | 1 898 | 100 |
| Full response: ≤ 90 days | 181 | 51% | 140 | 31 | 105 | 18 | 191 | 37 | 617 | 33 |
| ≤ 180 days (cumulative) | 212 | 60% | 200 | 45 | 261 | 45 | 366 | 71 | 1 039 | 55 |
| ≤ 1 year (cumulative) | 304 | 86% | 359 | 81 | 492 | 85 | 419 | 81 | 1 574 | 83 |
| > 1 year | 27 | 8% | 51 | 11 | 40 | 7 | 2 | 0.5 | 120 | 6 |
| Failure to obtain and provide information requested | 12 | 3% | 14 | 3 | 13 | 2 | 4 | 1 | 43 | 2 |
| Requests still pending at date of review | 11 | 3% | 22 | 5 | 36 | 6 | 92 | 17.5 | 161 | 9 |

| Total number of requests not processed | 2012 (from 1 July) | 2013 | 2014 | 2015 (until 30 June) | Total |
|---|---|---|---|---|---|
| Declined for valid reasons | 52 | 627 | 84 | 60 | 823 |
| Stolen data | 75 | 213 | 59 | 2 | 349 |

*Notes:* a. Switzerland counts one request per person involved by the request.

b. A supplementary request, i.e. a further request for information on the same matter, is counted separately if the original request has been treated and closed. If the additional request is received while the original request is still being treated, the additional request does not count as a new request and is put in the same file as the original request.

c. The table does not take into account group requests received as they are not comparable to normal requests. During the period under review, Switzerland received six group requests concerning more than 1 500 persons. In addition, two jurisdictions filed two requests concerning a total of 2 700 persons, however, these requests were clearly not admissible (as there was no legal basis to exchange information between Switzerland and these two jurisdictions), these requests were not included in the system and as such, do not figure in the table. Moreover, Switzerland received 264 requests from one partner jurisdiction with whom Switzerland has a special agreement to assist in the debt collection. These requests are not reflected in the table.

d. The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was sent, excluding the time taken by the requesting jurisdiction to provide clarification (if asked).

e. Requests based on stolen data and those declined for valid reasons are excluded from the first table because they were not processed by Switzerland.

445. Switzerland also received 299 requests in which the requesting jurisdiction stipulated that the taxpayer should not be notified. A large number of these were received prior to the change of law allowing for an exception to notification (July 2014). As the Swiss authorities were not able to fulfil this stipulation those requests were not processed for a period of two years (as explained in section B.2 above). These 299 requests were received in 2012 and in 2013. There was a long delay (approximately two years) during which the SEI discussed the situation with the partner, which eventually withdrew its stipulation and asked that the requests be processed. The requests were then responded to (with notification of the taxpayer) and the SEI mobilised extra resources to swiftly deal with the outstanding cases within a period of four months in 2014. The two year period during which the requests could not be processed has been removed from the calculation of the answering timeframe from the first table above. However, some of them (less than 25 cases) could not yet be finalised and they appear in the section "still pending" from 2012 and 2013.

446. There are 22 cases which are still pending from 2013. Four are in relation to a clarification request from Switzerland that has not been provided by the requesting partners despite many reminders from Switzerland; 13 cases are under appeal; one case in relation to deceased persons; and four pending cases where some delays are due to the workload of the SEI.

447. The table shows that Switzerland provided the requested information within 90 days for 33% of requests, 22% of the requests were answered within 180 days and 28% of the requests were answered in less than a year in total. The table also shows an improvement of the answering timeframe at the end of the review period. For the last six month of the review period (since January 2015), 37% of the requests were answered in less than 90 days 34% in less than 180 days and 10% in less than a year.

448. Switzerland explained that one of the reasons for the long answering timeframe at the beginning of the review period was the time needed to create a structural organisation enabling it to cope with a growing number of requests. The treatment of group requests has also required a lot of preparation time as well as a considerable increase of staff that had to be trained. During the period under review, Switzerland dealt with six group request concerning more than 1 500 persons concerned. The investment in the new structure and in the hiring of new staff has provided positive results as the answering timeframe has reduced significantly.

449. At the beginning of the review period, the status updates sent by Switzerland were not systematic. Since 2015, Switzerland has put in place a new system where status updates are systematically sent to all partner jurisdictions every six weeks. The status updates include an update of the situation of all pending requests of the jurisdiction.

### *Organisational process and resources (ToR C.5.2)*

450. Within the AFC, the SEI, as the EOI unit, has the overall responsibility for exchange of information. The SEI was created at in October 2010 with five employees. Since 2012 and considering the increasing number of requests received, the SEI has been continuously recruiting and training new employees in order to process all requests received. Five additional employees were hired in 2013, 22 in 2014 and another 11 up to 30 June 2015, for a total of 43 employees. Additional staff is expected to be recruited in 2016. The SEI is headed by a director, who is assisted by a deputy, and is divided into three sub-groups each headed by a head of sub-group. The requests are allocated to a sub-group based on the requesting partner and based on language, which means that the same sub-group always works with the same partner jurisdictions, which helps with communication. The SEI is assisted by a secretariat of four employees.

451. The employees of the SEI are mainly lawyers. Confidentiality requirements are specifically mentioned in each employee's contract and brought to his/her attention at the start of employment. Moreover, each employee of the SEI receives detailed information on EOI and the Swiss EOI procedure in writing (the Swiss EOI manual), regular updates are distributed by emails. Internal workshops and trainings are organised twice a year in order to provide employees with further knowledge on specific topics and to bring them up to date on current issues relevant to their work. In addition to this training, general SEI staff meetings take place on a weekly basis to update everyone on current issues, visits, special requests or court decisions. SEI employees can also participate in different workshops in Switzerland and abroad organised by state agencies, universities as well as private tax and finance entities. In addition, the federal tax administration offers courses on Swiss taxation and language courses.

452. All international requests for information are received, handled and processed by the SEI. The SEI is responsible for communication with the other competent authorities and for the administration of gathering the requested information. Once received, the request is first stamped and registered in the system, one file being created for each person concerned by the request. In addition, a paper file is created and a reference number is attributed to each file. The reference number allows the tracking of the progress of each file in the system. Switzerland usually acknowledges receipt of the request on the day it is received. After a preliminary check by the team head, the request is then attributed to one of the employees of the sub-group to which the requesting partner is allocated. The employee in charge of the request verifies that the request is complete and that there is a valid legal basis. This analysis is based on a checklist and takes approximately one day.

453. If the request is complete, the person in charge of the request starts the collection process. The notification will ensue right away or later in the process depending on the case. The SEI uses model letters for all steps of the process. If clarification is needed, the person in charge of the request informs its head of sub-group who communicates with the requesting jurisdiction to obtain the clarification. Communication with a partner jurisdiction is done at the level of the head of the sub-group or above and the director of the SEI and the deputy are always informed.

454. Statistics provided by Switzerland indicate that Switzerland has sought clarification in approximately 5% of the requests received during the period under review (this statistic does not take into account the request for stolen data and the 299 requests for which a request not to notify was made, see above). The average answering timeframe by the partner jurisdiction in these cases amounted to two months, but in certain cases it took more than six months. Switzerland indicates that these requests for clarification and further background information lead to a positive result in a number of cases as the SEI was able to provide the information in the vast majority of these cases.

455. The first notification and collection process is done simultaneously in the majority of cases. If the information is available with another government authority, the SEI requires the information within 14 days. The information is provided within this deadline in the vast majority of cases. If the information is within a third party, the SEI issues a disclosure order which contains the minimum information necessary to obtain the information requested (name of the taxpayers, information needed, tax years covered and applicable EOI agreement). The SEI can collect the information from many sources in parallel (for instance, it can collect from another government authority and from an information holder at the same time).

456. The deadline to respond is ten days for a holder of information. In the vast majority of cases this timeframe is respected. There is the possibility to extend the deadline but this must be justified and the extension is a further ten days with no possibility of a further extension. In exceptional cases, shorter deadlines can be established and this has been done in a number of cases.

457. Once the information is received by the SEI, the person in charge of the request reviews the information to ensure it is complete and prepares the answer for the partner jurisdiction. This step generally takes five days. The file is then reviewed by the head of the sub-group. This step is also generally done within five days. The person concerned then has the opportunity to give his/her consent for the transmission. This usually takes ten days. When the person concerned does not react or does not agree to the transmission of the information, the final decision to exchange the information along with the

information collected is then notified to the person concerned by the request (unless the notification is done through the federal gazette, see section C.3 above). If the person concerned by the request does not appeal the decision to exchange, the information is exchanged.

458. One of the biggest challenges for Switzerland with regard to EOI is the number of EOI requests received during the period under review. In order to manage the requests received, Switzerland has made important efforts in hiring and training new employees, in reorganising its EOI unit and developing a system to track the requests in order to improve its answering capacities. During the last year of the period under review (July 2014 to June 2015), Switzerland received 934 EOI requests, 37.7% were answered in less than 90 days and 70.2% in less than 180 days, which shows the results of these considerable efforts.

459. Switzerland also improved its collaboration with its partner jurisdictions by increasing the communication and meetings with its partners to discuss the pending cases and potential issues and in order to try to find solutions. To this effect, the Swiss authorities have organised numerous meetings and conference calls during the period under review to ensure a good co-operation.

460. Switzerland has thus improved its organisational processes and resources to its EOI system to help ensure more timely responses and the competent authority staff maintains high professional standards and expertise in relation to EOI. Nevertheless, delays were noted in the EOI process during the period under review as mentioned by a number of peers. It is recommended that Switzerland further improves its resources and streamlines its processes for handling EOI requests to ensure that all EOI requests are responded to in a timely manner.

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

461. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. Other than those matters identified earlier in this report, there are no further aspects of Switzerland's agreements or laws that appear to impose additional restrictive conditions on the exchange of information.

**Determination and factors underlying recommendations**

| 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.** |

| Phase 2 rating | |
|---|---|
| **Largely Compliant** | |
| **Factors underlying recommendations** | **Recommendations** |
| Whilst Switzerland has improved its organisational processes and resources to its EOI system to help ensure more timely responses and the competent authority staff maintain high professional standards and expertise in relation to EOI, delays were noted in the EOI process during the period under review. | Switzerland should further improve its resources and streamline its processes for handling EOI requests to ensure that all EOI requests are responded to in a timely manner. |

# Summary of determinations and factors underlying recommendations

| Overall Rating |
|---|
| **LARGELY COMPLIANT** |

| 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 in place but certain aspects of the legal implementation of the element need improvement** | Although legal requirements have been introduced for the reporting of ownership information in relation to bearer shares, these reporting mechanisms do not sufficiently ensure that the owners of such shares can be identified within the stipulated timeframes of the reporting regime. | Switzerland should ensure that appropriate reporting mechanisms are in place to effectively ensure the identification of the owners of bearer shares in all cases. |
| | 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. |

| Determination | Factors underlying recommendations | Recommendations |
|---|---|---|
| **Phase 2 rating: Partially Compliant** | The supervision of the obligation for certain companies (SAs and SCAs) to maintain a register of shares, and the effectiveness of the enforcement provisions should be improved, as there are currently no clear penalties for failure to maintain a register of shares | Switzerland should ensure that its system of oversight for SAs and SCAs is effective. |
| 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.** | | |
| **Phase 2 rating: Compliant** | | |
| 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. |
| **Phase 2 rating: Compliant** | | |
| Competent authorities should have the power to obtain and provide information that is the subject of a request under and exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(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. |
| **Phase 2 rating: Largely Compliant** | | |

| 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.** | Information on deceased persons cannot be exchanged in all circumstances in Switzerland, because of the impossibility to notify the deceased person or the deceased person's estate, under Swiss jurisprudence. | Switzerland should ensure that information in relation to deceased persons can be exchanged in all cases. |
| **Phase 2 rating: Largely Compliant** | Although Switzerland introduced an exception to notification, during the period under review a number of requests were proceeded with without the exception to notification, because this exception was not yet available. In addition, the application of the exception to notification in practice was limited. Only six of the 24 requests received since the introduction of the new exception included an application for the notification exception, where the requesting party provided a justification for the exception to apply. | Switzerland should monitor the application of the exception to notification to ensure the application is in line with the standard. |
| Exchange of information mechanisms should provide 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. not in place.** | 32 EOI agreements are not consistent with the standard. | Switzerland should ensure that each of its EOI agreements allows for the exchange of information in line with the standard. |

| Determination | Factors underlying recommendations | Recommendations |
|---|---|---|
| **Phase 2 rating: Largely compliant** | Switzerland had a restrictive approach to the concept of foreseeable relevance, which created delays in the treatment of the requests and limited the exchange of information in certain cases. However, this practice has changed towards the end of the review period. | Switzerland is recommended to monitor its interpretation of the foreseeable relevance concept to ensure it is in line with the standard. |
| The jurisdiction's 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. |
| **Phase 2 rating: Compliant** | | |
| 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, but certain aspects of the legal implementation of the element need improvement.** | Any person concerned by the request or with a right to appeal can exercise his/her right to see the file, including the request letter, subject to exceptions. This is not in accordance with the principle that the request letter should be kept confidential as required by the standard. | Switzerland is recommended to ensure that it does not exceed the confidentiality requirements as provided for under the international standard. |
| **Phase 2 rating: Largely Compliant** | Although Switzerland has indicated that the application of the exception to the right to see the file (including the request letter) would be broadly interpreted, the exception has not yet been applied in practice and this approach is very recent and has not been tested. | Switzerland is recommended to monitor that its new approach to the application of the exception to the right to see the file (including the request letter) and the application of the exception is applied effectively in practice. |

| Determination | Factors underlying recommendations | Recommendations |
|---|---|---|
| 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.** | | |
| **Phase 2 rating: Partially Compliant** | Switzerland's approach regarding the application of the concept of good faith has had a significant impact on EOI in practice. | Switzerland should modify its law and/or practice as appropriate to ensure that it can give effect to the obligations under its EOI mechanisms. |
| 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.** | | |
| **Phase 2 rating: Largely Compliant** | Whilst Switzerland has improved its organisational processes and resources to its EOI system to help ensure more timely responses and the competent authority staff maintain high professional standards and expertise in relation to EOI, delays were noted in the EOI process during the period under review. | Switzerland should further improve its resources and streamline its processes for handling EOI requests to ensure that all EOI requests are responded to in a timely manner. |

# Annex 1: Jurisdiction's response to the review report[99]

This annex is left blank because Switzerland has chosen not to provide any material to include in it.

99. 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: List of all exchange-of-information mechanisms

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 |
| | | Protocol to DTC | 9 September 2015 | |
| | | Multilateral Convention | Signed | 1 December 2013 |
| 2 | Algeria | DTC | 3 June 2006 | 9 February 2009 |
| 3 | Andorra | TIEA | 17 March 2014 | 27 July 2015 |
| | | 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 [c] | DTC | | 26 August 1963 |
| 6 | Argentina | DTC | 23 April 1997 | |
| | | DTC (new) | 20 March 2014 | 27 November 2015 |
| | | Multilateral Convention | Signed | 1 January 2013 |
| 7 | Armenia | DTC | 12 June 2006 | 7 November 2007 |
| 8 | Aruba | Multilateral Convention [d] | | 1 September 2013 |
| 9 | Australia | DTC | 28 February 1980 | 13 February 1981 |
| | | DTC (new) | 30 July 2013 | 14 October 2014 |
| | | Multilateral Convention | Signed | 1 December 2012 |

| | Jurisdiction | Type of EOI arrangement | Date signed | Date entered into force |
|---|---|---|---|---|
| 10 | Austria | DTC | 30 January 1974 | 4 December 1974 |
| | | Protocol to DTC | 3 September 2009 | 1 March 2011 |
| | | Multilateral Convention | Signed | 1 December 2014 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 11 | Azerbaijan | DTC | 23 February 2006 | 13 July 2007 |
| | | Multilateral Convention | Signed | 1 September 2015 |
| 12 | Bangladesh | DTC | 10 December 2007 | 13 December 2009 |
| 13 | Barbados[e] | DTC | | 26 August 1963 |
| | | Multilateral Convention | Signed | Not yet in force in Barbados |
| 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 | 1 April 2015 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 16 | Belize[f] | DTC | | 30 September 1954 |
| | | TIEA | 10 August 2015 | |
| | | Multilateral Convention | Signed | 1 September 2013 |
| 17 | Bermuda[g] | Multilateral Convention | | 1 March 2014 |
| 18 | Brazil | TIEA | 23 November 2015 | |
| | | Multilateral Convention | Signed | Not yet in force in Brazil |
| 19 | British Virgin Islands[h] | 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 |
| | | Multilateral Convention | 26 October 2015 | 1 July 2016 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 21 | Cameroon | Multilateral Convention | Signed | 1 October 2015 |

| | Jurisdiction | Type of EOI arrangement | Date signed | Date entered into force |
|---|---|---|---|---|
| 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[i] | Multilateral Convention | | 1 January 2014 |
| 24 | Chile | DTC | 2 April 2008 | 5 May 2010 |
| | | Multilateral Convention | Signed | Not yet in force in Chile |
| 25 | China | DTC | 6 July 1990 | 27 September 1991 |
| | | DTC (new) | 25 September 2013 | 15 November 2014 |
| | | Multilateral Convention | Signed | 1 February 2016 |
| 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 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 30 | Curaçao[j] | Multilateral Convention | | 1 September 2013 |
| 31 | Cyprus[ac] | DTC | 27 July 2014 | 15 October 2015 |
| | | Multilateral Convention | Signed | 1 April 2015 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 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 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 33 | Denmark | DTC | 23 November 1973 | 15 October 1974 |
| | | Protocol to DTC | 21 August 2009 | 22 November 2010 |
| | | Multilateral Convention | Signed | 1 June 2011 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 34 | Dominica[k] | DTC | | 26 August 1963 |

| | Jurisdiction | Type of EOI arrangement | Date signed | Date entered into force |
|---|---|---|---|---|
| 35 | Ecuador | DTC | 28 November 1994 | 22 December 1995 |
| 36 | Egypt | DTC | 20 May 1987 | 14 July 1988 |
| 37 | El Salvador | Multilateral Convention | Signed | Not yet in force in El Salvador |
| 38 | Estonia | DTC | 11 June 2002 | 12 July 2004 |
| | | Protocol to DTC | 25 August 2014 | 16 October 2015 |
| | | Multilateral Convention | Signed | 1 November 2014 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 39 | Faroe Islands[l] | DTC | | 20 March 1978 |
| | | Protocol to DTC | | 29 November 2010 |
| | | Multilateral Convention | | 1 June 2011 |
| 40 | Finland | DTC | 16 December 1991 | 26 December 1993 |
| | | Protocol to DTC | 22 September 2009 | 19 December 2010 |
| | | Multilateral Convention | Signed | 1 June 2011 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 41 | France | DTC | 9 September 1966 | 26 July 1967 |
| | | Protocol to DTC | 27 August 2009 | 4 November 2010 |
| | | Multilateral Convention | Signed | 1 April 2012 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 42 | FYROM | DTC | 14 April 2000 | 27 December 2000 |
| 43 | Gabon | Multilateral Convention | 3 July 2014 | Not yet in force in Gabon |
| 44 | Gambia[m] | DTC | | 26 August 1963 |
| 45 | Georgia | DTC | 15 June 2010 | 5 August 2011 |
| | | Multilateral Convention | Signed | 1 June 2011 |
| 46 | Germany | DTC | 11 August 1971 | 29 December 1972 |
| | | Protocol to DTC | 27 October 2010 | 21 December 2011 |
| | | Multilateral Convention | Signed | 1 December 2015 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |

| | Jurisdiction | Type of EOI arrangement | Date signed | Date entered into force |
|---|---|---|---|---|
| 47 | Ghana | DTC | 23 July 2008 | 30 December 2009 |
| | | Protocol to DTC | 22 May 2014 | |
| | | Multilateral Convention | Signed | 1 September 2013 |
| 48 | Gibraltar [n] | Multilateral Convention | | 1 March 2014 |
| 49 | Greece | DTC | 16 June 1983 | 21 February 1985 |
| | | Protocol to DTC | 4 November 2010 | 27 December 2011 |
| | | Multilateral Convention | Signed | 1 September 2013 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 50 | Greenland [ae] | TIEA | 7 March 2014 | 22 July 2015 |
| | | Multilateral Convention | | 1 June 2011 |
| 51 | Grenada [p] | DTC | | 26 August 1963 |
| | | TIEA | 19 May 2015 | |
| 52 | Guatemala | Multilateral Convention | Signed | Not yet in force in Guatemala |
| 53 | Guernsey [q] | TIEA | 11 September 2013 | 3 November 2014 |
| | | Multilateral Convention | | 1 August 2014 |
| 54 | Hong Kong, China | DTC | 4 October 2010 | 15 October 2012 |
| 55 | Hungary | DTC | 9 April 1981 | 27 June 1982 |
| | | DTC (new) | 12 September 2013 | 9 November 2014 |
| | | Multilateral Convention | Signed | 1 March 2015 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 56 | Iceland | DTC | 3 June 1988 | 20 June 1989 |
| | | DTC (new) | 10 July 2014 | 6 November 2015 |
| | | Multilateral Convention | Signed | 1 February 2012 |
| 57 | India | DTC | 2 November 1994 | 29 December 1994 |
| | | Protocol to DTC | 30 August 2010 | 7 October 2011 |
| | | Multilateral Convention | Signed | 1 June 2012 |
| 58 | Indonesia [r] | DTC | 29 August 1988 | 24 October 1989 |
| | | Multilateral Convention | Signed | 1 May 2015 |
| 59 | Iran | DTC | 27 October 2002 | 31 December 2003 |

| | Jurisdiction | Type of EOI arrangement | Date signed | Date entered into force |
|---|---|---|---|---|
| 60 | Ireland | DTC | 8 November 1966 | 16 February 1968 |
| | | Protocol to DTC | 26 January 2012 | 14 November 2013 |
| | | Multilateral Convention | Signed | 1 September 2013 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 61 | Isle of Man [s] | TIEA | 28 August 2013 | 14 October 2014 |
| | | Multilateral Convention | | 1 March 2014 |
| 62 | Israel | DTC | 2 July 2003 | 22 December 2003 |
| | | Multilateral Convention | Signed | Not yet in force in Israel |
| 63 | Italy | DTC | 9 March 1976 | 27 March 1979 |
| | | Protocol to DTC | 23 February 2015 | |
| | | Multilateral Convention | Signed | 1 May 2012 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 64 | Jamaica | DTC | 6 December 1994 | 27 December 1995 |
| 65 | Japan | DTC | 19 January 1971 | 26 December 1971 |
| | | Protocol to DTC | 21 May 2010 | 30 December 2011 |
| | | Multilateral Convention | Signed | 1 October 2013 |
| 66 | Jersey [t] | TIEA | 16 September 2013 | 14 October 2014 |
| | | Multilateral Convention | | 1 June 2014 |
| 67 | Kazakhstan | DTC | 21 October 1999 | 24 November 2000 |
| | | Protocol to DTC | 3 September 2010 | 26 February 2014 |
| | | Multilateral Convention | Signed | 1 August 2015 |
| 68 | Kenya | Multilateral Convention | Signed | Not yet in force in Kenya |
| 69 | Korea | DTC | 12 February 1980 | 22 April 1981 |
| | | Protocol to DTC | 28 December 2010 | 25 July 2012 |
| | | Multilateral Convention | Signed | 1 July 2012 |
| 70 | Kuwait | DTC | 16 February 1999 | 31 May 2000 |
| 71 | Kyrgyzstan | DTC | 26 January 2001 | 5 June 2002 |
| 72 | Latvia | DTC | 31 January 2002 | 18 December 2002 |
| | | Multilateral Convention | Signed | 1 November 2014 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |

| | Jurisdiction | Type of EOI arrangement | Date signed | Date entered into force |
|---|---|---|---|---|
| 73 | Liechtenstein | DTC | 22 June 1995 | 17 December 1996 |
| | | DTC (new) | 10 July 2015 | |
| | | Multilateral Convention | Signed | Not yet in force in Liechtenstein |
| 74 | Lithuania | DTC | 27 May 2002 | 18 December 2002 |
| | | Multilateral Convention | Signed | 1 June 2014 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 75 | Luxembourg | DTC | 21 January 1993 | 19 February 1994 |
| | | Protocol to DTC | 25 August 2009 | 19 November 2010 |
| | | Multilateral Convention | Signed | 1 November 2014 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 76 | Malaysia | DTC | 30 December 1974 | 8 January 1976 |
| 77 | Malawi [u] | DTC | | 21 September 1961 |
| 78 | Malta | DTC | 25 February 2011 | 6 July 2012 |
| | | Multilateral Convention | Signed | 1 September 2013 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 79 | Mauritius | Multilateral Convention | Signed | 1 December 2015 |
| 80 | Mexico | DTC | 3 August 1993 | 8 September 1994 |
| | | Protocol to DTC | 18 September 2009 | 23 December 2010 |
| | | Multilateral Convention | Signed | 1 September 2012 |
| 81 | Moldova | DTC | 13 January 1999 | 22 August 2000 |
| | | Multilateral Convention | Signed | 1 March 2012 |
| 82 | Monaco | Multilateral Convention | Signed | Not yet in force in Monaco |
| 83 | Mongolia | DTC | 20 September 1999 | 25 June 2002 |
| 84 | Montenegro | DTC | 13 April 2005 | 10 July 2007 |
| 85 | Montserrat [v] | DTC | | 30 September 1954 |
| | | Multilateral Convention | | 1 October 2013 |
| 86 | Morocco | DTC | 31 March 1993 | 27 July 1995 |
| | | Multilateral Convention | Signed | Not yet in force in Morocco |

| | Jurisdiction | Type of EOI arrangement | Date signed | Date entered into force |
|---|---|---|---|---|
| 87 | Netherlands | DTC | 12 November 1951 | 9 January 1952 |
| | | DTC (new) | 26 February 2010 | 9 November 2011 |
| | | Multilateral Convention | Signed | 1 September 2013 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 88 | New Zealand | DTC | 6 June 1980 | 21 November 1981 |
| | | Multilateral Convention | Signed | 1 March 2014 |
| 89 | Nigeria | Multilateral Convention | Signed | 1 September 2015 |
| 90 | Niue | Multilateral Convention | Signed | Not yet in force in Niue |
| 91 | Norway | DTC | 7 September 1987 | 2 May 1989 |
| | | Protocol to DTC | 31 August 2009 | 22 December 2010 |
| | | Protocol to DTC | 4 September 2015 | |
| | | Multilateral Convention | Signed | 1 June 2011 |
| 92 | Oman | DTC | 22 May 2015 | |
| 93 | Pakistan | DTC | 19 July 2005 | 24 November 2008 |
| 94 | Peru | DTC | 21 September 2012 | 10 March 2014 |
| 95 | Philippines | DTC | 24 June 1998 | 30 April 2001 |
| | | Multilateral Convention | Signed | Not yet in force in the Philippines |
| 96 | Poland | DTC | 2 September 1991 | 25 September 1992 |
| | | Protocol to DTC | 20 April 2010 | 17 October 2011 |
| | | Multilateral Convention | Signed | 1 October 2011 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 97 | Portugal | DTC | 26 September 1974 | 17 December 1975 |
| | | Protocol to DTC | 25 June 2012 | 21 October 2013 |
| | | Multilateral Convention | Signed | 1 March 2015 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 98 | Qatar | DTC | 24 September 2009 | 15 December 2010 |

| | Jurisdiction | Type of EOI arrangement | Date signed | Date entered into force |
|---|---|---|---|---|
| 99 | Romania | DTC | 25 October 1993 | 27 December 1994 |
| | | Protocol to DTC | 28 February 2011 | 16 July 2012 |
| | | Multilateral Convention | Signed | 1 November 2014 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 100 | Russia | DTC | 15 November 1995 | 18 April 1997 |
| | | Protocol to DTC | 24 September 2011 | 9 November 2012 |
| | | Multilateral Convention | Signed | 1 July 2015 |
| 101 | Saint Kitts and Nevis [w] | DTC | | 26 August 1963 |
| 102 | Saint Lucia [x] | DTC | | 26 August 1963 |
| 103 | Saint Vincent and the Grenadines [y] | DTC | | 26 August 1963 |
| 104 | San Marino | TIEA | 16 May 2014 | 20 July 2015 |
| | | Multilateral Convention | Signed | 1 December 2015 |
| 105 | Saudi Arabia | Multilateral Convention | Signed | 1 April 2016 |
| 106 | Senegal | Multilateral Convention | Signed | Not yet in Force in Senegal |
| 107 | Serbia | DTC | 13 April 2005 | 5 May 2006 |
| 108 | Seychelles | TIEA | 26 May 2014 | 10 August 2015 |
| | | Multilateral Convention | Signed | 1 October 2015 |
| 109 | Singapore | DTC | 25 November 1975 | 17 December 1976 |
| | | DTC (new) | 24 February 2011 | 1 August 2012 |
| | | Multilateral Convention | Signed | 1 May 2016 |
| 110 | Sint Maarten [z] | Multilateral Convention | | 1 September 2013 |
| 111 | Slovak Republic | DTC | 14 February 1997 | 23 December 1997 |
| | | Protocol to DTC | 8 February 2011 | 8 August 2012 |
| | | Multilateral Convention | Signed | 1 March 2014 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 112 | Slovenia | DTC | 12 June 1996 | 1 December 1997 |
| | | Protocol to DTC | 7 September 2012 | 14 October 2013 |
| | | Multilateral Convention | Signed | 1 June 2011 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |

| | Jurisdiction | Type of EOI arrangement | Date signed | Date entered into force |
|---|---|---|---|---|
| 113 | South Africa | DTC | 8 May 2007 | 27 January 2009 |
| | | Multilateral Convention | Signed | 1 March 2014 |
| 114 | Spain | DTC | 26 April 1966 | 2 February 1967 |
| | | Protocol to DTC | 27 July 2011 | 24 August 2013 |
| | | Multilateral Convention | Signed | 1 January 2013 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 115 | Sri Lanka | DTC | 11 January 1983 | 14 September 1984 |
| 116 | Sweden | DTC | 7 May 1965 | 6 June 1966 |
| | | Protocol to DTC | 28 February 2011 | 5 August 2012 |
| | | Multilateral Convention | Signed | 1 September 2011 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 117 | Chinese Taipei | DTC (private convention) | 8 October 2007 | 13 December 2011 |
| 118 | Tajikistan | DTC | 23 June 2010 | 26 October 2011 |
| 119 | Thailand | DTC | 12 February 1996 | 19 December 1996 |
| 120 | Trinidad and Tobago | DTC | 1 February 1973 | 20 March 1974 |
| 121 | Tunisia | DTC | 10 February 1994 | 28 April 1995 |
| | | Multilateral Convention | Signed | 1 February 2014 |
| 122 | Turkey | DTC | 18 June 2010 | 8 février2012 |
| | | Multilateral Convention | Signed | Not yet in force in Turkey |
| 123 | Turkmenistan | DTC | 8 October 2012 | 11 December 2013 |
| 124 | Turks and Caicos Islands [aa] | Multilateral Convention | | 1 December 2013 |
| 125 | Uganda | Multilateral Convention | Signed | Not yet in force in Uganda |
| 126 | Ukraine | DTC | 30 October 2000 | 22 February 2002 |
| | | Multilateral Convention | Signed | 1 September 2013 |
| 127 | United Arab Emirates | DTC | 6 October 2011 | 21 October 2012 |

| | Jurisdiction | Type of EOI arrangement | Date signed | Date entered into force |
|---|---|---|---|---|
| 128 | 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 |
| | | EU-Switzerland revised Savings Agreement | 27 May 2015 | Not yet in force in Switzerland |
| 129 | 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 |
| 130 | Uruguay | DTC | 18 October 2010 | 28 December 2011 |
| 131 | Uzbekistan | DTC | 3 April 2002 | 15 August 2003 |
| | | Protocol to DTC | 1 July 2014 | 14 October 2015 |
| 132 | Venezuela | DTC | 20 December 1996 | 23 December 1997 |
| 133 | Viet Nam | DTC | 6 May 1996 | 12 October 1997 |
| 134 | Zambia [ab] | 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.

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

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

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

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

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

h. 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).

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

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

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

l. 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).

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

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

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

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

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

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

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

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

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

v. 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).

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

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

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

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

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

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

ac. Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single 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.

# Annex 3: List of all laws, regulations and other material received

## Tax laws and regulations

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

Loi fédérale sur l'impôt fédéral direct (LIFD)

Loi fédérale régissant la taxe sur la valeur ajoutée (LTVA)

Loi fédérale sur les droits de timbre (LT)

Loi fédérale sur l'impôt anticipé (LIA)

Circulaire 30 de la Conférence suisse des impôts

Loi fédérale sur l'harmonisation des impôts directs des cantons et des communes (LHID)

## Laws, regulations and other materials relating to Financial Markets

Loi sur l'Autorité fédérale de surveillance des marchés financiers (LFINMA)

Loi fédérale sur les placements collectifs de capitaux (LPCC)

Loi fédérale sur les banques et les caisses d'épargne (LB)

Ordonnance du 17 mai 1972 sur les banques et les caisses d'épargne (OB)

Convention relative à l'obligation de diligence des banques (CDB 16)

Loi fédérale concernant la lutte contre le blanchiment d'argent et le financement du terrorisme dans le secteur financier (LBA)

Pratique de l'Autorité de contrôle en matière de lutte contre le blanchiment d'argent relative à l'art. 2, al. 3, LBA

Règlement LBA de l'OAR de l'ASG

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

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

## Commercial laws, regulations and other materials

Constitution fédérale de la Confédération Suisse (Cst.)

Loi fédérale complétant le Code civil suisse (CO)

Ordonnance sur le registre du commerce (ORC)

Ordonnance concernant la tenue et la conservation des livres de comptes

Code civil suisse (CC)

Loi fédérale sur le droit international privé

Loi fédérale sur les titres intermédiés (LTI)

Code pénal suisse (CP)

Convention relative à loi applicable au trust et à sa reconnaissance

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

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

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

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

# Annex 4: People interviewed during the on-site visit

Representatives from the Ministry of Finance, including:

- Representatives of the State Secretary for International Financial Affairs
- Representatives of the tax treaty negotiation team

Representatives from the Tax Departments

- Federal tax administration (*Administration fédérale des contributions – AFC*)
- Cantonal tax administration (Geneva and Zurich)
- Exchange of Information Unit (*Service d'échange d'informations en matière fiscale – SEI*)

Representatives of the Swiss Banking Association (*Association suisse des banquiers*)

Representatives of the Geneva's Lawyers Council (*Ordre des Avocats de Genève*)

Representative of Experts Suisse (association of experts in audit, tax and trusts)

Representatives of the Financial Market Supervisory Authority (FINMA)

Representatives of the federal Supervisory Authority for Foundations (*Autorité fédérale de surveillance des fondations)*

Representatives of the federal Commercial Registry (*Office federal du registre de commerce*)

Representatives of the cantonal Commercial Registry of Geneva (*Registre du commerce du canton de Genève*)

Representatives of the cantonal Commercial Registry of Zurich (*Registre du commerce du canton de Zurich*)

Representatives of the following Self-Regulating Organisations:

- SRO for the Assets Managers (*Organisme d'autorégulation des gérants de patrimoine*)
- SRO for the Swiss Federation of Lawyers and the Swiss Federation of Notaries (*Organisme d'autoréglementation de la Fédération Suisse des Avocats et de la Fédération Suisse des Notaires*)

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**Global Forum on Transparency and Exchange of Information for Tax Purposes**

# PEER REVIEWS, PHASE 2: SWITZERLAND

This report contains a "Phase 2: Implementation of the Standards in Practice" review, as well as revised version of the "Phase 1: Legal and Regulatory Framework review" already released for this country.

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 130 jurisdictions which participate in the work of the Global Forum on an equal footing.

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

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

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

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