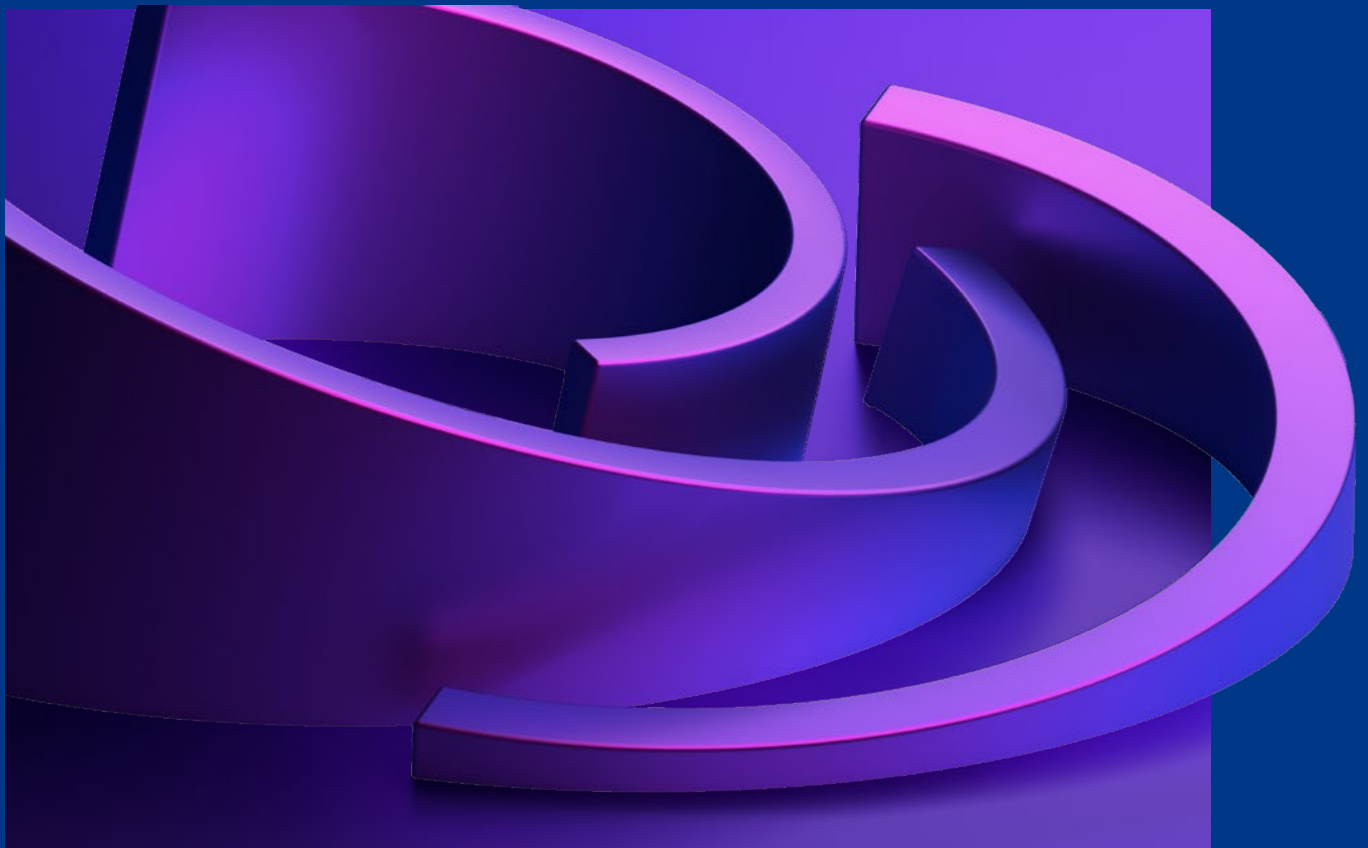




Where do Swiss Banks see themselves in terms of Compliance with the Qualified Intermediary regime?

After KPMG Switzerland's first survey conducted in 2019 concerning compliance with the Qualified Intermediary (QI) Agreement, we are now able to share the latest insights based on the results of our updated 2022 survey.



KPMG's Qualified Intermediary (QI) Survey

In 2019, KPMG performed a first survey of all banks on the Swiss market regarding their compliance with the QI regime for the certification period 2015-2017. KPMG recently performed a second survey regarding the certification period 2018-2020. The survey gave valuable insights into how Swiss banks' compliance with the QI regime has developed over the past three years, which aspects have improved and the challenges that remain. In total 45 banks participated in the 2022 survey, comprising the entire spectrum of banks (from Swiss cantonal banks to private banks and large multi-national banking groups). We are therefore confident that the results of the survey are representative of the Swiss market as a whole.

Background to the QI Regime

Banks that offer their clients the ability to invest into US securities are required to register with the US tax authority ("IRS") and undertake complex and often burdensome documentation, withholding and reporting requirements. In addition, such banks are required to maintain a compliance program, perform regular audits (so-called "**periodic reviews**") and file **recurring certifications** of their compliance with the QI regime directly to the IRS every three years. The latest round of certifications, covering the certification period 2018-2020, were filed with the IRS in late 2021/ early 2022 (depending on which year a bank had selected for the periodic review).

The Key Conclusions

The results from KPMG's 2022 survey show that Swiss banks have made an increased effort in complying with the QI rules, which was reflected in an overall increased level of compliance. Nevertheless, errors in the documentation led to underwithholding of US tax which then needed to be remediated or paid to the IRS before the certification of compliance to the IRS could be made. Further, the reporting on IRS Forms 1042-S/ 1042 remains challenging for banks. As we are seeing increased scrutiny on this aspect from the IRS, banks should continue to pay particular attention to their QI reporting in the coming years. In the following paragraphs, we provide an overview of the observations and conclusions from the survey that we find most interesting.

The Results

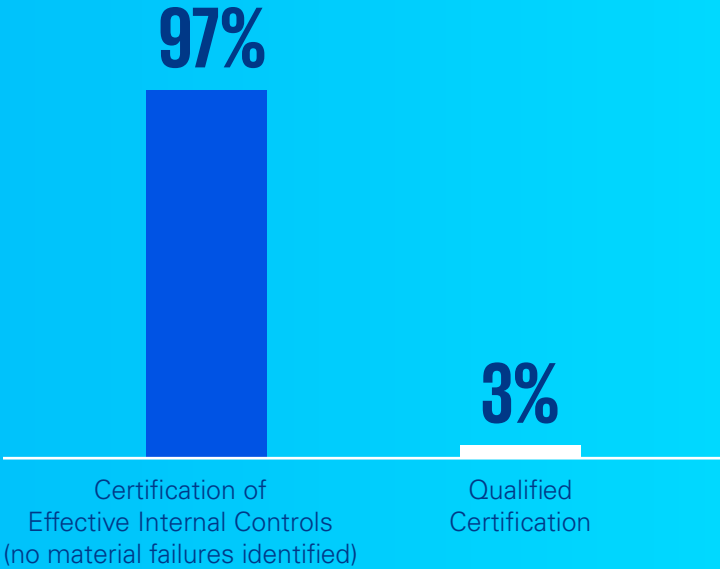
1 An overall increasing level of compliance...

97% (93% for the previous certification period) of banks in Switzerland were able to certify that they were compliant with the QI rules during the latest certification period by submitting a "Certification of Effective Internal Controls". Interestingly, all of these certifications stated that no material failures were identified (in the previous cycle, approx. 25% of the participating banks stated that material failures had been identified but were already remediated at the time of certification). Only 3% (as compared to 7% in the previous cycle) submitted a qualified certification.

The survey results also show slightly improved numbers regarding the QI documentation of accounts (91% of banks declared that either no, or fewer than 10 accounts, were identified that were not correctly documented, as compared to 87% for the previous cycle).

This positive development confirms the consistently high level of compliance and even an overall increasing level of compliance with the QI rules amongst Swiss banks.

Which of the following best describes the type of QI Certification you made?

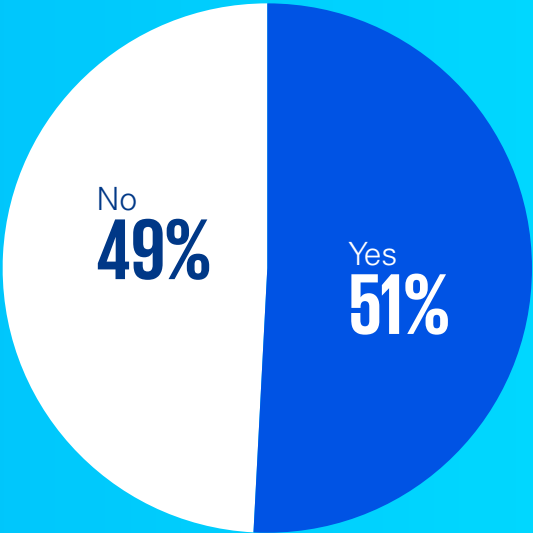


2 ...but certain difficulties remain...

Despite the good picture regarding the documentation, still 60% of banks stated that their latest periodic review led to the identification of underwithholding, which then needed to be remediated, either by obtaining additional documentation from clients or making additional tax payments to the IRS.

Further, the QI reporting on IRS Forms 1042-S and 1042 remains a particularly complex aspect of QI compliance for banks. 51% of banks said they had to amend their reporting as a result of the periodic review (similar to the 53% in the previous cycle). This shows that many banks still find the QI reporting requirements a particularly challenging area.

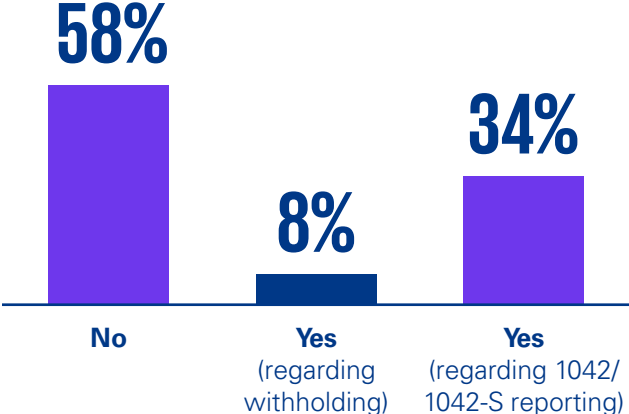
Did you have to amend your QI reporting as a result of findings identified during the QI Periodic Review?



3 in a world of enhanced scrutiny from the IRS...

At the same time, enhanced measures are taken by the IRS to ensure banks' compliance with the QI rules. 42% of banks stated that they received follow-up questions from the IRS regarding their previous certification, most of which related to banks' reporting on IRS Forms 1042-S and 1042.

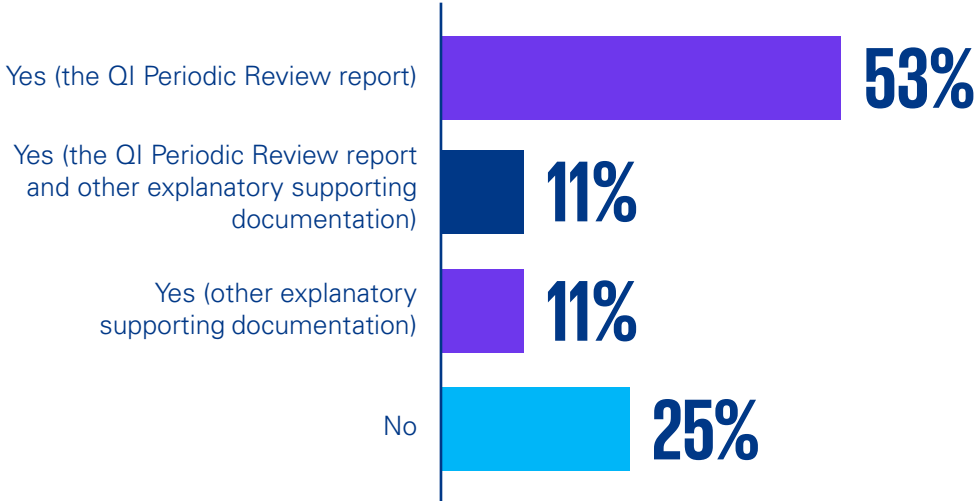
Did you receive any follow-up questions from the IRS concerning the submitted QI Certification for the previous (i.e. 2015-2017) cycle?



This is in line with our observation that the IRS is focusing increasingly on the accuracy of the QI reporting, in particular following up with banks on unreconciled differences between Forms 1042-S received from custodians (upstream withholding agents) and issued by the banks to the IRS, even where the amounts are small. Given the complexity of the QI reporting and the IRS' focus on this area, banks should continue to pay particular attention to this aspect going forward.

This trend is also reflected in the fact that the majority (approx. 75%) of the banks proactively attached supporting documentation (i.e. the review report and/ or additional documentation) to their certification hoping to reduce the amount of potential IRS queries.

Did you attach additional documents to the QI Certification?

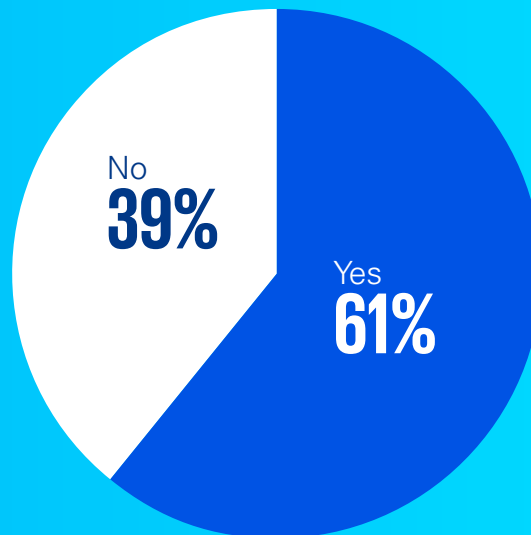


4 ... also considering the impact of the covid-19 pandemic

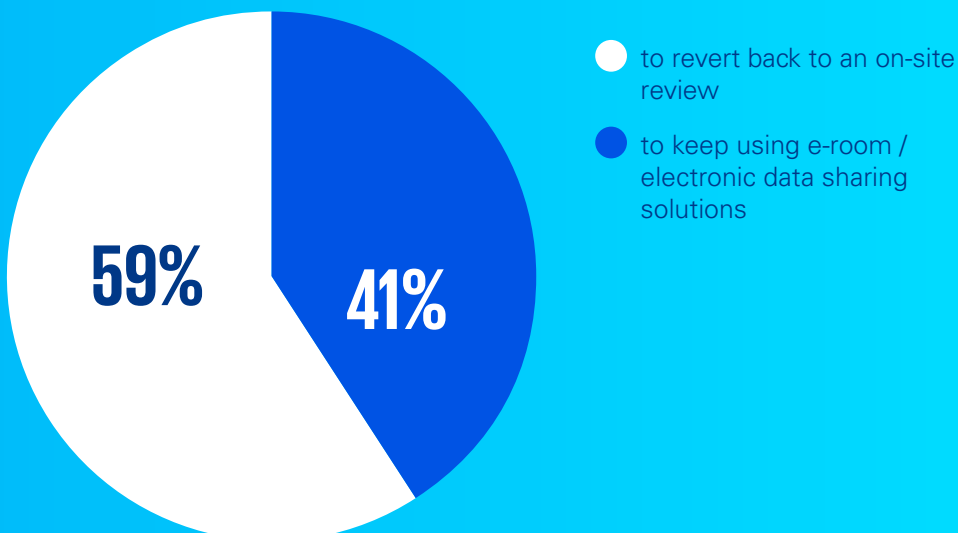
Unsurprisingly, a greater number of banks said it took them more than 12 months to complete the latest periodic review (14%, as opposed to 4% during the previous cycle). Notwithstanding the effect due to the pandemic, this shows that for global banking groups with QIs across multiple jurisdictions, a periodic review is still a comprehensive and time-consuming exercise, even with the experience of previous reviews.

As a result of the covid-19 pandemic, 61% of banks conducted all or parts of their periodic review remotely. Interestingly, the majority (i.e. 59%) of them said they would prefer to return to a conventional on-site review assuming the next review is no longer impacted by the pandemic. This shows that many Swiss banks have a preference for the traditional work style with physical presence, which may also have to do with additional data security issues that need to be considered in Switzerland when such reviews are conducted remotely.

As a result of the impact of the COVID-19, was any part of the periodic review conducted remotely (incl. e-room, electronic data sharing or other means)?



If the COVID-19 pandemic is over during the next Periodic Review, what would you prefer?



Further information

The results discussed here are a high-level summary of the key results arising from KPMG's latest QI compliance survey. If you would like to find out more information on the rest of the results from our survey, please do not hesitate to contact our team of QI specialists.

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