

Curaçao

Curaçao has met all aspects of the terms of reference (OECD, 2017^[3]) (ToR) for the calendar year 2019 (year in review) except for identifying tax rulings that are in the scope of the transparency framework and which category of rulings they fall under (ToR I.4.1.2) and completing exchanges of information on rulings in accordance with the timelines (ToR II.5.5 and II.5.6). Curaçao receives two recommendations on these points for the year in review.

In the prior year report, as well as in the 2017 peer review, Curaçao received the same two recommendations. As they have not been addressed, the recommendations remain in place.

Curaçao can legally issue five types of rulings within the scope of the transparency framework.

In practice, Curaçao issued rulings that are potentially within the scope of the transparency framework as follows:

- 3,621 past rulings;
- For the period 1 April 2017 - 31 December 2017: 320 future rulings;
- For the calendar year 2018: 48 future rulings, and
- For the year in review: 40 future rulings.¹

Peer input was received from three jurisdictions in respect of the exchanges of information on rulings received from Curaçao. The input was generally positive, noting that information was complete and in a correct format. However, one peer noted that information was not received in a timely manner, which is explained in the report.

A. The information gathering process

284. Curaçao can legally issue the following five types of rulings within the scope of the transparency framework: (i) preferential regimes;² (ii) cross-border unilateral APAs and any other cross-border unilateral tax rulings (such as an advance tax ruling) covering transfer pricing or the application of transfer pricing principles; (iii) rulings providing for unilateral downward adjustments; (iv) permanent establishment rulings; and (v) related party conduit rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

285. For Curaçao, past rulings are any tax rulings within scope that are issued either (i) on or after 1 January 2015 but before 1 April 2017; and (ii) on or after 1 January 2012 but before 1 January 2015, provided they were still in effect as at 1 January 2015.

286. In the prior years' peer review reports, it was determined that Curaçao's undertakings to identify past rulings and all potential exchange jurisdictions have met all the ToR, except for completing the process of reviewing the templates to confirm that all past rulings identified are cross-border rulings and therefore within the scope of the transparency framework, and to identify which category of rulings they fall under (ToR I.4.1.2). Therefore, Curaçao was recommended to continue its work to complete its information gathering process on past rulings as soon as possible.

287. During the year in review, Curaçao continued its work to accurately identify and categorise past rulings. This process is still ongoing given the large number of rulings, many of which fall into more than one category. As Curaçao completes the identification and categorisation process, they are also identifying the potential exchange jurisdictions. Curaçao anticipates that this process will be completed by the end of March 2021. Therefore, the prior year recommendation remains.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

288. For Curaçao, future rulings are any tax rulings within scope that are issued on or after 1 April 2017.

289. In the prior years' peer review reports, it was determined that Curaçao's undertakings to identify future rulings and all potential exchange jurisdictions have met all the ToR, except for completing the process of reviewing the templates to confirm that all future rulings identified are cross border rulings and therefore within the scope of the transparency framework, and to identify which category each ruling falls into (ToR I.4.1.2). Therefore, Curaçao was recommended to continue its work to complete its information-gathering process on future rulings as soon as possible.

290. During the year in review, Curaçao continued its work on reviewing future rulings in order to identify all rulings in scope and assess the definitive number of rulings per category. As Curaçao completes the identification and categorisation process, they are also identifying the potential exchange jurisdictions. This process is still ongoing with respect to future rulings issued before July 2018, when a new procedure requiring future rulings and potential exchange jurisdictions to be immediately identified at the point of issue was put in place. This process will be completed by the end of March 2021. Therefore, the prior year recommendation remains.

291. Curaçao is also working on the development of an electronic online system to digitalise the ruling request process. This new electronic procedure is intended to further increase the speed and accuracy of the information gathering process and the exchanges performed and will be reviewed in the subsequent peer reviews as soon as the online system is in operation. Curaçao noted that this electronic system is expected to be in place in 2022.

Review and supervision (ToR I.4.3)

292. In the prior years' peer review reports, it was determined that Curaçao's review and supervision mechanism was sufficient to meet the minimum standard. Curaçao's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

Conclusion on section A

293. Curaçao has met all of the ToR for the information gathering process except for identifying tax rulings that are in the scope of the transparency framework and which category of rulings they fall under (ToR I.4.1.2). Curaçao is recommended to finalise its information gathering process for identifying all past and future rulings in scope of the transparency framework as soon as possible.

B. The exchange of information

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

294. Curaçao has the necessary domestic legal basis to exchange information spontaneously. Curaçao notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

295. Curaçao has international agreements permitting spontaneous exchange of information, including being a party to the (i) *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011^[4]) ("the Convention"), and (ii) bilateral agreements in force with two jurisdictions.³

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

296. In the prior years' peer review reports, it was determined that Curaçao's process for the completion and exchange of templates met all the ToR, except for the timely exchange of information on past and future rulings (ToR II.5.5 and II.5.6). Therefore, Curaçao was recommended to continue its work to continue its efforts to ensure all information on past and future rulings is exchanged as soon as possible.

297. During the year in review, Curaçao continued its work on exchanging information on past and future rulings as soon as they were identified. The summary section of the template was completed by providing a summary of the content of the ruling and of the applicable tax regime, in line with the internal FHTP suggested guidance. Curaçao was able to complete a further 207 exchanges in 2019, but still needs to identify which of the approximately 3 500 rulings issued from previous years, meet the conditions to be exchanged. This process is expected to be completed by the end of March 2021. Therefore, the prior year recommendation remains.

298. For the year in review, the timeliness of exchanges is as follows:

| Past rulings in the scope of the transparency framework | Number of exchanges transmitted by 31 December 2019 | Delayed exchanges | | |
|---|---|---|---|--------------------|
| | | Number of exchanges not transmitted by 31 December 2019 | Reasons for the delays | Any other comments |
| | 73 | See preceding paragraph | Curaçao has a large number of rulings. Curaçao is currently identifying the rulings to be able to exchange information on all | N/A |

| | | | | |
|---|--|---|--|--------------------|
| | | | the cross border rulings. | |
| Future rulings in the scope of the transparency framework | Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted | Delayed exchanges | | |
| | | Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority | Reasons for the delays | Any other comments |
| | 134 | See preceding paragraph | Curaçao is currently identifying the rulings to be able to exchange information on all the cross border rulings. | N/A |
| Total | 207 | See preceding paragraph | | |

| | | | |
|--|--------|----------------------------------|---------------------------------|
| Follow up requests received for exchange of the ruling | Number | Average time to provide response | Number of requests not answered |
| | 0 | N/A | N/A |

299. During the year in review, 73 exchanges were performed with regard to 58 past rulings and 134 exchanges were performed with regard to 94 future rulings issued respectively in the year 2017 (18), 2018 (36) and 2019 (40). Nearly all exchanges were completed after the three-month timeframe required from when the information became available to the Competent Authority.

Conclusion on section B

300. Curaçao has met all of the ToR for the information gathering process except for completing exchanges of information on rulings in accordance with the timelines (ToR II.5.5 and II.5.6) and Curaçao is recommended to continue its efforts to ensure that all information on past and future rulings is exchanged as soon as possible.

C. Statistics (ToR IV)

301. The statistics for the year in review are as follows:⁴

| Category of ruling | Number of exchanges | Jurisdictions exchanged with |
|---|--------------------------------|---|
| Ruling related to a preferential regime | 197 | Argentina, Aruba, Barbados, Belize, Brazil, Canada, Chile, China (People's Republic of), Colombia, Cyprus, Czech Republic, Finland, France, Hungary, Ireland, Israel, Jersey, Liechtenstein, Luxembourg, Malta, Netherlands, New Zealand, Panama, Poland, Romania, Russia, Saudi Arabia, Slovak Republic, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States |
| Cross-border unilateral advance pricing agreements (APAs) and any other cross-border unilateral tax rulings (such as an advance tax ruling) covering transfer pricing or the application of | <i>De minimis rule applies</i> | N/A |

| | | |
|--|--------------------------------|--|
| transfer pricing principles | | |
| Cross-border rulings providing for a unilateral downward adjustment to the taxpayer's taxable profits that is not directly reflected in the taxpayer's financial / commercial accounts | <i>De minimis rule</i> applies | N/A |
| Permanent establishment rulings | 0 | N/A |
| Related party conduit rulings | 8 | Aruba, Netherlands, Saint Kitts and Nevis, Switzerland, United Kingdom |
| <i>De minimis rule</i> | 2 | |
| IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption | 0 | N/A |
| Total | 207 | |

D. Matters related to intellectual property regimes (ToR I.4.1.3)

302. Curaçao offered an intellectual property regime (IP regime)⁵ that was abolished from 30 June 2018 and not subject to the transparency requirements under the Action 5 Report (OECD, 2015_[1]), because:

- **New entrants benefitting from the grandfathered IP regime:** the IP regimes has been abolished without grandfathering for taxpayers entering after the relevant date from which enhanced transparency obligations apply. As such, no enhanced transparency requirements apply.
- **Third category of IP assets:** not applicable as the IP regime has been abolished.
- **Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption:** not applicable as the IP regime has been abolished.

303. In addition, Curaçao offered two IP regimes⁶ that are subject to the transparency requirements under the Action 5 Report (OECD, 2015_[1]). It states that the identification of the benefitting taxpayers will occur as follows:

- **New entrants benefitting from the grandfathered IP regime:** no enhanced transparency requirements apply, because: 1) the Curaçao investment company regime has been amended as of 1 July 2018 without grandfathering for taxpayers after the relevant date from which enhanced transparency obligations apply and 2) the Innovation box is a new IP regime rather than a grandfathered regime.
- **Third category of IP assets:** the regimes allow the third category of IP assets to qualify for the benefits. Therefore, enhanced transparency requirements apply. In order for a taxpayer to benefit from the IP regime, a specific ruling is required. When requesting the ruling, the taxpayer has to explicitly mention the type of IP assets. As such, the identification of taxpayers benefitting from the third category of IP assets occurs, when they apply for the IP regime and the process for identifying and exchanging information is as described above for future rulings. For the year in review, no taxpayers have applied to benefit from the third category of IP assets under both regimes, and therefore no information on these taxpayers needed to be exchanged.
- **Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption:** not applicable as the regimes do not allow the nexus ratio to be treated as a rebuttable presumption.

Summary of recommendations on implementation of the transparency framework

| Aspect of implementation of the transparency framework that should be improved | Recommendation for improvement |
|--|---|
| The information gathering process is still underway in Curaçao with respect to past and future rulings in scope of the transparency framework and the classification of these rulings under each category. | Curaçao is recommended to finalise its information gathering process for identifying all past and future rulings in scope of the transparency framework as soon as possible. This recommendation remains unchanged since the 2017 and 2018 peer review reports. |
| Curaçao experienced delays in exchanging information on past and future rulings. | Curaçao is recommended to continue its efforts to ensure that all information on past and future rulings is exchanged as soon as possible. This recommendation remains unchanged since the 2017 and 2018 peer review reports. |

References

- OECD (2017), *BEPS Action 5 on Harmful Tax Practices - Terms of Reference and Methodology for the Conduct of the Peer Reviews of the Action 5 Transparency Framework*, OECD Publishing, Paris, <http://www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf>. [3]
- OECD (2015), *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241190-en>. [1]
- OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264115606-en>. [4]

Notes

¹ In addition to the rulings in the scope of the transparency framework Curaçao identified 11 past and future rulings relating to "other types of rulings". These "other types of rulings" related to: (i) rulings issued to determine taxpayers' tax residence; (ii) rulings to confirm the application of tax treaty provisions; and (iii) rulings to confirm the application of the profit tax ordinance legislation. Although these rulings are not within the scope of the transparency framework and no exchange was required under the terms of reference of the peer review, Curaçao exchanged these rulings with the relevant IF members using the transparency framework. These rulings were previously categorised under a different category, which accounts for the variation in the report on the number of rulings issued as compared to last year.

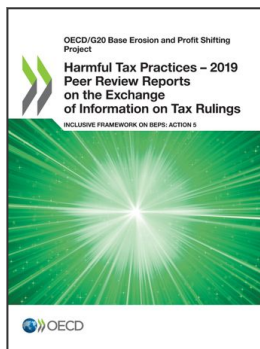
² With respect to the following preferential regimes: 1) Export facility; 2) Tax exempt entity; 3) Free zone; and 4) Offshore regime. The offshore regime has been abolished in 2001 and is grandfathered for fiscal years preceding 30 June 2019.

³ Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Curaçao also has bilateral agreements with Netherlands and Norway.

⁴ Curaçao issues dual category which have as main element a preferential regime but can also contain one of the other four categories mentioned above. In terms of counting, these dual category ruling have been included into the “preferential regime” category. Only when a ruling relates exclusively to one of the categories mentioned above, it is counted in that category.

⁵ This regime is the Export facility.

⁶ These regimes are: 1) Curaçao investment company (formerly Tax exempt entity) and 2) Innovation box.



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