

# Curaçao

Curaçao has met all aspects of the terms of reference (OECD, 2021<sup>[3]</sup>) (ToR) for the calendar year 2020 (year in review) except for identifying rulings within the scope of the transparency framework and under which category of rulings they fall (ToR I.A.1) and completing exchanges of information on rulings in accordance with the timelines (ToR II.B.5 and II.B.6). Curaçao receives two recommendations on these points for the year in review.

In the prior year report, as well as in the 2017 and 2018 peer reviews, Curaçao received three recommendations. Curaçao has resolved one of these issues, however two recommendations have not been addressed and 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:

Type of ruling	Number of rulings
Past rulings	3 621
Future rulings in the period 1 April 2017 – 31 December 2017	320
Future rulings in the calendar year 2018	48
Future rulings in the calendar year 2019	40
Future rulings in the year of review	20

As no exchanges took place, no peer input was received in respect of the exchanges of information on rulings received from Curaçao.

## A. The information gathering process (ToR I.A)

306. Curaçao can legally issue the following five types of rulings within the scope of the transparency framework: (i) preferential regimes;<sup>1</sup> (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.A.1.1, I.A.1.2, I.A.2.1, I.A.2.2)***

307. 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.

308. 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.

309. Due to the Covid-19 pandemic, during the year in review, Curaçao was not able to fully continue its work to accurately identify and categorise past rulings. Therefore, 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 2022. Therefore, the prior years' recommendation remains.

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

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

311. 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.

312. Due to the Covid-19 pandemic, during the year in review, Curaçao was not able to fully continue its work on reviewing future rulings in order to identify all rulings within the scope of the transparency framework 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 2022. Therefore, the prior year recommendation remains.

313. 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 in future. Curaçao noted that this electronic system is expected to be in place in 2023.

### **Review and supervision (ToR I.A.3)**

314. 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**

315. Curaçao has met all of the ToR for the information gathering process except for identifying rulings within the scope of the transparency framework and under which category of rulings they fall (ToR I.A.1). Curaçao is recommended to finalise its information gathering process for identifying all past and future rulings within the scope of the transparency framework as soon as possible.

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

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

316. 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.

317. Curaçao has international agreements permitting spontaneous exchange of information, including being a jurisdiction participating in (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011<sup>[4]</sup>) ("the Convention") and (ii) bilateral agreements in force with two jurisdictions.<sup>2</sup>

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

318. 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.5.6). 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.

319. During the year in review, Curaçao continued its work on exchanging information on past and future rulings as soon as they were identified, but experienced delays because of the Covid-19 pandemic. Curaçao 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 2022. In addition, no exchanges have taken place for any of the rulings issued in the year of review. Therefore, the prior year recommendation remains.

### **Conclusion on section B**

320. 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.B.5 and II.B.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)**

321. As there was no information on rulings exchanged by Curaçao for the year in review, no statistics can be reported.

## D. Matters related to intellectual property regimes (ToR I.A.1.3)

322. Curaçao offered an intellectual property regime (IP regime)<sup>3</sup> that was abolished from 30 June 2018 and not subject to the transparency requirements under the Action 5 Report (OECD, 2015<sup>[1]</sup>), 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.

323. In addition, Curaçao offers two IP regimes<sup>4</sup> that are subject to the transparency requirements under the Action 5 Report (OECD, 2015<sup>[1]</sup>). 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, as explained in the prior year peer review.
- **Third category of IP assets:** the regimes allow the third category of IP assets to qualify for the benefits. Therefore, enhanced transparency requirements apply and Curaçao has a process in place for the identification and exchange of information, as described in the prior year report. 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 within the 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 within the scope of the transparency framework as soon as possible. This recommendation remains unchanged since the 2017, 2018 and 2019 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, 2018 and 2019 peer review reports.

## Jurisdiction's response and recent developments

324. Curaçao indicates that it is fully committed to ensure that all past rulings are being identified and exchanged. Therefore, the dedicated team will continue to identify the rulings, by going through the files manually and completing and exchanging the templates for the rulings in scope. Curaçao notes that it plans to have this work completed by March 2022.

## References

- OECD (2021), *BEPS Action 5 on Harmful Tax Practices - Terms of Reference and Methodology for the Conduct of the Peer Reviews of the Action 5 Transparency Framework*, OECD Publishing, Paris, <http://www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf>. [3]
- OECD (2015), *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241190-en>. [1]
- OECD (ed.) (2017b), *Harmful Tax Practices - 2017 Progress Report on Preferential Regimes*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264283954-en>. [2]
- OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264115606-en>. [4]

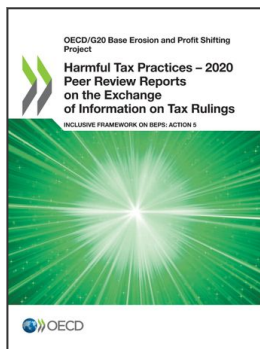
## Notes

<sup>1</sup> 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.

<sup>2</sup> Participating jurisdictions to the Convention are available here: [www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm](http://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm). Curaçao also has bilateral agreements with the Netherlands and Norway.

<sup>3</sup> This regime is the Export facility.

<sup>4</sup> These regimes are: 1) Curaçao investment company (formerly Tax exempt entity); and 2) Innovation box.



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