

Curaçao

Curaçao has met all aspects of the terms of reference (OECD, 2021^[3]) (ToR) for the calendar year 2021 (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.1.1 and ToR I.A.1.2) 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's peer review report, as well as in the 2017-2019 peer review reports, Curaçao received the same two recommendations. As they have not been fully 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 within the scope of the transparency framework as follows:

Type of ruling	Number of rulings
Past rulings	2 414
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 calendar year 2020	20
Future rulings in the year in review	0

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

Information gathering process (ToR I.A)

320. Curaçao can legally issue the following five types of rulings within the scope of the transparency framework: (i) preferential regimes;¹ (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)

321. 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.

322. 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). In the prior year's peer review report, it was determined that, due to the Covid-19 pandemic, Curaçao was not able to fully continue its work to accurately identify and categorise past rulings. Therefore, this process was still ongoing given the large number of rulings, many of which fall into more than one category. It was also noted that Curaçao was identifying the potential exchange jurisdictions. Curaçao anticipated to complete this process by the end of March 2022. Therefore, Curaçao was recommended to continue its work to complete its information gathering process on past rulings as soon as possible.

323. During the year in review, Curaçao continued this work and accordingly provided new statistics on past rulings, as part of the previously identified past rulings do not fall within the scope of one of the categories of the transparency framework. However, Curaçao notes that it was not able to finalise this process due to a change of government and the government new priorities program addressing more urgent issues such as a liquidity crisis, as well as lockdowns and the financial economic consequences hereof during the year in review. Curaçao anticipates that this process will be completed by the end of 2023. Therefore, the prior years' recommendation remains.

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

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

325. 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 under (ToR I.4.1.2). In the prior year's peer review report, it was determined that, due to the Covid-19 pandemic, 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. It was also noted that Curaçao was identifying the potential exchange jurisdictions. This process was 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. Curaçao anticipated to complete this process by the end of March 2022. Therefore, Curaçao was recommended to continue its work to complete its information-gathering process on future rulings as soon as possible.

326. In the prior year's peer review report, it was also noted that Curaçao developing an electronic online system to digitalise the ruling request process. This new electronic procedure was 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.

327. During the year in review, Curaçao continued this work and accordingly also provided statistics on future rulings for the year in review. However, Curaçao notes that it was not able to finalise this process due to a change of government and the government new priorities program addressing more urgent issues such as a liquidity crisis, as well as lockdowns and the financial economic consequences hereof during the year in review. Furthermore, due to cost considerations, Curaçao cannot confirm whether its electronic system will be developed. Curaçao anticipates that this process will be completed by the end of 2023. Therefore, the prior years' recommendation remains.

Review and supervision (ToR I.A.3)

328. 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

329. 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.

Exchange of information (ToR II.B)

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

330. 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.

331. 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^[1]) ("the Convention") and (ii) bilateral agreements in force with two jurisdictions.²

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

332. 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). In the prior year's peer review report, it was determined that, due to the Covid-19 pandemic, Curaçao experienced delays in its continued work on exchanging information on past and future rulings as soon as they were identified. Curaçao still needed to identify which of the approximately 3 500 rulings issued in previous years meet the conditions to be exchanged. Curaçao anticipated to complete this process 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, 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.

333. During the year in review, as noted above, Curaçao continued this work but was not able to finalise this process. Curaçao confirms that there were no rulings to be exchanged for the year in review and also

anticipates to complete the exchange of information process for previous years' rulings by the end of 2023. Therefore, the prior year recommendation remains.

Conclusion on section B

334. 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.

Statistics (ToR IV.D)

335. As no rulings were issued during the year in review, no statistics can be reported.

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

336. In the prior years' peer review reports, it was determined that Curaçao's information gathering and exchange of information processes for matters related to intellectual property regimes³ were sufficient to meet the minimum standard. Curaçao's implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

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, 2019 and 2020 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, 2019 and 2020 peer review reports.

References

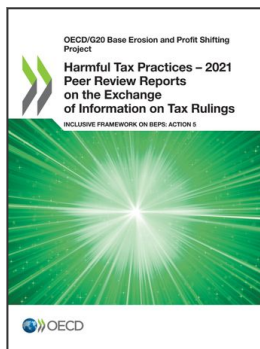
- OECD (2021), *BEPS Action 5 on Harmful Tax Practices - Terms of Reference and Methodology for the Conduct of the Peer Reviews of the Action 5 Transparency Framework*, OECD Publishing, Paris, <http://www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf>. [3]
- 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://doi.org/10.1787/9789264241190-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://doi.org/10.1787/9789264115606-en>. [1]

Notes

¹ 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.

² 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. Curaçao also has bilateral agreements with the Netherlands and Norway.

³ One regime that was abolished and not subject to the transparency framework: Export facility; and two regimes that are subject to the transparency framework: 1) Curaçao investment company (formerly Tax exempt entity); and 2) Innovation box.



From:

Harmful Tax Practices – 2021 Peer Review Reports on the Exchange of Information on Tax Rulings Inclusive Framework on BEPS: Action 5

Access the complete publication at:

<https://doi.org/10.1787/4034ce42-en>

Please cite this chapter as:

OECD (2023), “Curaçao”, in *Harmful Tax Practices – 2021 Peer Review Reports on the Exchange of Information on Tax Rulings: Inclusive Framework on BEPS: Action 5*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/7fc2b9ba-en>

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area. Extracts from publications may be subject to additional disclaimers, which are set out in the complete version of the publication, available at the link provided.

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at <http://www.oecd.org/termsandconditions>.