

Aruba

Aruba has met all aspects of the terms of reference (OECD, 2017^[3]) (ToR) for the calendar year 2018 (year in review) that can be met in the absence of rulings being issued.

This is Aruba's first review of implementation of the transparency framework.

Aruba can legally issue five types of rulings within the scope of the transparency framework but in practice has not issued any rulings within the scope of the transparency framework.

As no rulings have been issued in practice, no exchanges of information were required to be conducted. Therefore no peer input was received in respect of the exchanges of information on rulings received from Aruba.

Introduction

This peer review covers Aruba's implementation of the BEPS Action 5 transparency framework for the year 2018. The report has four parts, each relating to a key part of the ToR. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information gathering process

Aruba 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; and (iv) permanent establishment rulings; and (v) related party conduit rulings. Rulings are issued by the Inspector of Taxes upon appropriate application by a taxpayer.

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

For Aruba, past rulings are any tax rulings issued prior to 1 September 2018. However, there is no obligation under the terms of the transparency framework for Aruba to conduct spontaneous exchange information on past rulings under the terms of the peer review.

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

For Aruba, future rulings are any tax rulings within scope that are issued on or after 1 September 2018.

No rulings were issued by Aruba during the future rulings period in the year of review. However, Aruba indicates that there are processes in place for the issuance, review and record keeping of rulings for the purposes of the transparency framework.

Applications for rulings in Aruba must be accompanied by prescribed information, such as the kind of ruling being sought, organisational structure chart of the taxpayer, a complete description of the relevant facts and the purpose of the proposed transactions, and an indication of the effect of the transaction in other jurisdictions. All tax rulings are stored in a database with the issuance date, administrative reference details, and marked according to the type of ruling under the transparency framework. When a taxpayer applies for a ruling, the application must include all information on relevant exchange jurisdictions, which would cover all potential exchange jurisdictions for the purposes of the transparency framework.

Review and supervision (ToR I.4.3)

The accuracy of the information gathering process and the identification of rulings in scope of the transparency framework is supervised by the Inspector of Taxes and the Director of Taxes. The Director of Taxes is the Competent Authority for exchange of information in Aruba.

Conclusion on section A

Aruba has met all of the ToR for the information gathering process and no recommendations are made.

B. The exchange of information

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

Aruba has the necessary domestic legal basis to exchange information spontaneously. Aruba 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.

Aruba is a party to international agreements permitting spontaneous exchange of information, including (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention"), and (ii) double tax agreements and tax information exchange agreements in force with 25 jurisdictions.²

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

Aruba notes that the Inspector of Taxes would be responsible for the completion of the information required in the template contained in Annex C of the Action 5 Report (OECD, 2015), which would include providing a detailed summary of the ruling following the instructions in Annex C. Final review of the template would be conducted by the Director of Taxes. After the Director of Taxes is satisfied with the template, the Director of Taxes would instruct the Fiscal Intelligence and Fraud Team (FIOT) to conduct the spontaneous exchange of information with relevant exchange jurisdictions. As the Director of Taxes is also the Competent Authority in Aruba, all tax rulings would be readily available to the Competent Authority and no delays are expected.

As Aruba did not issue any rulings in scope of the transparency framework in the relevant period, Aruba was not required to exchange any information on rulings in the year in review and no data on the timeliness of exchanges can be reported.

Conclusion on section B

Aruba has the necessary legal basis to undertake spontaneous exchange of information. Aruba has met all of the ToR for the exchange of information process that can be met in the absence of rulings being issued and exchanged in practice and no recommendations are made.

C. Statistics (ToR IV)

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

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

Aruba offers an intellectual property regime (IP regime).³ However, for the year in review no transparency requirements under the Action 5 Report (OECD, 2015^[5]) were relevant, as follows:

- **New entrants benefitting from the grandfathered IP regime:** not applicable for the year in review, because Aruba is currently in the process of eliminating/amending the regime and has not taken a decision yet on whether it will provide grandfathering to existing taxpayers.
- **Third category of IP assets:** not applicable to this regime, which was in the year in review in the process of being eliminated/amended.

- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption:*** not applicable to this regime, which was in the year in review in the process of being eliminated/amended.

Summary of recommendations on implementation of the transparency framework

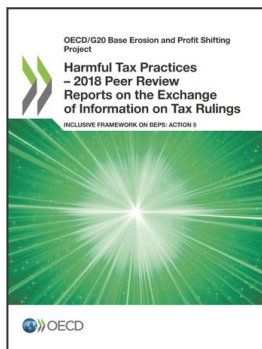
| Aspect of implementation of the transparency framework that should be improved | Recommendation for improvement |
|--|--------------------------------|
| | No recommendations are made. |

Notes

¹ With respect to the following preferential regimes: 1) Exempt companies, 2) Investment promotion, 3) Free zone, 4) Transparency regime and 5) Shipping regime.

² Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm Aruba also has double tax agreements with Antigua and Barbuda, Argentina, Australia, Bahamas, Bermuda, British Virgin Islands, Canada, Cayman Islands, Czech Republic, Denmark, Faroe Islands, Finland, France, Greenland, Iceland, Mexico, Netherlands, Norway, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Spain, Sweden, United Kingdom and United States.

³ Exempt company.



From:

Harmful Tax Practices – 2018 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/10.1787/7cc5b1a2-en>

Please cite this chapter as:

OECD (2020), “Aruba”, in *Harmful Tax Practices – 2018 Peer Review Reports on the Exchange of Information on Tax Rulings: Inclusive Framework on BEPS: Action 5*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9be58304-en>

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