

## Barbados

Barbados has met all aspects of the terms of reference (OECD, 2017<sup>[3]</sup>) (ToR) for the calendar year 2018 (year in review) except for identifying and exchanging information on all new entrants to the grandfathered IP regime (ToR I.4.1.3) and the timely exchange of information on rulings (ToR II.5). Barbados receives two recommendations on these points for the year in review.

In the prior year report, Barbados received two recommendations. One of these recommendations has been addressed and is removed. The second recommendation has not been addressed and remains in place and a new recommendation is added.

Barbados can legally issue five types of rulings within the scope of the transparency framework. In practice, Barbados has issued rulings within the scope of the transparency framework as follows:

- Two past rulings;
- For the period 1 September 2017 – 31 December 2017: no future rulings; and
- For the year in review: one future ruling.

No peer input was received in respect of the exchanges of information on rulings received from Barbados.

## Introduction

This peer review covers Barbados' 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

Barbados can legally issue the five following types of rulings within the scope of the transparency framework: (i) rulings related to preferential regimes;<sup>1</sup> (ii) cross-border unilateral advance pricing arrangements (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)***

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

In the year in review, Barbados' process for identifying past rulings were conducted as follows. The Legal Department of the Barbados Revenue Authority ("BRA") is constituted as one centralised office. All physical files relating to rulings are maintained within one area of the Legal Department. Due to the small number of rulings issued by Barbados, the Legal Department staff members therefore conducted a manual review of all files pertaining to tax rulings to identify past rulings in scope. Each physical file was manually read and reviewed to determine whether it fell into any of the five rulings categories.

In order to identify potential exchange jurisdictions, the BRA reviewed the available information in the taxpayer's files. Barbados was able to ascertain the relevant exchange jurisdiction from the information on file. Barbados reports that the "best efforts approach" was not utilised as all the information regarding relevant exchange jurisdictions was contained within the ruling request in the file.

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

For Barbados, future rulings are any tax rulings within scope that are issued on or after 1 September 2017.

During the year in review, Barbados implemented a new process to identify and flag future rulings as being within scope of the transparency framework. Each ruling is manually read to determine whether it is in scope of the five types of rulings that Barbados can legally issue under the transparency framework. This process for future rulings is identical to the process for past rulings above. For future rulings, information regarding potential exchange jurisdictions is to be acquired during the ruling request process. A ruling request would not be processed without the relevant information being obtained from the taxpayer.

### ***Review and supervision (ToR I.4.3)***

The BRA is a centralised office that also serves as Competent Authority of Barbados. The legal officers within the BRA Legal Department, who are briefed on the Action 5 transparency framework requirements, compile the rulings information. This information is then reviewed by the General Counsel and by the Senior Manager of the Policy, Planning and Governance Department who has the ultimate responsibility for matters of international taxation.

## Conclusion on section A

In the prior year peer review report, it was determined that Barbados's undertakings on the information gathering process have met the ToR except that Barbados was recommended to finalise the identification of all past and future rulings and potential exchange jurisdictions, with a review and supervision mechanism, as soon as possible (ToR I.4). During the year in review, Barbados has addressed this recommendation and the recommendation is now removed. Barbados 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)

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

Barbados 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 taxation agreements in force with 40 jurisdictions.<sup>2</sup>

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

Barbados notes that a Legal Officer in the Legal Department 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 General Counsel of the Legal Department. The process is supervised by the Senior Manager of the Policy, Planning and Governance Department who oversees the International Taxation Unit responsible for conducting the spontaneous exchange of information. All of these departments are within the BRA which is the Competent Authority for Barbados, and therefore, all rulings are made available to the Competent Authority with immediacy.

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 2018	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2018	Reasons for the delays	Any other comments
	0	2	Barbados was in the process of developing a new framework to implement the standard which resulted in delayed exchanges.	Internal procedures were finalised in 2019 for the exchange of information on rulings going forward.
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	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

	impediments have been lifted			
	0	1	Barbados was in the process of developing a new framework to implement the standard which resulted in delayed exchanges.	Internal procedures were finalised in 2019 for the exchange of information on rulings going forward.
<b>Total</b>	0	3		

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

The Legal Department was in the process of developing its framework to exchange information on rulings, which resulted in the delayed exchanges. All exchanges for past and future rulings were completed in early 2019. The Legal Department finalised its internal procedures in 2019, and therefore exchanges are expected to be conducted in a timely manner in future.

### **Conclusion on section B**

Barbados has the necessary legal basis to undertake spontaneous exchange of information and a process for completing the templates, but experienced delays in the exchange process. Barbados has met all of the ToR for the exchange of information process except for the timeliness of exchanges, and is recommended to continue its efforts to ensure that all information on past and future rulings is exchanged as soon as possible (ToR II.5).

## **C. Statistics (ToR IV)**

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

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

Barbados offered two intellectual property regimes (IP regime)<sup>3</sup> that were abolished from 1 July 2018 and are subject to transparency requirements under the Action 5 Report (OECD, 2015<sub>[5]</sub>). It states that the identification of the benefitting taxpayers will occur as follows:

- **New entrants benefitting from the grandfathered IP regime:** Transparency obligations apply for the two regimes, because grandfathering is provided to entrants that entered the regime after the relevant date from which enhanced transparency obligations apply. Barbados is currently in the process of developing mechanisms to identify these new entrants. Barbados is therefore recommended to identify and exchange information on all new entrants to the grandfathered IP regime as soon as possible (ToR I.4.1.3).
- **Third category of IP assets:** not applicable as the IP regimes have been abolished.
- **Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption:** not applicable as the IP regimes have been abolished.

## Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Barbados has experienced delays in the exchange of information on rulings.	Barbados 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 prior year peer review report.
Barbados did not identify or exchange information on new entrants to the grandfathered IP regime.	Barbados is recommended to identify and exchange information on all new entrants to the grandfathered IP regime as soon as possible.

### Notes

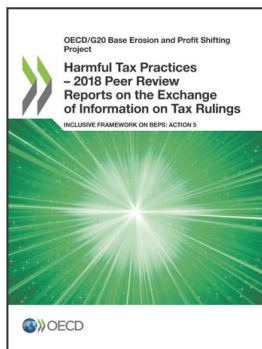
<sup>1</sup> With respect to the following preferential regime: Credit for foreign currency earnings.

<sup>2</sup> Parties 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). Barbados also has bilateral agreements in force with Antigua, Austria, Bahrain, Belize, Botswana, Canada, China (People's Republic of), Cyprus, Cuba, Czech Republic, Dominica, Finland, Grenada, Guyana, Iceland, Italy, Jamaica, Luxembourg, Malta, Mauritius, Mexico, Netherlands, Norway, Panama, Portugal, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Seychelles, Singapore, Spain, Sweden, Switzerland, Trinidad & Tobago, Qatar, United Arab Emirates, United Kingdom, United States and Venezuela.

Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union. The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

<sup>3</sup> 1) International business companies and 2) International societies with restricted liability



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