

Curaçao

Curaçao has met all aspects of the terms of reference (OECD, 2017^[3]) (ToR) for the calendar year 2018 (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, 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:

- 3,630 past rulings;
- For the period 1 April 2017 - 31 December 2017: 320 future rulings; and
- For the year in review: 50 future rulings.

Peer input was received from four jurisdictions in respect of the exchanges of information on rulings received from Curaçao. The input was generally positive, noting that information was complete, in a correct format and received in a timely manner.

Introduction

This peer review covers Curaçao'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

Curaçao can legally issue the five following types of rulings within the scope of the transparency framework: (i) taxpayer specific rulings related to preferential regimes;¹ (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; and (iv) related party conduit rulings.

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

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; 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 prior year peer review report, 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.

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. This process will be completed by the end of 2019. Therefore, the prior year recommendation remains.

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

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

In the prior year peer review report, 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.

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. This process is still ongoing with respect to future rulings issued before July 2018. This process will be completed by the end of 2019. Therefore, the prior year recommendation remains.

In addition, Curaçao has made amendments to the ruling practice. The new prerequisites to obtain a ruling are that an updated structure chart and a completed template must be provided to the Curaçao Tax Authority with the request for a tax ruling. Information regarding the type of rulings and the potential exchange jurisdictions is captured in this template. These additional prerequisites were communicated to

taxpayers and tax advisers and published in February 2018, and implementation was completed by July 2018. This amended ruling process means that from July 2018, future rulings and potential exchange jurisdictions are immediately identified at the point of issue.

Curaçao is also working on the development of an electronic online system to digitalise the ruling request process. This new electronic procedure will further affect the information gathering process and the exchanges activities performed and will be reviewed in the subsequent peer reviews as soon as the online system is in operation.

Review and supervision (ToR I.4.3)

In the prior year peer review report, 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

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)

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.

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) double tax agreements in force with two jurisdictions.²

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

In the prior year peer review report, 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.

During the year in review, Curaçao continued its work on exchanging information on past and future rulings. Curaçao was able to complete a further 163 exchanges in 2018, but still needs to identify which of the approximately 3 500 rulings issued from the previous years meet the conditions to be exchanged. This process is expected to be completed by the end of 2019. Therefore, the prior year recommendation remains.

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
	126	See preceding paragraph	Curaçao has a large amount of rulings. Curaçao is currently identifying the rulings to be able to exchange information on all the cross border rulings.	As at August 2019, Curaçao had completed an additional 79 exchanges.
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
	37	See preceding paragraph	Curaçao is currently identifying the rulings to be able to exchange information on all the cross border rulings.	As at August 2019, Curaçao completed an additional 73 exchanges.
Total	163	See preceding paragraph		

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

Conclusion on section B

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)

The statistics for the year in review are as follows: ³

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	158	Andorra, Belgium, Belize, Canada, China (People's Republic of), Colombia, Denmark, Germany, India, Ireland, Isle of Man, Israel, Italy, Jersey, Liechtenstein, Luxembourg, Malta,

		Mauritius, Mexico, Netherlands, Poland, Portugal, Singapore, Spain, Switzerland, 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 transfer pricing principles	5	<i>De minimis rule applies</i>
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	0	N/A
Permanent establishment rulings	0	N/A
Related party conduit rulings	0	N/A
<i>De minimis rule</i>	N/A	N/A
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	0
Total	163	

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

Curaçao offered an intellectual property regime (IP regime)⁴ that was abolished from 30 June 2018 and not subject to the transparency requirements under the Action 5 Report (OECD, 2015^[5]), 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.

In the year in review, Curaçao offered two intellectual property regimes (IP regime)⁵ that are subject to the transparency requirements under the Action 5 Report (OECD, 2015^[5]). It states that the identification of the benefitting taxpayers will occur as follows:

Curaçao investment company (formerly Tax exempt entity)

- **New entrants benefitting from the grandfathered IP regime:** the IP regimes have been amended as of 1 July 2018 without grandfathering for taxpayers after the relevant date from which enhanced transparency obligations apply. As such, no enhanced transparency requirements apply.
- **Third category of IP assets:** the regime allows the third category of IP assets, as described in paragraph 37 of the Action 5 report (OECD, 2015^[5]), to qualify for the benefits, therefore enhanced transparency requirements apply to taxpayers benefitting from these IP assets. In order to benefit from the third category of assets, a specific ruling is required. 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 the Curaçao investment company, 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 regime does not allow the nexus ratio to be treated as a rebuttable presumption.

Innovation box

- **New entrants benefitting from the grandfathered IP regime:** the regime is a new nexus-compliant regime that came into effect from 1 July 2018 and therefore there is no grandfathered IP regime for which enhanced transparency requirements will apply.
- **Third category of IP assets:** the identification of taxpayers benefitting from the third category of assets is identical to the process described above for the Curaçao investment company. For the year in review, no taxpayers applying for the Innovation box benefitted from the third category of IP assets, 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 regime does 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 prior year peer review report.
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 prior year peer review report.

Notes

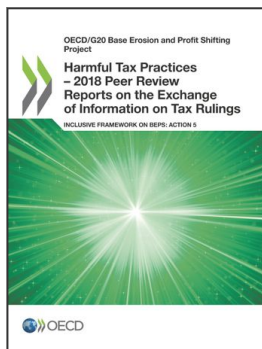
¹ With respect to the following preferential regimes: 1) Export facility; 2) Tax exempt entity; 3) Free zone; and 4) Offshore regimes. The offshore regime has been abolished in 2001 and is grandfathered for fiscal years preceding 30 June 2019.

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. Curaçao also has double tax agreements with Netherlands and Norway.

³ 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.

⁴ This regime is the Export facility.

⁵ These regimes are: 1) Curaçao investment company (formerly Tax exempt entity); and 2) Innovation box.



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), “Curaçao”, 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/e37ea8b9-en>

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