

## Antigua and Barbuda

Antigua and Barbuda has met all aspects of the terms of reference (OECD, 2017<sup>[3]</sup>) (ToR) for the calendar year 2019 (year in review) that can be met in the absence of rulings being issued and no recommendations are made. This is Antigua and Barbuda's first review of implementation of the transparency framework.

Antigua and Barbuda can legally issue five types of rulings within the scope of the transparency framework. In practice, Antigua and Barbuda has issued no rulings within the scope of the transparency framework.

These rulings are required to be published in an anonymised form on the Inland Revenue Department website.

As no exchanges were required to take place, no peer input was received in respect of the exchanges of information on rulings received from Antigua and Barbuda.

## A. The information gathering process

35. Antigua and Barbuda 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.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)**

36. For Antigua and Barbuda, past rulings are any tax rulings issued prior to 1 March 2019. However, there is no obligation for Antigua and Barbuda to conduct spontaneous exchange information on past rulings.

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

37. For Antigua and Barbuda, future rulings are any tax rulings within scope that are issued on or after 1 March 2019.

38. In Antigua and Barbuda, the Commissioner of the Inland Revenue Department (IRD), after consultation with the IRD's Legal Counsel and in co-operation with the Exchange of Information (EOI) unit within the IRD and with final consultation with the Attorney General's office, can issue advance rulings setting out the IRD's position regarding the application of tax provisions to a specific transaction proposed by the taxpayer. If a ruling were issued, it would be published (in anonymised form) on the IRD website.

39. The EOI Unit, in consultation with the Legal Counsel who forms part of the EOI Unit, is responsible for identifying all the rulings issued in order to establish whether they are in scope of the transparency framework. Given the expectation of small volumes of rulings in the jurisdiction, Antigua and Barbuda will identify relevant rulings for future exchanges based on the information on the IRD's website. If needed, Antigua and Barbuda will consider introducing an internal electronic repository of rulings issued.

40. Although Antigua and Barbuda has not issued any future rulings, Antigua and Barbuda has indicated that potential exchange jurisdictions could be identified through a manual review of the rulings. The taxpayer's application is initially reviewed by the Legal Counsel within the EOI Unit. During this process, the Legal Counsel may request additional information or clarification to the taxpayer in relation to the ruling application. The Attorney General's office would then conduct an independent review of the ruling application before making a decision to grant the ruling. This process assists in ensuring the relevant information is obtained in the course of issuing the ruling. If this information on potential exchange jurisdiction was not contained in the ruling, the IRD would consult with the audit department as well as available public sources.

41. Antigua and Barbuda intends to enact regulations, based on the Tax Administration and Procedures Act (TAPA), to formally provide that the necessary information to meet the requirements of the transparency framework would be obtained in all cases.

42. To date no rulings within the scope of the transparency framework have been issued as no applications have been submitted by taxpayers requiring the issuance of such rulings. As such, there was no need to identify potential exchange jurisdictions.

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

43. The accuracy of the information gathering process and the identification of rulings in scope of the transparency framework is supervised by the Legal Counsel within the EOI Unit and the Attorney General's office. The EOI Unit within IRD is the Competent Authority in Antigua and Barbuda.

44. In particular, Antigua and Barbuda's review and supervision system relies upon a number of steps commencing with the preparation and filing by the taxpayer of an application for an advance tax ruling, and concluding with the issuance by the IRD of that ruling in writing. Because in Antigua and Barbuda the same offices are in charge both of the issuance and the exchange of relevant rulings, the steps bringing to the issuance of rulings will ensure that all the rulings in scope of the transparency framework will be correctly and immediately identified and all information needed for the exchanges will be adequately captured.

### **Conclusion on section A**

45. Antigua and Barbuda has met all of the ToR for the information gathering process that can be met in the absence of rulings being issued and no recommendations are made.

## **B. The exchange of information**

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

46. Antigua and Barbuda has the necessary domestic legal basis to exchange information spontaneously. Antigua and Barbuda 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.

47. Antigua and Barbuda 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<sup>[4]</sup>) ("the Convention"), (ii) bilateral agreements in force with 13 jurisdictions and tax information exchange agreements in force with 69 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)**

48. Although Antigua and Barbuda has not issued any future rulings, Antigua and Barbuda has indicated that the Commissioner of the IRD, in conjunction with the IRD's Legal Counsel and the EOI unit, and in consultation with the Attorney General's office, is responsible for completing the template. In practice, the same office in charge of the rulings' issuance will be responsible for completion and exchange of templates. Antigua and Barbuda intends to complete the templates in the form of Annex C of the BEPS Action 5 Report (OECD, 2015<sup>[1]</sup>), to complete the summary section of the template in line with the internal FHTP suggested guidance and to transmit the templates according to the established timelines. Antigua and Barbuda indicated that the Legal Counsel will review manually the templates and cross-check the information against the actual ruling to ensure their completeness and accuracy. Thereafter, the Attorney General office will review the templates before submission to the Competent Authority for exchanges with relevant jurisdictions. The EOI Unit within IRD is the Competent Authority in Antigua and Barbuda, therefore all tax rulings, once issued, would be readily available to the Competent Authority (and in any case within three months from their issuance) for exchanges with relevant jurisdictions, to be concluded within three months after the tax ruling becomes available to the EOI Unit.

49. As Antigua and Barbuda did not issue any rulings in scope of the transparency framework in the relevant period, during the year in review, no exchanges were required to take place and no data on the timeliness of exchanges is reported.

### Conclusion on section B

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

### C. Statistics (ToR IV)

51. As no rulings were issued, no statistics can be reported.

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

52. Antigua and Barbuda does not offer an intellectual property regime for which transparency requirements under the Action 5 Report (OECD, 2015<sup>[1]</sup>) were imposed.

### 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.   |

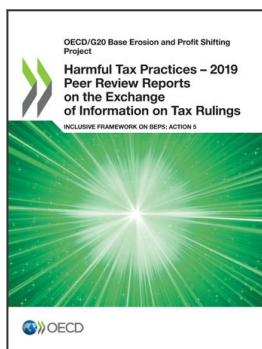
### References

- OECD (2017), *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/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) International business companies and 2) International banking.

<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). Antigua and Barbuda also has bilateral agreements with the CARICOM jurisdictions, Switzerland, United Kingdom and United Arab Emirates. The TIEAs with Albania, Andorra, Anguilla, Aruba, Argentina, Austria, Australia, Bahrain, Bahamas, Belgium, Belize, Bermuda, Brazil, British Virgin Islands, Bulgaria, Canada, Chile, Cayman Islands, Colombia, China (People's Republic of), Cook Islands, Costa Rica, Croatia, Curaçao, Cyprus, Czech Republic, Dominica, Denmark, Finland, France, Germany, Gibraltar, Greece, Grenada, Hong Kong (China), Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Jersey, Korea, Luxembourg, Mexico, Montserrat, Netherlands, Norway, New Zealand, Panama, Poland, Portugal, Russia, Romania, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Sint Maarten, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, Turks and Caicos, United Kingdom and United Arab Emirates also permit for the spontaneous exchange of information.



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