BEPS Action 5 Exchange of Rulings and Good Governance in Tax Matters Curaçao

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1.   Peer Review Process

➢ 125 of 193 countries/jurisdictions (January 2018). Most recent to join Cook Islands

➢ In principle, 4 minimum standards soft law thus no legally binding (except if in MLI). However, there is an expectation that they will be implemented by the countries.

➢ Main objectives: Peer review: Monitoring process
   ➢ Compliance: Timely and accurate implementation
   ➢ Ensure a level playing field

➢ Other objectives
   ➢ To review their own tax systems
   ➢ To identify and remove elements raising BEPS risks

2.   Action 5 Peer Review

➢ 2016 Report (BEPS 44 countries/jurisdictions)
➢ 2017 Report (BEPS 92 countries/jurisdictions) including Curaçao.

➢ Peer review
  ➢ Information from the peer review jurisdictions
  ➢ Input from peers (still limited 1-10)
  ➢ Input from delegates of the Forum on Harmful Tax Practices/OECD Secretariat.

3. Action 5: Peer Review 2016 Curaçao

➢ No input was received

➢ In practice 3630 past rulings approx., and for 2017, 320 future rulings (after 1 April 2017).

➢ 5 Types of Rulings

➢ Comply but recommended

  ➢ to finalize information gathering to identify all past and future rulings

  ➢ to continue ensuring that all information is exchanged as soon as possible.

3.   Action 5: Peer Review 2016 Curaçao

➢ Information rulings sent to

Andorra, Australia, Barbados, Belgium, **Belize**, Brazil, Canada, **China**, Denmark, France, Germany, Guernsey, Hungary, Isle of Man, **Israel**, Italy, Jersey, Liechtensein, Luxembourg, Malta, Mauritius, Mexico, Netherlands, **Nigeria**, Norway, Portugal, Russia, Singapore, Spain, Switzerland, United Kingdom, United States.

4.   EOI Framework

- MAC: 126 countries including Curaçao
- TIEAs: Netherlands Antilles: Antigua and Barbuda, Aruba, Australia, British Virgin Islands, Bermuda, Canada, Cayman Islands, Denmark, Faroe Islands, Finland, France, Greenland, Iceland, Mexico, New Zealand, Spain, St. Lucia, St. Kitts and Nevis, San Marino, Sweden, United Kingdom, United States
- Tax treaties: Norway, Malta (not yet ratified)
- Curaçao: Committed to CRS-AEOI and signatory CRS-MCAA. EOI active with 61 countries.
http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships/#d.en.345426

5.   Practical challenges

- Confidentiality requirement? Exchange of information with third countries? Protection of business (and sensitive) data?

- Curaçao: Confidentiality requirements in domestic law? Training for tax inspectors on data processing, data collection and monitoring in EoI and safeguards for processing of data (CoE Automatic Processing of Personal Data)

- No framework with Belize, China (before 1 Jan 2017), Israel, Nigeria

Additional reading

- Mosquera Valderrama, Irma Johanna and Mazz, Addy and Schoueri, Luis Eduardo and Quiñones, Natalia and Roeleveld, Jennifer and Pistone, Pasquale and Zimmer, Frederik, The Rule of Law and the Effective Protection of Taxpayers' Rights in Developing Countries (August 31, 2017). WU International Taxation Research Paper Series No. 2017-10. Available at SSRN: https://ssrn.com/abstract=3034360

- Debelva F. & Mosquera Valderrama I.J. (2017), Privacy and Confidentiality in Exchange of Information Procedures: Some Uncertainties, Many Issues, but Few Solutions, Intertax 45(5): 362-381. https://bit.ly/2LWVC2z

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