

CARIBBEAN FINANCIAL ACTION TASK FORCE



Report on Trinidad and Tobago's Voluntary Tax Compliance Programme

L Plenary and Working Groups Meeting
November 24th – 29th, 2019
St. John's, Antigua & Barbuda

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Discussion item:

Whether Trinidad and Tobago's Voluntary Tax Compliance (VTC) Programme satisfies the four Principles of the CFATF VTC Procedures?

I. Introduction

1. In October 2012, the FATF issued a best practices paper entitled *Managing the Anti-Money Laundering and Counter-Terrorist Financing Policy Implications of Voluntary Tax Compliance Programmes*¹. The objective of the paper is to provide four basic principles and international best practices that assist countries in the implementation of VTC programmes, under the general idea that such programmes must not impede the effective implementation of AML/CFT measures and that countries address and mitigate the ML/TF risks of VTC programmes and are able to effectively investigate and prosecute their abuse.
2. In November 2014, the CFATF Plenary adopted its *Voluntary Tax Compliance (VTC) Procedures* as required by the FATF for FSRBs. The procedures sets out the actions to be followed to obtain information from Member Countries that intend to or have established VTC Programmes and analyse their content to ensure that related ML and TF risks are addressed and mitigated and that the VTC Programme does not have a negative impact on the effectiveness of the country's AML/CFT system.
3. On June 25, 2019, the Parliament of the Republic of Trinidad and Tobago enacted the Miscellaneous Provisions (Tax Amnesty, Pensions, National Insurance, Central Bank, Companies and Non-Profit Organisations) Act No. 13 of 2019², wherein Section 2 provides for a tax amnesty in relation to any tax payable under certain revenue laws in Trinidad and Tobago. The Tax Amnesty 2019 is a facility authorised by Act No. 13 of 2019, whereby penalties and interest on outstanding tax liabilities are waived, provided that the principal amounts are paid within the period specified in the Act, i.e. 15th June 2019 – 15th September 2019. The Tax Amnesty relates to all established liabilities on taxpayers' accounts. It also includes any tax liabilities that may be applicable to returns not yet filed for income years 2013-2018.
4. This report presents the analysis carried out by the CFATF Secretariat on the Trinidad and Tobago tax amnesty programme to determine whether it complies with the four principles established in the CFATF's *Voluntary Tax Compliance (VTC) Procedures*. To this end, the Secretariat reviewed the information submitted from the authorities of Trinidad and Tobago regarding the programme and the laws in force related to this matter. Accordingly, section II of this report outlines the tax amnesty program, section III examines the adherence of the programme to the four (4) basic principles as set out in the FATF's best practices paper and adopted in the CFATF's VTC Procedures, and section IV provides recommendations to the CFATF Plenary for consideration.

¹ See FATF's paper setting out international best practices to assist countries in their implementation of VTC programmes: <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP%20VTC.pdf>

² An Act to provide for a tax amnesty in relation to certain revenue laws and to amend the Retiring Allowances (Legislative Service) Act, Chap. 2:03; the President's Emoluments Act, Chap. 2:50; the Prime Minister's Pensions Act, Chap. 2:51; the Judges Salaries and Pensions Act, Chap. 6:02; the National Insurance Act, Chap. 32:01; the Central Bank.

II. Outline of the programme

Prescribed period

5. Section 2(1) of the Miscellaneous Provisions (Tax Amnesty, Pensions, National Insurance, Central Bank, Companies and Non-Profit Organisations) Act No. 13 of 2019 provides for a tax amnesty for the prescribed period commencing on **15th June 2019** and ending on **15th September 2019** or such other date as the Minister with responsibility for finance may prescribe.

Waiver

6. Section 2(2) of the Act provides for a waiver of certain liabilities in relation to any tax payable under a revenue law in the following manner:

- 6.1. *Revenue law* means a written law as specified in the Schedule of the Act and refers to the following:

- Registration of Clubs Act, Chap. 21:01
- Income Tax Act, Chap. 21:01
- Corporation Tax Act, Chap. 75:02
- Unemployment Levy Act, Chap. 75:03
- Petroleum Taxes Act, Chap. 75:04
- Health Surcharge Act, Chap. 75:05
- Value Added Tax Act, Chap. 75:06
- Stamp Duty Act, Chap. 76:01
- Section 54 of the Property Tax Act, Chap. 76:04
- Parts IX, XI, XIII, XIV and XV of the Miscellaneous Taxes Act, Chap. 77:01
- Tourism Development Act, Chap. 87:22

- 6.2. *Waiver of interest*: Section 2(2)(a) and (b) provides for the waiver of:

- Interest on any outstanding taxes, where they are due and payable for the years up to and including the year ending 31st December 2018, when the tax is paid prior to or during the prescribed period.
- Outstanding tax charged on any outstanding tax due and payable for the years up to and including the year ending 31st December 2018, where the tax is paid prior to or during the prescribed period.

- 6.3. *Waiver of penalties*: Section 2(2)(c), (d), and (e) provides for the waiver of:

- All other penalties that are due and payable on or in respect of any tax or outstanding tax or interest for the years up to and including the year ending 31st December 2018, where the tax is paid prior to or during the prescribed period.
- All penalties on any outstanding return for the years up to and including the year ending 31st December 2018, where the return is filed before or during the prescribed period.
- All penalties with respect to any return for the years up to and including the year ending 31st December 2018 and filed before 15th June 2019, where such penalties have not been paid.

Clarifications

7. Section 2(3) of the Act provides that the waiver shall not apply in the following manner:

7.1. Affect any liability to tax due and payable by a person under a revenue law.

7.2. Apply to any interest and penalties paid prior to 15th June 2019.

The revival of interests and penalties

8. Section 2(4) of the Act provides that where a tax or return under a revenue law remains outstanding after the expiration of the prescribed period, the interest and other penalties, which would have been payable in relation to the tax or return, as the case may be, shall be revived and become payable as if the waiver under Section 2 had not come into force.

III. Compliance with the four basic principles of the CFATF's VTC Procedures

Effective application of AML/CFT preventative measures

9. **Principle 1** states that *“the effective application of AML/CFT preventative measures is a prerequisite for addressing and mitigating the money laundering and terrorist financing risks associated with implementing any type of voluntary tax compliance programme.”* The review of information on the Trinidad and Tobago tax amnesty program produced the following findings in relation to this first principle:

9.1. The Board of Inland Revenue, Ministry of Finance applies the legislative and regulatory framework as contained in the following AML/CFT laws in Trinidad and Tobago. The Act does not provide for any amendment to these laws for the tax amnesty:

- The Proceeds of Crime, Chapter 11:27
- The Financial Obligations Regulations
- The Anti-Terrorism Act, Chapter 12:07
- The Financial Obligations (Financing of Terrorism) Regulations
- The Financial Intelligence Unit Act, Chap 72:01
- The Financial Intelligence Unit Regulations
- The Central Bank Act, Chap 79:02
- The Financial Institutions Act, Chap 79:09
- The Insurance Act, Chap 84:01
- The Securities Act, Chap 83:02
- The Mutual Assistance in Criminal Matters Act, Chap. 11:24
- The Extradition (Commonwealth and Foreign Territories) Act, Chap. 12:04
- The Customs Act, Chap. 78:01
- The Exchange Control Act, Chap. 79:50
- The Companies Act, Chap. 81:01
- The Economic Sanctions Act, Chap. 81:05
- The Non-Profit Organisations Act, 2019
- The Civil Asset Recovery and Management and Unexplained Wealth Act, 2019

These laws were all applied before the tax amnesty and are relevant and applicable during the same.

- 9.2. The Board of Inland Revenue Division's response to payment of taxes by cash at any of the offices of the division is heightened. The focus is on cash payments which exceed the stipulated threshold of twenty thousand dollars in Trinidad and Tobago currency (TTD\$20,000). Any amounts at or over this threshold would be flagged for possible investigation by the Criminal Tax Investigations Unit, Board of Inland Revenue.
- 9.3. The follow-up process of Trinidad and Tobago demonstrates that AML/CFT regulatory supervisors have taken several actions to ensure that the reporting entities comply with their obligations effectively, including³:

- **Developing outreach, awareness activities and resources**⁴ to assist reporting entities in the assessment of their risks and compliance with obligations about CDD, record-keeping, high-risk customers, suspicious transactions reporting, tipping-off, and internal controls.
- **Supervising reporting entities** to verify they understand their ML/FT risks; ensuring that preventive measures align to the sector's vulnerabilities; reviewing compliance with CDD obligations, including enhanced CDD measures and obtaining adequate information on beneficial ownership; and verifying the existence of compliance programmes, and that such are reflective of the AML/CFT risks of the reporting entities.

10. According to these actions, the Trinidad and Tobago has developed increased effectiveness in the application of AML/CFT preventative measures, complying with the prerequisite as stated in Principle 1.

Prohibition of Exemptions from AML/CFT Requirements

11. **Principle 2** affirms that *“the FATF Recommendations do not allow for full or partial exemptions from AML/CFT requirements in the context of implementing a voluntary tax compliance programme. Therefore, when implementing a voluntary tax compliance programme, national authorities should ensure that its terms do not allow, in law or in practice, for full or partial exemptions from AML/CFT requirements as set out in the FATF Recommendations. Voluntary tax compliance programmes which do so are in breach of the FATF Recommendations.”* In accordance with this Principle, the Act No. 13 of 2019 does not prescribe for either full or partial exemptions from AML/CFT requirements in Trinidad and Tobago's legislative framework. In addition:

- 11.1. The **Board of Inland Revenue Division continues to conduct due diligence on taxpayers when they are flagged** for review and possible investigation by the Criminal Tax Investigations Unit, based upon the sums paid in cash and in settlement of their tax liability.
- 11.2. **Reporting entities are obliged to assess their risks, apply enhanced due diligence to higher risk customers, obtain information on beneficial ownership, and establish the origin of assets as part of the ongoing due diligence**, according to Regulations 7(2)(a), 14(2), 12(1), and 11(1G), respectively, of the Financial Obligations Regulations. Reporting

³ Pages 38-46 of the 2nd FUR.

⁴ Risk assessment tools, provision of typologies and publication of national PEPs lists.

institutions must as well implement these measures to customers and assets that relate to the tax amnesty programme.

- 11.3. Regulation 33(6)(b) of the Financial Obligations Regulations requires beneficiary financial institutions to have **risk-based policies and procedures to execute, reject or suspend a wire transfer lacking the required originator or beneficiary information** and determine follow-up action.⁵

12. Therefore, Act No. 13 of 2019 is consistent with Principle 2.

Domestic co-ordination and co-operation

13. The text of **Principle 3** states that “*when implementing a voluntary tax compliance programme, it should be ensured that all relevant domestic competent authorities be able to co-ordinate and co-operate, and exchange information, as appropriate, with a view to detecting, investigating and prosecuting any ML/FT abuse of the programme.*” Trinidad and Tobago has implemented several measures to enable the relevant authorities to co-ordinate, co-operate and share information, which can be used to investigate the misuses of the tax amnesty program:

- 13.1. **The Criminal Tax Investigation Unit of the Board of Inland Revenue** has maintained a working relationship with several other agencies: Director of Public Prosecutions, the Financial Intelligence Unit and various branches of the Trinidad and Tobago Police Service, such as the Financial Investigations Branch, the Fraud Squad, and the Anti-Corruption Bureau, among others.⁶
- 13.2. **The LEA Working Group**, chaired by the Deputy Director of Public Prosecution and which includes representatives of the Police Service, Customs, Immigration, Board of Inland Revenue and the FIU, has prioritised several joint investigations to drive ML charges.⁷
- 13.3. The Board of Inland Revenue is a law enforcement agency under the Proceeds of Crime Act.⁸ The Board has the authority, under the Income Tax Act, Chapter 75:01, sections 121(1) and (2), to authorise a person to prosecute and conduct any compliant or other proceedings under the Income Tax Act in respect of any offence or penalty. Therefore, **the Criminal Tax Investigation Unit has been authorised by the Board of Inland Revenue to prosecute and conduct complaints into the income or origin of assets or refer such investigations to the relevant authorised authorities.**
- 13.4. According to Section 4 of the Income Tax (Amendment) Act, No. 18 of 2018, **competent authorities can request and receive relevant taxpayer information from the Board of Inland Revenue** for financial intelligence, analysis and criminal investigations.⁹

⁵ Paragraph 617 of the MER of Trinidad and Tobago.

⁶ The report provided by the jurisdiction to the Secretariat regarding the tax amnesty programme provides this information.

⁷ Page 57 of the 2nd FUR of Trinidad and Tobago.

⁸ Paragraph 25 of the MER of Trinidad and Tobago.

⁹ <http://www.ttparliament.org/legislations/a2018-18.pdf>



13.5. **The FIU, the Office of the Director of Public Prosecutions, and other LEAs are adequately resourced** in terms of qualified staff to carry out analysis and investigations related to ML/TF.¹⁰

14. The aforementioned measures demonstrate that the Trinidad and Tobago adheres to Principle 3.

International co-operation

15. **Principle 4** provides that *“the widest possible range of mutual legal assistance and exchange of information in ML/FT investigations, prosecutions and related proceedings relating to the abuse of voluntary tax compliance programmes, including asset recovery investigations and proceedings, should be provided.”* Trinidad and Tobago has various instruments and mechanisms in place that may be applicable in the context of the tax amnesty programme:

15.1. **The Mutual Assistance in Criminal Matters Act, the Anti-Terrorism Act, and the Mutual Legal Assistance Agreements** in which Trinidad and Tobago is a signatory, ensure that foreign authorities can provide co-operation to competent authorities implementing the tax amnesty program.^{11 12}

15.2. **The FIUTT** has established mechanisms for collaboration with foreign stakeholders through the **execution of thirteen (13) MOUs** since January 2015.¹³

15.3. **Spontaneous dissemination of information** to foreign authorities by the FIU is addressed in Section 4(1)(b)(ii) of the Miscellaneous Provisions (Mutual Assistance in Criminal Matters, Proceeds of Crime, Financial Intelligence Unit of Trinidad and Tobago, Customs and Exchange Control) Act, No. 2 of 2018 which amended section 8(3)(f) of the FIUTT Act (functions of the FIUTT). The FIB's revised 2018 Information Sharing Policy specifically provides for the spontaneous exchange of information and articulates clear processes to facilitate such exchanges¹⁴.

15.4. **Competent authorities such as the FIU, LEAs, and others can access basic and beneficial ownership information**, and foreign counterparts can access information online, which provides good basis for providing international cooperation via MLA treaties and other means of international cooperation.¹⁵

15.5. Section 5 of the **Mutual Assistance in Criminal Matters Act, Chap. 11:24, provides that nothing in the Act shall prevent other forms of international cooperation**, therefore, not prohibiting joint investigations by specifically providing that the Act does not derogate from such existing forms of international cooperation. Trinidad and Tobago has provided information regarding joint investigations with foreign counterparts.¹⁶

¹⁰ Page 9 of the 1st FUR.

¹¹ Paragraph 739 of the MER of Trinidad and Tobago, and page 21 of the 2nd FUR. The report provided by the jurisdiction to the Secretariat regarding the tax amnesty programme mirrors the information reflected in MER and the 2nd FUR.

¹² It is important to note that since the approval of the Miscellaneous Provisions Act, No. 2 of 2018, there is no prohibition or unduly restrictive conditions in the legal framework of Trinidad and Tobago to provide MLA. See page 21 of the 2nd FUR and paragraph 114 of the 3rd FUR.

¹³ Page 16 of the 1st FUR.

¹⁴ Paragraphs 123 and 134 of the 3rd FUR.

¹⁵ Paragraph 68 of the 3rd FUR.

¹⁶ Paragraph 144 of the 3rd FUR.

15.6. **There are no legal impediments for sharing information indirectly with non-counterparts** through one or more domestic or foreign counterpart.¹⁷

15.7. **The FIU of Trinidad and Tobago can order reporting entities the application of countermeasures** against countries identified by the FATF as non-compliant or insufficiently compliant with the Recommendations, under Section 17(2) of the FIUTT Act¹⁸. Therefore, the repatriation of funds or other assets from countries that do not adequately apply the FATF Recommendations may be subject to enhanced due diligence measures and additional scrutiny.

16. The international co-operation framework of Trinidad and Tobago adheres to Principle 4.

IV. Recommendation

17. Following the VTC Procedures, the CFATF Secretariat notified the Global Network about Trinidad and Tobago's programme and requested the delegations to submit any information they could have concerning their experience with the programme. The Secretariat received only one submission, corresponding to Ukraine (MONEYVAL), indicating that it has no information in this regard. Considering this information and that Trinidad and Tobago complies with the four Principles, **it is recommended that this report be submitted to the Plenary for approval in its next Plenary that will take place between November 24-29, 2019.**

CFATF Secretariat

August 5th, 2019

¹⁷ Paragraph 145 of the 3rd FUR.

¹⁸ Paragraph 635 of the MER of Trinidad and Tobago.

