

# Luxembourg

Luxembourg has met all aspects of the terms of reference (OECD, 2021<sup>[3]</sup>) (ToR) for the calendar year 2021 (year in review), and no recommendations are made.

Luxembourg can legally issue four types of rulings within the scope of the transparency framework.

In practice, Luxembourg issued rulings within the scope of the transparency framework as follows:

Type of ruling	Number of rulings
Past rulings	1 922
Future rulings in the period 1 April 2016 – 31 December 2016	73
Future rulings in the calendar year 2017	18
Future rulings in the calendar year 2018	9
Future rulings in the calendar year 2019	3
Future rulings in the calendar year 2020	0
Future rulings in the year in review	6

Peer input was received from one jurisdiction in respect of the exchanges of information on rulings received from Luxembourg. The input was positive, noting that information was complete, in a correct format and received in a timely manner.

## Information gathering process (ToR I.A)

797. Luxembourg can legally issue the following four 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; and (iv) permanent establishment rulings.

798. For Luxembourg, past rulings are any tax rulings within scope that are issued either: (i) on or after 1 January 2014 but before 1 April 2016; or (ii) on or after 1 January 2010 but before 1 January 2014, provided they were still in effect as at 1 January 2014. Future rulings are any tax rulings within scope that are issued on or after 1 April 2016.

799. In the prior years' peer review reports, it was determined that Luxembourg's undertakings to identify past and future rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. In addition, it was determined that Luxembourg's review and supervision mechanism was sufficient to meet the minimum standard. Luxembourg's implementation remains unchanged, and therefore continues to meet the minimum standard.

800. Luxembourg has met all of the ToR for the information gathering process and no recommendations are made.

## Exchange of information (ToR II.B)

801. Luxembourg has the necessary domestic legal basis to exchange information spontaneously. Luxembourg 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.

802. Luxembourg has 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<sup>[1]</sup>) ("the Convention"), (ii) the Directive 2011/16/EU with all other European Union Member States and (iii) bilateral agreements in force with 82 jurisdictions.<sup>2</sup>

803. For the year in review, the timeliness of exchanges is as follows:

Future rulings within 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
	9 <sup>3</sup>	0	N/A	N/A

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	3	2 months	0

804. In the prior years' peer review reports, it was determined that Luxembourg's process for the completion and exchange of templates were sufficient to meet the minimum standard. With respect to past rulings, no further action was required. Luxembourg's implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

805. Luxembourg has the necessary legal basis for spontaneous exchange of information, a process for completing the templates in a timely way and has completed all exchanges. Luxembourg has met all of the ToR for the exchange of information process and no recommendations are made.

### Statistics (ToR IV.D)

806. The statistics for the year in review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	0	N/A
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	1	<i>De minimis</i> rule applies
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	8	Cyprus, France, Germany, Switzerland, United Kingdom, United States
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	1	<i>De minimis</i> rule applies
<b>Total</b>	10 <sup>4</sup>	

### Matters related to intellectual property regimes (ToR I.A.1.3)

807. In the prior years' peer review reports, it was determined that Luxembourg's information gathering and exchange of information processes for matters related to intellectual property regimes<sup>5</sup> were sufficient to meet the minimum standard. Luxembourg's implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

### 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 (2021), *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://doi.org/10.1787/9789264241190-en>. [2]
- OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264115606-en>. [1]

## Notes

<sup>1</sup>1) Private asset management company, 2) Investment company in risk capital, 3) Provision for fluctuations in reinsurance companies, and 4) Informal capital and partial exemption for income/gains derived from certain IP rights.

<sup>2</sup> Participating jurisdictions 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). Luxembourg also has bilateral agreements with Andorra, Armenia, Austria, Azerbaijan, Bahrain, Guernsey, Barbados, Belgium, Brazil, Brunei Darussalam, Bulgaria, Canada, China (People's Republic of), Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Kazakhstan, Korea, Kosovo, Lao People's Democratic Republic, Latvia, Liechtenstein, Lithuania, Malaysia, Malta, Mauritius, Mexico, Moldova, Monaco, Morocco, Netherlands, North Macedonia, Norway, Panama, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Chinese Taipei, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Türkiye, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan and Viet Nam.

<sup>3</sup> During the year in review, Luxembourg also transmitted an additional 30 exchanges for 13 rulings relating to "other types of rulings" that fall outside of the scope of the transparency framework.

<sup>4</sup> See note 3.

<sup>5</sup> Informal capital and partial exemption for income/gains derived from certain IP rights.



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