

Netherlands

The Netherlands has met all aspects of the terms of reference (OECD, 2021^[3]) (ToR) for the calendar year 2020 (year in review), except for the timely provision of information on rulings to the Competent Authority for exchange of information (ToR II.B.5). The Netherlands receives one recommendation on this point for the year in review.

In the prior year report, the Netherlands received no recommendations. However, as there were new circumstances, a recommendation has been made as relevant.

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

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

Type of ruling	Number of rulings
Past rulings	2 206
Future rulings in the period 1 April 2016 – 31 December 2016	297
Future rulings in the calendar year 2017	214
Future rulings in the calendar year 2018	272
Future rulings in the calendar year 2019	403
Future rulings in the year in review	263

Peer input was received from fourteen jurisdictions in respect of the exchanges of information on rulings received from the Netherlands. The input was generally positive, noting that overall information was complete and in a correct format. However, three peers indicated that exchanges on rulings were not timely.

A. The information gathering process (ToR I.A)

840. The Netherlands can legally issue the following four types of rulings within the scope of the transparency framework: (i) preferential regimes;¹ (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;² and (iv) permanent establishment rulings.

841. For the Netherlands, 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.

842. In the prior years' peer review reports, it was determined that the Netherlands' 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 the Netherlands' review and supervision mechanism was sufficient to meet the minimum standard. The Netherlands' implementation remains unchanged, and therefore continues to meet the minimum standard.

843. The Netherlands has met all of the ToR for the information gathering process and no recommendations are made.

B. The exchange of information (ToR II.B)

Legal basis for spontaneous exchange of information (ToR II.B.1, II.B.2)

844. The Netherlands has the necessary domestic legal basis to exchange information spontaneously. The Netherlands 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.

845. The Netherlands has international agreements permitting spontaneous exchange of information, including being a party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011^[4]) ("the Convention"), (ii) the Directive 2011/16/EU with all other European Union Member States and (iii) bilateral agreements in force with 142 jurisdictions.³

Completion and exchange of templates (ToR II.B.3, II.B.4, II.B.5, II.B.6, II.B.7)

846. In the prior years' peer review reports, it was determined that the Netherlands' process for the completion and exchange of templates were sufficient to meet the minimum standard. However, it should be noted that for the peer input, three peers indicated that information in the summary box of the template could provide more detail.

847. Furthermore, peer input indicated that during the year in review, some information on rulings were exchanged with a delay. The Netherlands confirms that in all cases, information on rulings was exchanged within three months after the information became available to the Competent Authority. However, the Netherlands indicates that in some cases, a delay has taken place in the period between the issuance of the ruling and the transmission to the Competent Authority as the Tax Administration needed additional time to complete the Annex C template. The Netherlands is currently investigating this issue and therefore, the Netherlands is recommended to ensure that information is made available to the Competent Authority without undue delay (ToR II.B.5).

848. 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
	772	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
	6	50 days	4

849. It was noted by the Netherlands that four follow up requests have not yet been answered due to ongoing inquiries.

Conclusion on section B

850. The Netherlands has the necessary legal basis for spontaneous exchange of information. The Netherlands has met all of the ToR for the exchange of information process except for the timely provision of information on rulings to the Competent Authority for exchange of information (ToR II.B.5). The Netherlands is recommended to ensure that information is made available to the Competent Authority without undue delay.

C. Statistics (ToR IV)

851. 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	580	Argentina, Australia, Austria, Belarus, Belgium, Brazil, Canada, Chile, China (People's Republic of), Colombia, Costa Rica, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, Finland, France, Germany, Greece, Guatemala, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Jersey, Kazakhstan, Korea, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Monaco, Morocco, New Zealand, Norway, Oman, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Senegal, Serbia, Singapore, Slovak Republic, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Thailand, Tunisia, Turkey, Uganda, Ukraine, United Kingdom, United States, Uruguay, Viet Nam
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	125	Argentina, Australia, Belarus, Bosnia and Herzegovina, Brazil, Canada, Chile, China (People's Republic of), Colombia, Guernsey, Hong Kong (China), Iceland, India, Indonesia,

		Israel, Japan, Kazakhstan, Korea, Malaysia, Mauritius, Mexico, New Zealand, Norway, Russia, Saudi Arabia, Singapore, Slovenia, South Africa, Switzerland, Chinese Taipei, Thailand, Turkey, Ukraine, United States
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	67	Australia, Bonaire, Brazil, Canada, China (People's Republic of), Curaçao, Hong Kong (China), India, Indonesia, Israel, Japan, Korea, Malaysia, Mexico, New Zealand, Norway, Philippines, Russia, Saint Lucia, Singapore, South Africa, Switzerland, Chinese Taipei, Thailand, Turkey, United States
<i>De minimis</i> rule	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	Included in "rulings related to a preferential regime".	N/A
Total	772	

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

852. The Netherlands offers an intellectual property regime (IP regime)⁴ that is subject to the transparency requirements under the Action 5 Report (OECD, 2015^[1]). It states that the identification of the benefitting taxpayers will occur as follows:

- **New entrants benefitting from the grandfathered IP regime:** the application of the IP regime⁵ is usually offered by way of ruling. In those cases, the Netherlands identified taxpayers entering new into the regime or bringing new assets into the regime through the rulings process. For those cases in which no ruling was granted but the benefit was claimed directly in the tax return, the Netherlands' process was described in the previous' year peer review report. The Netherlands confirms that all exchanges have now taken place.
- **Third category of IP assets:** the regime allows the third category of IP assets to benefit from the preferential tax treatment. Most taxpayers apply for a ruling in order to obtain this benefit with regard to the IP regime,⁶ and information would be exchanged using the process for future rulings. For those taxpayers that use the third category of IP assets without having applied for a ruling, the Netherlands' process was described in the previous' year peer review report. The Netherlands continues to meet the standard.
- **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 Netherlands experienced delays in the provision of rulings to the Competent Authority.	The Netherlands is recommended to ensure that information is made available to the Competent Authority without undue delay.

Jurisdiction's response and recent developments

853. With respect to the input by three peers that the information included in the summary section of the template could provide more detail, the Netherlands notes that the templates exchanged meet the minimum standard and therefore all required elements have been included. In most of the cases, more than the required information was provided. The Netherlands also notes that in some instances, it was not possible to exchange certain details (such as the amount of the transaction or annual turnover and profits), as such information was not yet available at the time of issuance of the ruling.

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]
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Notes

¹ With respect to the following preferential regimes: 1) Innovation box and 2) International shipping.

² From 1 July 2019, a new ruling policy is in place which no longer allows rulings with regard to unilateral downward adjustments to be concluded.

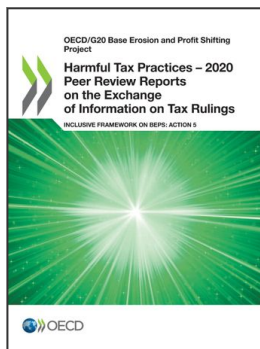
³ Participating jurisdictions to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. The Netherlands also has bilateral agreements with Albania, Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Bermuda, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, China (People's Republic of), Croatia, Curaçao, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Ghana, Greece, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Moldova, Montenegro, Morocco, New Zealand, Nigeria, North Macedonia, Norway, Oman, Pakistan, Panama, Philippines, Poland, Portugal, Qatar, Romania, Russia, Sint Maarten, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Chinese Taipei, Tajikistan, Thailand, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Venezuela, Viet Nam, Zambia and Zimbabwe.

⁴ Innovation box.

⁵ The non-lump-sum IP regime.

In the lump-sum-regime, 25% of the profit of a taxpayer with a maximum of € 25,000 can be taxed in the IP regime. This means that the maximum IP regime deduction is € 20,000 per taxpayer in 2017.

⁶ The non-lump-sum IP regime.



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