

Belgium

Belgium has met all aspects of the terms of reference (OECD, 2017^[3]) (ToR) for the calendar year 2019 (year in review) and no recommendations are made.

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

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

- 586 past rulings;
- For the period 1 April 2016 - 31 December 2016: 57 future rulings;
- For the calendar year 2017: 107 future rulings,
- For the calendar year 2018: 103 future rulings, and
- For the year in review: 73 future rulings.

Peer input was received from two jurisdictions in respect of the exchanges of information on rulings received from Belgium. The input was positive, noting that information was complete, in a correct format and almost all received in a timely manner.

A. The information gathering process

121. Belgium can legally issue four types of rulings within the scope of the transparency framework: (i) preferential regimes;¹ (ii) cross-border unilateral advance pricing agreements (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.

122. For Belgium, 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.

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

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

B. The exchange of information

125. In the prior years' peer review reports, it was determined that Belgium'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. Belgium's implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

126. Belgium 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^[4]) ("the Convention"), (ii) the Directive 2011/16/EU with all other European Union Member States and (iii) bilateral agreements in force with 77 jurisdictions.²

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

Future rulings in 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
	216	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
	0	N/A	N/A

128. Belgium 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. Belgium has met all of the ToR for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

129. 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	15	Brazil, Denmark, France, Ireland, Japan, Luxembourg, Netherlands, United Kingdom, United States
Cross-border unilateral advance pricing agreements (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	193	Argentina, Australia, Austria, Brazil, Bulgaria, Canada, Chile, China (People's Republic of), Colombia, Czech Republic, France, Gabon, Germany, Indonesia, Ireland, India, Isle of Man, Italy, Japan, Jersey, Kazakhstan, Korea, Luxembourg, Malaysia, Mexico, Netherlands, Norway, Poland, Portugal, Romania, Russia, Saudi Arabia, Singapore, South Africa, Spain, Switzerland, Tunisia, Turkey, United Kingdom, 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	22	Czech Republic, France, Germany, Indonesia, Ireland, Luxembourg, Netherlands, Portugal, Spain, Singapore, South Africa, 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	83	Australia, Austria, Bulgaria, China (People's Republic of), France, Germany, Hungary, India, Ireland, Israel, Italy, Japan, Lithuania, Mexico, Malaysia, Mauritius, Netherlands, Nigeria, Norway, Poland, Romania, Russia, Spain, Sweden, Switzerland, Thailand, Turkey, Ukraine, United Kingdom, United States
Total	313³	

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

130. Belgium 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:** In the prior year peer review report, it was determined that Belgium's process for identifying and exchanging information on new entrants to the grandfathered IP regime were sufficient to meet the minimum standard. Belgium's implementation in this regard remains unchanged and therefore continues to meet the minimum standard.
- **Third category of IP assets:** not applicable as the regime does not allow the third category of IP assets to qualify for the benefits.
- **Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption:** Belgium confirms that no taxpayer elected to treat the nexus approach 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
	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

¹ With respect to the following preferential regimes: 1) Patent income deduction, 2) tax shelter regime for maritime exploitation and 3) excess profits.

² Parties to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Belgium also has bilateral agreements in force with Albania, Algeria, Andorra, Antigua and Barbuda, Argentina, Armenia, Australia, Azerbaijan, Bahrain, Bangladesh, Belarus, Brazil, Belize, Bosnia and Herzegovina, Canada, Chile, China (People's Republic of), Côte d'Ivoire, Democratic Republic of the Congo, Ecuador, Egypt, Gabon, Georgia, Ghana, Hong Kong (China), Iceland, India, Indonesia, Israel, Japan, Kazakhstan, Korea, Kosovo, Kyrgyzstan, Kuwait, Malaysia, Mauritius, Mexico, Moldova, Mongolia, Montenegro, Morocco, New Zealand, Nigeria, North Macedonia, Norway, Pakistan, Philippines, Russia, Rwanda, San Marino, Senegal, Serbia, Seychelles, Singapore, South Africa, Sri Lanka, Switzerland, Tajikistan, Chinese Taipei, Thailand, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United States, Uruguay, Uzbekistan, Venezuela and Viet Nam.

³ There were 299 unique exchanges. The total of number of exchanges given in this table, 313, is higher due to the fact that some exchanges relate to rulings that fall under more than one category.

⁴ Innovation income deduction.



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