

The Netherlands

The Netherlands has met all aspects of the terms of reference (OECD, 2017^[3]) (ToR) for the calendar year 2018 (year in review) and no recommendations are made.

In the prior year report, the Netherlands received one recommendation. This recommendation has been addressed and is removed.

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:

- 2 204 past rulings;
- For the period 1 April 2016 - 31 December 2016: 297 future rulings;
- For the calendar year 2017: 214 future rulings, and
- For the year in review: 272 future rulings.

Peer input was received from ten jurisdictions in respect of the exchanges of information on rulings received from the Netherlands. The input was generally positive, noting that information was complete, mostly in a correct format and in general received in a timely manner.

Introduction

This peer review covers the Netherlands' implementation of the BEPS Action 5 transparency framework for the year 2018. The report has four parts, each relating to a key part of the ToR. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information gathering process

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; and (iv) permanent establishment rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

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.

In the prior year peer review report, it was determined that the Netherlands' undertakings to identify past rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. The Netherlands' implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

For the Netherlands, future rulings are any tax rulings within scope that are issued on or after 1 April 2016.

In the prior years' peer review reports, it was determined that the Netherlands' undertakings to identify future rulings and all potential exchange jurisdictions was sufficient to meet the minimum standard. The Netherlands' implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

Review and supervision (ToR I.4.3)

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

Conclusion on section A

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

B. The exchange of information

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

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.

The Netherlands 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) double tax agreements in force with 141 jurisdictions.²

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

In the prior year peer review report, it was determined that the Netherlands' process for the completion and exchange of templates were sufficient to meet the minimum standard. The Netherlands' implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

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

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2018	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2018	Reasons for the delays	Any other comments
	2	0	During the year of review two past rulings have been identified that were mistakenly overlooked during the first review process.	N/A
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
	442	0	N/A	N/A
Total	444	0		

Follow up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	12	41 days	Nil

With respect to the two exchanges on past rulings, these had not been identified in 2016 or 2017, owing to human error in the manual review process. The rulings were identified in the year in review in the course of other work on the relevant files. This is a relatively small error in the context of the Netherlands' exchange of information on rulings, given the substantial number of rulings issued, and the exchange took place within a very short period of the issue being identified. As such, no recommendation is made.

Conclusion on section B

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

C. Statistics (ToR IV)

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	233	Argentina, Aruba, Australia, Belarus, Brazil, Canada, Chile, China (People's Republic of), Colombia, Costa Rica, Curaçao, Egypt, Georgia, Ghana, Hong Kong (China), Iceland, India, Indonesia, Israel, Japan, Jordan, Kazakhstan, Korea, Malaysia, Mauritius, Mexico, Moldavia, Morocco, New Zealand, Nigeria, Norway, Panama, Philippines, Russia, Saudi Arabia, Serbia, Singapore, South Africa, Sri Lanka, Switzerland, Chinese Taipei, Thailand, Turkey, Ukraine, United States, Viet Nam
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	190	Argentina, Australia, Barbados, Belarus, Brazil, Canada, Chile, China (People's Republic of), Colombia, Costa Rica, Curaçao, Egypt, Greenland, Hong Kong (China), India, Indonesia, Israel, Japan, Jersey, Korea, Malaysia, Malta, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Philippines, Russia, Saudi Arabia, Seychelles, Singapore, South Africa, Switzerland, Chinese Taipei, Thailand, Turkey, Ukraine, United States, Uruguay, Viet Nam
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	14	Canada, Curaçao, Cyprus, Ireland, Israel, Italy, Kazakhstan, United Kingdom, United States
Permanent establishment rulings	7	Curaçao, Mexico, Switzerland, United States
Related party conduit rulings	N/A	N/A
<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	0 ^{3 4}	N/A
Total	444	

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

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

- **New entrants benefitting from the grandfathered IP regime:** the IP regime was in nearly all cases offered by way of ruling and this is how the Netherlands identified taxpayers entering new into the regime or bringing new assets into the regime.
To the extent there could have been new entrants (both new taxpayers and new assets of existing taxpayers) who did not apply for a ruling, these were identified once they filed their corporate income tax returns, which had been amended for this purpose. If a taxpayer had indicated this in the return, the tax inspector verifies whether information had already been exchanged on the basis that a ruling has been issued. If not, the officer would have ensured that the template is filled out and submitted to the competent authority for exchange of information. In practice, all tax returns for the period of which new entrants could obtain grandfathering relating to 2017 will normally have been filed by the end of 2019. A complete review with final results will take place by end of 2019.
- **Third category of IP assets:** the regime allows the third category of IP assets to benefit from the preferential tax treatment. Most taxpayers will seek a ruling in order to obtain this benefit, and information would be exchanged using the process for future rulings described above. However, as there is no requirement to apply for a ruling in order to benefit from the new innovation box, the Netherlands amended their tax return forms in 2017 and added a question to collect information on whether a taxpayer benefits from the third category of IP assets without having obtained a ruling. The Netherlands expects that all the tax returns relating to 2017 will normally be filed by the end of 2019. The Netherlands will then exchange information on any taxpayers that benefit from the third category in 2017 without applying for a ruling. The Netherlands notes that in practice because most taxpayers do apply for a ruling, the number of exchanges resulting from the amended tax returns is expected to be very low.
- **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
	No recommendations are made.

Notes

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

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. The Netherlands also has bilateral agreements with Albania, 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, Saint Martin, 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.

³ It is noted that the Netherlands is using the same code to exchange information on new entrants of the grandfathered IP regime, entrants of the new innovation box, entrants of the new innovation box benefitting from the third category of assets, and beneficiaries of the shipping regime. Therefore exact figures of new entrants benefitting from the grandfathered regime and from the third category of assets as required for statistical purposes cannot yet be provided.

⁴ The tax returns of the year 2017, in which taxpayers who did not apply for a ruling can opt for the continued application of the grandfathered regime (new entrants) or applying the new IP regime to the third category of IP asset, will normally have been filed by the end of 2019. The Netherlands will then exchange information about the application of the Innovation box if the taxpayers are grandfathered new entrants and/or have eligible profits with regard to third category IP assets, without having applied for a ruling. In practice, nearly all taxpayers request a ruling for the application of the Innovation box and therefore the number of additional taxpayers is expected to be very low.

⁵ Innovation box.



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