

The Netherlands

The Netherlands 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.

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:

- 2 206 past rulings;
- For the period 1 April 2016 - 31 December 2016: 297 future rulings;
- For the calendar year 2017: 214 future rulings,
- For the calendar year 2018: 272 future rulings, and
- For the year in review: 403 future rulings.

From 1 July, anonymised summaries are published for all rulings of an international nature.¹

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

A. The information gathering process

771. The Netherlands can legally issue the following four types of rulings within the scope of the transparency framework: (i) preferential regimes;² (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;³ and (iv) permanent establishment rulings.

772. 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.

773. 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.

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

B. The exchange of information

775. 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. The Netherlands' implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

776. 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) bilateral agreements in force with 141 jurisdictions.⁴

777. 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 2019	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2019	Reasons for the delays	Any other comments
	3	0	N/A	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
	978	0	N/A	N/A
Total	981	0		

Follow up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	21	96 days	One request, due to ongoing investigation.

778. With respect to the three exchanges on two past rulings, it is noted that these had not been identified in 2016 or 2017, because of a human error in the manual review process. As there was no centralised process for issuing past rulings in the Netherlands, part of the issued rulings were manually identified in every local office. 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. It should also be noted that the manual identification process only applied to past rulings and that for future rulings, the registration takes place in a central system and the identification process is therefore automated.

779. 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)

780. 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	428	Argentina, Australia, Brazil, Canada, Chile, China (People's Republic of), Colombia, Curaçao, Egypt, Guatemala, Hong Kong (China), Iceland, India, Indonesia, Israel, Japan, Kazakhstan, Korea, Lebanon, Malaysia, Mexico, Morocco, New Zealand, Norway, Oman, Pakistan, Panama, Peru, Philippines, Russia, Saudi Arabia, Serbia, Singapore, South Africa, Sri Lanka, Switzerland, Chinese Taipei, Thailand, Turkey, Ukraine, United States, Uruguay, 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	326	Argentina, Aruba, Australia, Azerbaijan, Barbados, Belarus, Brazil, Canada, Chile, China (People's Republic of), Colombia, Costa Rica, Curaçao, Egypt, Gibraltar, Guatemala, Hong Kong (China), India, Indonesia, Israel, Japan, Jersey, Korea, Lebanon, Malaysia, Mexico, Morocco, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Peru, Philippines, Qatar, Russia, Saint Lucia, Saudi Arabia, Serbia, Singapore, South Africa, Sri Lanka, Suriname, Switzerland, Chinese Taipei, Thailand, Tunisia, 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	213	Australia, Austria, Barbados, Brazil, Canada, Chile, China (People's Republic of), Curaçao, Cyprus, Finland, France, Georgia, Germany, Guernsey, Hong Kong (China),

		Hungary, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Luxembourg, Malaysia, Mexico, New Zealand, Oman, Portugal, Russia, Singapore, Spain, Sweden, Chinese Taipei, Turkey, United Kingdom, United States, Uruguay
Permanent establishment rulings	14	Brazil, Curaçao, Norway, Peru, Singapore, Switzerland, 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	Included in "rulings related to a preferential regime".	N/A
Total	981	

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

781. The Netherlands offers an intellectual property regime (IP regime)⁵ 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 regime⁶ 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 has undertaken the following steps:

- It has inserted a new question in the tax return which requires taxpayers to indicate whether the IP regime is applied without a ruling.
- Based on the filed tax returns in respect of 2017 (received by the tax administration by the end of 2019), the Netherlands identified 342 taxpayers that applied the innovation box without a ruling and which potentially could fall under the transparency framework. However, the necessary information to establish whether taxpayers are benefitting from the third category of IP assets or are grandfathered new entrants is often not present in the relevant tax return. Therefore, in February 2020, these 342 taxpayers were asked whether they are benefitting from the third category of IP assets or are grandfathered new entrants. This is a manual process after the tax return has been filed.
- Of these 342 requests, it appeared that 148 taxpayers are either new entrants to the grandfathered regime or taxpayers benefitting from the third category of IP assets, for which information must be exchanged. These 148 taxpayers have an aggregate amount of EUR 63,3 million worth of tax benefits (decrease of the taxable base), which corresponds to approximately 1% of the total amount. The templates for this group will be exchanged with the relevant jurisdictions as soon as possible. The Netherlands is currently in the process of exchanging information on these 148 taxpayers. As of July 2020, information on 112 taxpayers has been collected and exchanged. For the remaining 36 cases, the Netherlands is still in the process of collecting the relevant information from taxpayers in order to conduct exchanges. The Netherlands confirms that all necessary exchanges will be conducted by the end of 2020.

- **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,⁷ and information would be exchanged using the process for future rulings. In order to identify those small portion of taxpayers using the third category of IP assets without having applied for a ruling, a new question was inserted in the tax return, which requires taxpayers to indicate whether the IP regime is applied without a ruling. This process is described under the previous section. For 2017, the Netherlands has identified the taxpayers using the third category of IP assets, as described above. The tax returns for 2018 and 2019 will be ultimately filed by the end of 2020 and the end of 2021, respectively. The Dutch Tax Administration will then use the same approach for the years 2018 and 2019 (i.e. performing a query on all tax returns and manually collecting additional information to complete any necessary exchanges within one year of the dates mentioned before, i.e. the end of 2020, respectively 2021).
- **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.

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 This summary contains a short statement of: 1) the facts and circumstances and, when appropriate, the main conclusions from transfer pricing reports or other documents; 2) the issue on which certainty is requested based on relevant legislation and regulations; and 3) the conclusion on the basis of which the ruling was reached. If a ruling request is rejected, a summary will be published with the explanation as to why the request was rejected.

The summaries are made available on the Dutch Tax Administration's website:

- Rulings IP regime:
https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/standaard_functionies/prive/contact/rechten_en_plichten_bij_de_belastingdienst/ruling/rulings-ihkv-innovatiebox
- ATRs:
https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/standaard_functionies/prive/contact/rechten_en_plichten_bij_de_belastingdienst/ruling/atr
- APAs:
https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/standaard_functionies/prive/contact/rechten_en_plichten_bij_de_belastingdienst/ruling/apa
- Other rulings of an international nature:
https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/standaard_functionies/prive/contact/rechten_en_plichten_bij_de_belastingdienst/ruling/overige-internationale-rulings

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

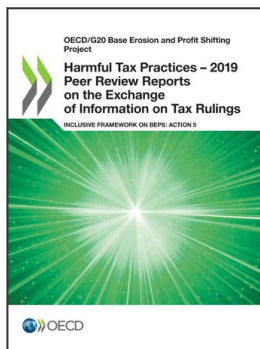
³ From 1 July 2019, a new ruling policy is in place which no longer allows rulings with regard to unilateral downward adjustments to be concluded.

⁴ 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.

⁵ Innovation box.

⁶ 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.

⁷ The non-lump-sum IP regime.



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