Luxembourg

Luxembourg has met all aspects of the terms of reference (OECD, 2021[3]) (ToR) for the calendar year 2020 (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	1922
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 year in review	0

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.

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

752. Luxembourg 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.

753. 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.

754. 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.

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

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

756. Luxembourg 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 82 jurisdictions.[2]

757. 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
	0[3]	3	See below	N/A

Follow up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	6	1.5 months	0

758. Luxembourg concluded during its verification process of the exchange statistics that the exchanges for one ruling issued in 2019 were omitted in 2019 due to human error, which subsequently resulted in three exchanges in 2020. Luxembourg notes this was a specific and isolated case which will be prevented by a closer collaboration between the authorities involved.

759. 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.

760. 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.

C. Statistics (ToR IV)

761. 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	*De minimis* rule applies[4]	N/A
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	0	N/A
De minimis rule	3	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	7	Belgium, France, Germany, Netherlands, Turkey, United States
Total	10[5]	

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

762. Luxembourg offered an intellectual property regime (IP regime)[6] that was abolished as of 1 July 2016 and is subject to 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:*** during the prior year, an IT research application was launched with the aim of identifying the taxpayers who requested the application of the IP regime in their tax return. Some taxpayers only filed their tax return for the fiscal years 2015 and 2016 by late 2017 or in 2018. Information on these remaining new entrants and new IP assets from existing taxpayers was exchanged in 2018, with a small number of additional exchanges taking place early in the year in review. Exchanges took place generally within one month of receipt of the information. This issue is now completed.
- ***Third category of IP assets***: not applicable as the IP regime has been abolished.
- ***Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption***: not applicable as the IP regime has been abolished.

763. In addition, Luxembourg offers an IP regime that not is subject to the transparency requirements under the Action 5 Report (OECD, 2015[1]), because:

- ***New entrants benefitting from the grandfathered IP regime***: as this is a new IP regime rather than a grandfathered IP regime, transparency on new entrants is not relevant.
- ***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***: 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 (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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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) 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.

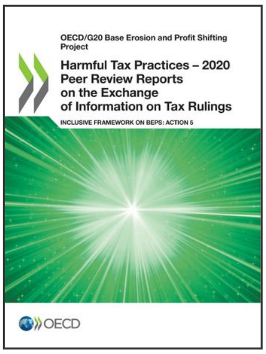
[2] Participating jurisdictions to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Luxembourg also has bilateral agreements with Andorra, Armenia, Austria, Azerbaijan, Bahrain, Guernsey, Barbados, Belgium, 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, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan and Viet Nam.

[3] During the year in review, Luxembourg also transmitted an additional 10 exchanges of "other types of rulings" that fall outside of the scope of the transparency framework.

[4] Exchanges related to one ruling issued in 2019, as explained under paragraph 6.

[5] See note 3.

[6] Partial exemption for income/gains derived from certain IP rights.



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