

# Belgium

Belgium has met all aspects of the terms of reference (ToR) for the calendar year 2018 (year in review) and no recommendations are made.

In the prior year report, Belgium received one recommendation to continue its efforts to identify and exchange information on new entrants to the grandfathered IP regime (ToR I.4.1.3). This recommendation has been addressed and is removed.

Belgium can legally issue four types of rulings within the scope of the transparency framework. In practice, Belgium has 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, and
- For the year in review: 103 future rulings.

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

## Introduction

This peer review covers Belgium's 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

Belgium can legally issue the following four types of rulings within the scope of the transparency framework: (i) rulings related to preferential regimes;<sup>1</sup> (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.

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

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.

In the prior year peer review report, it was determined that the Belgian tax administration's undertakings to identify past rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. The Belgian tax administration's 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 Belgium, future rulings are any tax rulings within scope that are issued on or after 1 April 2016.

In the prior year peer review report, it was determined that the Belgian Tax Administration's implementation of a system to identify future rulings and all potential exchange jurisdictions was sufficient to meet the minimum standard. The Belgian Tax Administration's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

#### ***Review and supervision (ToR I.4.3)***

In the prior year peer review report, it was determined that the Belgian Tax Administration's review and supervision mechanism was sufficient to meet the minimum standard. The Belgian Tax Administration's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

#### ***Conclusion on section A***

Belgium 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)**

Belgium has the necessary domestic legal basis to exchange information spontaneously. Belgium 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.

Belgium is a party to international agreements permitting spontaneous exchange of information, including (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ( “the Convention”), (ii) the Directive 2011/16/EU with all other European Union Member States and (iii) double tax agreements in force with 70 jurisdictions.<sup>2</sup>

### **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 Belgian Tax Administration’s completion and exchange of templates was sufficient to meet the minimum standard. Belgium’s 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
	63	0	N/A	These past rulings were exchanged with four jurisdictions with whom the legal basis for exchange did not enter into force until 2018, and one developing country (non-financial centre) that received a deferral. As such these exchanges were not delayed as they were only legally permitted to occur or required by the ToR to occur in 2018.
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
	354	0	N/A	N/A
<b>Total</b>	417	0		

Follow up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	2	1 day	0

### Conclusion on section B

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 on time. Belgium 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	42	Australia, Brazil, Canada, Chile, China (People's Republic of), Denmark, France, Germany, Indonesia, India, Italy, Mexico, Netherlands, Poland, Romania, Russia, Sweden, Slovenia, South Africa, Spain, Switzerland, Turkey, Ukraine, 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	348	Australia, Austria, Barbados, Bulgaria, Canada, China (People's Republic of), Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, Indonesia, Ireland, Italy, Japan, Jersey, Liechtenstein, Luxembourg, Malaysia, Malta, Mexico, Netherlands, Panama, Poland, Portugal, Romania, Russia, Saudi Arabia, Singapore, Slovenia, South Africa, Spain, Sweden, Tunisia, Turkey, Ukraine, 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	75	Australia, Austria, Finland, France, Germany, Ireland, Italy, Japan, Jersey, Lithuania, Luxembourg, Netherlands, Poland, Spain, Switzerland, Ukraine, United Kingdom, United States
Related party conduit rulings	0	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	1	<i>De minimis</i> rule applies
<b>Total</b>	<b>466<sup>3</sup></b>	

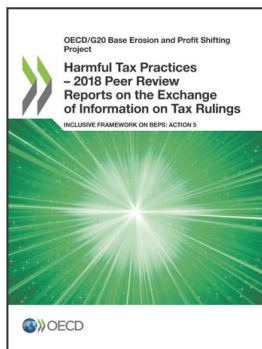
## D. Matters related to intellectual property regimes (ToR I.4.1.3)

Belgium has an intellectual property regime (IP regime) that is subject to transparency requirements under the Action 5 Report (OECD, 2015<sup>[5]</sup>).<sup>4</sup> 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, Belgium received a recommendation to continue its efforts to identify and exchange information on new entrants to the grandfathered IP regime. For taxpayers filing tax returns in calendar year 2017 (regarding tax year 2016), Belgium introduced a new requirement in the tax return form to identify new entrants that entered the regime after the relevant date from which enhanced transparency obligations apply. New entrants included both (i) new taxpayers not previously benefiting from the regime and (ii) new IP assets owned by taxpayers already benefiting from the regime. As described in the prior year peer review report, the Belgian Tax Administration has finalised the tax return assessment process to establish which taxpayers are in scope for enhanced transparency under the Standard. The exchanges were completed in February 2019. Belgium acknowledges that these exchanges were approximately five months delayed, given that tax returns were received by the Belgian Tax Administration in September 2017 and it is expected under the Standard that the exchanges should have taken place by September 2018. Belgium has now completed the identification and exchange of all new entrants to the grandfathered IP regime and the prior year recommendation is now removed.
- ***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.



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