

Netherlands

The Netherlands has met all aspects of the terms of reference (OECD, 2021^[3]) (ToR) for the calendar year 2021 (year in review), except for the timely provision of information on rulings to the Competent Authority for exchange of information (ToR II.B.5). The Netherlands receives one recommendation on this point for the year in review.

In the prior year's peer review report, the Netherlands had received the same recommendation. As it has not been fully addressed, the recommendation remains in place.

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:

Type of ruling	Number of rulings
Past rulings	2 206
Future rulings in the period 1 April 2016 – 31 December 2016	297
Future rulings in the calendar year 2017	214
Future rulings in the calendar year 2018	272
Future rulings in the calendar year 2019	403
Future rulings in the calendar year 2020	263
Future rulings in the year in review	299

Peer input was received from eight jurisdictions in respect of the exchanges of information on rulings received from the Netherlands. The input was generally positive, noting that overall information was complete and in a correct format. However, two peers indicated that exchanges on rulings were not timely. This is reflected in the report.

Information gathering process (ToR I.A)

884. 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;² and (iv) permanent establishment rulings.

885. 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.

886. 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.

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

Exchange of information (ToR II.B)

Legal basis for spontaneous exchange of information (ToR II.B.1, II.B.2)

888. 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.

889. The Netherlands has 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^[1]) ("the Convention"), (ii) the Directive 2011/16/EU with all other European Union Member States and (iii) bilateral agreements in force with 94 jurisdictions.³

Completion and exchange of templates (ToR II.B.3, II.B.4, II.B.5, II.B.6, II.B.7)

890. In the prior year's peer review report, it was determined that the Netherlands' process for the completion and exchange of templates met all the ToR, except for the timely provision of information on rulings to the competent authority for exchange of information (ToR II.B.5). Therefore, the Netherlands was recommended to ensure that information is made available to the competent authority without undue delay.

891. During the year in review, some peers indicated that some information on rulings was exchanged with a delay. As was the case last year, the Netherlands confirms that information on rulings was exchanged within three months after the information became available to the competent authority, but that there has been a delay in transmitting issued rulings to the competent authority as the tax administration needed additional time to complete the Annex C template. The Netherlands indicates that it has taken steps to address this issue. It now requires that a ruling can only be issued once all information to complete the Annex C template is available and that all templates will be sent to the Competent Authority every two months. This new process takes effect from 1 January 2022, and therefore, for the year in review, the recommendation remains in place.

892. 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
	1 231	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
	6	100 days	3

893. For the year in review, three follow-up requests have not yet been answered due to ongoing inquiries.

Conclusion on section B

894. The Netherlands has the necessary legal basis for spontaneous exchange of information. The Netherlands has met all of the ToR for the exchange of information process except for the timely provision of information on rulings to the competent authority for exchange of information (ToR II.B.5). The Netherlands is recommended to ensure that information is made available to the Competent Authority without undue delay.

Statistics (ToR IV.D)

895. 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	621	Argentina, Australia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Canada, Chile, China (People's Republic of), Colombia, Curaçao, Cyprus, Czech Republic, Denmark, Dominican Republic, Egypt, Finland, France, Germany, Hong Kong (China), Hungary, India, Indonesia, Ireland, Israel, Japan, Jordan, Kazakhstan, Korea, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Morocco, New Zealand, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Thailand, Tunisia, Türkiye, Ukraine, United Kingdom, United States, Uruguay, Viet Nam
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	172	Argentina, Australia, Brazil, Canada, Chile, China (People's Republic of), Hong Kong (China), India, Indonesia, Israel, Japan, Korea, Malaysia, Mexico, New Zealand, Norway, Philippines, Russia, Saudi Arabia, Singapore, South Africa, Switzerland,

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	421 ⁴	Chinese Taipei, Türkiye, Ukraine, United Kingdom, United States Argentina, Armenia, Australia, Azerbaijan, Barbados, Belgium, Brazil, Bulgaria, Canada, China (People's Republic of), Colombia, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Finland, France, Germany, Guatemala, Hong Kong (China), Hungary, Iceland, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Jordan, Kazakhstan, Korea, Kuwait, Luxembourg, Malta, Marshall Islands, Mexico, New Zealand, Norway, Oman, Philippines, Portugal, Qatar, Romania, Russia, Senegal, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Thailand, Tunisia, Türkiye, Ukraine, United Kingdom, United States
Permanent establishment rulings	17	Curaçao, Indonesia, Philippines, Sint Maarten, Singapore, Chinese Taipei, Thailand, 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	Included in "rulings related to a preferential regime".	Included in "rulings related to a preferential regime".
Total	1 231	

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

896. In the prior years' peer review reports, it was determined that the Netherlands' information gathering and exchange of information processes for matters related to intellectual property regimes⁵ were sufficient to meet the minimum standard. The Netherlands' implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
The Netherlands experienced delays in the provision of rulings to the competent authority.	The Netherlands is recommended to ensure that information is made available to the competent authority without undue delay. This recommendation remains unchanged since the prior year's peer review report.

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]
- 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://doi.org/10.1787/9789264241190-en>. [2]
- OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264115606-en>. [1]

Notes

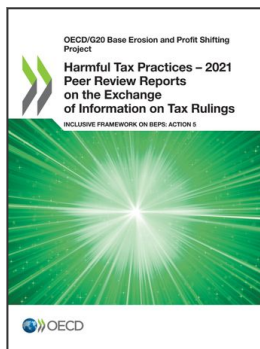
¹ 1) Innovation box and 2) International shipping.

² 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.

³ 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. The Netherlands also has bilateral agreements with Albania, Algeria, 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, Kosovo, Kuwait, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Moldova, Montenegro, Morocco, New Zealand, Nigeria, North Macedonia, Norway, Oman, Pakistan, Panama, Philippines, Poland, Portugal, Qatar, Romania, Sint Maarten, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Chinese Taipei, Tajikistan, Thailand, Tunisia, Türkiye, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Venezuela, Viet Nam, Zambia and Zimbabwe.

⁴ These exchanges are not reported as issued rulings, as all exchanges related to unilateral downward adjustments relate to cases whereby no rulings was issued, but the adjustment was effectively agreed by the tax authority through the tax return.

⁵ Innovation box.



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