

# Luxembourg

Luxembourg has met all aspects of the terms of reference (OECD, 2017<sup>[3]</sup>) (ToR) for the calendar year 2018 (year in review) and no recommendations are made.

In the prior year report, Luxembourg did not receive any recommendations.

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:

- 1 922 past rulings;
- For the period 1 April 2016 - 31 December 2016: 73 future rulings;
- For the calendar year 2017: 18 future rulings, and
- For the year in review: nine future rulings.<sup>1</sup>

Peer input was received from five jurisdictions in respect of the exchanges of information on rulings received from Luxembourg. The input was generally positive, noting that information was complete, in a correct format and received in a timely manner. One peer suggested to include more details in the template. Luxembourg has reviewed the particular case and has committed to make additional efforts to further improve the information in the template by including more details in the short summary of the issue covered by the ruling.

## Introduction

This peer review covers Luxembourg'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

Luxembourg can legally issue the following four types of rulings within the scope of the transparency framework: (i) preferential regimes;<sup>2</sup> (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. To the extent that related party conduit rulings are provided, they are already covered under the second category.

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

For Luxembourg, past rulings are any tax rulings within the 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 Luxembourg's undertakings to identify past rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. Luxembourg'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 Luxembourg, 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 Luxembourg's implementation of a new system to identify future rulings and all potential exchange jurisdictions was sufficient to meet the minimum standard. Luxembourg'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 years' peer review reports, it was determined that Luxembourg's review and supervision mechanism was sufficient to meet the minimum standard. Luxembourg's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

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

Luxembourg 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)**

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

Luxembourg 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<sup>[4]</sup>) ("the Convention"), (ii) the Directive 2011/16/EU with all other European Union Member States and (iii) double tax agreements in force with 79 jurisdictions.<sup>3</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 Luxembourg's process for the completion and exchange of templates were sufficient to meet the minimum standard. Luxembourg'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
	0	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
	17	0	N/A	N/A
<b>Total</b>	17 <sup>4</sup>	0		

Follow up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	59	Six weeks	0

### **Conclusion on section B**

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)

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 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	7	Italy, Netherlands, Spain, Switzerland, 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	10	Belgium, Germany, Guernsey, Ireland, Isle of Man, United Kingdom, United States
Permanent establishment rulings	0	N/A
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	38	Belgium, China (People's Republic of), Denmark, France, Germany, Hungary, India, Italy, Japan, Monaco, Netherlands, Norway, Poland, Portugal, Slovak Republic, Sweden, Switzerland, United States
<b>Total</b>	<b>55<sup>5</sup></b>	

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

Luxembourg offered an intellectual property regime (IP regime)<sup>6</sup> that was abolished as of 1 July 2016 and is subject to transparency requirements under the Action 5 Report (OECD, 2015<sup>[5]</sup>). It states that the identification of the benefitting taxpayers will occur as follows:

- **New entrants benefitting from the grandfathered IP regime:** during the previous peer review 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 in early 2019. Exchanges took place generally within one month of receipt of the information.
- **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.

In addition, Luxembourg offers an IP regime that is not subject to the transparency requirements under the Action 5 Report (OECD, 2015<sup>[5]</sup>), 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.

## Notes

<sup>1</sup> In addition to the rulings in the scope of the transparency framework Luxembourg issued and exchanged in the year of review 28 rulings relating to “other types of rulings”. These “other types of rulings” cover an additional category of rulings that Luxembourg identified, related to intragroup financing activities which in the absence of transparency may cause BEPS concerns. These rulings are not otherwise covered by one of the five categories within the scope of the transparency framework and are therefore defined as “other type of rulings”. Luxembourg exchanged these rulings with the relevant Inclusive Framework members using the transparency framework.

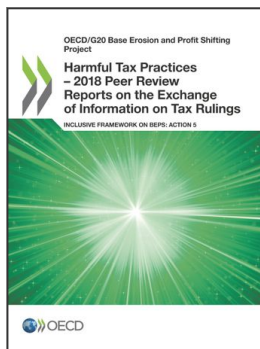
<sup>2</sup> With respect to the following preferential regimes: 1) Private asset management company, 2) Investment company in risk capital, 3) Provision for fluctuations in reinsurance companies, and 4) Informal capital and partial exemption for income/gains derived from certain IP rights.

<sup>3</sup> Parties to the Convention are available here: <http://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm>. Luxembourg also has double tax agreements with Andorra, Armenia, Austria, Azerbaijan, Bahrain, Bailiwick of Guernsey, Barbados, Belgium, Brazil, Brunei Darussalam, Bulgaria, Canada, China (People’s Republic of), Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Kazakhstan, Korea, 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, 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.

<sup>4</sup> In addition to the rulings in the scope of the transparency framework Luxembourg transmitted 43 exchanges relating to “other types of rulings” during the year in review.

<sup>5</sup> An additional 43 exchanges of “other types of rulings” were transmitted by 31 December 2018 inter alia to the following countries: Belgium, Canada, China (People’s Republic of), Germany, France, Guernsey, Japan, Jersey, Netherlands, Norway, Spain, Switzerland, United Kingdom, and United States.

<sup>6</sup> Partial exemption for income/gains derived from certain IP rights.



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