

# Luxembourg

## Transfer Pricing Country Profile

February 2022

		SUMMARY	REFERENCE
<b>The Arm's Length Principle</b>			
1	<p><b>Does your domestic legislation or regulation make reference to the Arm's Length Principle?</b></p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Explicit references to the TPG can be found in the parliamentary file deposited in the legislative process. The documents can be retrieved in the electronic archives of the parliament.</p> <p><b>Article 56 LITL</b>, entitled "Arm's length principle", states that profits of enterprises that are linked by conditions that differ from those between independent enterprises shall be determined in accordance with the conditions that prevail between independent enterprises and taxed accordingly. It thus explicitly confirms the OECD benchmark.</p> <p>The legal provision has been introduced into LITL by the "loi du 19 décembre 2014 relative à la mise en oeuvre du paquet d'avenir"</p> <p><b>Article 56bis LITL</b> has incorporated into Luxembourg law the relevant criteria of the revised TPG (Actions 8-10 of the BEPS Action Plan) which the taxpayer is obliged to comply with.</p> <p>This legal provision has been introduced by the budget law for the year 2017.</p>	<p>Art. 56 and 56bis of the modified law as of 4<sup>th</sup> December 1967 concerning income tax ("<a href="#">LITL</a>").</p> <p>Art. 56 LITL</p> <p>Chapter 9 of the corresponding bill and the related commentaries (which explicitly refer to the TPG); N° doc. parl. : 6722 (<a href="http://www.chd.lu">www.chd.lu</a>)</p> <p>Art. 56bis <a href="#">LITL</a></p> <p>Art. 3 of the budget law 2017 and the related commentaries (of the draft budget law) cover the latest amendments in <a href="#">TP regulation in Luxembourg</a>; N° doc. parl. : 7050</p>
2	<p><b>What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?</b></p>	<p>The OECD TPG are the base reference in domestic legislation. They constitute the framework for any TP analysis.</p>	<p>Art. 56 and 56bis <a href="#">LITL</a></p> <p>Refer to section 1</p>

3	<p><b>Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the definition contained under your domestic law or regulation.</b></p>	<p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p> <p>Art 56 incorporates the definition provided by Art 9 (1) of the OECD Model Tax Convention on Income and on Capital.</p>	<p>Art. 56 of the modified law as of 4<sup>th</sup> December 1967 concerning income tax ("<a href="#">LITL</a>").</p> <p>Refer to section 1</p>												
<b>Transfer Pricing Methods</b>															
4	<p><b>Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?</b></p>	<p><input type="checkbox"/> <b>Yes</b></p> <p><input checked="" type="checkbox"/> <b>No</b></p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1" data-bbox="712 576 1563 735"> <thead> <tr> <th>CUP</th> <th>Resale Price</th> <th>Cost Plus</th> <th>TNMM</th> <th>Profit Split</th> <th>Other (<i>If so, please describe</i>)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </tbody> </table> <p>As domestic legislation reflects the principles of the OECD TPG, the transfer pricing methods as outlined in the guidelines are required to be used. "Other methods" may be acceptable within the limits of paragraph 2.9 of the OECD TPG.</p>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other ( <i>If so, please describe</i> )	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other ( <i>If so, please describe</i> )										
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
5	<p><b>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</b></p>	<p>Please check all that apply:</p> <p><input type="checkbox"/> Hierarchy of methods</p> <p><input checked="" type="checkbox"/> Most appropriate method</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p> <p>The basis for any TP related analysis being the OECD TPG, the method to apply is the one determined as being appropriate, with regard to the guidelines provided by the OECD TPG.</p>													
6	<p><b>If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.</b></p>	<p><input checked="" type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.</p> <p><input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (<i>if so, please explain</i>)</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p>													

## Comparability Analysis

7	<b>Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<p>Art. 56bis <a href="#">LITL</a></p> <p>Art. 3 of the budget law 2017 and the related commentaries (of the draft budget law) cover the latest amendments in <a href="#">TP regulation in Luxembourg</a>; N° doc. parl. : 7050</p>
		This legal provision has been introduced by the budget law for the year 2017.	
8	<b>Is there a preference in your jurisdiction for domestic comparables over foreign comparables?</b>	<input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	
9	<b>Does your tax administration use secret comparables for transfer pricing assessment purposes?</b>	<input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	
10	<b>Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	
		Luxembourg follows the guidance in the OECD TPG.	
11	<b>Are comparability adjustments required under your domestic legislation or regulations?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	
		In the case where no suitable direct comparables can be found, comparability adjustments might eliminate material differences for the purpose of the determination of the arm's length price. Such comparability adjustments have to be done in compliance with the TPG.	
Intangible Property			
12	<b>Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?</b>	<input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	
		Luxembourg's domestic legislation or regulations do not contain specific guidance on the pricing of controlled transactions involving intangibles and tend to rely on the OECD TPG.	

13	Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard-to-value intangibles (HTVI)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<a href="#">HTVI Implementation Questionnaire</a>
14	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Intra-Group Services</b>			
15	Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  Luxembourg's domestic legislation or regulations do not contain specific guidance on intra-group services and tend to rely on the OECD TPG.	
16	Do you have any simplified approach for low value-adding intra-group services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  Luxembourg follows the guidance in the OECD TPG, and thus the simplified approach for low value-adding intra-group services (as outlined in Chapter VII) could be accepted, depending on the facts and circumstances of each case.	
17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Financial Transactions</b>			
18	Does your domestic legislation or regulations provide guidance specific to financial transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  Specific guidance on financial transaction is provided under the form of an administrative circular.	<a href="#">Administrative Circular LIR 56 – 56bis/1</a> as of 27 <sup>th</sup> December 2016

		The mentioned circular incorporates the clarifications provided by the BEPS Action 8-10 revised Chapter I of the OECD TPG (i.e. control and assumption of risks). It is thus in line with the OECD guidance on financial transactions. It also contains the safe harbour provisions explained in question 26 below.	
19	<b>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<a href="#">Law of 21<sup>st</sup> December 2018</a>
		Article 2 of the Law of 21 <sup>st</sup> December 2018 (transposing the EU Anti-Tax Avoidance Directive of 12 <sup>th</sup> July 2016 (ATAD 1)) has introduced a measure to limit interest deductions into national law. In accordance with Article 168bis LITL, corporations are only allowed to deduct a limited amount of interest for tax purposes. The net amount between interest income and interest expenses is only deductible up to 30% of the company's EBITDA (Earnings Before Interest, Tax and Amortization) or up to an amount of EUR 3 million, whichever is higher, with the possibility of a carry forward.	
<b>Cost Contribution Agreements</b>			
20	<b>Does your jurisdiction have legislation or regulations on cost contribution agreements?</b>	<input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	
		Luxembourg's domestic legislation or regulations do not contain specific guidance on CCAs and tends to rely on the OECD TPG.	
<b>Transfer Pricing Documentation</b>			
21	<b>Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b> <i>If affirmative, please check all that apply:</i> <ul style="list-style-type: none"> <li><input type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG</li> <li><input type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG</li> <li><input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG</li> <li><input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return)</li> </ul>	§ 171 (3) of the General Law on Taxation Loi du 19 décembre 2014 relative à la mise en oeuvre du paquet d'avenir – première partie (2015), <a href="#">Mémorial A – N°257 as of 24th December 2014</a> p. 5472  <a href="#">Law of 23<sup>rd</sup> December 2016</a> (published in the OJ : Mémorial A – No 280 as of 27th December 2016 page 5920 and following)

		<input checked="" type="checkbox"/> Other (specify): There is a documentation obligation for any transactions related to the determination of the taxable income. This documentation obligation is also extended to intercompany transactions, meaning that every taxpayer subject to the provisions of the arm's length principle in the Income Tax Law needs to document how the arm's length price has been determined. No specific form is required by law.	
22	<b>Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)</b>	Documentation needs to be provided upon request by the taxation office during the process of the tax assessment. There is no specific requirement to file TP documentation during the filing of the tax returns.  The documentation can be filed in the administrative languages of Luxembourg: French and German. Documentation in English is also acceptable. There is no specific deadline upon request, but often the taxpayer will get a delay of 30 days. Requirements for the CbCR are in line with BEPS Action 13.	
23	<b>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  No specific TP related penalties, but administrative penalties may be applicable in order to enforce taxpayers' delivery of general documentation on transactions in the course of the tax assessment.	§ 202 of the <a href="#">General Law of Taxation</a>
24	<b>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</b>	MNEs with turnover below EUR 750 million are not required to file CbCR.	
<b>Administrative Approaches to Avoiding and Resolving Disputes</b>			
25	<b>Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?</b>	Please check those that apply: <input type="checkbox"/> Rulings <input type="checkbox"/> Enhanced engagement programs <input checked="" type="checkbox"/> Advance Pricing Agreements (APA) <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Unilateral APAs</li> <li><input checked="" type="checkbox"/> Bilateral APAs</li> <li><input checked="" type="checkbox"/> Multilateral APAs</li> </ul>	§29a of the <a href="#">General Law of Taxation</a> Grand Ducal Decree as of <a href="#">23<sup>rd</sup> December 2014</a> <a href="#">Luxembourg's MAP Profile</a>

		<input checked="" type="checkbox"/> Mutual Agreement Procedures <input type="checkbox"/> Other ( <i>please specify</i> ):	
		<p>A general regime with regard to unilateral APAs has been introduced as of 29<sup>th</sup> December 2014, whereas the Luxembourg Competent Authority concludes bi- and multilateral APAs on the basis on Article 25(3), first sentence of the OECD Model Tax Convention.</p> <p>The Luxembourg MAP guidance is published and regularly updated under on the website of the Luxembourg tax administration (Circular L.G. - Conv. D.I. n° 60).</p> <p>For further information, please refer to Luxembourg's MAP Profile.</p>	
<b>Safe Harbours and Other Simplification Measures</b>			
26	<b>Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	§4 of the <a href="#">Administrative Circular LIR 56 – 56bis/1</a> as of 27th December 2016
		<p>Circular 56/1 – 56bis/1 as of 27 December 2016 provided safe harbour provisions for financing companies.</p> <p>The Circular provides that financial companies realizing a purely intermediary activity can opt for a simplified method and declare a minimum after tax return of 2% in relation to the intermediated amounts.</p>	
27	<b>Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Other Legislative Aspects or Administrative Procedures</b>			
28	<b>Does your jurisdiction allow/require taxpayers to make year-end adjustments?</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		<p>Compliance with the arm's length principle is mandatory for all enterprises subject to the provisions of Art 56 and 56bis LIR. There are no legal provisions in domestic legislation prohibiting year-end adjustments performed by taxpayers due to outcome testing for the purposes of the preparation of the yearly tax return and the compliance with the arm's length principle.</p>	

29	<b>Does your jurisdiction make secondary adjustments?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>  Excessive cash payments operated by an enterprise to a parent company on the basis of transfer prices exceeding the arm's length price might in certain cases be subject to the recognition of a constructive dividend distribution for the excess price charged.	Art. 164 (3) <a href="#">LITL</a>
<b>Attribution of Profits to Permanent Establishments</b>			
30	<b>Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <i>In how many tax treaties?</i> In 7 tax treaties.  <i>If yes, how do you implement it in cases, where the old tax treaties do not contain the new version of Article 7 (OECD MTC 2010 and later)</i>  There are no special provisions in the Luxembourg national law regarding the application of the AOA. In the case that a double tax treaty contains the new version of Article 7 (OECD MTC version 2010), the attribution of profits to permanent establishments should follow the steps of the AOA.  In case a double tax treaty contains the pre-2010 language of Article 7 (OECD MTC), the provisions of that old version of Article 7 and the corresponding commentaries of the respective MTC version are regarded to be not compatible with the concept of the AOA, so that the AOA could in principle not be applied.	<a href="#">Tax treaties</a>
31	<b>Does your jurisdiction follow also another approach?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	
<b>Other Relevant Information</b>			
32	<b>Other legislative aspects or administrative procedures regarding transfer pricing</b>	N/A	

33	<b>Other relevant information</b> (e.g. <i>whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire</i> )	N/A	
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For more information, please visit: <https://oe.cd/transfer-pricing-country-profiles>