

LUXEMBOURG

TRANSFER PRICING PROFILE

1. Reference to the Arm's Length Principle

The arm's length principle is embedded in Section II Article 164 paragraph 3 of the income tax law (loi modifiée du 4.12.1967 concernant l'impôt sur le revenu).

Art. 164, § 3: Taxable income comprises hidden profit distributions. A hidden profit distribution arises in particular when a shareholder, a stockholder or an interested party receives either directly or indirectly benefits from a company or an association which he normally would not have received if he had not been a shareholder, a stockholder or an interested party.

2. Reference to the OECD Transfer Pricing Guidelines

National legislation does not contain a general reference to the OECD Transfer Pricing Guidelines. The Circular of 28th January 2011 concerning intra group financing makes however a reference to the provisions of article 9 of the OECD Model Tax Convention and to the principles of the OECD concerning Transfer Pricing. All double tax treaties concluded by Luxembourg contain a provision corresponding to the provision of article 9 of the OECD Model Tax Convention.

3. Definition of related parties

National legislation doesn't provide for a definition of related parties. However, under article 164, paragraph 3 it suffices that the tax administration demonstrates that a shareholder, a stockholder or an interested party received an advantage from a company solely because of his quality as a shareholder, a stockholder or an interested party be it directly or indirectly.

4. Transfer pricing methods

National legislation doesn't prescribe the use of any specific transfer pricing method.

5. Transfer pricing documentation requirements

No national requirements apart from documentation obligations imposed by accounting and company law.

Implementation of the Code of Conduct on Transfer Pricing documentation for associated enterprises in the European Union (EU TPD) - summary of Member States' responses to the 2013 JTPF questionnaire on the implementation of the EU TPD:

http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf/2013/summary-ms.pdf

6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties

Neither specific audit procedures nor specific transfer pricing penalties.

7. Information for Small and Medium Enterprises on TP

Information relevant for SMEs in tackling transfer pricing matters is available on the JTPF webpage at: http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/profile-lu.pdf

8. Information on dispute resolution

Competent Authority	<p>M. Guy Heintz Director / Comité de Direction / Administration des Contributions Directes / Ministère des Finances 45, Blvd Roosevelt / L - 2982 Luxembourg / Luxembourg Tél.: +352 40 800-2102</p> <p>Mme Pascale Toussing Deputy Director / Comité de Direction / Administration des Contributions Directes / Ministère des Finances 45, Blvd Roosevelt / L - 2982 Luxembourg / Luxembourg Tél.: +352 40 800-2110</p> <p>M. Georges PEIFFER Head of the Economics Division / Administration des Contributions Directes / Ministère des Finances 45, Blvd Roosevelt / L - 2982 Luxembourg / Luxembourg Tél.: +352 40 800-2410 E-mail: georges.peiffer@co.etat.lu</p>
Organization	The Economics Division is the authority empowered to negotiate APA's and MAP's in the field of Transfer Pricing.
Scope of MAP & MAP APA	Resolve double taxation issues for particular taxpayers.
Domestic guidelines & administrative arrangements	Circular of the 28th January 2011 concerning intra group financing provides guidelines for APA's with a maximum period of validity of 5 years.
Time for filing	N/A
Form of request	N/A
Documentation requirement	No special requirements. * The taxpayer must produce all necessary documentation to prove that double taxation has effectively occurred.
User fees	None
Tax collection / penalty / interest	None
Other dispute resolution mechanisms	The EU Arbitration convention. The agreement signed between Luxembourg and Mexico provides for arbitration.
Government Website	www.impotsdirects.public.lu

Dispute resolution under the Arbitration Convention does not need to be initiated and may be suspended if one of the enterprises involved is subject to a 'serious penalty' for the transactions giving rise to the profit adjustment (Article 8).

Unilateral Declaration of Luxembourg on Article 8 of the Arbitration Convention (*Official Journal L 225, 20/08/1990 P. 0010 - 0024*)

“Luxembourg considers to be a 'serious penalty' what the other Contracting State considers to be so for the purposes of Article 8.”

9. Relevant regulations on Advance Pricing Arrangements

Article 25 of relevant double tax treaty and EU Arbitration Convention.

Circular L.I.R.164/2 dated 28 January 2011.

Available at <http://www.impotsdirects.public.lu/legislation/legi11/index.html#circulaires> .

10. Links to relevant government websites

Tax administration: <http://www.impotsdirects.public.lu>

11. Other relevant information

Secondary and compensating year-end adjustments may result in double taxation. Two questionnaires launched by the EU Joint Transfer Pricing Forum (JTPF) in 2011 took stock of the situation prevailing in each EU Member State with respect to secondary and compensating year-end adjustments as on 1 July 2011.

[Secondary Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)

[Compensating/year-end Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)