



Overview

ATOZ Tax Advisers, Taxand Luxembourg

With over 70 tax practitioners, ATOZ is a high-end, independent advisory firm offering a comprehensive and integrated range of tax and transfer pricing services. Our collective industry expertise encompasses local and global companies in a wide variety of industry sectors, including – but not limited to – investment funds (real estate, private equity, infrastructure, venture capital, debt funds), aviation, banking, capital markets, communications, financial services and insurance.

In the field of transfer pricing, we assist our clients with the development of transfer pricing strategies, the preparation of transfer pricing documentation, regular risk reviews and disputes (local and cross-border).

Our transfer pricing services cover a broad spectrum, such as financing activities, intermediaries, interest rates on a wide range of debt instruments, fund management services, intra-group services, debt/borrowing capacity, valuation of tangible and intangible assets, attribution of profits to a permanent establishment and its head office.

General: Transfer Pricing Framework

Luxembourg tax law does not provide for integrated transfer pricing legislation. Transfer pricing adjustments with the objective to restate arm's length conditions can be made on the basis of different tax provisions and concepts applicable under Luxembourg domestic tax law. The arm's length principle is explicitly stated in Article 56 of the Luxembourg Income Tax Law (hereafter: "LITL"). Article 56 of the LITL is complemented by Article 56bis of the LITL which provides more guidance on the application of the arm's length principle under Luxembourg tax law. More precisely, Article 56bis of the LITL formalises the authoritative nature of the OECD Transfer Pricing Guidelines and replicates some of the key concepts provided in Chapter I (Arm's length principle) of the OECD Transfer Pricing Guidelines.

The law currently is in the process of being amended to introduce new rules specifically for multinational groups.

In addition, a transfer pricing decree on intra-group financing activities contains additional guidance and requirements in this specific context.

Accepted Transfer Pricing Methodologies

The OECD Guidelines are not incorporated in Luxembourg legislation but are an explicit point of reference and guidance.

Therefore, the general hierarchy of transfer pricing methodologies is commonly accepted and no method is *per se* rejected, if its use is justified in the individual case at hand (noting that certain market practices have developed over time for a number of transactions).

The taxpayer is, however, free to choose another method if he can substantiate the appropriateness for the use of such method in light of an arm's length result.

The most commonly used method is the comparable uncontrolled price method, mainly for a wide range of financial transactions and license fees. However, other methods such as the cost-plus method (for low value-adding services) as well as the profit split (e.g. for highly integrated fund management activities) are regularly relevant in practice as well.

Transfer Pricing Documentation Requirements

Taxpayers are not explicitly required to prepare annual documentation (although this may be effectively required depending on the case at hand) and are not required to file transfer pricing documentation with the local tax authority (but to be provided upon request). Transfer pricing documentation should be prepared at the time the transaction is entered into (or even before) in order to reduce the risk of challenge.

While there are no legal *de minimis* thresholds, in practice all material related-party transactions are covered by an appropriate transfer pricing documentation and pragmatic approaches may be chosen for small transactions with immaterial tax risks.

Luxembourg taxpayers may indirectly be obliged to prepare a master or local file, if this is imposed by another jurisdiction (i.e., the jurisdiction of a subsidiary or parent company).

As from tax year 2024, new documentation requirements will also be introduced for Luxembourg group companies of multinational groups that fall within the scope of country-by-country reporting (i.e. with a consolidated turnover of at least EUR 750 million).

Luxembourg companies forming part of such multinational groups will have to prepare a local file and, under certain circumstances, also a master file. For the master file (based on the current draft legislation), the Luxembourg group company has to have a net turnover amounting to at least EUR 100 million or a balance sheet total of at least EUR 400 million at the balance sheet date of a given financial year.

The master and local file requirements broadly correspond to BEPS Action 13, with some exceptions, deviations and additional local requirements.

Local Jurisdiction Benchmarks

Given the absence of Luxembourg-specific benchmarking data, the Luxembourg tax authorities generally accept pan-European benchmarks, provided that they meet OECD-compliant search strategy standards. Multiple-year data are not commonly used. The use of interquartile ranges in terms of benchmarking is generally feasible with a preference for measures of central tendency. A yearly update is not explicitly required and in practice, most taxpayers do not update their benchmark searches on an annual basis. In cases where a business activity does not undergo significant changes, a search can be updated every 3 years.

LUXEMBOURG



Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Despite the legal possibility to do so, the number of APA in Luxembourg is extremely limited in practice.

Transfer Pricing Audits

Within the statute of limitation, the Luxembourg tax authorities can perform audits at their discretion. Matters of interest seem to be focused on financial transactions. The Luxembourg tax authorities do not conduct audits in great numbers compared to the number of taxpayers. However, since a couple of years, tax inspectors are highly likely to review transfer pricing aspects in more detail and request detailed documentation.

Transfer Pricing Penalties

There is no specific penalty for the non-preparation of transfer pricing documentation, but the non-availability of such documentation upon request of the tax authorities significantly increases the risk of adjustments.

Documentation threshold

Master file	(i) EUR 750m consolidated group turnover + (ii) EUR 100m standalone turnover or EUR 400m balance sheet total
Local file	EUR 750m consolidated group turnover
CbCR	EUR 750m consolidated group turnover

Submission deadline

Master file	Not yet specified in the draft law
Local file	Not yet specified in the draft law
CbCR	12 months after the final day of the reporting fiscal year of the MNE group

Penalty Provisions

Documentation – late filing provision	Not Applicable
Tax return disclosure – late/incomplete/no filing	Up to 10 percent of the tax due and a fine up to EUR 25,000
CbCR – late/incomplete/no filing	Up to EUR 250,000

Local Hot Topics and Recent Updates

The introduction of master and local file requirements for certain multinational groups as from the fiscal year 2024 marks a milestone in the development of Luxembourg transfer pricing rules.

In line with long-standing views from practitioners, recent court cases have shown that the delayed preparation of transfer pricing documentation long after the transaction date (e.g. only upon request by the tax authorities some years later during a tax audit or review of the tax returns) significantly increases the risk that the result of such belated transfer pricing studies will be rejected/challenged as a matter of principle (and due to a lack of credibility of such delayed documentation when the benchmark analysis happens to confirm the transfer price that has been charged in a given undocumented transaction).



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