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Overview

ATOZ Tax Advisers, Taxand Luxembourg

With over 100 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 expertise covers a broad spectrum of areas, such as financing activities, mere intermediary services, interest rate assessments on a wide range of debt instruments, fund management services, operational services, debt/borrowing capacity analyses, valuation of tangible and intangible assets, attribution of profits between 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. 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 might be amended to introduce new rules specifically for multinational groups (Bill of Law No. 8186, 28 March 2023, hereafter: the "Bill").

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 apply another transfer pricing method, provided that the appropriateness of the selected method can be demonstrated in light of the arm's length principle.

In practice, the comparable uncontrolled price method is the most commonly applied transfer pricing method, particularly for financial transactions and licensing arrangements. 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, depending on the facts and circumstances, annual updates may be appropriate in practice) 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 contemporaneously with the transaction (or even before it is entered into) to reduce the risk of challenge.

While there are no legal de minimis thresholds, in practice all material related-party transactions should be covered by an appropriate transfer pricing documentation. Pragmatic and proportionate approaches may be adopted 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).

Under the Bill, new documentation requirements might also be introduced for Luxembourg 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 would have to prepare a local file and a master file, under certain circumstances.

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 any points in the interquartile ranges derived from the benchmarking analyses is generally feasible with a preference for measures of central tendency (e.g., median or average). A yearly update is not explicitly required and in practice, a full refresh of the benchmark searches is generally not performed on an annual basis. Where the relevant business activity and underlying facts and circumstances remain broadly unchanged, benchmark searches are typically updated every three years.

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Focus on Financial Transactions

Luxembourg is a leading jurisdiction for intra-group financing activities and transfer pricing remains a key area of focus for financing entities.

In addition to the general arm's length principle set out in Articles 56 and 56bis LITL, Luxembourg has issued specific guidance on intra-group financing activities through Circular L.I.R. n°56/1 – 56bis/1 of 27 December 2016. The Circular provides a framework for determining the arm's length remuneration of Luxembourg financing entities based on their functional profile, the economically significant risks assumed, as well as their financial capacity to control such risks. It further emphasises that financing entities should have adequate decision-making capacity, appropriate resources and substance in Luxembourg to perform and control the relevant financing activities. In practice, documenting the arm's length nature of intra-group financing arrangements generally requires a transfer pricing analysis consistent with the OECD Transfer Pricing Guidelines, including the accurate delineation of the financing transaction, an assessment of the borrower's creditworthiness and a benchmarking of the arm's length remuneration, interest rate and other financial terms against comparable uncontrolled transactions.

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 limitations, the Luxembourg tax authorities may conduct tax audits at their discretion. While the number of tax audits performed remains relatively limited compared to the overall number of taxpayers, transfer pricing matters - particularly in relation to financial transactions - have become an area of increased focus in recent years. Tax inspectors frequently perform detailed reviews of transfer pricing arrangements and request comprehensive supporting documentation to substantiate the arm's length nature of the transactions.

The Burden of Proof in Transfer Pricing: Theory versus Practice

Under Luxembourg tax law, the burden of proof is generally shared between the taxpayer and the Luxembourg tax authorities. The burden of proof for facts and circumstances that result in an increase in the taxpayer's taxable income rests with the Luxembourg tax authorities, while the burden of proof for facts and circumstances that result in a decrease in the taxpayer's taxable income rests with the taxpayer (Article 59 of the Law of 21 June 1999; BFH, Decision of 24.6.1976, IV R 101/75, BStBl II 1976, p. 562; BFH, Decision of 11.4.1984, I R 175/79, BStBl II 1984, p. 535). Thus, a distinction must be made between upward and downward adjustments with respect to the burden of proof for transfer pricing adjustments.

Burden of proof in case of upward adjustments

The burden of proof that transactions are not at arm's length generally rests with the Luxembourg tax authorities. It is up to the administration to verify whether the transfer prices for goods and services transferred between group companies are in line with the arm's length principle.

In practice, although the burden of proof is on the tax authorities, they can still reasonably require a Luxembourg company to provide consistent arguments regarding its transfer pricing (RFH, Decision of 21.12.1938, RStBl 1939, p. 307; BFH, Decision of 7.4.1959, I 2/58 S, BStBl III 1959, p. 233). In this regard, the company must consider that the voluntary production of documents can significantly improve the persuasiveness of the company's transfer pricing approach to the tax authorities.

Burden of proof in case of downward adjustments

In the case of hidden capital contributions and "downward adjustments" under Article 56 LITL, the fair market value of the advantage shifted to a Luxembourg company is deducted from the company's taxable income. It follows that the facts and circumstances underlying the advantage shifted to a Luxembourg company must be proven by the taxpayer.

In practice, in these situations, the Luxembourg tax authorities may reasonably require that the value of a hidden capital contribution or the advantage that would result in a downward adjustment under Article 56 LITL be substantiated in a transfer pricing study.

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.

Local Hot Topics and Recent Updates

Although it has been pending since 2023, the potential introduction of master and local file requirements for certain multinational groups remains a topic to monitor. Such requirements would represent a significant step towards further formalising Luxembourg's transfer pricing documentation framework

In parallel, the increasing focus of the Luxembourg tax authorities on financial transactions has also been reflected in 2026 case law. Recent decisions regarding interest-free shareholder loans and intra-group guarantees illustrate that financing arrangements continue to be an area of close examination, with courts considering not only the contractual terms but also the economic substance of the arrangements, including the allocation of functions, assets and risks between related parties.

Another important development is Luxembourg's adoption of the OECD's simplified and streamlined approach for certain baseline distribution and marketing activities under Amount B of Pillar One. This framework, applicable

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for financial years starting on or after 1 January 2025, provides taxpayers with an additional simplified approach for determining arm's length remuneration for in-scope marketing and distribution activities.

Finally, the implementation of BEPS 2.0 (Pillar One & Two) reflects the evolving regulatory environment and the increasing complexity of managing intra-group transactions.

Documentation threshold

Master file	Not Applicable (draft Law)
Local file	Not Applicable (draft Law)
CbCR	EUR 750m consolidated group turnover

Submission deadline

Master file	Not Applicable (draft Law)
Local file	Not Applicable (draft Law)
CbCR	12 months after the final day of the reporting fiscal year of the MNE group. CbCR notification must be submitted on or before the last day of the reporting fiscal year.

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

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