

# Grand-Duchy of Luxembourg

## Transfer Pricing Country Profile

Updated October 2017

		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"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></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 œuvre du paquet d'avenir »</p> <p><b>Article 56bis LITL</b> has incorporated into Luxembourg law the relevant criteria of the revised TPG (Action 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. Art 3 of the budget law 2017 and the related commentaries (of the draft budget law) cover the latest amendments in TP regulation in LU.</p>	<p>Art 56 and 56bis of the modified law as of 4<sup>th</sup> December 1967 concerning income tax ("LITL").</p> <p>Consolidated LITL for the year 2017</p> <p><a href="http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/LIR/LIR2017.pdf">http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/LIR/LIR2017.pdf</a></p> <p>Art 56 LITL Please refer to Chapter 9 of the corresponding bill and the related commentaries (which explicitly refer to the TPG)</p> <p><a href="http://chd.lu/wps/PA_RoleDesAffaires/FTSByteServingServletImpl?path=/export/exped/sexpdata/Mag/189/337/138386.pdf">http://chd.lu/wps/PA_RoleDesAffaires/FTSByteServingServletImpl?path=/export/exped/sexpdata/Mag/189/337/138386.pdf</a></p> <p>Art 56bis LITL</p> <p><a href="http://chd.lu/wps/PA_RoleDesAffaires/FTSByteServingServletImpl?path=/export/exped/sexpdata/Mag/164/612/166131.pdf">http://chd.lu/wps/PA_RoleDesAffaires/FTSByteServingServletImpl?path=/export/exped/sexpdata/Mag/164/612/166131.pdf</a></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 LITL</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.</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 checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1" data-bbox="696 564 1547 724"> <thead> <tr> <th>CUP</th> <th>Resale Price</th> <th>Cost Plus</th> <th>TNMM</th> <th>Profit Split</th> <th>Other (If so, please describe)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </tbody> </table>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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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 (if so, please explain)</p> <hr/> <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 (if so, please explain)</p> <p><input type="checkbox"/> Other (if so, please explain)</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>  This legal provision has been introduced by the budget law for the year 2017. Art 3 of the budget law 2017 and the related commentaries of the draft budget law cover the latest amendments in TP regulation in LU.	Art 56bis LITL  <a href="http://chd.lu/wps/PA_RoleDesAffaires/FTSBYTEServletImpl?path=/export/exped/sexpdata/Mag/164/612/166131.pdf">http://chd.lu/wps/PA_RoleDesAffaires/FTSBYTEServletImpl?path=/export/exped/sexpdata/Mag/164/612/166131.pdf</a>
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. Again, the basis for such comparability adjustments has to be done in compliance with TPG.	
<h2 style="background-color: #4F81BD; color: white; padding: 5px;">Intangible Property</h2>			
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>  The guidance provided by the OECD TPG are applicable.	

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	
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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No  Specific guidance for the pricing of intercompany finance transactions. No other specific guidance issued as of the moment. For other intra-group services, general guidance of the OECD TPG are applicable.	Administrative Circular LIR 56 – 56bis/1 as of 27th December 2016  <a href="http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/legi16/circulairelir561-56bis1-27122016.pdf">http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/legi16/circulairelir561-56bis1-27122016.pdf</a>
16	Do you have any simplified approach for low value-adding intra-group services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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>Cost Contribution Agreements</b>			
18	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

## Transfer Pricing Documentation

19	<p><b>Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?</b></p>	<p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p> <p><i>If affirmative, please check all that apply:</i></p> <p><input type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG</p> <p><input type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG</p> <p><input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG</p> <p><input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return)</p> <p><input checked="" type="checkbox"/> Other (specify):</p> <p>There is a documentation obligation for any transactions that are related to the determination of the taxable income. This documentation obligation is also extended to intercompany transactions, meaning that all taxpayer subject to the provisions of the arm's length principle in the Income Tax Law need to document how the arm's length price has been determined. No specific form is required by law.</p>	<p>§ 171 (3) of the General Law on Taxation</p> <p>Loi du 19 décembre 2014 relative à la mise en oeuvre du paquet d'avenir – première partie (2015), Mémorial A – N°257 as of 24th December 2014 p. 5472</p> <p><a href="http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/legi14/Memorial-A---N_-257-du-24-decembre-2014.pdf">http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/legi14/Memorial-A---N_-257-du-24-decembre-2014.pdf</a></p> <p>Law as of 23rd December 2016 (published in the OJ : Mémorial A – No 280 as of 27th December 2016 page 5920 and following)</p> <p><a href="http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/legi16/a280.pdf">http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/legi16/a280.pdf</a></p>
20	<p><b>Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)</b></p>	<p>Documentation needs to be provided upon request by the taxation office during the process of tax assessment. Taxpayers can also file together with the tax return TP documentation if they wish to do so. There is no specific requirement though to file TP documentation during the filing of the tax returns.</p>	
21	<p><b>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</b></p>	<p><input type="checkbox"/> <b>Yes</b></p> <p><input checked="" type="checkbox"/> <b>No</b></p> <p>No specific TP related penalties. But administrative penalties may be applicable in order to enforce taxpayer's delivery of general documentation on transactions in the course of the tax assessment;</p>	<p>§ 202 of the General Law on Taxation</p>
22	<p><b>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</b></p>		

## Administrative Approaches to Avoiding and Resolving Disputes

23	<b>Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?</b>	<p>Please check those that apply:</p> <p><input type="checkbox"/> Rulings</p> <p><input type="checkbox"/> Enhanced engagement programs</p> <p><input checked="" type="checkbox"/> Advance Pricing Agreements (APA)</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Unilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Bilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Multilateral APAs</p> <p><input checked="" type="checkbox"/> Mutual Agreement Procedures</p> <p><input type="checkbox"/> Other (<i>please specify</i>):</p>	<p>APA's regulations</p> <p>§29a of the General Law of Taxation</p> <p><a href="http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/legi14/Memorial-A--N_-257-du-24-decembre-2014.pdf">http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/legi14/Memorial-A--N_-257-du-24-decembre-2014.pdf</a></p> <p>Grand Ducal Decree as of 23 December 2014</p> <p><a href="http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/legi14/Memorial-A--N_-264-du-29-decembre-2014.pdf">http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/legi14/Memorial-A--N_-264-du-29-decembre-2014.pdf</a></p>
		A general regime with regard to APA's has been introduced as of 29 December 2014.	

## Safe Harbours and Other Simplification Measures

24	<b>Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?</b>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	<p>§4 Circular 56/1 – 56bis/1 as of 27 December 2016</p> <p><a href="http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/legi16/circulairelr561-56bis1-27122016.pdf">http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/legi16/circulairelr561-56bis1-27122016.pdf</a></p>
		Circular 56/1 – 56bis/1 as of 27 December 2016 provided safe harbour provisions for financing companies.	
25	<b>Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.</b>		

## Other Legislative Aspects or Administrative Procedures

26	<b>Does your jurisdiction allow/require taxpayers to make year-end adjustments?</b>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	
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		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.	
27	<b>Does your jurisdiction make secondary adjustments?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	Art 164 (3) LITL
		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.	
<b>Other Relevant Information</b>			
28	<b>Other legislative aspects or administrative procedures regarding transfer pricing</b>		
29	<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> )		