

## FAQ: Does Luxembourg still grant rulings to companies?

In Luxembourg, rulings are strictly regulated. Advance rulings issued by the Luxembourg tax administration are issued through an Advance Rulings Commission and are valid for a maximum period of five years. The number of such rulings has decreased significantly and reached 44 in 2020, which corresponds to a decrease of more than -90% between 2015 and 2020.

Luxembourg exchanges rulings with all tax administrations of EU Member States as well as with tax administration of third countries. Indeed, the exchange of rulings within the European Union, carried through a dedicated central directory, accessible to all EU Member States and managed by the European Commission, is completed by an exchange of rulings communicated directly to the jurisdictions concerned on a spontaneous and mandatory basis according to Action 5 (Harmful tax practices) of BEPS.

The practice of advance rulings on tax matters is well established in many countries. At both European Union and G20 level, the vast majority of tax administrations issue rulings in one form or another. The European Commission has confirmed the conformity of the practice of advance rulings in general with European law, provided that they are not used to grant advantages to companies which other companies in the same situation would not be able to enjoy.

### How many advance tax agreements requests have the Luxembourg authorities received since 2015 and how many of were approved?

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Year	2015	2016	2017	2018	2019	2020
ATA requests	539	452	231	142	92	71
Approved ATA	454	390	204	114	69	44
<i>Advance Pricing Agreement Requests</i>	187	118	29	6	3	1
<i>Approved APA</i>	145	91	18	3	1	0

The law of December 19, 2014 limited the validity period of tax rulings to a maximum of five tax years. The 2020 Budget law also stated that all rulings issued prior to 2015 would be automatically invalidated on January 1, 2020.

### How much are the fees for a ruling? Do the fees have to be paid even if the Advance Tax Agreement is rejected?

The fees for a tax ruling have been fixed in the law of December 19, 2014 (<http://legilux.public.lu/eli/etat/leg/loi/2014/12/19/n13/jo>)

Depending on the complexity of the request and the amount of work, the fee can vary between EUR 3,000 and EUR 10,000. The purpose is to cover the administrative costs incurred in processing the request. Thus, after receiving a request for a tax ruling, the director of the direct tax administration calculates and fixes a fee. This fixed amount is due and payable within one month.

Even in case of withdrawal by the applicant or in case of rejection or negative decision after examination of an application, the fee charged will not be refunded.

## Does Luxembourg grant non-binding and/or oral rulings? Are non-binding and/or oral tax rulings also being exchanged?

All tax agreements of the Luxembourg tax administration are in writing and binding. There is no such thing as non-binding and/or an oral tax ruling.

Furthermore, it is important to highlight that the scope of the DAC3 Directive, which defines the automatic exchange of advance cross-border rulings and advance pricing arrangements in the EU, refers to advance rulings or advance understandings "upon which [a] person or group of persons is entitled to rely".

Section 29a of the Tax Code strictly regulates the procedure for issuing tax rulings so that any kind of "non-binding rulings" are excluded from the outset.

In this regard, it is also important to note that according to Section 29a of the Tax Code, tax rulings are no longer valid if the rules on which they are based have been modified or tightened.

Since 2016, around 11,500 rulings were exchanged with other European and non-European tax administrations. The vast majority of these exchanges (around 10,600) relate to rulings granted before 2016. Most exchanges took place with the following countries: United States, United Kingdom, Netherlands, France, Germany and Canada.

Under DAC 3, EU Member States can request and obtain the full text of a ruling. Luxembourg participates in other forms of exchange of information - notably upon request -, so that tax authorities from other Member States are able to initiate tax audits on the basis of information obtained under the framework for exchange of information, both automatic and on request.

## How many tax rulings have been exchanged with Luxembourg from other EU countries since 2014?

Luxembourg has received approximately 500 tax rulings from other European tax administrations since 2016. Most of the information was provided by the following countries: Netherlands, United Kingdom, Italy, Belgium, Sweden.

## What are 'information letters' and how frequent is this practice in Luxembourg?

'Information letters' may refer to letters sent by the taxpayer to the tax authority. Such letters are under the sole responsibility of the taxpayer and do not have any binding effect upon the tax authority. Correspondence sent by the taxpayer to the tax authority is not subject to statistics.

## Have the tax authorities joined meetings with taxpayers or their tax advisers to discuss 'information letters'?

Taxpayers may request a meeting with the tax authority with a merely informative character.

In order to avoid any potential misinterpretations or misunderstandings during meetings between the tax administration officials and taxpayers, each (external) participant to such meeting must fill in a form, which clearly states the meeting policy. The participants thus confirm in writing that the meeting has a purely informative character and possible statements or other behavior (silence) adopted during the meeting by the tax officials present can in no case be interpreted as binding.

If the taxpayer seeks legal certainty as to the transactions contemplated, he can of course file a formal request for a tax ruling. Such a formal request will be examined by the tax authority based on the relevant tax law provisions, and in accordance with the applicable procedural requirements.

## Why are rulings not published?

The Luxembourg regulations in this context provide that a summary of the requests is published in the annual report of the tax administration. Accordingly, the annual reports of the direct tax administration contain information on the legal provisions that are covered in the respective rulings.

For reasons of data protection and tax secrecy, taxpayer-related data is not published. There are no European or international rules that demand the integral publication of tax rulings.

The transparency around tax rulings is guaranteed by the European and international exchange framework, such as DAC3 Directive or Action 5 of the BEPS report.

In this context, it should also be mentioned that the tax administration sets out and publishes its interpretation of Luxembourg tax law through administrative letters ("Circulaires administratives").

These administrative letters give the taxpayer a clear understanding of how the tax administration interprets the legal provisions, and contain, if applicable, information on which conditions have to be fulfilled in order for a tax ruling to be issued on a certain subject.

Like all other EU member states, Luxembourg was reviewed in 2020 by the Code of Conduct (Business Taxation) Group with regard to the procedural rules for the issuance of tax rulings. Luxembourg's rules were found to be compliant ("compliant") in this respect.

## Have there been complaints about the quality of information given out by Luxembourg?

The OECD conducts yearly assessments as regards the information exchange on tax rulings (Action 5 BEPS). These assessments are based on the input received from other OECD Member States as regards the quality of information exchanged ("peer review process"). The review of the transparency framework assesses jurisdictions against the OECD terms of reference which focus on five key elements: i) information gathering process, ii) exchange of information, iii) confidentiality of the information received; iv) statistics on the exchanges on rulings; and v) transparency on certain aspects of intellectual property regimes.

In December 2020, the OECD released the latest peer review assessment for the year 2019. As regards Luxembourg, the report concludes the following: "Luxembourg has met all aspects of the terms of reference (OECD, 2017[3]) (ToR) for the calendar year 2019 (year in review) and no recommendations are made." Furthermore, it is noted that "Peer input was received from three jurisdictions in respect of the exchanges of information on rulings received from Luxembourg. The input was positive, noting that information was complete, in a correct format and received in a timely manner. (...) In the prior years' peer review reports, it was determined that Luxembourg's process for the completion and exchange of templates were sufficient to meet the minimum standard. With respect to past rulings, no further action was required. Luxembourg's implementation in this regard remains unchanged and therefore continues to meet the minimum standard."

## Are there specific rule that the members of the tax administration in their dealings with large corporate clients - or the accounting firms that work for those corporate clients have to follow?

Members of the tax administration are sworn civil servants or public employees and are thus subject to the Constitution, general civil service laws, and the special official duties for tax officials provided for in the Tax Code.

In accordance with the constitutional principle of equality, all taxpayers in Luxembourg are treated equally; large corporate or accounting firms are accordingly not given preferential treatment.

In order to avoid any potential misinterpretations or misunderstandings during meetings between the tax administration officials and taxpayers, each (external) participant to such meeting must fill in a form, which clearly states the meeting policy. The participants thus confirm in writing that the meeting has a purely informative character and possible statements or other behavior (silence) adopted during the meeting by the tax officials present may not be interpreted as binding the tax administration.

When the request for a preliminary ruling is filed by a taxpayer subject to corporate, the official of the competent tax office shall submit it to the Advance Rulings Commission for its opinion.

The CDA has the task of assisting the tax bureau in the implementation and uniform and coherent application of tax law. Accordingly, a single official cannot issue a tax ruling on his own.