



# APA & MAP Country Guide 2019 – Luxembourg

CONNECTING THE DOTS OF INTERNATIONAL TAX CONTROVERSY



# Luxembourg

## APA Program

KEY FEATURES	
<b>Competent authority</b>	Luxembourg Tax Authorities (LTA)
<b>Relevant provisions</b>	Section 29a Abgabenordnung (AO); Articles 56 and 56bis of the Luxembourg Income Tax Law (LITL); and Circular-Loi concernant l'impôt sur le revenu (LIR) n° 56/1-56bis/1 dated December 27, 2016 (Circular).
<b>Types of APAs available</b>	Unilateral, bilateral, and multilateral APAs are available.
<b>Acceptance criteria</b>	The transaction to be covered under the proposed APA must adhere to the arm's length principle and must not be purely tax driven. Financing companies that seek to enter into an APA with the LTA are required to determine remuneration on the basis of an analysis of the functions performed, assets used and risks assumed in relation to financing activities, and an economic analysis of data on comparable transactions. Financing companies must have a sufficient amount of equity in relation to its functions and this equity needs to be available if the risk in relation to the financing activities materializes. Luxembourg-based financing companies must meet capital and substance requirements and an appropriate arm's length margin.
<b>Key timing requests, deadlines</b>	The LTA requires that the transaction(s) covered in the APA have not taken place before the Taxpayer applies for the APA.

<b>APA term limits</b>	There is a five-year maximum term for an APA.
<b>Filing fee</b>	The filing fee for an APA is between EUR3,000 (approx. USD3,500) and EUR10,000 (approx. USD11,800), depending on the complexity of the application. The fee is due and fully payable within one month following confirmation by the LTA of the amount to be charged, following the initial review of the application.
<b>Rollback availability</b>	Rollback to prior years is not available.
<b>Collateral issues</b>	No specific guidance.

### PRE-FILING REQUIREMENTS

<b>Overview</b>	Pre-filing meetings are optional. A meeting with the LTA may take place in order to discuss the tax issues related to the transaction to be covered under the proposed APA.
<b>Anonymous pre-filing availability</b>	Anonymous pre-filing is not available.

## APPLICATION REQUIREMENTS

### **Content of application**

The application should at least include the following elements:

- name, address and file number of the Taxpayer and the relevant entities involved in the transactions or arrangements which are covered by the application;
- a detailed description of all intra-group financing transactions, and legal arrangements or legislation referred to in the request accompanied by a detailed statement of the legal position of the applicant;
- qualifications of the relevant employees and description of their duties;
- any foreign jurisdiction(s) relevant to the transactions or arrangements;
- a presentation of the legal structure of the group, including information on the beneficial owner(s) of the capital of the Taxpayer;
- the tax years to be covered by the proposed APA;
- a transfer pricing study in compliance with the recommendations of the OECD guidelines, including:
  - a description of the computation of equity allocation required to assume risks;
  - a description of the group and the interdependent links between the functions performed by the entities participating in the controlled transactions and the rest of the group, together with a description of the value creation in a broad sense within the group by the entities participating in the transactions;
  - a defined scope of the transactions;

<b>(cont.)</b>	<ul style="list-style-type: none"> <li>• a complete list of researched comparables;</li> <li>• a matrix of rejected potential comparables together with justifications of such rejections;</li> <li>• the final list of comparables selected and used to determine the arm's length remuneration applied to the precisely defined intra-group transaction(s);</li> <li>• a general description of market conditions;</li> <li>• an analysis of all relevant ancillary tax issues arising from the proposed methodology;</li> <li>• a list of APAs concluded in other countries in connection with the analysed transaction(s);</li> <li>• a list of any APAs in connection with the analyzed entity which are still in force at the time the request is submitted; and</li> <li>• projected profit and loss accounts for the years covered by the request for the APA.</li> <li>• The assurance that the information required to assess the facts is complete and truthful.</li> </ul>
<b>Language</b>	Documentation should be submitted in French or English.
<b>SME provisions</b>	No specific guidance

**OTHER PROCEDURAL CONSIDERATIONS**

<p><b>General</b></p>	<p>Taxpayers that seek to enter into an APA with the LTA should note that while pre-filing is optional, there are detailed guidelines that must be followed in relation to the transfer pricing study required as part of the APA application.</p>
<p><b>Monitoring &amp; compliance</b></p>	<p>The tax returns of the Taxpayer must be in line with the content of the APA, with the appendices including computations demonstrating whether the transfer pricing requirements covered by the APA have been met. If the commercial accounts of the company do not adhere to the APA terms, the tax adjustments will be made.</p>
<p><b>Renewal procedure</b></p>	<p>There is no specific guidance for renewal procedures. Taxpayers may after the term of the APA has elapsed submit a new APA application to the LTA and include updated methodologies and analyses, which could result in different outcomes.</p>

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## MAP Program

### KEY FEATURES

<b>Competent authority</b>	Ministry of Finance
<b>Relevant provisions</b>	Circular No. 60 dated August 28, 2017 in respect of the Mutual Agreement Procedure.
<b>Acceptance criteria</b>	Taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a DTT to which Luxembourg is signatory.
<b>Key timing requests, deadlines</b>	Taxpayers have three years to present a case to the LTA under the EU Arbitration Convention (90/436/EEC).

### APPLICATION REQUIREMENTS

<b>Content of application</b>	<p>The following information and documents must be attached to the MAP request:</p> <ul style="list-style-type: none"> <li>• name, address, and identification number of the Taxpayer;</li> <li>• the taxation year(s) in question;</li> <li>• the DTT concerned, including the article(s) which, in the Taxpayer's opinion, have been applied incorrectly;</li> <li>• description of all the facts relevant to the case, as well as the documents in support of these facts;</li> <li>• analysis of the question(s) to be settled under MAP; and</li> <li>• copies of tax notices and proposals for rectification or equivalent documents leading to the alleged double taxation.</li> </ul>
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	<p>In addition it will be necessary to indicate in the request whether:</p> <ul style="list-style-type: none"> <li>• the request for MAP has also been submitted to the relevant foreign jurisdiction(s) concerned;</li> <li>• the question(s) to be settled has already been or will be dealt with in an advance tax ruling, prior transfer pricing agreement, or a court judgment; and</li> <li>• the documents and information provided are accurate and, that any other piece of information or document required will be transmitted or communicated in due time.</li> </ul>
<b>Language</b>	Documentation should be submitted in French or English.

**OTHER PROCEDURAL CONSIDERATIONS**

<b>Interaction with domestic proceedings</b>	Taxpayers may pursue domestic proceedings separately from the MAP process. In practice the domestic proceedings are usually suspended until the MAP has been finalized.
<b>Arbitration</b>	As Luxembourg is a member of the EU, Taxpayers may initiate the arbitration procedure under the Tax Dispute Resolution Mechanism Directive on October 10, 2017. The Directive is applicable to matters submitted after July 1, 2019, on issues related to the tax year starting on or after January 1, 2018. The EU Arbitration Convention (90/436/EEC) also imposes a binding obligation on EU member states to eliminate double taxation under DTTs including, if necessary, by reference to the opinion of an independent advisory body.

STATISTICS	
<b>APA</b>	There were 163 application requests in 2015 and 145 completed applications. The LTA has had an APA program since 2011.
<b>MAP</b>	Luxembourg had a total of 234 active MAP applications as of December 31, 2016. The average time needed to close MAP cases is 41 months for transfer pricing cases, and 18 months for other cases.

## Double Taxation Treaty Network

The following treaties include MAP provisions which are the basis for bilateral and multilateral APA negotiations:

Andorra <sup>(iv)</sup>	Georgia	Liechtenstein <sup>(i)</sup>
Armenia <sup>(vi)</sup>	Germany <sup>(iii), (iv)</sup>	Lithuania
Austria	Greece <sup>(vi)</sup>	Macedonia <sup>(vi)</sup>
Azerbaijan <sup>(vi)</sup>	Guernsey <sup>(iii), (iv)</sup>	Malaysia
Bahrain	Hong Kong <sup>(ii)</sup>	Malta <sup>(vi)</sup>
Barbados	Hungary <sup>(vi)</sup>	Mauritius <sup>(i)</sup>
Belgium	Iceland <sup>(vi)</sup>	Mexico <sup>(vi)</sup>
Brazil	India	Moldova
Brunei <sup>(iv)</sup>	Indonesia <sup>(vi)</sup>	Monaco
Bulgaria <sup>(vi)</sup>	Ireland	Morocco
Canada <sup>(vi)</sup>	Isle of Man <sup>(iii), (iv)</sup>	Netherlands <sup>(vi)</sup>
China	Israel	Norway <sup>(vi)</sup>
Croatia <sup>(iv), (vi)</sup>	Italy	Panama <sup>(vi)</sup>
Cyprus <sup>(vi), (vi)</sup>	Japan	Poland
Czech Republic <sup>(iv), (vi)</sup>	Jersey <sup>(iii), (iv)</sup>	Portugal
Denmark <sup>(vi)</sup>	Kazakhstan <sup>(vi)</sup>	Qatar
Estonia <sup>(ii), (iv), (vi)</sup>	Korea (Republic of) <sup>(vi)</sup>	Serbia <sup>(vi)</sup>
Finland	Laos <sup>(iv)</sup>	Singapore <sup>(iii), (vi)</sup>
France <sup>(iii), (iv)</sup>	Latvia	Romania

Russia <sup>(vi)</sup>	Spain	Turkey <sup>(vi)</sup>
San Marino <sup>(i), (vi)</sup>	Sri Lanka <sup>(vi), (iv)</sup>	Ukraine
Saudi Arabia <sup>(iv), (vi)</sup>	Sweden	United Arab Emirates <sup>(vi)</sup>
Senegal <sup>(iv)</sup>	Switzerland <sup>(i), (vi)</sup>	United Kingdom
Serbia <sup>(iv)</sup>	Tajikistan <sup>(iv), (vi)</sup>	United States
Seychelles <sup>(i), (iv)</sup>	Taiwan, China <sup>(iv), (vi)</sup>	Uruguay <sup>(i), (iv)</sup>
Slovak Republic <sup>(vi)</sup>	Thailand	Uzbekistan <sup>(vi)</sup>
Slovenia	Trinidad and Tobago	Vietnam
South Africa <sup>(vi)</sup>	Tunisia <sup>(vi)</sup>	

## Notes

- i. denotes treaties with MAP arbitration provisions. (I\* denotes treaties to which MAP arbitration provisions under the MLI apply)
- ii. denotes treaties with the USSR that remain applicable until a separate tax treaty is concluded.
- iii. denotes treaties between the countries' representative office in Taipei and the Taipei Economic and Cultural Office in the relevant country.
- iv. denotes treaties that became effective within the last five years.
- v. denotes treaties that are awaiting ratification.
- vi. denotes MAP provisions identical to para 3, art 25 of the OECD Model Convention with respect to Taxes on Income and on Capital.
- vii. arbitration is to be conducted under the statutes of the ECJ.
- viii. arbitration is to be conducted under the statutes of the ICJ.

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