

# NEW TRANSFER PRICING DISCLOSURE - TAX RETURNS 2017

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Luxembourg Tax Authorities ("LTA") have issued new disclosure requirements related to the 2017 tax returns specifically related to transfer pricing information. This new requirement will enable the LTA to ascertain whether taxpayers have carried out intra-group transactions and potentially derive more scrutiny on transfer pricing matters.

The new transfer pricing disclosure requirements will be included in "Form 500 E" for corporate income tax, municipal business and net worth tax returns for Luxembourg tax residents and which can be also filed through [www.guichet.lu](http://www.guichet.lu).

Based on the new requirements the following information related to transfer pricing should be disclosed as from fiscal year 2017:

1. Did the company engage in **transactions with related parties** - Articles 56/56 bis Loir Concernant L'Impôt Sur le Revenue ("L.I.R.") - ?
2. Did the company opt for the **simplification measure** stated in section 4 of Circulaire du directeur des contributions L.I.R n° 56/1 - 56bis/1 issued on December 27th 2016 ("Circular")?

In this context it is relevant for taxpayers to understand the potential impact of the new requirement and what information is relevant to answer the aforementioned questions.

## TRANSACTIONS WITH RELATED PARTIES

The new disclosure requirements refer to transactions carried out by Luxembourg taxpayers with its related parties (including domestic and cross-border transactions) and which fall within the scope of Art. 56/56 bis of the L.I.R. Therefore, it is imperative to identify the types of intra-group transactions covered by the new disclosure requirements. Broadly, related party transactions may be grouped into four categories as follows:

- **Financing arrangement:** this will include transactions such as loans, guarantees, cash pooling arrangements, etc.
- **Intragroup services:** example of service transactions will involve technical services, management services, advisory services, custody services, fund administration, back office support services such as human resources support, finance and accounts, information technology, etc.
- **Tangible goods:** this relates to transactions involving purchase/sale of any type of finished goods, raw materials, fixed assets, spare parts etc.
- **Intangible property:** this involves know how, trademark, trade name etc

Additionally, in the context of a business restructuring any transfer of assets and/or liabilities or business activities/risks between related parties should be also considered as an intra-group transaction and therefore included as part of the answer to this new requirement.

If Luxembourg taxpayers have carried out any type of transactions listed above, with its related parties these should be disclosed in their tax return as part of the new transfer pricing disclosure requirements.

## SIMPLIFICATION MEASURE

The Circular issued by LTA on the 27 December 2016, related to financing activities between related parties states that taxpayers could opt for the application of a simplification measure. This measure is applicable for Luxembourg companies performing intermediation activities related to financing activities with its related parties and that would opt to comply with the Circular substance requirements.

Under this option, for entities that have decided to apply the simplification measure a remuneration for its intermediation activities of 2% on financing assets should be considered at arm's length.

In this regard, taxpayers that opt for the simplification measure must now disclose this decision in their tax return as part of the new transfer pricing requirements.

## TRANSFER PRICING DOCUMENTATION

The latest transfer pricing rules in Luxembourg (including the new disclosure requirements) will likely lead to more scrutiny and tax audits from the LTA, particularly related to transfer pricing.

Therefore, although the outcome of the tax audits/reviews from LTA might differ on case by case basis it is likely that the LTA will request transfer pricing documentation to assess the compliance with the transfer pricing requirements in Luxembourg (e.g. substance) and to ensure that transactions carried out between related parties are in compliance with the arm's length principle.

In this context we highly recommend to taxpayers to pro-actively assess whether they are in compliance with these new transfer pricing rules and disclosure requirements or otherwise would recommend to take the necessary actions in order to meet the transfer pricing requirements following Luxembourg transfer pricing rules and OECD Guidance (i.e. preparation of transfer pricing documentation).

### CONTACT US

For additional information with respect to this matter, please contact the following:

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