

## The Luxembourg tax rulings practice becomes Law



On October 15 2014, in the context of the draft budget law, the Luxembourg Minister of Finance released the provisions in respect of the so-called tax rulings.

This is a significant event: upon the approval of the bill 6722, the tax rulings practice shall be formalized as from a legal perspective, by becoming part of the Law.

### The *official* Luxembourg tax ruling practice

Until now, the only “official” references to the tax rulings were included in administrative circulars and deemed as general principles.

After the entry into force of this new law, the tax ruling and the advanced pricing agreement shall be recognized as legally binding (and not only as an indication of the tax treatment of the transaction as from a Luxembourg direct tax perspective).

Thus, on the basis of a written and motivated request from the taxpayer to the tax inspector (the *préposé du bureau d'imposition*), this latter shall assess the case at hand by interpreting the tax laws with equality.

A completely new element is the administrative fee that should be charged to the Luxembourg taxpayer by the tax administration for the ruling release, as it shall be deemed as a service provided by the Luxembourg tax administration to a taxpayer who formally requested for such service.

The *ratio legis* proposed by the Luxembourg lawmakers is the modernization of the advance tax agreement practices in view of an increasing complexity at an international level that requires the “certainty” of the future tax treatment.

Such approach will grant the uniformity of the tax law application and a general equality among taxpayers.



An important step, consistent to the next measures of the EU: a new directive on the automatic exchange of information on rulings

On late November 2014, after the LuxLeaks affair, the EU Commission President Claude Juncker together with the EU Tax Commissioner Pierre Moscovici proposed to put in place a directive on an automatic exchange of information on rulings.

The discussion process on the matter has been sped up by the release of a joint open letter recently sent by the French, the German and the Italian Finance Ministers to Mr Moscovici.

The content of the directive should be analysed and discussed during the first quarter 2015 in order to try to officially implement it by the end of the same year.

German finance minister underlined that traditionally Luxembourg exchanges information on rulings but only upon a justified request.

The abovementioned joint letter claims also for (i) the setting up of rules to bind the tax advantages on patent boxes regimes; (ii) further controlling the parent-subsiary relationship; and (iii) the cracking down on shell companies, by the creation of a beneficial owners' register at disposal of the EU tax administrations.

An important clause of the abovementioned joint letter points out such initiatives target Luxembourg but also other jurisdictions very familiar with the tax rulings practice, such as Ireland and the Netherlands.

## Conclusions

These news should be welcome with enthusiasm as steps to the evolution of a country which is far away from the concept of tax haven and that once again proves its compliance with the international tax regulations and efforts to fight tax evasion and avoidance.

Especially in current times, the formalization of the tax ruling practice restates the international credibility of Luxembourg as a reliable holding jurisdiction for cross-border transactions, finally establishing the concept of legal "certainty" of the ruling with the Luxembourg tax administration over a given transaction.

Provided with these new tools, the role of Luxembourg vis-à-vis its competitors (especially in the EU) should be remarkably reinforced.



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