

The Luxembourg government's position on the practice of issuing tax rulings

1. The practice of advance tax decisions (“rulings”) is well established in many countries, including Luxembourg. In these decisions, the tax administration sets out how it intends to apply the existing national and international tax rules to a specific situation.

The rulings are neither contracts nor mutual agreements. They are unilateral decisions by the tax authority. These acts provide visibility and legal certainty, which is legitimately sought by companies. In this context, the Luxembourg tax authority carries out its functions in complete autonomy, without reporting to the Ministry of Finance and without receiving any instructions from that Ministry.

2. The great majority of tax authorities of the European Union and G20 countries issue rulings of one form or another.

The European Commission has confirmed that this practice is not in conflict with European law, provided that all taxpayers in a similar situation are treated equally. The advance tax decisions issued by the Luxembourg tax administration are compliant with national, European and international law, as well as with non-double taxation treaties applicable on a case-by-case basis. Their legality is not challenged.

3. In Luxembourg, as in almost all other countries, rulings are not made public, but rather are subject to the same confidentiality that applies to all other information concerning the tax situation of natural or legal persons.

The rulings issued by the Luxembourg tax authority are not secret. In fact, Luxembourg, upon request, exchanges information on rulings with its partners, as foreseen by non-double taxation treaties as well as by directives and agreements concerning administrative cooperation and mutual assistance in tax matters.

Finally, it should be noted that a substantial part of the information concerning the mechanisms put in place by a specific company and covered by a ruling is publicly available through that company's annual accounts, published, as required by law, in the trade and companies register, as well as through "country-by-country-reporting" initiatives.

4. Since the financial and economic crisis, states and citizens take a fresh look at international taxation matters. The legitimacy of certain mechanisms, which are compliant with international law, is put in doubt.

Luxembourg shares those concerns. In particular, Luxembourg considers that it is not acceptable that corporations may use international regulations in such a way as to avoid any taxation or excessively reduce their tax burden.

The interaction of the tax regimes of multiple countries, within the current international framework, together with the application of non-double taxation treaties, can lead to a significant reduction of a company's tax burden, or even no taxation at all. This is not acceptable from an ethical point of view. The analysis of this situation calls for a broad perspective, and cannot be limited to one country's regulatory framework.

5. The international community as a whole faces a responsibility to adapt international regulations to current realities. Although the European Union can play a pioneering role on this topic, it is desirable for the initiative to be international in order to avoid distortions in the global competition. The OECD and the Global Forum are the ideal environments to address this complex issue.
6. Luxembourg's position is not new. Luxembourg has not waited for the current debate to amend its policy. Even long before, the government made a strong commitment in favour of transparency in tax matters and implemented a number of concrete measures.

At a national level, in early October 2014 the government submitted to parliament, together with the draft budget for 2015, and within the framework of the "Package for the Future", a draft law providing an enhanced framework for tax rulings, which aims to make the procedure clearer and more transparent. As a result, what is currently an administrative practice will be anchored in law. Furthermore, a commission on rulings will be put in place within the tax administration. With regard to the application of transfer prices, the law concerning income tax will be amended in order to state explicitly that the 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 ("at arm's length") and taxed accordingly, in line with OECD principles. Furthermore, Luxembourg tax legislation will incorporate a specific provision, explicit with regard to the documentation on transfer prices.

7. At a European level, in July 2014 Luxembourg supported the introduction of provisions in the Parent-Subsidiary Directive which aim to prevent the double non-taxation of groups of companies arising from hybrid loans. Luxembourg also supports the proposal to introduce a general anti-abuse clause into the Parent-Subsidiary Directive. The government has announced that Luxembourg will be among the first countries to transpose the amended Directive into national law.

8. At an international level, Luxembourg is an active participant in the OECD's BEPS (base erosion and profit shifting) discussions, which aim to provide greater justice in tax matters at a global level. Luxembourg has made the commitment to fully apply the new regulations that will result from these discussions.

9. Moreover, Luxembourg has introduced a wide range of concrete measures to ensure compliance with all the requirements of the Global Forum, with a view to apply for rating review as soon as possible. In this respect, mention must be made of the law of 26 May 2014 approving the Convention on Mutual Administrative Assistance in Tax Matters and its protocol of amendment, signed in Paris on 29 May 2013, the law of 28 July introducing the immobilisation of bearer shares, as well as the law establishing the procedure for the exchange of information for tax purposes upon request, approved by Parliament on 4 November 2014.

In recent months, Luxembourg has also specifically promoted the introduction of the automatic exchange of information for tax purposes as a global standard. From 1 January 2015, Luxembourg will implement the automatic exchange on the basis of the Savings Taxation Directive, thereby breaking with the tradition of banking secrecy. Luxembourg is among the Early Adopters of the Common Reporting Standard for the automatic exchange of information at OECD level from 2017.

10. All of these elements prove that Luxembourg is a constructive, reliable player in the move towards greater transparency in tax matters. Luxembourg considers that the current debate represents an auspicious opportunity for all countries to evaluate the fairness of their respective tax systems. Luxembourg has always advocated a level playing field on this subject and actively supports all initiatives to this end, including with regard to the use of tax rulings.

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