Luxembourg ministry of Finance position paper on tax transparency and rulings

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.

Rulings are neither contracts nor mutual agreements. They are unilateral decisions by the tax authority. Any taxpayer, individual or a company, may contact its tax office and seek such a binding decision in order to get legal certainty as to the tax treatment of a specific operation at the tax assessment procedure at a later stage. This is one of the reasons why the tax offices are open to the public in the morning, without any appointment needed to be taken in advance. The tax offices may be contacted as well by phone or by written request.

Because of its complexity, the ruling practice regarding the tax treatment of international corporate business usually requires by its essence and for the sake of clarification prefilling meetings where the taxpayer has the possibility to explain in a more detailed manner the planned transaction, before submitting a more formal written ruling request. Companies are free to request rulings directly or through a proxy of their choice. In either case, a company will have to submit a detailed case file, which will be thoroughly reviewed by the tax administration.

In order to be able to be granted a ruling, it is mandatory for companies to demonstrate to the Luxembourg tax authorities that they have appropriate economic substance and are genuinely active in Luxembourg (offices, active management and shareholders meeting to be held in Luxembourg) which is a minimum requirement, in addition to other company requirements in relation to the place of effective management and compliance with the general rule according which the internal organization of any company needs to be adapted to its corporate purpose.

It has to be emphasized that any taxpayer has the possibility to address himself to his tax office, including, as the case may be, to "Bureau d'Imposition Sociétés 6", and this on an equal basis. Thus, it would be false to state that a privileged access or treatment has been specifically reserved or granted to the Big Four accountancy firms, or any other entity.

In this context, the administration carries out its functions in complete autonomy, without reporting to the Ministry of Finance and without receiving any instruction from that Ministry. Indeed, by application of the general universal principles of the rule of law and confidentiality and tax secrecy provisions, Luxembourg law does not authorize the Minister of Finance to interfere in the work of the tax authorities who act independently while applying the tax law to individual cases, under the control of the tax courts.

It has to be noted that Luxembourg civil servants are bound by strict rules designed to avoid any conflict of interest in relation with the private sector. In the 2014 Transparency

International Corruption Perceptions Index, Luxembourg has scored 82, rising to 9th place, from 11th place last year.

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 other countries, as foreseen by non-double taxation treaties as well as by directives and agreements concerning administrative cooperation and mutual assistance in tax matters. These exchanges will be further reinforced. 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.

Since the financial and economic crisis, states and citizens take a fresh look at international taxation matters. The interaction of the tax regimes of multiple countries, within the current international framework, together with the application of non-double taxation treaties, can currently lead to a significant reduction of a company’s tax burden, or even to no taxation at all. While such mechanisms are compliant with international law, their legitimacy is put in doubt from an ethical point of view. Luxembourg shares those concerns.

The analysis of this situation calls for a broad perspective, and cannot be limited to one country's regulatory framework and practices. The international community as a whole faces a responsibility to adapt international regulations to current realities. While it is desirable for the initiative to be international in order to avoid distortions in the global competition, the European Union can play a pioneering role on this topic.

Luxembourg has not waited for the current debate to move towards enhanced transparency in tax matters and implement a number of concrete measures.

At a national level, the government submitted to parliament, together with the draft budget for 2015, a draft law (n° 6722, referred to as “package for the future”) providing, among other elements, an enhanced framework for tax rulings. More specifically, it foresees the formalization and modernization of the current practice, following thereby the current global trend towards increased transparency. The law will presumably be adopted by parliament before the end of 2014 and will come into force on 1 january 2015.

As a result, what is currently an administrative practice will be anchored in law. For the sake of transparency and clarity, the draft law provides for the following additional changes :

- Any request for a ruling regarding corporate tax matters filed with the tax office has to be submitted to a supervisory commission ("commission des decisions anticipées"). This newly set up body will issue a binding opinion on which the advance ruling to be delivered by the tax office, will be based.
- The administration will issue further circulars on the interpretation and application of certain provisions and issues of the tax law which are frequently raised by individual tax payers in their respective ruling requests, thus limiting the need to revert to rulings with regard to those provisions and issues.
- 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.
- Luxembourg's tax legislation will incorporate a specific provision, explicit with regard to the documentation on transfer prices.
- Finally, the tax administration's annual report for 2015 and all following editions will include a synthetic and anonymized presentation of all the rulings issued that year.

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. Luxembourg will be among the first countries to transpose the amended Directive into national law.

Further, Luxembourg welcomes the initiative of the EU Commission to quickly present a draft directive aimed at introducing a mandatory automatic exchange of information on tax rulings between the competent authorities of the EU member states.

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.

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.

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.

With regard to the European Commission's investigation into the tax practices of several European countries, Luxembourg fully cooperates with the Commission and has disclosed to the Commission all requested information with regard to individual cases. The cases pending before the European Court are not about the validity of the advance tax decisions issued by Luxembourg, but about the extent of the powers granted by the EU treaties to the Commission, acting within the framework of EU competition law, to request fully fledged information across the board and in a general way.

The success of Luxembourg as a European hub for global businesses does not rely on taxation. Luxembourg has built up a unique expertise in providing cross-border solutions to complex multi-jurisdictional issues. The country benefits from a favorable geographical position and excellent infrastructures, offers political and social stability, a safe and secure environment, a high quality of life, as well as an international, multilingual and highly skilled workforce.

Above and beyond the financial sector, Luxembourg's economy is highly diversified. The country's largest private employer is actually a steel producer. Luxembourg is also a leading logistics platform, a host for numerous research centers, as well as for the headquarters of the world's largest satellite operator and Europe's leading media group. These are but a few illustrations to show that Luxembourg is a location of choice for international companies to set up and develop their activities. Luxembourg is a legitimate player in the global economy and a strong advocate for free and open markets, as well as for a fair competition among nations.

For further information : presse@fi.etat.lu - Please notice that the ministry does not comment on individual cases.