

Annex to ROOM DOCUMENT # 2
Code of Conduct Group (Business Taxation)
4 March 2010
ORIGIN: Commission Services

Administrative Practices Questionnaire

Replies from the Member States

SECTION 1 Update of country reports

Could you provide a one to two page summary of the changes in the tax policy of your state in the area of rulings?

AT :

Up to now there are no significant changes in the tax policy in respect of rulings as summarised in the country report of the Simmons & Simmons study.

Have there been significant changes to the administrative practice in your state as compared to the description in the country report concerning:

- The legal basis for tax rulings
- Administrative issues
- The effect of rulings

AT :

See answer above.

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:

AT :

No answers possible to the questions in Section 2.

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for finance and other types of holding companies?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
X				

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

SECTION 3 Transparency and Information Exchange

Could you provide information on the level of transparency a ruling has in your state?

Published	Published but in an anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy

Could you please describe the approach your state would be prepared to apply regarding rulings:

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

AT :

The exchange of information on person-related data is limited by national and international rules of confidentiality. The legal basis for an exchange of information would be either a Double Taxation Convention or the national implementation of the Directive concerning Mutual Assistance (77/799/EEC).

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

AT :

Unilateral rulings always affect a second Member State which should be informed in order to decide whether a corresponding adjustment is necessary or not.

Although the ECOFIN has already decided on an exchange of information in this area in 2002, such exchange did not take place in practice. Most of Member States argue that this was not possible due to confidentiality reasons. The only possible solution is a directive governing the exchange of information.

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

Belgium

No replies received

SECTION 1

General Comments

It would be helpful to provide a short introduction describing in general terms the prevailing 'culture' in your territory in relation to tax matters, in particular covering the relative importance to businesses of tax rulings,

Taxation in Bulgaria is governed by rules established in the substantive and procedural tax laws and laws relating to compulsory social security and health insurance. The revenue administration has no authority to establish non-legislative taxation rules. The powers of the Minister of Finance and the Executive Director of the National Revenue Agency (NRA) include issuing guidances on implementation of the tax and social security laws which are obligatory for the revenue authorities. Also Executive Director of the National Revenue Agency has the authority to adequately explain the tax and insurance legislation. This power is exercised through issuing opinions on frequently asked questions, booklets, manuals on the application of the tax and social security laws, replies to taxpayers' and revenue bodies' inquiries.

To ensure the security of taxpayers the Tax and Social Security Procedure Code stipulates that when a person liable to tax acts in accordance with written instructions by the Minister of Finance, the Revenue Authority or any public executor, which subsequently are proven to be unlawful, no interest accrued is due for the actions taken in accordance with the instructions, and no penalty by law is envisaged.

With a view to ensuring transparency and better information, the above mentioned instructions, statements, brochures, manuals, and answers to queries are published on the website of the National Revenue Agency and the internal website of the agency.

Specific Questions

1. Preliminary and general issues

1.1 General approach.

(A) Please describe the way in which businesses and tax advisers setting up in your country approach tax planning. Do businesses and their advisers normally rely on advice as to the tax position or is it customary to approach the tax authorities for agreement on the tax status and treatment of new businesses or companies?

Businesses normally rely on professional advice (large companies have their own tax departments; small and medium sized enterprises use tax advisers) and do not usually approach the tax authorities when setting up a new business or making a new investment. However, even big firms with their own tax departments tend to ask tax authorities for a second opinion.

(B) Is there any obligation on a new company or business to discuss its tax position with the tax authorities, either in advance of setting up, or on an ongoing basis, beyond the ordinary obligation to file returns and pay tax?

There is no obligation in Bulgaria for a new company or business to discuss its tax position with the tax authorities, either prior to the setting up or on a regular basis beyond the ordinary obligations such as to file registration forms, tax returns and pay taxes.

(C) Please give a general indication of the degree of discretion exercised by the tax authority in agreeing tax computations whether or not in advance. [This question seeks general information only - specific details are requested below].

The tax authorities have no right of discretion in agreeing on tax computations which produce a tax result different from that which would apply upon a strict application of the law.

(D) In what proportion of inward investment transactions are the tax authorities likely to be involved in advance of the commencement of the project? What are the principal reasons for seeking to involve the tax authorities?

In Bulgaria there is no legal possibility for tax authorities to be involved in advance in projects concerning inward investment transactions.

1.2 Tax rulings with collateral agreements

(A) Are there circumstances in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc?

In no circumstances can a tax ruling in the sense of the questionnaire be agreed.

2. Structural issues

2.1 Legal basis for tax rulings:

(A) Is there specific legislation providing for tax rulings or other similar advance agreement in relation to the level of taxation, or tax treatment? [The response to this question should not deal with Advance Pricing Agreements in relation to transfer pricing, which are dealt with at question 6 below.]

We do not have specific legislation providing for tax rulings or similar advance agreement in relation to the level of taxation or tax treatment.

(B) Is there any constitutional or administrative law relevant to rulings?

No

(C) In the absence of specific legislation, is there any published guidance on the extent to which discretion over the determination of tax liabilities may be exercised.

No

2.2 Administrative issues

(A) How is your tax authority organised in relation to giving rulings? Does one inspector deal with all aspects of a business tax affairs (including payroll and social security taxes, and VAT)?

The tax inspectors in Bulgaria are specialized by the type of tax (VAT, personal income tax, corporate income tax, excise, local taxes and fees) and social security contributions.

(B) Is there a national office dedicated to providing rulings, or are these given ad hoc by offices dealing with particular taxpayers or particular classes of companies? How is the national office involved in local decisions?

In the event of a question on a particular case in a local office, the request is sent to the HQ of NRA and the response is prepared by the central office. The NRA's aim is to avoid controversial practices and to guarantee a uniform application of the law.

(C) Are there regional or local offices dealing, e.g., with particular businesses, regional incentives or with local taxes?

All banks, insurance companies, pension insurance companies and health insurance companies across the country are the responsibility of the respective Territorial Directorate "Large insurers and taxpayers." Local taxes are administered by municipalities.

(D) Are there restrictions on the taxes to which rulings can apply, or applied in practice?

Not applicable

2.3 The effect of rulings

(A) Are rulings or other agreements with tax authorities binding on the tax authority and the taxpayer?

Guidances issued on the implementation of tax legislation (see General comments above) are binding on the tax authorities but not on the taxpayers.

(B) Do rulings last for a specific period of time?

Not applicable

(C) Can the tax authority withdraw a ruling once agreed?

No. All guidances on the implementation of tax legislation are applicable unless amended or annulled in accordance with changes in the legislation.

(D) What other restrictions can be applied to rulings?

None.

In the following questions (3, 4, 5 and 6), replies should deal particularly with circumstances in which the ruling produces a tax result different from that which might apply on a strict application of the law.

3. Rulings for particular companies or classes of business

3.1 Whether a company is within the charge to tax.

(A) Is it possible to agree that particular companies are not within the scope of a particular tax, for instance by agreeing that they should be treated as non-resident?

No. Companies resident in Bulgaria are unlimitedly liable to Bulgarian tax. In addition, where a company is resident in Bulgaria and also resident in a Double Tax Treaty partner country, the tie-breaker clause in the treaty will determine the taxing rights of Bulgaria and

those of the other Contracting State. The qualification for taxation purposes of any company as a resident or non-resident complies only with the provision of the domestic law as well as the relevant provisions in the Tax Treaties concluded by Bulgaria.

In general it is not possible not to apply a particular tax to a particular company or companies at the discretion of the revenue authority.

3.2 Rulings on whether a permanent establishment exists.

(A) Is it possible to agree that an activity carried on in your territory by a non-resident company should not be treated as a taxable branch, agency or permanent establishment?

It is not possible to agree with the tax authorities that an activity carried out in Bulgaria by a non-resident company would be treated as a non-taxable branch, agency or permanent establishment if the activity fulfils the domestic requirements for constitution of a PE. The one exception is that of an activity which falls within the scope of Art. 5, para. 4 of the OECD Model Tax Convention, i.e. activity of a preparatory or auxiliary character.

(B) Is it possible to agree in your territory that some income attributable to business, or a branch, located elsewhere is outside the scope of tax either on a permanent basis or on a 'holiday' basis?

It is not possible to agree with the tax authorities that income attributable to a business or a branch of a Bulgarian entity carried on outside Bulgaria is outside the scope of Bulgarian tax.

3.3 Particular businesses

(A) Are there specific classes of business for which it is possible to agree a particular basis of taxation? [e.g. finance companies, or shipping businesses]

There are no specific classes of business for which it is possible to agree a particular basis of taxation.

4. Rulings as to amount of profits

4.1 Agreements on the amount of taxable income

(A) Can the level of profit of any class of business or company be agreed in advance? If so, on what basis?

In Bulgaria there is no statutory mechanism for agreeing the level of profits for tax purposes of any class of business or company in advance.

(B) Is it ever possible to agree a basis of taxation which differs materially either from the rules provided by statute or from the accounts basis of taxation?

No

(C) Is it possible to agree “costs plus” arrangements in your territory, whereby taxable profits can be determined as a basis of the costs of a business, irrespective of its actual income? In applying a “costs plus” basis, is it possible to agree to keep agreed costs out of the local territory so reducing the costs by reference to which the taxable profits are calculated.

No

4.2 Rulings for special regimes.

(A) Where special tax regimes exist, (e.g. for investment in regeneration areas,) or for particular classes of activity, is there a special procedure for obtaining tax rulings, either on whether a business can benefit from the special regime, or on the amount of taxable profits which will benefit?

In Bulgaria there are several tax incentives in the form of the retention of corporate tax, which are regulated by the Law on Corporate Income Tax.

1. The corporate tax due is to be retained up to 100 percent for tax liable persons for their profits from production activities carried out, including processing of materials supplied by customers, when a taxpayer's manufacturing activity is carried out only in municipalities where the rate of unemployment for the year preceding the current year was by 35 per cent or more higher than the national average for the same period and when for the use of the retention the specific conditions for granting state aid (de minimis aid or state aid for regional development) are met.

Any cooperative and any enterprise formed thereby, which is affiliated to a cooperative union within the meaning given by Chapter Four of the Law on Cooperatives, shall be allowed to retain up to 60 per cent of the corporation tax due therefrom where the conditions for de minimis aid are fulfilled.

Any taxable person shall be allowed to retain 100 per cent of the corporate tax for a period of five years in respect of the taxable profit accruing thereto from an activity carried out in agriculture, the manufacturing industry, production, high technologies and infrastructure, where the following conditions are simultaneously fulfilled:

1. the taxable person performs an investment to an amount exceeding BGN 10 million annually;
2. the assets acquired as part of the investment referred to in Item 1 are new as fabricated and have not been exploited prior to the acquisition thereof;
3. the specific conditions for state aid (in the cases of de minimis aid or of regional aid) are fulfilled.

4.3 Rulings on deductible expenses

(A) Is it possible to agree that particular classes of expenses (which would not otherwise be tax deductible) will be tax deductible?

It is not possible to agree that particular classes of expenses which would not otherwise be deductible, will be deductible in certain circumstances.

(B) Is it possible to agree that provided a certain level of taxable profits is achieved, the deductibility of expenses in excess of that figure will not be challenged?

It is not possible to agree that provided a certain level of taxable profits is achieved, the deductibility of expenses in excess of that figure will not be challenged.

4.4 Particular activities

(A) Are there 'agreed' or customary levels of profit which are acceptable for particular activities?

There are no “agreed” or customary levels of profits which are acceptable for particular activities.

5. Miscellaneous

5.1 Are there any other administrative practices or tax rulings which are operated in your territory which might influence the location of business?

No

5.2 Are there any other general comments you wish to make about administrative practices in your territory?

There are no other general comments

5.3 From your experience and knowledge of other territories in the EU, do you think that your territory offers a more or less flexible approach to agreeing taxable profit than other countries?

Bulgaria generally offers a much less flexible approach to agreeing taxable profit than most other countries. In fact, no agreement on taxable profit can be made in Bulgaria.

5.4 Are you aware of practices operated in other EU territories, details of which should be included in our report?

No

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

NIL	1 to 5	6 to 25	26 to 100	More than 100
x				

How many rulings have been issued for finance and other types of holding companies?

NIL	1 to 5	6 to 25	26 to 100	More than 100
x				

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
x				

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
x				

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

SECTION 3 Transparency and Information Exchange

Could you provide information on the level of transparency a ruling has in your state?

Published	Published but in an anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy
NA	NA	NA	NA	NA

Could you please describe the approach your state would be prepared to apply regarding rulings:

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

In Bulgaria there are no established rules under which to provide copies of prepared statements or instructions in all cases. The information required is available to the Member State after receipt of a written request.

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

Bulgarian tax authorities do not have information on the rulings issued by other country's fiscal authorities.

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

No

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

The report is concerned only with the exercise of discretions, and the operation of extra-statutory practices operated by your tax authority. There is no requirement to describe details of statutory provisions, although some explanation of these may be needed in order to explain the operation of particular practices.

SECTION 1

General Comments

It would be helpful to provide a short introduction describing in general terms the prevailing 'culture' in your territory in relation to tax matters, in particular covering the relative importance to businesses of tax rulings,

The issue of tax rulings is a new and developing area for the Department of Inland Revenue since 2002.

Prior to 2002, the Department only issued tax circulars, addressing matters of general tax interest, regarding the application of direct tax legislation. As from 2002, the Department, after requests from the accounting and legal profession, started to issue tax rulings regarding specific tax cases, but always within the context of the application of direct tax legislation. These tax rulings express the interpretation of the Inland Revenue Department regarding the application of the Tax Laws to specific business transactions, either in advance, before the transaction takes place or after its completion but before the submission of the relevant tax returns.

It should be noted that according to the Constitution of Cyprus the public administration in general has to reply to queries submitted in writing by citizens within thirty days.

Specific Questions

1. Preliminary and general issues

1.1 General approach.

(A) Please describe the way in which businesses and tax advisers setting up in your country approach tax planning. Do businesses and their advisers normally rely on advice as to the tax position or is it customary to approach the tax authorities for agreement on the tax status and treatment of new businesses or companies?

It is customary for enterprises in Cyprus to rely on independent and professional tax advisors for their tax planning. Where however tax advisors are not certain about the tax effects of certain transactions and in order to obtain certainty and avoid exposure towards their clients they ask for tax rulings on behalf of their clients, who wish to know in advance the tax implications concerning their intended business transactions. Taxpayers themselves however, may also apply for a written tax ruling.

(B) Is there any obligation on a new company or business to discuss its tax position with the tax authorities, either in advance of setting up, or on an ongoing basis, beyond the ordinary obligation to file returns and pay tax?

No.

- (C) Please give a general indication of the degree of discretion exercised by the tax authority in agreeing tax computations whether or not in advance. [This question seeks general information only - specific details are requested below].**

Prior to the submission of tax computations, the Director of the Department of Inland Revenue excersises no discretion regarding matters already covered by direct tax legislation. Discretion may be excersised only if after the submission of tax computations and during the examination of the tax returns there are issues in dispute and this only if the legislation and relevant court cases are not clear enough.

- (D) In what proportion of inward investment transactions are the tax authorities likely to be involved in advance of the commencement of the project? What are the principal reasons for seeking to involve the tax authorities?**

No such information is available.

1.2 Tax rulings with collateral agreements

- (A) Are there circumstances in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc?**

No.

2. Structural issues

2.1 Legal basis for tax rulings:

- (A) Is there specific legislation providing for tax rulings or other similar advance agreement in relation to the level of taxation, or tax treatment? [The response to this question should not deal with Advance Pricing Agreements in relation to transfer pricing, which are dealt with at question 6 below.]**

No.

- (B) Is there any constitutional or administrative law relevant to rulings?**

The Constitution of Cyprus requires the administration to respond to written requests of citizens within thirty days from the submission of a request.

- (C) In the absence of specific legislation, is there any published guidance on the extent to which discretion over the determination of tax liabilities may be exercised.**

In the absence of specific provisions in the direct tax legislation regarding the excersise of discretion, the General Principles of Administrative Practices Law apply.

2.2 Administrative issues

- (A) **How is your tax authority organised in relation to giving rulings? Does one inspector deal with all aspects of a business tax affairs (including payroll and social security taxes, and VAT)?**

No. The Inland Revenue Department does not deal with social security taxes and VAT.

- (B) **Is there a national office dedicated to providing rulings, or are these given ad hoc by offices dealing with particular taxpayers or particular classes of companies? How is the national office involved in local decisions?**

Enquiries on direct tax matters requiring the issue of rulings are submitted and are dealt with at the Central Offices of the Department of Inland Revenue.

The actual examination of tax computations is carried out at the local District Tax Offices where the registered office of the business is situated.

- (C) **Are there regional or local offices dealing, e.g., with particular businesses, regional incentives or with local taxes?**

The norm is for a District Tax Office to deal with the enterprises carrying on a business within its catchment area without particular regard to specialisation or industry size.

The Inland Revenue Department does not deal with local taxes or any regional incentives.

- (D) **Are there restrictions on the taxes to which rulings can apply, or applied in practice?**

Rulings issued by the department of Inland Revenue relate only to direct tax matters concerning the following Laws :

- Income Tax Law
- Assessment and Collection of taxes Law
- Special Contribution for the Defence of the Republic Law
- Capital Gains Tax Law
- Immovable Property Tax Law
- Stamp Duty Law.

2.3 The effect of rulings

- (A) **Are rulings or other agreements with tax authorities binding on the tax authority and the taxpayer?**

The rulings issued are binding on the Department of Inland Revenue, provided that full and correct information is submitted by the taxpayers and/ or their tax advisors.

However, such rulings are not binding on taxpayers if they disagree with the opinion issued.

- (B) **Do rulings last for a specific period of time?**

No.

(C) Can the tax authority withdraw a ruling once agreed?

No, unless there was concealment or misrepresentation of facts by the taxpayer or his advisor to the tax authority.

(D) What other restrictions can be applied to rulings?

No other restrictions are applicable.

In the following questions (3, 4, 5 and 6), replies should deal particularly with circumstances in which the ruling produces a tax result different from that which might apply on a strict application of the law.

3. Rulings for particular companies or classes of business

3.1 Whether a company is within the charge to tax.

(A) Is it possible to agree that particular companies are not within the scope of a particular tax, for instance by agreeing that they should be treated as non-resident?

No.

3.2 Rulings on whether a permanent establishment exists.

(A) Is it possible to agree that an activity carried on in your territory by a non-resident company should not be treated as a taxable branch, agency or permanent establishment?

No.

(B) Is it possible to agree in your territory that some income attributable to business, or a branch, located elsewhere is outside the scope of tax either on a permanent basis or on a 'holiday' basis?

No, unless provided so by direct tax legislation.

3.3 Particular businesses

(A) Are there specific classes of business for which it is possible to agree a particular basis of taxation? [e.g. finance companies, or shipping businesses]

No.

4. Rulings as to amount of profits

4.1 Agreements on the amount of taxable income

(A) Can the level of profit of any class of business or company be agreed in advance? If so, on what basis?

No.

(B) Is it ever possible to agree a basis of taxation which differs materially either from the rules provided by statute or from the accounts basis of taxation?

No.

(C) Is it possible to agree a 'costs plus' arrangement in your territory, whereby taxable profits can be determined as a basis of the costs of a business, irrespective of its actual income? In applying a 'costs plus' basis, is it possible to agree to keep agreed costs out of the local territory so reducing the costs by reference to which the taxable profits are calculated.

No.

4.2 Rulings for special regimes.

(A) Where special tax regimes exist, (e.g. for investment in regeneration areas,) or for particular classes of activity, is there a special procedure for obtaining tax rulings, either on whether a business can benefit from the special regime, or on the amount of taxable profits which will benefit?

No.

4.3 Rulings on deductible expenses

(A) Is it possible to agree that particular classes of expenses (which would not otherwise be tax deductible) will be tax deductible?

No.

(B) Is it possible to agree that provided a certain level of taxable profits is achieved, the deductibility of expenses in excess of that figure will not be challenged?

No.

4.4 Particular activities

(A) Are there 'agreed' or customary levels of profit which are acceptable for particular activities?

No.

5. Miscellaneous

5.1 Are there any other administrative practices or tax rulings which are operated in your territory which might influence the location of business?

No.

5.2 Are there any other general comments you wish to make about administrative practices in your territory?

Tax rulings issued are always bound by the direct tax legislation and are intended to confirm the application or not of specific law provisions to specific transactions, or to clarify any uncertainties relating to the application of the said provisions..

5.3 From your experience and knowledge of other territories in the EU, do you think that your territory offers a more or less flexible approach to agreeing taxable profit than other countries?

We are not aware of the practices and approach applied by other EU Member States.

5.4 Are you aware of practices operated in other EU territories, details of which should be included in our report?

No.

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:

The figures relate to the last twelve months.

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

NIL	1 to 5	6 to 25	26 to 100	More than 100
	√			

How many rulings have been issued for finance and other types of holding companies?

NIL	1 to 5	6 to 25	26 to 100	More than 100
				√

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
		√		

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
√				

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

No.

SECTION 3 Transparency and Information Exchange

Could you provide information on the level of transparency a ruling has in your state?

Published	Published but in an anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy
		√		

Could you please describe the approach your state would be prepared to apply regarding rulings:

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

On request only.

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

On request only.

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

Such an option is not opposed, provided however that the ruling relates to one or more Member States and the information exchange with all due transparency requirements is restricted between Cyprus and that or those Member States.

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

The Department of Inland Revenue is of the opinion that tax competition should not be encouraged through the issue of rulings that grant tax exemptions in infringement of direct tax legislation.

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

No.

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

The report is concerned only with the exercise of discretions, and the operation of extra-statutory practices operated by your tax authority. There is no requirement to describe details of statutory provisions, although some explanation of these may be needed in order to explain the operation of particular practices.

Czech Republic

SECTION 1

General Comments

It would be helpful to provide a short introduction describing in general terms the prevailing 'culture' in your territory in relation to tax matters, in particular covering the relative importance to businesses of tax rulings,

In general terms, the degree of discretion allowed to the tax administration in the Czech Republic is quite limited and restricted to the application of tax legislation provisions. Czech tax authorities have to follow the rules prescribed by the Czech tax law. There is no general advance ruling procedure applicable in all circumstances. Though taxpayers often request tax authorities for their opinion as regards interpretation of tax legislation, it is the ultimate competence of courts to do so. Tax authorities in principle reply to such requests as it smoothes the application of the law and contributes to further improvements.

In addition to that a formal procedure for a binding ruling in specific cases was introduced in 2004 through the amendment of Tax Administration Act (hereafter “TAA”) and Individual and Corporate Income Taxes Act (hereafter “ITA”).

The TAA contains general rules of tax procedure, tax inspection, rulings, appeals, penalties, liabilities of tax administrators and tax subjects, etc. Legislation regulating individual types of taxes, in particular the ITA and the VAT Act contain special conditions relevant to specific cases (both Acts contain conditions, which are the extension to the § 34b of the TAA stipulating a procedure regulating an issuance of binding consideration in general). There isn't any tax ruling procedure generally applicable in all circumstances in the Czech Republic. Issuing of a binding ruling is possible only in specific situations explicitly listed in tax legislation.

ITA provides for binding rulings in the following cases:

- Method of allocation of expenses linked to taxable and exempt income (Section 24a)
- Method of allocation of expenses related to the operation of immovable property used both for business and private purposes (Section 24b)
- Distinction between technical enhancement and repair and maintenance costs (Section 33a)
- Research and development expenses (Section 34a)
- Tax consequences of a substantial change in control or participation of a company (Section 38na)
- Binding ruling on transfer price in related-party transaction (Section 38nc)

Specific Questions

1. Preliminary and general issues

1.1 General approach.

(A) Please describe the way in which businesses and tax advisers setting up in your country approach tax planning. Do businesses and their advisers normally rely on advice as to the tax position or is it customary to approach the tax authorities for agreement on the tax status and treatment of new businesses or companies?

Generally speaking, in case of more complex tax issues business relies on advice of tax advisers, sometimes in case of large-scale firms there is relied on advice of their own tax departments. Tax advisers and financial directors often approach the tax administration to discuss tax aspects of the planned business. The tax administration is generally open to do so, however as mentioned in the previous section, binding rulings are available only in specific cases and the interpretation of laws is the competence of courts.

Taxpayers may also request for information according to the Act on the Free Access to Information. This right to information is restricted by the duty of the tax authorities to observe secrecy.

Some issues are discussed within a more formal framework of a Committee comprising representatives of the Ministry of Finance, tax administration and the Czech Chamber of Tax Advisers. The committee discusses and seeks practical solutions to the problems that taxpayers encounter in practice.

Many information about tax liabilities and tax procedures are on the website of Ministry of Finance (www.mfcr.cz), on the website of the central body of the Czech Tax Administration – The Central Financial and Tax Directorate (<http://cds.mfcr.cz>) or on the website of the Chamber of Tax Advisers of the Czech Republic (www.kdpcr.cz).

(B) Is there any obligation on a new company or business to discuss its tax position with the tax authorities, either in advance of setting up, or on an ongoing basis, beyond the ordinary obligation to file returns and pay tax?

No.

(C) Please give a general indication of the degree of discretion exercised by the tax authority in agreeing tax computations whether or not in advance. [This question seeks general information only - specific details are requested below].

As mentioned above the degree of discretion exercised by the tax authority is very limited in the Czech Republic. Tax computations are not in the Czech Republic subject to an agreement in advance. Taxpayers are obliged to calculate their tax liability in accordance with tax legislation, declare and pay it within the statutory limit. The tax authority cannot confirm whether the tax liability is correct in advance.

In advance there is a possibility to apply for a binding ruling on transfer pricing, on method of distributing expenses, ratio of expenses for the operation of real estate, on technical enhancement, on R+D expenses and on substantial change in participation as described above.

A decision of binding ruling is in fact ruling of tax consequences arising from certain tax decisive events (facts) that have already occurred or that are expected to occur. Relevant binding ruling shall be effective in relation to the tax administrator who decides on tax

liability of the person on whose application the ruling was issued provided that the actual conditions correspond to the information based on which such ruling was issued.

Generally, the tax may be assessed in several ways. There are three consecutive options:

- 1) If it is possible, the tax should be assessed in accordance with the data (evidence) supplied by the taxpayer.
- 2) If there is no relevant data (evidence) or they are inappropriate, then the tax authorities assess the tax according to the “benchmark” which is determined for the particular case. The discretion of the tax authorities when determining the benchmark model is limited with the principles of non-discrimination and proportionality. This may be subject of the judicial review.
- 3) If the previous options are not possible than the tax authorities may agree the tax declared by tax payer.

(D) In what proportion of inward investment transactions are the tax authorities likely to be involved in advance of the commencement of the project? What are the principal reasons for seeking to involve the tax authorities?

None, the decision making is fully up to the investor. It is difficult for tax administration to judge potential effects of the current practice on it.

1.2 Tax rulings with collateral agreements

(A) Are there circumstances in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc?

No.

2. Structural issues

2.1 Legal basis for tax rulings:

(A) Is there specific legislation providing for tax rulings or other similar advance agreement in relation to the level of taxation, or tax treatment? [The response to this question should not deal with Advance Pricing Agreements in relation to transfer pricing, which are dealt with at question 6 below.]

No.

(B) Is there any constitutional or administrative law relevant to rulings?

The Czech constitution stipulates that tax can only be imposed by the law. It implies that any liability imposed on a taxpayer shall be clearly stipulated in the law. The major responsibility of a tax authority is to apply the law correctly. This principle has been confirmed and developed further by Czech courts in many cases.

(C) In the absence of specific legislation, is there any published guidance on the extent to which discretion over the determination of tax liabilities may be exercised.

The Ministry of Finance issues Guidance notes, which are binding for the inferior taxes authorities. Most of the Guidance notes are published on the website of Ministry of Finance (www.mfcr.cz) and on the website of the Central Financial and Tax Directorate (<http://cds.mfcr.cz>), so everybody may at any time consult them.

2.2 Administrative issues

(A) How is your tax authority organised in relation to giving rulings? Does one inspector deal with all aspects of a business tax affairs (including payroll and social security taxes, and VAT)?

Organization of giving rulings considerably depends on the level of tax administration issuing the ruling. Regional and central level of tax administration usually mean higher level of specialization, i.e. one tax official deals usually with particular tax only. At the local level a tax official usually deals with all aspects of one taxpayer.

(B) Is there a national office dedicated to providing rulings, or are these given ad hoc by offices dealing with particular taxpayers or particular classes of companies? How is the national office involved in local decisions?

The responsibility to issue rulings lays upon tax authorities (The Tax Offices, The Financial Directorates and The Ministry of Finance) in accordance with the general rules on competent authority (in most cases based on the residence of a taxpayer).

The central body of the Czech Tax Administration is the Central Financial and Tax Directorate (CFTD), which is an integral part of the Ministry of Finance and manages a system of the Territorial Financial Authorities. Currently 8 Financial Directorates operating 199 Tax Offices form the system of the Territorial Financial Authorities. The Central Financial and Tax Directorate provides the following activities: manages the administration of taxes, manages the Financial Directorates and examines their decisions issued in administration proceedings, in some cases conducts operations otherwise falling into cognisance of the Territorial Financial Authorities or may take part in conducting these operations, provides analytical, conceptual and legislative activities related to the tax legislation, tax administration and direct management of the automation of the tax agendas etc.

The Financial Directorates (FD) are bodies of Tax Administration having regional competencies and they are superior to the Tax Offices. The Director of each respective Financial Directorate, who is appointed and removed by the Minister of Finance, is responsible for the operation of the Financial Directorate under his charge. The Financial Directorates provide the following activities: manage the Tax Office, conduct the administration of taxes, examine the decisions of the Tax Offices issued in administration proceeding, conduct financial audit, conduct price audit, conduct tax delinquency proceedings, in well-founded cases conduct operations otherwise falling into cognisance of the Tax Offices or may take part in conducting these operations, process data gained from operation of the Territorial Financial Authorities in their territories etc.

(C) Are there regional or local offices dealing, e.g., with particular businesses, regional incentives or with local taxes?

The Czech Republic has no special Tax Office dealing with particular businesses, regional incentives or with local taxes.

Some local fees are administrated by municipal offices, e.g. Fees on dogs, Fees on spa and recreational accommodation, Fees on specific use of public space, Fees on entry tickets, Fees on accommodation capacity, Motor vehicle entry fees etc.

(D) Are there restrictions on the taxes to which rulings can apply, or applied in practice?

No.

2.3 The effect of rulings

(A) Are rulings or other agreements with tax authorities binding on the tax authority and the taxpayer?

A binding ruling should be effective in relation to the tax administrator who has issued it and who is competent to assess the tax. The binding ruling may be applied only in individual case of the taxpayer who has applied for it.

Tax ruling or advance agreement binds the taxpayer and the tax administrator, who has decided on the merits. If the tax administrator later within the determination of tax liability ascertains the relevant circumstances are different than before, the tax ruling or advance agreement does not bind him. If the circumstances are not the same as previous in the framework of giving tax ruling or advance agreement, the taxpayer may file an application to terminate the tax ruling or advance agreement.

(B) Do rulings last for a specific period of time?

Binding rulings and advance agreements last until the termination of a time-limit determined in the decision, or last until the termination of a time-limit determined by law, or on the basis of an application of the applicant.

Binding rulings are always linked to the individual case and tax periods. All taxes are subject to a general statutes of limitation of 3 years.

(C) Can the tax authority withdraw a ruling once agreed?

Tax administrator shall cancel a certain binding ruling in case of a change of the conditions under which this ruling was issued.

If the certain circumstances exist, the tax authority may withdraw a ruling once agreed. It is possible in cases, when the applicant gave incorrect, incomplete and untrue data within the process of giving a ruling.

(D) What other restrictions can be applied to rulings?

When it is proved that particular binding ruling was issued based on inaccurate, incomplete or false data, this binding ruling may not be used, especially for determining the tax.

In the following questions (3, 4, 5 and 6), replies should deal particularly with circumstances in which the ruling produces a tax result different from that which might apply on a strict application of the law.

3. Rulings for particular companies or classes of business

3.1 Whether a company is within the charge to tax.

(A) Is it possible to agree that particular companies are not within the scope of a particular tax, for instance by agreeing that they should be treated as non-resident?

No.

3.2 Rulings on whether a permanent establishment exists.

(A) Is it possible to agree that an activity carried on in your territory by a non-resident company should not be treated as a taxable branch, agency or permanent establishment?

No, if in accordance with the law and international agreements they are subject to tax.

(B) Is it possible to agree in your territory that some income attributable to business, or a branch, located elsewhere is outside the scope of tax either on a permanent basis or on a 'holiday' basis?

No.

3.3 Particular businesses

(A) Are there specific classes of business for which it is possible to agree a particular basis of taxation? [e.g. finance companies, or shipping businesses]

No.

4. Rulings as to amount of profits

4.1 Agreements on the amount of taxable income

(A) Can the level of profit of any class of business or company be agreed in advance? If so, on what basis?

No.

(B) Is it ever possible to agree a basis of taxation which differs materially either from the rules provided by statute or from the accounts basis of taxation?

No.

(C) Is it possible to agree 'costs plus' arrangements in your territory, whereby taxable profits can be determined as a basis of the costs of a business, irrespective of its actual income? In applying a 'costs plus' basis, is it possible to agree to keep agreed costs out of the local territory so reducing the costs by reference to which the taxable profits are calculated.

No.

4.2 Rulings for special regimes.

(A) Where special tax regimes exist, (e.g. for investment in regeneration areas,) or for particular classes of activity, is there a special procedure for obtaining tax rulings, either on whether a business can benefit from the special regime, or on the amount of taxable profits which will benefit?

No.

4.3 Rulings on deductible expenses

(A) Is it possible to agree that particular classes of expenses (which would not otherwise be tax deductible) will be tax deductible?

No.

(B) Is it possible to agree that provided a certain level of taxable profits is achieved, the deductibility of expenses in excess of that figure will not be challenged?

No.

4.4 Particular activities

(A) Are there 'agreed' or customary levels of profit which are acceptable for particular activities?

No.

5. Miscellaneous

5.1 Are there any other administrative practices or tax rulings which are operated in your territory which might influence the location of business?

No.

In the Czech Republic there is available a regime of investment incentives which on the basis of fulfilled conditions set by ITA results in the tax relief. This regime is granted based on law not administrative practice. This regime was already assessed by the Code of Conduct Group in 2003 and currently fulfils none of the five criteria.

5.2 Are there any other general comments you wish to make about administrative practices in your territory?

Administrative practices are strictly regulated through the law. There is very limited space for discretion. Every ruling must be granted in accordance with law. Ministry of Finance monitors the administrative practices of the subordinate tax authorities.

5.3 From your experience and knowledge of other territories in the EU, do you think that your territory offers a more or less flexible approach to agreeing taxable profit than other countries?

We assume not, however we do not have comprehensive knowledge of practices in other EU territories.

5.4 Are you aware of practices operated in other EU territories, details of which should be included in our report?

No.

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

NIL	1 to 5	6 to 25	26 to 100	More than 100
x				

How many rulings have been issued for finance and other types of holding companies?
.....

NIL	1 to 5	6 to 25	26 to 100	More than 100
x				

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
x				

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
x				

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

No.

SECTION 3 Transparency and Information Exchange

Could you provide information on the level of transparency a ruling has in your state?

Published	Published but in an anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy
				X

Could you please describe the approach your state would be prepared to apply regarding rulings:

See abovementioned responses.

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

In general, we consider useful to increase transparency as of the application of rulings. Such information is covered by the tax secrecy rules. However such information may be shared within the framework of exchange of information among tax administrations if the respective state and assessment of tax in particular case are concerned.

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

See above answer.

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

At present the Czech Republic has not formed its position on this particular issue.

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

We are not in the possession of any information of this kind.

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

We have no awareness of such aspects.

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

The report is concerned only with the exercise of discretions, and the operation of extra-statutory practices operated by your tax authority. There is no requirement to describe details of statutory provisions, although some explanation of these may be needed in order to explain the operation of particular practices.

SECTION 1 Update of country reports

Could you provide a one to two page summary of the changes in the tax policy of your state in the area of rulings?

The information in Section 6 (Transfer pricing issues) of the Simmons and Simmons report from 1999 can be amended as follows:

6.1 What are the practical procedures used for determining transfer prices for controlled transactions in relation to intra-group service activities and financial services? Please set out a brief description of the procedures, with details only to the extent that those procedures may be relevant in influencing the location of business. Is the handling of transfer pricing issues dealt with on a centralised basis?

A number of transfer pricing provisions were enacted in 1998. The main issues are documentation requirements (section 3B of the Tax Control Act) and the compulsory use of the arm's length principle (section 2 of the Tax Assessment Act).

These rules provide that as from 1 January 1998, entities liable to Danish tax and falling within the scope of the rules are to give summary information in their tax returns about the nature and extent of any intra-group transactions ('controlled transactions') to which they are parties.

Furthermore, as from 1 January 1999 these taxpayers are to prepare and keep on file for a minimum period of 5 years written documentation describing how prices, terms and conditions are determined in controlled transactions.

In 2006 the central tax authorities issued a statutory order on documentation requirements and documentation guidelines setting out the level of documentation required in transfer pricing matters. The purpose of the statutory order and the guidelines is to elaborate and explain the documentation requirements set out in the section 3B of the Tax Control Act.

The documentation rules generally follow the EU TPD.

Transfer pricing auditors uses the transfer pricing documentation as a starting point for the audit. During the audit further information are generally obtained from the company.

There are no special procedures for intra-group services and financial services.

The tax authorities use the following databases in relation to transfer pricing: Amadeus, Orbis, RoyaltyStat, RoyaltySource, Standard & Poor's CreditModel, Reuters LoanConnector, Moody's Market Implied Ratings, Thomson ONE Banker and Bloomberg

Transfer pricing issues are dealt with on a centralised basis in Large Enterprises Division (LED). As of 1 January 2010 LED will have four specialised transfer pricing groups, working solely with transfer pricing issues. Three of these groups work with transfer pricing audits and one group works as competent authority in relation to transfer pricing and are also responsible for other general tasks (International work, issuing of guidance etc.).

6.2 How, in practice, does the tax administration verify whether transfer prices are at arms length and how is this done when no comparable uncontrolled prices are available? What methods are used and how are these chosen?

The tax authorities are allowed to inspect documentation from the taxpayer as described in Section 6.10 above.

In verifying the validity of prices and terms presented by the taxpayer, the tax authorities must take into account all relevant matters, such as market conditions, rates of exchange, seasonal fluctuations, spare production capacity, market developments, etc, as laid down in the OECD Transfer Pricing Guidelines.

Danish tax authorities recognise the transactional methods. In accordance with the OECD guidelines, traditional methods are preferred, however, in practice, due to lack of reasonably reliable information on comparables, the transactional profit methods are often used. The transactional net margin method is the most commonly used profit method.

6.3 How does the national tax administration ensure that the factors determining comparability, as defined by the OECD Transfer Pricing Guidelines, are taken into account? In particular, does the national tax administration perform verifiable functional and risk analysis in each case separately or does it rely on sector specific and industry averages without, in practice, undertaking a case by case analysis?

The tax administration performs a proper analysis separately for each case and take into account the specific facts and circumstances of the case. The documentation requirements oblige the taxpayer to provide information about the 5 comparability factors on the controlled transactions.

The tax administration does not rely on industry averages.

6.4 What administrative flexibility is available in the application of formal or informal Advance Pricing Agreements? What are the disclosure and documentation requirements? Are Advance Pricing Agreements administered centrally?

Formal Advance Pricing Agreements (APA) applications can be filed with the competent authority in Large Enterprises Division. Both bi- and multilateral agreements can be applied for. Unilateral Advance Pricing Agreements at not concluded.

There are no specific requirements as to the format or content of the APA application; however, overall the application must enable the authorities to assess whether the transactions will be in accordance with the arm's length principle.

Advance Pricing Agreements are normally entered into for a period of 3-5 years.

Advance Pricing Agreements are administered centrally.

6.5 Are there regular enquiries on the operation of transfer pricing rules, and Advance Pricing Agreements and are the enquiry practices centrally monitored?

Operations of transfer pricing rules are centrally monitored.

6.6 Which party has the burden of proof regarding the application of the arms length principle?

The tax authorities have the burden of proof, both in their own internal dealings with the taxpayer and in litigation.

Accordingly, it is for the tax authorities to establish that an income variation is justified, and only where that is established will the subjective burden of proof be on the taxpayer.

Have there been significant changes to the administrative practice in your state as compared to the description in the country report concerning:

- **The legal basis for tax rulings**
- **Administrative issues**
- **The effect of rulings**

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:

Denmark has a general system of advance rulings given on a case by case basis. The rulings are normally given by the ordinary tax authorities; however rulings with public interest are given by the National Tax Board.

In the recent years the tax authorities have given around 6000 rulings each year; about 400 rulings each year by the National Tax Board.

In 2008 and 2009 the National Tax Board gave the following number of rulings on cross border transactions for companies:

2008: 14 rulings concerning CFC-taxation and recapture of foreign losses, 2 rulings concerning permanent establishments, 1 ruling concerning outbound dividends, 1 ruling concerning credit for foreign tax and 1 ruling concerning tonnage taxation.

2009: 7 rulings concerning CFC-taxation and recapture of foreign losses, 2 rulings concerning mergers, 2 rulings concerning liability to tax, 1 ruling concerning credit for foreign tax and 2 rulings concerning tonnage taxation.

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for finance and other types of holding companies?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

NIL	1 to 5	6 to 25	26 to 100	More than 100

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

No

SECTION 3 Transparency and Information Exchange

Could you provide information on the level of transparency a ruling has in your state?

Published	Published but in anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy
	Yes	Yes		

Rulings which are of general interest or relates to horizontal issues are published in an anonymous form. These rulings are all issued by the National Tax Board.

Could you please describe the approach your state would be prepared to apply regarding rulings:

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

Information on rulings can be supplied to other Member States on request under the normal exchange of information procedures.

However Denmark is of the opinion that a concept whereby a Member State should supply copies of all rulings without request to all other Member States would impose a heavy burden in terms of translation on the first-mentioned Member State. The rulings have typically not cross border issues and are therefore not relevant for other countries.

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

Information on rulings can be supplied to other Member States on request under the normal exchange of information procedures.

Denmark is of the opinion that a concept whereby copies of rulings should be provided to other Member States to which the ruling has a link needs clarification on what should be considered a link.

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

Denmark is of the opinion that such threshold criteria is likely to reduce the administrative costs, which in itself is positive.

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

Denmark attaches importance on both a) and b).

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

No

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

SECTION 1

General Comments

It would be helpful to provide a short introduction describing in general terms the prevailing 'culture' in your territory in relation to tax matters, in particular covering the relative importance to businesses of tax rulings,

Tax matters in Estonia are strictly based on law. Since the law has to describe general situations there are complex tax issues which may raise the question of unambiguous interpretation. For such cases the possibility to apply for a preliminary decision was introduced 1 January 2008. It is to be stressed that the purpose of these decisions is to ascertain the tax treatment and consequences of a planned transaction. In this procedure tax authority exercises no discretion and doesn't provide any degree of agreement as to the level on taxation on a particular company, activity or business. This practice is not intended to favour particular sectors of activity.

Specific Questions

1. Preliminary and general issues

1.1 General approach.

(A) Please describe the way in which businesses and tax advisers setting up in your country approach tax planning. Do businesses and their advisers normally rely on advice as to the tax position or is it customary to approach the tax authorities for agreement on the tax status and treatment of new businesses or companies?

Businesses and advisers normally rely on advice as to the tax position.

(B) Is there any obligation on a new company or business to discuss its tax position with the tax authorities, either in advance of setting up, or on an ongoing basis, beyond the ordinary obligation to file returns and pay tax?

There is no obligation or any custom for a new company to discuss its tax position with the tax authorities beyond the ordinary filing obligation.

(C) Please give a general indication of the degree of discretion exercised by the tax authority in agreeing tax computations whether or not in advance. [This question seeks general information only - specific details are requested below].

The tax authority doesn't have discretion as to the amount of tax payable. Tax assessments are not subject to an agreement.

(D) In what proportion of inward investment transactions are the tax authorities likely to be involved in advance of the commencement of the project? What are the principal reasons for seeking to involve the tax authorities?

Involvement of tax authorities in case of inward investment transactions is not practiced. Principal reason for seeking to involve the tax authorities might be to eliminate any doubt as to how the particular transaction is treated under tax laws.

1.2 Tax rulings with collateral agreements

(A) Are there circumstances in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc?

There are no such circumstances.

2. Structural issues

2.1 Legal basis for tax rulings:

(A) Is there specific legislation providing for tax rulings or other similar advance agreement in relation to the level of taxation, or tax treatment? [The response to this question should not deal with Advance Pricing Agreements in relation to transfer pricing, which are dealt with at question 6 below.]

The basis for tax rulings (i.e. notices of assessment and preliminary decisions) is set in Taxation Act. Preliminary decisions are available since 1 January 2008. Preliminary decision is the type of practice referred to in general remark as a practice which is for the general convenience of all business. Some more detail is given under question 2.3.

(B) Is there any constitutional or administrative law relevant to rulings?

See 2.1 (A).

(C) In the absence of specific legislation, is there any published guidance on the extent to which discretion over the determination of tax liabilities may be exercised.

As explained in 1.1.(C) and 2.1.(A) there's no room for discretion in determining tax liabilities and tax assessment is carried out strictly following the legislation (i.e. Taxation Act and specific tax acts).

2.2 Administrative issues

(A) How is your tax authority organised in relation to giving rulings? Does one inspector deal with all aspects of a business tax affairs (including payroll and social security taxes, and VAT)?

Preliminary decisions are a collective product coordinated by legal unit of Tax and Customs Board of Estonia. Generally tax officials are dealing with all aspects of tax affairs.

(B) Is there a national office dedicated to providing rulings, or are these given ad hoc by offices dealing with particular taxpayers or particular classes of companies? How is the national office involved in local decisions?

See 2.2 (A). Regional offices are not involved in providing preliminary decisions.

(C) Are there regional or local offices dealing, e.g., with particular businesses, regional incentives or with local taxes?

Regional offices are carrying responsibilities which don't fall into the scope of this questionnaire. Regional offices are set up to provide service to clients on the basis of clients' location. Local taxes are governed by local municipalities.

(D) Are there restrictions on the taxes to which rulings can apply, or applied in practice?

There are no such restrictions.

2.3 The effect of rulings

(A) Are rulings or other agreements with tax authorities binding on the tax authority and the taxpayer?

The preliminary decision is binding on the tax authority when taxpayer completes within given time the transaction exactly as described in the application for this ruling, and if the legal basis for the ruling has not been changed before completion of the transaction.

The application can be withdrawn any time before making the preliminary decision. When withdrawn, it's possible to apply again for a decision on the same transaction.

There's no obligation for the applicant to complete the transaction.

(B) Do rulings last for a specific period of time?

The preliminary decision is binding on the tax authority for the time stated in the ruling.

(C) Can the tax authority withdraw a ruling once agreed?

The tax authority shall announce the preliminary decision to be null if the ruling was made as a result of deception, under a threat or when inclining the tax authority in any other illegal way.

(D) What other restrictions can be applied to rulings?

The tax authority can refuse to provide a preliminary decision if the provisions applying to the transaction are explicit under objective circumstances, if the transaction is hypothetical, or if the purpose of the transaction is tax avoidance. The preliminary decision cannot be made in transfer pricing cases.

The application for the decision must include full detailed description of the transaction and the analysis of conditions important in the view of taxation. It must also include applicant's opinion on the legal basis for taxing that transaction.

The processing of an application for preliminary decision can be suspended if a similar or connected case is appealed and the decision of that case may influence considerably taxing of such cases, or if there's an ongoing assessment proceeding in a case connected to the application.

In the following questions (3, 4, 5 and 6), replies should deal particularly with circumstances in which the ruling produces a tax result different from that which might apply on a strict application of the law.

3. Rulings for particular companies or classes of business

3.1 Whether a company is within the charge to tax.

(A) Is it possible to agree that particular companies are not within the scope of a particular tax, for instance by agreeing that they should be treated as non-resident?

This is not possible.

3.2 Rulings on whether a permanent establishment exists.

(A) Is it possible to agree that an activity carried on in your territory by a non-resident company should not be treated as a taxable branch, agency or permanent establishment?

This is not possible.

(B) Is it possible to agree in your territory that some income attributable to business, or a branch, located elsewhere is outside the scope of tax either on a permanent basis or on a 'holiday' basis?

This is not possible.

3.3 Particular businesses

(A) Are there specific classes of business for which it is possible to agree a particular basis of taxation? [e.g. finance companies, or shipping businesses]

There are no such specific classes of business.

4. Rulings as to amount of profits

4.1 Agreements on the amount of taxable income

(A) Can the level of profit of any class of business or company be agreed in advance? If so, on what basis?

This is not possible.

(B) Is it ever possible to agree a basis of taxation which differs materially either from the rules provided by statute or from the accounts basis of taxation?

This is not possible.

(C) Is it possible to agree a 'costs plus' arrangement in your territory, whereby taxable profits can be determined as a basis of the costs of a business, irrespective of its actual income? In applying a 'costs plus' basis, is it possible to agree to keep agreed costs out of the local territory so reducing the costs by reference to which the taxable profits are calculated.

This is not possible.

4.2 Rulings for special regimes.

(A) Where special tax regimes exist, (e.g. for investment in regeneration areas,) or for particular classes of activity, is there a special procedure for obtaining tax rulings, either on whether a business can benefit from the special regime, or on the amount of taxable profits which will benefit?

There is no such procedure.

4.3 Rulings on deductible expenses

(A) Is it possible to agree that particular classes of expenses (which would not otherwise be tax deductible) will be tax deductible?

This is not possible.

(B) Is it possible to agree that provided a certain level of taxable profits is achieved, the deductibility of expenses in excess of that figure will not be challenged?

This is not possible.

4.4 Particular activities

(A) Are there 'agreed' or customary levels of profit which are acceptable for particular activities?

There is no such practice.

5. Miscellaneous

5.1 Are there any other administrative practices or tax rulings which are operated in your territory which might influence the location of business?

There is uniform treatment for all business. No practices are to influence the location of business.

5.2 Are there any other general comments you wish to make about administrative practices in your territory?

No.

5.3 From your experience and knowledge of other territories in the EU, do you think that your territory offers a more or less flexible approach to agreeing taxable profit than other countries?

We don't have such impression.

5.4 Are you aware of practices operated in other EU territories, details of which should be included in our report?

No.

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

NIL	1 to 5	6 to 25	26 to 100	More than 100
X				

How many rulings have been issued for finance and other types of holding companies?

NIL	1 to 5	6 to 25	26 to 100	More than 100
X				

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
X				

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
X				

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

SECTION 3 Transparency and Information Exchange

Could you provide information on the level of transparency a ruling has in your state?

Published	Published but in an anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy
	X			

Could you please describe the approach your state would be prepared to apply regarding rulings:

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

Preliminary decisions of the acts if general importance are published in summarized and anonymized form. The tax authority cannot disclose data which may enable identification of persons involved in the transaction. The details are protected by tax secrecy provisions and can be disclosed to other Member States according to general provisions of international professional assistance.

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

See previous. Preliminary decision, as well as other administrative acts of the tax authority, can be disclosed to another Member State under provisions of international professional assistance.

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

This would be a practical solution.

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

Estonian government doesn't look favourably to practices which treat certain taxpayers differently as compared to what they would be eligible under general regulation.

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

Estonia is not aware of any such practices.

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

The report is concerned only with the exercise of discretions, and the operation of extra-statutory practices operated by your tax authority. There is no requirement to describe details of statutory provisions, although some explanation of these may be needed in order to explain the operation of particular practices.

SECTION 1 Update of country reports

Could you provide a one to two page summary of the changes in the tax policy of your state in the area of rulings?

Have there been significant changes to the administrative practice in your state as compared to the description in the country report concerning:

- The legal basis for tax rulings
- Administrative issues
- The effect of rulings

The tax policy in the area of rulings is still as it appears in the country report.

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:

Statistical data concerning rulings issued on specific topics is not available.

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists? *N/A*

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for finance and other types of holding companies? *N/A*

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)? *N/A*

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)? *N/A*

NIL	1 to 5	6 to 25	26 to 100	More than 100

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Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

No.

SECTION 3 Transparency and Information Exchange

Please note that (advance) rulings referred to in our answers to section 3 are those described in the Simmons&Simmons study.

Could you provide information on the level of transparency a ruling has in your state?

Published	Published but in an anonymous form	Published only if of general interest relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy
	Yes	Yes		

The Central Tax Board publishes summaries of those advance rulings that contain new or otherwise important guidelines. Rulings are published in an anonymous form. By the time of Simmons&Simmons study, published summaries were available in the Finlex data bank maintained by the Ministry of Justice. The practice changed at beginning of year 2001 and since that the advance rulings are published at the Tax Administrations own webpage.

Advance rulings given by other authorities (e.g. regional tax offices) are not published. Those rulings are part of taxpayers tax records and general rules on confidentiality and secrecy apply.

Could you please describe the approach your state would be prepared to apply regarding rulings:

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

Copies of anonymized, published advance rulings can be given to other Member States.

Copies of complete advance rulings (including name and other details) can be given to other Member States in accordance with Directive 77/779/EC and Tax Treaties.

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

Copies of anonymized, published advance rulings can be given to other Member States.

Copies of complete advance rulings (including name and other details) can be given to other Member States in accordance with Directive 77/779/EC and Tax Treaties. If the advance ruling contains information received from another Member State, it cannot be given to third Member State without consent of the authority which supplied the information. (See Art. 7.4 in the Directive 77/779/EC).

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

Of course the cases with significant amounts involved are of the most interests to Member States and in general terms such an emphasis seems to have its reasons. However, it might be difficult in practice to define the amount involved since the rulings may be silent on the amount and only involve a verbal interpretation of facts and law.

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

-

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

-

Section 1 – Update of country reports

Could you provide a one or two page summary of the changes in the tax policy of your state in the area of rulings ?

Have there been significant changes to the administrative practice in your state as compared to the description in the country report concerning :

- the legal basis for tax rulings ;
- administrative issues ;
- the effects of rulings

Les Autorités françaises ont fait connaître dès 1999 leur appréciation et leurs réserves sur le contenu du rapport réalisé par le Cabinet Simmons & Simmons lors de sa diffusion. Les indications apportées dans le cadre de la présente enquête doivent donc être examinées à l'aune de ce rappel.

S'agissant des régimes subordonnés à l'obtention d'un agrément administratif, les périmètres des mesures relatives à l'outre-mer ont été revues en 2003 et 2009. Les nouvelles mesures ont été notifiées à la Commission qui étudie en ce moment les modifications intervenues en 2009. Cependant, les procédures en place n'ayant pas été modifiées depuis l'étude de 1999, celles-ci ne sont pas rappelées ci-dessous.

En revanche, la France a apporté des améliorations significatives aux procédures de rescrit fiscal.

A titre liminaire, il est toutefois précisé que les initiatives présentées ci-après ne sont pas destinées à favoriser la localisation d'activités sur le territoire national ou un secteur d'activité particulier, ni à négocier la charge fiscale qui doit peser sur un contribuable. Elles n'entrent donc pas dans le champ de l'étude précisé en page 5 de l'annexe 1. Les éléments transmis visent néanmoins à souligner la volonté de transparence des Autorités françaises.

Les principales évolutions apportées en France en matière de pratiques administratives au cours des dernières années ont porté sur le « rescrit fiscal » (prise de position formelle de l'administration fiscale qui lui est opposable) avec la volonté de développer la sécurité juridique apportée à **tous** les contribuables, personnes physiques et personnes morales, sur le droit qui leur est applicable, d'améliorer le dialogue entre l'administration fiscale et les usagers et de favoriser ainsi le civisme fiscal et la prévention du contentieux. Les prises de position formelles de l'administration fiscale s'inscrivent dans le respect des principes de légalité et d'égalité devant la loi et l'impôt qui régissent la matière fiscale.

L'objectif poursuivi est de permettre aux citoyens et aux entreprises de bénéficier d'une meilleure sécurité juridique et d'une plus grande transparence de la règle fiscale, qui peut se révéler instable et complexe. Grâce à la procédure de rescrit, les contribuables **peuvent** ainsi obtenir des engagements de l'administration sur les conditions d'application de la législation à leur situation particulière, dans un délai encadré. Ces prises de position de l'administration fiscale permettent de stabiliser l'environnement juridique d'un redevable de bonne foi qui a

pris soin de la solliciter sur l'interprétation d'un texte fiscal avant de le mettre en œuvre. Elles ne sont pas un préalable pour bénéficier d'un régime fiscal si le contribuable estime qu'il satisfait aux conditions légales d'application.

Dans ce contexte, de nouvelles procédures de rescrit spécifiques ont été créées depuis 2004¹, une cellule de pilotage a été mise en place à l'administration centrale de la direction générale des finances publiques, un espace dédié au rescrit a été organisé sur le site Internet de l'administration fiscale, avec notamment pour objectif d'accroître la notoriété de ce dispositif et de favoriser son appropriation par les usagers professionnels et particuliers. Les prises de position de portée générale sont publiées sur le site Internet de l'administration fiscale et un rapport annuel est désormais établi sur la pratique du rescrit fiscal.

Des aménagements supplémentaires ont été introduits en 2008, avec notamment la possibilité de solliciter un second examen d'une prise de position formelle de l'administration.

Après un bref rappel sur la notion de rescrit et l'articulation des différents dispositifs existants **(I)**, le cadre juridique applicable aux rescrits est précisé **(II)**, ainsi que la procédure de demande de rescrit et de second examen des prise de position de l'administration **(III)**.

I. Définition du rescrit et articulation des dispositions

A. DEFINITION

Le rescrit est une prise de position formelle de l'administration fiscale sur l'interprétation d'un texte fiscal (article L. 80 A, alinéa 1 du Livre des procédures fiscales, ci-après LPF) ou sur l'appréciation d'une situation de fait au regard d'un texte fiscal (articles L. 80 B, L. 80 C, L. 64 B et L. 18 du LPF).

Une prise de position est considérée comme formelle lorsqu'elle est suffisamment explicite, ferme et non équivoque. Elle engage alors l'administration fiscale. A l'inverse, cette prise de position est un avis juridique, que le contribuable prend l'initiative de solliciter, et qu'il a la faculté de suivre ou non au moment d'accomplir ses obligations déclaratives.

B. ARTICULATION DES DISPOSITIONS

1. L'origine des dispositions

La première disposition instaurant le principe de prise de position formelle de l'administration a été introduite dans la législation en 1958. Son objectif était d'apporter une limite au droit de reprise de l'administration pour les contribuables qui l'avaient sollicitée.

Dans sa rédaction actuelle, le 1^{er} alinéa de l'article L. 80 A LPF institue, au profit des contribuables, une garantie contre les changements d'interprétation des textes fiscaux par l'administration fiscale. Les dispositions de cet article ne doivent pas être regardées comme ayant seulement pour objet de permettre à un contribuable de solliciter l'administration afin qu'elle lui fasse connaître le sens et la portée d'un texte fiscal. Elles autorisent l'intéressé à se

¹ rescrits en cours de contrôle fiscal, absence d'établissement stable, jeunes entreprises innovantes, pôle de compétitivité, organismes bénéficiaires de dons...

prévaloir, en cas de rehaussement (c'est-à-dire de remise en cause de sa situation fiscale), de l'interprétation d'un texte fiscal donnée par l'administration.

L'article 19 de la loi n° 87-502 du 8 juillet 1987, codifié à l'article [L. 80 B-1°](#) du LPF, constitue quant à lui une extension de la garantie précédente : il ouvre aux contribuables la possibilité d'opposer à l'administration ses prises de position formelle antérieures sur l'appréciation de situations de fait au regard d'un texte fiscal. Il a, par la suite, été complété par plusieurs dispositifs spécifiques assortis d'accord implicite en l'absence de réponse de l'administration aux demandes de prise de position formelle qui lui sont adressées.

2. Les garanties apportées

Pour l'usager, l'offre de rescrit se décline sous la forme de trois principales garanties.

- **La prise de position formelle sur un texte fiscal (article L. 80 A alinéa 1)** est une réponse de l'administration sur l'interprétation d'un texte fiscal opposable en cas de rehaussement d'une imposition antérieure. Les demandes individuelles formulées par un redevable à l'administration au titre du 1^{er} alinéa de l'article L. 80 A doivent donc porter sur un point de droit fiscal, de portée générale afin que cette dernière lui fasse connaître le sens et la portée du ou des textes fiscaux en cause.
- **La prise de position sur l'appréciation d'une situation de fait au regard d'un texte fiscal (L. 80 B-1°)** est une extension de la garantie de l'article L. 80 A alinéa 1. Elle permet à l'administration fiscale de tirer les conséquences juridiques d'une situation donnée d'un contribuable. La garantie accordée ne peut être invoquée que par le contribuable concerné par la réponse, pour une imposition postérieure à la prise de position de l'administration, si la situation en cause est strictement identique à celle qui a été formellement appréciée par l'administration.
- **Les rescrits de portée générale publiés en ligne par l'administration fiscale** sur son site www.impots.gouv.fr sont également opposables.

II. Les rescrits existants

A. LE RESCRIT GENERAL

Le rescrit général, ou prise de position formelle, codifié au 1° de l'article L. 80 B du LPF, constitue le fondement juridique des procédures de consultation préalable de l'administration sur des situations de fait au regard d'un texte fiscal.

- **Champ d'application du régime** : cette procédure s'applique à tous les impôts, droits et taxes mentionnés dans le code général des impôts. Elle ne s'applique pas aux procédures d'imposition et de contrôle, au recouvrement de l'impôt, aux modalités d'application des pénalités (majorations et intérêts de retard), à la procédure contentieuse et aux obligations comptables des contribuables.
- **Garantie apportée** : lorsque l'administration a formellement pris position sur l'appréciation d'une situation de fait au regard d'un texte fiscal, elle ne peut procéder à

aucun rehaussement sur le fondement d'une appréciation différente de cette situation de fait au regard du même texte fiscal. Cette garantie contre les changements de doctrine s'applique dès lors que l'usager est de bonne foi et qu'il se conforme exactement à la solution décrite à l'administration et expressément validée par elle.

Elle peut prendre fin dans trois cas :

- (i). le droit a évolué : la garantie cesse de s'appliquer dès l'entrée en vigueur du nouveau cadre juridique ;
- (ii). l'administration révisé son analyse sur la situation de fait qui lui a été présentée. Cette modification ne peut s'appliquer qu'à compter du jour où l'usager en est informé, et ne vaut que pour l'avenir ;
- (iii). la situation de fait a changé : la garantie cesse de s'appliquer dès lors que la situation de fait n'est plus strictement identique à celle présentée.

Ces dispositions générales ont été complétées par des procédures de rescrit dédiées à des opérations ou situations spécifiques.

B. LES RESCRITS SPECIFIQUES

• **Les rescrits « accord implicite »**

Les dispositions du 1° de l'article [L. 80 B](#) permettent aux contribuables de demander à l'administration de prendre position sur une situation de fait au regard d'un texte fiscal ; seule une réponse expresse peut engager l'administration.

L'offre de sécurité juridique a été régulièrement complétée par des dispositifs particuliers qui prévoient une réponse obligatoire de l'administration à des demandes de prises de positions formelles dans un délai encadré, l'absence de réponse valant accord implicite. Les récentes évolutions législatives ont encore renforcé ce dispositif en assortissant d'un délai (généralement de trois mois), la réponse de l'administration lorsqu'elle est saisie d'une demande écrite, précise et complète faite par un redevable de bonne foi dans les conditions décrites au (III).

En effet, la garantie est apportée aux contribuables qui ont exposé tous les éléments utiles permettant d'apprécier si les conditions requises pour bénéficier d'un régime fiscal particulier sont satisfaites. Un redevable ne peut se prévaloir de la réponse ou de l'absence de réponse de l'administration lorsqu'il a fourni des éléments incomplets ou inexacts.

Les différents rescrits assortis d'un accord implicite sont exposés aux 2°, 3°, 3° bis, 4°, 5°, 6° et 8° de l'article L. 80 B, à l'article L. 64 B et à l'article L. 80 C du LPF.

Le bénéfice des régimes fiscaux spécifiques pour lesquels une faculté de rescrit a été ouverte n'est pas subordonné à une autorisation préalable de l'administration fiscale. Le rescrit est seulement destiné à apporter au contribuable, qui la sollicite, une prise de position de l'administration sur le fait que sa situation particulière satisfait ou non aux conditions légales pour en bénéficier. Cette prise de position engage l'administration vis-à-vis du contribuable et limite sa capacité ultérieure de rehaussement. En revanche, elle ne s'impose pas au contribuable qui peut décider de ne pas la suivre.

- **Les rescrits spécifiques de l'article L. 80 B, 2° à 6° et 8°**

Pour tous ces rescrits, le délai de réponse de l'administration est désormais de **trois mois**. A l'issue de ce délai, et à condition que l'administration ait disposé de toutes les informations nécessaires pour se prononcer en connaissance de cause, son absence de réponse vaut accord implicite de sa part.

a) Allègements d'impôts pour les entreprises nouvelles et amortissements exceptionnels (2° de l'article L. 80 B)

- Champ d'application du régime : deux types de demandes peuvent être présentés au titre du 2° de l'article [L. 80 B](#) du LPF, introduit par la loi n° 96-314 du 12 avril 1996 :
 - celles se rapportant à certains régimes d'amortissements exceptionnels de plein droit ;
 - celles se rapportant à l'exonération d'impôt sur les bénéfices prévue en faveur des entreprises nouvelles par l'article 44 *sexies* du CGI et, plus récemment, depuis l'entrée en vigueur de l'article 128 de la loi de finances rectificative pour 2006, en faveur des entreprises qui s'implantent en Zone Franche Urbaine (ZFU) par l'article 44 *octies* A du CGI.
- Modalités de la demande de rescrit : la demande de rescrit doit être préalable à l'opération, à savoir :
 - pour le régime d'amortissement exceptionnel, elle doit intervenir avant l'acquisition ou l'achèvement de la fabrication ou la construction de l'immobilisation concernée ;
 - pour le régime « entreprise nouvelle », avant le début de l'activité qui coïncide, en principe, avec son inscription au registre du commerce ou des métiers ;
 - pour le régime « entreprise en zone franche urbaine », avant sa création ou son transfert.

Les demandes doivent être adressées à la direction dont dépend le service auprès duquel le contribuable est tenu de souscrire ses obligations déclaratives.

Le silence gardé par l'administration pendant un délai de trois mois à compter de la réception du dossier complet vaut prise de position implicite, c'est-à-dire approbation du régime sollicité.

b) Dépenses éligibles au crédit d'impôt recherche (3° et 3° bis de l'article L. 80 B)

L'article 105 de la loi de finances pour 1997 a étendu le dispositif d'accord implicite au crédit d'impôt recherche (ci-après CIR). Il permet aux entreprises, préalablement à l'engagement d'un projet de recherche, de s'assurer qu'il ouvre droit au crédit d'impôt prévu à l'article 244 quater B du CGI.

- Champ d'application du régime : réservé initialement aux entreprises industrielles, commerciales ou agricoles imposées selon un régime réel, cet avantage est également accordé à certaines entreprises nouvelles, aux jeunes entreprises innovantes ainsi qu'aux entreprises qui créent ou reprennent des activités dans des zones franches urbaines ou en Corse.

- Modalités de la demande de rescrit : elle doit être préalable à la mise en œuvre des opérations de recherche prévues dans le projet.

Les demandes doivent être adressées à la direction dont dépend le service auprès duquel le contribuable est tenu de souscrire ses obligations déclaratives (article L. 80 B-3°).

Le 3° bis, introduit en 2008, prévoit toutefois de nouvelles possibilités de saisine directe de services ou d'organismes autres que l'administration fiscale.

- Autres interlocuteurs sur l'appréciation du caractère scientifique et technique du projet : lorsque l'appréciation du caractère scientifique et technique du projet le nécessite, l'administration fiscale consulte les services du ministère chargé de la recherche ou des organismes chargés de soutenir l'innovation (OSEO et l'Agence nationale de la recherche).

Les entreprises peuvent également, à compter du 1^{er} juillet 2009, saisir directement les services du ministère en charge de la recherche ou l'un des organismes précités afin d'obtenir une prise de position formelle sur le caractère scientifique et technique du projet de dépenses de recherche présenté par le demandeur. Ils disposent de trois mois pour donner une réponse, l'absence de réponse dans ce délai valant réponse implicite favorable. La prise de position ainsi obtenue est opposable à l'administration fiscale.

Le délai de réponse de l'administration aux demandes de rescrit sur le crédit d'impôt recherche est de trois mois. Passé ce délai, le silence de l'administration vaut approbation implicite sur le caractère scientifique et technique du projet présenté.

c) Régime des jeunes entreprises innovantes (4° de l'article L. 80 B)

L'article 13 de la loi de finances pour 2004 a créé le régime de « jeunes entreprises innovantes » (JEI) codifié à l'article 44 sexies-0A du CGI. Il permet une exonération d'impôt sur les bénéfices, d'impôts locaux ainsi qu'éventuellement des plus-values sur les cessions de parts ou d'actions détenues par des personnes physiques. Des exonérations en matière de charges sociales pour les personnels de recherche sont également prévues.

- Champ d'application du régime : ce statut s'applique aux entreprises de recherche et de développement de moins de 8 ans, déjà créées au 1^{er} janvier 2004 ou qui se créent entre le 1^{er} janvier 2004 et le 31 décembre 2013.
- Modalités de la demande de rescrit : les entreprises peuvent solliciter l'administration pour s'assurer qu'elles satisfont les critères leur permettant d'être qualifiées de JEI. La demande de rescrit peut être faite à tout moment par l'entreprise auprès de la direction dont dépend le service auprès duquel le contribuable est tenu de souscrire ses obligations déclaratives. L'avis des services du ministère de la recherche peut être sollicité par l'administration fiscale sur l'appréciation du caractère scientifique et technique du projet présenté.

Le silence gardé par l'administration pendant un délai de trois mois à compter de la réception du dossier complet vaut prise de position implicite.

d) Régimes des pôles de compétitivité (5° de l'article L. 80 B)

L'article 24 de la loi de finances pour 2005 prévoit la création de pôles de compétitivité issus du regroupement sur un territoire donné d'entreprises, d'établissements d'enseignement supérieur et d'organismes de recherche publics ou privés qui ont vocation à travailler en synergie pour mettre en œuvre des projets de développement économique innovants.

- Champ d'application du régime : les entreprises exerçant une activité industrielle, commerciale ou non commerciale peuvent bénéficier d'avantages fiscaux à condition d'être implantées dans les zones de recherche et développement d'un pôle de compétitivité et de participer à un projet agréé. Un décret en Conseil d'Etat délimite les zones de recherche et développement. Les avantages fiscaux s'appliquent aux exercices ouverts à compter de la date de délimitation.
- Modalités de la demande de rescrit : les entreprises peuvent faire une demande de rescrit pour s'assurer qu'elles satisfont aux critères pour bénéficier de ce régime fiscal. La demande de rescrit peut être faite à tout moment auprès de la direction dont dépend le service auprès duquel le contribuable est tenu de souscrire ses obligations déclaratives.

Le délai de réponse à l'issue duquel l'administration est réputée avoir implicitement accepté l'opération est aujourd'hui de trois mois.

e) Le rescrit « établissement stable » (6° de l'article L. 80 B)

L'article 19 de la loi de finances rectificative pour 2004 étend la procédure des accords implicites aux sociétés étrangères qui souhaitent obtenir l'assurance qu'elles ne peuvent pas être considérées comme disposant d'un établissement stable en France.

La requalification en établissement stable d'une société étrangère permet en effet à l'administration française d'imposer les bénéfices de la société mère à raison des opérations réalisées en France au travers de son établissement stable. Or, il arrive que la société mère fasse déjà l'objet d'une imposition dans son Etat à raison des mêmes bénéfices. Le rescrit « établissement stable » permet ainsi de prémunir les sociétés étrangères contre le risque de double imposition.

- Champ d'application du régime : ce dispositif s'adresse à tout contribuable résidant dans un Etat lié à la France par une convention fiscale, dès lors qu'il réalise ou envisage de réaliser une ou plusieurs activités économiques en France sans pour autant choisir une implantation sous la forme d'une société.
- Modalités de la demande de rescrit : la demande écrite comportant une présentation précise et complète de l'activité exercée en France doit être adressée au Service Juridique de la Fiscalité, Bureau des agréments et rescrits.

L'absence de réponse dans le délai de trois mois à compter de la réception d'un dossier complet vaut reconnaissance implicite de l'absence d'établissement stable en France.

f) Le rescrit « qualification d'une activité au regard de catégories de revenus ou d'impôts » (8° de l'article L. 80 B)

Cette nouvelle procédure, introduite par la loi de finances rectificative pour 2008, permet de qualifier une activité professionnelle au regard de certaines catégories de revenus

professionnels (bénéfices industriels et commerciaux et bénéfices non commerciaux) ou d'impôts (impôt sur le revenu ou impôt sur les sociétés s'agissant de sociétés civiles), en vue de déterminer les obligations comptables et fiscales auxquelles sont soumis les redevables concernés (article L. 80 B, 8°).

- Champ d'application de ce régime : les contribuables exerçant une activité professionnelle commerciale ou non commerciale au sein d'une entreprise individuelle ou au sein d'une société soumise au régime fiscal des sociétés de personnes, telle une société civile, peuvent rencontrer des difficultés pour déterminer les obligations comptables et fiscales qui leur incombent. Ils peuvent alors demander à l'administration fiscale de prendre position.
- Modalités de la demande de rescrit : la demande doit comporter des informations précises sur les activités exercées et leur importance. La situation réelle doit correspondre à la situation décrite dans la demande. La demande doit être adressée à la direction départementale de l'administration fiscale dans le ressort de laquelle le travailleur indépendant ou la société doit déposer sa déclaration de bénéfices ou de résultat au titre de son activité professionnelle.

Le silence gardé par l'administration pendant un délai de trois mois à compter de la réception du dossier complet vaut prise de position implicite.

- **Les demandes sur la reconnaissance du statut d'organisme d'intérêt général ou d'utilité publique en France (article L. 80 C)**

- Champ d'application et intérêt du régime : la loi du 1^{er} août 2003 relative au mécénat, aux associations et aux fondations permet aux organismes ou groupements recevant des dons de s'assurer auprès de l'administration, préalablement à la délivrance des reçus fiscaux, qu'ils répondent bien aux critères définis aux articles 200 et 238 bis du CGI et que les dons qui leurs sont alloués ouvrent ainsi droit à réduction d'impôt. Dès lors que des organismes répondent aux critères définis aux articles précités, les dons qu'ils reçoivent ouvrent droit à une réduction d'impôt.
- Modalités de la demande de rescrit : elle doit être adressée à la direction dont dépend le service du lieu du siège de l'organisme, selon un modèle fixé par voie réglementaire.
- Délai de non-réponse déterminant l'accord implicite : L'administration dispose d'un délai **de six mois** pour répondre à la demande de l'organisme à compter de la réception d'un dossier complet. En l'absence de réponse dans ce délai, la demande est réputée tacitement acceptée.

- **Le rescrit « abus de droit » (article L. 64 B du LPF)**

Aux termes de l'article L. 64 B du LPF, issu de l'article 18 de la loi n° 87-502 du 8 juillet 1987, la procédure de l'abus de droit fiscal n'est pas applicable lorsqu'un contribuable, préalablement à la conclusion d'un acte, a consulté par écrit l'administration centrale en lui fournissant tous éléments utiles pour apprécier la portée véritable de cette opération et que l'administration n'a pas répondu dans un délai de six mois à compter de la demande.

- Les quatre conditions de la garantie du rescrit « abus de droit » : la garantie prévue par l'article L. 64 B du LPF trouve donc à s'appliquer lorsque la consultation de l'administration répond aux quatre conditions suivantes :
 - la consultation de l'administration doit concerner la portée d'un ou plusieurs actes susceptibles d'être mis en cause dans le cadre de la procédure de l'abus de droit fiscal ;
 - cette consultation doit être préalable à la conclusion de cet acte ou de ces actes ;
 - la demande doit être adressée par écrit à l'administration centrale de la DGFIP;
 - la demande doit comporter tous les éléments utiles pour apprécier la portée véritable de l'opération.
- Les conditions de l'accord implicite dans le cadre du rescrit « abus de droit » : si ces conditions sont satisfaites et que l'administration n'a pas répondu dans un délai de six mois à compter de la demande, la procédure de l'abus de droit fiscal ne pourra pas être appliquée à cette opération.

En revanche, si l'une des conditions posées n'est pas satisfaite, les contribuables concernés ne peuvent pas se prévaloir de la garantie instituée par cet article en l'absence de réponse de l'administration.

L'accord implicite de l'administration né du défaut de réponse dans le délai de six mois ne concerne que l'application de la procédure de l'abus de droit fiscal. Le service conserve donc la possibilité d'effectuer des rehaussements au titre de l'opération en cause sur un fondement autre que l'abus de droit.

Enfin, la garantie ne s'applique qu'à l'opération soumise à l'administration et ne peut être invoquée que par les contribuables parties à l'acte ou aux actes en cause.

- **Le rescrit « valeur » (article L. 18 du LPF)**

La loi de finances rectificative pour 2008 lui a donné un fondement légal au rescrit « valeur ».

- Champ d'application et intérêt du régime : la procédure permet à une personne qui détient une entreprise ou des titres de sociétés dans laquelle elle exerce une des fonctions de direction énumérées au 1° de l'article 885 O bis du CGI, et qui entend procéder, par anticipation, à la transmission de tout ou partie de cette société ou de ces titres, de consulter l'administration fiscale, préalablement à l'opération, sur la valeur vénale de l'entreprise qui sert de base au calcul de l'impôt. Sont exclus du bénéfice de ce dispositif les titres de sociétés mentionnées à l'article 885 O quater du CGI.
- Modalités de la demande de rescrit : le demandeur doit fournir à l'administration tous les éléments utiles pour apprécier la valeur vénale du bien dans le cadre de l'opération de donation envisagée (un modèle de demande est disponible sur le site **Error! Hyperlink reference not valid.** de la DGFIP).
- Garantie apportée : en cas d'accord exprès du service sur la valeur estimée de l'entreprise, le demandeur peut passer dans les trois mois l'acte de donation projetée sur la base acceptée par l'administration. L'évaluation retenue ne pourra alors plus être remise en cause pour l'assiette des droits de donation, à condition que la donation effectuée soit conforme au projet présenté par le chef d'entreprise.

III. Les procédures de demande de rescrit et de recours contre une prise de position formelle de l'administration

A. RAPPEL : LES REGLES PRATIQUES DE LA DEMANDE DE RESCRIT

La demande de rescrit doit respecter certaines conditions permettant à l'administration fiscale de se prononcer en toute connaissance de cause.

1. Le contenu de la demande

- La demande doit préciser le nom ou la raison sociale et l'adresse de son auteur.
- Elle doit comporter une présentation écrite, complète et sincère de la situation de fait du contribuable.
- Le contribuable qui saisit l'administration fiscale doit par ailleurs indiquer les dispositions qu'il entend appliquer.

2. Le lieu de dépôt et de traitement de la demande

En principe, la demande doit être déposée à la direction départementale des finances publiques dont dépend le service auprès duquel le contribuable est tenu de souscrire ses obligations déclaratives. C'est cette direction qui traite la demande de rescrit.

Cela étant, pour certains rescrits spécifiques, des bureaux métiers de l'administration centrale de la DGFIP sont les interlocuteurs uniques des usagers. C'est le cas en particulier pour le rescrit « abus de droit » et le rescrit « absence d'établissement stable ».

B. L'OUVERTURE D'UNE FACULTE DE SECOND EXAMEN D'UNE DEMANDE DE RESCRIT

La loi de finances rectificative pour 2008 a institué la possibilité d'un second examen contre les rescrits, afin d'améliorer la sécurité juridique que confèrent les prises de position aux demandeurs. Cette procédure est codifiée à l'article L. 80 CB du LPF.

1. Le champ d'application de la procédure de recours contre une prise de position formelle

Elle est ouverte au rescrit général comme aux rescrits spécifiques, à l'exception du rescrit dit « abus de droit », ce dernier étant déjà entouré de nombreuses garanties. Le recours n'est également pas ouvert à la procédure d'accord préalable sur les prix de transfert, compte tenu de sa spécificité.

2. Les garanties apportées

La procédure de second examen est assortie de nombreuses garanties. Ainsi, le réexamen de la demande se fait sous une forme collégiale. Le redevable ou son représentant peut être entendu par le collège. Enfin, cette seconde prise de position bénéficie des mêmes garanties et obéit aux mêmes règles de délais que celles applicables à la demande initiale.

3. Les modalités de la demande de second examen

Pour bénéficier d'un second examen, le contribuable doit le solliciter dans les deux mois de la prise de position de l'administration sur sa demande initiale. Il s'agit d'un réexamen de la même demande de rescrit : le contribuable doit donc présenter sa demande dans les mêmes termes, sans invoquer d'éléments nouveaux.

A la suite de ce second examen, l'administration fiscale notifie au redevable une nouvelle réponse qui produit ses effets dans les conditions de droit commun. Cette réponse, qui fait suite à un recours, ne peut pas elle-même faire l'objet d'un recours.

Section 2 - Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:

Texte de référence du livre des procédures fiscales	Domaine du rescrit	2006	2007	2008
L 80 B 1°	général	3 641	6 522	6 407
L 80 B 2°	amortissements exceptionnels, entreprise nouvelle, zone franche urbaine	3 553	5 839	6 703
L 80 B 3°	crédit d'impôt recherche	34	68	122
L 80 B 4°	jeune entreprise innovante	442	490	642
L 80 B 5°	pôle de compétitivité	4	8	3
L 80 B 6°	absence d'établissement stable		8	2
L 18	rescrit valeur (entreprise individuelle ou titres non cotés)	10	14	10
L 80 C	organismes d'intérêt général	2 130	2 811	3 540
L 64 B	abus de droit		22	21

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

NIL	1 to 5	6 to 25	26 to 100	More than 100
	X			

Le rescrit prévu à l'article L 80 B 6° du livre des procédures fiscales permet à une société étrangère de s'assurer qu'elle ne dispose pas en France d'un établissement stable ou d'une base fixe au sens de la convention fiscale liant la France à l'Etat dans lequel ce contribuable est résident.

How many rulings have been issued for finance and other types of holding companies?

NIL	1 to 5	6 to 25	26 to 100	More than 100

Cette typologie ne correspond pas à l'approche du rescrit par les Autorités fiscales françaises, pour lesquelles aucune procédure de rescrit spécifique n'est organisée.

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
				X

1/ Le bénéfice du crédit d'impôt recherche s'applique de plein droit, dès lors que l'entreprise répond aux conditions fixées par la loi et ses textes d'application.

Toutefois, si l'entreprise souhaite obtenir davantage de sécurité juridique préalablement à l'engagement d'un projet de recherche en vue d'éviter une remise en cause ultérieure du bénéfice de crédit d'impôt, le législateur a prévu qu'elle puisse solliciter un rescrit spécifique (article L. 80 B 3° et 3° bis du livre des procédures fiscales).

Ce rescrit est destiné à apporter à l'entreprise qui le sollicite une sécurité juridique sur le fait de savoir si les caractéristiques de son projet de dépenses de recherche le qualifient ou non pour prétendre au bénéfice de ce crédit d'impôt. Cette procédure fait intervenir des experts scientifiques qui se prononcent sur le caractère scientifique et technique du projet de recherche.

2/ Un régime de jeune entreprise innovante réalisant des projets de recherche et développement a été codifié à l'article 44 sexies-0A du CGI. Le bénéfice de ce régime est ouvert de plein droit aux entreprises qui remplissent les conditions fixées par la loi et ses textes d'application.

L'entreprise qui souhaite toutefois s'assurer qu'elle satisfait aux conditions légales peut solliciter une prise de position formelle de l'administration fiscale.

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
X				

Cette typologie ne correspond pas à l'approche du rescrit par les Autorités fiscales françaises, pour lesquelles aucune procédure de rescrit spécifique n'est organisée.

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

Aucune procédure de rescrit ne vise à fixer d'obligation en termes d'activité ou de création d'emploi.

SECTION 3 Transparency and Information Exchange

Could you provide information on the level of transparency a ruling has in your state?

Published	Published but in an anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy
		X		

La transparence de la norme fiscale a été améliorée avec la publication depuis 2005 des prises de position de l'administration fiscale lorsqu'elles présentent un intérêt général. Ces prises de position sont accessibles sur le site Internet de l'administration fiscale et lui sont opposables (www.impots.gouv.fr).

Could you please describe the approach your state would be prepared to apply regarding rulings:

Les prises de position sollicitées par une entreprise sur l'absence d'établissement stable en France seraient susceptibles d'entrer dans le champ de cette question, en particulier si l'administration fiscale française parvenait à la conclusion qu'il s'agit d'un établissement stable.

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

Les autorités fiscales françaises sont prêtes à communiquer un rescrit relatif à un établissement stable à un autre Etat membre concerné par cette prise de position, qui lui en ferait la demande.

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

Les autorités fiscales françaises sont prêtes à communiquer un rescrit relatif à un établissement stable à un autre Etat membre concerné par cette prise de position, qui lui en ferait la demande.

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

Dans la pratique française du rescrit, le montant d'une opération ne constitue pas nécessairement un critère pertinent d'appréciation du droit applicable à une situation de fait, et en aucun cas un critère exclusif.

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

Bien que difficilement mesurables du fait, le cas échéant, de leur manque de transparence, les *rulings* constituent un risque réel en matière de localisation ou délocalisation d'entreprises.

Face à ce constat, il faudrait donc assurer un minimum d'obligations en matière de transparence de façon à éviter à éviter la mise en œuvre, sous couvert de ces *rulings*, de pratiques fiscales dommageables. A cet égard, l'information des Etats membres concernés en matière de rescrits relatifs aux activités transfrontalières, par exemple en relation avec les établissements stables, apparaît comme une piste de réflexion intéressante.

Cela étant, il conviendra d'approfondir ces problématiques à la lumière des réponses apportées par les Etats membres au présent questionnaire.

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with

tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

ABSCHNITT 1 Aktualisierung der Länderberichte

1.1. Bitte beschreiben Sie zusammenfassend auf einer oder zwei Seiten die Änderungen der Steuerpolitik im Bereich verbindliche Auskünfte in Ihrem Land.

Im Rahmen des Föderalismusreform-Begleitgesetzes v. 5. 9. 2006 (BGBl 2006 I S. 2098) wurde eine gesetzliche Regelung über verbindliche Auskünfte im Besteuerungsverfahren geschaffen. Im Jahressteuergesetz 2007 vom 13. 12. 2006 (BGBl 2006 I S. 2878) wurde zudem eine Gebührenregelung für verbindliche Auskünfte geschaffen. Einzelheiten über Form und Inhalt von Auskunftsanträgen und über die Bindungswirkung einer verbindlichen Auskunft wurden in der Steuer-Auskunftsverordnung – StAuskV – v. 30. 11. 2007 (BGBl 2007 I S. 2783) geregelt.

1.2. Gab es bedeutende Änderungen bei der Verwaltungspraxis in Ihrem Land im Vergleich zu den im Länderbericht beschriebenen Praktiken im Hinblick auf:

- **die rechtliche Grundlage für verbindliche Auskünfte** (vgl. unter 1.1.)
- **Verwaltungsfragen** (aufgrund der gesetzlichen Neuregelungen wurden die Verwaltungsgrundsätze überarbeitet und sind nun im Anwendungserlass zu § 89 AO enthalten).
- **Auswirkungen von verbindlichen Auskünften**

ABSCHNITT 2 Informationen über Art und Anzahl spezifischer Auskünfte

2.1. Bitte geben sie die Anzahl der in den vergangenen fünf Jahren erteilten verbindlichen Auskünfte an (wenn für diesen Zeitraum die Daten nicht verfügbar sind, geben Sie die Anzahl der verbindlichen Auskünfte aus dem vergangenen Jahr an):

Es liegen keine entsprechenden Statistiken vor. Nach grober Schätzung werden von den Landesfinanzbehörden jährlich rund 10.000 verbindliche Auskünfte erteilt. Weitere Details sind nicht bekannt.

Wie viele Auskünfte wurden darüber erteilt, ob ein Unternehmen steuerpflichtig ist, einschließlich der Auskunft, ob eine Betriebsstätte existiert:

0	1 bis 5	6 bis 25	26 bis 100	mehr als 100

Wie viele verbindliche Auskünfte wurden an Finanzunternehmen und andere Arten von Holdinggesellschaften erteilt?

0	1 bis 5	6 bis 25	26 bis 100	mehr als 100

Wie viele Auskünfte wurden an spezifische Steuerbereiche erteilt (z. B. Logistik, erneuerbare Energien, Forschungs- und Entwicklungstätigkeiten)?

0	1 bis 5	6 bis 25	26 bis 100	mehr als 100

Wie viele verbindliche Auskünfte wurden für die Bewertung von Vermögenswerteinbringung ins Inland (einschließlich geistigem Eigentum, Marken, Know-how, Patente und Lizenzen) erteilt?

0	1 bis 5	6 bis 25	26 bis 100	mehr als 100

Sind irgendwelche der oben aufgeführten verbindlichen Auskünfte an Bedingungen oder Anforderungen geknüpft, durch die der Erhalt einer verbindlichen Auskunft davon abhängt, ob das Unternehmen sich zur Einstellung einer bestimmten Anzahl an Mitarbeitern oder zur Fortführung seines Betriebs über einen bestimmten Zeitraum verpflichtet?

ABSCHNITT 3 Transparenz und Informationsaustausch

3.1. Bitte geben Sie das Maß an Transparenz einer verbindlichen Auskunft in Ihrem Land an.

Veröffentlichung	Veröffentlichung in anonymer Form	Veröffentlichung nur, wenn ein allgemeines Interesse besteht oder ein Bezug zu horizontalen Fragen besteht	Verfügbarkeit für alle Steuerinspektoren über eine Datenbank oder auf Anfrage	Hohes Maß an steuerlicher Geheimhaltung

Bitte beschreiben Sie, welchen Ansatz Ihr Land bereit wäre anzuwenden:

Wegen der gesetzlichen Pflicht zur Wahrung des Steuergeheimnisses (§ 30 AO) dürfen derartige Informationen nicht veröffentlicht werden. Die Weitergabe von Informationen aus individuellen Besteuerungsverfahren (einschl. verbindlicher Auskünfte) an andere Finanzbehörden ist grundsätzlich zulässig (§ 30 Abs. 4 Nr. 1 AO). Bei Fragen von grundsätzlicher Bedeutung werden entsprechende Informationen auch in anonymisierter Form ausgetauscht. Eine Weitergabe individueller Daten an andere Behörden ist nur unter bestimmten gesetzlichen Voraussetzungen zulässig.

3.2. Sind Sie generell bereit, anderen Mitgliedstaaten Kopien von Auskünften bereitzustellen? In anonymisierter Form? In allen Fällen? Nur auf Anfrage?

Es gelten die allgemeinen Grundsätze des Informationsaustauschs zwischen Finanzbehörden.

3.3. Sind Sie bereit, bestimmten Mitgliedstaaten in Fällen von Auskünften, die im Zusammenhang mit anderen Mitgliedstaaten stehen, Kopien von verbindlichen Auskünften zur Verfügung zu stellen? In anonymisierter Form? In allen Fällen? Nur auf Anfrage?

Es gelten die allgemeinen Grundsätze des Informationsaustauschs zwischen Finanzbehörden.

3.4. Welche Ansicht vertritt Ihr Land im Hinblick auf die Option, Transparenz und Informationsaustausch nur bei Auskünften zu gewährleisten, die im Zusammenhang mit hohen Beträgen stehen (Schwellwerte müssten vereinbart werden)?

Es gelten die allgemeinen Grundsätze des Informationsaustauschs zwischen Finanzbehörden.

ABSCHNITT 4 Auswirkungen von verbindlichen Auskünften auf den Steuerwettbewerb

4.1. Bitte geben Sie an, wie Ihr Staat die von Finanzbehörden anderer Staaten erteilten Auskünfte hinsichtlich ihrer Bedeutung für den Steuerwettbewerb zwischen Mitgliedstaaten im Hinblick auf a) Standortauswirkungen auf Unternehmen, die in der Gemeinschaft ansässig sind, und auf b) Investitionsentscheidungen von Investoren außerhalb der EU einschätzt.

4.2. Gibt es weitere Aspekte der Verwaltungspraxis in anderen Mitgliedstaaten, die innerhalb des Rahmenwerks des Arbeitsprogramms der Gruppe „Verhaltenskodex“ diskutiert werden sollten?

Allgemeine Anmerkungen

Bitte beachten Sie bei der Beantwortung dieser Fragen, dass der Begriff „verbindliche Auskunft“ in seiner breiteren Bedeutung verstanden werden sollte. Alle Praktiken, Vereinbarungen mit Steuerbehörden oder die Wahrnehmung des Ermessensspielraums durch eine Behörde, die ein gewisses Maß an Vereinbarung im Hinblick auf das Niveau der Besteuerung eines bestimmten Unternehmens, Geschäftsbereichs oder von Tätigkeiten beinhalten, sollten berücksichtigt werden, auch wenn dies nicht als „verbindliche Auskunft“ bezeichnet wird.

Im Bericht geht es nur um Verwaltungspraktiken, die möglicherweise den steuerlichen Wettbewerb aufgrund des Standorts von Unternehmen verzerren. Verfahren, die der allgemeinen Annehmlichkeit aller Unternehmen dienen (wie z. B. Verfahren, die die Belastung durch gesetzliche Auflagen erleichtern) brauchen nicht erwähnt zu werden, es sei denn, sie begünstigen in der Praxis bestimmte Tätigkeitssektoren.

In einigen Fällen könnten sich Antworten wiederholen. Bitte verweisen Sie in diesem Fall auf die entsprechende andere Antwort, anstatt noch einmal die gleiche Antwort zu geben.

Greece



**MINISTRY OF FINANCE
GENERAL SECRETARIAT
FOR TAX & CUSTOMS ISSUES
INTERNATIONAL ECONOMIC
RELATIONS DIRECTORATE
TAX AFFAIRS SECTION**
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To :

**1. Mr Michael Kuttin
Chair of the Code of Conduct Group
(Business Taxation)**

**2. Mrs Margarete Rosner
Council Secretariat**

C/O

**Greek Permanent Representation to EU
Economic Unit
Rue Jacques de Lalaing 19-21
B-1048, BRUXELLES
BELGIUM
In attention of Mrs Athina Kalyva**

Our ref: 3529/DOS/09

Date: 17th of November 2009

SUBJECT: Administrative Practices Questionnaire.

Dear Mr Michael Kuttin,

We apologize for the late response to your e-mails regarding the Questionnaires on Administrative Practices.

At this stage we can provide some partial comments on the Simmons and Simmons country report. Also, we would like to let you know that our Directorate is not authorized to answer all the questions of Administrative Practice Questionnaire. It is required further elaborations and contributions from all the Directorates of the Hellenic Ministry of Finance and as soon as all the necessary information is concentrated, it will be forwarded to you.

Thank you in advance for your cooperation.

Yours Sincerely

The Director of International
Economic Relations Directorate
G. Kounadis

Comments from Greece on the 1999 Simmons & Simmons country report

Thin Capitalization rules

The accrued interest on loans or credits that are paid to associated enterprises, is deducted on the condition that the relation of these loans or credits over the equity of an enterprise doesn't exceed the ratio of 3:1 on the average per fiscal year.

The accrued interest that proportionate to the excess of the above ratio does not deduct from the gross income of the enterprise.

The new provisions apply to loan agreements or credits that are concluded from and after 21st of July 2009 (Date of publication of the law no.3375/2009, in the Government Gazette).

Transfer Pricing

Recently the Hellenic Government has introduced Transfer Pricing Documentation Rules for intra-group transactions. Under the provisions of articles 1 and 2 of the adopted law no.3375/2009 (Governmental Gazette A' 122/21-7-2009) our internal legislation is harmonized with those defined in the Code of Conduct on transfer pricing documentation for associated enterprises in the European Union (EUTPD) and follows the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

According to its provisions the above-mentioned law, will entry in force on and after 1-1-2011. Meanwhile, Ministerial degrees or circulars are being elaborating for the properly implementation, and practical functioning of these law provisions. Under these circumstances, we can provide you with some general information.

The adopted law no.3375/2009, is modifying the Income Tax Code, by amending the existing article 39 and adding article 39A.

Until now, this article 39 of the Income Tax Code was dealing only with the treatment of "underpricing and overpricing of transactions", without mentioning the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

Instead, the amended article 39 makes this reference to the Guidelines, and also introduces **the obligation** for transfer pricing documentation, as defined in the new article 39A.

The article 39A, under the title "Transfer Pricing Documentation for Cross Border Transactions", foresees that a domestic enterprise associated to a foreign enterprise and member of a multinational group can choose either the general obligation for documentation or to keep the "documentation file", in order to fulfill its obligation for documentation of transfer pricing.

General obligation for documentation means to provide data and information for the documentation of the prices of its intragroup transactions, according to those defined in article 9 of the OECD Model Tax Convention, the corresponding articles for associated enterprises

of the Double Taxation Conventions that Greece has concluded and the OECD Transfer Pricing Guidelines.

The “**documentation file**” follows those referred in the Code of Conduct on transfer pricing documentation for associated enterprises in the European Union (EU TPD) and consists of :

- a. The "**masterfile**" of documentation which is common for all the group companies and contains common standardised information for all the affiliated companies and branches of the group.
- b. The “**Greek file of documentation**”, which would supplement the "**masterfile**" and contains additional information, with regard to the Greek enterprises of the group.

Also, the new Article 39A foresees:

- **proportionally application of the transfer pricing documentation obligation and to permanent establishments that maintain in Greece foreign enterprises members of multinational groups or that Greek enterprises members of multinational groups maintain abroad.**
- that Medium and Small enterprises shall keep simpler and limited documentation.
- obligation of updating the documentation data, so that it always correspond to the current prevailing prices between the obliged enterprises
- obligation to uphold and maintain the confidentiality of the documentation data.

Advance Pricing Agreements

The current legislation does not provide the conclusion of Advance Pricing Agreements of any type (unilateral, bilateral or multilateral) among the competent foreign Tax Authorities or pre-approved rules for expenses. The arrangement of possible problems is settled by the Tax Treaties Mutual Agreement Procedure (usually article 25).

SECTION 1

General Comments

It would be helpful to provide a short introduction describing in general terms the prevailing 'culture' in your territory in relation to tax matters, in particular covering the relative importance to businesses of tax rulings,

In Hungary ruling in a narrow sense means the administrative decision on provisional tax assessment issued by the Secretariat of Tax Policy in the name of the Minister of Finance in line with Section 132. of Act XCII of 2003 on the Rules of Taxation. In the decision upon the taxpayer's request, the Ministry of Finance shall determine in a two-phase procedure whether any tax liability applies and, if possible, the tax base and the tax on the basis of the detailed information supplied by the taxpayer with regard to a future contract, other legal transaction, or specific types of contracts or contract packages. The submission and registration of applications for provisional tax assessment and on the payment and refund of related charges and on the detailed regulations for the decision-making process is regulated in Decree No. 39/2006 (XII. 25.) PM.

Beside provisional tax assessments Section 132/A. of Act XCII of 2003 on the Rules of Taxation contains provisions about administrative decisions on determining the fair market value (APA), but this decision is issued by the tax authority. It means, the state tax authority shall declare by resolution, upon request, the procedure for determining the fair market value to be used in a forecasted transaction to be concluded between affiliated companies, the facts and circumstances based on which it is determined, and, if possible, the fair market price or price range (fair market value). The submission and registration of applications for APA and on the payment of related charges and on the detailed regulations for the decision-making process is regulated in Decree No. 38/2006 (XII. 25.) PM.

In Hungary neither the state tax authority nor the Ministry of Finance has right to exercise discretion, and – as it follows also from our answers below – can issue decisions strictly on the basis of law.

Specific Questions

1. Preliminary and general issues

1.1 General approach.

(A) Please describe the way in which businesses and tax advisers setting up in your country approach tax planning. Do businesses and their advisers normally rely on advice as to the tax position or is it customary to approach the tax authorities for agreement on the tax status and treatment of new businesses or companies?

In general large companies enlist the services of a tax advisor, but many times they ask for the confirmation of the Ministry of Finance or the tax authority concerning tax consequences of a certain transaction.

(B) Is there any obligation on a new company or business to discuss its tax position with the tax authorities, either in advance of setting up, or on an ongoing basis, beyond the ordinary obligation to file returns and pay tax?

No.

(C) Please give a general indication of the degree of discretion exercised by the tax authority in agreeing tax computations whether or not in advance. [This question seeks general information only - specific details are requested below].

The tax authority is not entitled to exercise discretion, it can give any information concerning tax consequences of a transaction only in line with the law.

(D) In what proportion of inward investment transactions are the tax authorities likely to be involved in advance of the commencement of the project? What are the principal reasons for seeking to involve the tax authorities?

Most of the time the tax authority is requested to issue APA-s. The Ministry of Finance issues rulings on provisional tax assessment when there is an investment transaction of a large amount or a significant change in the company's structure (merger, transfer of assets, existence of a PE or not, etc).

1.2 Tax rulings with collateral agreements

(A) Are there circumstances in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc?

No.

2. Structural issues

2.1 Legal basis for tax rulings:

(A) Is there specific legislation providing for tax rulings or other similar advance agreement in relation to the level of taxation, or tax treatment? [The response to this question should not deal with Advance Pricing Agreements in relation to transfer pricing, which are dealt with at question 6 below.]

No.

(B) Is there any constitutional or administrative law relevant to rulings?

See our answers in section "general comments".

(C) In the absence of specific legislation, is there any published guidance on the extent to which discretion over the determination of tax liabilities may be exercised.

No.

2.2 Administrative issues

(A) How is your tax authority organised in relation to giving rulings? Does one inspector deal with all aspects of a business tax affairs (including payroll and social security taxes, and VAT)?

The ruling on provisional tax assessment is signed by the Secretariat of Tax Policy. (See our answers in section “general comments”.)

The preparation of different sections of the ruling (concerning different kinds of taxes) is the task of the competent subdivision or department, which sends its answers to the department assigned to assemble the answers and prepare the final draft of the ruling. The finalisation and procedural questions is the responsibility of the Department of Tax Administration.

(B) Is there a national office dedicated to providing rulings, or are these given ad hoc by offices dealing with particular taxpayers or particular classes of companies? How is the national office involved in local decisions?

No, see the answer above.

(C) Are there regional or local offices dealing, e.g., with particular businesses, regional incentives or with local taxes?

No, see the answer above.

(D) Are there restrictions on the taxes to which rulings can apply, or applied in practice?

No.

2.3 The effect of rulings

(A) Are rulings or other agreements with tax authorities binding on the tax authority and the taxpayer?

It is binding solely if the circumstances of the transaction described in the application for the ruling do not change. Should the state of the facts or the law be amended, the relevant part of the ruling is not binding any more.

(B) Do rulings last for a specific period of time?

(C) Can the tax authority withdraw a ruling once agreed?

It can be withdrawn just like any other administrative orders and decisions. The conditions of withdrawal are laid down as follows: the authority, if it finds that its decision that has not been judged by superior bodies or by the administrative court is unlawful, may amend or withdraw the decision in question. The authority shall be entitled to conduct the procedure referred to (with the exception if the procedure is launched based on a resolution of the Constitutional Court or upon objection by the prosecution) only once and unless otherwise prescribed by law within one year from the date the resolution was delivered.

(D) What other restrictions can be applied to rulings?

N/A.

In the following questions (3, 4, 5 and 6), replies should deal particularly with circumstances in which the ruling produces a tax result different from that which might apply on a strict application of the law.

3. Rulings for particular companies or classes of business

3.1 Whether a company is within the charge to tax.

(A) Is it possible to agree that particular companies are not within the scope of a particular tax, for instance by agreeing that they should be treated as non-resident?

No.

3.2 Rulings on whether a permanent establishment exists.

(A) Is it possible to agree that an activity carried on in your territory by a non-resident company should not be treated as a taxable branch, agency or permanent establishment?

No.

(B) Is it possible to agree in your territory that some income attributable to business, or a branch, located elsewhere is outside the scope of tax either on a permanent basis or on a 'holiday' basis?

No.

3.3 Particular businesses

(A) Are there specific classes of business for which it is possible to agree a particular basis of taxation? [e.g. finance companies, or shipping businesses]

No.

4. Rulings as to amount of profits

4.1 Agreements on the amount of taxable income

(A) Can the level of profit of any class of business or company be agreed in advance? If so, on what basis?

No.

(B) Is it ever possible to agree a basis of taxation which differs materially either from the rules provided by statute or from the accounts basis of taxation?

No.

(C) Is it possible to agree □ costs plus □ arrangements in your territory, whereby taxable profits can be determined as a basis of the costs of a business, irrespective of its actual income? In applying a □ costs plus □ basis, is it possible to agree to keep agreed costs out of the local territory so reducing the costs by reference to which the taxable profits are calculated.

No.

4.2 Rulings for special regimes.

(A) Where special tax regimes exist, (e.g. for investment in regeneration areas,) or for particular classes of activity, is there a special procedure for obtaining tax rulings, either on whether a business can benefit from the special regime, or on the amount of taxable profits which will benefit?

No.

4.3 Rulings on deductible expenses

(A) Is it possible to agree that particular classes of expenses (which would not otherwise be tax deductible) will be tax deductible?

No.

(B) Is it possible to agree that provided a certain level of taxable profits is achieved, the deductibility of expenses in excess of that figure will not be challenged?

No.

4.4 Particular activities

(A) Are there 'agreed' or customary levels of profit which are acceptable for particular activities?

No.

5. Miscellaneous

5.1 Are there any other administrative practices or tax rulings which are operated in your territory which might influence the location of business?

No.

5.2 Are there any other general comments you wish to make about administrative practices in your territory?

No.

5.3 From your experience and knowledge of other territories in the EU, do you think that your territory offers a more or less flexible approach to agreeing taxable profit than other countries?

Yes, it can be said, since the tax authority in charge can not deviate from the provisions of the law in the course of the process.

5.4 Are you aware of practices operated in other EU territories, details of which should be included in our report?

No.

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:

2004	2005	2006	2007	2008
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63	74	112	87	89
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How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for finance and other types of holding companies?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

NIL	1 to 5	6 to 25	26 to 100	More than 100

No data available.

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

There are no conditions like that.

SECTION 3 Transparency and Information Exchange

Could you provide information on the level of transparency a ruling has in your state?

Published	Published but in an anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy
No.	No.	No.	Yes.	General level of tax confidentiality.

Could you please describe the approach your state would be prepared to apply regarding rulings:

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

There were no claims like that so far, but it could be fulfilled in anonymized form upon request.

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

Rulings are not in link with other countries usually, but we do not see any obstacles to fulfil such a request, in anonymized form.

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

Not necessary.

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

As far as we are concerned there are some countries where agreements can be concluded with regard to the amount and the base of tax, which can have an effect on settlement of companies.

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

We have no information about that.

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

The report is concerned only with the exercise of discretions, and the operation of extra-statutory practices operated by your tax authority. There is no requirement to describe

details of statutory provisions, although some explanation of these may be needed in order to explain the operation of particular practices.

SECTION 1 Update of country reports

Q1. Could you provide a one to two page summary of the changes in the tax policy of your state in the area of rulings?

A1. There have been no changes.

Q2. Have there been significant changes to the administrative practice in your state as compared to the description in the country report concerning:

- The legal basis for tax rulings
- Administrative issues
- The effect of rulings

A2. There have been no changes

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:

Q3. How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

A3.

NIL	1 to 5	6 to 25	26 to 100	More than 100
		X		

Q4. How many rulings have been issued for finance and other types of holding companies?

A4.

NIL	1 to 5	6 to 25	26 to 100	More than 100
		X		

Q5. How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

A5.

NIL	1 to 5	6 to 25	26 to 100	More than 100
			X*	

*The bulk of “rulings” issued under this head are in the form of opinions that the companies involved are within the scope of the shipping tonnage tax regime.

Q6. How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

A6

NIL	1 to 5	6 to 25	26 to 100	More than 100
X				

Q7. Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

A7. No.

SECTION 3 Transparency and Information Exchange

Q8. Could you provide information on the level of transparency a ruling has in your state?

Published	Published but in an anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy

A8. Revenue supply advance opinions on the interpretation of Irish law in accordance with published guidelines. Details of opinions which involve no more than the application of the law as generally understood are not published. The principles involved in an advance opinion dealing with a new issue are published by amending the Tax and Duty Manuals, issuing a statement of practice or technical guideline or amending published precedents.

Could you please describe the approach your state would be prepared to apply regarding rulings:

Q9. Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

A9. The effects of opinions issued are included in the material published by Revenue and available on the Revenue website <http://www.revenue.ie/>. Information regarding an advance opinion would be supplied on request under normal exchange of information procedures.

Q10. Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

A10. Please see reply to Q9.

Q11. How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

A11. Notwithstanding that opinions are given as to the interpretation of Irish law in a set of circumstances, they are intended to have general application as to the interpretation of the law involved. In such circumstances it is not clear that reference to a threshold amount would be appropriate.

SECTION 4 Impact of rulings on tax competition

Q12. Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

A12. In Ireland's view rulings made in the normal course of a fully transparent rulings system have the same importance as legislation and would be treated accordingly. The importance of other types of rulings may be difficult to assess.

Q13 Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

A13. There are not other such aspects which Ireland wishes to have discussed..

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

SECTION 1 Update of country reports

Could you provide a one to two page summary of the changes in the tax policy of your state in the area of rulings?

A system of tax rulings (“*interpelli*”: i.e., formal questions) was first introduced in Italy by Art. 21 of Law 413/1991 (Finance Act 1992), as implemented by Ministerial Decrees n. 194 and 195 of 13 June 1997.

Pursuant to Law 413/91, a ruling can be issued only with respect to the following cases (so called: “special ruling procedure”):

- the application of the anti-avoidance provisions set out by Art. 37-*bis* DPR 600/1973;
- the application of the provision on fictitious interposition set out by Art. 37(3) DPR 600/1973;
- the deductibility of advertisement and entertainment expenses;
- the application of the anti-tax haven legislation on the non deductibility of expenses arising from transactions with businesses located in a *black list* jurisdiction (Art. 110(10) TUIR).

Under a procedural point of view, the taxpayer which is in one of the situations set out by the law must file a ruling request with the Revenue Agency (Central Directorate for Tax Provisions and Litigation); such request is normally filed through the Regional Directorate of Revenue. The request shall contain the personal information of the taxpayer, as well as a detailed description of the actual case whose tax regime is uncertain and the solution proposed by the taxpayer. If the Revenue Agency does not reply within 120 days, the taxpayer can file a formal notice. If the Revenue Agency does not reply within 60 days from the formal notice, the solution proposed by the taxpayer is considered accepted. The ruling is not binding on the taxpayer.

Art. 37-*bis*(8) DPR 600/1973 provides for a further “negative” tax ruling procedure, whereby taxpayers may ask the tax administration to recognise that a specific business operation, while formally falling within the scope of a restrictive anti-avoidance regime, has in practice no abusive effects.

The procedure provided for by Art. 37-*bis*(8) may also be used to obtain the non-application of the minimum tax on non-operating companies (*società di comodo*).

A more general system of advance rulings applicable to all tax issues (so called: “ordinary” ruling procedure) was introduced by Law 212/2000 (Taxpayer's Bill of Rights). The ruling request may concern only the application to actual (not theoretical) cases of statutory provisions whose interpretation is objectively unclear. The interpretation is considered objectively unclear if the tax administration has not yet issued an interpretation through a circular, ruling or other official document published on the Revenue Agency's website. Both resident and non resident taxpayers may file a request for an ordinary ruling.

The request must be submitted to the competent Regional Directorate of the Revenue Agency. Should the case be particularly new or sensitive, the Regional Directorate may pass the request on to the Central Directorate Tax Provisions and Litigation. Furthermore, the

Regional Directorate will pass on the Central Directorate all rulings submitted by taxpayers whose gross turnover exceeds EUR 300,000,000. Non resident taxpayers may submit the request directly to the Central Directorate.

The application must be filed before the relevant provision is applied. In other words, a ruling cannot be used to obtain confirmation of the taxpayer's tax choices. The filing of the request does not extend the statutory deadlines for submitting tax returns and other compliance. The request must be accompanied by all necessary information and documentation. The suggested interpretation of the relevant provision must also be provided.

The tax authorities must reply (by mail, fax or e-mail) within 120 days of the request. In the case of no reply, the interpretation provided by the taxpayer is considered accepted. If, however, the documentation provided by the taxpayer is deemed to be insufficient to correctly assess the case, the Revenue Agency may, within the 120 days deadline, ask for additional documentation. The request, that can be issued only once per single ruling request, interrupts the deadline; the new 120 days deadline starts again when the tax administration officially receives the requested documentation. The reply must be motivated. The interpretation provided binds the tax authorities, but not the taxpayer.

The procedure set out by Law 212/2000 may also be used to avoid the application of the CFC legislation (Arts. 167-168 of the consolidated text on income taxes, so called TUIR) and of the anti-avoidance provisions excluding the application of the participation exemption regime to dividends and capital gains arising from shareholdings in companies located in a tax haven (Arts. 47(4), 68(4), 87(1), 89(3) TUIR). Even in these cases, the ruling is binding on the tax administration, but not on the taxpayer.

Furthermore, the procedure set out by Law 212/2000 may be also used by groups with foreign subsidiaries to obtain confirmation of the existence of the conditions required by Art. 130 seq. TUIR to opt for the world consolidation regime (or to renew the option upon termination of the 5-years minimum option period).

However, none of these practices seems to imply some degree of agreement between the tax administration and the taxpayer on the tax burden to be borne by the latter and, therefore, none of these practices seems to fall within the scope of the questionnaire.

For the sake of completeness, we finally recall the procedure for "international rulings" (unilateral APAs) set out by Art. 8 of the Law Decree 269/2003, effective as of 1 January 2004. The relevant information on unilateral APAs have already been provided by Italy in response to Room document # 6 of the Code meeting of 15 May 2009 ("*Transparency and Exchange of Information in the area of Transfer Pricing*"). See also Room document #4 of the Code of 23 September 2009 – Member States' replies on questionnaire). This measure was notified in March 2004 to the Code Group under the *standstill* exercise. The Code of Conduct Group considered, on 29 April 2004, that Italy's International Tax Ruling Practice did not require assessment under the Code.

Have there been significant changes to the administrative practice in your state as compared to the description in the country report concerning:

- **The legal basis for tax rulings**
- **Administrative issues**

- **The effect of rulings**

Please see reply to the previous questions.

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for finance and other types of holding companies?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

NIL	1 to 5	6 to 25	26 to 100	More than 100

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

SECTION 3 Transparency and Information Exchange

Could you provide information on the level of transparency a ruling has in your state?

Published	Published but in an anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy

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Could you please describe the approach your state would be prepared to apply regarding rulings:

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

Ruling issued by third countries and capable of having an impact on the decision of Italian businesses to invest in that country may determine the inclusion of the said country in the Italian *black list* of countries subject to anti tax haven legislation (e.g. CFC legislation or non deductibility of business expenses).

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

SECTION 1

General Comments

It would be helpful to provide a short introduction describing in general terms the prevailing 'culture' in your territory in relation to tax matters, in particular covering the relative importance to businesses of tax rulings,

There is no separate regime for binding advance rulings with respect to taxation, but there is a general regime (Article 98 of the Administrative Procedure Law), under which an individual or a legal entity can approach any governmental institution asking for a statement on its rights in a particular legal situation, including taxation issues. Thus, such a statement is issued to provide interpretation of application of tax laws to a particular legal situation.

The effect of such a statement is that where a person has acted as stated in the statement, the tax authority will not issue an administrative act less favourable than its statement even if the statement was incorrect. Therefore, a taxpayer may legally rely that the tax authority's statement is correct and may act accordingly. This does not apply where the statement was obtained on the basis of false information, fraud, etc. Paragraph four of Section 101 of the Administrative Procedure Law provides that a statement may be challenged to a higher institution, i.e., tax authority's statement may be contested to the Ministry of Finance. The decision of the Ministry of Finance is final and may not be appealed to a court.

Notwithstanding that Latvian tax legislation is quite detailed, it is often necessary to ask the tax authorities in advance for a statement of their views on a specific situation.

Specific Questions

1. Preliminary and general issues

1.1 General approach.

(A) Please describe the way in which businesses and tax advisers setting up in your country approach tax planning. Do businesses and their advisers normally rely on advice as to the tax position or is it customary to approach the tax authorities for agreement on the tax status and treatment of new businesses or companies?

Businesses and their advisers normally rely on advice as to the tax position and, except specific situations as described above (see General Comments), it is not customary to approach the tax authority.

(B) Is there any obligation on a new company or business to discuss its tax position with the tax authorities, either in advance of setting up, or on an ongoing basis, beyond the ordinary obligation to file returns and pay tax?

No.

(C) Please give a general indication of the degree of discretion exercised by the tax authority in agreeing tax computations whether or not in advance. [This question seeks general information only - specific details are requested below].

Taxes are computed only in accordance with the respective tax laws. The tax authority has no right to agree on the tax computation and it is not possible to calculate taxable income in advance.

(D) In what proportion of inward investment transactions are the tax authorities likely to be involved in advance of the commencement of the project? What are the principal reasons for seeking to involve the tax authorities?

Tax authorities are not involved, only generally applicable requirements to register as a taxpayer, and, if necessary, as a VAT taxpayer must be observed.

1.2 Tax rulings with collateral agreements

(A) Are there circumstances in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc?

No.

2. Structural issues

2.1 Legal basis for tax rulings:

(A) Is there specific legislation providing for tax rulings or other similar advance agreement in relation to the level of taxation, or tax treatment? [The response to this question should not deal with Advance Pricing Agreements in relation to transfer pricing, which are dealt with at question 6 below.]

No, there is no such specific legislation providing for tax rulings or other similar advance agreements in relation to the level of taxation, or tax treatment.

However, there is legislation in relation to the level of taxation:

1. The Law on the Application of Taxes in Free Ports and Special Economic Zones determines the procedures for the application of tax relief. Certificate to apply direct tax relief shall be granted by a zone authority or a free port authority in accordance with the procedures specified by law.
2. Under the Law on Immovable Property Tax local governments are entitled to grant immovable property tax reductions of 25%, 50%, 70% or 90% for certain categories of taxpayers by issuing binding regulations (normative act of general application).
3. According to the procedure prescribed by the Law on Taxes and Fees if as a result of a tax administration official's control (examination, review) additional tax payments have been assessed, taxpayer in the cases specified by the law is entitled to propose the director-general of the tax administration to enter into a settlement agreement. The settlement agreement shall indicate that the taxpayer consents to the amount of

additional tax payment assessed and undertakes to pay such amount, but in accordance with this law, the assessed fine shall be revoked.

4. Under the Law on Taxes and Fees the tax administration can also examine and decide on the extension of the term of payment of taxes and fees, but the term extension is restricted by the law.

(B) Is there any constitutional or administrative law relevant to rulings?

See General Comments above.

(C) In the absence of specific legislation, is there any published guidance on the extent to which discretion over the determination of tax liabilities may be exercised.

No.

2.2 Administrative issues

(A) How is your tax authority organised in relation to giving rulings? Does one inspector deal with all aspects of a business tax affairs (including payroll and social security taxes, and VAT)?

There is no special structure in our tax administration dealing with rulings, in fact different institutions deals with the above mentioned issues:

- tax authorities provide statements on tax treatment in specific situations (see General Comments above);
- The Free Port authority and The Special Economic Zone authority deal with the issues related to Free Ports and Special Economic Zones (see 2.1. above);
- local governments deal with issues related to immovable property tax (see 2.1. above).

(B) Is there a national office dedicated to providing rulings, or are these given ad hoc by offices dealing with particular taxpayers or particular classes of companies? How is the national office involved in local decisions?

See answer to (A) above.

(C) Are there regional or local offices dealing, e.g., with particular businesses, regional incentives or with local taxes?

See answer to (A) above.

(D) Are there restrictions on the taxes to which rulings can apply, or applied in practice?

See answer to 2.1. above.

2.3 The effect of rulings

(A) Are rulings or other agreements with tax authorities binding on the tax authority and the taxpayer?

A statement is binding on the tax authority (see General Comments above). But the applicant taxpayer is, in principle, not bound by a statement. This implies that he is still free not to complete or start the transaction described in the statement.

(B) Do rulings last for a specific period of time?

A statement relates to a particular situation, certificates that entitle companies to the tax benefits of the particular Free Port or Special Economic Zone are issued for a specific period and immovable property tax reductions is in force until local government's binding regulations apply.

(C) Can the tax authority withdraw a ruling once agreed?

No.

(D) What other restrictions can be applied to rulings?

No other restrictions apply.

In the following questions (3, 4, 5 and 6), replies should deal particularly with circumstances in which the ruling produces a tax result different from that which might apply on a strict application of the law.

3. Rulings for particular companies or classes of business

3.1 Whether a company is within the charge to tax.

(A) Is it possible to agree that particular companies are not within the scope of a particular tax, for instance by agreeing that they should be treated as non-resident?

No.

3.2 Rulings on whether a permanent establishment exists.

(A) Is it possible to agree that an activity carried on in your territory by a non-resident company should not be treated as a taxable branch, agency or permanent establishment?

If under the criteria set in the Law on Taxes and Fees, a non-resident has a permanent establishment in Latvia (and accordingly is subject to taxation on profits attributable to the permanent establishment), it is not possible to agree that the presence in Latvia should not be treated as a permanent establishment. However, it is possible to ask the tax authority to issue an advance statement on the existence of a permanent establishment in a particular situation described in detail in the request for a statement (see General Comments above).

(B) Is it possible to agree in your territory that some income attributable to business, or a branch, located elsewhere is outside the scope of tax either on a permanent basis or on a 'holiday' basis?

No.

3.3 Particular businesses

(A) Are there specific classes of business for which it is possible to agree a particular basis of taxation? [e.g. finance companies, or shipping businesses]

There is a so called “tonnage tax” regime that, as an alternative to generally applicable corporate income tax, is available to shipping companies in respect of their income from the operation of ships in international traffic. But it is not possible to agree on a tonnage taxpayer status as the tonnage tax regime is granted under a standard procedure set by the Cabinet of Ministers. Any company applying for this tax regime must fulfil the standard procedure and submit all necessary documentation necessary to fulfil the procedure set by the Cabinet of Ministers.

4. Rulings as to amount of profits

4.1 Agreements on the amount of taxable income

(A) Can the level of profit of any class of business or company be agreed in advance? If so, on what basis?

No.

(B) Is it ever possible to agree a basis of taxation which differs materially either from the rules provided by statute or from the accounts basis of taxation?

Local governments are entitled by law to grant immovable property tax reductions (see 2.1. above).

(C) Is it possible to agree “costs plus” arrangements in your territory, whereby taxable profits can be determined as a basis of the costs of a business, irrespective of its actual income? In applying a “costs plus” basis, is it possible to agree to keep agreed costs out of the local territory so reducing the costs by reference to which the taxable profits are calculated.

No, there is no such a possibility under the Latvian law.

4.2 Rulings for special regimes.

(A) Where special tax regimes exist, (e.g. for investment in regeneration areas,) or for particular classes of activity, is there a special procedure for obtaining tax rulings, either on whether a business can benefit from the special regime, or on the amount of taxable profits which will benefit?

No, there is not a special procedure for obtaining tax rulings. Investors wishing to operate in the Free Port or in the Special Economic Zone must establish a Free Port company or Special Economic Zone company, which can be either a joint stock company or a limited liability company established under Latvian law. There is a special procedure how to acquire a status of a Free Port company or Special Economic Zone company.

4.3 Rulings on deductible expenses

(A) Is it possible to agree that particular classes of expenses (which would not otherwise be tax deductible) will be tax deductible?

No.

(B) Is it possible to agree that provided a certain level of taxable profits is achieved, the deductibility of expenses in excess of that figure will not be challenged?

No.

4.4 Particular activities

(A) Are there 'agreed' or customary levels of profit which are acceptable for particular activities?

No.

5. Miscellaneous

5.1 Are there any other administrative practices or tax rulings which are operated in your territory which might influence the location of business?

No.

5.2 Are there any other general comments you wish to make about administrative practices in your territory?

No.

5.3 From your experience and knowledge of other territories in the EU, do you think that your territory offers a more or less flexible approach to agreeing taxable profit than other countries?

In our view, Latvia takes a rather rigid approach, if compared with other EU member states, as there is no possibility to agree on individual adjustments of taxable profits. All above mentioned adjustments and reliefs can be granted under the generally applicable requirements.

5.4 Are you aware of practices operated in other EU territories, details of which should be included in our report?

We have not analyzed practices of other EU member states. Our evaluation in 5.3. is based on our conclusion that rulings system as such does not exist in Latvia.

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

NIL	1 to 5	6 to 25	26 to 100	More than 100
X				

How many rulings have been issued for finance and other types of holding companies?

NIL	1 to 5	6 to 25	26 to 100	More than 100
X				

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
X				

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
X				

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

No.

SECTION 3 Transparency and Information Exchange

Could you provide information on the level of transparency a ruling has in your state?

See SECTION 2 above.

Published	Published but in an anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy
-	-	-	-	-

Could you please describe the approach your state would be prepared to apply regarding rulings:

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

Such information could be exchanged only in accordance with the provisions of the Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation or under the double tax treaties concluded between the EU member states.

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies' resident in the Community and on b) investment decisions by third country investors?

Such information has not been compiled, but it can be assumed that more favourable provisions on rulings in other EU member states may have an impact on company's relocation (in comparison with Latvia, where no system of rulings exists).

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

No other aspects of administrative practices of other EU member states have been analyzed.

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

The report is concerned only with the exercise of discretions, and the operation of extra-statutory practices operated by your tax authority. There is no requirement to describe details of statutory provisions, although some explanation of these may be needed in order to explain the operation of particular practices.

SECTION 1

General Comments

It would be helpful to provide a short introduction describing in general terms the prevailing 'culture' in your territory in relation to tax matters, in particular covering the relative importance to businesses of tax rulings.

There is no tax ruling institute in Lithuanian tax law or administrative practice. Tax administration issues general commentaries of tax law (central tax administrator) or consultations on specific situations, how the law should be applied (local tax administrators). For the purpose of educating, consulting and controlling the taxpayers on issues relating to the payment of taxes, the tax administrator must take into account the general commentaries of the relevant tax law. The commentaries and consultations are not binding to a tax payer. If a commentary or a consultation proves to be misleading and taxpayer followed it, he might be exempt from fines and late payment interest, but it does not affect his obligations to pay taxes as set by the law.

It is foreseen to introduce tax rulings and advanced pricing agreements programme in Lithuania from 2011.

Specific Questions

1. Preliminary and general issues

1.1 General approach.

(A) Please describe the way in which businesses and tax advisers setting up in your country approach tax planning. Do businesses and their advisers normally rely on advice as to the tax position or is it customary to approach the tax authorities for agreement on the tax status and treatment of new businesses or companies?

Lithuanian tax law or administrative practice does not foresee any agreements on the tax status or treatment of businesses or companies.

(B) Is there any obligation on a new company or business to discuss its tax position with the tax authorities, either in advance of setting up, or on an ongoing basis, beyond the ordinary obligation to file returns and pay tax?

No.

(C) Please give a general indication of the degree of discretion exercised by the tax authority in agreeing tax computations whether or not in advance. [This question seeks general information only - specific details are requested below].

When a dispute occurs, tax administrator and a taxpayer may conclude an agreement regarding taxes and related amounts, provided that for the purpose of calculating taxes neither of the parties has sufficient evidence to substantiate their calculations. After having signed such an agreement, the taxpayer shall lose the right to dispute the correctness of tax calculation and the tax administrator shall lose the right to calculate an amount larger than specified in the agreement. The aforementioned agreement may be signed in the course of a tax inspection or tax investigation as well as during all of the stages of the settlement of tax disputes. Such agreements do not change taxation rules set by the tax laws.

(D) In what proportion of inward investment transactions are the tax authorities likely to be involved in advance of the commencement of the project? What are the principal reasons for seeking to involve the tax authorities?

None.

1.2 Tax rulings with collateral agreements

(A) Are there circumstances in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc?

N/A

2. Structural issues

2.1 Legal basis for tax rulings:

(A) Is there specific legislation providing for tax rulings or other similar advance agreement in relation to the level of taxation, or tax treatment? [The response to this question should not deal with Advance Pricing Agreements in relation to transfer pricing, which are dealt with at question 6 below.]

No.

If approved, certain amendments of Law on tax administration, introducing possibilities to obtain a tax ruling on tax treatment of certain tax payer's operations would come into force from 1 January 2011.

(B) Is there any constitutional or administrative law relevant to rulings?

N/A

(C) In the absence of specific legislation, is there any published guidance on the extent to which discretion over the determination of tax liabilities may be exercised.

No.

2.2 Administrative issues

(A) How is your tax authority organised in relation to giving rulings? Does one inspector deal with all aspects of a business tax affairs (including payroll and social security taxes, and VAT)?

N/A

(B) Is there a national office dedicated to providing rulings, or are these given ad hoc by offices dealing with particular taxpayers or particular classes of companies? How is the national office involved in local decisions?

See general comments.

If general commentary does not give answer in a specific situation, local tax administrator may address central tax administrator.

(C) Are there regional or local offices dealing, e.g., with particular businesses, regional incentives or with local taxes?

No.

(D) Are there restrictions on the taxes to which rulings can apply, or applied in practice?

See general comments.

In drafts foreseen, that tax rulings could include tax treatment issues only (not the level of taxation).

2.3 The effect of rulings

(A) Are rulings or other agreements with tax authorities binding on the tax authority and the taxpayer?

See general comments.

Foreseen to be binding only on tax authorities.

(B) Do rulings last for a specific period of time?

See general comments.

In drafts - no strict time limit. Ruling would be valid until the legislation concerned or general commentary of the law is changed.

(C) Can the tax authority withdraw a ruling once agreed?

See general comments.

(D) What other restrictions can be applied to rulings?

See 2.3 (B)

In the following questions (3, 4, 5 and 6), replies should deal particularly with circumstances in which the ruling produces a tax result different from that which might apply on a strict application of the law.

3. Rulings for particular companies or classes of business

3.1 Whether a company is within the charge to tax.

(A) Is it possible to agree that particular companies are not within the scope of a particular tax, for instance by agreeing that they should be treated as non-resident?

No. See general comments.

3.2 Rulings on whether a permanent establishment exists.

(A) Is it possible to agree that an activity carried on in your territory by a non-resident company should not be treated as a taxable branch, agency or permanent establishment?

No. See general comments.

(B) Is it possible to agree in your territory that some income attributable to business, or a branch, located elsewhere is outside the scope of tax either on a permanent basis or on a 'holiday' basis?

No. See general comments.

3.3 Particular businesses

(A) Are there specific classes of business for which it is possible to agree a particular basis of taxation? [e.g. finance companies, or shipping businesses]

No agreements can be made. All basis of taxation is set by the law (e.g. tonnage tax scheme).

4. Rulings as to amount of profits

4.1 Agreements on the amount of taxable income

(A) Can the level of profit of any class of business or company be agreed in advance? If so, on what basis?

No.

Draft legislation does not foresee that possibility.

(B) Is it ever possible to agree a basis of taxation which differs materially either from the rules provided by statute or from the accounts basis of taxation?

No. See 1.1.C.

(C) Is it possible to agree 'costs plus' arrangements in your territory, whereby taxable profits can be determined as a basis of the costs of a business, irrespective of its actual income? In applying a 'costs plus' basis, is it possible to agree to keep agreed costs out of the local territory so reducing the costs by reference to which the taxable profits are calculated.

No.

4.2 Rulings for special regimes.

(A) Where special tax regimes exist, (e.g. for investment in regeneration areas,) or for particular classes of activity, is there a special procedure for obtaining tax rulings, either on whether a business can benefit from the special regime, or on the amount of taxable profits which will benefit?

No.

4.3 Rulings on deductible expenses

(A) Is it possible to agree that particular classes of expenses (which would not otherwise be tax deductible) will be tax deductible?

No.

(B) Is it possible to agree that provided a certain level of taxable profits is achieved, the deductibility of expenses in excess of that figure will not be challenged?

No.

4.4 Particular activities

(A) Are there 'agreed' or customary levels of profit which are acceptable for particular activities?

No.

5. Miscellaneous

5.1 Are there any other administrative practices or tax rulings which are operated in your territory which might influence the location of business?

No.

5.2 Are there any other general comments you wish to make about administrative practices in your territory?

Before official approval by Ministry of Finance, all drafts of general tax law commentaries, prepared by central tax administration, are announced for public consideration. All suggestions and remarks are analysed by central tax administration and Ministry of Finance.

5.3 From your experience and knowledge of other territories in the EU, do you think that your territory offers a more or less flexible approach to agreeing taxable profit than other countries?

There are no possibilities to agree on taxable profits in advance in Lithuania.

5.4 Are you aware of practices operated in other EU territories, details of which should be included in our report?

No.

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:

Zero.

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

NIL	1 to 5	6 to 25	26 to 100	More than 100
X				

How many rulings have been issued for finance and other types of holding companies?

NIL	1 to 5	6 to 25	26 to 100	More than 100
X				

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
X				

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
X				

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

No.

SECTION 3 Transparency and Information Exchange

Could you provide information on the level of transparency a ruling has in your state?

Published	Published but in an anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy

See general comments.

Could you please describe the approach your state would be prepared to apply regarding rulings:

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

As at the moment there are only draft proposals on ruling legislation itself, no consideration on this issue is made yet.

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

As at the moment there are only draft proposals on ruling legislation itself, no consideration on this issue is made yet.

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

-

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

Certain practices of fiscal authorities of different Member States might be a concerning issue in the context of tax competition between Member States, however due to lack of experience in this field, shortage of information on most common practices in Member states that have rulings and their actual effects, it is hard to draw any specific conclusions.

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

No issues identified at the moment.

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

The report is concerned only with the exercise of discretions, and the operation of extra-statutory practices operated by your tax authority. There is no requirement to describe details of statutory provisions, although some explanation of these may be needed in order to explain the operation of particular practices.

Luxembourg

SECTION 1 Update of country reports

Could you provide a one to two page summary of the changes in the tax policy of your state in the area of rulings?

Since the last report dated August 1999 Luxembourg has not modified the practices relating to advanced tax agreements.

Have there been significant changes to the administrative practice in your state as compared to the description in the country report concerning:

- The legal basis for tax rulings
- Administrative issues
- The effect of rulings

No

It has to be noted that the figures in section 2 relate exclusively to the confirmation by the tax authority of a given legal situation, without derogatory tax treatment nor discretion reserved to the tax authorities in relation to tax computation.

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]: Period of reporting is 2008

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

NIL	1 to 5	6 to 25	26 to 100	More than 100
	x			

How many rulings have been issued for finance and other types of holding companies?

NIL	1 to 5	6 to 25	26 to 100	More than 100
			x	

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
	x			

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
	X			

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

No
 Please refer to the Simons&Simons report for further explanations.

SECTION 3 Transparency and Information Exchange

Could you provide information on the level of transparency a ruling has in your state?

Published	Published but in an anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy
			X	

Could you please describe the approach your state would be prepared to apply regarding rulings:

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

Luxembourg is willing to contribute to a European solution in this respect. Our preference would be to exchange upon request in anonymized form, on the basis of reciprocity.

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

Please refer to the answer above

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

Please refer to the answer above

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors? [To be discussed by the Group.](#)

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group? [To be discussed by the Group.](#)

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

SECTION 1

General Comments

It would be helpful to provide a short introduction describing in general terms the prevailing 'culture' in your territory in relation to tax matters, in particular covering the relative importance to businesses of tax rulings,

Specific Questions

1. Preliminary and general issues

1.1 General approach.

(A) Please describe the way in which businesses and tax advisers setting up in your country approach tax planning. Do businesses and their advisers normally rely on advice as to the tax position or is it customary to approach the tax authorities for agreement on the tax status and treatment of new businesses or companies?

Businesses and their advisers normally rely on advice as to the tax position. However, tax authorities are approached for agreement on the interpretation of applicable tax legislation and treatment of new businesses or companies.

(B) Is there any obligation on a new company or business to discuss its tax position with the tax authorities, either in advance of setting up, or on an ongoing basis, beyond the ordinary obligation to file returns and pay tax?

No.

(C) Please give a general indication of the degree of discretion exercised by the tax authority in agreeing tax computations whether or not in advance. [This question seeks general information only - specific details are requested below].

There is no such discretion. The relevant tax computation cannot vary from the applicable provisions found in income tax law.

(D) In what proportion of inward investment transactions are the tax authorities likely to be involved in advance of the commencement of the project? What are the principal reasons for seeking to involve the tax authorities?

Statistics which would enable such an estimate are not available.

1.2 Tax rulings with collateral agreements

(A) Are there circumstances in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc?

No.

2. Structural issues

2.1 Legal basis for tax rulings:

(A) Is there specific legislation providing for tax rulings or other similar advance agreement in relation to the level of taxation, or tax treatment? [The response to this question should not deal with Advance Pricing Agreements in relation to transfer pricing, which are dealt with at question 6 below.]

Yes. Article 52 of the Income Tax Act (Cap. 123) specifies the circumstances in which an advance ruling concerning the tax treatment (but not the level of taxation) may be issued.

(B) Is there any constitutional or administrative law relevant to rulings?

No.

(C) In the absence of specific legislation, is there any published guidance on the extent to which discretion over the determination of tax liabilities may be exercised.

N/A

2.2 Administrative issues

(A) How is your tax authority organised in relation to giving rulings? Does one inspector deal with all aspects of a business tax affairs (including payroll and social security taxes, and VAT)?

Each Department / Division (such as, social security, VAT, Income Tax and so on) is responsible for giving any rulings that are allowed under the respective legislation.

(B) Is there a national office dedicated to providing rulings, or are these given ad hoc by offices dealing with particular taxpayers or particular classes of companies? How is the national office involved in local decisions?

The Commissioner of Inland Revenue, or any official delegated by the said Commissioner to that effect, may issue such rulings.

(C) Are there regional or local offices dealing, e.g., with particular businesses, regional incentives or with local taxes?

No.

(D) Are there restrictions on the taxes to which rulings can apply, or applied in practice?

No.

2.3 The effect of rulings

(A) Are rulings or other agreements with tax authorities binding on the tax authority and the taxpayer?

Rulings issued under Article 52 of the Income Tax Act (Cap. 123) are legally binding on the tax authority.

(B) Do rulings last for a specific period of time?

Rulings issued under Article 52 of the Income Tax Act (Cap. 123) last for 5 years.

(C) Can the tax authority withdraw a ruling once agreed?

The tax authority can withdraw a ruling once agreed only if there are material changes.

(D) What other restrictions can be applied to rulings?

N/A

In the following questions (3, 4, 5 and 6), replies should deal particularly with circumstances in which the ruling produces a tax result different from that which might apply on a strict application of the law.

3. Rulings for particular companies or classes of business

3.1 Whether a company is within the charge to tax.

(A) Is it possible to agree that particular companies are not within the scope of a particular tax, for instance by agreeing that they should be treated as non-resident?

No.

3.2 Rulings on whether a permanent establishment exists.

(A) Is it possible to agree that an activity carried on in your territory by a non-resident company should not be treated as a taxable branch, agency or permanent establishment?

No.

(B) Is it possible to agree in your territory that some income attributable to business, or a branch, located elsewhere is outside the scope of tax either on a permanent basis or on a 'holiday' basis?

No.

3.3 Particular businesses

(A) Are there specific classes of business for which it is possible to agree a particular basis of taxation? [e.g. finance companies, or shipping businesses]

No.

4. Rulings as to amount of profits

4.1 Agreements on the amount of taxable income

(A) Can the level of profit of any class of business or company be agreed in advance? If so, on what basis?

No.

(B) Is it ever possible to agree a basis of taxation which differs materially either from the rules provided by statute or from the accounts basis of taxation?

No.

(C) Is it possible to agree costs plus arrangements in your territory, whereby taxable profits can be determined as a basis of the costs of a business, irrespective of its actual income? In applying a costs plus basis, is it possible to agree to keep agreed costs out of the local territory so reducing the costs by reference to which the taxable profits are calculated.

Cost plus arrangements are technically possible in a transfer pricing context only. It is not possible to agree to keep agreed costs out of the Maltese territory so reducing the costs by reference to which the taxable profits are calculated.

4.2 Rulings for special regimes.

(A) Where special tax regimes exist, (e.g. for investment in regeneration areas,) or for particular classes of activity, is there a special procedure for obtaining tax rulings, either on whether a business can benefit from the special regime, or on the amount of taxable profits which will benefit?

No.

4.3 Rulings on deductible expenses

(A) Is it possible to agree that particular classes of expenses (which would not otherwise be tax deductible) will be tax deductible?

No.

(B) Is it possible to agree that provided a certain level of taxable profits is achieved, the deductibility of expenses in excess of that figure will not be challenged?

No.

4.4 Particular activities

(A) Are there 'agreed' or customary levels of profit which are acceptable for particular activities?

No.

5. Miscellaneous

5.1 Are there any other administrative practices or tax rulings which are operated in your territory which might influence the location of business?

No.

5.2 Are there any other general comments you wish to make about administrative practices in your territory?

No.

5.3 From your experience and knowledge of other territories in the EU, do you think that your territory offers a more or less flexible approach to agreeing taxable profit than other countries?

It is felt that Malta offers a less flexible approach.

5.4 Are you aware of practices operated in other EU territories, details of which should be included in our report?

No.

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:

Note: Malta only has data available on rulings issued in the last year.

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

NIL	1 to 5	6 to 25	26 to 100	More than 100
✓				

How many rulings have been issued for finance and other types of holding companies?

Note: Rulings dealt with interpretation of the relevant income tax rules only.

NIL	1 to 5	6 to 25	26 to 100	More than 100
		✓		

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
✓				

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
✓				

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

Note: None are connected to employment of individuals.

SECTION 3 Transparency and Information Exchange

Could you provide information on the level of transparency a ruling has in your state?

Published	Published but in anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy
			✓ (on request)	

Could you please describe the approach your state would be prepared to apply regarding rulings:

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

Yes. Copies are provided on request only.

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

Yes. Copies are provided on request only.

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

Yes. Copies are provided on request regardless of amounts involved.

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

Malta does not give too much importance to the question of relocation effects provided that there is a transparent framework. On the other hand, on the basis of feedback received, Malta does give importance to the effect of rulings on the question of investment decisions by third country investors.

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

No.

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

The report is concerned only with the exercise of discretions, and the operation of extra-statutory practices operated by your tax authority. There is no requirement to describe details of statutory provisions, although some explanation of these may be needed in order to explain the operation of particular practices.

Section 1 Update of country reports

Could you provide a one to two page summary of the changes in the tax policy of your state in the area of rulings?

Have there been significant changes to the administrative practice in your states as compared to the description in the country report concerning:

- **The legal basis for tax rulings**
- **Administrative issues**
- **The effect of rulings**

As set out in the general remarks of the administrative practice questionnaire the report only concerns rulings which are likely to distort the location of business. Please note that Dutch rulings do not have this assumed favourable character. As a result, our reply to below mentioned questions does not concern rulings that (could) distort the location of business.

In 2001 the Dutch government transformed the Dutch ruling practice into an APA/ATR practice in accordance with OECD standards. On 30 March 2001 the Dutch State Secretary issued some decrees, in which the Dutch APA/ATR practice is described. At that time the Code of Conduct Group was informed accordingly.

With respect to the administrative issues of tax rulings, there are no changes compared to our answer in the country report.

Section 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years (or, if this data is not available for this period, information on the rulings issued in the last year):

As the Dutch Tax Authorities pointed out in the answers of the 1999 questionnaire, the term “ruling” to be used in the report is overly broad, at least for Dutch tax purposes. The answers given below only refer to APA’s and ATR’s.

According to the Dutch Tax Authorities an advance pricing agreement (APA) provides advance certainty on the determination of an arm’s length price or a method for the determination of such a price for cross-border transactions (goods and services) between associated entities and between different parts of the same entity.

An Advance Tax Ruling provides certainty on the Dutch tax consequences of (an) intended transaction(s).

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exist?

<i>NIL</i>	<i>1 to 5</i>	<i>6 to 25</i>	<i>26 to 100</i>	<i>More than 100</i>

How many rulings have been issued for finance and other types of holding companies?

<i>NIL</i>	<i>1 to 5</i>	<i>6 to 25</i>	<i>26 to 100</i>	<i>More than 100</i>

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and development activities)?

<i>NIL</i>	<i>1 to 5</i>	<i>6 to 25</i>	<i>26 to 100</i>	<i>More than 100</i>

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

<i>NIL</i>	<i>1 to 5</i>	<i>6 to 25</i>	<i>26 to 100</i>	<i>More than 100</i>

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or the carry on business for an agreed period, etc.

The Dutch Tax Authorities are not able to answer the above mentioned questions, because the data are not available. However, we can affirm that for the year 2008 206 APA's and 498 ATR's were issued.

Section 3 Transparency and information exchange

Could you provide information on the level of transparency a ruling has in your state?

Published	Published but in an anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy
		X*	X	

* It should be noticed that not the ruling itself is published, but the tax policy how our tax law has to be interpreted with regard to specific factual situations of the taxpayer. The aim of publication is that all tax payers are informed how tax laws are applied in order to establish equal treatment of similar situations.

Could you please describe the approach your state would be prepared to apply regarding rulings:

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

Are you prepared to provide copies of rulings to certain Member States in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

How would your state view the opinion to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

The Dutch Tax Authorities are willing to provide copies on request on the basis of bilateral treaties.

Section 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

As long as administrative practices are in line with legislation, tax competition is out of the question.

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

Section 1 General Comments

Polish tax law provides the institution of official interpretation of tax law in individual cases, however this instrument substantially differs from the tax rulings being subject of the Administrative Practice Questionnaire. According to the Polish General Tax Law (Ustawa z dnia 29 sierpnia 1997 r., Ordynacja Podatkowa (Dz.U. z 2005r. Nr 8, poz. 60 ze zm.) every person interested in obtaining official interpretation in the scope of the tax law in force, in his individual case may apply for such interpretation. The application may submit every person, to whom certain facts that may have consequences in the area of tax law, have already occurred or will occur. The applicant is obliged to present in his application an exhausting description of the facts of the case as well as his own position and evaluation of the legal situation. The authority is obliged to issue the official interpretation within three months from submitting the application by the person interested in it. If the authority fails to keep the three month deadline the position and evaluation of the legal situation presented by the applicant is passively approved by the authority and enters into force in his case. The interpretation is issued on behalf on Minister of Finance by his authorised representatives who are the directors of selected four Tax Chambers. Within those Tax Chambers, National Tax Information Offices were organised, which specialise in issuing official tax interpretations in individual cases.

Although official tax interpretations in individual cases have legal consequences they do not determine the level of tax due to pay.

The application for official tax interpretation is chargeable. The fee in amount of 40 PLN shall be payable within 7 days from submitting the application.

1. Preliminary and general issues

1.1 General approach.

(A)

Tax payers and tax advisers often apply for official interpretations in individual cases however, as mentioned before, such interpretations do not determine the level of tax liability and the tax computations. Official interpretations concern only tax laws and tax provisions.

(B)

There is no obligation on a new company or business to discuss its tax position with the tax authorities, beyond the ordinary obligation to file returns and to pay tax.

(C)

There is no possibility of any discretion exercised by the tax authority, every official interpretation in individual case shall be issued upon tax provisions.

(D)

There is no data available.

1.2 Tax rulings with collateral agreements

Obtaining an official interpretation does not depend on any commitments in any case.

2.

2.1

(A)

Act on General Tax Law (Ustawa z dnia 29 sierpnia 1997 r. Ordynacja podatkowa (Dz.U. z 2005r. Nr 8, poz. 60 ze zm.)) provides for official interpretation of tax law in individual cases in the relation to tax treatment.

(B)

There is no constitutional law or administrative law relevant to official interpretation of tax law in individual cases.

(C)

There is no guidance on the extent to which discretion over the determination of tax liabilities may be exercised since there is any possibility of the discretion. The tax authorities, issuing the official interpretation of tax law in individual cases must strictly apply the tax law.

2.2 Administrative issues

(A)

The interpretation is issued by the Minister of Finance. Nevertheless he delegated his powers to his authorised representatives who are the directors of selected four Tax Chambers. There have been organised National Tax Information Offices within the selected Tax Chambers that specialise in issuing official tax interpretations in individual cases in all tax affairs the national Tax Information offices deal with all kinds of requests for interpretation including all taxes except of local taxes.

(B)

There is no national office as an authority dedicated to provide rulings. All interpretations are given by the Minister of Finance or his authorized representatives. The minister and the directors of tax chambers are not involved in local tax decisions.

(C)

In regard to local taxes, official interpretations are given by local government authorities.

(D)

Official interpretations concern only tax laws and tax provisions.

2.3 The effect of rulings

(A)

Official interpretations are a tool that was created to protect the rights of the taxpayer. Therefore they are not binding on the applicant but just on the tax authorities.

Official interpretations are binding on the tax authorities, but to certain extend only. Any interpretation may be amended or repealed at any time by the tax authority, as well as in any time a different tax decision to the interpretation may be issued. In those situations however the rights of the taxpayer are protected. The same protection is foreseen in the case of the above mentioned so called passive approvals. The penal – fiscal liability of the taxpayer is excluded as well as his obligation to pay the penalty interest. In the case of a proper compliance of the taxpayer to the official interpretation, which has been later amended, the taxpayer is excluded from the obligation to pay taxes in the scope of the event that was subject of the interpretation.

(B)

Official interpretations are not subject to any restrictions in the scope of lasting for a specific period of time.

(C)

The tax authorities are not authorized to withdraw an official interpretation once issued, however they are authorized to amend or repeal it as it was described above.

(D)

The official interpretations may be repealed by administrative courts.

The answer for questions 3,4,5 and 6 are not provided since there is no possibility that an official interpretation will produce a tax result different from the strict application of the law.

SECTION 2 Information on the type and number of specific rulings

The system of official interpretations of tax law in individual cases was launched in the form as it works today on 1st July 2007. Official interpretations became a very popular instrument among taxpayers. Since the introduction of the instrument until September 2009, - **44 159** interpretations were given. A great number of interpretations was given in the scope of VAT tax – **20 313** and PIT – **14 292**. Because of the great number of interpretations and no data concerning the type and number of specific interpretations the precise answer to Section 2 is not given.

SECTION 3 Transparency and Information Exchange

Since 1st July 2007, **44 159** official interpretations were published in anonymous form on the competent tax authorities website.

Poland is prepared to provide copies of official interpretations to certain Member States in cases of interpretations with a link to another Member State, in a specific case on request.

The official interpretations in cases with significant amounts involved are subject to the same rules as mentioned above.

SECTION 4 Impact of rulings on tax competition

The official interpretations are generally viewed as a positive instrument. Since it was introduced it became very popular and often used by taxpayers. The official interpretations do increase the security of investments and understanding of tax law. Additionally it is viewed as an useful tool to reduce tax risks.

SECTION 1 Update of country reports

Could you provide a one to two page summary of the changes in the tax policy of your state in the area of rulings?

If the term “tax ruling”, even when interpreted with a wide meaning, is intended to include “any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling” (in General remarks), namely if these administrative practices are likely to distort the location of business and the tax competition, we can state that, in general terms, the Portuguese Tax Authorities do not have the power to enter into agreements or negotiated settlements with the taxpayers.

Also, in Portugal the Tax Authorities are not allowed any degree of discretion in agreeing tax computations of any taxpayer or business operation. Instead, the Tax Authorities will interpret the prevailing legislation and apply it to specific situations if complex tax matters are involved. Also, the taxpayers may require a binding ruling (“informação vinculativa”) or the interpretation from the competent Tax Authorities to ensure their understanding of the tax status and tax treatment applicable is correct.

In accordance with the General Taxation Law (Lei Geral Tributária) (articles 59, 67, 68 and 68-A) as well as under the rules recently reinforced in the State Budget 2009 (Law nr. 64-A/2008, of 31 December), namely in terms of expeditious examination of a request for clarification and delays for prompt reply, the cooperation between the Tax Administration and taxpayers includes, in particular: i) ordinary and systematic public information on their rights and duties; ii) ordinary publication of general guidelines adopted on the interpretation of tax rules; iii) assistance needed for complying with any ancillary duty; iv) binding information on a tax situation; and v) ordinary timely clarification of well-grounded doubts on the interpretation and application of tax rules. Taxpayers are entitled to be informed on their effective tax situation, and the Tax Administration is bound by information given in writing, as well as by broad guidelines included in information circular letters on the interpretation of standards in force.

Have there been significant changes to the administrative practice in your state as compared to the description in the country report concerning:

- **The legal basis for tax rulings**
- **Administrative issues**
- **The effect of rulings**

Please see above commentaries.

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:

According to the above answer, there are no such specific rulings in Portugal.

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for finance and other types of holding companies?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

NIL	1 to 5	6 to 25	26 to 100	More than 100

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

SECTION 3 Transparency and Information Exchange

Could you provide information on the level of transparency a ruling has in your state?

Please see above commentaries.

Published	Published but in an anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy

Could you please describe the approach your state would be prepared to apply regarding rulings:

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

Portugal considers that in an analysis of the tax practices in the different Member States the criteria enshrined in the Code of Conduct should continue to be applied, among which the transparency criterion designed to establish “whether the tax measures lack of transparency, including where legal provisions are relaxed at administrative level in a non-transparent way”.

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

SECTION 1

General Comments

It would be helpful to provide a short introduction describing in general terms the prevailing 'culture' in your territory in relation to tax matters, in particular covering the relative importance to businesses of tax rulings,

Specific Questions

1. Preliminary and general issues

1.1 General approach.

(A) Please describe the way in which businesses and tax advisers setting up in your country approach tax planning. Do businesses and their advisers normally rely on advice as to the tax position or is it customary to approach the tax authorities for agreement on the tax status and treatment of new businesses or companies?

(companies and tax advisers established in Romania can contact the local fiscal office, where support services are available to taxpayers in order to clarify the issues relating to setting up an economic agent).

(B) Is there any obligation on a new company or business to discuss its tax position with the tax authorities, either in advance of setting up, or on an ongoing basis, beyond the ordinary obligation to file returns and pay tax? *(fiscal record – annex 2.2)*

(C) Please give a general indication of the degree of discretion exercised by the tax authority in agreeing tax computations whether or not in advance. [This question seeks general information only - specific details are requested below].

(the degree of discretion of tax authority is manifested by the confidential treatment of an economic agent, whose fiscal data are not disclosed to third parties, unless required by law);

(D) In what proportion of inward investment transactions are the tax authorities likely to be involved in advance of the commencement of the project? What are the principal reasons for seeking to involve the tax authorities?

1.2 Tax rulings with collateral agreements

(A) Are there circumstances in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc?

2. Structural issues

2.1 Legal basis for tax rulings:

(A) Is there specific legislation providing for tax rulings or other similar advance agreement in relation to the level of taxation, or tax treatment? [The response to this question should not deal with Advance Pricing Agreements in relation to transfer pricing, which are dealt with at question 6 below.]

(B) Is there any constitutional or administrative law relevant to rulings?

(C) In the absence of specific legislation, is there any published guidance on the extent to which discretion over the determination of tax liabilities may be exercised.

2.2 Administrative issues

(A) How is your tax authority organized in relation to giving rulings? Does one inspector deal with all aspects of a business tax affairs (including payroll and social security taxes and VAT)?

According to Art. 94 of the G.O. no. 92/2003 regarding the Fiscal Procedure Code, republished with amendments and additions, the subject of a fiscal inspection is " the verification of the legality and compliance of tax returns, the fairness and accuracy of liabilities fulfilment of the taxpayers, the compliance with fiscal legislation and accounting laws, the verification or determination, when needed, of the tax base, establishing the differences concerning the payment liabilities and their related accessories. Art. 94 of the G.O. no. 92/2003 regarding the Fiscal Procedure Code, republished with amendments and additions, stipulates that " all persons, regardless of their form of organization, are subject to fiscal inspection, if these persons have obligations of establishing, retention and payment of taxes, charges, contributions and other amounts owed to the general consolidated budget, as provided by law".

(B) Is there a national office dedicated to providing rulings, or are these given ad hoc by offices dealing with particular taxpayers or particular classes of companies? How is the national office involved in local decisions?

(C) Are there regional or local offices dealing, e.g., with particular businesses, regional incentives or with local taxes?

The National Agency for Tax Administration established a structure for big-size taxpayers and structures at the county level for medium-size taxpayers. The local taxes are administered by the local tax office of the Local Council.

(D) Are there restrictions on the taxes to which rulings can apply, or applied in practice?

2.3 The effect of rulings

(A) Are rulings or other agreements with tax authorities binding on the tax authority and the taxpayer?

(B) Do rulings last for a specific period of time?

(C) Can the tax authority withdraw a ruling once agreed?

(D) What other restrictions can be applied to rulings?

In the following questions (3, 4, 5 and 6), replies should deal particularly with circumstances in which the ruling produces a tax result different from that which might apply on a strict application of the law.

3. Rulings for particular companies or classes of business

3.1 Whether a company is within the charge to tax.

(A) Is it possible to agree that particular companies are not within the scope of a particular tax, for instance by agreeing that they should be treated as non-resident?

3.2 Rulings on whether a permanent establishment exists.

(A) Is it possible to agree that an activity carried on in your territory by a non-resident company should not be treated as a taxable branch, agency or permanent establishment?

Permanent residence is defined in Art. 8 of Law 571/2003 regarding the Fiscal Code, amended and supplemented, as being:

"(1) A place in which takes place entirely or partly the activity carried out by a non-resident, either directly or through a dependent agent.

(2) A permanent residence means either a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas pit, or other place of extraction of natural resources.

(3) A permanent residence means a building site, a construction, assembly or installation project or supervisory activities related to these, only if the site, project or activities last more than 6 months.

It is not considered a permanent residence "(6) (...) if only carries in Romania activities through a broker, agent, general commission agent or an intermediary having an independent status, if this activity is the normal activity of the agent as described in the setting-up documents. If such agent activities are carried out integrally or mostly on behalf of the non-resident, and within the commercial and financial relations between the non-resident and the agent there are conditions different from those which would exist between independent persons, the agent shall not be considered as agent of independent status. (7) A nonresident shall not be considered as having a permanent residence in Romania only if it is controlled or controls himself a resident or a person carrying out an activity in Romania through a permanent residence or otherwise. "

Also, according to art. 29 - "Permanent residence income" - of the Law 571/2003 regarding the Fiscal Code with amendments and additions, "(1) foreign legal persons operating through a permanent residence in Romania are required to pay income tax on the taxable profit which is the attribute of the permanent establishment. " For calculating the taxable income, the following will be taken into account:

a) only incomes that are the attribute of the permanent residence shall be included in taxable income;

b) only expenses made in order to obtain these revenues are included in deductible expenses.

(3) The taxable income of the permanent residence shall be determined by treating it as a separate person and by using transfer pricing rules to establish the market price of a transfer made between the foreign legal entity and its permanent residence. When the permanent residence does not have an invoice for the expenses allotted to itself by the head office, the other evidences must include proofs regarding the actual bearing of costs and reasonable allocation of these costs to the permanent establishment by the means of transfer pricing rules. "

(B) Is it possible to agree in your territory that some income attributable to business, or a branch, located elsewhere is outside the scope of tax either on a permanent basis or on a 'holiday' basis?

Some incomes of the company are considered as "outside the taxable area". These incomes are categorized in art. 20 and art. 20¹ of Law 571/2003 regarding the Fiscal Code with amendments and additions, as "non-taxable income"

3.3 Particular businesses

(A) Are there specific classes of business for which it is possible to agree a

4. Rulings as to amount of profits

4.1 Agreements on the amount of taxable income

(A) Can the level of profit of any class of business or company be agreed in advance? If so, on what basis?

Advance pricing agreements refer to setting-up the terms and means for calculating the transfer prices over a fixed period, in the case of transactions between affiliated persons. Within the advance pricing agreements, the level of profit for any type of activity is estimated based on an analysis. The legal base for advance pricing agreements is the art. 42 of G.O. no. 92/2003 regarding the Fiscal Procedure Code, republished with subsequent amendments and supplements, as well as Chapter II of the G.D. no. 529/2007 for approving the procedure for issuing anticipated individual fiscal solutions and advance pricing agreements.

(B) Is it ever possible to agree a basis of taxation which differs materially either from the rules provided by statute or from the accounts basis of taxation?

The tax base is set in compliance with the accounting rules.

(C) Is it possible to agree costs plus arrangements in your territory, whereby taxable profits can be determined as a basis of the costs of a business, irrespective of its actual income? In applying a costs plus basis, is it possible to agree to keep agreed costs out of the local territory so reducing the costs by reference to which the taxable profits are calculated.

To determine the transfer price the method used is "plus cost". To determine the market price, the method is based on increasing the costs with a profit margin corresponding to the taxpayer field of activity. The starting point for this method, in case of transfer of goods or services between affiliated persons, is the cost of the manufacturer or service provider. These costs are determined using the same method of calculation used by the person making the transfer for his pricing policy for independent persons. The amount to be added to the cost so determined will consider a profit margin corresponding to the taxpayer field of activity.

4.2 Rulings for special regimes.

(A) Where special tax regimes exist, (e.g. for investment in regeneration areas,) or for particular classes of activity, is there a special procedure for obtaining tax rulings, either on whether a business can benefit from the special regime, or on the amount of taxable profits which will benefit?

4.3 Rulings on deductible expenses

(A) Is it possible to agree that particular classes of expenses (which would not otherwise be tax deductible) will be tax deductible?

(B) Is it possible to agree that provided a certain level of taxable profits is achieved, the deductibility of expenses in excess of that figure will not be challenged?

4.4 Particular activities

(A) Are there 'agreed' or customary levels of profit which are acceptable for particular activities?

5. Miscellaneous

5.1 Are there any other administrative practices or tax rulings which are operated in your territory which might influence the location of business?

5.2 Are there any other general comments you wish to make about administrative practices in your territory?

5.3 From your experience and knowledge of other territories in the EU, do you think that your territory offers a more or less flexible approach to agreeing taxable profit than other countries?

5.4 Are you aware of practices operated in other EU territories, details of which should be included in our report?

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for finance and other types of holding companies?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

NIL	1 to 5	6 to 25	26 to 100	More than 100

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

SECTION 3 Transparency and Information Exchange

Could you provide information on the level of transparency a ruling has in your state?

Published	Published but in an anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy

The Romanian fiscal regulations, in terms of transparency, are public, as follows:

- *published in the Official Journal of Romania,*
- *fiscal regulations and fiscal forms list of direct interest for taxpayers are posted on the NATA portal.*

Also, the English translation of the most important acts regulating the fiscal domain (the Fiscal Code and the Fiscal Procedure Code, with their corresponding norms of application) can be found on this portal.

Could you please describe the approach your state would be prepared to apply regarding rulings:

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

The report is concerned only with the exercise of discretions, and the operation of extra-statutory practices operated by your tax authority. There is no requirement to describe details of statutory provisions, although some explanation of these may be needed in order to explain the operation of particular practices.

Slovak Republic

SECTION 1

General Comments

It would be helpful to provide a short introduction describing in general terms the prevailing 'culture' in your territory in relation to tax matters, in particular covering the relative importance to businesses of tax rulings,

In general, the income tax and its administration are in the Slovak Republic regulated by the Act No. 595/2003 of Coll. on Income Tax as later amended (hereinafter "Income Tax Act") and the Act No. 511/1992 of Coll. on Administration of Taxes and Fees and on Changes to the System of Regional Financial Bodies as later amended (hereinafter "Tax Administration Act").

The Income Tax Act provides two possibilities for a taxpayer to agree the way of taxation by a tax administrator.

- 1. According to Section 17 Para.7 of the Income Tax Act a taxpayer may request a tax administrator in written to approve a specific method of determination of the tax base of the permanent establishment (hereinafter "MDTB"). However, the approved method has to be in compliance with the Income Tax Act.*
- 2. According to Section 18 Para. 4 of the Income Tax Act a taxpayer may request a tax administrator in written to issue a decision on approval of specific method to be used for purposes of calculation of the difference between the prices used among related parties and prices used among unrelated parties in comparable business relations (APA).*

Whereas there is no other possibility to agree in advance tax treatment or tax computation, the following replies relate only to MDTBs and APAs, unless specified differently.

Specific Questions

1. Preliminary and general issues

1.1 General approach.

(A) Please describe the way in which businesses and tax advisers setting up in your country approach tax planning. Do businesses and their advisers normally rely on advice as to the tax position or is it customary to approach the tax authorities for agreement on the tax status and treatment of new businesses or companies?

- Taxpayers are interested in tax planning issues, however tax administration is involved in tax planning of taxpayers only in a very limited extent. Taxpayers and tax advisors extensively exploit a system of providing general information by tax administration. The Slovak Tax Administration has a developed supporting system for new taxpayers.*

(B) Is there any obligation on a new company or business to discuss its tax position with the tax authorities, either in advance of setting up, or on an ongoing basis, beyond the ordinary obligation to file returns and pay tax?

- *No, there is not such an obligation. However, based on the supporting system for new taxpayers, each new taxpayer receives basic tax information package and has a possibility to attend events organized by tax administration in order to provide this group of taxpayers with relevant information.*

(C) Please give a general indication of the degree of discretion exercised by the tax authority in agreeing tax computations whether or not in advance. [This question seeks general information only - specific details are requested below].

- *Tax authorities can only provide taxpayers with information on tax computation according to tax laws and cannot agree tax computation (except of APAs).*

(D) In what proportion of inward investment transactions are the tax authorities likely to be involved in advance of the commencement of the project? What are the principal reasons for seeking to involve the tax authorities?

- *A taxpayer has a possibility to consult necessary issues in advance of the commencement of the project. As mentioned above, the Slovak Tax Administration has a developed supporting system for new taxpayers. The principal reason for seeking tax authorities' involvement can be an increase of legal certainty or looking for optimal way of taxation.*

1.2 Tax rulings with collateral agreements

(A) Are there circumstances in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc?

- *No.*

2. Structural issues

2.1 Legal basis for tax rulings:

(A) Is there specific legislation providing for tax rulings or other similar advance agreement in relation to the level of taxation, or tax treatment? [The response to this question should not deal with Advance Pricing Agreements in relation to transfer pricing, which are dealt with at question 6 below.]

- *Except of APAs, a taxpayer can request tax administrator to agree MDTB.*

(B) Is there any constitutional or administrative law relevant to rulings?

- *No. APAs and possibility to agree MDTB are laid down in the Income Tax Act.*

(C) In the absence of specific legislation, is there any published guidance on the extent to which discretion over the determination of tax liabilities may be exercised.

- *N/A*

2.2 Administrative issues

(A) How is your tax authority organised in relation to giving rulings? Does one inspector deal with all aspects of a business tax affairs (including payroll and social security taxes, and VAT)?

- *There is not any special department within the Slovak Tax Administration dealing exclusively with rulings.*

(B) Is there a national office dedicated to providing rulings, or are these given ad hoc by offices dealing with particular taxpayers or particular classes of companies? How is the national office involved in local decisions?

- *No, there is not any special office dedicated to providing rulings. Rulings can be given by all tax offices to the taxpayers, who/which are in the regional competence of the particular tax office. The exception is the Tax Office for Selected Taxpayers, which administers selected taxpayers (banks, insurance companies and taxpayers with stated turnover).*

(C) Are there regional or local offices dealing, e.g., with particular businesses, regional incentives or with local taxes?

- *There are no local income taxes in the Slovak Republic. Local taxes in the Slovak Republic include real estate tax, dog tax, tax on the use of public areas, accommodation tax, vending machine tax, non-winning gaming machine tax, tax on the entering and parking of motor vehicles within the historical parts of towns, nuclear facility tax, fees for municipal waste and minor construction waste and motor vehicle tax. These local taxes are administered by the municipalities.*

(D) Are there restrictions on the taxes to which rulings can apply, or applied in practice?

- *Rulings can apply only to income tax.*

2.3 The effect of rulings

(A) Are rulings or other agreements with tax authorities binding on the tax authority and the taxpayer?

- *Yes. Rulings are in general binding on the tax authorities as well as the taxpayer, with the exception of the cases when rulings were issued based on inaccurate or incorrect data, or conditions on that the ruling was based have changed after the ruling was issued.*

(B) Do rulings last for a specific period of time?

- *If the tax administrator approves the MDTB, the method, proposed and justified by the taxpayer, shall apply for at least one tax period and cannot be changed during a tax year. APAs can be agreed for a period up to five tax years and can be, based on a taxpayer's written request, extended to another five tax years.*

(C) Can the tax authority withdraw a ruling once agreed?

- *Tax administrator has a right to withdraw, or amend, issued ruling, if it was issued on the bases of inaccurate or incorrect data, or conditions on that the ruling was based have changed after it was issued.*

(D) What other restrictions can be applied to rulings?

- *There are no other restrictions.*

In the following questions (3, 4, 5 and 6), replies should deal particularly with circumstances in which the ruling produces a tax result different from that which might apply on a strict application of the law.

3. Rulings for particular companies or classes of business

3.1 Whether a company is within the charge to tax.

(A) Is it possible to agree that particular companies are not within the scope of a particular tax, for instance by agreeing that they should be treated as non-resident?

- *No.*

3.2 Rulings on whether a permanent establishment exists.

(A) Is it possible to agree that an activity carried on in your territory by a non-resident company should not be treated as a taxable branch, agency or permanent establishment?

- *No, there are exact rules for determination, whether a non-resident company has, or has not, a permanent establishment in the territory of the Slovak Republic.*

(B) Is it possible to agree in your territory that some income attributable to business, or a branch, located elsewhere is outside the scope of tax either on a permanent basis or on a 'holiday' basis?

- *No.*

3.3 Particular businesses

(A) Are there specific classes of business for which it is possible to agree a particular basis of taxation? [e.g. finance companies, or shipping businesses]

- *No.*

4. Rulings as to amount of profits

4.1 Agreements on the amount of taxable income

(A) Can the level of profit of any class of business or company be agreed in advance? If so, on what basis?

- *No.*

(B) Is it ever possible to agree a basis of taxation which differs materially either from the rules provided by statute or from the accounts basis of taxation?

- *No.*

(C) Is it possible to agree "costs plus" arrangements in your territory, whereby taxable profits can be determined as a basis of the costs of a business, irrespective of its actual income? In applying a "costs plus" basis, is it possible to agree to keep agreed costs out of the local territory so reducing the costs by reference to which the taxable profits are calculated.

- *No. In case of MDTB, it is possible to approve method, for the purposes of determination of permanent establishment's tax base, which is based on costs.*

4.2 Rulings for special regimes.

(A) Where special tax regimes exist, (e.g. for investment in regeneration areas,) or for particular classes of activity, is there a special procedure for obtaining tax rulings, either on whether a business can benefit from the special regime, or on the amount of taxable profits which will benefit?

- *Special tax regime (Investment aid tax credit) has strict rules determining taxpayers allowed, and conditions that have to be met, to benefit from this regime.*

4.3 Rulings on deductible expenses

(A) Is it possible to agree that particular classes of expenses (which would not otherwise be tax deductible) will be tax deductible?

- *No.*

(B) Is it possible to agree that provided a certain level of taxable profits is achieved, the deductibility of expenses in excess of that figure will not be challenged?

- *No.*

4.4 Particular activities

(A) Are there 'agreed' or customary levels of profit which are acceptable for particular activities?

- *No.*

5. Miscellaneous

5.1 Are there any other administrative practices or tax rulings which are operated in your territory which might influence the location of business?

- *No.*

5.2 Are there any other general comments you wish to make about administrative practices in your territory?

- *No.*

5.3 From your experience and knowledge of other territories in the EU, do you think that your territory offers a more or less flexible approach to agreeing taxable profit than other countries?

- *N/A*

5.4 Are you aware of practices operated in other EU territories, details of which should be included in our report?

- *N/A*

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:

Since 1 January 2003 till 31 December 2008 Slovak tax administrators approved 41 MDTBs and 4 APAs related to EU MS.

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

NIL	1 to 5	6 to 25	26 to 100	More than 100
X				

How many rulings have been issued for finance and other types of holding companies?

NIL	1 to 5	6 to 25	26 to 100	More than 100
X				

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
X				

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
X				

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

- N/A

SECTION 3 Transparency and Information Exchange

Could you provide information on the level of transparency a ruling has in your state?

- *Approved MDTBs and APAs are not, due to the tax secrecy, publicly available. However these are available to competent authorities in compliance with tax administration laws.*

Published	Published but in anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy
				X

Could you please describe the approach your state would be prepared to apply regarding rulings:

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

- *The Slovak Republic exchange information on tax matters according to the Act No. 76/2007 of Coll. on International assistance and cooperation in administration of taxes amending some acts, which is in compliance with Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation. Therefore we are prepared to provide copies of rulings to other Member States. Moreover, notification system is being developed for APAs, so that the Slovak Republic could spontaneously and systematically inform another Member States on new APAs.*

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

- *See the reply to previous question.*

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

- *We are of the opinion that this issue should be subject of discussion.*

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

- *N/A*

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

- *N/A*

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

The report is concerned only with the exercise of discretions, and the operation of extra-statutory practices operated by your tax authority. There is no requirement to describe details of statutory provisions, although some explanation of these may be needed in order to explain the operation of particular practices.

SECTION 1

General Comments

It would be helpful to provide a short introduction describing in general terms the prevailing 'culture' in your territory in relation to tax matters, in particular covering the relative importance to businesses of tax rulings,

In general, the “culture” of the relationship between taxpayers and the tax authorities in Slovenia is quite cooperative. Taxpayers have the right to be informed in a timely and appropriate manner on tax laws and to acquire by tax authorities the answer on the request. The instructions for the uniform implementation of the tax law are issued by general director of the Tax Administration. These instructions are published on the web site of the Tax Administration or the Ministry of Finance and they are binding for the tax authorities.

Specific Questions

1. Preliminary and general issues

1.1 General approach.

(A) Please describe the way in which businesses and tax advisers setting up in your country approach tax planning. Do businesses and their advisers normally rely on advice as to the tax position or is it customary to approach the tax authorities for agreement on the tax status and treatment of new businesses or companies?

Normally businesses and tax advisers do not contact the tax authorities when they plan to establish a new business in Slovenia.

(B) Is there any obligation on a new company or business to discuss its tax position with the tax authorities, either in advance of setting up, or on an ongoing basis, beyond the ordinary obligation to file returns and pay tax?

No.

(C) Please give a general indication of the degree of discretion exercised by the tax authority in agreeing tax computations whether or not in advance. [This question seeks general information only - specific details are requested below].

Tax authorities do not have discretion in agreeing tax computations.

(D) In what proportion of inward investment transactions are the tax authorities likely to be involved in advance of the commencement of the project? What are the principal reasons for seeking to involve the tax authorities?

It is not likely that the tax authorities are involved in the inward investment transactions of the taxpayer.

1.2 Tax rulings with collateral agreements

(A) Are there circumstances in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc?

No.

2. Structural issues

2.1 Legal basis for tax rulings:

(A) Is there specific legislation providing for tax rulings or other similar advance agreement in relation to the level of taxation, or tax treatment? [The response to this question should not deal with Advance Pricing Agreements in relation to transfer pricing, which are dealt with at question 6 below.]

The Tax Procedure Act ensures to the taxpayers the right to be informed in a timely and appropriate manner on tax laws. The General Tax Office may issue a written information (advance ruling) to the taxpayer in connection with tax treatment of his planned transactions or planned business events.

(B) Is there any constitutional or administrative law relevant to rulings?

See A.

(C) In the absence of specific legislation, is there any published guidance on the extent to which discretion over the determination of tax liabilities may be exercised.

No.

2.2 Administrative issues

(A) How is your tax authority organised in relation to giving rulings? Does one inspector deal with all aspects of a business tax affairs (including payroll and social security taxes, and VAT)?

The Tax Administration is composed of the General Tax Office and tax offices. Tax offices are organisation units of the Tax Administration, which are established for performing of tasks of the tax service on the specific area or for a specific work field. Branches and offices for individuals are territorial organisation units of tax offices.

Among others, the General Tax Office provides uniform implementation and interpretation of regulations from the taxation field. For this purpose the General Tax Office issues circulars (*okrožnice*) to the local tax offices.

The taxpayers may apply for rulings which can be divided into two types: advance rulings (*zavezujoča informacija*) and rulings on the interpretation of the law (*pojasnilo*).

In case of the rulings on the interpretation of the law if the local tax offices are not able to answer the taxpayer's question, they forward it to the General Tax Office. The General Tax Office then passes on their interpretation to the local tax authorities who, in turn, make it known to the taxpayer.

The advance rulings are issued only by the General Tax Office.

(B) Is there a national office dedicated to providing rulings, or are these given ad hoc by offices dealing with particular taxpayers or particular classes of companies? How is the national office involved in local decisions?

See A.

(C) Are there regional or local offices dealing, e.g., with particular businesses, regional incentives or with local taxes?

The Special Tax Office (Large Business Office) performs tasks of tax offices for: banks, savings banks, insurance companies, companies, which organize classic permanent games of chance and special games of chance, companies, which organize special games of chance in gambling halls, stock exchanges, bourse brokerage companies, investment companies, management companies, pension companies and central securities clearing corporations. The Special Tax Office performs the tasks of tax offices also for business companies, whose total revenues in the previous tax year exceeded 50.000.000 EUR.

(D) Are there restrictions on the taxes to which rulings can apply, or applied in practice?

The advance rulings are not issued if this is a question, connected with transfer pricing.

2.3 The effect of rulings

(A) Are rulings or other agreements with tax authorities binding on the tax authority and the taxpayer?

The advance rulings don't oblige the tax authority if they are based on incorrect or incomplete data, which are stated in the application by the taxpayer, or if the activity of the taxpayer doesn't have the economic subject matter stated in the application. In this case the tax authority cancels the advance rulings. The cancelled information has no legal effects.

(B) Do rulings last for a specific period of time?

No. There is no special rule in legislation about that.

(C) Can the tax authority withdraw a ruling once agreed?

The tax authority may replace the issued advance rulings if it establishes subsequently that the authority has incorrectly applied the substantive law at its issuing and it has been issued in connection with the planned activity, which is of repeating nature or it has not been concluded during the time of cancellation. In this case the advance rulings oblige the tax authority in connection with activities, which the taxpayer conducted till the day of delivery of replacement advance rulings.

(D) What other restrictions can be applied to rulings?

The tax authority informs the person liable for tax with a notice that it will not issue the advance rulings if:

- this is an activity already conducted where it is considered that the activity is also already conducted if the taxpayer cannot unilaterally influence the conduct of the activity,
- any question, connected with the request for issuing of the advance rulings, is considered in the tax supervision procedure or in the procedure with legal means or before the court or the planned activity should be conducted in the indefinite future time or the application for issuing of the advance rulings doesn't show serious intentions to conduct the planned activity,
- the preparation of the advance rulings requires the explanation of the regulation, which is not a regulation from Article 2 Paragraph 3 of the Tax Procedure Act,
- the preparation of the advance rulings requires establishing of the fact, but it is evident from circumstances that it is not possible to establish this fact during consideration of the request for issuing of the advance rulings, especially: residence, performing of activities, connections between persons,
- this is a question, connected with transfer pricing.

In the following questions (3, 4, 5 and 6), replies should deal particularly with circumstances in which the ruling produces a tax result different from that which might apply on a strict application of the law.

3. Rulings for particular companies or classes of business

3.1 Whether a company is within the charge to tax.

(A) Is it possible to agree that particular companies are not within the scope of a particular tax, for instance by agreeing that they should be treated as non-resident?

No.

3.2 Rulings on whether a permanent establishment exists.

(A) Is it possible to agree that an activity carried on in your territory by a non-resident company should not be treated as a taxable branch, agency or permanent establishment?

As for any other tax issue, the taxpayer may ask the tax authorities for a non binding ruling as to whether a certain degree of presence amounts to a permanent establishment. It cannot be said, however, that the existence of a permanent establishment may be negotiated; the

taxpayer files a request in writing describing all the facts and circumstances and the tax authorities provide their interpretation.

(B) Is it possible to agree in your territory that some income attributable to business, or a branch, located elsewhere is outside the scope of tax either on a permanent basis or on a 'holiday' basis?

No.

3.3 Particular businesses

(A) Are there specific classes of business for which it is possible to agree a particular basis of taxation? [e.g. finance companies, or shipping businesses]

No.

4. Rulings as to amount of profits

4.1 Agreements on the amount of taxable income

(A) Can the level of profit of any class of business or company be agreed in advance? If so, on what basis?

No.

(B) Is it ever possible to agree a basis of taxation which differs materially either from the rules provided by statute or from the accounts basis of taxation?

No.

(C) Is it possible to agree □ costs plus □ arrangements in your territory, whereby taxable profits can be determined as a basis of the costs of a business, irrespective of its actual income? In applying a □ costs plus □ basis, is it possible to agree to keep agreed costs out of the local territory so reducing the costs by reference to which the taxable profits are calculated.

No.

4.2 Rulings for special regimes.

(A) Where special tax regimes exist, (e.g. for investment in regeneration areas,) or for particular classes of activity, is there a special procedure for obtaining tax rulings, either on whether a business can benefit from the special regime, or on the amount of taxable profits which will benefit?

There is no special procedure for obtaining tax rulings in special tax regimes (general rules apply) although special tax regimes exist and are described below:

A special tax regime is granted under the Act on Special Economic Zones (SEZ). According to SEZ, an economic zone operator may claim tax concessions for: initial investments in

activities carried on or intended to be carried on in an economic zone and the securing of new jobs linked to initial investments, whereby the total number of jobs in the economic zone is increased; and securing new jobs not linked to initial investments, whereby the total number of jobs in the economic zone is increased.

A general R&D investment incentive is represented as a deduction from the tax base of 20% of the amount invested in internal R&D activities and purchase of R&D services, but not exceeding the amount of the taxable base. The amount of the additional deduction can be increased to 30% or 40%, depending on the regional relief scheme.

A special tax regime is granted under the Tonnage Tax Act. Tonnage Tax regime is an alternative to normal corporate income tax. It is available to shipping companies in respect of their income from the operation of ships in international traffic. Each shipping company that is a taxpayer under corporate income tax may elect for the tonnage tax regime, provided that: It operates in maritime transport in international shipping; and The ships are being strategically and commercially operated from the Republic of Slovenia.

4.3 Rulings on deductible expenses

(A) Is it possible to agree that particular classes of expenses (which would not otherwise be tax deductible) will be tax deductible?

No.

(B) Is it possible to agree that provided a certain level of taxable profits is achieved, the deductibility of expenses in excess of that figure will not be challenged?

No.

4.4 Particular activities

(A) Are there 'agreed' or customary levels of profit which are acceptable for particular activities?

Through the analysis of risk the tax authorities exercises control over the level of profit of the taxpayers. If a taxpayer's level of profit deviates from the average level of profit, the likelihood of being investigated by the tax authorities increases.

5. Miscellaneous

5.1 Are there any other administrative practices or tax rulings which are operated in your territory which might influence the location of business?

In our opinion administrative practices or tax rulings play a very marginal role in making decisions as to the location of business.

5.2 Are there any other general comments you wish to make about administrative practices in your territory?

No.

5.3 From your experience and knowledge of other territories in the EU, do you think that your territory offers a more or less flexible approach to agreeing taxable profit than other countries?

Slovenia offers a very inflexible approach to agreeing profits. Such agreements are impossible.

5.4 Are you aware of practices operated in other EU territories, details of which should be included in our report?

No comments.

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:

Following information includes only the number of the advance rulings.

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

NIL	1 to 5	6 to 25	26 to 100	More than 100
x				

How many rulings have been issued for finance and other types of holding companies?

NIL	1 to 5	6 to 25	26 to 100	More than 100
	x			

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
x				

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, know-how, patents and licenses)?

NIL	1 to 5	6 to 25	26 to 100	More than 100
x				

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

No.

SECTION 3 Transparency and Information Exchange

Could you provide information on the level of transparency a ruling has in your state?

Published	Published but in an anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy

Could you please describe the approach your state would be prepared to apply regarding rulings:

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?
 N/A

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?
 N/A

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?
 N/A

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?
 N/A

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?
 N/A

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of

agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

The report is concerned only with the exercise of discretions, and the operation of extra-statutory practices operated by your tax authority. There is no requirement to describe details of statutory provisions, although some explanation of these may be needed in order to explain the operation of particular practices.

SECTION 1 Update of country reports

Could you provide a one to two page summary of the changes in the tax policy of your state in the area of rulings?

Answer:

The Federal Tax Code 58/2003 of December 17th (from now on FTC), in force since July 1st 2004, provides in its articles 88 and 89, a new focus concerning the description of tax queries, by means of its inclusion within the framework of the fiscal procedures aimed at provisioning information and assisting taxpayers, in order to facilitate obligations of the taxpayers fiscal compliance, reinforcing legal certainty.

Although the new legal regulation on tax queries, and later statutory developed, does not excessively differ from the previous normative, it is convenient to mention the following aspects:

- In general and from July 1st 2004, tax inspections are binding for Tax Authority. It means that the answers provided by the Directorate-General of Taxes (from now on DGT) to the tax queries raised by taxpayers are binding operations of bodies of Tax Authority, which is responsible for the implementation of taxation and consultants.
- Furthermore, the answer given by the DGT shall be considered binding, not only for the taxpayer in charge of the query, but also for other taxpayers in the same situation.
- The potential object of the tax query is very broad, since it may be referred to any tax aspect or doubt coming from the taxpayer and concerning the interpretation or the implementation of the tributary norm.
- The DGT generally provides an answer of a particular nature, to the question of the taxpayer. However, in particular circumstances, the DGT can adopt general resolutions in order to make public certain interpretation criteria fixed in the queries as its number and homogeneity recommends it.
- Generally speaking, resident and non-residents taxpayers may report a tax query to the DGT (including their legal representatives or volunteers). In addition, certain institutions or organizations (Unions, professional associations, consumer organizations, etc) are also entitled to report collective tax queries which may affect the interest of their members.
- Tax queries shall be formulated in writing (through letter or fax). However, taxpayers

may also send their queries by electronic and computer network means, through the Minister for Economic Affairs and Finance Web, using the electronic signature.

- The new normative establishes that the tax queries shall be reported before the end of the fixed deadline in order to exercise rights, the presentation of tax returns or the compliance of any other tax obligation.
- The DGT has to provide an answer to the taxpayers within a six-month period. The lack of answer of such deadline does not imply the acceptance of the expressed criteria in the query writing. Such answer is merely for informational purposes and, therefore cannot be object of administrative nor jurisdictional remedy.

Finally, as aforementioned, the DGT answer is only binding for the Tax Authority and therefore consultants may adhere or not their action to the administrative criterion stated by the DGT in its report as the answer to the query.

Have there been significant changes to the administrative practice in your state as compared to the description in the country report concerning:

- **The legal basis for tax rulings**

Answer:

See previous answer

- **Administrative issues**

Answer:

See previous answer

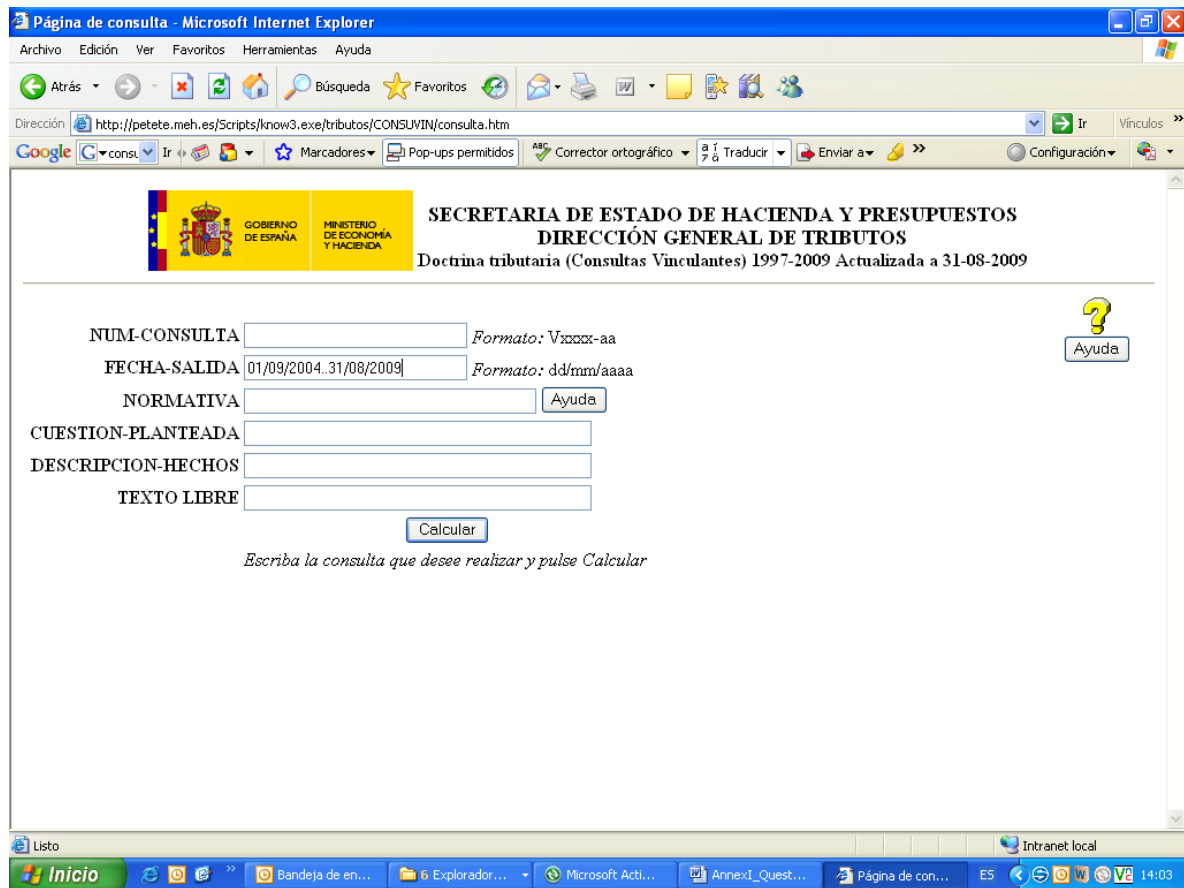
- **The effect of rulings**

Answer:

See previous answer

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:



Answer:

The DGT (Dirección General de Tributos), that is the Spanish Directorate-General of Taxes, provides with information about all the answers to the tax queries made by taxpayers, through the public data base on the Spanish Minister of Economy and Treasury website: <http://petete.meh.es/Scripts/know3.exe/tributos/CONSUVIN/consulta.htm>

It is advisable to indicate that that data base currently comprises all the tax queries answered by the DGT since 1997.

Therefore, in order to find out the amount of tax queries successfully answered by the DGT during the last few years (that is, from 01/09/2004 to 31/08/09), the required period of time has to be introduced (for example, 01/09/2004..31/08/09) in the data base segment “FECHA-SALIDA” (current date-reply date), as it is shown below:

The result obtained amounts to: 12,663 documents (binding tax queries) issued by the DGT in the last five years.

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

Answer:

As it was indicated in the answer to the previous question, any user interested in knowing both the number and the type of query made by taxpayers, as well as the answers to them by the DGT, can use the aforementioned data base by Internet, as it is public.

This way, in order to answer the following questions of the questionnaire, it is suggested that the user introduces the corresponding words (in Spanish) to the different types of activities that are shown below in the segment “TEXTO LIBRE” (free text). Subsequently, by clicking on the link “calcular” (calculate), you will obtain the number of documents and those documents that are included in the data base.

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for finance and other types of holding companies?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

NIL	1 to 5	6 to 25	26 to 100	More than 100

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

SECTION 3 Transparency and Information Exchange

Could you provide information on the level of transparency a ruling has in your state?

Published	Published but in an anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy
Answer:	Answer:	Answer:	Answer:	Answer:
All the tax	All the tax	See previous	The answer	Depending on

queries are available (since 1997) in the data base “CONSULTAS” (queries) through the Minister of Economy website (see above).	queries available in the data base are indeed issued anonymously, with a view to safeguard the right to intimacy of the person making the query and respect the confidential nature of those data having a tax implication.	answer.	is affirmative: all the tax queries can be consulted by every tax inspector through the same data base.	the answers to the previous questions, you can indicate that there is no official secret concerning tax queries in Spain.
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Could you please describe the approach your state would be prepared to apply regarding rulings:

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

Answer:

The answer is affirmative. As it was previously indicated, the data base “CONSULTAS” (queries) is made available for all those persons and institutions interested in these issues, including the foreign ones, since the data base has been included on the website of the Spanish Minister of Economy and Treasury.

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

Answer:

See previous answer.

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

Answer:

As it was indicated above, publicity is general and there is no discrimination for grounds of pertinence of the subject.

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

Answer:

The decisions adopted by other Member States have no effect with the Spanish Tax Authority, without prejudice of being studied or analysed for their knowledge and opportune effects.

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g. practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

SECTION 1 Update of country reports - Sweden

Could you provide a one to two page summary of the changes in the tax policy of your state in the area of rulings?

Comments: Initially, we note that some of the views expressed in the summary for Sweden seem to be made from a private practitioners' point of view and that they do not necessarily reflect the perspective of the Swedish tax administration (especially as regards para 7.1). We have, however, chosen not to comment on the more subjective aspects of the report and instead to focus on the objective facts. Our comments to the country report are attached at the end of this questionnaire.

Have there been significant changes to the administrative practice in your state as compared to the description in the country report concerning:

- The legal basis for tax rulings – No.
- Administrative issues – Aside from the fact that there has been a reorganisation of the Swedish tax administration, *inter alia* to ensure a uniform application of existing rules, there have been no changes in the administrative practices. Prior to the reorganisation, the tax administration consisted of a National Tax Board as well as of several local tax authorities (as mentioned in the 1999 Simmons & Simmons report, the extended version). Currently, the tax administration consists of one single authority, the Swedish Tax Agency.
- The effect of rulings – No.

SECTION 2 Information on the type and number of specific rulings

Could you provide information on the number of the rulings agreed upon during the last 5 years [or, if this data is not available for this period, information on the rulings issued in the last year]:

How many rulings have been issued whether a company is within the charge to tax, including whether a permanent establishment exists?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for finance and other types of holding companies?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for specific regimes (e.g. shipping regimes, renewable energy sector, research and developments activities)?

NIL	1 to 5	6 to 25	26 to 100	More than 100

How many rulings have been issued for the valuation of inbound transferred assets (including intellectual property, brand names, knowhow, patents and licenses)?

NIL	1 to 5	6 to 25	26 to 100	More than 100

Are any of the rulings mentioned above connected to conditions or requirements in which obtaining a tax ruling will depend on the business committing to employ a specified number of individuals, or to carry on business for an agreed period, etc.

Comments: As follows from the country report, Sweden does not have the kind of rulings referred to above. However, we do have a system of advance rulings, which may be said to be an integral part of Sweden's general tax case law (see our comments below to the country report, para 5). The rulings are given on a case-by-case basis and are not divided into different categories based on what kind of companies or what kind of issues they concern. The only division made is that the ruling committee (Skatterättsnämnden) has two departments, one that gives rulings on direct tax matters, and the other on indirect tax matters. The rulings can be appealed against to the Supreme Administrative Court. As a consequence, no statistics based on the categories mentioned above are kept. Furthermore, Sweden does not have the type of special tax regimes in question.

SECTION 3 Transparency and Information Exchange

Could you provide information on the level of transparency a ruling has in your state?

Published	Published but in an anonymous form	Published only if of general interest or relates to horizontal issues	Available to all tax inspectors via a data base or on request	High level of tax secrecy

Could you please describe the approach your state would be prepared to apply regarding rulings:

Are you generally prepared to provide copies of rulings to other Member States? In anonymized form? In all cases? On request only?

Are you prepared to provide copies of rulings to certain Member State in cases of rulings with a link to another Member State? In anonymized form? In all cases? On request only?

How would your state view the option to ensure transparency and information exchange only on rulings in cases with significant amounts involved (threshold to be discussed)?

Comments: The advance rulings delivered by the special ruling committee (Skatterättsnämnden) are of a different nature than the rulings referred to above. They are more similar to judgments delivered by a court, and may indeed be appealed against to the Supreme Administrative Court. In Sweden, the principle of public access to official documents apply to all authorities' decisions, as well as other types of records submitted to or drawn up by the authorities. Thus, as a main rule, the public has a right to be informed of the content of advance rulings. There are, however, legal secrecy protections in place. Therefore, the rulings are published on the committee's website but in an anonymous form. Under exceptional circumstances, it may also occur that an advance ruling is not published at all for reasons of secrecy, due to the fact that it might not otherwise be possible to protect the applicant's identity. When an advance ruling is appealed against to the Supreme Administrative Court, the court's judgment will be made public according to the same principles (i.e. in an anonymous form if legal secrecy protections apply). There are no specific obstacles for other Member States to access the rulings, since the same principles would apply in these cases as well. The rulings could of course also be accessed by a competent authority via a normal procedure for exchange of information on a specific tax payer. Whether or not significant amounts are involved would not pertain to the possibility to access the rulings.

SECTION 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings issued by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?

Comments: There is no legislation that specifically deals with this issue. The Swedish Tax Agency principally deals with the interpretation of Swedish tax legislation and, therefore, does not attribute special importance to rulings issued by foreign fiscal authorities. The rulings may, however, be weighed against other facts during a mutual agreement procedure. We are at this time not aware of any administrative practices in other EU countries that would require discussion in the Code of Conduct Group.

General remarks

Please note in responding to these questions that the term tax ruling should be interpreted with a wide meaning. It is intended to include any practice, agreement with tax offices or exercise of discretion by a tax authority, which provides some degree of agreement as to the level of taxation on a particular company, activity or business, whether or not this is called a ruling

The report is concerned only with administrative practices which are likely to distort the location of business. Practices which are for the general convenience of all business (e.g.

practices designed to ease the compliance burden) need not be referred to, unless in practice they are likely to favour particular sectors of activity.

The responses to some questions may duplicate other replies. Please simply cross-refer to other answers, rather than setting out the same reply.

CODE OF CONDUCT GROUP
ADMINISTRATIVE PRACTICES
RESPONSE FROM THE UK

Introduction

1. This response sets out details of the services that the UK's revenue department - HM Revenue & Customs (HMRC) provides to its business customers, in matters of corporate taxation.
2. The term "rulings" is not homogenous and means different things in different EU Member States. As more narrow definitions of rulings, as practiced in some Member States, are generally not as relevant or applicable to the UK, we are responding to the Commission's questionnaire on rulings in a broad and wide ranging way, to provide the Code Group with a comprehensive picture of the administrative practices and arrangements available to businesses in the UK from HMRC.

Services provided by HMRC to UK business tax customers

3. HMRC offers businesses a number of services, with the sole objective of providing them with advice and a degree of certainty in matters of Corporate Taxation.
4. While not an exhaustive list, these services broadly comprise:
 - a comprehensive service providing certainty to business on the tax treatment of multinational transactions e.g Advanced Pricing Agreements (see below);
 - a comprehensive customer support service for businesses already in the UK or considering establishing a business in the UK;
 - for companies investing in the UK who have no previously established relationship with HMRC, provided there is a minimum investment of £250 million there is a comprehensive advice service. For this type of case, HMRC will provide clarity and assurance on the application of UK tax law to a full range of transactions, but this is done strictly in accordance with our published legislation and guidance on a range of topics ranging from international tax issues, payroll taxes and thin capitalisation to tariff classification of machinery; and
 - advice to relevant companies on the operation of various specific tax regimes that apply to them (for example tonnage tax for shipping companies or Real Estate Investment Trusts).
5. In addition to the above HMRC has some discretion to provide a degree of certainty through the operation of two additional types of instrument: Extra Statutory Concessions (ESCs) and Advanced Pricing Agreements (APAs) – the latter apply in the area of transfer pricing.

Advanced Pricing Agreements

6. The UK is a signatory to both of the OECD's "Model Tax Convention on Income and on Capital" and the "Transfer Pricing Guidelines for Multinationals and Tax Administrations". HMRC seeks to agree transfer prices with multinationals according to Article 9 of the Model Treaty and the Guidelines; i.e. transfer prices that are based on the "arms length principle". In those cases where the arms length principle is difficult to determine then the UK tax authorities will enter into Advanced Pricing Agreements that seek to fix the price at which future transactions, within the scope of the APA, will be agreed. This price is then recognised as the appropriate arm's length price for a designated period of time. The UK seeks, wherever possible, to enter into APAs on a bi-lateral or multi-lateral basis i.e. with the agreement of the overseas tax authorities with an interest in the transactions dealt with under the APA. It should be noted that admission to the UK's APA programme is by application only and is governed by primary legislation.

Advance Clearances

7. As part of its commitment to improve customer service, HMRC offers businesses the opportunity to seek advance clearances. These clearances are designed to provide certainty in respect of the application of anti-avoidance measures and other aspects of UK taxation rules in relation to appropriate transactions.

8. Further information on advance clearances is set out in Annex 1, which provides a copy of the current pages from HMRC's publicly available web-site relating to advance clearances that can be obtained in respect of certain types of transaction and how these may be obtained.

Rationale for providing such services

9. As set out above, HMRC provides these services to its business customers with the objective of providing certainty to business on their UK tax payments. We believe this certainty has business advantages in terms of reducing administrative costs and providing an element of stability, which is important to underpin long term business investment.

10. It should be stressed that at all times, advice and guidance is given solely on the basis of, and in accordance with, published national tax law and / or publicly available guidance. It should be emphasised that such advice is not given with the intention of giving one business, or class of business, preferential treatment over another business or class of business.

11. For this reason HMRC believes that the administrative practices it operates comply with international best practice, and should not in any way be considered as 'harmful' tax competition.

Extra Statutory Concessions (ESCs)

12. A general description of the rationale for, and operation of, these concessions is provided here for completeness but it should be noted that, following recent developments in the UK,

the continued existence of this type of concession is under review, with the likelihood being that they will be phased out altogether. (Please see para 16 below for further details).

13. An Extra-Statutory Concession (ESC) is a published relaxation of the UK's tax law which is intended, in the circumstances covered by the particular ESC, to give taxpayers (on a claim by the tax-payer) a reduction in their tax liability to which they would not be entitled under the strict letter of the law. Historically, ESCs have been made by HMRC under the discretionary powers that it has for the "care and management" of the UK's taxation system.

14. Most ESCs are made to deal with what are, on the whole, minor or transitory anomalies under the UK's tax legislation and to meet cases of hardship at the margins of the taxation code where a full statutory remedy would either be difficult to devise or would run to a length out of proportion to the intrinsic importance of the matter. In short, these concessions exist to aid cost efficient and fair administration of the UK's tax system and as a protection for UK taxpayers.

15. It should be noted that the published guidance on ESCs makes it clear that no relief will be granted by HMRC under an extra statutory concession in any case where an attempt is made to use it for tax avoidance purposes.

16. Extra statutory concessions have been a feature of the UK's tax system for decades and will continue to be made and withdrawn as necessary. Nevertheless a recent House of Lords judgement (*R v IR Commissioners, ex parte Wilkinson*) made it clear that the scope of HMRC's administrative discretion to make concessions that depart from the strict statutory position is not as wide as previously thought, and as a result of that judgement HMRC is currently reviewing the concessions in operation. Where it is found that an existing concession exceeds the scope of HMRC's discretion based on the *Wilkinson* judgement, the effect of the concession will be maintained by putting it on a legislative basis where it is appropriate to do so.

17. Although ESCs are not "legislation" they are transparent in that a list of those in force (and those that have become obsolete) is publicly available from HMRC (e.g via the HMRC web-site) and in publications of the UK's tax legislation such as the CCH Red Book and Tolley's Tax Guide.

Harmful administrative practices

18. The UK authorities (HM Treasury and HMRC) believe that harmful administrative practices exist where:

- a tax authority affords clear "preferential treatment" to specific businesses with the intention of lowering their tax bill relative to other businesses in the sector, with the sole purpose of attracting inward investment from overseas; and
- This "preferential treatment" is inconsistent with, or directly contrary to, the tax authority's own published tax law/code or published guidance.

Tackling harmful administrative practices.

19. The UK authorities believe transparency represents an important key policy tool for tackling the harmful administrative practices set out above (paragraph 18).

20. The UK authorities believe, that there should be complete transparency in the following areas:

- the statutory tax legislation and tax code in operation in a given country, and the basis for any discretion that may be applied on the part of the tax authorities, to vary these statutory provisions;
- the criteria underpinning the advice, guidance or rulings issued by an EU tax authority; and
- the process surrounding the issuance of such advice, guidance or rulings.

21. While the UK authorities fully acknowledge that it is inherently difficult to identify non-transparent harmful practices, we believe that were the Code group able to establish a clear and comprehensive picture of the practices undertaken by each Member State in this area, it would become easier to identify specific abuses when they arise.

22. Finally, the UK authorities would point out that data protection legislation places clear limits on the extent to which such transparency can extend. For example, under existing data protection legislation it would be illegal for HMRC to reveal either the names of individual firms in receipt of advice, guidance or rulings, or (for fear of de facto identification) the nature or content of such advice, guidance or rulings.

23. Nevertheless, as a general rule the UK authorities believe that EU Member States should look to pursue maximum levels of transparency and openness, subject to whatever specific data protection rules may be in existence at a particular time.

Areas for further work

24. The UK authorities strongly welcome the Code Group's focus on administrative practices and within that, on the issue of rulings.

25. In addition, the UK authorities believe one area of administrative practices that would merit attention and consideration from the Group is the issue of enforcement; i.e. the extent to which a country's tax code and tax statutes are actually enforced by tax authorities whether national or regional, and the extent to which a general lack of enforcement, through rulings or other administrative practices, is used to unfairly attract business investment or activity.

26. The UK authorities stand ready to provide the Code Group with further additional information on request.

**HM TREASURY
HM REVENUE AND CUSTOMS**

December 2009

Annex 1

Clearance service for businesses – how to get certainty on significant business tax issues

This guidance is for the use of business customers. The current service for non-business customers continues. Non-business customers should continue to refer to the existing guidance at [Code of Practice 10](#) or [VAT Notice 700-6](#). (Please note that as a result of the extension of clearances for business customers COP10 and VAT Notice 700/6 are being revised. Further announcements will be available on the ‘What’s new’ section of the Internet in due course.)

Business owners who would like make clearance applications in relation to Inheritance Tax business property relief (IHT-BPR) should see the separate guidance [Inheritance Tax clearance service for business](#). Please note that HM Revenue & Customs (HMRC) are currently reviewing the pilot of the IHT-BPR clearance service which took place from 1 May 2008 to 31 October 2008. HMRC will continue to accept IHT-BPR clearance applications, while this review is in progress, on the same basis as for the trial period. HMRC will make a formal announcement on the IHT-BPR clearance service and update the guidance once the review has concluded.

Contents

- [Mission Statement](#)
- [Applications for clearances and statutory approvals](#)
- [When and where to apply for a non-statutory clearance](#)
- [Information you need to provide with your application](#)
- [How and when HMRC will respond](#)
- [When you can rely on a clearance](#)
- [Annex A. Checklist for non-statutory clearance applications](#)
- [Annex B. Other help and advice available from HMRC](#)

Clearances: Mission Statement

In developing the new Clearances Service we wanted to provide a facility that was as useful as possible for UK business as a whole. To do this within our resources, we have focused our efforts on where the benefit is greatest. There are a wide range of potential applications, from issues that are clearly new to those which are almost without doubt. HM Revenue and Customs (HMRC) wants therefore to work in partnership with businesses and their representatives to ensure that as far as possible those issues brought forward for clearance are the ones that have the greatest impact on the business concerned. Developing a common understanding on this will be an ongoing process between HMRC and the users of the service.

The purpose of the new Clearances Service is:

- to provide certainty for businesses operating in the UK, as a useful practical service at a level whereby speed of response from HMRC can be reasonably assured.

We will therefore aim to provide clearances:

- within 28 days as the norm
- on areas of material uncertainty arising within four Finance Acts of the introduction of any new legislation
- on legislation older than last four Finance Acts where there is material uncertainty around the tax outcome of a real issue of commercial significance to the business itself, determined by reference to the scale of the business and the impact of the issue upon it.

HMRC and users of the Clearances Service will:

- recognise the need for proportionality from all sides so that applications are relevant, focused and within scope, thus avoiding overload of the service to the detriment of all concerned.

Applications for clearances and statutory approvals

This guidance sets out what you need to do to make a clearance application, and what information you need to provide. It includes information for business customers across all of the taxes that was previously set out in [VAT Notice 700/6](#) and [Code of Practice 10](#).

Customers who would like advice on personal tax issues should continue to refer to [Code of Practice 10](#). General guidance on other help and advice available from HMRC is set out at [Annex B](#).

Non-statutory clearances

A non-statutory clearance is written confirmation of our view of the application of tax law to a specific transaction or event that you can rely on in most circumstances, as our view of the tax consequences of your transaction.

We will aim to send you our view within 28 calendar days, though in complex cases this may take longer. We will provide clearances across all business taxes, regardless of the age of the legislation, where you have demonstrated that:

- there is material uncertainty
- that the issue is commercially significant.

We will provide non-statutory clearances both:

- pre-transaction where evidence is supplied that the transaction is genuinely contemplated
- post-transaction.

Clearances do not alter the tax treatment but simply give you HMRC's view of what the correct tax treatment is.

Statutory clearances

There are a few statutes where tax law provides that HMRC will give a clearance relating to a specific point. These are referred to as 'statutory clearances' and they are outside the scope of this guidance.

For contact details and a comprehensive list of statutory clearances, please [see the contact list \(PDF 79K\)](#). It is helpful if applications for non-statutory clearances are submitted separately to statutory clearances, to speed up the handling of your applications.

You may wish to write one clearance application letter to cover both non-statutory and statutory clearance applications, but you should ensure that copies are sent to all relevant teams. Where you choose to do this, please ensure it is clear at the front of your letter which teams copies of your letter have been sent to.

Statutory approvals

A statutory approval is different from a statutory clearance. Approval can be required in advance for a particular tax treatment to apply to a particular issue that can have wide reaching consequences, and the tax treatment changes according to whether an approval has been given or not. For example, statutory approval for the beneficial tax treatment of certain employee share schemes. For contact details on statutory approvals, please [see the contact list \(PDF 79K\)](#).

When and where to apply for a non-statutory clearance

Customers who can use this service

Clearance applications will be accepted from businesses and their advisers where there is demonstrable material uncertainty about the tax consequences of transactions affecting their business. We do not intend that this encompasses applications which clearly fall within the area of personal taxation of individuals (such as inheritance tax or the residence status of an individual director) or routine product endorsements.

Please note that we are unable to provide clearances on employment contract matters (for example, changes in the balance between salary and benefits) or where the provision of a clearance would encroach on taxpayer confidentiality. However, in salary sacrifice cases you may ask for confirmation of the correct tax treatment of the arrangement once it has been put in place. These should no longer be sent to the local office but emailed or posted to the HMRC Clearances Team in Southend as detailed below. In general we will not give clearances on draft legislation which has not been passed by Parliament.

The current service for non-business customers continues. These customers should refer to the existing guidance at [Code of Practice 10](#) or [VAT Notice 700-6](#).

Normally, for VAT clearances, it is the supplier who should ask for a clearance on a liability to tax of goods or services. However, the clearance should not vary in circumstances where the same question and facts are set out by the recipient of the supply. If the enquiry relates to tax recovery, then it is the recipient of the supply who should make the clearance application.

When you may choose to apply for a non-statutory clearance

We aim to make the guidance that accompanies our taxes legislation as clear as possible. If you feel that the guidance does not make clear how the legislation will apply in a particular situation you can make a non-statutory clearance application.

Please read our guidance on the legislation before applying for a non-statutory clearance, and then read through the checklist in [Annex A](#). The checklist will help you consider all the information that could be relevant to your particular application and to arrange the information so that we can progress your application as quickly as possible. Please attach the checklist, completed as appropriate, with your application.

To discuss your tax affairs or get tax information, including a wide range of leaflets that explain different aspects of the tax system, please see the information contained in the [Contact Us](#) area of our website.

In addition to non-statutory clearances HMRC makes available a wide range of information and advice to our customers. These are set out at [Annex B](#). You may also wish to speak to your adviser.

Where to send your non-statutory clearance

Applications should be sent to:

- your Client Relationship Manager (CRM) if you are a Large Business Service customer
- HMRC Clearances Team, Alexander House, 21 Victoria Avenue, Southend on Sea, Essex SS99 1BD

Email: [HMRC Clearances Team](#)

We will be able to process your application more efficiently if you send your clearance application by email. Attachments to emails should be no larger than 2 MB. Please don't send self-extracting zip files as our software will block them.

Using email

- HMRC cannot guarantee the security of emails you send to us or we send to you over the internet. Any information you send us by email is at your own risk.
- It is important that you have assessed the risks of using email to send information or to receive it from us.
- If you would like us to reply by email, please tell us so and confirm that you understand and accept the risks involved in using email. We will not always be able to reply by email.
- Information about market/price sensitive matters or well known individuals should not be sent by email. Courier or post should be used for such sensitive information.
- If you have any doubt about the authenticity of an email you receive which claims to come from the clearances team, please call us to check.

Please attach the checklist in [Annex A](#), completed as appropriate, along with the information and any supporting documents that explain your clearance application. If you do not email

your application to us, please print the checklist as a cover page and send all the documents to your designated contact above.

We recognise that many clearance applications contain commercially sensitive information and we will handle all information included in clearance applications securely and in accordance with our legal obligations. Whether you send us information electronically or on paper we will keep it secure, and not disclose it to anyone unless they are authorised to see it.

For an application that you consider particularly sensitive you may wish to notify us in advance, so that we can agree about how best to submit your application to us. If your tax affairs are dealt with by the Large Business Service please call your Client Relationship Manager. In other cases, please telephone [named officer] for advice.

Information you need to provide with your application

For a clearance to be binding on us you must provide us, at the time the clearance is sought, with the full facts and context of the transaction, and set out the legislative uncertainty in question. The courts have said that the customer must 'put all of their cards face upwards on the table' ([See Note 1](#)). You are responsible for ensuring the information is correct, accurate and complete.

The information that you provide will depend on the circumstances of the clearance application. You need to decide what information is relevant to your application. Please include a heading to your clearance application that includes the name and address of the business customer and ensure that your application is clearly headed as a non-statutory business clearance application.

The checklist at [Annex A](#) and the guidance in this section will help you decide what to provide so that we have the relevant information we need to process your application quickly. The guidance sets out guidelines as to the information to provide. We do not expect that all the information we list will be available or relevant for every clearance application. It minimises the burden for you and for us if you provide summaries of the relevant information, rather than a large volume of supporting documents.

Please supplement this with more detailed explanations, drawing attention to the relevant paragraphs in any supporting documents you provide.

Information about the applicant

Please set out this information at the start of your clearance application.

We will need to understand who is carrying on the business, including:

- the name of the person carrying on the business
- if different, the name of the business
- the relevant customer identification number in full, eg Unique Taxpayer Reference, VAT Registration Number or Pay As You Earn (PAYE) reference – of the involved parties
- contact details

- if you are an adviser acting on a client's behalf, your contact details, and statement on whose behalf you are acting. Normally we require the full authority for you to act from your client.

Information about the transaction(s)

It helps us to handle the application efficiently if you set out the nature of your clearance request at the start – for example, in the heading or first paragraph. Please follow this with:

- details of when the transaction occurred and the parties involved, and any other details of the transaction, eg what was supplied, price, contract terms etc
- the proposed date if the transaction has not yet happened, and supporting information, such as a draft contract where it is available, so that we have an understanding of the timeframes under which you are working and can verify that the transaction is genuinely contemplated
- any details of the transaction that are contingent, for instance, on future events or the consent of other parties.

Please note that if the request relates to one specific part of a series of connected transactions we expect you to provide a summary of the series of transactions as part of the facts about your transaction.

Information about the commercial background

Please explain the context of the transaction and the reasons you are undertaking it, providing details of any connected transactions as appropriate. Please also:

- explain the significance to the business of the tax result in achieving the desired outcome, including the consequences of any alternative legal interpretations you have considered
- where you have considered different forms of the transaction explain why you chose the proposed form of transaction over alternatives that could achieve the same commercial result
- where your uncertainty arises from the interpretation of legislation older than the last four Finance Acts, you should also provide details of the commercial significance to the business of the transaction which leads you to make the clearance application, except for transactions related to VAT and Excise.

Information about legal points

Please set out your view of the tax consequences of the particular transaction, with a summarised explanation of your reasoning, and the full details of the question and issue on which you want a response. Please:

- summarise the specific legislation at issue, any case law considered and guidance consulted that are relevant to the point of doubt on which you have made your clearance application
- demonstrate why you believe there is uncertainty about the way the legislation applies
- explain different ways it might apply which you have considered, paying particular attention to those aspects of the transaction that are critical to the legal analysis

- state any previous advice you have or, where you are an adviser, your client has, received from HMRC (or its predecessor departments) which is relevant to your clearance application, quoting any HMRC (or predecessor) references where known and explaining why this advice does not go far enough to resolve your uncertainty
- consider disclosing any advice, or parts of it, you have received, for example from your professional advisers or tax counsel. You are not obliged to provide this but by doing so we may better understand your request for advice.

Note1: The quote originates from R v IRC (ex parte MFK Underwriting Agencies Ltd) [1989] STC 873.

Information about the disclosure of a tax avoidance scheme that covers all or part of the transaction

When submitting a Non-Statutory Business Clearance application for a transaction for which there is also the disclosure of an avoidance scheme which covers all or part of the transaction, it is important that explicit mention is made of any related disclosures, preferably by including a copy of the disclosure or, where available, by reporting the allocated DOTAS scheme reference number.

How and when we will respond

If your application for a clearance is accepted

We will acknowledge your application on receipt and send our full response within 28 calendar days as the norm. Our response will either:

- accept your interpretation of the legislation
- reject your interpretation of the legislation
- request further information that we need before we can give you an answer

Where we reject your interpretation we will set out reasons for this. Once we have provided our response, you are entitled to act on the basis of our view, or on the basis of your own view of the appropriate tax treatment, and self assess accordingly.

Very occasionally we may not be able to send our full response within 28 calendar days. This may be, for example, because the application is very complex and requires advice from a number of specialists within HMRC. Where this is the case we will tell you, and work with you to provide a response as soon as we can.

Sometimes we may need to ask you to provide more information before we can send you a full reply. If we need to ask you for more information, we will suspend the handling time for your application until you are able to provide us with the information we have requested. We may wish to contact you by telephone for clarification, and it helps us if you can provide a regular contact point during the period of your application.

If your application for a clearance is not accepted

We will, as soon as possible after receipt of your application, either:

- respond by referring you to the relevant guidance
- return your request setting out clearly why we are not responding to it

Circumstances when we will not accept your clearance application

We will not accept your application:

- where you ask us to give, or comment on, tax planning advice. In particular, we do not 'approve' tax planning arrangements
- where you submit an application that is a minor variation of your previous one for the same client on the same transaction (minor variation does not include where you notify us of a change in the facts of the transaction that is the subject of an ongoing pre-transaction clearance application)
- where we take the view that the arrangements are primarily to gain a tax advantage rather than primarily commercially motivated. We will consider each case on its own merits and in accordance with our published [risk guidance](#)
- in response to applications where there is not, in fact, any uncertainty - where the point is covered by our published guidance we will instead refer you to the specific part of relevant publications and indicate its relevance to the issues raised in your clearance application
- where we have already opened an audit or enquiry into the transaction that is the subject of your clearance application; or where an audit or enquiry into your Self Assessment return for the tax that the clearance application relates to has already been opened; or after the time limit has passed for one of our officers to notify you of his or her intention to open an audit or enquiry into the tax that the clearance application relates to
- on issues that do not involve the interpretation of tax law or its application to particular circumstances, for instance asset valuations and transfer pricing
- in relation to questions about the application of customs rules. Under EU Customs law, HMRC may only provide binding tariff and binding origin information. These are provided as statutory clearances. We may issue decisions about the application of customs rules but these will not be binding on HMRC
- we are not able to give an HMRC view on whether a particular Research & Development (R&D) project qualifies for relief in relation to research and development tax incentives. The key relevant test in the [2004 Department of Innovation, Universities and Skills Guidelines](#) is based on the opinion of a competent professional in the field of science or technology and the claimant is best placed to apply this test. However, in line with our published [Practice Note \(PDF 30K\)](#), we do offer support and advice to companies intending to claim R&D tax credits. In advance of starting an R&D project, companies are welcome to approach either their CRM (if their tax affairs are dealt with by the Large Business Service), or the relevant [R&D Specialist Unit](#), with details of how the company considers that the guidelines apply to its proposal, with a view to resolving any issues concerning the company's application of the guidelines at the outset - so that the company can proceed with confidence about how HMRC will handle the company's claim in respect of the project.
- in relation to the tax consequences of executing trust deeds or settlements, and whether Chapter 5 Part 5 Income Tax (Trading and Other Income) Act (ITTOIA) applies.

Where you are not happy about the way we handled your application

We aim to send clear responses to the questions raised in your clearance application. We recognise that sometimes you may not agree with the response you receive from us, or you may not be happy with the service we have provided.

If you believe that we have failed to take account of some of the material facts set out in your application please contact the officer who dealt with your case (the details will be on the correspondence we have sent you) and ask that they look at your application again. If you remain unhappy you can ask to be referred to the complaints manager.

If you are unhappy with the way we have handled your affairs, for example because of delays or mistakes, please tell the person or office you have been dealing with. If they are unable to sort things out, ask for your case to be referred to the complaints manager.

Interest and penalties where you asked us for a clearance

If you have applied for a non-statutory clearance, but have not received it by the time that your return is due to be submitted, then your return must still be sent in before the time limit. If that happens you should complete your return according to your own view of the correct tax treatment of the particular transaction. If you have filed a Self Assessment (SA) return you can amend it after we have given the clearance, if you wish, subject to the normal time limits.

The normal interest and penalty rules will apply if a return is incorrect, whether or not the transactions have been the subject of a clearance.

If you disagree with the clearance that we gave you and complete your return in accordance with your own view of the proper tax treatment, then it may turn out that you have not declared nor paid enough tax at the right time. Regardless of whether you had applied for a post transaction clearance or whether we had given a clearance by the due date, any unpaid or undeclared tax carries interest in the normal way. Similarly, any overpaid tax carries repayment interest from the date it was paid wherever this is usually the case.

Appeals against clearances

There is no general right of appeal against advice or clearances given by HMRC except where rights to appeal are set out in statute. For example, there is a right to appeal to the independent tax tribunal under Section 83 of the VAT Act 1994 about the amount of VAT chargeable on a specific supply of goods or services. An appeal under this section can only be made if the supply has taken place.

If you disagree with any appealable decision you have been given you should write to us and tell us within 30 days. You can ask for the appealable decision you have been given to be reviewed or can appeal direct to the independent tax tribunal. More information on your rights to review and appeal are set out in the HMRC factsheet [HMRC1: HM Revenue & Customs decisions – what to do if you disagree \(PDF 73K\)](#)

When you can rely on a clearance

General principles

A clearance applies:

- to the applicant (even where the application has been made by the applicant's adviser, the adviser cannot apply that clearance to other similar cases)
- to the particular transaction that was the subject of the clearance application

We aim to provide clearances that will give certainty to business as to the tax consequences of their transactions. Our starting point is therefore that you should be able to rely on any clearance we provide. However for a clearance to be considered binding on HMRC, you must set out all the relevant facts and draw attention to all the issues in your application. We expect businesses to interpret this relatively broadly, for example, by providing information on related transactions where relevant.

Under our existing powers of 'collection and management' ([See Note 2](#)), the principles of administrative law apply and the Courts will ultimately determine if we are bound by a clearance we have given. The underlying principle is that HMRC has a duty to collect the correct amount of tax as required by statute. In the vast majority of cases a clearance we give will be correct in law and therefore binding on HMRC. However there are some circumstances in which our primary duty to collect tax according to the statute may mean that we can no longer be bound by a clearance we have given. For example this may occur where:

- for a pre-transaction clearance, the nature of the transaction changes in a way that has a material impact on the transaction as a whole
- you provided incorrect or incomplete information when you made the clearance application
- a Court or Tribunal judgment changes the prevailing interpretation of the law on which the clearance was based and your liability to tax for that year has not been finalised, for example, where you have not yet submitted your return or if you have submitted your return, where the opportunity to amend that return remains. A clearance will be based on the prevailing understanding of the law at the time it is given. Where the courts change the prevailing interpretation of the law, subject to the principle of legitimate expectation, we are required to collect the correct amount of tax as required by the new interpretation of the law
- the statutory law relevant to the transaction for which the clearance was given changes. If this change is retrospective we will not be bound by any pre- or post-transaction clearance we have previously given. This situation occurs very infrequently. If the new statute is enacted pre-transaction and is prospective, any previously given clearance relating to the transaction will not be considered to be binding. HMRC has a duty to collect the correct amount of tax as required by statute at the time the transaction takes place. It remains your responsibility to take account of changes in the law.

Note 2: Section 5 of the Commissioners for Revenue and Customs Act 2005

Where HMRC makes an incorrect statement

There may be a small number of cases where we provide a clearance that is incorrect in law. Where this happens, we will be bound by such advice provided that it is clear, unequivocal and explicit and you can demonstrate that:

- you reasonably relied upon the advice
- where appropriate you made full disclosure of all the relevant facts
- the application of the statute would result in your financial detriment

Where this is the case, to apply the statute may be so unfair that it could amount to an abuse of power. But, where we have given an incorrect clearance, our primary duty will always remain to collect the correct amount of tax as required by the law and therefore there will be some circumstances when we would not be bound by the advice we have given. All cases will be subject to any statutory time limits.

Where we provide you with an erroneous clearance that is binding on us and subsequently notify you that it is incorrect, the established legal position ([See note 3](#)) is that you will only be required to start accounting for tax on the correct basis from the date of notification.

Note 3: See for example *F & I Financial Services Ltd* [2001] STC 939 and *Al Fayed and others v Advocate General for Scotland* [2002] STC 910.

Annex A - checklist for non-statutory clearance applications

Please use this [checklist \(PDF 29K\)](#) when deciding which document to attach to your email application, or print and include as a cover sheet where you do not send it electronically.

Check that you have included information that is relevant and available for your clearance application and indicate with a tick, items that are included. It helps us if you follow the order set out below in your clearance application letter and follow the same order in grouping any supporting documents.

Annex B - other help and advice available from HMRC

In addition to non-statutory clearances HMRC makes available a wide range of information and advice to our customers.

To discuss your tax affairs or get tax information, including a wide range of leaflets that explain different aspects of the tax system, please see the information contained in the [Contact Us](#) area of our website.

For general advice on VAT, Excise and Customs, please ring our National Advice Service (NAS) on Tel 0845 010 9000.

For general queries on IR35 intermediaries legislation, please contact Tel 0845 303 3535

For general advice on other matters, please ring the Client Relationship Manager (CRM) or Customer Manager (CM) that handles your tax affairs. If you do not have an established contact within HMRC, then please visit the [Contact Us](#) area for the number of an appropriate

helpline. You will find it helpful if you prepare for the call by having to hand a clear explanation of your question and relevant details.

General advice on specialist technical areas of taxation

Please check the [contact details](#) provided.

Statutory approvals

Please check the [contact details](#) provided.

Statutory clearances

Please see a list of all our [statutory clearances and contact details \(PDF 79K\)](#).

Statements of Practice

Non routine publications that explain our interpretation of legislation and the way we apply the law in practice.

Extra-statutory concessions

Relaxations of the law that give a reduction in tax liability that you would not be entitled to under the strict letter of the law.

News releases

Published on the [Government News Network](#) to announce proposed changes in the law or in our practice, or any other changes or initiatives of interest to the public.

Public Notices

A range of [publications](#) in relation to VAT, Customs and Excise.

Revenue & Customs Briefs

Regular [publications](#) which include announcements advising of policy changes resulting from legislation, litigation or internal policy reviews.

Guidance manuals

The internal [guidance manuals](#) our staff use.
