



## **SURVEY ON ADVANCE TAX RULINGS**

The Fédération des Experts Comptables Européens (FEE) is the representative organisation for the accountancy profession in Europe, currently grouping together the 38 leading institutes in 26 countries, including the 15 Member States, Cyprus, Czech Republic, Hungary, Iceland, Israel, Malta, Monaco, Norway, Romania, Slovenia and Switzerland. Between them these bodies have a combined membership of approximately 400.000 individuals of whom about 45% work in the public practice, providing a wide range of services to clients, whilst the other 55% work in various capacities in industry, commerce, government and education.

## INTRODUCTION

### PURPOSE OF THE SURVEY

The purpose of the survey is to identify the extent to which both formal and informal tax rulings or clearances can be obtained in EU Member States and Malta.

The survey particularly aims at understanding if any specific rules existed setting out the basis on which tax rulings could be obtained, the length of time it typically takes to obtain a ruling and also the extent to which rulings obtained are binding on the tax administration.

The Code of Conduction group have debated a number of advance tax ruling procedures when considering harmful tax practices and it is therefore particularly important to understand the general validity of tax rulings to all taxpayers and the transparency of rulings given to all taxpayers. These are key areas reviewed in the survey.

### WORK CARRIED OUT

The member organisations of the FEE in EU countries and Malta have answered to fifteen questions which try to show when it is possible to obtain an advance tax ruling, obligations of the Tax Administration and of the taxpayers and publication and application of the advance tax rulings.

### CONCLUSIONS

The survey concludes that it is possible to obtain advance tax rulings in the countries surveyed, except in Ireland, but there are some countries (e.g. Denmark or Italy) where it is only possible to ask for advance tax rulings for specific operations.

The obligation of the tax administration to reply is very different in each country, each one has its own rules about this. For instance, in Belgium, Finland, Luxembourg and Sweden there is no obligation to reply, in Germany it is only obligatory to reply with respect to issues on wages taxes. In Italy, at the other extreme, if no reply is received within six months, then the tax ruling is considered as granted to the taxpayer.

In the majority of the surveyed countries, the common condition under which it is possible to obtain a tax ruling is the provision of an application to the tax administration with the specific details of the ruling requested and full details of the transaction proposed.

In the majority of the countries there is no charge to apply for a tax ruling. An exception is Denmark, however, where there is a minimum charge when applying for a binding advance tax ruling.

The procedure is formal in Belgium, Finland, France, Germany, Greece, Italy, Malta, Spain and Sweden. It is informal in Austria, Luxembourg, the Netherlands and Portugal. It can be both, formal and informal in Denmark and the United Kingdom depending on the type of advance tax ruling.

The provision of the name of the inquirer is compulsory in the majority of the surveyed countries. It depends on the specific case in Austria and in the United Kingdom.

Regarding the name of the ultimate beneficial owner, it is compulsory to provide it in France, Germany, Greece and Sweden. If it is relevant for the advance tax ruling, it has to be disclosed in Denmark, Finland, the Netherlands and the United Kingdom. It depends on the specific case on Austria and Luxembourg and it is not compulsory to be provided in the other countries surveyed.

The rules relating to advance rulings are published in Belgium, Germany, Greece, Italy, Malta and Spain. They are not published in Austria, Finland and Portugal. In Denmark, France, the Netherlands, Sweden and the United Kingdom it depends on the specific situation of the advance tax rulings.

The timescale to receive an answer from the tax administration is different in each country. There is a wide range of possibilities from the one week in some specific situations in Luxembourg to no formal time limit in different countries, depending on the individual case.

The answers are binding on the tax administration in Denmark, Finland (if the taxpayer appeals for it), France, Germany, Greece, Malta (in general, for five years), the Netherlands and Portugal. They are not binding for Italy. It depends on the specific situation in Austria, Belgium, Luxembourg, Spain, Sweden and the United Kingdom.

The rulings granted are published in the Netherlands and Greece and anonymously published in Belgium and Italy. In Austria, only the rulings issued by the Ministry of Finance are published. In France, only the questions dealt with by a Member of the Parliament are published. In Denmark, they are published if the advance tax rulings are of interest to other companies and, in Spain, only the major issues are published. In Sweden, some rulings are published anonymously.

When the answers are published they are applicable to all companies in Denmark, France, Greece and the Netherlands. They are not automatically applicable, but are taken into consideration, in Italy and Spain.

In the majority of the surveyed countries the rulings are given by the tax administration, except for:

- Denmark: Binding advance rulings are given by the Tax Assessment Council.
- Italy: they are given by the special "Committee" which is part of the Ministry of Finance.

- The Netherlands: Standard rulings are given by the “Ruling Team” in Rotterdam and other specific rulings by the local tax inspector.
- Sweden: they are given by the Council For Advance Tax Ruling.

In all surveyed countries all rulings are available equally to all taxpayers, except in Spain in the specific case of the consultation about employment restructuring processes that has to be made by the company or by the workers representatives. The United Kingdom specifies that although, in principle, tax rulings are available equally to all taxpayers, they are not applicable to certain types of taxpayers.

#### FINAL THOUGHTS FROM FEE

FEE believes that the provision of tax rulings dealing with tax law and practice is helpful and should be encouraged. It is important, however, that all taxpayers should be treated equally and therefore recommended that, for the sake of transparency, all, or at least the most important rulings given, should be published. FEE also believes that rulings should not be available on the basis of negotiated special situations applicable only to specific industries or specific taxpayers as this can create unfair “hidden” competition between European countries and potentially distort normal commercial relationships.

## QUESTIONNAIRE ON ADVANCE TAX RULINGS

### 1. For what operations is it possible to obtain an advance tax ruling?

#### AUSTRIA

- Binding Rulings:
  - For wage tax matters (withholding tax on wages and salaries)
  - Exemption from dividend withholding tax on dividends paid by an Austrian company to its EU-resident parent company
  
- Non-Binding Rulings
  - All tax matters by the Ministry of Finance
  - International tax issues and tax treaty issues: EAS ("Express Answering Service") by the Ministry of Finance
  - rulings can be issued by all tax offices on all tax matters falling in the respective tax office's competency; the rulings can be binding on the tax office to the extent the full facts were presented and the taxpayer relied on the ruling in good faith ("Treu und Glauben")

#### BELGIUM

- a) General ruling: Since 1993, it has been possible to obtain a ruling on specific matters which are detailed in Article 345 of the Belgian Income Tax Code.

This includes and is restricted to:

- the possibility of obtaining an exemption on capital gains when including a branch or division of a company as contribution to capital;
- tax exemption in cases of company mergers;
- possible requalification of transactions made with non-residents located in a tax haven country or not subject to normal corporation tax;
- interest royalties, licence fees or similar payments made to foreign entities located in tax haven countries or countries with an exceptionally low tax regime, which, under certain circumstances, can be regarded as disallowed expenses;
- exemption from corporation tax on certain dividends paid to resident companies as far as foreign subsidiaries could be regarded as being located in tax haven countries or not subject to normal corporation tax;
- transactions whose legal character could be requalified in a transaction of another country
- changes in control of management justified for financial or economic reasons.

In all cases, the purpose or ruling would be to obtain from the Ministry of Finance a statement that the transaction can be regarded as normal and that special tax breaks would follow.

For further information, contact: “Ruling Committee”, Ministry of Finance Administrative Centre, Tour des Finances, Boulevard du Jardin Botanique, 50, boîte 57, 1010 Brussels – tel.: +32 (0)2 210 23 84 or 86.

b) Specific ruling: A new advance ruling service has been in place since 14 June 1999 under the authority of the Tax Office Chief Executive, which will make it possible to obtain the tax authorities’ position in advance, especially with regard to the tax consequences of new investments in tangible or intangible fixed assets in Belgium. The Royal Decree of 3 May 1999 (Ministerial Decision, 4 June 1999) established a prior consultation procedure standardised by the implementation of a single decision-making centre and introduced deadlines within which the advance decision must be delivered. We should at once point out that this scheme does not constitute a means of obtaining, in agreement with the tax authorities, a tax exemption or reduction. Its only aim is to define, on the basis of an advance decision binding the tax authorities, the application of statutory, regulatory or administrative provisions in a given situation for a particular period relating to the four issues below:

- “The effects of direct and indirect taxation on an investment in tangible or intangible fixed assets, including financing thereof, but excluding investments in financial fixed assets to be realised on Belgian soil”. Reference is therefore made to depreciation allowances for investments in tangible or intangible fixed assets, whether or not a fixed establishment exists in Belgium, the application of Article 26 CIR 92 on abnormal or voluntary tax breaks (“cost-plus” methods, “cost-sharing” agreements, various “at-arm’s-length” payments and other agreements for granting “management fees”, the application of registry fees to capital contributions and the VAT regime applied to operations outside the Community.
- “The conditions governing the invoicing of services rendered by a resident company or a Belgian establishment of a foreign company, which are exclusively engaged in preparatory or auxiliary activities or in certain non-commercial information activities for customers, in favour of affiliated companies within the meaning of the Royal Decree of 8 October 1976 relating to companies’ annual accounts” and “the conditions governing the invoicing of services rendered by a resident company or a Belgian establishment of a foreign company, which are exclusively engaged in the activities referred to in 2) or in sales administration activities within a separate division and in favour of affiliated companies within the meaning of the Royal Decree of 8 October 1976 relating to companies’ annual accounts”. Reference is obviously made to the tax regime of the distribution and service centres.
- The tax status of foreign executives
- The issue of knowing whether a granted tax break is abnormal or voluntary (cf. Art. 26 CIR 92) and whether a payment referred to in Article 54 CIR 92 corresponds to honest and actual operations and does not exceed the normal limits.

For further information, contact: “Advance decisions service”, Ministry of Finance Administrative Centre, Tour des Finances, Boulevard du Jardin Botanique, 50, boîte 57, 1010 Brussels – tel.: +32 (0)2 210 23 84 or 86.

NB: Without constituting a ruling in the strict sense, companies not yet established in Belgium which have projected investment of more than BEF 200,000,000 have the option of applying to the Foreign Investors Tax Unit to find out for certain how the tax authorities is considering applying legislation or a specific directive. For further information, contact: Ministry of Finance, Secretary General, Foreign Investment Unit, rue de Louvain 38, 1000 Brussels – tel.: +32 (0)2 233 82 64 – fax: +32 (0)2 233 82 70 and by e-mail at min.fin.invest@skynet.be.

## DENMARK

Generally, it is possible to obtain a binding advance tax ruling in areas of tax and duty from the Tax Assessment Council. A basic rule is that an advance tax ruling is only granted in relation to issues of income taxation or taxation by way of duties. For example, it is not possible to obtain an advance tax ruling in relation to tax valuation of real property, penalties, etc.

It is commonly used to ask the tax authorities for a non-binding advance tax ruling for example in situations where it is not possible to wait for the Tax Assessment Council to make a ruling. Normally, you can rely on such a ruling, but it is not binding. The following mainly refers to the rules regarding binding advance rulings.

## FINLAND

Advance tax ruling can be obtained for operations concerning:

Tax	Authority
- income tax (business and personal income)	Central Tax Board, Tax Office
- property tax	Central Tax Board, Tax Office
- value added tax	Central Tax Board, Tax Office
- preliminary tax withholding	Tax Office
- withholding tax on interest payments to Finnish residents	Central Tax Board, Tax Office
- withholding tax of payments to non-residents	Central Tax Board, Tax Office
- inheritance and gift tax	Tax Office
- real estate tax	Tax Office
- lottery tax	Tax Office
- asset transfer tax	Tax Office
- stamp duty tax	Tax Office
- excise tax	National Board of Customs
- car tax	Vehicle Administration Centre
- tax on motor vehicles	Vehicle Administration Centre



Advance tax ruling can be applied from the Central Tax Board, Tax Office, National Board of Customs and Vehicles Administration Centre.

## FRANCE

1.1 There is no specific procedure (but not a formal one) allowing a taxpayer to ask the administration for advance tax ruling. Except in some cases (see point 1.2), the Tax Administration is not obliged to answer.

There is another procedure allowing a Member of Parliament to ask a question to the “Ministre des Finances”.

If the answer is precise enough and applies to the case of the taxpayer, he can use the answer of the “Ministre des Finances”. Of course this procedure is rather heavy and cannot be used for a very particular case.

1.2 There are specific procedures for some situations:

- In case of transfer of business by donation. The ruling applies only for the value of the business. For the moment, this ruling is only for a short period of time: January 1998 till 31 December 1999. (Instruction of January 8 1998). It has not been renewed after January 1<sup>st</sup> 2000.
- The taxpayer may ask the Tax Administration about a particular operation (Livre des Procédures fiscales Art. 64A-64B).  
If the tax administration does not answer in the next 6 months, Tax Administration will not use a special procedure called “procédure de répression des abus de droit”. This special procedure allows the Administration to consider the operations as fictitious.
- For non-profit organisations (Associations).  
They can ask local administration about their tax regime. Are they really non-profit? For good faith “associations”, there will be no tax penalty if they ask the Administration before the end of 1999.
- Transfer pricing.  
An Instruction of September 7, 1999 allows multinational corporations (either French or Foreign) to obtain a “preliminary agreement” on their method of transfer pricing.  
This agreement is about a method of determining transfer pricing.  
The agreement is given by both (French and Foreign) Tax authorities.

## GERMANY

Tax offices may issue binding opinions beyond the scope of Sec. 204 et seq. of the General Tax Act and Sec. 42e Income Tax Act on the tax treatment of precisely stated

matters, where the taxpayer has a particular interest therein, in view of the significant tax consequences.

### GREECE

Advance tax ruling can be obtained for operations concerning Income Tax, VAT and other taxes.

### IRELAND

There is not a formal system of advance tax rulings in the Republic of Ireland. However, practitioners do get informal opinions from the Revenues commissioners – particularly, in relation to inward investment and the International Finance Services Centre (IFSC). Such opinions are not binding on the Revenue Commissioners, but are not normally queried by them after the event.

### ITALY

The “right to interpellate” the Financial Administration has been introduced in Italy since 1991 but, as the relevant regulations have been approved after years, actually this right entered into force only starting from March 16<sup>th</sup> 1998.

The possibility to obtain a tax ruling is restricted to:

- corporate reorganizations (such as merger, spin off, demerger, liquidation, transformation)
- fictitious interposition legislation (legislation which allow the Italian Tax Authorities to attribute income to the “actual beneficial owner”)
- deduction of advertisement and entertainment expenses
- exchanges of tax credits and excess taxes
- tax-haven transactions
- transactions among international group companies

### LUXEMBOURG

For any operation a tax ruling is possible.

### MALTA

1. Whether a particular transaction would be deemed by the Inland Revenue to fall foul of general anti-avoidance tax provisions (only a party to the transaction may apply, and the Commissioner must be satisfied that the transaction is to be effected for bona fide commercial reasons).
2. Whether an investment would be deemed to be in furtherance of an investing company's own business in connection with the qualification of that investment for tax purposes as a participating holding.
3. The tax treatment of any transaction which concerns any financial instrument or other security.
4. The tax treatment of any transaction which involves international business (the Commissioner has exclusive discretion to determine what constitutes international business).
5. Whether a company qualifies as an international trading company.

## NETHERLANDS

Taxpayers can apply for a ruling for a broad range of situations. For practical purposes, two types of rulings can be distinguished:

- standard rulings
- tailor-made ruling

**Standard rulings** are designed for standard situations:

- *Holding company ruling* (ruling assuring the application of the Dutch participation exemption);
- *Finance company ruling* (ruling fixing a spread on borrowing/lending activities of a Dutch finance company);
- *Royalty company ruling* (ruling fixing a spread on royalty-structures);
- *Foreign finance branch ruling* (ruling fixing division of profit between Dutch company and its foreign finance branch);
- *Cost plus/sales minus ruling* (ruling fixing income for support/sales activities in the Netherlands to assure application of arm's length);
- *Informal capital ruling* (ruling assuring the qualification of informal capital).

**Tailor-made rulings** assure tax-consequences in non-standard situations.

## PORTUGAL

Advance tax rulings are not related to specific operations. In principle, it is possible to obtain an advance tax ruling regarding any area of taxation.

## SPAIN

The taxpayer can ask for ruling in any question, but only in some areas the answer is binding for the Administration. Those matters are listed in question 2.

### SWEDEN

Advance tax rulings are not related to specific operations. In principle it is possible to obtain an advance tax ruling regarding direct taxes, indirect taxes including VAT, property taxes, some selective taxes and finally some specific charges.

Applications may be filed by taxable persons or by the National Tax Board. In the latter case, the application must concern a specific taxable person and stem from a request or application filed by this person with the tax authorities.

### UNITED KINGDOM

It is sometimes possible to obtain advance clearances or rulings in the United Kingdom. In the legislation, the possibility exists specifically for certain mergers and reorganisations and this has been the case for a long while. It is also now proposed to have an advance clearance system for controlled foreign corporation legislation and transfer pricing legislation. In addition, it is possible to obtain clearances in the form of advance rulings from the International Division of the UK Revenue with respect to cost plus arrangements for service companies and branches and also with respect to debt/equity ratios acceptable from a thin capitalisation viewpoint. Additionally, it is sometimes possible, on uncertain situations, to request the local Tax Inspector dealing with the taxpayer to express a view and confirm his agreement to the proposed tax treatment of a specific activity or transaction.

## **2. Are there any areas in which the tax administration is obliged to reply (e.g. they have to give their opinion and then they are bound by it)?**

### AUSTRIA

In some instances the tax administration has to reply to ruling requests, e.g.:

- For wage tax matters (withholding tax on wages and salaries - § 90 EStG)
- Exemption from dividend withholding tax on dividends paid by an Austrian company to its EU-resident parent company (§ 5 VO BGBl 1995/56)
- Rulings under § 48 BAO (unilateral elimination of double taxation in the absence of a tax treaty)
- Rulings under § 103 EstG (partial tax exemption for scientists taking up residence in Austria)
- The tax administration is generally obliged to answer questions from taxpayers as to the application and interpretation of tax law. The authorities

and the taxpayer are, however, generally not bound by such rulings and the taxpayer has no legal procedure to force the tax administration to comply with the obligation to provide answers to taxpayer's questions

Under certain conditions the taxpayer can rely on answers received from the tax office under the principle of good faith:

- If the ruling has been obtained from the competent tax office
- If the ruling was based on a full and complete disclosure of relevant facts
- If the ruling was given in advance (before the taxpayer took relevant decisions or actions)
- If the taxpayer can demonstrate that he relied on the ruling
- If the ruling is not contrary to law or jurisdiction

If all conditions are met and the taxpayer acted in good faith he could claim damages from the tax administration if they change their mind without good cause.

## BELGIUM

No (see answers to questions 9 and 10).

## DENMARK

A basic rule is that the Tax Assessment Council makes binding advance tax rulings only in such areas where it is possible for the tax payer to complain over the Council's ruling before an administrative authority. This means that in practice the Tax Assessment Council is obliged to make a binding advance tax ruling in almost all areas involving taxation. There are only few areas where no binding advance tax ruling can be obtained, e.g. in areas where the Tax Assessment Council is the relevant authority for certain permissions.

A binding advance tax ruling is binding for the tax authorities. The tax authorities are thus obliged to base their subsequent treatment of the issue dealt with as stated in the ruling. The binding advance tax ruling is of course not binding for the tax authorities if conditions of material importance to the contents of the ruling are changed.

## FINLAND

Tax administration is not obliged to give an advance ruling. However, there should always be a clear reason for not to give a ruling. Most often it is an insufficient explanation so that the matter can not be solved. If the Tax Administration does not give a ruling, it gives a written decision stating that the ruling will not be given. It is not possible to appeal against the decision where the ruling has not been given.

## FRANCE

- In the first case “donation” (see point 1.2), if the Administration does not answer, that does not mean agreement. Normally the Administration will answer in the next nine months.
- In the second case (“abus de droit”), if the Administration does not answer in the next 6 months, it means that the special procedure will not be used.
- In the third case, the Administration has to answer, but there is no special text.
- In the fourth case (transfer pricing), tax administration is obliged to reply.

## GERMANY

Wage tax.

## GREECE

In all cases that tax legislation imposes.

## IRELAND

N/A

## ITALY

For any applications the Tax Administration is obliged to reply within 60 days.

Should the applicant not receive any reply within 60 days he can formally give the Tax Administration warning to reply.

If the silence of the Tax Administration persists for further 60 days the tax ruling is considered as obtained by the applicant.

## LUXEMBOURG

There are no areas for which the administration is obliged to reply.

## MALTA

Yes. Same areas as listed in question 1 above.

## NETHERLANDS

No.

## PORTUGAL

See answer to question 1.

## SPAIN

1. Investments in business assets
2. Tax incentives
3. Intercommunity transactions made by business from different EU Member States
4. International tax treaties
5. Employment restructuring processes
6. Tax regime of financial assets and life insurances
7. Restructuring transactions (merges, split-offs)

## SWEDEN

The National Tax Board is not obliged to reply each issue related to an advance tax ruling but the system presumes that the National Tax Board will give its opinion, and in fact it always does. The National Tax Board is in principle not bound by its previous opinion. The board is however bound by the advance tax ruling itself once it becomes legally binding.

## UNITED KINGDOM

The UK have some instances where a formal system exists whereby taxpayers can divulge full details of a proposed transaction and request an advance ruling. In such circumstances, and provided full and appropriate disclosure has been made, the ruling will be binding although the taxpayer may have a right of appeal.

### **3. Under what conditions is it possible to obtain an advance tax ruling?**

## AUSTRIA

- The person requesting the ruling must have a justified interest in the matter
- The facts are fully presented
- The question relates to a legal issue or to the way the tax administration is going to decide in cases they have discretionary authority
- The taxpayer can not ask for general advice

## BELGIUM

- a) General ruling: A request for a ruling must be sent to the Chairman of the committee. This request must be well-founded and signed. The committee can ask the applicant to furnish documents which it deems necessary to give a ruling and/or hear the applicant at the committee's initiative or at the applicant's request. The applicant may have a duly appointed adviser sit in throughout this procedure. All correspondence between the committee and the applicant is sent by registered letter.
- b) Specific ruling: The request must be sent by registered letter to the advance ruling service.

## DENMARK

A binding advance tax ruling depends on the following:

- that the Tax Assessment Council is the competent/right authority to evaluate the issue, see under item 1;
- that the actions evaluated by the authorities have not yet been carried out. The right to obtain an advance tax ruling does thus mainly include contemplated actions. An evaluation of actions already carried out belongs with the local tax authorities. However, on a few occasions it is possible to obtain an advance tax ruling on actions already carried out;
- that the binding advance tax ruling by the discretion of the tax authorities is deemed of significant importance to the applicant.

## FINLAND

The conditions for advance ruling from the *Central Tax Board* are specified in the Central Tax Board Act. The Central Tax Board can give an advance tax ruling on the basis of the following criteria:

- an advance ruling has an important bearing on other similar cases or for securing the uniformity of legal practise;
- there are other important grounds for giving the advance ruling.

The conditions for advance tax ruling from the *Tax Office, National Board of Customs and Vehicle Administration Centre* are not specified in any way in the legislation. The law provides only that the Tax Office can give an advance ruling.

## FRANCE



- The person requesting the ruling must use special form or questionnaires prepared by the Administration (point 1 and 3) Good faith is necessary. Descriptions have to be precise. If this is not the case, the ruling will have no value.
- Generally the ruling has not to be asked before the operation takes place.
- For transfer pricing, the ruling has to be asked at least 6 months before the opening of the fiscal year concerned.

## GERMANY

An application for a binding opinion must be submitted in writing to that tax office which may be expected to be responsible, should the matters at issue be realised. The application must include the following:

- the exact identity of the applicant (name, town and tax number, if any);
- a description of the significant tax consequences;
- a comprehensive and complete description of the measures under serious consideration (no incomplete or alternative arrangements, no measures based on assumptions, references of enclosures merely by way of documentation);
- an exhaustive description of the (tax) legal issues involved and a detailed explanation of the applicant's own view of the legal position;
- precise expression of questions of law (a general request for a view as to the legal consequences is insufficient);
- a declaration that an application for a binding opinion on the same matters has not been submitted to any other tax authority; and
- a representation that all information necessary for an evaluation of the facts and for issuing the opinion has been furnished and that this information is true.

The tax office is not obliged to conduct its own investigation for purposes of the opinion.

When issuing the opinion, the tax office must state that it:

- under the principle of good faith is only binding, insofar as the measures actually taken do not depart from those on which the opinion was based; and
- loses validity upon a change of statute or statutory instrument upon which the opinion was based.

Binding opinions will not be issued where the prime aim is the achievement of a tax benefit (e.g. review of tax saving schemes, determination of where the boundary for

abuse of legal forms shall lie, or judgements on the conduct of an orderly business manager).

The right to refuse, after due consideration, to issue a binding opinion in other cases remains unaffected (e.g. where the issue is expected to be the subject of legislation, high court decision, or decree of the tax authorities, within the foreseeable future).

#### GREECE

In the cases of doubt or disagreement on the concept of the law provisions.

#### IRELAND

N/A

#### ITALY

The Italian tax legislation doesn't provide for any particular condition to obtain an advance tax ruling, apart from the formalities requested for the application and the relevant documents which have to be enclosed.

#### LUXEMBOURG

A precise description of the operation has to be given.

The ruling will of course always comply with existing tax laws.

#### MALTA

Application must be made in writing and must contain all material particulars of the transactions to be effected. The Commissioner may ask for further information for his deliberations which must be complied with by the applicant within 30 days or such longer period as the Commissioner may allow. If such request for further information is not met in time by the applicant, the application is no longer valid.

#### NETHERLANDS

- Standard rulings: if facts comply with the situation as described in the ruling;
- Tailor-made rulings: *not* being approved if:
  - the proposed transaction is solely/mainly driven by purpose of tax saving;
  - no practical purpose is involved except for tax savings;

- the purpose of law would be violated.

(Partly) non-disclosure of facts by the taxpayer leads to voidness of the ruling.

### PORTUGAL

An application for a binding opinion must be submitted in writing.  
The person requesting the ruling must be identified.  
The facts are fully presented.

### SPAIN

It depends on the matter:

- investments in business assets: the question must be issued before the materialisation of the investment;
- tax incentives: no special requirements;
- intracommunity transactions made by business from different EU Member States: no special requirements;
- international tax treaties: no special requirements;
- employment restructuring processes: the consultation has to be made by the company or by the workers representatives;
- tax regime of financial assets and life insurance: the consultation has to be made before the commercialisation of the product;
- restructuring transactions, like mergers or spin-offs: no special requirements.

### SWEDEN

The issue in question has to be of importance to the applicant, in the case of a taxable person, or to the uniform application or interpretation of law.

### UNITED KINGDOM

This is covered by the reply to item 1. above.

## **4. Is there a charge to apply for a tax ruling?**

### AUSTRIA

No.

## BELGIUM

No.

## DENMARK

There is a fee for obtaining a binding advance tax ruling. A fee of DKK 1,600 must be paid for binding advance tax rulings concerning transactions in respect of issues impacting on the taxation of a single tax payer, and transactions which impact on the taxation of other persons carry a fee of DKK 7,800. The fees are adjusted on an annual basis. If a binding advance tax ruling involves a lot of work for the tax authorities, an additional fee is charged for the extra hours spent.

## FINLAND

All advance rulings are subject to a fee. The amount of the fee depends on the applicant (private person or a company) and the form of tax as well as the authority giving the ruling. The price charged by a tax office varies between FIM 400 – 2000. The Central Tax Board charges FIM 2000 or FIM 4000. Rulings given by the National Board of Customs and the Vehicle Administration Centre cost FIM 300 – 1000.

## FRANCE

No

## GERMANY

No

## GREECE

No.

## IRELAND

N/A

## ITALY

There is no charge to apply a tax ruling.

#### LUXEMBOURG

There is no charge.

#### MALTA

No.

#### NETHERLANDS

No.

#### PORTUGAL

No.

#### SPAIN

No.

#### SWEDEN

If the advance tax ruling relates to direct taxes, property taxes or certain specific charges a charge will apply. The charge normally ranges from some SEK 600 to SEK 10 000. The amount charged depends on different circumstances, such as degree of difficulty, amounts involved and whether the beneficial owner is a private or a legal person. However, if there are exceptional reasons the charge can be set to an amount less than SEK 600.

#### UNITED KINGDOM

There are no charges for such tax rulings. There is also an informal ruling system and, although there is no provision for cost in the legislation, it is possible that the Revenue might seek to recover some costs, if they considered it appropriate.

### **5. Is the procedure formal or informal?**

## AUSTRIA

The procedure is informal in the form of a letter to the tax office or to the Ministry of Finance.

## BELGIUM

As indicated in question 3, a written procedure applies in both cases.

## DENMARK

This involves a formal procedure. The application must be in writing and include all information important for the ruling. The application must be accompanied by a minimum charge of 1,500 DKK when applying for binding advance tax ruling.

The procedure for a not binding advance tax ruling is in most cases informal.

## FINLAND

It is formal in a sense that the procedure has been regulated in the law. It is also possible to apply for correction from the decision concerning the advance tax ruling. However, in cases where advance tax ruling can be applied both from the Central Tax Board and the Tax Office, it is not possible to apply for correction from the Tax Office's decision.

The applicant is obliged to provide the advance tax ruling authority with all the information needed for the advance ruling.

## FRANCE

The procedure is formal.

- For donations for instance, the request has to be very precise about the business. If the Administration does not agree with the value given in the request, there will be a discussion (oral) between taxpayer and the Administration.
- For transfer pricing procedure is quite formal and implies many discussions between corporations and Tax Administration.

## GERMANY

Formal.

## GREECE

Formal.

## IRELAND

N/A

## ITALY

A formal request has to be introduced with a special “Committee”. The application must be in writing.

## LUXEMBOURG

The procedure is informal. An often-used procedure is that the taxpayer and his consultant meet the competent tax inspector. The consultant drafts minutes of such meetings and sends them for approval to the tax inspector. The taxpayer may also simply address a letter to the competent tax inspector or to the director of the tax administration.

## MALTA

Formal.

## NETHERLANDS

Informal.

## PORTUGAL

The procedure is informal (letter to the tax administration).

## SPAIN

The procedure is formal.

## SWEDEN

The procedure is formal. The application has to be in writing and lodged within a specific time frame as regards the fiscal year in question.

## UNITED KINGDOM

The procedure can be both formal and informal but where tax law foresees the ability to obtain an advance clearance in the circumstances mentioned in item 1., then the approach is formal. Where a ruling is obtained from the International division or from the local Tax Inspector, then the approach is informal. It should be mentioned that somewhere between the two extremes used to be the ability to apply to the Technical Division of the Inland Revenue on a specific fact scenario for their ruling as regards the tax consequences. Unfortunately, this Technical Division service was withdrawn some two or three years ago.

### **6. Is it compulsory to provide the name of the inquirer?**

## AUSTRIA

The ruling request can be filed by a tax advisor or lawyer without disclosing the name of the client. It is compulsory to provide the name of the taxpayer if a binding ruling is requested.

## BELGIUM

Yes in both cases.

## DENMARK

Yes.

## FINLAND

Yes, the application for the advance ruling must be based on a concrete case.

## FRANCE

Yes (Except the case when a Member of Parliament asks the Ministre des Finances).

## GERMANY

Yes.

## GREECE



Yes.

IRELAND

N/A

ITALY

The name of the taxpayer(s) who is (are) interested in obtaining the tax ruling has to be disclosed.

LUXEMBOURG

Yes.

MALTA

Yes.

NETHERLANDS

Yes.

PORTUGAL

It is compulsory to provide the name of the taxpayer if a binding ruling is requested.

SPAIN

Yes.

SWEDEN

Yes.

UNITED KINGDOM

It is customary to provide the name of the taxpayer involved in a transaction although it is sometimes possible to apply for a general statement of practice on a no-names basis.



**7. Is it compulsory to provide the name of the ultimate beneficial owner?**

AUSTRIA

If the taxpayer wants to rely on the ruling under the "good faith"-principle the full facts (including the identity of ultimate beneficial owners) have to be disclosed to the extent the facts might be relevant to the case.

BELGIUM

No in both cases.

DENMARK

Only if this information is important for the advance tax ruling.

FINLAND

If the name of the ultimate beneficial owner is significant for the tax problem, it has to be mentioned. Otherwise the advance tax ruling is not binding. If the name of the beneficial owner has no significance, it does not have to be mentioned.

FRANCE

Yes.

GERMANY

Yes.

GREECE

Yes.

IRELAND

N/A

## ITALY

In principle, it is not compulsory to provide the name of the ultimate beneficial owner, but the Tax Administration has the right to ask for any information (the name of the ultimate beneficial owner too) which in its opinion is significant for the tax case submitted by the applicant.

## LUXEMBOURG

In most cases.

## MALTA

No.

## NETHERLANDS

All facts relevant for Dutch tax treatment have to be disclosed.

## PORTUGAL

No.

## SPAIN

No.

## SWEDEN

Yes.

## UNITED KINGDOM

It is generally sufficient to provide the name of the UK taxpayer rather than the ultimate beneficial owner of the UK company involved. On the other hand, depending on the ruling sought, it may be essential to provide full details of the ownership if a favourable response is to be received.

**8. Are the rules to obtain an advance tax ruling published?**

AUSTRIA

The procedure is informal so there are no "rules" which could be published.

BELGIUM

Yes in both cases.

DENMARK

Yes, for a binding advance tax ruling.

FINLAND

Certain conditions are stated in the law (see above, Central Tax Board). Otherwise, the rules are not published.

FRANCE

Yes for the specific procedure some situations (see point 12)

For transfer pricing, there is a "tax secret". Tax Administration has not the right to give any information to any third party except Tax authority.

GERMANY

Yes.

GREECE

Yes.

IRELAND

N/A

ITALY

All the rules, the entire procedure, are stated in the Law.

## LUXEMBOURG

There are no rules.

## MALTA

Yes – statutory provisions in Income Tax Act.

## NETHERLANDS

Partly, as no specific procedure exists foreign companies are free to request for a ruling on a specific (non-) standard situation.

## PORTUGAL

No.

## SPAIN

Yes.

## SWEDEN

The prerequisites for an advance tax ruling application are described in the applicable legislation (Lag [1998:189] om förhandsbesked i skattefrågor).

## UNITED KINGDOM

Where legislation provides an option to apply for advance clearance, then to this extent one could consider the rules and procedures are published. Informal clearances are a matter of practice, however, officially are probably rather discouraged by the Inland Revenue authorities and certainly there are no published guidelines in this respect.

### **9. How long is it necessary to wait in order to get an answer?**

## AUSTRIA

- That depends; there is no enforceable time limit and it might take from 2 weeks to 1 year to get a ruling;

- Under the EAS (express answering system) introduced by the Ministry of Finance non-binding rulings regarding tax treaty issues and international tax issues will usually not take more than 3-4 weeks.

## BELGIUM

- a) General ruling: In principle, the committee must make its decision within three months from the date the request was received. This deadline may be extended to a maximum of three months, however, where additional documents and information have been requested and where the applicant has received a hearing. Failing to provide an answer within the prescribed deadline is equivalent to in a prior agreement.
- b) Specific ruling: A distinction is drawn depending on the purpose and the nature of the request. The advance ruling on the invoicing of distribution or service centres where the request relates exclusively to a uniform activity will be delivered within one month. To that end, a specimen request including a list of the uniform activities will be drawn up by the tax authorities. In this particular instance, and in the absence of an answer within one month, the request will be deemed to be accepted. The other rulings will be notified within three months, which may be extended by a further three months where the special nature of the request requires more in-depth examination. Curiously enough, the Royal Decree of 4 May 1999 does not lay down what happens if the tax authorities fails to deliver a ruling at the end of the second three-month period.

## DENMARK

The duration of the administration period for the Tax Assessment Council may vary. Typically, the administration period is 6 to 8 weeks.

## FINLAND

Approximately 2-4 months.

## FRANCE

Between 6 and 9 months maximum (see above point 12)

For transfer pricing, no duration is mentioned in the Instruction.

## GERMANY

No precise prescription; depends on the individual case.

GREECE

Two months.

IRELAND

N/A

ITALY

Please see the answer given to question 2 above.

LUXEMBOURG

It depends upon the complexity of the case. For simple cases a week should be sufficient.

MALTA

Within 30 days.

NETHERLANDS

No formal time limit; on average eight weeks after filing a request.

PORTUGAL

Depends on the individual case. Approximately 3 months.

SPAIN

Six months.

SWEDEN

If the application is complete and if the tax issue in question is granted first call an answer may be obtained within two or three months. In other situations it can take as long as one year and sometimes even longer to get an answer. Should however either party appeal the decision to the Supreme Court it could take another year or even a year and a half before there is a legally binding answer to the issue in question.



## UNITED KINGDOM

Different parts of the legislation lay down differing time limits for a Revenue response but quite typically this is 30 days. As regards informal ruling applications, there is no limited limit nor indeed any obligation on the Inland Revenue to necessarily give a ruling.

- 10. What happens if the Tax Administration does not reply within the time specified in the law or regulation (e.g. 30 days, 6 months, or whatever the law or regulation requires)?**

## AUSTRIA

The taxpayer has generally no legal remedy but can file a disciplinary complaint with the Ministry of Finance.

## BELGIUM

- a) General ruling. Failing to provide an answer within the prescribed deadline is covered in a prior agreement.
- b) Specific ruling. In case of advance rulings on the invoicing of distribution service centre and in absence of an answer within the month, the request will be deemed to be accepted. For other rulings, curiously enough, the Royal Decree of 4 May 1999 does not lay down what happens if the tax authorities fails to deliver a ruling at the end of the second three-month period (see question 9).

## DENMARK

There are no Danish tax rules or guidelines which state the time limit within which the binding advance tax ruling should be made. But as a general rule the Tax Assessment Council has an ambition to answer requests for binding advance tax rulings within three months.

## FINLAND

The law does not specify any time limit for the Tax Administration to reply to the applicant. However, the tax authorities have their own internal rules, according to which the reply should be given within two to three months.

## FRANCE

For particular operations (see point 1.2), if the Administration does not answer after 6 months, the inquirer knows that the Administration will not use the special procedure (“répression des abus de droit”) against him.

In the other cases (donation or association or transfer pricing) nothing is specified, but the Administration normally answers.

#### GERMANY

N/A

#### GREECE

Under the new legislation, the tax administration is obliged to reply.

#### IRELAND

N/A

#### ITALY

Please see the answer given to question 2 above.

#### LUXEMBOURG

No time frame is set by any law or regulation.

#### MALTA

This is not contemplated in the legislation, and does not arise in practice.

#### NETHERLANDS

Formally no consequence to non-reply of the Dutch tax authorities. Application of a standard ruling in standard situations during *tax-assessment* (afterwards) is ensured by the principle of equality.

#### PORTUGAL

Not specified.

## SPAIN

There is not a legal rule, but some courts have understood that the absence on reply could allow the taxpayer to make a claim against the Estate for the prejudice caused, besides the possibility to avoid the penalties taking into account the good faith of the taxpayer. Anyway, those possibilities depend on the specific situation, and cannot be understood as general rules.

## SWEDEN

There is no time limit stipulated by law or regulation.

## UNITED KINGDOM

Most of our rulings require a response within 30 days. If no response is made within that time, in some instances the legislation is silent - ie it is not clear what the remedy will be for the taxpayer. In other instances the taxpayer has the right to refer the matter to an independent body of professionals ie the Special Commissioners.

### **11. Is the answer binding or not binding for the tax administration?**

## AUSTRIA

- In general the answers are not binding on the tax administration nor on the taxpayer;
- the answer is binding only with regard to certain issues (see question 1 withholding tax issues on wages and salaries);
- The answer could become binding under the "good faith"-principle (Grundsatz von Treu und Glauben) if all facts are properly disclosed and the taxpayer acted in good faith upon the answer received from the competent tax office; the taxpayer can not claim the "good faith" principle with regard to rulings obtained from the Ministry of Finance or from a tax office which is not handling the respective case in question.

## BELGIUM

- a) General ruling: The tax authorities may not raise objections to the ruling which will in future be binding on them where one of the operations set out in Article 345 CIR 92 was presented in good faith before being carried out. The authorities are not bound by this ruling where it appears that these operations were described incompletely or inaccurately by the taxpayer or where they are not carried out as presented by the taxpayer. The tax authorities cease to be bound by this ruling where the effects of the operations are modified by one or more other subsequent

operations resulting in the operations which are the subject of the ruling no longer satisfying the conditions laid down.

- b) Specific ruling: By analogy with the ruling procedure, the advance ruling binds the tax authorities for a maximum period of five years, unless the purpose of the request would imply otherwise. The tax authorities will be released from its ruling, however, “where it appears that the investment operations described by the applicant were incomplete or inaccurate or where they are not carried out as presented by the applicant and/or where the effects of the operations are modified by one or more other subsequent operations”.

## DENMARK

The tax authorities are bound by a binding advance tax ruling, which can only be given by the Tax Assessment Council. The tax authorities are thus obligated to respect the content of a binding advance tax ruling when evaluating the actions carried out.

## FINLAND

The answer is binding if the taxpayer appeal to it.

## FRANCE

The answer is normally binding if the inquirer is of “good faith” and if the information given by him is complete and precise.

## GERMANY

Binding.

## GREECE

The answer is binding.

## IRELAND

N/A

## ITALY

The tax rulings are not binding for the Tax Administration, but they shift the burden of proof from the tax payers to the same Tax Administration.

## LUXEMBOURG

The answer is not binding in case of a change of law. The answer is binding if the operation is executed under the circumstances described in the demand for a ruling. In some cases tax authorities limit the time frame of the application of the ruling (e.g. acceptance of a profit margin may be given for 2 years)

## MALTA

Binding for earlier of 5 years, or 2 years from change of relevant legislation. After first 5 years, at the option of the applicant, the ruling may be renewed for a further 5 years.

## NETHERLANDS

Binding, unless the company involved disclosed wrong facts and figures on purpose or non-disclosed facts which are crucial for the ruling.

## PORTUGAL

The answer is binding for the Tax Administration.

## SPAIN

Answers to the questions listed in question 2 are binding. The others are not binding.

## SWEDEN

Once the advance tax ruling becomes legally binding it is also binding for the tax administration. The option to call on the tax ruling, however, rests with the taxable person in question who has the choice of either referring to it or not. Should the taxable person find the answer unsatisfactory he is under no obligation to inform the local tax authorities about it. Furthermore the National Tax Board is not allowed to inform local tax authorities about specific issues.

## UNITED KINGDOM

In the case of formal rulings, the answer is binding on the tax administration provided the full facts have been disclosed in the application and the actual facts after the event remain unchanged. The position on informal rulings is less clear but, in general, if it can be proved that the facts remain unchanged and a written ruling or confirmation of

the tax law has been received, the Inland Revenue would generally feel obliged to stand by the ruling given, at least for a number of years.

## **12. Are the answers published?**

### AUSTRIA

- Answers on rulings issued by the Ministry of Finance are usually published;
- Rulings issued by tax offices are not published.

### BELGIUM

- a) General ruling: The tax authorities regularly publish in the Tax Report - albeit belatedly - an anonymous, summarised version of the rulings delivered and certain statistics on the various categories of applicants requesting a ruling. Edition No. 798 of November 1999 of the Tax Report contains the Committee's assessment of advance tax rulings which analyses the running of the scheme during its first five years. Following a brief background into and an overview of the procedure for requesting an advance tax ruling, the assessment conducts a detailed study of the decisions taken according to subject, and the grounds which led to a positive ruling. The previous assessment was published in early 1996.
- b) Specific ruling: Delivered advance rulings will be published in so far as this is consistent with the observance of the provisions relating to professional secrecy. No decision has yet been published to date. An activity report will be published every year in the General Tax Authorities' annual report.

### DENMARK

Generally, a binding advance tax ruling is only published if such a ruling is assumed to be of interest to other parties.

### FINLAND

Not categorically, but some advance rulings from the Central Tax Board may be published if they have an important bearing on other similar cases. Although some answers may be published no names of the applicants are mentioned.

### FRANCE

No, except in the case of questions asked by a Member of Parliament.

### GERMANY

No.

GREECE

Yes.

IRELAND

N/A

ITALY

The answers are published but without disclosing the names of the taxpayer(s) involved.

LUXEMBOURG

No.

MALTA

No.

NETHERLANDS

Standard rulings: yes.

Tailor-made rulings: published yearly (since 1999, due to the interpretation of the highest Dutch Administrative Court (Raad van State/Conseil d'État) of the law regarding *Disclosure of Administration* (Wet Openbaarheid Bestuur). These rulings are published in detail, without disclosure of the companies involved.

PORTUGAL

No, the answer is only communicated to the party filling the consultation.

SPAIN

In principle, the answer is communicated to the party filling the consultation. But according to a Law approved in 1998, the Tax Administration has the obligation of publish the main consultations issued. It has not been defined how can be known

whether a consultation is important or not, but it seems logical to think that in the future the taxpayers could use the absence of publicity in their own benefit.

#### SWEDEN

No. The advance tax rulings are normally classified for others than the parties involved. However, the National Tax Board publishes some advance tax rulings anonymously in their case protocols. The case protocols are numbered in succession and published approximately forty times a year.

#### UNITED KINGDOM

Under no circumstances are the answers to a ruling request published.

**13. If the answer to question 12 is yes, are the published answers binding/applicable for all the companies in the same situation?**

#### AUSTRIA

No (as the rulings are generally not binding)

#### BELGIUM

The answer is no for both types of ruling. The publication of a decision does not create any right of precedent and does not commit the tax departments with respect to taxpayers other than those which have individually obtained an advance ruling by the committee.

#### DENMARK

Normally, yes, for all liable to taxation in a similar situation. An advance tax ruling therefore constitutes a source of law in line with other administrative decisions and juridical rulings unless of course court decisions later reverse the ruling.

#### FINLAND

The answers are binding only for the applicant. However, they are normally taken into consideration also for other companies in the same situation.

#### FRANCE



An answer by the Tax Administration can always be freighted. Course decisions can reverse the ruling.

GERMANY

N/A

GREECE

Yes.

IRELAND

N/A

ITALY

The answers are binding only for the applicant, but they are taken into strong consideration also for other taxpayers in the same situations.

LUXEMBOURG

Not applicable.

MALTA

N/A (not published)

NETHERLANDS

Yes.

PORTUGAL

N/A

SPAIN

The answers are not binding for other taxpayers, but, logically, it would be notoriously helpful in a possible claim.

## SWEDEN

No.

## UNITED KINGDOM

A schedule of key areas for which advance tax rulings are foreseen under UK tax legislation is set out below.

### *Advance Tax Rulings*

UK tax legislation provides that advance tax rulings may be obtained for the following scenarios (this is not a comprehensive list but highlights the key areas where advance rulings may be obtained):

Statutory Source	Description
s.707 ICTA 1988	Clearance may be obtained that a proposed transaction will not fall foul of the general anti-avoidance provisions of s.703 ICTA 1988 relating to transactions in securities.
s.138 TCGA 1992	Clearance may be obtained that no CGT arises from a proposed share for share transaction.
s.215 ICTA 1988	Clearance may be obtained that distributions made on a demerger are excluded from being treated as a demerger for corporation tax purposes.
s.225 ICTA 1988	Clearance may be obtained that a buy-back of shares by a company should be treated as a capital distribution and not an income distribution.
s.590 ICTA 1988	Clearance may be obtained that a proposed retirement benefits scheme qualifies as an approved pension scheme.

**14. Are the rulings given by the Tax Administration or by other bodies (e.g. a board which incorporates non revenue people)?**

## AUSTRIA

Rulings are given by the tax administration (tax offices, regional tax directorates or by the Ministry of Finance.

## BELGIUM

By the Tax Administration.

## DENMARK

As mentioned, a binding advance tax ruling is made by the Tax Assessment Council. This council consists of representatives from different business sectors, politicians, and of course representatives from different departments and entities under the Danish Ministry of Taxation.

## FINLAND

Advance tax rulings are given by the Tax Administration.

## FRANCE

By the Tax Administration.

## GERMANY

Tax Administration.

## GREECE

The rulings are given by the tax administration.

## IRELAND

N/A

## ITALY

The tax rulings are given by a special “Committee” which is part of the Ministry of Finance and incorporates also non revenue people.

## LUXEMBOURG

Rulings are given by the tax administration (Administration des Contributions).

#### MALTA

Rulings are given by the Tax Administration.

#### NETHERLANDS

Standard advance rulings and tailor-made rulings (referring to standard rulings) are dealt with by the *Ruling Team* in Rotterdam (part of the Dutch tax authorities). Other specific rulings can be obtained from the local tax inspector.

#### PORTUGAL

The rulings are given by the Tax Administration.

#### SPAIN

By the Tax Administration.

#### SWEDEN

The Council for Advance Tax Ruling issues the rulings. Organisationally the council is a part of the National Tax Board. It consists of two full time judges appointed by the government as well as representatives of the legal profession, tax authorities and organisations, i.e. Swedish Federation of Industries. The National Tax Board is also always one of the two parties to the application. There is an unconditional right of appeal to the Supreme Court. Hence the system constitutes a quasi judicial rather than an administrative process. It is to be noted that the tax authorities now have the right to appeal on advance rulings even if they do not want to change the outcome but just want to reinforce a precedence.

#### UNITED KINGDOM

The rulings are given by the Inland Revenue, our Tax Administration, except where their decisions are appealed or the rulings are not provided within the required time limit - in which cases they will be given by an independent body.

- 15. Are all rulings available equally to all taxpayers (e.g. to domestic taxpayers and foreign owned corporations) or are there some instances when rulings are restricted to one or another case (e.g. non-residents)?**

## AUSTRIA

Generally no differentiation between resident and non-resident taxpayers.

## BELGIUM

Yes, all rulings are available equally to all taxpayers.

## DENMARK

Persons and companies who or which are or will become subject to tax in Denmark have the right to be granted binding advance tax rulings.

## FINLAND

Advance tax rulings are available to all Finnish corporations irrespective of whether they are domestic or foreign owned.

A corporation or a private person who is not resident in Finland may also be an applicant. In such cases the question usually concerns collecting tax at source, establishing a fixed place of business, or general or limited tax liability.

## FRANCE

Yes.

## GERMANY

All rulings are available equally to all taxpayers.

## GREECE

Yes, but the tax adjustments for the special cases of non-Greek residents or moving foreigners are taken under consideration.

## IRELAND

N/A

## ITALY

Tax rulings are available to all taxpayers.

## LUXEMBOURG

Rulings are available to all taxpayers.

## MALTA

Rulings are available equally to all taxpayers, as long as subject matter falls within list in question 1 above.

## NETHERLANDS

Equal availability.

## PORTUGAL

The rulings are available to all taxpayers.

## SPAIN

The consultation about employment restructuring processes has to be made by the company or by the workers representatives.

## SWEDEN

Tax rulings are available to all taxpayers.

## UNITED KINGDOM

We are not aware of any instances where tax rulings are not available equally to all taxpayers. However, some rulings are clearly only applicable to certain types of taxpayers.

## OTHER COMMENTS

### LUXEMBOURG

Luxembourg law has no provisions in respect to rulings except for article 9 of our income tax law (LIR) which allows a favourable tax treatment of immigrants during a maximum period of 10 years subsequently to immigration. Such ruling is given by the finance minister after a debate of the government and applies only to exceptional cases. There was no case until now. Therefore advance rulings in Luxembourg consist only in an interpretation of the application of the law under circumstances of the given case.

### UNITED KINGDOM

Within the United Kingdom, there is a support mechanism available to taxpayers and their professional advisors. This can take the form of access to the Inland Revenue's technical specialists on new pieces of legislation, informal rulings from districts and head office specialists and a formal rulings procedure which is encapsulated within the Statute.

In order for a taxpayer to achieve certainty, the information must be provided to the Inland Revenue in a fairly standard and complete form. The Courts have considered what constitutes full disclosure and in the cases of Matrix Securities Ltd and MFK Underwriters, they have concluded that it is necessary for the taxpayer to meet fairly stringent disclosure requirements. The taxpayer must give full details of the specific transaction on which he seeks the Revenue's ruling. He must indicate to the Revenue the ruling thought. He must lay all his cards face up on the table and indicate to the Inland Revenue the use to which he intends to make of the confirmation of opinion. He must also set out the legal background to any claim that is being made and identify any areas of risk and uncertainty.

The ruling must also be sought to the appropriate person or department within the Revenue organisation so as to obviate all or avoidable risks of irrevocation by obtaining a ruling from the wrong person.

Within the United Kingdom, it is generally possible to obtain specialist opinions from the Inland Revenue on all legislation which has been newly enacted or amended within the last 5 years. In addition, most professionals enjoy the possibility of an informal ruling from their local district inspector on issues of doubt although this is discretionary.

Formal clearance procedures are possible within the legislation. For example, if a company intends to float its shares on the Stock Exchange, it is possible to obtain from the Inland Revenue a clearance under section 707 to protect shareholders from a challenge under section 703 ICTA 1988. It is also normal practice to obtain a clearance under section 138 TCTA 1992 to ensure that capital gains are not

crystallised by an exchange of shares with securities in any reorganisation or reconstruction that may be required.

The clearance under section 707 ICTA 1988 enables the Inland Revenue to view the proposed transaction and confirm that the anti avoidance legislation will not be triggered. The anti avoidance legislation aims to cancel tax advantages arising in connection with transactions and securities and so a clearance is essential. It is also possible to obtain clearances from the Stamp Office for the purposes of Finance Act 1986, section 77 which deals with reorganisation relief. There are also clearance mechanisms to consent for the migration of companies from the UK to a transfer to overseas persons. This is dealt with at section 765 ICTA 1988.

In the case of some small companies, a potential purchaser of the shares is the company itself. Under the normal UK legislation, a payment by a company to its shareholders would be treated as a distribution, not allowed for tax purposes in the computation of the company's profit and potentially creating a liability to ACT (although this will cease after 1 April 1999). If the company is going to purchase its own shares, it is usual practice to obtain a clearance from the Inland Revenue that they will accept that this is wholly and exclusively for the purposes of the company's trade and provided certain conditions are met the payment by the company to the shareholder to acquire the shares will be treated as a disposal and therefore liable to capital gains tax.

Within the UK we have legislation which deems the profit of what is called a controlled foreign company to be taxable in the United Kingdom. The Revenue normally provides on an extra statutory and concessionary basis, advice on technical points regarding the interpretation of the controlled foreign company's legislation and advice on the group structures which are proposed. The Revenue will not give hypothetical advice but will comment if a particular group structure would create obvious problems. The Revenue will also provide advance clearance where shares in a controlled form company are to be sold.

If a company intends to reorganise itself, there is a clearance procedure available under section 215 of the Taxes Act 1988. Clearance can be obtained that a distribution will be treated as an exempt distribution or that a payment will not be regarded as a chargeable payment or that a company which becomes or ceases to be connected with another company can make a payment which will not be regarded as a chargeable payment. This really deals with de-mergers.

Section 140 - 140D deals with chargeable gains being rolled over. There is a clearance procedure available which allows the gain to be rolled over where the assets are overseas. The most common incidence of when this occurs is where a UK resident company transfers a trade carried on through a branch or agency anywhere in the world outside the UK in return for securities.

Within the UK, there are certain types of investment which have tax favoured status. The most obvious one is enterprise investment scheme relief which broadly gives an individual investor a tax relief on the first £150,000 invested in any one year with tax relief limited to 20% (the top rate of personal tax in the UK is 40%). In addition, investment in an enterprise investment scheme company can defer a gain made within



a period of roughly 48 months. The relief is available if reinvestment into the qualifying unquoted trading company occurs within 12 months before the disposal or 36 months after the disposal. Another attraction to enterprise investment scheme is that on realisation of the shares which have been held beyond the 5 year qualifying period, any gain is exempt.

Not surprisingly, enterprise investment scheme investments have a clearance procedure whereby the prospectus is prepared and sent to the Inland Revenue who will give provisional confirmation that provided the company does what it sets out to do, it will qualify for the tax reliefs. Various forms are issued to confirm this.

Employee share ownership trusts are another form of tax favoured investment which encourages employees to participate in their employer company. There is a clearance procedure to confirm that a trust will qualify. Under this procedure, the trustees of the ESOP present the trust deed and any other relevant information to the Inland Revenue who will then be prepared to examine the trust and inform the trustees whether the trust will meet the qualifying conditions.

There are many other instances in the UK where the administrative regime provides a form of clearance procedure even though it is not formally recognised as such. For example, occupational pension schemes are generally set up by the employer and operated by trustees of the scheme. Money within the pension fund grows free of tax and contributions into the fund within the allowed limits are also tax deductible to the individual employees and the employer. The normal administration of an occupational pension scheme is that the trust deed and investment policy is formalised and then submitted to the Inland Revenue. They approve the pension fund giving it its tax favoured status. Although this is not a clearance procedure, it functions in a similar way.

By a similar mechanism, charities enjoy generous tax relief within the United Kingdom and they get their tax favoured status on application to the Inland Revenue setting out the charity's objectives and its administrative and organisational structure.

Coming to your questionnaire and the 10 questions it raises, I hope that I have answered questions 1, 3 and 4 in the description above. For any formal clearance procedure, it is compulsory to provide the name of the enquirer and because of the need to state the intended use of the ruling, it is compulsory to provide the name of the ultimate beneficial owner if certainty is to be given to the taxpayer.

Within the United Kingdom, the tax affairs of all persons are confidential. Consequently, the procedures necessary to obtain an advance tax ruling are published and are freely available to all. However the rulings are given to individual persons and would be confidential to the recipient. Most rulings have a 30 day time limit but this can be extended where the Inland Revenue feels the information it has been given is inadequate.

Provided full disclosure has been made, rulings answered by the Inland Revenue authorities are binding for the tax administration. This applies both to direct tax (Inland Revenue) and indirect tax (HM Customs & Excise) (VAT).

Because of the confidential aspects of our taxation system, the rulings are not published but professional advisors have a good information network. It follows that where publicity is given to a particular decision perhaps in a professional journal, this will be respected and followed by the Inland Revenue and Customs & Excise.

This response has been prepared by the Institute of Chartered Accountants of Scotland and outlines the availability of clearance procedures within the United Kingdom.