European Parliament Policy Department issues paper on EU Member States’ tax ruling practices

Executive summary

The European Parliament Policy Department issued a paper on the tax ruling practices in European Union (EU) Member States. This paper analyzes how the various types of tax rulings are currently formulated within the EU and how this is expected to develop. It furthermore gives an overview of the current policy and legal limits that are set at the Organisation for Economic Co-operation and Development (OECD), EU and national level. It also considers the features of tax rulings as well as the current tax ruling practices across the 28 Member States.

The results featured in this paper are being considered by the European Parliament’s Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE Committee) in its work and are expected to be featured in the final TAXE Committee report which is due to be published in November 2015. It is furthermore quite likely that this paper also will form the basis for a general soft law approach of the Commission to give guiding principles on an EU-wide aligned ruling system.

Detailed Discussion

The context in which tax rulings can exist

The paper recognizes that there was an increase in the issuance of tax rulings which developed as a result of a change in the mentality of tax authorities, whose aim is to achieve a higher degree of tax compliance and economic investment, as well as a result of the taxpayers’ quest for legal certainty. The paper describes tax rulings as an instrument to achieve reciprocity between the tax authorities and the taxpayer. It further suggests that the development of a tax ruling practice would strengthen the relationship between the tax authorities and the taxpayer.
Nevertheless, a tax ruling also must take into consideration both the legal and policy limits imposed at the international, European and national level. At the international level, tax authorities need to take into account the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations including the related updates and the OECD Report on Harmful Tax Competition. At the European level tax rulings must be issued within the framework of the EU Guidelines for Advance Pricing Agreements (APAs), the Code of Conduct for Business Taxation Model Instruction, Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation, CCCTB proposal, Action plan to strengthen the fight against tax fraud and tax evasion and State aid rules. Moreover, most European Member States’ national law endorse both the principle of legality and the principle of equality. The principle of legality ensures that tax rulings cannot provide benefits that are not granted by law and vice versa. The principle of equality requires tax authorities to publish the procedural steps and the general policy on granting, refusing and revoking tax rulings and does not allow the tax authorities to deviate from the general administrative procedure.

Furthermore, the introduction of automatic exchange of information on tax rulings should be implemented together with a system guaranteeing that taxpayers’ rights are not breached. Currently there is no framework at the European or international level ensuring that the Taxpayers’ rights are safeguarded. In this regard the paper suggests that past proposals are considered by Member States when introducing a national model.

Non-harmonized tax rulings systems in the EU
Tax ruling systems differ among Member States. In this regard the paper suggests that the EU should consider a coordinated or harmonized tax ruling procedure. This would be supplemented with a European Ruling Committee that would be responsible for providing guidance and coordination.

Amendments and suggestions put forward to the TAXE Committee by Members of the European Parliament
The TAXE committee published an interim report in July 2015 setting out its initial findings, conclusions and draft recommendations following its investigation into the tax ruling practices of EU Member States. The recommendations set out in the interim report are extremely wide-ranging, going further than the examination of existing tax ruling practices, and covering other issues such as country-by-country reporting, the regulation of tax advisers and base erosion and profit shifting (BEPS) issues generally.

On 6 October 2015, the TAXE Committee published a new Draft report on tax rulings and other measures similar in nature or effect (Draft Report). This Draft Report was issued in anticipation of its upcoming final report due to be published in November 2015. It confirms the sovereignty of Member States while it recognizes that there is a need to tackle the problem of unfair tax measures. In this context, it calls for intensified transparency regarding the activities of MNCs and better coordination of national tax policy. The Draft Report also urges Members States to ensure in implementing their national laws, deliberate breaching of reporting obligations or deliberate misreporting under automatic exchange of information should be considered as a criminal offense. To enforce its authority over multinational companies (MNCs), the introduction of Transparency Register sanctions for non-cooperative MNCs should be considered, if companies refuse to appear before the committee. It is essential also to ensure progress on the cooperation agreement with third countries on the automatic information exchange agreements since these seem to be moving at a slower pace than required.

Members of the European Parliament also are suggesting an extension of the current mandate of the TAXE Committee to at least February 2016, to obtain and analyze the full documentation requested and organize additional hearings based on the new evidence obtained. In addition, it is recommended that a committee of inquiry with a mandate of at least 12 months should be set up in order to shed light on individual cases and the specific breaches of community law by Member States and institutions, beyond those cases and aspects explicitly covered by on-going Commission investigations.
Implications

The results featured in this paper are being considered by the TAXE Committee in its work and are expected to be featured in the final TAXE Committee report which is due to be published in November 2015. This final report is expected to have far reaching influence on the soft law approach that is currently being taken by Directorate-General for Competition. It also is expected to impact on the way that tax ruling systems are expected to develop in the future. Hence, businesses operating within the European market should continue to monitor closely the developments made by this Committee.

Endnotes


2. The Model Instruction was developed in 2012 by the Code of Conduct Group and it provides guidance on the cross-border exchange of tax rulings that Member States could use for internal application.


4. See EY Global Tax Alert, EU Council reaches political agreement on the automatic exchange of information on tax rulings, dated 6 October 2015.


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EU Competency

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