



BUILDING A GROWTH-FRIENDLY TAX ENVIRONMENT

Advance Tax Ruling of Large Businesses Virtual Seminar

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The importance of tax certainty...in advance

Tax certainty...

Importance of certainty

- Reduction of **oversight/compliance burden (efficiency)**
- Reduction of **litigation costs (efficiency)**
- Reliability of investment planning and revenue collection (**predictability**)

- Improvement of the investment climate

...in advance

Importance of advance certainty

- Unforeseen situations
- Taxpayer specific considerations

- Practical implementation of tax certainty



Advance certainty in the form of rulings

Tax rulings

Public Rulings

A published statement of how an administration will interpret provisions of tax law. It has wide application, especially where a large number of taxpayers may be impacted

Private Rulings

An advice that a taxpayer may seek from the tax authority in relation to the application of the tax law to their particular arrangement which is binding for the tax authority

- Post-Transaction Ruling: private ruling requested after the relevant transaction has taken place
- **Advance Tax Ruling:** private ruling requested in advance of a proposed transaction
- **Advance Pricing Agreement:** advance certainty regarding the pricing of intra-group cross border transactions

- Binding on the tax administration
- Public or private
- Ex-ante or ex-post



Advance certainty in the form of rulings

Tax rulings are recognized as relevant tools to promote tax certainty (...)

IMF/OECD – Practical tools for enhancing tax certainty

“Tools should be put in place to reduce the likelihood of disputes arising in the first place (...) This is the case, in particular, for detailed guidance provided to taxpayers through regulations and rulings, whether of general or individual application (public/private rulings, APAs, etc.)”

Tax Certainty, IMF/OECD Report for the G20 Finance Ministers, 2017

BEPS Action 5

“(...) it is recognised that rulings are a useful tool for both tax administrations and taxpayers, providing for certainty and predictability and thus avoiding tax disputes from even arising (...)”

BEPS Action 5 Final Report, 2015

(...) but their use raises concerns related to transparency and tax competition



Rulings and harmful tax competition

1998 Report: Harmful Tax Competition

*“Inappropriate use of advance rulings (...) can also **distort the competitive position** of countries, where the treatment accorded the taxpayer is **non-transparent, not based on a full and detailed examination** of the facts and circumstances and attempts to give the taxpayer **complete certainty** of tax treatment by determining actual transfer prices, rather than an appropriate transfer pricing methodology” (para. 72).*

Minimizing BEPS concerns derived from ruling practices (BEPS action 5)

Compulsory spontaneous exchange of information on:

1. Rulings related to preferential regimes
2. Unilateral APAs
3. Cross-border rulings providing for a downward adjustment of taxable profits
4. Permanent establishment rulings
5. Related party conduit rulings
6. Any other type of ruling agreed by the FHTP

Best practices intended to reinforce transparency:

- Administrative procedures for rulings should be published in advance
- Discretion in granting a ruling should be limited by the law
- International obligations should be respected
- Rulings should be issued in writing and by the authority competent for this task
- At least two officials should be involved
- The taxpayer should provide the relevant necessary information for the ruling
- The ruling should be binding on the authority



Potential challenges

State aid rules and WTO subsidies

- Tax certainty provided by certain countries undermined by the later Commission decisions on State aid
- Parallel issue could potentially occur in connection with WTO subsidy rules

Prevention of double taxation

- Spontaneous exchange of information ensures BEPS risks are identified and cross-border treatment is realigned
- Realignment is also necessary in case of double taxation (e.g. through MAP or Arbitration)



Cooperative Compliance and ICAP

Cooperative Compliance Programs

Collaborative relationship between taxpayers and tax authorities with the goal of identifying the right tax liability at the right time, reducing tax risks and providing **early certainty**

Characteristics

- Mutual trust, transparency and understanding
- Certainty in return for transparency
- Tax Control Framework is key (no blue eyes trust)
- Upskilling tax administration (soft skills)
- Commitment at management level (CFO - Executive Management Tax Administration)
- Large enterprises vs SMEs

International Compliance Assurance Program (ICAP)

Multilateral risk assessment and assurance process aimed at providing cooperative MNEs with **increased tax certainty**

Characteristics

- Voluntary for the taxpayer
- Non-binding on the tax administration
- Provide comfort where risks are low and effective action where necessary



Cooperative compliance in the Pillar 2 environment

Pillar 2 uncertainties

The implementation of Pillar 2, as agreed by Inclusive Framework members, is bound to raise significant uncertainties derived from the novelty of the rules

Potential tax certainty promotion mechanisms

Diverging interpretation between tax authority and taxpayer

- Cooperative compliance programs could offer a pathway for a joint journey and learning process when it comes to the implementation of Pillar 2 – even more so in case the program is applied multilaterally (compare ICAP and Guidelines European Trust and Cooperation Approach – ETACA)

Diverging interpretation between tax authorities

- Where tax authorities have diverging interpretations, the risk of double taxation arises. Pillar 2 does not (yet) have a dedicated mechanism to address that. BRI Members could consider panel mechanisms to determine and allocate the top up tax under the UTPR



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THANKS