



It is not a secret that taxpayers worldwide are concerned about tax certainty, sometimes even more than about tax optimization. This concern follows from diverging opinions in legal doctrine and case law. Taxpayers therefore more often seek confirmation on the tax consequences of a transaction in advance, by consulting the tax administration. This factsheet gives an overview of the characteristics of the Belgian ruling procedure, aimed at providing up front tax certainty to taxpayers. Note that this is never an obligation, but rather an opportunity for taxpayers seeking for up front confirmation of their tax obligations.

1. History

The general ruling procedure that nowadays exist, is a product of a great evolution. In earlier days, only informal request and 'rulings' were possible. Since 1992, a formal Commission was set up to deal with limited and very specific matters. It was only in 2003 that the general ruling procedure was introduced by the Law of 24 December 2002¹ and the Royal Decree of 30 January 2002. For a more efficient handling of applications, the independent Ruling Commission for fiscal matters (DVB, 'Ruling Commission', 'Ruling Office') was introduced in January 2005. This Ruling commission can issue so-called rulings or 'advanced decision'.

2. Definition

A preliminary ruling is defined as follows²: *a legal act whereby the Federal Public Service for Finance determines, in accordance with the provisions in force, how the law is applied in a special situation that has not yet had any tax effect/consequences.*

The purpose of the general ruling procedure is that a taxpayer can be informed beforehand of the interpretation to be given to a certain legal provision and of tax consequences of a specific situation. This is self-evident as such, but sometimes creates restrictions, e.g. in cases

where a transaction has been executed but the tax return has not yet been filed. Depending on the facts of the case, the Ruling Commission tries to think in a cooperative way and to nevertheless grant certainty in some of these cases.

3. Scope

A preliminary ruling can be applied for by all taxpayers: individuals as well as legal persons. The application may cover all taxes that are under the authority of the Federal Public Service for Finance: direct taxes as well as indirect taxes. One slight remark is that the Flemish Region is competent for everything with regard to Flemish tax regulation (mainly inheritance tax and stamp duties in Flanders).

Note that since the law of 11 February 2019, no decisions by the Ruling Commission can be rendered for cases where essential elements of the situation relate to low tax jurisdictions and countries that don't cooperate with the OECD. For more information, see the News Alert on our website.

4. Application procedure

The application has to be in all cases a written application. A 2-step-approach is possible.

- In case of complex questions, it may be useful to do a pre-filing application first. This is an introductory simplified application to assess whether a formal filing is advisable and what is needed therefore. A big advantage of this pre-filing is that it may be done on an anonymous basis. Note that this is an option and no obligation.
- The official filing application cannot be filed anonymously. It is the formal request to obtain a preliminary decision. It has to contain:
 - (1) ID of the parties;
 - (2) Description of the facts; and
 - (3) Motivation of the application.

¹ Art. 20 – 28 of the Law of 24 December 2002.

² Art. 20 of the Law of 24 December 2002.

5. *Binding effect of decisions*

The decisions are binding upon tax administrations for the specific situation at hand and with regard to the requesting taxpayer. Hence, it is important to correctly describe the underlying facts of the case.

There are some exceptions to this principle. First, when the situation the taxpayer declares is not in accordance with reality, the tax administrations are not bound by the decision. A second peculiarity is that a preliminary ruling does not protect against amendments of law.

A decision rendered by the Ruling Commission for fiscal matters is valid for a period of five years.

6. *Publication*

The decisions by the Ruling Commission are published online but in an anonymous way.

The Ruling Commission also publishes a number of its 'positions' on issues which often give rise to a ruling question. These positions may be found on their website: www.ruling.be.

For further information about this topic, please contact office@sanseninternational.tax