



Ruling Procedure Update

The so-called 'General Ruling Procedure' as described in the factsheet on our website, provides a possibility for taxpayers to obtain up front tax certainty about the interpretation and tax consequences of a specific situation.

In the light of the combat against tax evasion and corruption, the law of 24 December 2002 has recently been amended with regard to personal income tax and the application for a preliminary ruling for situations containing elements related to tax havens.¹

The amended article 22, third paragraph, 1° of the law of 24 December 2002 states that no decision by the Ruling Commission can be rendered for the cases where essential elements of the action or situation relate to:

- (i) A country that doesn't cooperate with the OECD; but also:
- (ii) A country that is mentioned in the list of countries without or with a low tax rate as mentioned in article 307, §1/2, third paragraph WIB 92 (declaration formality for payments to tax haven

entities). Countries mentioned on this list² are amongst others Andorra, Dubai, Monaco, British Virgin Islands, Cayman Islands, ...

Applying for a preliminary ruling with regard to situations with the beforementioned countries is however allowed provided that:

- (i) There is a double tax treaty with the specific country; and
- (ii) The agreement or any other treaty foresees in the exchange of information.

It is currently not clear to what extent it would be sufficient if a country has concluded a TIEA with Belgium or engages in exchange of information under CRS, but as such does not have a double tax treaty in place. If these countries would also be ruled out, this could have consequences for tax aspects linked to *private equity* investments (often structured through tax havens, more for corporate law than for tax purposes) or for the so-called Belgian 'Cayman Tax' affecting foreign trusts, foundations and low-taxed companies and the Belgian CFC-legislation.

¹ Article 32 of the Law of 11 February 2019 houdende fiscale, fraudebestrijdende, financiële alsook diverse bepalingen, BS 2019/03/22.

² Article 169 KB/WIB92.

In this respect, amended article 22 is more restrictive than before. Previously, only situations where essential elements related to countries that didn't cooperate with the OECD, were excluded from the scope of applying for a preliminary ruling. Now, reference is also made to the tax haven list for reporting of payments.

Although this evolution is understandable in the light of worldwide recent measures against tax abuse and tax havens, we regret this new measure as it hinders taxpayers confronted with tax havens – e.g. upon investment – of seeking for tax certainty up front.

Entry into force

The law was adopted on the 11th of February 2019 and was published in the Belgian Official Gazette on the 22nd of March 2019. For further detail, please contact office@sanseninternational.tax or your regular contact.