

"If you can keep your head when all about you
Are losing theirs and blaming it on you..."

In today's fiscally volatile, uncertain, complex and ambiguous world ("VUCA world"), global industrial companies – whether newly set up or firmly established, whether digital or 'brick and mortar', and whether European, American or Asian – are pressing for fiscal certainty and predictability in all the countries where they are operating.

In this (already BEPS-dominated) fiscally VUCA world, such companies, more than ever before, prefer up-front fiscal certainty to running the risk of litigation or needing to launch a bilateral (or multilateral) dispute resolution procedure under the existing bilateral tax treaties or the European Arbitration Convention: two procedures which are very time-consuming, inefficient and expensive and which rarely culminate in an agreement.

In this context the Belgian Ruling Commission must be seen as a world-class ruling body. In other words, it is definitely not some kind of rubber-stamp one-stop shop, but a properly governed, knowledgeable and highly respected entity.

Over my 20-year international career I have probably requested rulings in more than 15 countries, leading me to the conclusion that the Belgian Ruling Commission is an example of best practice for the whole of Europe, if not the world.

The Belgian ruling process is very predictable, standardised and transparent. It starts with (preliminary) filing of the ruling request, followed by an in-depth review by a dedicated case manager and his/her case team, in consultation with the central tax authorities, as provided for by a protocol agreement signed by all the relevant parties within the administration.

Once the case has been reviewed from a Belgian tax perspective and checked for its compliance with the OECD Guidelines, European law and tax-treaty provisions, it is then brought before the Belgian Ruling Commission, which makes a decision on a collegiate basis.

In my experience, rulings are granted within four to six months of filing. If for business reasons a party strongly requests that the process be sped up, e.g. for IPOs, public bond offerings and divestitures, the ruling is sometimes issued much faster, just going to show that the Ruling Commission understands the

complexity and sensitivity of business environments.

Is there any room for improvement? And should all rulings be published and exchanged at European level? Probably, but then global industrial companies should be assured that cross-border tax disputes will be resolved very efficiently. This is because transparency would substantially increase double taxation, since today European countries and their counterparts elsewhere are mainly competing to obtain a greater share of tax, leading to a proliferation of cases of double taxation which are never resolved. The current OECD initiatives under the BEPS project are not nearly ambitious enough in this regard. The European institutions could play a key role here in safeguarding free trade not only within the EU but also with major trading partners outside the Union.

Another important point to mention is that the Belgian Ruling Commission is highly respected for its integrity in dealing with confidential and sensitive information. Confidential information – for instance, sensitive stock market information and strategic company data – can be shared with them without any fear that it will be leaked to the media. If only other institutions, media and people had the same level of integrity – which alas is not always the case. The business community is concerned that when rulings are exchanged between European tax authorities, the confidentiality of often highly sensitive business information is not guaranteed. Therefore automatic exchange of rulings should only be acceptable if such protection of confidential information is legally assured and violations can be sanctioned.

Last but not least, while the Belgian Ruling Commission does indeed play a crucial part in inbound investment cases, it should be pointed out that before giving its ruling in such instances, a critical assessment of these often complex cases is always made to prevent any rulings not being at arm's length or not complying with international tax treaties, existing European law or OECD soft law.

In my opinion, there is nothing wrong with a Member State granting rulings confirming the case against existing Belgian tax legislation just to provide legal certainty to a global industrial company eager to invest in Belgium or its competitive neighbouring countries.

If you believe that such fiscal competition between countries is inadmissible, then the European Union and its institutions and Member States should have the courage to make the switch over to a European corporate tax system. By this I do not mean the overly complex CCCTB, but a genuine European

corporate tax system that (optionally) allows international industrial companies to engage in free trade throughout the European Union and to compete with other regions in the world under one tax compliance system: one set of accounting books, a single, effective one-stop shop for VAT, a single corporate tax base, a single tax return and a single fair tax rate, complemented by a single European corporate tax system – as Professor Luc De Broe (KULeuven) recently proposed – with uniform withholding tax on interest, royalties and dividends due when such revenues are paid to entities outside the EU. And even if this European corporate tax system were ever to become reality, then companies would plead for a properly governed, knowledgeable and highly respected European Ruling Commission similar to the current Belgian one.

However, such a CCCTB also implies a much more politically integrated Europe than is currently the case.

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