

Q&A Luxembourg

1. Could you provide numbers on requested, granted and refused rulings since 1991? Ireland, Belgium and the Netherlands have already sent these figures to the TAXE committee.
2. Questions on economic substance in light of article 6 of la loi generale sur les impots:
 - 2a. Is the anti-abuse clause too weak or simply not applied?
 - 2b. Are you ready to apply it now, and or to toughen it? What would in your view a meaningful economic substance rule entail in concrete terms?
 - 2c. The recent reforms concern structures and procedures, but what has changed in terms of economic substance requirements?
3. The Government of the Grand Duchy of Luxemburg argues that tax rulings since 1991 cannot be fully released to the TAXE Committee of the European Parliament due to absence of electronic storage. As tax administration in Luxemburg must be in possession of official procedures and files such as tax rulings in order to comply with its own administrative practices and laws how long would it take Luxemburg to compile the full data?
4. The Minister of Finance of the Grand Duchy of Luxemburg Pierre Gramenga stated in the conversation with the Members of European Parliament during the delegation visit of the TAXE Committee to Luxemburg that tax authorities in Luxemburg alerted EU member states such as Germany and France on several occasions about abnormal declared profits of corporations in Luxemburg. He explained that tax authorities of the mentioned member states would have signalled no interest in pursuing those cases. Could the Government or tax authorities provide data such as the number of cases where other EU member states have been alerted, which member states remained passive and the possible motivation provided by the tax authorities of those member states for not acting upon the cases?
5. During the delegation visit we were told that the tax ruling authority in Luxembourg has no leeway as to the content of tax ruling because the rulings only explain how existing legislation will be applied. This would however require very detailed internal rules about the correct interpretation of all aspects of tax law, including calculations and figures when it comes to the value of intellectual property, for instance. Furthermore, we would expect there to be mechanisms to check on a routine basis whether the information provided by the companies applying for tax rulings is indeed accurate. Would you please send us these rules and documents as soon as possible?

1. and 3. Figures related to granted and refused tax rulings since 1991

As stated in our letter of June 1, 2015, tax rulings are confidential and covered by tax secrecy pursuant to paragraph 22 of the General Tax Code. The disclosure of such information would infringe applicable Law. Besides, the Luxembourg tax administration has no centralized exhaustive electronic filing system for approved as well as refused tax rulings since 1991. The tax rulings that have been granted are stored in the paper file of the taxpayer concerned and tax audits are carried out on the basis of the documents contained in these files. Finally, it was not predictable in 1991 that certain EU Member States would be required in 2015 to submit numbers related to tax rulings that have been rendered or refused on a period of more than 20 years.

2. Application of the economic substance

Compared to other EU Member States, the anti-abuse concept contained under paragraph 6 of the "loi d'adaptation fiscale" has a broad scope of application. It allows the Luxembourg tax authorities to tax the legal acts carried out by taxpayers on the basis of their economic reality. Technically speaking, this concept is however not the only one to be used to assess factual circumstances such as "has this company sufficient economic substance?" The question as to whether a company has sufficient economic substance must be analyzed in the light of paragraph 15 of the "Loi d'adaptation fiscale", paragraph 159 (1) of the "Loi concernant l'impôt sur le revenu" and the Circular 164/2 (which contains the most recent guidelines in this respect) on the basis of facts. If the analysis of these facts leads to the conclusion that the company does not have sufficient economic substance in Luxembourg, it will not be considered as a Luxembourg resident company in the light of the respective Double Taxation Agreement and as a result of the application of the concept of economic substance, without any need to invoke the anti-abuse rule. The concept of economic substance is sufficient as such.

4. Information to other EU States

You refer to the spontaneous exchanges of information that took place in the past with other EU Member States. Any further information that you request in this respect is covered by the confidentiality rules as contained in the international instruments applicable to the EU Member States concerned by the exchange of information.

5. Internal guidelines

As stated in our letter of June 1, 2015, tax rulings confirm the Luxembourg tax Law in force and the treaties for the avoidance of double taxation entered into by the Grand Duchy of Luxembourg with other EU Members States to factual circumstances as described by Luxembourg taxpayers in their requests. With respect to the treaties for the avoidance of double taxation, the Luxembourg tax administration applies as from the beginning the general OECD guidelines. Regarding its own legislation, circulars are issued by the Luxembourg tax administration when the Law is unclear and subject to various possible interpretations. These circulars are publicly available on the website of the Luxembourg tax administration. Additional instruction documents for the mere attention of the staff of the Direct Tax Administration are not publicly disclosed.