5.2.4.3.6. 'Tax ruling'

Our tax legislation makes no provision for the practice of rulings, or advance agreements with authorities. Income Tax Act Circulars 119 and 120 (coordination centres and international group financing companies), which were repealed on 20 February 1996, introduced, as from 1990, an advance opinion procedure. A financing company for a multinational corporation which operates at group level to finance intra-group companies is subject to taxation under ordinary law.

Each commercial operation has to 'generate an appropriate trading profit in line with the normal behaviour of a prudent manager in his relations with independent third parties'; and, accordingly, Corporate Taxation Office VI is often asked to issue an advance statement on minimum taxable margins in order to reassure taxpayers and prevent automatic subsequent taxation under Section 217 of the General Tax Code.

As it is legitimate for taxpayers to have certainty as to which tax rules apply to their activities, there is very little to find fault with as regards the practice of tax rulings. At most, safeguards should be maximised for tax rulings in order to prevent the tax authority - if it has misled a taxpayer by misreading statutory provisions - from reversing its decision and declining to apply a tax ruling to that taxpayer, on the ground that it is unlawful, who has nonetheless complied with it.

As things stand, informal rulings are applied only to multinationals with intra-group activities. To some extent, 'dialogue' between a taxation office and a taxpayer makes it possible to do away with arrangements termed 'improper'. Naturally, such 'dialogue' requires the tax authority to abandon the highly dim view it has traditionally taken of operations the tax concessions from which are one of the key reasons for them; it also requires the tax authority to be aware that a fast decision is a key factor in the success of an operation.

For the authority, however, issuing an advance statement that an operation is lawful or proper means entering into tax competition with other European countries, where issuing rulings is a widespread practice.

In a Europe where there is tax competition, that boosts the negative impact of offshoring. In this context, reference should be made to the Netherlands - a rulings practice pioneer - where innovative types of financing for groups have recently been introduced in order to improve the tax climate for investment and compete against attractive regimes on offer outside the country.

The rapporteur can understand why the taxation office has opted for a pragmatic approach, but suggests that the minister responsible keep a somewhat closer eye on such 'arrangements'. If the informal rules applied are no longer in line with government policy, the political authorities - once they are clearly aware of the practices - can act.