



Wolters Kluwer



# GLOBAL TAX WEEKLY

## a closer look

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**SUBJECTS** TRANSFER PRICING INTELLECTUAL PROPERTY VAT, GST AND SALES TAX CORPORATE TAXATION INDIVIDUAL TAXATION REAL ESTATE AND PROPERTY TAXES INTERNATIONAL FISCAL GOVERNANCE BUDGETS COMPLIANCE OFFSHORE

**SECTORS** MANUFACTURING RETAIL/WHOLESALE INSURANCE BANKS/FINANCIAL INSTITUTIONS RESTAURANTS/FOOD SERVICE CONSTRUCTION AEROSPACE ENERGY AUTOMOTIVE MINING AND MINERALS ENTERTAINMENT AND MEDIA OIL AND GAS

**COUNTRIES AND REGIONS** EUROPE AUSTRIA BELGIUM BULGARIA CYPRUS CZECH REPUBLIC DENMARK ESTONIA FINLAND FRANCE GERMANY GREECE HUNGARY IRELAND ITALY LATVIA LITHUANIA LUXEMBOURG MALTA NETHERLANDS POLAND PORTUGAL ROMANIA SLOVAKIA SLOVENIA SPAIN SWEDEN SWITZERLAND UNITED KINGDOM EMERGING MARKETS ARGENTINA BRAZIL CHILE CHINA INDIA ISRAEL MEXICO RUSSIA SOUTH AFRICA SOUTH KOREA TAIWAN VIETNAM CENTRAL AND EASTERN EUROPE ARMENIA AZERBAIJAN BOSNIA CROATIA FAROE ISLANDS GEORGIA KAZAKHSTAN MONTENEGRO NORWAY SERBIA TURKEY UKRAINE UZBEKISTAN ASIA-PAC AUSTRALIA BANGLADESH BRUNEI HONG KONG INDONESIA JAPAN MALAYSIA NEW ZEALAND PAKISTAN PHILIPPINES SINGAPORE THAILAND AMERICAS BOLIVIA CANADA COLOMBIA COSTA RICA ECUADOR EL SALVADOR GUATEMALA PANAMA PERU PUERTO RICO URUGUAY UNITED STATES VENEZUELA MIDDLE EAST ALGERIA BAHRAIN BOTSWANA DUBAI EGYPT ETHIOPIA EQUATORIAL GUINEA IRAQ KUWAIT MOROCCO NIGERIA OMAN QATAR SAUDI ARABIA TUNISIA LOW-TAX JURISDICTIONS ANDORRA ARUBA BAHAMAS BARBADOS BELIZE BERMUDA BRITISH VIRGIN ISLANDS CAYMAN ISLANDS COOK ISLANDS CURACAO GIBRALTAR GUERNSEY ISLE OF MAN JERSEY LABUAN LIECHTENSTEIN MAURITIUS MONACO TURKS AND CAICOS ISLANDS VANUATU

## Cyprus Formalizes Its Tax Rulings Procedure

by Philippos Aristotelous, Andreas Neocleous & Co LLC

A recent survey of tax professionals carried out by KPMG found that one of the key factors in assessing the merits of competing jurisdictions is the degree of predictability and reliability they provide. Advance tax rulings are a key element in giving taxpayers and their advisers the assurance they desire.

The Cyprus tax department has a long-established practice of providing written replies to requests for guidance on the interpretation of Cyprus tax law. While this practice is not formally incorporated into the tax legislation and is not an official ruling regime such as exists in other EU member states, the tax department nevertheless regards itself as bound by its rulings if the full facts were disclosed in the ruling request.

In anticipation of changes at EU level regarding the automatic exchange of cross-border rulings, and recognizing the usefulness of tax rulings in eliminating uncertainty, the tax department has issued a circular (No. 2015/13) formalizing the procedures for obtaining advance tax rulings and setting out the terms on which they are binding. The new procedures took effect on October 1, 2015.



### Time Limits

The Tax Rulings Division of the tax department will, on application by or on behalf of a taxpayer, issue advance tax rulings regarding actual transactions (for brevity this should be understood as including a series of transactions) relating to tax years for which the due date for filing a tax return has not yet passed, and transactions proposed to be undertaken by existing or new entities. By way of example, ruling requests in respect of transactions concluded in the year 2015 will be accepted up to March 31, 2017, the statutory deadline for filing the 2015 tax return.

### Ruling Requests

Requests for tax rulings are required to be in writing, addressed to the Commissioner of Taxation. They must include the following information as a minimum:

- The name and tax identification code of the parties involved in the relevant transaction and the name of any group of companies of which any parties are members;
- Confirmation that all the parties have filed all the tax returns due;

- A summary of the matter in respect of which the ruling is sought, including a description of the relevant business activities or transactions or series of transactions, giving a sufficient explanation of the tax issue under consideration;
- Detailed factual analysis of the transaction or transactions relating to the request;
- The question or questions on which a ruling is required;
- References to the relevant tax legislation, tax circulars or practices of the tax department and to any relevant case-law; and
- The applicant's assessment of the appropriate tax treatment.

The tax department may request further information, evidence or clarifications, which the applicant must provide within a reasonable time, failing which no ruling will be issued.

Requests will be dealt with in the order in which they are received unless the Commissioner of Tax is satisfied that there are reasonable grounds for issuing an expedited ruling on a particular matter at the taxpayer's request.

In its response to a ruling request, the tax department will not necessarily limit itself to the specific question in the request. It may include in its response any tax consequences that in its opinion flow from the transactions specified in the ruling request, even though the applicant may not have requested an opinion on these matters.

## Validity Of Rulings

Rulings will be binding only with regard to the taxpayers specifically mentioned in the ruling request, and only to the extent that the facts and circumstances presented in the ruling request continue to be applicable, and provided that there is no subsequent change in the tax law which renders the ruling inapplicable. The Tax Rulings Division will express an opinion on the applicable tax treatment of the hypothetical transaction or scenario presented to it and will not be responsible for verifying the facts presented by the applicant.

In the event of any discrepancy subsequently emerging between the scenario presented in a tax ruling request and the actual transactions undertaken, the relevant District Tax Office may decline to apply the tax ruling, or inform the Tax Rulings Division of the actual facts, asking it to confirm or modify the initial ruling.

The tax department reserves the right to set aside or modify a tax ruling that was issued based on an incorrect understanding of the facts presented. However, before doing so, it will take into consideration all potential consequences to the taxpayer resulting from any actions that took place after the issuance of the tax ruling, in line with the principles of good administration.

## Tax Rulings On Past Transactions

Other than in exceptional cases, where in the judgment of the Commissioner of Taxes there are special circumstances to justify it, the Tax Rulings Division

will not deal with any tax ruling requests that relate to tax years for which tax returns have been or ought to have been filed. These will be handled by the relevant District Tax Office, and the Tax Rulings Division will become involved only at the request of the District Tax Office concerned and only after all due tax returns have been submitted.

Unlike the Tax Rulings Division, the District Tax Offices are expected to investigate and verify the facts, given that the relevant transactions have been undertaken, which may require additional information to be provided to the District Office.

## **Conclusion**

The new procedures anticipate, and are consistent with, the recent political agreement by EU Finance Ministers to amend Directive 2011/16/EU on administrative cooperation in the field of taxation to automatically exchange basic information on advance cross-border tax rulings with effect from January 1, 2017. The information to be submitted with ruling requests will enable Cyprus to comply with the expected information exchange requirements from the outset.