New tax ruling procedure in Luxembourg

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An advance tax ruling is an agreement between a taxpayer and national tax authorities, clarifying and confirming the application of domestic tax laws on the taxpayer's circumstances in a binding agreement.

Advance tax rulings have long been part of Luxembourg's unique offering as a leading financial centre and popular go-to jurisdiction for holding companies as well as regulated and non-regulated funds vehicles. However, until recently, the Luxembourg tax rulings were mostly based on administrative practice, without a clear legal basis.

This changed with the Grand Ducal Decree of 19 December 2014 "for the Future of Luxembourg" (Zukunftspack), which formalized Luxembourg's existing advance tax ruling practice and provided it with a clear statutory basis. The same Decree introduced changes to the transfer pricing legislation, an increase of VAT rates, and a temporary 0.5% income tax for individuals. All measures have entered into force on 1 January 2015.

The Decree states, as a general principle, that an advance tax ruling cannot by itself provide for an exemption or moderation of taxes due. It thereby confirms that the purpose of a tax ruling is merely to provide confirmation of the correct application of tax laws, and therefore to provide certainty to (prospective) investors. An advance tax ruling will be valid for a maximum of 5 years and binding on the tax authorities, except in the usual scenario's (i.e. if the description of the situation or operations with respect to which a ruling demand was introduced are inaccurate or incomplete or have changed, or if domestic, European or international laws have subsequently changed).

A tax ruling request must be introduced in writing with the competent tax inspector and duly motivated. It must identify the applicant, contain a detailed description of the operation or considered operation(s) and of the tax issues arising from such operation(s), motivate the applicant's tax position on the matter and confirm that the facts and analysis given are true and complete. Requests relating to corporate taxation will be forwarded to a newly created commission des décisions anticipées (tax ruling commission) to ensure consistency and uniform treatment of tax payers.

The advance tax ruling will be published anonymously and in summary form in the annual report of the Luxembourg Revenue.
An administrative fee ranging from EUR 3,000 to EUR 10,000 will be levied on the applicant, depending on the complexity of the request and the amount of work involved. The fee is payable as from the receipt of the request; no ruling will be issued until the fee is paid and the fee is non-refundable in case the request is withdrawn, declined or answered negatively. A grandfathering exemption exists for pending rulings requests that were introduced prior to 1 January 2015.

This new regime for advance tax rulings in Luxembourg enhances Luxembourg’s prime position as a leading financial centre. By further promoting certainty and predictability, Luxembourg continues to be an ideal platform jurisdiction for Chinese enterprises investing overseas using Luxembourg structures.