



Fiscal Ruling

Advance decisions in fiscal matters

Belgium has a long tradition of informal tax agreements between taxpayers and local or central tax offices. Taxpayers can rely on these informal agreements for past actions, but only in so far that no tax law has been breached. The downside of such agreements is that they can be cancelled for future tax years and that no standard proceedings are available.

An Act of 24 December 2002 (promulgated on December 31 2002) introduced the legal basis for a generalized rulings system as from January 1 2003, allowing taxpayers and prospective investors to apply for an advance decision on the application of direct or indirect tax laws to a particular situation or transaction provided it had not yet had any tax effects.

Following an evaluation, in the middle of 2004, the government decided to create a fully independent rulings Office with sufficient dedicated staff. Within the service, a board of leading managers is taking decisions autonomously. The practical aspects of the creation and modus operandi of the new Office are detailed in the Royal Decree of August 13 2004 (promulgated on August 18 2004).

The new Office is directed by a board of four leading managers, including a chairman, all recruited from the tax authority and appointed for a renewable period of five years. Decisions are taken by a majority vote. In the case of a tie, the chairman has a casting vote, and hence his influence is substantial. The Office has legal authority to take autonomous ruling decisions that are binding on the federal tax authorities. The board will direct up to 40 fully dedicated tax staff members, of which presently already 32 are appointed for a renewable period of five years. Although decisions are taken independently by the Office, other tax authorities may be consulted for advice during the ruling proceedings.

The new Office is fully operational as from the beginning of 2005.

Advance tax rulings proceedings installed by the Act of 24 December 2002

Scope

The Federal Tax Office (hereafter "FTO") grants advance rulings on any request concerning application of the tax laws

under its authority or in respect of which it is responsible for collection and settlement matters.

An advance ruling is defined as **a legal act whereby the FTO determines in accordance with the provisions in force how the law will apply to a particular situation or transaction that has not yet produced any effect from a tax point of view.**

An advance ruling may not result in any tax exemption or tax abatement.

Formalities

An advance ruling application must be sent in writing to the FTO. It must be supported by reasons.

It must include:

the **identity of the taxpayer** and, as the case may be, the identity of the parties and third parties involved;

- a description of the **activities of the taxpayer**;
- a full description of the **particular situation or transaction**; and
- **reference to the statutory or regulatory provisions** that will constitute the basis of the decision.

The application must include full copies of any applications that have been filed on the same subject with the tax authorities of EU member states or third states with which Belgium has a tax treaty, and the relevant decisions

Until a ruling is granted, any new information relating to the contemplated situation or transaction must be added to the application.

An advance ruling is notified to the applicant within a period of three months of the application being made. The FTO and the applicant may agree to change this deadline.

The FTO informs the applicant of the deadline set within 15 business days after the application is complete.

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Rejection

An advance ruling may not be granted if:

- the application relates to **situations or transactions identical to such as have already produced effects for the applicant** from a tax point of view or it relates to an appeal or legal proceedings between the Belgian state and the applicant;
- it would be **inappropriate or ineffective** because of the nature of the statutory or regulatory provisions referred to in the request;
- the request **concerns application of any tax law concerning collection or prosecutions**.

By Royal Decree of 17 January 2003, the King has fixed the matters and provisions mentioned in the first subsection.

In addition, an advance ruling **may not be granted in the area of income taxes** where:

- at the time the application is filed, essential elements of the operation or transaction described are linked to a tax haven that does not cooperate with the OECD;
- the operation or transaction described **lacks economic substance in Belgium**.

Duration

Except in cases justified by the subject-matter of the ruling, the ruling remains valid for a **maximum of five years**.

An advance ruling is **binding upon the FTO for the future**, except where:

- the conditions to which the advance ruling is subject are not met;
- it appears that the applicant described the situation or the transactions in an incomplete or inaccurate manner, or where essential elements of the transactions have not been carried out in the manner in which the applicant presented them;
- any treaty, EU law, or domestic law applicable to the relevant situation or transaction changes; and

- the advance ruling does not comply with the provisions of treaty, EU or domestic law.

In addition, an advance ruling **ceases to be binding** upon the FTO where the main effects of the situation or transaction change owing to one or more closely-related or subsequent factors that are directly or indirectly attributable to the applicant. In such a case, withdrawal of the ruling is effective as of the date on which the factors attributable to the applicant occurred.

Any application filed with the tax authorities of an EU Member State or a third State as referred to in section 21(3) during the validity of an advance ruling and any decision in relation thereto must immediately be communicated to the FTO for the purposes of application of this section.

Publication

Advance rulings are **published on a no-name basis** (on the website www.fisconet.fgov.be), in accordance with professional secrecy rules.

Yearly report

The minister of finance submits an **annual report to parliament** on the application of section 20. The identity of applicants and FTO officials may not figure in the report. It is published by parliament.

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Or visit our dedicated web site: <http://www.pwc.be/>