

## ADMINISTRATIVE PRACTICES:

### SPONTANEOUS EXCHANGE OF INFORMATION RE. CROSS BORDER RULINGS

#### 1. GENERAL

At the meeting of the Code Group on 17 April 2012; the Group discussed the monitoring exercise related to the implementation of the guidance that was agreed on the exchange of information when granting specific cross border rulings. The agreed guidance read as follows:

21. *"With respect to improving exchange of information for cross border rulings, the Group agreed the following:*

- *If a Member State provides advance interpretation or application of a legal provision for a cross border situation or transaction of an individual taxpayer (hereafter: cross border ruling), which is likely to be relevant for the tax authorities of another Member State, the tax authorities of the first Member State will spontaneously exchange the relevant information regarding this cross border ruling in accordance with the provisions of the Directive on Mutual Assistance with the latter Member State in order to assure coherent overall taxation.*
- *By means of a non-exhaustive list, this would specifically concern the following types of cross border rulings:*
  - *MS 1 gives clearance on the absence of a PE in MS 1 to a company resident in MS 2. Such a ruling could be relevant for the tax authorities of MS 2 (same applies in reverse situation).*
  - *MS 1 gives clearance on specific items related to the tax base of a PE in MS 1 to a company resident in MS 2. Such a ruling could be relevant for the tax authorities of MS 2 (same applies in reverse situation).*
  - *MS 1 gives clearance on the tax status of a hybrid entity resident in MS 1 which is controlled by residents of MS 2. Such a ruling could be relevant for the tax authorities of MS 2 (same applies in reverse situation).*
  - *MS 1 gives clearance to a company resident in MS 1 regarding the tax value for depreciation for an asset that is acquired from a group company in MS 2. Such a ruling could be relevant for the tax authorities of MS 2 (same applies in reverse situation)."<sup>1</sup>*

---

<sup>1</sup> Code Group Report of 22 November 2010, doc. 16766/10, FISC 139, par. 21.

At the 17 April 2012 meeting it was agreed to collect further information of MS' internal framework for managing the spontaneous exchange of information. Therefore, by e-mail of the Council Secretariat of 4 May 2012, MS have been asked to reply to the following questions by 16 May 2012:

1. *All Member States are invited to provide information on their internal framework for managing the spontaneous exchange of information with tax administrations of other Member States, in particular as regards spontaneous exchange of information under the guidance for cross-border rulings. This can include internal instructions, Ministerial letters, administrative circulars or decrees or any other internal instrument that ensures that the tax administrations dealing with cross border rulings actually follow the politically agreed guidance notes.*

*You are kindly requested to include a copy of these internal instructions, accompanied with a courtesy translation in English – if possible – or with a summary in English highlighting the essential elements.*

2. *In case such an administrative framework does not exist, delegations are invited to comment on the framework that would be needed in their Member States to manage the spontaneous exchange of information under the guidance for cross-border rulings.*

MS replies to these questions are attached to this Roomdoc, and also include Annexes 1 till 8.

## **2. PRELIMINARY OBSERVATIONS**

Given the large variety of responses by MS, COM has not been able to prepare any summarised table grouping approaches into a small number of categories for comparison purposes. We therefore attach the responses received.

Some positive conclusions can be drawn from the replies received. For example, it seems that the attitude of tax administrators towards international co-operation is generally positive. It is also clear that the legal framework which allows the spontaneous exchange of information is in place. Some MS have even set in place some first steps to try and make the process more effective.

On the negative side, however, some replies are still missing. It is also clear that some MS responses are more comprehensive than others. Some of the replies would be more useful if they were more detailed and this would improve the chances of identifying concrete problem areas and hence of analysing what is the best way forward.

## **3. PROPOSED FURTHER WORK**

Building on the positive elements in this exercise, COM is in favour of pursuing further possibilities to improve the current situation. As a possible way forward, COM would propose a strategy along the following two lines:

1. In the first place, COM would like to prepare a more detailed and comprehensive overview of MS practices. To that extent, the Group could invite COM to engage in bilateral contacts with those MS where COM believes further work would be fruitful.
2. Secondly, given the fact that in COM's view and based on the information now available, there is no single MS which could serve as an overall 'model' of best practice – although the practices of several MS contain some very valuable elements –

the Group could aim at agreeing some sort of "Model Instruction" that could be used as a reference by MS for internal follow-up. This Model would address various issues that are important to ensure a proper functioning of spontaneous exchange of information, including (but not limited to) the following elements:

- Ensuring that the obligation to exchange information on a spontaneous basis is clearly reflected in the internal organisation;
- Clarifying the situations in which information should be exchanged spontaneously;
- Suggesting a time frame for exchanging the information (deadlines);
- Suggesting a reporting process to monitor and manage any instructions given;
- Suggesting possible forms that could be used for this purpose;
- Addressing issues related to a minimum tax amount at stake (e.g. de minimis rules);
- Addressing translation issues.

**COM is prepared to undertake this strategy to assist MS in this matter and is open to any suggestions or comments from MS.**

-----

# ADMINISTRATIVE PRACTICES: INTERNAL FRAMEWORK FOR MANAGING SPONTANEOUS EXCHANGE OF INFORMATION - MS REPLIES

## 1. AUSTRIA

Legal basis. EG-Amtshilfegesetz (law on EC mutual assistance)

In section 2 para. 2 of the law mentioned above circumstances are listed under which a spontaneous exchange of information shall take place. The list is in line with the provisions of Article 4 of Council Directive 77/799 (Annex 1)

Furthermore the Central Liaison Office for International Cooperation (CLO) started 2009 seminars for officials who are in charge of exchange of information. This office also issues newsletters on a regular basis which inform about the latest developments in the area of international cooperation.

Instructions for the use of electronic forms are available since 2011 ("*Anleitung für die Benutzung der Amtshilfeformulare für indirekte Steuern und für direkte Steuern*" – Annex 2). Specific reference to spontaneous exchange of information can be found in para. 3) b.

- (a) the competent authority of the one Member State has grounds for supposing that there may be a loss of tax in the other Member State;
- (b) a person liable to tax obtains a reduction in or an exemption from tax in the one Member State which would give rise to an increase in tax or to liability to tax in the other Member State;
- (c) business dealings between a person liable to tax in a Member State and a person liable to tax in another Member State are conducted through one or more countries in such a way that a saving in tax may result in one or the other Member State or in both;
- (d) the competent authority of a Member State has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
- (e) information forwarded to the one Member State by the competent authority of the other Member State has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Member State.

*Annex 1 EG-Amtshilfegesetz, section 2 para. 2*

*Annex 2 Anleitung für die Benutzung der Amtshilfeformulare für indirekte Steuern und für direkte Steuern*

## 2. BELGIUM

En réponse au courriel du Secrétariat de la DGG Fiscalité du Conseil du 4 mai, j'ai l'honneur de vous informer que la Belgique n'a pas encore mis en place de procédure interne en vue de la mise en œuvre des lignes directrices sur les pratiques administratives, en particulier en ce qui concerne l'échange spontané d'informations pour les décisions anticipées transfrontalières. Vous trouverez cependant ci-joint une copie des lettres que j'ai envoyées à ce sujet au service belges des décisions anticipées et au service compétent pour l'échange d'informations.

---

### **Objet : Code de conduite dans le domaine de la fiscalité des entreprises**

Vous trouverez ci-joint un document de séance des services de la Commission par lequel ces derniers entendent assurer le suivi de plusieurs lignes directrices adoptées par le Groupe Code de conduite et entérinées par l'ECOFIN.

Au point 2.3 de ce document de séance figurent les lignes directrices relatives à l'échange d'informations lors de décisions anticipées ou de rulings transfrontaliers. Les Etats membres se sont engagés à procéder à un échange spontané d'informations conformément à la directive assistance mutuelle chaque fois qu'ils donnent une décision anticipée ou un ruling, entre autres, dans les domaines suivants :

- Confirmation de l'absence d'un établissement stable par l'Etat membre où cet établissement est situé;
- Décision anticipée ou ruling quant à la base imposable d'un établissement stable (détermination des bénéfices imputables à un établissement stable) par l'Etat membre d'établissement ou, inversement, par l'Etat membre de résidence (ou du siège central) ;
- Confirmation du statut d'une entité hybride résidente dans l'Etat membre qui donne la décision anticipée ou le ruling lorsque l'entité est contrôlée par des résidents d'un autre Etat membre ;
- Décision anticipée ou ruling déterminant la valeur fiscale servant de base aux amortissements d'un actif transféré d'un autre Etat membre ou vers un autre Etat membre.

Si le service des décisions anticipées a donné des décisions pouvant intéresser un autre Etat membre, en particulier dans les quatre domaines mentionnés ci-dessus, il serait utile d'en informer le service compétent de l'Administration générale de la fiscalité (Direction III/1, section III/1A) afin que ce dernier puisse procéder à l'échange spontané de renseignement auquel la Belgique s'est engagée.

[Signature]

### 3. BULGARIA

Further to the April 17, 2012 meeting of the Code of Conduct Group regarding the spontaneous exchange of information, please be informed that the legal basis and mechanism for doing so is settled in the Bulgarian *Tax and Social Insurance Procedure Code*. Our current legislation envisages that the competent authority that provides information spontaneously to other member states is the Executive Director of National Revenue Agency.

Moreover, he must spontaneously communicate tax information to other member states in some specific situations listed in article 143e of the *Tax and Social Insurance Procedure Code* (see below). They include cases in which if the competent authority has reasons to believe that there may be a loss of tax in the other member state or that a saving of tax may result from artificial transfers of profits within groups, it must communicate spontaneously to the other member state. In any other cases not explicitly listed in the Code, the Executive Director of National Revenue Agency may spontaneously provide information if he considers that information will be useful to the other member state's competent authority.

In practice if in the conduct of a tax audit the tax examiners discover information relevant for a foreign tax administration, they inform the Tax Treaties Directorate in National Revenue Agency. Tax Treaties Directorate delivers the necessary information to the competent national authority of that other member state through CCN network or by official mail.

-----  
Article 143e of Bulgarian *Tax and Social Insurance Procedure Code* states that:

(1). *The Executive Director of the National Revenue Agency, acting on his or her own initiative, shall provide the competent authority of another Member State with information relevant in assessing liability to tax income, property and insurance premiums where:*

1. *the said Executive Director has grounds for supposing that there may be a loss of revenue from tax in that other Member State;*
2. *the taxable person enjoys a reduction in or an exemption from tax in the Republic of Bulgaria, which would give rise to an increase in the tax due or to incurrance of an obligation for taxes in that other Member State;*
3. *the business dealings between a taxable person in the Republic of Bulgaria and a taxable person in another Member State are conducted within the territory of one or more States in such a way that a reduction in tax may result in the Republic of Bulgaria and/or that other Member State;*
4. *the said Executive Director has grounds for supposing that a reduction in or non-payment of tax may result from artificial transfers of profits within groups of enterprises;*
5. *information forwarded by the competent authority of that other Member State has enabled information to be obtained which may be relevant in assessing liability to tax income, property and insurance premiums in that other Member State.*

*(2). The Executive Director of the National Revenue Agency may extend the exchange of information under paragraph (1) with the competent authorities of the Member States to cases other than those specified therein.”*

Please be advised that the provision of the Bulgarian *Tax and Social Insurance Procedure Code* cited above is not an official translation in English language.

#### 4. CYPRUS

##### Question 1

Up to now there has been no need for the Department of Inland Revenue to exchange information spontaneously in the area of cross-border rulings. Hence, it hasn't been considered necessary to set up a specific administrative framework in order to address such issues.

##### Question 2

In any future event whereby the Department of Inland Revenue is required, in accordance with the relevant agreed guidance notes, to spontaneously exchange information in this area, this shall be undertaken by the competent section of the department (International tax affairs section), whose competence is, amongst other things, the exchange of information with the tax authorities of other Countries (including EU Member States).



## 5. CZECH REPUBLIC

With reference to the meeting of the Code of Conduct Group held on 17 April 2012, we are sending the following answers of the Czech Republic regarding the information on administrative practise - follow-up:

The Czech Republic applies **Guidance D - 333** Communication by the Ministry of Finance in respect of Binding Ruling on transfer price in related parties' transactions, comes into effect on January 1S\2011 (Annex 3) according to which:

*Page 4 paragraph 4*

"If the parties involved are the entities stipulated in section 2 par. 3 and section 17 par. 4 of AIT, which are not tax liable for the incomes arising from resources on the territory of the Czech Republic, and if the parties are residents of a state, which entered into the Double Taxation Treaty with the Czech Republic, and if the Treaty allows the international exchange of information about taxable entities, then the ruling is notified to the relevant tax office of the contracting state as so called spontaneous exchange of information, namely in the usual form defined for the tax information exchange. The mentioned procedure shall not be applied, if there has been a process of bilateral APA already initiated based on article 25 of the Double Taxation Treaty."

*Annex 3    Guidance D - 333 Communication by the Ministry of Finance in respect of Binding Ruling on transfer price in related parties' transactions*

## 6. DENMARK

**Re: Code of Conduct Group: Spontaneous exchange of information re. specific cross border rulings**

In response to the request in e-mail of 4 May, 2012 I can inform the tax authorities which are dealing with binding advance rulings on cross border transactions have an obligation to consider whether a ruling can be relevant for assessing tax liability in another state and if that is the case to provide information on a spontaneous basis to the tax authorities of the other State.

Binding advance rulings on cross-border transactions are issued by a few tax authorities only.

The importance of spontaneous exchange of information will be stressed at meetings with these tax authorities.

Yours sincerely

[signature]

## 7. ESTONIA

The necessary procedure for notification other MSs about cross boarder rulings will be established in September the latest. We also identified three rulings on cross border transactions that concerned LT, AT, SE, LV and we will inform these MSs about the elements of the rulings.

## 8. FINLAND

### Question 1

Currently, there are no internal instructions, Ministerial letters, administrative circulars or decrees or any other internal instrument issued by the Ministry of Finance or by the Tax Administration in Finland for managing the spontaneous exchange of information with tax administrations of other Member States.

Advance rulings in Finland are issued either by the Central Tax Board or by a tax office. In principle, the advance rulings are not public information. However, the Central Tax Board is entitled to publish advance rulings issued by the Board without the name of the taxpayer and without any such details that would make the taxpayer identifiable.

### Question 2

The framework should as clearly as possible define the situations in which an advance ruling would have cross-border character, i.e. contain interpretation or application of a legal provision for a cross border situation or transaction of an individual taxpayer.

Some practical problems would need to be addressed in the framework, such as timing questions. In Finland, in some cases, the advance rulings are can be appealed according to the normal rules for tax appeals. Thus, it can take some time before the remedies have been exhausted and a court has issued a final decision in the matter. At this time, the tax assessment in the other Member State may have become final and cannot be revised anymore. The validity of advance rulings or advance clearances may differ in different Member States, which would probably also need to be addressed in the framework.

Solutions to practical problems arising from different languages would need to be covered in the framework. In Finland, the advance rulings are issued either in Finnish or Swedish. In order to the exchange of advance rulings to serve its purpose of assuring coherent overall taxation, the advance rulings would probably need to be translated. A practical solution would be needed to be sought as to which languages are used and how the translation is proved.

In Finland, the Tax Administration is responsible for gathering and exchanging information with the tax authorities of other Member States. The Ministry of Finance will continue internal discussions with the Tax Administration as how to in practice implement the agreed guidance on the spontaneous exchange of information on cross-border advance rulings.

## 9. FRANCE

## 10. GERMANY

Below you will find an extract from the current Ministerial letter (instruction) concerning the spontaneous exchange of information. This Ministerial letter will be updated by the 1 January 2013. Germany is of the opinion that the current rules comprise the exchange of cross border rulings already. However, for the sake of clarification a sentence for cross border rulings will be inserted accordingly.

---

### "4 Exchange of information without formal request

#### 4.1 Information from German revenue authorities without formal request

##### 4.1.1 Information in individual cases (spontaneous information)

EU member states can receive information pursuant to section 2(2) of the EGAHiG where the revenue authorities arrive at determinations in individual cases (e.g. during an external audit or tax assessment) which give rise to justifiable grounds to suspect that

- a) taxes in the other state have been evaded or might be evaded; the actual taxation in the other state is immaterial;
- b) business relations have been conducted via third countries for the purposes of evading tax;
- c) overall a lower tax burden can be achieved by not apportioning taxes between related persons in the same way as taxes between unrelated persons;
- d) circumstances which lead to reduced tax or tax exemption could lead to taxation or higher taxation of the taxpayer in the other state;
- e) circumstances happened upon in connection with the disclosure of information by another state are relevant for the correct determination of taxes in this state.

As grounds for suspicion that the situations described in section 2(2) of the EGAHiG exist, it is enough when the behaviour of the taxpayer allows the conclusion to be drawn based on general experience that he sought to prevent the competent revenue authority from becoming aware of circumstances of relevance for taxation (FCA of 17 May 1995, BStBl II, p.497).

Spontaneous information is also allowed with respect to non-EU member states with whom a broad (or comprehensive) exchange of information clause has been agreed. Furthermore, it is permitted with respect to countries with whom a narrow exchange of information clause has been agreed, to the extent that this is necessary for the proper execution of the DTA, e.g. for the purposes of exempting a working wage from a tax deduction on the basis of a DTA.

Although the decision to provide information is at the discretion of the revenue authorities, it is also in the overwhelming public interest if the Federal Republic of Germany foregoes in a DTA the right to tax income to the benefit of another state. The German option not to tax is based on the expectation that tax will be imposed in the other state. As such, no taxation means unequal treatment which both affects tax

fairness and distorts competition (FFC of 8 December 1995, BStBl II, p.358). Spontaneous information is legal where there is the serious possibility that the other contracting state has the contractual right to tax but would know nothing of the object of this right to tax without this information (FFC, Decision of 10 May 2005, I B 218/04).

The information may be limited to cases relevant for tax purposes (e.g. high payments or suspicion of a tax crime or fiscal offence). The transmission of spontaneous information is not necessarily always dependent on the amount being over a certain limit.

Information must generally be provided in full and in typed form using the corresponding forms in Annexes 6 to 10. The information must enable the foreign tax administration to identify the party concerned."

## 11. GREECE

With regard to the agreed guidance on the transparency of procedures for providing advance certainty and on cross border rulings, we would like to inform you once again, that our national legislation does not provide for administrative advance rulings. Therefore there is no relevant enactment of an administrative or regulatory framework (circulars, decrees, etc.) for spontaneous exchange of such administrative decisions.

It should be noted once again though, that the competent Directorates of the Ministry of Finance issue administrative solutions, in the form of circulars or individual solutions, which are purely interpretative in nature and do not preclude the taxpayer (natural or legal person) to appeal in court. Furthermore, according to § 16 of Article 5 of Law 3296/2004, these administrative solutions given by the competent authorities of the Ministry of Finance are published every year to inform all taxpayers, within four months from the end of the year. Moreover, a draft legislation submitted to our Parliament for enactment provides for the publication of these administrative solutions in the Internet at the same time of their issuance.



## 12. HUNGARY

### Question 1

As for Hungary the spontaneous exchange of information on EU level is based on:

- Council Regulation (EU) No. 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (formerly Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92),
- Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums and on Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.

Besides, the National Tax and Customs Administration (NTCA) issued an internal ruling regarding the exchange of information, which deals with the practical issues of the exchange of information e.g. deadlines, tasks of the competent local authorities and contact persons.

Examining our legal and administrative background we did not identify any obstacle in relation to exchange of information which could prevent Hungary from exchanging information in connection with cross-border rulings. However in practice of the NTCA there was not any example for using spontaneous exchange of information in relation to cross-border rulings (neither incoming, nor outgoing request).

Taking into account the mentioned facts Hungary would find it useful to have more information on the practice of the Member States and to have a short guideline which could contain guidance on the practical side of this type of exchange of information.

### Question 2

N/A

## 13. IRELAND

### Question 1

Existing frameworks, which require administrative practices to be made available publicly in updated published precedents or instructions, would be fully applicable to any practice that could be relevant to the Code of Conduct. Advance interpretations or applications of legal provisions for cross-border situations or transactions of an individual taxpayer that would be likely to be relevant to the tax authorities of another Member State have not been identified and the need for a specific formal framework for spontaneous exchanges in that regard is not readily apparent. If instances requiring spontaneous exchanges of information were to be identified then these would be managed under existing arrangements for spontaneous exchange of information with tax administrations of other Member States. The position will be reviewed, as necessary, to ensure consistency with any formal arrangements adopted across the Member States in giving effect to the agreed guidance under the Code.

### Question 2

Please see above.

## 14. ITALY

**Oggetto:** *Italy's internal framework for managing the spontaneous exchange of information*

The Revenue Agency's authorized competent authority for information exchange is the "Exchange of Information Office" within the International Division, which also includes the International Ruling Office (in charge of APAs). One of the two teams of the EOI Office is in charge of administrative assistance in the field of direct taxes and has several officers specialized in the delivery of spontaneous exchange of information, including information on unilateral APAs.

Spontaneous delivery of information on unilateral APAs to the foreign Tax administrations interested is provided for by Article 8 of Legislative Decree no. 269 of 30 September 2003, converted into Law 26 of 24 November 2003, the same Article by which the International Standard Ruling was set up (please find an English version of Article 8 below).

Moreover, for purposes of transparency, the so-called "International Standard Ruling Report" is periodically issued by the Revenue Agency on its website also in the English version. The Report illustrates, in anonymous form, the applications signed by the International Ruling Office and provides a broad description of the activity of the Italian Tax administration with respect to the APA Program and the relevant statistics (e.g. : applications submitted and arrangements signed; completion time; tp methods; taxpayers' clusters; relation between associated parties; type of transaction).

Italy would point out, as already expressed in the past to the Code Group (Annex 4), its complete availability and strong support to the spontaneous communication of unilateral APAs between Member States in a statutory framework of transparency and reciprocity. These two principles, as applied to exchange of information, should be intended in a broader sense. An understatement of the two principles by the Code Group would introduce items able to seriously undermine the scope and the aims of its works.

Italy agrees with the Code Group's position that also a Member State of the European Union which does not sign an APA or another agreement concerning transfer pricing should receive information, but in addition Italy is persuaded that in case Member State A has concluded unilateral APAs or TP agreements concerning transactions with enterprises established in Member State B and is not willing to send information to State B, State B has no obligation to provide the same information to State A.

[signature]

---

**Art. 8 of Legislative Decree 269 of 30 September 2003, converted into Law 326 of 24 November 2003**

(Unofficial translation)

1. Enterprises carrying out international business activities may request an international ruling on transfer pricing, interest, dividends and royalties.
2. The term “international ruling” encompasses a final agreement entered into between Italy Revenue Agency and the taxpayer, binding the government and the taxpayer for three fiscal years, including the year in which the agreement is entered into and the following two years. The agreement will cease to be valid should changes in the factual and legal circumstances occur under which the agreement was entered into.
3. Under EU legislation, the present Article provides for that Italy Revenue Agency send a copy of the agreement to the tax authorities of the countries of residence of the enterprises with which the taxpayer enters into the relevant transactions.
4. As regards the effects of an international ruling, this Article provides for that for the tax periods covered by the agreement, the tax assessment powers (under Art. 32 et seq. of Presidential Decree 600/1973) of the tax authorities are limited to issues other than those dealt with in the agreement.
5. The international ruling requests will have to be filed to the office of Italy Revenue Agency in Milan or Rome, according to the instructions that will be promulgated by the Revenue Agency.
6. The procedure under the present article is effective starting from tax periods following that in progress on the date that the Decree enters into force.\*

\*Thus, for calendar year taxpayers, the provisions of the Article became applicable on 1 January 2004.

*Annex 4. – Roomdoc #4 of 23 September 2009 with IT position.*

## 15. LATVIA

### Question 1

In reply to the request for information regarding the internal framework for managing the spontaneous exchange of information, on behalf of the Ministry of Finance of the Republic of Latvia we would like to confirm that by the end of April 2012 the Ministry of Finance has not introduced yet the necessary measures to ensure the internal framework for managing the spontaneous exchange of information with tax administrations of other Member States, in particular as regards spontaneous exchange of information under the guidance for cross-border rulings. However, currently the spontaneous exchange of information with tax administrations of other Member States is maintained in accordance with the Mutual Assistance Directive and concluded DTAs.

### Question 2

In order to ensure the necessary administrative framework to manage the spontaneous exchange of information under the guidance for cross-border rulings the Ministry of Finance has to submit a written instruction to the Latvian tax administration on implementation of the necessary measures. We would also like to confirm that in the near future such an instruction will be submitted to the Latvian tax administration.

We would also like to inform you that by the end of April 2012 the Latvian tax administration has not received any information from other Member States under the guidance for cross-border rulings.

## 16. LITHUANIA

The Ministry of Finance of the Republic of Lithuania refers to 5 May, 2012 SECRETARIAT DGG Fiscalite e-mail requesting to provide information on internal framework for managing the spontaneous exchange of information with tax administrations of other Member States, in particular as regards spontaneous exchange of information under the guidance for cross-border rulings.

Please note that The State Tax Inspectorate under the Ministry of Finance is a competent authority for the exchange of information in the field of direct taxes, VAT and excise duties.

The main legal instruments for the exchange of information in the field of direct taxes are Double Taxation Avoidance Treaties, the Council Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums, and the Council directive 2003/48/EC on taxation of savings income in the form of interest payments. On a national level, the international administrative assistance and information exchanges are defined in articles 28 (regarding non-EU countries) and 29 (regarding EU Member States) of the Law on Tax Administration (13 April 2004 No IX-2112) (article 28 and article 29 of the Law on Tax Administration underwritten) and in Internal rules of mutual assistance endorsed by the Head of the State Tax Inspectorate under the Ministry of Finance (06 June 2011 No V-209).

However, the aforementioned legal instruments are mostly used for international administrative assistance as regards correct taxation of specific transactions performed by Lithuanian and foreign taxpayers.

So far the information on cross border rulings has not been exchanged with tax authorities of other Member States, but under the necessity, the above-mentioned legal base would be used.

---

### Article 28 and article 29 of the Law on Tax Administration:

#### **Article 28. Cooperation with Tax Administrators of Foreign States**

1. The central tax administrator shall cooperate with the tax administrations (competent authorities) of foreign states on the basis of international treaties or agreements.
2. Unless an international treaty or agreement provides otherwise, assistance to the tax administration (competent authority) of a foreign state shall be provided only under conditions of reciprocity and provided that:
  - 1) a request is made concerning the required assistance;
  - 2) assurance is provided that the information supplied will be used solely for the purpose of taxation or investigation of violations of tax legislation;
  - 3) the fulfillment of the request will not violate the legitimate interests of the Republic of Lithuania or its subjects or entities and no state, official, professional, commercial or other type of secret information protected by law will be disclosed;

- 4) the secrecy of information is ensured;
  - 5) the requesting foreign state institution has exhausted all conventional means to achieve the objective in respect of which the request has been made.
3. If the central tax administrator refuses to provide information or assistance, it shall notify the requesting institution of the reasons for refusing to do so.
  4. When providing assistance to the tax administrations (competent authorities) of foreign states, the tax administrator shall have the same rights in respect of taxpayers or third persons as when performing the other functions assigned to it.
  5. The central tax administrator shall, within its sphere of competence and taking into account the provisions of the relevant international treaties and agreements, establish a detailed procedure for implementing this Article.

#### **Article 29. Cooperation with Tax Administrations (Competent Authorities) of European Union Member States**

1. The central tax administrator shall, within its sphere of competence, cooperate with the tax administrations (competent authorities) of EU Member States when exchanging information about taxpayers, conducting joint inspections and recovering arrears in payments at the request of the tax administrations (competent authorities) of EU Member States or addressing the said authorities concerning the recovery of arrears in payments. Cooperation shall be carried out on the grounds provided for in paragraph 1 of Article 28 of this Law.
2. The central tax administrator may exchange any information with the tax administrations (competent authorities) of EU Member States where such information may enable them to effect a correct calculation of taxes and investigate violations of tax laws. Information may be exchanged:
  - 1) on request in a particular case;
  - 2) regularly (automatic exchange of information) without prior request;
  - 3) in cases provided for in agreements on administrative cooperation where the designated institutions are allowed to communicate directly with each other;
  - 4) in cases provided for in agreements on administrative cooperation where an officer of a competent authority of another Member State is allowed to participate in the process of collecting information;
  - 5) by forwarding information, of which it has knowledge, without prior request in at least one the following circumstances: tax is not paid in another Member State or it is paid incorrectly; the taxpayer is subject to tax reliefs or is exempt from tax which would give rise to an increase in tax or to liability to tax in another Member State; transactions are carried out between taxpayers in one or several Member States in such a way that tax is not paid in either or both of the Member States; tax may not be paid as a result of artificial distribution of income among associated (related) economic entities; information forwarded to the central tax administrator by the tax administration (competent authority) of another EU Member State has enabled data to be obtained which may be relevant for taxation in the forwarding Member State.

3. Requests by the tax administrations (competent authorities) of EU member states for assistance in recovering arrears in payments shall be examined and met in compliance with the procedure laid down in the Law of the Republic of Lithuania on Providing Assistance to the Institutions of EU States for the Recovery of Claims relating to Levies, Customs Duties, Taxes and other Monetary Amounts and Using the Assistance Provided by the Institutions of the European Union Member States for the Recovery of the Said Amounts. The amounts indicated in the requests, where the tax administrator bears responsibility for their recovery in accordance with the provisions of the aforementioned law, shall be recovered as arrears in payments in accordance with the procedure laid down in this Law.
4. Unless EU legal acts or the relevant international treaties provide otherwise, the principles specified in paragraph 2 of Article 28 of this Law shall apply for the purpose of cooperation with the tax administrations (competent authorities) of EU Member States.
5. The provisions of paragraphs 3, 4 and 5 of Article 28 of this Law shall also apply for the purpose of cooperation with the tax administrations (competent authorities) of EU Member States.



## 17. LUXEMBURG

Please find hereafter the Luxembourg response concerning our internal instructions for managing the exchange of information with tax administrations of other MS.

Our internal instructions have been published on 30 June 2006 and relate to all forms of exchange of information with tax authorities.

These instructions will be updated (deadline 31/12/2012) to take into account the latest international developments in this area.

Unfortunately these instructions are only available in French.

We are happy to assist you in case you have further technical questions.

*Annex 5 LU 2006-06-30 (Manuel sur la mise en oeuvre des dispositions relatives à l'échange de renseignements en matière fiscale)*

*Annex 6 LU 2006-06-30 (Echange de renseignements)*

**18. MALTA**

## 19. NETHERLANDS

Please see enclosed relevant excerpt from the Administrative Circular of 6 April 2006 (no. CPP2006/546M). We emphasize that this is an unofficial translation, that the circular is somewhat outdated and that we are working on an update.

*Annex 7 NL - Excerpt Circular of 6 April 2006 (no. CPP2006/546M)*

## 20. POLAND

The framework for a system of spontaneous exchange of information as such is provided in the Act of 29 August 1997 on Tax Ordinance. Article 305k paragraph 1 of this Act stipulates that the competent authority shall ex officio provide information to a foreign authority, if:

1. there is a risk of a reduction of tax receivables or a circumvention of the tax law provisions of an other member state of the European Union,
2. the fact that a taxpayer benefits from a tax relief may give rise to a tax liability abroad or may increase the amount of tax due in a member state of the European Union,
3. the findings of tax examinations, made on the basis of information obtained from a foreign authority, may be useful for determining the correct amount of the tax base and the amount of a tax liability.

The regulations on spontaneous exchange of information do not specifically refer to “cross border rulings” as to a separate group or type of information. This however does not preclude the applicability of the above-mentioned rule of Tax Ordinance.

## 21. PORTUGAL

Regarding the questions put forward to the delegations of Member States on the framework for managing the spontaneous exchange of information, please see below the Portuguese replies:

*1 - The internal legislative framework under which the spontaneous exchange of information takes place is a provision with a content identical to the article 4 of Directive 77/799/ECC of 19 December, so it is not completely clear if its wording could be considered, as it is, the adequate juridical basis for exchanging information regarding the cross-border rulings under the agreed guidance.*

*2. - The proposal on inclusion of agreed guidance in the law could be considered at the time of the transposition of the Council Directive 2011/16/EU on administrative cooperation in the field of taxation, of 15 February 2011*

## 22. ROMANIA

On behalf of the Romanian delegation, I would like to inform you that a legal or an administrative framework for managing the spontaneous exchange of information with tax administrations of other Member States does not exist.

The Romanian National Agency for Tax Administration (NATA) considers that the legal framework should be amended in order to manage the spontaneous exchange of information under the guidance for cross-border rulings.

Please find below the letter of the director within the NATA (*unofficial translation*)

---

"Following the request of the General Secretariat of the Council as regards the administrative practices discussed during the meeting of the Code of Conduct group, we would like to inform you that currently there is no legal or administrative framework for managing the spontaneous exchange of information with tax administrations of other Member States, in particular as regards spontaneous exchange of information on the anticipated individualized tax solution and advance pricing agreement in the cross border situation, as it is defined in the Code Group Report 16766/10/ FISC 139.

Taking into consideration the mutual benefit of the exchange of information in the cross border cooperation, we think that it is appropriate to amend the national legal framework in order to allow, in terms of reciprocity or on the basis of EU directives or agreements, the exchange of information on the anticipated individualized tax solution and advance pricing agreement, in accordance with par. 21 of the Code Group Report.

[signature]"

## 23. SLOVAK REPUBLIC

### Question 1

Application of exchange of information (incl. internal framework for managing the spontaneous exchange of information with tax administrations of other Member States, in particular as regards spontaneous exchange of information under the guidance for cross-border rulings) is in competence of the Financial Directorate of the Slovak Republic. However, transposition of legally binding acts of the EU regarding the exchange of information and administrative cooperation in the Slovak legislation remains in the responsibility of the Ministry of Finance of the Slovak Republic.

Exchange of tax information concerning direct taxes is realised pursuant to Council Directive of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, 77/799/EEC (which will be replaced by Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC with effect from 1 January 2013) and double tax treaties. The Directive will be transposed into the new act repealing the Act. No. 76/2007 Coll. on International assistance and cooperation in administration of taxes amending and supplementing certain acts. The information may be exchanged upon request, automatically or spontaneously.

As we have already answered in our reply to your email dated 17 February 2012 regarding administrative practises and implementation of agreed guidance the only type of advance ruling, that may be issued by Slovak tax authorities, is advance pricing arrangement; hereinafter the „APA“ (advance rulings on the application of tax legislation will also be introduced in the future). Based on information from Slovak tax authorities there were any bilateral or multilateral APA issued so far.

The exchange of information on issued unilateral APA is governed by a **Methodical Instruction** issued by the Financial Directorate in 2010 for Slovak tax authorities (Annex 8 - Slovak version of the instruction). According to this instruction the relevant tax authority, who issued the APA, will provide information to another MS without prior request (spontaneously). The information consists of a summary of transfer pricing documentation containing in particular the information necessary to identify the taxpayers involved in transactions, then types of transactions, that are covered by the APA, the valuation method used, as well as the tax period, to which it relates. The instruction further describes the APA procedures and legal basis for the exchange of such information (Act. No. 76/2007 Coll., Tax order, Directive 77/799/EEC).

Based on the information from the Financial Directorate any such information has been provided by Slovak tax authorities by now. And the Slovak Republic also has not received any spontaneous information of this kind from another MS.

### Question 2

N/A

*Annex 8. SK Methodical Instruction Slovak Version*

## 24. SLOVENIA

Tax Procedure Act determines that General Tax Office is the only tax office that can issue the legally binding information that would be potentially suitable for exchange of information under agreed guidance notes for cross border rulings.

General Tax Office is also Slovene Competent Authority for (spontaneous) exchange of information with other Member States.

Ministry of Finance has informed the General Tax Office about the politically agreed guidance notes for cross border rulings. Since the same tax office (General Tax Office) is responsible for both – exchange of information and legally binding information there was no other instrument within the meaning of your request.

As we have already stated in our reply dated March 28, 2012 – in the year that ended January 31, 2012 the Tax Administration did not generate any legally binding information regarding the income taxation of legal persons.



## 25. SPAIN

Spain has signed two cross-border agreements, with France and Portugal. As regards they both, there are no specific provisions on automatic exchange of information. Instead, the agreements assign powers for the exchange information to the Regional Authorities of Delegations bordering with France and Portugal.

Therefore, Regional Tax Auditors can carry out in these regions the tasks assigned at State level to the Central Information Unit (Equipo Central de Información), which is the competent authority for the exchange of information in Spain, irrespective of whether the exchange has been made automatically or upon request.

The same software (INTER) is used in order to file information requests and to submit them for verification by the jurisdictional tax office according to the taxpayer's domicile. This procedure is equal to that followed at State level.

There is no need for more regulation on this matter in Spain, since as it was verified during the Peer Review process all best-practice rules are followed, without need for special procedures concerning automatic exchange of information.

There are no special rules or instructions because there is no need for them. The procedure is framed within the general tax audit process, which provides all guarantees needed.

## **26. SWEDEN**

In Sweden, there are no such rulings which are referred to in the guidance agreed by the Code of Conduct Group on the exchange of information when granting specific cross border rulings (the Group's report of 22 November 2010, doc. 16766/10, FISC 139, para 21). The Swedish Tax Agency does not – and cannot – provide such rulings. The Swedish Tax Agency has however an internal framework for exchange of information, "Guidance for the exchange of information". Please find below an unofficial translation of the section of the guidance that deals with spontaneous exchange of information.

---

### ***EXTRACT FROM THE SWEDISH TAX AGENCY'S "GUIDANCE FOR THE EXCHANGE OF INFORMANCE" (Unofficial translation)***

#### **6. SPONTANEOUS EXCHANGE OF INFORMATION**

##### **6.1. General information about the exchange of information**

The exchange of information without a preceding request is the term most often used in regulations and tax conventions for what we informally call a spontaneous income statement. It is a matter of information that the Swedish Tax Agency in one way or another gained knowledge of and that is assessed as being of interest to another country. The spontaneous information is quite often the only way that a tax authority can gain knowledge about certain types of transactions and it is therefore extremely important that it is provided.

In accordance with conventions and Council regulations, an obligation exists for Sweden to provide information to other countries which can be of significance for taxation there. Sweden receives information from other countries in a corresponding manner.

##### **6.2. Spontaneous income statement to another country**

Information that can be of interest to foreign tax authorities often emerges as surplus information in connection with audits or desk-based reviews. When a spontaneous income statement is sent to another country, it is permissible to provide all information whose purpose is the correct establishment of tax in the other country.

If information about tax is sent to a foreign authority, the person that the information relates to must be informed of which foreign authority the information has been sent to as well as being provided with the information for their knowledge. The obligation to inform can be disregarded if it is clearly unnecessary or if there is a risk that it can complicate the investigation or decision in the other country if the information is disclosed. There is no necessity to inform if the information is available from the Swedish Tax Agency. It may be assumed that this information is known by the person that it relates to. No obligation to

inform exists, however, if the information is sent over with the support of Council regulations regarding VAT and harmonized excise duties.

#### *6.2.1. Direct tax*

Examples of information that are suitable to be spontaneously provided to other countries are:

- Cash payments and payments by check to foreign countries.
- Payment to foreign countries of invoices that appear to have been produced in Sweden or are incomplete. (For example, lack address, telephone, fax or verification numbers.)
- Payments to foreign countries relating to fees for consultation, brokerage or commission.
- Payments to affiliated companies, executives etc., in foreign countries where normal payment procedures have not been followed.
- Payments to another country than where the recipient has their place of residence.
- Decisions about tax exemption in Sweden, which may mean that taxation shall occur in another country.
- Payments between affiliated companies, to executives etc.

In addition to facts about the person or company involved, spontaneous information shall contain a brief description of the relevant transactions and copies of documentation which proves these, e.g., invoices, vouchers for payment, conventions and similar.

#### *6.2.2. VAT and excise taxes*

Spontaneous income statements should be provided when, for example:

- Deviations or errors relating to the registration in VIES or SEED have been established.

## 27. UNITED KINGDOM

In response to the communication of 4 May asking Member States to provide information on their internal framework for managing the spontaneous exchange of information with tax administrations of other Member States – particularly in relation to cross-border rulings (as agreed by the Code of Conduct Group at its meeting in June 2010), we can confirm that the United Kingdom does indeed have both a framework and mechanism in place to support spontaneous information exchange in this area.

The framework resides in the UK statutory authorities' ability to request information, and those governance processes under which that information may be exchanged: Double Tax Conventions, EU Mutual Assistance Directive, EU regulations and the joint Council of Europe/OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. This framework for exchanging information is the same whether or not that information is intended to be exchanged spontaneously.

All staff at Her Majesty's Revenue and Customs (HMRC) are advised to be alert to opportunities for providing information spontaneously to overseas (or EU Member State) tax authorities. The types of information that may be helpful to other countries is, of course, wide ranging but the general guideline is that information should be provided because of its general importance or because of the amount of tax involved. In particular, information suggesting that the tax laws of another country may have been abused or that tax has been evaded or avoided should be provided. It is encouraged that the information should be as accurate and complete as possible and should be sufficient to enable an overseas (or EU Member State) tax authority to trace their taxpayer. Any available corroborative evidence and documents should be provided.

The handling of direct tax exchanges of information (inward and outward) are dealt with by the Exchange of Information (EOI) Team housed within the Centre for Exchange of Intelligence (CEI) and forming part of HMRC's Risk and Intelligence Service in London.

The EOI team is made up of 11 staff working full time on exchange of information, including two with delegated competent authority status, and working to an Assistant Director who also has competent authority status. The CEI deals with requests for information in both civil and criminal cases. EOI team members, generally, are officers with extensive experience of the UK tax system. Team members also receive specific training on EOI mechanisms, confidentiality obligations and internal processes delivered through desk training, written and oral guidance and mentoring.

Where transfer pricing is in point or the exchange is appropriate to the Joint International Tax Shelter Information Centre (JITSIC) - a body set up to identify and combat abusive tax schemes through the exchange of information through members DTC's - EOI requests are referred to and handled by those specialised teams.

In terms of the process, all requests (inward and outward) are reviewed by one of the delegated competent authorities. This provides assurance that the exchange is appropriate and within the scope of the legal instrument concerned. This initial review inevitably involves some judgment to ensure compliance with legal requirements and the information is of value and relevance to ensure the correct assessment or enforcement of tax in the UK or, in outward exchanges, the MS concerned. Quality of EOI work is monitored by the two delegated competent authorities in the team, who review and sign all international correspondence. In

addition, there are quality monitoring reviews of cases that took more than six months to close.

Spontaneous reports of any information that meets the international standard of foreseeable relevance to the administration or enforcement of the tax laws of a treaty partner are encouraged, and reinforced by giving regular training seminars on EOI to trainees and field officers. All information disseminated to compliance teams is sent with guidance on use and disclosure.

Published guidance links are provided below:

- Exchange of information general guidance:  
<http://www.hmrc.gov.uk/manuals/intmanual/intm156010.htm>
- Spontaneous exchange of information:  
<http://www.hmrc.gov.uk/manuals/intmanual/intm156030.htm> :

*"Information is exchanged spontaneously when one country obtains information which it considers will be of interest to another country and passes it on without having received a request. Information of this sort received in the United Kingdom is evaluated by the Risk & Intelligence Service Offshore Risk Team and sent to the appropriate office for action.*

*HMRC staff should be alert to opportunities for providing information spontaneously to overseas tax authorities. The types of information that may be helpful to other countries are very wide ranging, but as a guideline, information should be provided because of its general importance or because of the amount of tax involved. In particular, information suggesting that the tax laws of another country may have been abused or that tax has been evaded or avoided should be provided. The information should be as accurate and complete as possible and should be sufficient to enable the overseas tax authority to trace their taxpayer. Any available corroborative evidence and documents should be provided. Except in the cases referred to below, the Centre for Exchange of Intelligence (CEI) is responsible for passing the information to the overseas tax authorities and will decide whether it is within the scope of the relevant agreement and appropriate to send. It is therefore important that any matters of a potentially sensitive nature are brought to the attention of the CEI.*

*Where the information relates to aggressive or abusive tax avoidance schemes with an Australian, Japanese, Korean, Canadian or American connection, any report should be made to the JITSIC team at CTIAA Business International.*

*Where a transaction comes within Part 4 (Transfer Pricing: sections 146-217) of the Taxation (International and Other Provisions) Act 2010 (TIOPA 2010) any report should be made to CTIAA Business International, to whom reports should also be made where there is any information to suggest significant avoidance of foreign tax by a multinational group."*

Finally, an internal instruction exists as follows

- Spontaneous exchanges: *It is possible to send information to another jurisdiction if it is thought that this might be of value or relevance to ensuring the correct assessment or enforcement of tax in that country, even where there has been no specific request. We would encourage HMRC officials to provide such information as this will*

*encourage reciprocal disclosures to HMRC. Any spontaneous exchanges should be routed via the same contact points set out above.*

-----