

## CFE 2015 Questionnaire on tax rulings

Country	<p><b>1. Are tax rulings in your country published?</b></p> <p>(a) Does this take place in anonymous form?</p> <p>(b) Do taxpayers have a means to object publication or to obtain further deletion of business-sensitive or confidential information?</p>	<p><b>2. Are tax rulings legally binding for the tax administration, in cases different from the one for which the ruling was requested?</b></p> <p>(a) If they are not legally binding, are they factually binding?</p>	<p><b>3. Is/would the publication of tax rulings, in anonymous form and after deletion of confidential and sensitive information, (be) useful?</b></p> <p>(a) Does/would this increase legal certainty for taxpayers/advisers?</p> <p>(b) Does/would this create more equality in the treatment of taxpayers?</p>	<p><b>4. How should the number of rulings/APAs on which information has to be exchanged be limited?</b></p> <p>(a) What could be a reasonable monetary/size threshold?</p> <p>(b) Are there other reasonable limitations (e.g. regarding the subject matter of the ruling)?</p>	<p><b>5. Any other remarks?</b></p>
AT	<p>For "genuine rulings": No.</p> <p>For „EAS rulings“ (see column 5): The opinions are published in anonymous form and play an important role in practice, as tax authorities tend to follow these opinions.</p>	No.	<p>Yes - it would help to create a level playing field for taxpayers within a jurisdiction. However, given that a precondition of obtaining such a ruling is that the facts and circumstances are described completely and in detail ("umfassend") it would not be easy to delete the confidential/sensitive information.</p> <p>(a) Yes (b) Yes</p>	<p>(a) a de minimis rule would probably be the only sensible way to minimise the number of rulings</p> <p>(b) It will sometimes be very difficult for a tax administration to determine whether the subject matter of a ruling has relevance or a tax impact in another country. Also it would be very time-consuming to apply a discretionary / manual selection process to determine whether a specific ruling should be exchanged or not.</p> <p>If tax administrations are to</p>	<p>It should be noted that there are 3 different types of rulings. The answers in columns 1 and 2 relate to the "genuine" rulings pursuant § 118 BAO (Federal Tax Code) which exist since 2010 and allow taxpayers to apply for a binding ruling on specific legal questions related to planned arrangements concerning reorganisations, groups of companies and transfer prices. The arrangement must be comprehensively described and may not be implemented in a</p>

				<p>handle the expected large numbers of rulings on which information is to be exchanged automatically it is essential that the information so exchanged is presented in standardized format and contains only the most relevant points of the ruling.</p> <p>Only in case the tax administration of the other Member State feels that they need more details they should then be provided the full ruling upon request.</p>	<p>significantly different way. Legislative changes override the binding effect of the ruling. The maximum fee for such ruling is € 20,000. "Genuine" rulings are not very common.</p> <p>Much more relevant in practice, as not limited to the above-mentioned specific legal questions, are bona-fide "rulings" which are not strictly legally binding but seldom deviated from in practice.</p> <p>Lastly, there are EAS (Express Answer Service) rulings of the Ministry of Finance in international tax law and cross-border questions. They are answers to specific questions and not legally binding for the tax offices.</p>
<b>BE</b>	<p>(a) Yes, in anonymous form. (b) Yes.</p>	<p>Not legally binding for other cases – but a ruling can have a 'factual precedent value' for cases that are similar to the one described in the ruling. In practice, taxpayers and even courts refer to rulings issued to other taxpayers.</p>	<p>(a) Yes, published rulings are useful information and help to increase legal certainty. (b) Yes.</p>	<p>(c) De minimis rule + only for big multinational companies. (d) There should be an EU cross-border aspect in the ruling and further limited to intra-group transactions.</p>	

<b>CZ</b>	No, tax rulings are not published.	<p>There is a very limited number of tax rulings that can be issued based on the law. These are legally binding.</p> <p>In the VAT area, the Supreme Tax Office issues legally binding tax rulings in respect of the correct VAT rates and application of the reverse-charge mechanism. The tax rulings are legally binding only for a person who requested the ruling.</p> <p>Due to a good cooperation between the Chamber of Tax Advisors and the Ministry of Finance / General tax inspectorate, there is a forum for resolving complicated issues and notes from these meetings are being published. These are factually binding.</p>	<p>Pros and cons are very difficult to assess but we believe that the publication of the tax rulings would increase legal certainty for both taxpayers and advisers. Definitely this would require changes in the Czech tax law.</p>	N/A	
<b>DE</b>	No.	No.	<p>Very useful</p> <p>(a) Yes</p> <p>(b) It should</p>	Difficult to say.	<p>In Germany tax rulings are restricted to legal questions/opinions, esp. how should a certain term in the legal provisions and in the tax administration circulars be understood. There is no ruling – like in the Netherlands – on factual circumstances as well.</p>

<b>FI</b>	<p>Rulings issued by the Central Tax Board including revised or significant positions are published. Preliminary rulings issued by other tax authorities are not published.</p> <p>(a) Yes, any names and references to the taxpayer are deleted.</p> <p>(b) Yes, if the ruling contains any business-sensitive or confidential information the taxpayer can demand that the sensitive documents or necessary parts thereof are declared secret, although such demand does not bind the Central Tax Board.</p>	<p>Rulings are only legally binding towards the taxpayer requesting the ruling.</p> <p>Yes, the tax authorities should treat the taxpayers equally and in similar cases under similar circumstances the rulings issued by the tax authorities should be alike. However, as the majority of the tax rulings is not public, the taxpayers do not generally have the information regarding the previous rulings issued to other taxpayers.</p>	<p>Yes, publication of tax rulings issued by the Central Tax Board is useful as it might help to predict the Tax Authorities' view in similar cases. In addition, publishing the rulings is vital in making sure the tax authorities treat taxpayers equally.</p> <p>(a) Yes, significantly.</p> <p>(b) Yes, significantly.</p>	-	-
<b>FR</b>	No.	No.	<p>(a) Yes, it is always interesting to know the position of the tax authorities on specific cases, assuming that the facts are described in the ruling in a sufficiently precise manner.</p> <p>(b) Yes, most likely.</p>	<p>(a) The CFE should not ask for the introduction of a threshold as the taxpayers would not be involved anyway; in effect, the communication will be the responsibility of the tax authorities so that the taxpayers will not face any compliance issue (at least as far as the proposal is brought forward for the time being).</p> <p>(b) Probably not, subject to the remark in column 5.</p>	<p>It seems that transparency should go also for the taxpayers, which assumes that</p> <p>(i) the concept of what is a "ruling" should be more precisely defined, and</p> <p>(ii) the information that rulings should contain should be harmonized (for instance, precise description of the facts and the legal background of the decision),</p> <p>(iii) the definition of the type and nature of rulings that the tax authorities should exchange should be sufficiently precise so that</p>

					<p>the taxpayers should know what will fall into the scope and what will not and</p> <p>(iv) the taxpayer should itself be authorized to forward rulings obtained to foreign affiliates (in Luxembourg, for instance, a taxpayer is often not authorized, legally or de facto, to forward tax rulings to group companies outside Luxembourg).</p>
<b>IE</b>	<p>Correspondence between the Irish Revenue and individual taxpayers are not published by the Irish Revenue even on an anonymous or redacted basis. This includes any opinions or confirmations issued by the Revenue.</p>	<p>In general, opinions/ confirmations are not binding on Revenue, and it is open to Revenue officials to review the position when a transaction has been completed and all the facts are known. However, Revenue have stated that they will generally follow an opinion/ confirmation once it can be shown that</p> <ul style="list-style-type: none"> <li>- all relevant information was disclosed either at the time the application was made or following a request from Revenue for further clarification, and</li> <li>- the transaction as</li> </ul>	<p>We have had recent cause to consider similar issues about publication of anonymised information on taxpayer appeal cases and we would be very cautious about recommending the publication of anonymous tax rulings. For smaller countries, in particular, it may be very easy to identify which taxpayer a ruling concerns even if names and other immediately obvious details are removed.</p>	<p>The key priority is that a consistent approach is taken by all tax authorities as to the type of rulings that are exchanged and actions taken on foot of receiving details of rulings. Creating size/monetary thresholds is probably of more concern to tax authorities than taxpayers as there will be an administrative burden on tax authorities to ensure rulings are exchanged.</p>	

		actually implemented did not diverge or deviate from that which was outlined in the information provided in relation to the request for the opinion/ confirmation.			
IT	<p>Yes, on the web page of the Tax Authority.</p> <p>The Italian tax system provides for 4 (+1) basic types of "rulings":</p> <ul style="list-style-type: none"> <li>• Interpretative Ruling ("Ordinary" Ruling), pursuant to the Charter of the Taxpayers' Rights (Article 11 Law no. 212/2000), every taxpayer, including non-residents, may file a formal request to obtain the Revenue's opinion regarding the correct interpretation of an objectively uncertain tax provision he/she needs to apply. The interpretation of a tax provision is "objectively uncertain" when there is no official interpretation available (circular letters, resolutions, etc.) that applies to the taxpayer's specific case or when such official interpretation is too generic.</li> <li>• Controlled Foreign Companies (CFC) Ruling, this applies to resident shareholders of controlled foreign companies</li> </ul>	<p>The opinion expressed in the ruling by the Agenzia is not binding on the taxpayer who may decide not to follow it. The ruling however is binding on the Agenzia delle Entrate whose offices cannot issue assessments or impose fines or penalties that would be contrary to what has been decided in the ruling. This limitation applies provided that the factual elements described by the taxpayer in the query are true.</p> <p>Although, according to the Italian source of law system they are not binding, they are an administrative practice.</p> <p>(a) Yes, they are factually binding, only the tax judge can state that the ruling should not be applied to the case object of the trial.</p>	<p>Yes, because in many cases they provide the interpretation of the law whether its application is not clear or uncertain.</p> <p>(a) Yes, it increases legal certainty if there are not other contradictory rulings.</p> <p>(b) No, it does not create more equality in the treatment of taxpayers because rulings are provided "on demand" so the taxpayers in a similar or comparable situation that have not directly asked for the ruling could be excluded from its application if the tax administration applies it in a restrictive way. Discrimination could be the opposite consequence of the practice.</p>	<p>Determining a list of issues, fields of taxation for which the exchange is necessary. It means an objective restriction based on a risk assessment.</p> <p>(a) A monetary threshold is not a solution because taxpayers can modify their tax planning (e.g. the structure of the company) in order to avoid this limit. In any case the threshold could not be higher than 100,000 €. It is true that the efforts of tax administration could be increased, but this function of control, to be effective, should not address only to a huge economic reality.</p> <p>(b) Yes, the subject matter of the ruling (objective restriction) could be a reasonable limitation.</p>	<p>The exchange of information connected to the rulings for cross border issues could be very useful in particular to acknowledge taxpayers on the conduct that they must respect to carry out certain transactions (e.g. for VAT cross border supplies, a taxpayer of a member state could be aware of the formal requirements - documents, additional compliance- in force in another member state with which he trades. In that way problems related to registration, fiscal representative, letter of intents and other formalities would be avoided).</p>

	<p>wishing to avoid the application of the CFC regimes provided for by the Italian Tax Code or to apply the participation exemption regime to dividends and capital gains arising from shareholdings in black-listed companies.</p> <ul style="list-style-type: none"> <li>• Anti Avoidance Ruling, taxpayers may seek the Revenues' opinion regarding certain operations carried out in the context of a business reorganization or on the correct qualification of certain non-deductible expenses. The ruling may only concern operations and expenses listed in Arts. 37(3) and 37bis Law on Tax Assessment.</li> <li>• "Advance Clearing" Ruling, taxpayers may seek advance clearing from the Agenzia delle Entrate in order to exclude the application of anti-avoidance provisions limiting the right to deductions, tax relief, tax credits and other tax benefits.</li> <li>• Preliminary agreements for international transactions in certain fields of taxation (e.g. transfer pricing, interest and royalties, transfer of residence, permanent establishment). The effects of the agreement between tax administration and companies will last 5 (tax) years.</li> </ul>	<p>Only when in the course of an audit or control the factual elements of the case are found to be different from those described in the ruling, the ruling is not binding on the tax authorities.</p>			
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<b>LU</b>	<p>Tax rulings were not published in the past.</p> <p>The tax administration announced that in the future rulings will be published in an anonymous form in the administration's yearly activity report .</p> <p>No procedures or rules are in place with respect to the procedures and taxpayer's rights linked to this publication.</p>	<p>Based on the principle of legitimate expectations tax rulings should be binding for the tax administration in different/other cases, provided the facts and circumstances in these cases do not deviate from the reference case in such a way that the ruling is not transposable. A law from December 19th 2014 limits the duration of a ruling to 5 years and sets 3 conditions precedent for its validity: a) fair description of structures and actions b) conformity of the implemented structures and actions with such description and, c) conformity with Luxembourg and EU-law.</p> <p>Moreover the administration defined that since January 2012, rulings issued before that</p>	<p>Whether the publication will be useful cannot be appreciated as the first publication will happen next year.</p> <p>a) It will certainly increase legal certainty.</p> <p>b) It will certainly create more equality.</p>	<p>Any kind of limitation may always lead to inequality. Criteria used in accountancy (materiality) must be discarded as they vary from client to client. De minimis rules make little sense as the effect is not always quantifiable in advance and as taxpayers could multiply structures to spread the effect.</p> <p>Limitations could apply to matters linked to national sovereignty, such as defence.</p>	<p>Rulings as such constitute a lawful practice and are the consequence of the application of economic substance over form.</p> <p>Individual rulings may however be unlawful, but this has to be appreciated on the basis of the facts and circumstances of each case.</p>



		date are no longer binding.			
<b>MT</b>	No	<p>(a) Tax rulings in Malta are regulated by Article 52 of the Income Tax Act. Article 52(8) providing that a ruling shall be binding on the commissioner for a period of 5 years. In addition a ruling shall remain binding on the commissioner for a period of 2 years from the date of any relevant change in statutory provisions subsequent to such ruling.</p> <p>(b) N/A</p>	<p>(a) Yes (b) Yes</p>	<p>(a) SMEs should be excluded. (b) No</p>	Rulings in Malta are usually a clarification of the interpretation of the law since Revenue does not issue technical releases.
<b>NL</b>	Tax rulings are given for situations of individual taxpayers. For that reason tax rulings are not published (confidentiality).	<p>As a consequence of confidentiality, other taxpayers cannot apply a specific tax ruling issued to another taxpayer. Therefore, tax rulings are not binding for the Tax Administration in different/other cases.</p> <p>Exceptions could apply if for one reason or another rulings would be become effective public (e.g. through a development like Luxleaks), and a taxpayer would demand</p>	At this moment there is one department of the Tax Administration which issues what are called tax rulings. In addition, taxpayers and other parts of the tax administration enter into other types of agreements as to the future tax treatment of transactions or structures which can be characterised as tax rulings as well. As tax rulings are not published, another taxpayer who wishes some kind of certainty about whether the conditions of the individual case are at arms length,	<p>Criteria used in accountancy (materiality) could be used.</p> <p>The difficulty is that any arrangement through which the tax administration agrees on the future tax treatment of a transaction of structure qualifies as a tax ruling. Rulings on any subject and type of tax could grant benefits to taxpayers that might be regarded as state aid.</p> <p>Taxpayers have no genuine interest in reducing the efforts for tax administrations. For purposes of transparency (as</p>	

		<p>equal treatment. However, if only for the fact that rulings address particular factual circumstances, it is difficult to imagine that taxpayers could ever in this way claim protection under tax rulings issued to other taxpayers.</p>	<p>should apply for a ruling itself. It is clear that this takes quite some time and costs as well.</p> <p>There may be situations in which publication of tax rulings in anonymous form can be useful for legal certainty and equal treatment of taxpayers. It should be noted however that in practice it is often very difficult to draw conclusions from a ruling issued in respect of a factual situation of one taxpayer to that of another taxpayer.</p> <p>There is also the risk that publishing rulings could trigger a negative response from the public either against the perceived beneficial tax treatment of certain taxpayers or against the tax ruling practice as a whole.</p>	<p>basically intended by the EC), why should there be limits on what should be revealed? The EC would probably appreciate it if there was 100% clarity. The less limitations, the smaller the risks of tax evasion. More limitations could result in more discussions with tax administrations (taxpayers do not know what is sufficient in their specific case and what is not).</p>	
<b>PL</b>	<p>Yes, they are published.</p> <p>(a) Yes. In Poland there is a complete publishing system of tax rulings. All rulings are in anonymous form. Under the Polish tax jurisdiction, there are two different kinds of tax rulings: individual and general. Individual rulings are issued on request of any taxpayer by the</p>	<p>Both, individual and general tax rulings are not a source of law and hence, do not formally bind the tax authorities. However, the Polish tax system contains the general principle of conducting the tax proceedings plausibly by the tax authorities. The unjustified omission of the</p>	<p>Yes, it is very useful.</p> <p>(a) Yes, obviously. There are 5 branches of tax authorities` offices for issuing tax rulings. It is possible and happens that tax rulings are different depending on the branch. However, in such case, the Ministry of</p>	<p>Due to the relatively small number of general tax rulings issued within a year by the Ministry of Finance, there may be no limitation for the purposes of the exchange. In case of APAs, the monetary threshold may be considered.</p> <p>As there is no possibility to apply the monetary threshold to individual tax rulings, the</p>	<p>In addition to the tax rulings referred to in column 1, decisions of the Naczelny Sąd Administracyjny (Supreme Administrative Court) are anonymised and published on the court's website and juridical reviews. Those rulings are binding for other courts as official interpretations of</p>

	<p>tax authorities and published without specific details of taxpayer (anonymised). General are issued by the Minister of Finance – ex officio or on request of any taxpayer, if the taxpayer proves an inconsistency in applying the provisions of the tax law in the same factual and legal situation. They are published in whole, as they concern general subjects of taxation.</p> <p>(b) No, there is no need. All confidential information is deleted.</p>	<p>issued rulings may lead to violations of this rule.</p> <p>(a) Somewhat yes, but generally not. Regarding individual rulings, the tax authorities emphasize that rulings were issued in an individual case of a taxpayer, thus may not apply to different cases.</p>	<p>Finance should issue the general tax ruling to unify the approach of the tax authorities.</p> <p>(b) Yes – everyone can read and would know how things going in his similar tax case.</p>	<p>potential solution to reduce their number is to exchange only the rulings related to selected issues.</p> <p>(a) As is apparent from the practice, APAs are not very popular among the taxpayers, due to the significant costs and time-consuming procedure. Moreover, if the taxpayers decide to conclude APA, it usually relates to transactions with a relatively large value. Thus, in practice it may be difficult to assume a certain threshold and the limitation, in fact, may not be necessary due to the number of APAs.</p> <p>(b) The monetary threshold could not be applied to tax rulings. The number of individual tax rulings may be limited by adopting the assumption that only these tax rulings are exchanged which concerns the certain issues, such as:</p> <ul style="list-style-type: none"> <li>- issues related to foreign entities;</li> <li>- issues causing substantial discrepancies among the tax authorities;</li> <li>- change of the tax authorities' positions on relevant issues</li> </ul>	<p>the law.</p>
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				<p>for the taxpayers;</p> <ul style="list-style-type: none"> <li>- issues concerning the amendment of the tax provisions, particularly through the introduction of the new tax regimes, such as CFC.</li> </ul>	
<b>PT</b>	<p>Decisions issued by the Judicial Courts of appeal (Tribunal Central Administrativo e Supremo Tribunal Administrativo) and the Arbitration Court are published.</p> <p>Binding advance opinions issued by the tax authorities on a specific matter at the request from taxpayers are also published.</p> <p>Decisions issued by the tax authorities regarding an administrative claim/appeal are not published.</p> <p>(a) Yes. All the tax rulings, decisions of the Arbitration Court and the binding opinions are published in an anonymous form. Information that is able to identify the taxpayers, as well as the specificities of the business underlying the main tax question is removed.</p> <p>(b) As mentioned above, the information published does not contain any type of business-sensitive or confidential information. As far as we are aware, there are</p>	<p>Tax rulings and the arbitral decision are not legally binding, in a way that courts are not obliged to follow a previous decision concerning similar facts and tax rules.</p> <p>Nonetheless, some decisions, from the Administrative Supreme Court (Supremo Tribunal Administrativo) are considered as case law. Those decisions are issued as result of an appeal filed on the basis of an opposition of tax rulings concerning the same tax rules and with similar facts.</p>	<p>We believe that publishing tax rulings is helpful as this</p> <ul style="list-style-type: none"> <li>- allows tax advisers and taxpayers to understand more clearly the application of the tax rules granting a degree of certainty (limited to the fact that the rulings are not legally binding) and</li> <li>- provides tax advisers with relevant information that supports their understanding of the law, whenever they challenge a tax assessment or a decision from the tax authorities.</li> </ul>	<p>Considering that the obligation to exchange tax rulings in addition to the mandatory exchange of tax information related to taxpayers with cross-border activities may result in an overloading of information that would subvert the purposes of its implementation, we believe that a limit should be introduced to avoid the said inconvenient. The limit to be introduced should be related to the activities performed by the taxpayers, i.e., only the exchange of tax rulings concerning cross-border activities already identified as schemes of profit shifting and tax evasion using the member states' loopholes and treaty shopping advantages should be mandatory. We understand that this way, it would be easier for member states to tackle those schemes and introduce a more uniform ruling response to those situations regardless of the tax rules in place in each member state. It is our understanding that</p>	

	no specific means for objection or obtaining deletion of that kind of information.			a limit based only on a monetary cap may oblige member states to exchange tax rulings that are only related with domestic tax issues, arising for example from challenges of property municipality tax or the application of surcharges that are only connected with internal tax issues.	
<b>SK</b>	No.	According to the general obligation of the tax administration not to decide differently in factually identical matters, they might be viewed as factually binding. According to recent news, no taxpayer has filed a request for issuance of a tax ruling yet, it is therefore not possible to evaluate the practice of the tax authorities.	(a) Yes, it would (b) Yes, it would  If business sensitive matters are discussed in the ruling, it may be considered to ask the taxpayer prior to publishing to highlight such parts and the rest may be anonymised and published. A similar approach has been already adopted in practice of some state authorities.	It should not be limited: (a) Firstly, in some cases it may be difficult to define the factors to determine the threshold, in particular if series of transactions are involved. In addition, from the Slovak perspective, a threshold on the number of rulings to be exchanged might entirely hinder the aim of the initiative. (b) We do not see any major limitations which would seem reasonable once a general rule on exchange of tax rulings is adopted.	
<b>SI</b>	(a) No (b) If there was publication, the rulings should be anonymised.	N/A	(a) Yes (b) Yes Slovenia is a small country with a lot of small companies. If confidential and sensitive information of companies is published, you can see quickly from which company the information is.	(a) 1 mio € of turnover	

ES	<p>(a) According to article 86.2 of Law 58/2003 (the General Tax Law) the Spanish tax authorities are obliged to publish those tax rulings considered of greater importance and impact. These rulings are issued by the General Tax Directorate (<i>Dirección General de Tributos</i>) and published in the web page of the Ministry of Finance.</p> <p>(b) Article 87.2 of Law 58/2003, of the General Tax Law, establishes that the Spanish tax authorities shall provide, at request of an interested person, the full text of the tax rulings, deleting any reference or data that would allow identifying the parties involved.</p>	<p>Tax rulings duly requested from the Spanish tax authorities and their criteria must be compulsorily applied to taxpayers provided that (i) there is total identity in facts and circumstances as those of the tax ruling of reference; (ii) the regulations existing at the time of issuance and applicable case law remain unchanged.</p>	<p>(a) As said, tax rulings are binding for the Spanish tax authorities and their criteria must be compulsorily applied to taxpayers in similar cases so these should increase legal certainty for taxpayers /advisors. Taxpayers have the right to request a tax ruling on the basis of the constitutional right to legal certainty (Article 9 of the Spanish Constitution). In practice, the tax authorities may change from time to time their criteria on newly issued tax rulings but such changes should not have retroactive effects for taxpayers (the new criteria will supersede the previous ones for future cases).</p> <p>(b) In our opinion, this system is intended to create more equality in the treatment of taxpayers since what really matters is the facts and circumstances of a taxable event.</p>	<p>In our opinion, a criterion of greater importance and relevancy should apply (no monetary / size thresholds).</p>	
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