

International Conference

Dispute Resolution and Taxpayer Protection

Athens, 8 May 2017

Ladies and gentlemen,

I would like to begin by thanking the organisers for inviting a representative of the French tax authority to speak at this Dispute Resolution and Taxpayer Protection conference.

At the French tax authority, one of our top priorities is to maintain a non-adversarial relationship with taxpayers amid unstable and complex tax legislation and active efforts to combat tax evasion.

In this speech, I will explain how we do this by focusing on two issues: first, what the French tax authority is doing – both internally and externally – to provide legal certainty for taxpayers, and second, the practical arrangements we have put in place to protect taxpayers from double taxation.

1./ Legal certainty for taxpayers

Taxpayers have long had the right – under article L. 80 A of the Book of Tax Procedures – to avail themselves of the French tax authority's rulings based on its interpretation of tax legislation.

We therefore have a duty to make our interpretations available to the public, to ensure all taxpayers are treated on an equal footing. In September 2012 we launched a new website, known as BOFiP, for precisely this purpose. The site – a consolidated, electronic archive of tax rulings – is regularly updated with guidance on new tax provisions, publishable individual rulings, and case notes.

As well as publishing general information, we also issue advance tax rulings on individual cases to give taxpayers legal certainty around their personal circumstances and plans. This service, which is open to all taxpayers, has even become something of a benchmark for other French government bodies.

There has been a steady rise in the use of advance rulings since the adoption of the act of 8 July 1987, which included a provision – codified in paragraph 1, article L. 80 B of the Book of Tax Procedures – outlawing tax adjustments “where the authorities have formally ruled on their interpretation of tax legislation in an individual case”. Alongside these “general” advance rulings, the act also introduced “abuse of law” rulings.

Around a dozen special advance rulings have since been added to article L. 80 B – notably from the late 1990s onwards – on matters such as depreciation, profit motive, sponsorship, research tax credits, and the “Young Innovative Enterprises” programme. The procedural arrangements vary from case to case. For example, we issue explicit general rulings in some circumstances and implicit individual rulings in others, and we have differing time limits within which to respond.

During the same period, the *département* tax authorities set up ad hoc structures and appointed officers with specific responsibility for advance rulings.

The number of rulings has increased steadily since the 2000s – from 9,814 in 2006, to 13,305 in 2007, and around 20,000 on average in recent years. Most of these rulings are issued locally.

We have also embarked on a review of the “enhanced relationship” – the OECD's term for its cooperative compliance initiative – in an effort to address information asymmetry between the tax authority and taxpayers, and to encourage taxpayers to disclose their full tax liability upfront (thereby avoiding the need for subsequent tax investigations). We recently introduced a new service for businesses in which we look not just at a particular plan or one-time transaction (as is the case with advance rulings), but instead examine their annual profit. In return, we expect businesses to be open and honest about their liability.

This service – which provides absolute legal certainty and is currently being trialled with around 20 firms under a co-operative compliance pilot scheme – helps taxpayers cut their tax management costs. It also aims to curb companies' natural tendency towards aggressive tax planning and instead foster more compliant behaviour as enhanced transparency becomes increasingly important. It is proving difficult to roll out this service more widely, however, as the number of tax inspectors continues to decline, risk analysis tools gain limited traction, and inspectors become ever more reluctant to make binding decisions. This experimental scheme is currently under review.

Advance rulings were originally used for initial tax returns only. However, the tax authority found that inspectors were casting doubt – sometimes retrospectively – over decisions not to impose tax adjustments during prior investigations. Businesses were unaware that this type of retrospective action was possible, even when they had previously abided by the agreed rules.

We addressed this issue by introducing a new advance ruling for tax investigations in 2005 but, for cultural reasons, take-up of the service has been limited.

For the French tax authority, answering requests within the required time limit remains a constant challenge. We have three months to submit our response for general advance rulings, and there is no penalty for overshooting this limit. For special rulings, however, the tacit time limit of three to six months places enormous pressure on our staff.

As well as issuing advance rulings on domestic matters, our work encompasses advance pricing agreements (APAs) on cross-border taxation. Although we only receive a few dozen of these requests each year, we have to carry out a detailed examination in conjunction with the business and the partner authority – analysing the transactions at issue and determining the appropriate transfer pricing methodology for each case on its merits.

APAs have been well publicised in recent years with the OECD's BEPS project and the December 2015 Council Directive on the exchange of information on advance tax rulings.

We are all familiar with the background – there is a drive for greater transparency on cross-border taxation across all stakeholders, the OECD is spearheading work on this theme, and the European Commission and the DG Competition are taking welcome steps to stamp out exceptional tax treatment in some quarters. The aim of the December 2015 directive is to establish a system for Member States to transfer key information about these much-vaunted advance rulings. An automatic ruling exchange system will be introduced in 2018. A sliding-scale system will apply to rulings prior to 1 January 2017 (when the directive came into force), according to the date on which they were issued.

At the French tax authority, we have no problem with disclosing individual rulings from a legal perspective. But it remains to be seen whether this move will affect the number of requests we receive from businesses.

The French tax authority's advance tax ruling policy has produced mixed results.

Because the service provides legal certainty, it has undoubtedly enhanced our image as a transparent authority that seeks to build a non-adversarial relationship with taxpayers and prefers to take a preventive stance.

Similarly, some taxpayers have embraced our advance ruling service with open arms. Non-profit organisations account for 25% of the requests we receive – a fact that stands testament to our non-adversarial approach to sensitive taxpayers.

And we could see a fresh spike in ruling activity if the Commission follows through on its intention to publish a proposal for a directive requiring intermediaries, taxpayers or both to declare tax avoidance schemes to the authorities (as is already the case in several industrialised countries).

On a more negative note, some taxpayer groups are still unwilling to use the myriad services at

their disposal. The research tax credit scheme is a case in point. More than 10,000 businesses complete an annual research tax credit return, but the tax authority – which has introduced several types of advance ruling for this scheme – issues an average of just 200-300 rulings each year.

Moreover, the Commission and the DG Competition launched investigations into tax arrangements in Ireland and the Benelux countries after media revelations about the true nature of these deals, finding evidence that advance ruling policies were bringing about harmful practices. As I mentioned previously, the Commission has taken a number of steps to force Member States to disclose rulings and APAs issued to multinational companies.

While this quest for greater transparency is putting bad practices in the spotlight, it is likely to have unintended harmful consequences, raising doubts and perhaps even suspicion – at least among NGOs and MPs – about the very principle of individual rulings. So far, however, there is no evidence that demand is falling.

2./ Resolution of double taxation disputes in France

The last 10 years have seen a spike in demand for mutual agreement procedures (MAPs) under tax treaties in major OECD countries – from 2,352 in 2006 to 5,423 in 2014. This development reflects a rise in double taxation disputes, fuelled primarily by an upsurge in transfer pricing investigations.

The situation in France – which has the third-highest number of MAP cases – is indicative of this trend.

The French tax authority has taken stock of this situation and revamped its organisation accordingly, in an effort to better serve the needs of economic operators.

A new internal department – created to deal specifically with transfer pricing and double taxation disputes – has been up and running since September 2013.

With a staff of 11 people, the department's chief responsibilities are:

- to investigate APAs and contribute to economic thinking in this area, and
- to examine MAPs and other cross-border tax affairs.

The department – inspired by similar arrangements put in place by France's economic partners – is intended to act as a one-stop shop for businesses on all MAP and APA matters.

Our aim – on both MAPs and APAs – is to shorten processing times and steadily reduce the number of open cases, while remaining within the confines of tax treaty law and following our internal procedures.

By prioritising the longest-standing MAP cases, we stabilised the backlog at less than 600 by the end of 2016. Each year, the department handles around 150 MAP cases and receives roughly the same number of new requests.

The Public Finances General Directorate (DGFIP) is exploring ways to speed up the case handling process and work with its partners to reach solutions. However, the pace of progress can differ from country to country as some partners take longer to act than others. While we have cleared some of our backlog with more cooperative partners, other authorities have failed to keep pace with our efforts because they lack either the resources or the will to move forward at the same speed.

We are also involved in international efforts to roll out arbitration as a means to settle MAP cases that cannot be resolved bilaterally. In October 2016, the European Commission published a proposal for a directive to introduce automatic arbitration procedures in cases where no agreement can be reached in the initial MAP. The proposal, which builds on BEPS Action 14 (dispute resolution), has two aims: to increase arbitration take-up and expand its scope, and to offload a significant portion of cross-border dispute resolution work to third parties. The Maltese Presidency hopes to finalise negotiations on the directive in May 2017.

France, as part of the OECD's FTA MAP Forum, is also involved in the "peer review" process in which peers and taxpayers assess how members are handling their MAP cases. France's assessment – under batch two of the scheme – began in April this year. The OECD will publish a report outlining the findings. The peer review process will reveal which countries are making progress on double taxation dispute resolution. And it will show which members are falling behind on compliance with OECD principles.

Doing more to shield businesses from double taxation therefore requires action on two fronts – legal (introducing compulsory arbitration) and practical (implementing peer review, and putting more pressure on countries to cut their attachment to fiscal-driven policy). And in taking these steps, governments will be doing their bit to help resolve double taxation disputes under BEPS tax avoidance rules.