IBFD Course Programme
Management of Tax Rulings, APAs and Mutual Agreement Procedures

Amsterdam / 21 – 23 June 2017
Overview and Learning Objectives

Tax rulings are decisions or opinions of the tax authorities in respect of factual situations issued as part of an assessment procedure or in response to taxpayer questions. Examples of tax rulings are advance tax rulings (ATRs) and advance pricing agreements (APAs). They are both designed to provide upfront certainty and protection from tax disputes, to establish a good relationship between taxpayers and tax administrations and to attain consistency in the application of laws in a consensual and cost-effective way. Yet, due to the recent controversies surrounding the role of ATRs and APAs in high-profile tax cases, the ever changing and stricter rules governing them, the great diversity of country practices, the OECD BEPS project, the EU Commission investigations and the increased scrutiny from tax administrations regarding ATRs/APAs, there is a substantial risk for taxpayers in the (mis)administration of these voluntary agreements. In addition, there is a growing political consensus that information on tax rulings should be exchanged between tax administrations or even made public.

Mutual agreement procedures (MAPs) are means of cooperative procedures between tax administrations that seek to reduce instances of double taxation. The number of MAP procedures has doubled in the last years ranging from e.g. transfer pricing to permanent establishment cases. In general, taxpayers are, by definition, excluded from MAP procedures and their role is often limited to the role of a passive observer. However, this does not have to mean that taxpayers should not have a deep understanding of the use of MAPs and their rights and opportunities regarding these procedures, nor that they should not be in control of the process.

This three-day course is set up to provide corporate tax professionals and advisers with the knowledge and understanding of how to work out their sound strategy and approaches to ruling, APA and MAP practices and manage the procedures and the arising risks. The course will analyse the ruling practices of four popular jurisdictions of tax structures (the Netherlands, Switzerland, Ireland and Luxembourg). In addition, the rights and obligations of taxpayers and competent authorities will be explored, as well as the use and limits of these agreements and procedures, the international best practices, and common, related issues of tax treaties, transfer pricing and arbitration.

The course will feature top-notch advisers heavily involved in managing tax rulings, APAs, MAPs and dispute resolution in general, as well as representatives of competent authorities, the EU Commission and corporates who will share their first-hand experience with the course participants.

Field of Study

Taxes

Who Should Attend?

The course is suitable for practitioners in tax advisory firms, tax specialists in commerce and industry, and government officials who wish to gain a complete understanding of the management of rulings, APAs and MAPs.

Course Level and Prerequisites

This is an intermediate-level course. Participants taking this course are expected to be familiar with the structure of at least one domestic tax system and to be aware of the common international tax planning techniques.
Day 1

08.30 - 09.00 Registration
09.00 - 09.20 Welcome and IBFD Overview
09.20 - 10.40 Introduction and General Overview

- Different forms of taxpayer-tax authority agreements (soft law, binding rulings, general rulings vs taxpayer-specific rulings: ATRs, APAs)
- Key concepts and basic features of different types of rulings
- Vertical and horizontal monitoring
- Legal character/nature of rulings
- Overview of functions, rights and obligations of tax administrations and taxpayers

10.40 - 11.15 Break – Refreshments

11.15 - 12.45 Risk Management 1: ATRs and Horizontal Monitoring

- Policy considerations, procedural aspects and requirements
  - general procedural rules of application
  - pre-filing meeting(s)
  - tax control framework
  - common conditions for application: substantive requirements
  - future vs past transactions
  - scope of rulings
  - limitations: e.g. excluded transactions
  - binding effects
  - compliance requirements
  - internal monitoring of the facts and circumstances underlying the ruling
  - publication and transparency
  - examples of court cases

12.45 - 14.00 Lunch

14.00 - 15.20 Risk Management 1: ATRs and Horizontal Monitoring (continued)

15.20 - 15.50 Break – Refreshments

15.50 - 17.00 Impact of OECD BEPS on Ruling Practices and Policies

- BEPS Action 5
  - preferential regimes and transparency
  - rulings covered by the new system
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- country coverage
- information to be exchanged
- practical implementation
- confidentiality and taxpayer rights
- best practices
Day 2

09.00 - 10.40  **A Selection of Ruling Practices: Netherlands, Luxembourg, Switzerland and Ireland**

In-depth analysis of the ruling practices of the Netherlands, Luxembourg, Switzerland and Ireland with a focus on:

- Legal basis for rulings
- Common features and differences
- Procedures to obtain rulings
- Scope of rulings: topics on which rulings can be requested
- Binding effects and terms of rulings
- Procedural rules for the ruling committees/commissions and services
- Substance and other requirements
- Risk management including change of facts and business activities
- Publication
- Impact of BEPS and EU State aid investigations

10.40 - 11.00  Break – Refreshments

11.00 - 12.45  **A Selection of Ruling Practices: Netherlands, Luxembourg, Switzerland and Ireland (continued)**

12.45 - 14.00  Lunch

14.00 - 15.20  **Risk Management 2: Advanced Pricing Agreements**

- In-depth analysis of the key features of APAs
  - insights of unilateral, bilateral and multilateral APAs
- Preparation for APAs
- Managing the APA procedures:
  - expression of interest
  - pre-filing negotiations
  - application
  - documentation
  - disclosure requirements
  - pricing
- Negotiations/meetings with tax authorities: establishing cooperation and trust
- Common causes of denial
- Implementation of APA in business practices
- Revision, review and cancellation procedures
- Management of arising risks

15.20 - 15.40  Break – Refreshments
15.40 - 17.00  Risk Management 2: Advanced Pricing Agreements

(continued)
Day 3

09.00 - 10.40  EU State Aid Investigations: EU Perspective

- EU transparency and anti-avoidance agenda
- EU competition law perspective
- EU procedural rules on State aid investigations
- The impact of investigations on taxpayers, their rights and obligations in State aid cases
- In-depth analysis of the EU Commission's position on the:
  - McDonald's case
  - Apple case
  - Starbucks case
  - Amazon case
  - Belgian “excess profits” tax scheme

10.40 - 11.00  Break – Refreshments

11.00 - 12.45  EU State Aid Investigations: Corporate Perspective

- Reflection on EU Commission's position
- Transfer pricing vs competition law
- Lessons learned for corporates

12.45 - 14.00  Lunch

14.00 - 15.20  Risk Management 3: Mutual Agreement Procedures

- Why to initiate a MAP
- When to use MAP vs domestic juridical dispute resolution vs mediation
- Limits of MAP (e.g. domestic law, timing, no case for treaties, constitutional law)
- Understanding what competent authority is for residents and in cases of non-discrimination
- General interpretative issues:
  - "endeavour to resolve the case"
  - when an objection is justified
  - time calculations
- Managing the procedure (initiation by taxpayers vs initiation by competent authorities, presenting the objections, examination by authorities, taxpayers’ representation, oral hearings, council assistance)
- Scope of obligation of tax administrations to negotiate
- Common causes for rejection
- Taxpayers’ opportunities and rights
- Approval of MAP result, cases of non-agreement, pursuing arbitration
- Results of MAP in light of previous domestic court and tax administration decisions
- BEPS Action 14: commitment for mandatory binding MAP Arbitration
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15.20 - 15.40 Break – Refreshments

15.40 - 17.00 Risk Management 3: Mutual Agreement Procedures (continued)