

# ***Tax rulings: current practice and future perspectives***



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# *Introduction*

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1. What is a tax ruling according to the current practice of a Tax administration, based on practical examples
2. Conditions to be protected through a Tax ruling
3. Recent federal case law
4. Brief overview of the future perspectives concerning the exchange of information on tax rulings

# *What is a tax ruling?*

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- Advance approbation delivered by a competent tax authority on a tax analyse in reference with a future operation.
- = is a statement provided by the tax authorities, regarding the tax treatment of a taxpayer with respect to his future transactions and on which he is - to a certain extent –entitled to rely
- Increase certainty and tax planning process.
- Due to complexity of tax law

# *Current examples*

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- Share deal: do the shares belongs to private wealth?
- Merger: is the planned reorganization neutral on a tax level?
- Irrevocable and discretionary trust: does my brand new trust meet the FTA Circular standard?
- Immovable rights: Is the right cession to a third party submitted to transfer duty tax?

## *More over...*

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- Special corporate tax regime
- Corporate Tax holiday
- Lump sum taxation of taxpayer

## Quiz

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Can you find a legal basis for a Tax Ruling in the Direct Tax Law ?



# Quiz

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Is a Tax Ruling 100 % safe ?



# Quiz

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The Tax Authority refuses to sign the Ruling : can I sue them ?





## Quiz

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Can I ask the Tax Authority of Valais to sign a Ruling concerning a Geneva activity: they seem to be nicer and less pernickety ?



## *Conditions to be met*

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- No legal basis in the direct tax laws
- Federal Court states tax ruling are illegal...
- ...but could bind tax authorities provided the conditions of Good Faith's Principle are met!

## *Recent case law*

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- ATF 139 II 78 = RDAF 2013 II 445
- 2C\_603/2012 du 10 décembre 2012
- 2C\_842/2013 du 18 février 2014
- 2C\_529/2014 du 24 août 2015
- 2C\_807/2014 du 24 août 2015
- 2C\_123/2014 du 30 septembre 2015

## *Conditions to be met (cont')*

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- A specific situation with regard to specific persons
- TA acted or is deemed to have acted within its competence
- Taxpayer could not recognize the inaccuracy of the information obtained
- The taxpayer has taken, based on the tax ruling measures it can not alter without suffering harm
- The regulation has not changed since the moment the assurance was given

## *Conditions to be met (cont')*

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- Conclusion : even if not legally based the tax ruling can be binding for tax authorities
- Strict application of the conditions: Good Faith vs legality
- Important for Switzerland as part of global business friendly politic

## *What's the future like ?*

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- EU: On 6 October 2015, the Council reached a political agreement on a directive aimed at improving transparency in the assurances given by member states to companies about how their taxes are calculated.
- The directive is one of a number of initiatives aimed at preventing corporate tax avoidance.
- It will require member states to exchange information automatically on advance cross-border tax rulings, as well as advance pricing arrangements

## *What's the future like ?*

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- OECD: Action Plan n° 5: Where countries have the legal framework to start exchanging information covered by the report, they have until the end of 2016 to exchange information on past rulings.
- Future rulings are those issued on or after 1 April 2016 and they should be exchanged as quickly as possible and generally no later than three months after the date on which the ruling becomes available to the competent authority of the country that granted the ruling.
- Tax secrecy!

# *Conclusion*

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- Actual framework is a pragmatic solution
- Change to come: exchange of tax ruling
- Practical impact is difficult to assess now



# QUESTIONS ?

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