Administrative Practices in Taxation

A report prepared for the European Commission on Administrative Practices in Taxation likely to affect the location of business in the European Union.
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EXECUTIVE SUMMARY

This report is prepared on the basis of the experience of professional firms in all 15 Member States and describes the administrative practices in each Member State. Our principal findings are:

• The degree of administrative discretion and the practices used in exercising that discretion vary considerably within the EU. All Member States offer taxpayers some degree of assistance in interpreting the law and applying the law to particular facts. Such assistance is the limit of the administrative practices we have found in Finland, Denmark, Sweden, Germany and (with the exception of a small amount of discretion in relation to local taxes) Austria.

• In Ireland, Portugal, Spain and the United Kingdom administrative practices go beyond this minimum level. This is principally through a combination of advance agreements and a greater degree of cooperation and flexibility to taxpayers, but still with the intention of achieving better administration or giving effect to the intention of legislation. Although such practices may be operated as part of statutory regimes designed to attract business (as is the case in Ireland and Portugal) we do not believe that, isolated from any related statutory incentives, these practices are likely to influence the location of business.

• We also did not find any significant administrative practices likely to attract business to Greece or Italy.

• In a few Member States - Belgium, the Netherlands and France - we have found a degree of administrative discretion which allows the negotiation of a favourable tax treatment. While based on a framework of statutory or case law rules the degree of discretion and flexibility is such as to be an important factor in the location of business. In the past this has also been the case, but to a lesser extent, in Luxembourg.

• We have found no instances where special taxation regimes have been negotiated directly with the government of a Member State except in the case of France.

• We found significant variations in the application of transfer pricing rules. A costs plus basis of taxation is widely available. In many cases costs plus is used as a genuine attempt to arrive at arms length pricing. In Belgium, France and the Netherlands a costs plus basis can apply which is not always consistent with arms length pricing.

• A summary and analysis of the position in all Member States is set out in paragraphs 9 to 11.
1. Introduction

1.1 This report describes administrative practices in taxation within the EU. It has been prepared by Simmons & Simmons for the European Commission. No part of this report may be published or circulated other than by, or with the express permission of, the European Commission.

1.2 The Commission wishes to identify administrative practices operated by tax authorities in the EU that may influence the location of business, whether such practices are intended to attract inward investment, or to support or retain existing domestic business. The Commission is concerned with those practices which have no legislative basis, as well as those derived from specific provisions in the tax code of the relevant territory.

1.3 The instructions forming the basis of this report are set out in a Commission paper, which is reproduced as the Annex to this report.

2. Structure of report

2.1 This report is in three parts. Part 1 describes the work undertaken and the methodology adopted; Part 2 examines particular issues and findings of relevance to the questions asked by the Commission and draws some comparative conclusions; Part 3 sets out an analysis and summary of the administrative practices found in each Member State, as established from the work undertaken and from the detailed responses from each Member State. The full responses from each Member State have been circulated separately.

3. Acknowledgements

3.1 In preparing this report we have been assisted by our own offices, by a number of professional firms and several others. We would particularly mention:

- Austria: Dr F Schwank Law Offices
- Belgium & Netherlands: Stibbe Simont Monahan Duhot
- Denmark: O. Bondo Svane - Advokatfirmaet
- Finland: Hannes Snellman
- Greece: Law Office of Tryfon J Koutalidis
- Italy: Studio Maisto e Associati
- Spain: Cuatrecasas
- Sweden: Mannheimer Swartling
PART 1 : METHODOLOGY

4. Background and methodology

4.1 A questionnaire was prepared and agreed with the Commission setting out a number of questions on the administration of the tax system and administrative practices in each Member State. That questionnaire was submitted to tax professionals in each Member State having the relevant practical and professional experience.

4.2 We also spoke in depth, and on a confidential basis, to representatives of a number of multinational businesses about their experiences in establishing businesses in the different Member States and dealing with the tax authorities.

4.3 The information in the responses includes:

- A summary of the approach the tax authorities take to tax rulings or to administrative practices having the same practical effect as rulings, including any practice or agreement with tax offices which provides some degree of assurance in advance as to the level of taxation on a particular activity or business.

- An indication whether rulings generally/exceptionally can be obtained in practice from any local or national tax offices in respect of any taxes applicable to businesses or companies, and whether there are particular offices or departments dealing with these matters.

- An indication of circumstances in which a tax charge can be agreed which varies from that prescribed by law or which is based on profits differing from those in commercial accounts.

- A description of the way in which the relevant tax authorities determine transfer prices, and in particular whether the authorities are prepared to agree a transfer price which differs from that which would apply under the OECD Transfer Pricing Guidelines.

4.4 We reviewed the answers provided and, in each case, asked supplemental questions.

4.5 We have prepared a summary of the position in each Member State based on the responses received to the questionnaire, and on the information obtained from our meetings with business representatives. Those summaries are contained in Part 3 of this report.
5. Reservations and additional comments

5.1 In preparing this report it has been necessary on a number of occasions to distinguish purely administrative practices from the operation of statutory rules. A practice which is perceived as purely administrative may in fact be the operation of the discretion provided for by law in a statutory regime. We have tried to make this distinction clear in the summaries. This issue is discussed at greater length in the comparative study section of this report (see paragraph 7).

5.2 In preparing this report we have relied on the responses to the questionnaire and have not attempted any independent verification of those responses, beyond our own experience of dealing with a number of Member States, and the interviews with representatives of multinational businesses. We have had no discussions with the tax authorities in any Member States. We are satisfied that the responses accurately represent the practices in each Member State as known to the respondents, but if other practices had been agreed in any Member State on an occasional and confidential basis with a small number of taxpayers, it is unlikely that those taxpayers or their professional advisers would have been willing or able to disclose the existence of such practices. In this regard it should be noted that one multinational business declined to discuss these matters with us.

5.3 Given the methodology adopted, it is inevitable that the responses given will be limited to the knowledge, direct and indirect, of those firms participating in the preparation of this report. There is a risk that practices exist of which the participating firms are not aware. This is more likely in those Member States with decentralised political and tax systems and in Member States with a lower degree of transparency in the operation of the tax system.

5.4 The approach to the administration of tax, and to the law generally, varies markedly within Europe. Accordingly the system of administration and practices in each Member State did not always fit easily within the framework of the questions asked. This has led to some variation in the manner in which the questions have been answered. We did not attempt to eliminate these variations, but our summaries of the responses are prepared in a uniform format and adopt a uniform approach, which we believe provides an accurate means of comparing Member States.

5.5 We would also note that while the questionnaire and the responses received were in English, English is not the first language of the majority of the respondents. We edited the responses and confirmed with the respondents that they agree with any changes and tried to ensure that no ambiguities have arisen, but it is possible that some nuances may have been lost as a result. This report has been prepared in English. We can take no responsibility for any translation of this report which is made into other languages.

5.6 This report has been prepared for the use of the European Commission. While we believe that the responses and the conclusions set out in this report accurately reflect the position in each Member State, the nature of the subject matter of the
report is such that we cannot accept any responsibility for omissions or errors.

5.7 Finally, we have not sought to identify any cases where there is any suggestion of impropriety, which could amount to illegality or corruption. Were any practices to exist which are completely contrary to law they would almost inevitably not be public and establishing details of such cases would have to be effected through other means.
PART 2 : COMPARATIVE ANALYSIS

6. Types of administrative practices

6.1 The practices which we have examined cover a wide range of different circumstances. They range from agreements direct with government as to tax liability, through the operation of discretions provided for by a particular legislative provision intended to favour inward investment, to the simple day to day exercise of administrative powers to ensure the effective working of the tax system. All of the practices we have identified involve the exercise of some degree of discretion by tax authorities based on a judgement of a particular taxpayer’s circumstances, but their inclusion in this report does not imply that they have no basis in law, nor that they are intended to influence the location of business. Practices which are intended simply to achieve the better or more consistent administration of a tax system may have the unintended effect of offering an advantage to international business.

6.2 We have identified a number of categories of administrative practice as potentially affecting the location of business. However, any such categorisation must be approached with care, and should be treated more as a starting point for the examination of particular practices, some of which may fall into more than one category. The broad categories of practice which we have encountered are:

(A) Extra-statutory agreements. These involve a taxpayer negotiating with either the Revenue authorities or the government a special tax treatment which is not provided for in that Member State’s law. France is the only Member State in which this kind of practice was explicitly acknowledged, although some practices in other states, particularly in Belgium, may fall into this category.

(B) Advance agreements offering a favourable tax treatment based on statute or case law. The statute or case law in a number of Member States provides for favourable regimes or tax treatments to be made available at the discretion of the Revenue authorities if certain conditions are satisfied. This allows the tax authorities to enter into specific agreements with taxpayers in advance of establishing a business, or entering into a particular transaction. The degree of flexibility offered in such cases can be almost as great as the cases under (A) above, where a treatment falling wholly outside the law is agreed. The principal difference is the extent to which such a treatment is sustained by a specific statutory provision or judicial authority. This category covers a diverse range of practices, the common features being that some degree of negotiation with the authorities is possible, either as to whether a business
qualifies for a particular tax treatment or as to the tax treatment of particular activities, and that either intentionally, or as a result, these practices are likely to affect the location of specific businesses. We would note here the operation of the costs plus basis of taxation in Belgium and the availability of ‘Greenfield rulings’ in the Netherlands.

(C) **Agreements on taxable income in cases of uncertainty.** The authorities in a number of Member States will enter into agreements to tax businesses on an approximate basis where ascertaining the exact taxable profit is difficult. The most obvious example of this is the allowing of costs plus taxation of permanent establishments or subsidiaries of overseas companies as is possible in, among others, Germany, Ireland, Spain, Sweden and the United Kingdom. Such agreements may represent a genuine attempt to estimate an unquantifiable liability but in some cases the application of a costs plus basis of taxation to a business cannot be justified as a realistic estimate of the profits earned, for example where there is a level of mark-up below what would apply in an arms length agreement as occurs, for example, in Belgium and, to some extent, in the Netherlands.

(D) **Formal and informal agreements and interpretations.** This wide category covers a whole range of agreements, practices and interpretations entered into purely as a matter of administrative convenience without either the effect or intention of conferring a benefit on the taxpayer (beyond the benefit of achieving certainty as to the tax position). The Revenue authorities in a number of Member States are able to enter into binding agreements with taxpayers to determine how transactions or entities will be taxed. Sometimes there is express statutory authority for these agreements. In other cases they are made in the absence of express authority but case law or subsequent practice has confirmed their binding nature. Agreements may be reached either before or after a transaction takes place or a structure is set up. Beyond this, the authorities in every Member State are prepared, to some extent, to assist taxpayers in interpreting the law and to give indications of how they think the law applies in particular cases. The availability of such formal or informal agreements and interpretations may well be a factor which makes a tax system and a jurisdiction more attractive to potential investors.

6.3 Although it is not strictly an administrative practice, the overall culture of a Member State’s tax authorities has emerged as an important factor influencing the location of business. See paragraph 8.2 below for further comments on this.
7. General comments on administrative practices

7.1 Administrative practices of one kind or another are necessary for the effective working of any tax system. Tax authorities need, for example, to be able to decide which cases to investigate further, whether to settle disputed matters without recourse to litigation in every case and to establish a workable basis for the application of tax law to particular activities or taxpayers. As will be seen from the summaries, administrative practices exist in every Member State.

7.2 A common theme emerging from every Member State is the stated adherence to the rule of law. Where we did find evidence of administrative practices which may potentially affect the location of business these practices were perceived in almost every case as being operated within the scope of express statutory authority. Only in a very few cases was there evidence that administrative practices were operated entirely without a statutory basis.

7.3 We have also found that the prevailing cultures and approaches to the administration and collection of tax within different Member States vary widely. The term ‘administrative practices’ carries different meanings and different connotations, even within a single Member State. In a few cases we found Member States where the concept of an administrative practice which could have an effect on the location of business was not understood, simply because the concept of tax authorities being able to apply discretion so as to favour or benefit particular businesses was completely unknown. Any comparative examination of practices in different territories therefore has to take account of these significant cultural differences. In our summaries of the position in each Member State we have attempted to bring a consistent approach to bear, so that those summaries can be compared with each other on a like-for-like basis.

7.4 We have also noted very differing participation by government in administrative practices. The explicit intervention by government in particular cases (e.g in France), or the existence of a particular tax regime allowing for the exercise of administrative discretion which has been sanctioned by legislation (as in Belgium and, at least in the past, in Luxembourg) is a fairly consistent indication of the existence of a practice likely to influence the location of business. In such cases administrative practices reflect specific intent on the part of government to promote particular activities or businesses.

7.5 Conversely, in cases where there is little government intervention involved in the creation or exercise of an administrative practice, this is usually an indication that the practice exists principally for the administrative convenience of tax authorities or taxpayers, and any effect on the location of business is likely to be a secondary consequence. Thus in the United Kingdom a costs plus basis of taxation can be agreed in certain circumstances, within the law, but without any explicit legislative or other sanction from Government. At this level administrative practices exist to
ensure the better administration of the tax system and while practices may, at least indirectly, have an effect on the location of business (see paragraph 8.2 below) they do not involve an active participation by government.

7.6 In this context it is not clear to us whether a number of the practices in the Netherlands, which have a firm legal basis, and operate consistently with the overall structure of the Dutch tax regime, reflect a conscious intention on the part of Government to attract international business, or merely have the consequent effect of doing so.

7.7 The existence of transparency in the operation of administrative practices (i.e. whether details are published or otherwise made widely available) does not, of itself, affect the nature of the practices. However, practices which have little or no basis in law are less likely to exist in those territories which operate on an open basis, with a culture which requires or encourages the publication of rulings and practices. See paragraph 11 below.

8. Comments on the location of business

8.1 The Commission is concerned with administrative practices that may affect the location of business. Many factors influence business decisions on where to locate and taxation is only one of those factors. The level of tax (as reflected in a reduced rate of tax for a particular activity) is the most likely aspect of a tax system to influence location decisions, although a number of the businesses to which we have spoken did not regard the level of taxation as a factor in isolation. Those practices which allow express agreement of the level of tax for particular companies or business are the most likely practices to affect the location of business. Such practices typically reflect a specific intention on the part of government to provide fiscal benefits for particular businesses.

8.2 While the level of tax is important, it is also clear that the ability to achieve certainty as to the application of tax rules, even though there is no reduction of the liability provided by statute, has a considerable effect on the location of business. Practices which provide for approachability and certainty are therefore also likely to influence the location of business. To the extent that such practices reflect any intention of government it is usually an intention that the tax system, and often the regulatory and financial systems as well, be operated in an open manner so as to create a climate attractive to inward investment.

8.3 In addition to those Member States where there is a clear intention on the part of the relevant government and tax authority to influence the location of business or to offer a location which is attractive to business, there are Member States which offer attractions to mobile businesses in a way which may not be explicitly intended. A
tax authority which offers flexibility so as to accommodate business generally, or
operates an administrative practice designed to deal with an anomaly principally
affecting domestic businesses, may inadvertently offer benefits to inward investors
and mobile businesses who exploit the practice to achieve a favourable tax result.
This may be the case particularly in those Member States operating a relatively
unsophisticated tax system, or those who have only recently adapted their tax rules
and practices to deal with international businesses. It may also be the case that a
practice implemented to provide a consistent application of a particular feature of a
tax regime, e.g. an exemption system of double tax relief, may also allow the
establishment of finance or holding companies which take advantage of the
practice to achieve an overall reduction in tax liability.

8.4 We would also note that just as a tax regime offering certainty and approachability
can attract business, those tax regimes which exhibit degrees of uncertainty and
arbitrariness discourage inward investment. Similarly those regimes where the
practice of the tax administration is aggressive towards taxpayers generally, and
particularly where it is aggressive towards foreign investors, clearly do have an
effect on the location of business.

9. Comments on the administrative practices in specific countries

9.1 We refer to the summaries for each Member State, and to the full responses in
respect of each country. The tax system of every country is complex, and by its
nature is impossible to disentangle from wider economic, cultural and social
aspects of the territory. No summary should be treated as more than a broad
generalisation of the position and the following paragraphs should not be treated as
more than an overview of the summaries. Subject to this caveat we believe that a
number of broad conclusions can be drawn from the work we have done.

9.2 There are a number of countries where the responses received disclosed no
administrative practices which are likely to influence the location of business. In
particular the Nordic countries, Sweden, Denmark and Finland, appear to operate
their tax systems on a thorough basis, complying closely with the published rules,
and using rulings, where these are available, as a means of achieving certainty
within the strict constraints of the legislative framework. We also found no
evidence in either Germany or Austria (other than in relation to local payroll taxes
in Austria) of administrative practices likely to influence the location of business.
In relation to these countries we would refer to the reservations in paragraph 5.3
above. Establishing with certainty the extent to which there is regional variation
within such decentralised jurisdictions has proved difficult.

9.3 In contrast there are a significant number of Member States which have set out to
attract business through the use of the tax system. This has been achieved through
different means, and, as noted at paragraph 5.1 above, it is not always possible to
distinguish the application of statutory regimes from the operation of administrative
practices, particularly where statute confers an explicit discretion on tax authorities
to grant tax benefits in particular cases.

9.4 In Ireland a statutory regime to encourage investment is administered in a way
which requires the application of discretion, but we found this to be applied in an
open manner, in accordance with the law. We found a somewhat similar, but
considerably less developed, approach to inward investment in Portugal, which
offers a statutory regime designed to encourage investment, which requires case by
case approval. In the UK, there are few statutory regimes designed to attract
international business, but the tax authorities deal with taxpayers in a pragmatic
and approachable way. This provides certainty for taxpayers in a number of
circumstances, but without any possibility of a tax treatment beyond that provided
for by law. In all these cases, the administration of the tax system operates in a
way which is likely to be attractive to business, but we would not regard there as
being any significant practices influencing the location of business. Similarly, in
Spain there seems to be a clear intention to operate the tax system in an even-
handed manner, but inconsistencies appear to arise in the giving of rulings, which
do not reflect any overall intention to benefit particular taxpayers.

9.5 The position in these jurisdictions (i.e. Ireland, Portugal, Spain and the UK), where
discretion is operated within the law, contrasts to some extent to the position in
France, Belgium, the Netherlands and Luxembourg. In all of those Member States
there are statutory regimes requiring the operation of varying degrees of
administrative discretion. Those regimes are overlaid or supplemented, to a greater
or lesser extent, by the ability to agree special treatment on a case by case basis.
We would particularly draw attention to France and Belgium, where the ability to
agree a favourable treatment would appear to have the least firm basis in statutory
provisions.

9.6 There are two other Member States whose tax systems do not fit easily into a
particular category - Italy and Greece. While in neither case did we find evidence
of significant administrative practices intended to influence the location of
business, in each case, and in different ways, we found evidence that the
administration operates in a manner which is not always consistent.

9.7 In Italy a culture which is perceived as aggressive by taxpayers reflects a degree of
inconsistency in the application of tax laws. This inconsistency appears to be
based on a desire to maximise tax yield, but also reflects variations in the approach
different tax offices. Accordingly, familiarity with the administrative workings
of the tax system in Italy may enable a more favourable tax treatment to be
achieved. In addition, large and influential businesses appear to be better placed to
achieve favourable changes of tax law to deal with particular issues.

9.8 In Greece the administration is constrained to operate strictly as provided by law
and we found no evidence of significant administrative practices. However, the system is regarded by foreign companies as exhibiting a degree of arbitrariness which deters investors.

10. **Transfer pricing**

10.1 In many cases the administrative practices which we have identified have the effect of accepting prices for inter-company transactions which are not consistent with arms length pricing. However, the use of costs plus as a means of agreeing the tax liability of a company or permanent establishment in a Member State can also be a method consistent with OECD guidelines for determining an arms length price between associated enterprises.

10.2 A number of countries apply costs plus only, or principally, where other means of profit determination is not possible, and the rate is applied on a case-by-case basis (for instance, Austria, Denmark, Germany, Ireland, Sweden and the United Kingdom). These countries are likely to achieve close to an arms length price, although the actual percentages applied may vary.

10.3 A number of other Member States apply costs plus as part of statutory regimes (coordination centres etc in Belgium, headquarters companies in France) or do so using prescribed rates (standard rulings in the Netherlands). In some of these cases some costs are excluded from the costs plus base. It is clear that these regimes do not apply rates which are consistent with other Member States, and in many cases vary from an arms length price.

10.4 There is therefore both variation between those countries using costs plus as a genuine attempt to measure an arms length price and deviation from arms length pricing. However, it does not follow that where costs plus methods are used as a means of determining the tax liability of an enterprise, that an administrative practice likely to influence the location of business exists. In many instances, Member States use costs plus methods as a pragmatic and accurate method of agreeing an arms length price or allocation of profits. For the same reason, we do not regard failure to apply the OECD guidelines as an indication of itself that administrative practices exist affecting the location of business.

10.5 We found that few countries have explicitly adopted the OECD guidelines (the UK has incorporated the guidelines into domestic law), but a majority of Member States either follow the guidelines, or adopt an approach consistent with them. Greece, Ireland and Luxembourg do not appear to do so, and the approach taken in Finland and France amounts to only a partial adoption of the guidelines. Sweden applies OECD principles, but in many cases in an inappropriate manner. Many countries follow OECD principles but will not accept secondary methods of profit determination (Belgium and the Netherlands being examples of this).
10.6 The administration of transfer pricing rules also varies significantly. Most Member States are moving progressively towards a greater degree of centralisation and there is, for obvious reasons, a correlation between the degree of centralisation and the consistency with which transfer pricing rules are applied. The greatest degree of centralisation is found in the UK and the Netherlands, and the least in Portugal, Spain, Italy, Luxembourg and Greece.

11. Transparency

11.1 All Member States respect the confidentiality of individual taxpayers, and most Member States publish details of rulings which are of general application or of application to particular business sectors. There is wide variation in the publication of other material, and in particular in the publication of rulings or agreements given to particular taxpayers. Where these are published it is on an anonymised basis.

11.2 Member States which publish a high proportion of rulings include Sweden, Spain and Italy. The Netherlands is required to publish rulings which do not conform to any of the published standard rulings but has rarely done so. There is little or no publication of any rulings in France, Germany or Belgium, but a recently enacted law in Belgium will require greater publication in future. Other Member States tend to make public information or rulings to a more limited extent but will publish details of practices or rulings agreed with particular taxpayers, if these are of general application.

11.3 As noted at paragraph 7.6, lack of transparency is not an indication of the existence of administrative practices, but there appears to be a high degree of correlation between the two.
PART 3: SUMMARY AND ANALYSIS OF ADMINISTRATIVE PRACTICES IN EACH MEMBER STATE

AUSTRIA

1 Summary

1.4 The administration of the tax system in Austria is characterised by a close adherence to the law. Administrative practices exist to achieve certainty for taxpayers through a system of rulings and requests, but these are rarely, if ever, exercised so as to favour a particular enterprise or investor in a way inconsistent with the law. The principal exception to this is the ability of businesses to negotiate the level of payroll tax with the local community which raises the tax.

1.5 Administrative flexibility also exists in the operation of double tax relief and the ability to agree a costs plus basis of taxation in limited circumstances. These practices exist to assist in the better administration of the tax system but it is possible that these administrative practices have some influence on the location of business.

2 Principal administrative practices

2.6 The principal feature of the administration of the tax system in Austria is the system of statutory rulings. These exist to clarify the law and to confirm the treatment of proposed structures, not to negotiate a particular level of taxation.

2.7 At a local level it is possible to agree a lower than normal level of payroll tax. However, it appears unlikely to us that this can reduce the overall tax burden enough to be a significant factor in the location of business within the European Union.

3 Costs plus arrangements

There are limited circumstances in which a costs plus basis of taxation can be agreed. These are confined to cases where activities are of an ancillary nature, and costs plus represents a fair measure of the actual profit attributable to the Austrian enterprise.

4 Statutory regimes

A special regime exists in the Austria for international holding companies. The application of that regime (but not the tax benefits which it provides) involves discretionary approval by the tax authorities. There is no discretion as to the tax liability of a company which qualifies for the regime. The international holding company regime is frequently used as a vehicle for investment by non-Austrian
businesses into Central and Eastern Europe.

5 **Rulings, requests and advance agreements**

5.8 A wide range of advance rulings and requests are possible in Austria, allowing taxpayers and their advisers to obtain the authorities’ views on the application of the law to particular situations. This allows advisers to seek clarification of the law and to test out the efficacy of particular tax planning proposals, but not to seek to negotiate a particular level of taxation.

5.9 A significant proportion of inward investment transactions will involve an approach to the tax authorities for a ruling or to obtain an advance agreement, but this will be to obtain certainty as to the application of the law and not to achieve any special benefit.

5.10 The authorities rarely have any significant discretion in giving a ruling or advance agreement, but where there is such discretion, account may be taken of the economic effects of a ruling, including the prospects for employment. This appears to be applied only to a limited extent.

5.11 At a local level it is possible to negotiate with the local community a reduction in the rate of payroll tax, normally levied at 3% on payroll costs, in order to secure the location of an enterprise in a particular community.

5.12 A specific provision of the Federal Fiscal Code (sec.48) deals with questions of international tax law. This was introduced, and is applied, to deal with cases of double taxation, where no tax treaty is available. It is operated in a discretionary manner but can be applied only to relieve double taxation, and not to create any additional benefit. Sec.48 may encourage the use of foreign businesses to invest through an Austrian branch or company.

6 **Transparency**

Details of some rulings are published in anonymised form, particularly those rulings relating to questions of international tax law, but these are in the nature of interpretations of law, rather than rulings as to particular liabilities. Details of advance agreements reached with particular taxpayers are not published.

7 **Transfer pricing**

Although transfer pricing issues are not fully centralised, Austria appears to apply consistent methods based on the OECD guidelines. Costs plus methods are used (see above) as a means of determining a price when other methods are not appropriate.
BELGIUM

1 Summary

1.13 Belgium has a complex tax system which relies heavily on the exercise of administrative discretion and on the availability of formal and informal rulings. There are a number of statutory regimes which are specifically designed to encourage investment, the operation of which requires the exercise of a degree of administrative discretion. In addition, there are a number of administrative practices which have the effect of offering a favourable tax regime for inward investors into Belgium principally by offering a costs plus basis of taxation for commercial activities. These are likely to have a significant influence on the location of business. Recent changes have sought to formalise and make more transparent the practices which operate in Belgium.

2 Principal administrative practices

2.14 The principal features of the administration of the tax system in Belgium which are capable of influencing the location of business within the European Union are:

(A) Informal regimes which offer favourable treatment; in particular, the ability to agree a costs plus basis of taxation for a range of activities carried on by the Belgian branch of a foreign corporation, specifically in relation to headquarters companies; and

(B) A number of statutory regimes relating to distribution centres, service centres, and coordination centres, which are operated in a relatively flexible manner.

2.15 In addition we would draw attention to the following features of the Belgian tax system:

(A) The general ability to obtain informal rulings, allowing taxpayers to obtain certainty as to the tax treatment of particular transactions or enterprises in advance;

(B) The ability to obtain formal rulings in a number of areas, in particular in relation to a number of elements of the tax base for investment projects;

(C) The fact that there is limited transparency in the way in which the rulings systems (both formal and informal) operate; and

(D) The fact that transfer pricing rules are not strictly applied, in particular in relation to businesses benefitting from a costs plus basis of taxation.
2.16 We regard the availability of a costs plus ruling for a wide range of activities, including activities which go beyond those which are merely ancillary, to be the single practice operated by Belgium which is most likely to influence the location of business. The ability to operate in Belgium without paying tax on commercial profits (either under the statutory regimes, or on an informal costs plus basis) has clearly been a major factor influencing the location decisions of a large number of businesses.

3 Costs plus arrangements

3.17 Informal costs plus rulings are available to the Belgian branches of foreign corporations, allowing tax to be assessed on a percentage of operating costs - 10-15% for administrative activities and 15-20% for more commercial activities. Although in principle available as a means of determining liability for enterprises where no clearly identifiable profit base exists, in practice this treatment is available even where branch accounts exist which would allow a determination of profits.

3.18 Similar rulings are also available for the headquarters functions of multinational groups located in Belgium. Such businesses can benefit from a 10% costs plus basis of taxation, with significant tax exemptions being given to expatriate employees seconded to the headquarters office.

3.19 The tax charge is based on a percentage of costs, and may depart from accounts profits. It will therefore not be based on the application of arms length transfer prices in relation to transactions with affiliated entities.

3.20 Several hundred businesses benefit from these costs plus rulings. Costs plus arrangements are not available to Belgian companies.

4 Statutory regimes

4.21 There are a number of statutory regimes which are specifically designed to encourage investment in Belgium. The principal regimes offering a favourable tax treatment are the regimes for coordination centres, distribution centres and service centres. In all cases Belgian tax liability is calculated on a costs plus basis. Financial and personnel costs are excluded from the tax calculation for coordination centres, and certain other costs in the case of distribution and service centres. The costs plus percentage varies between 5% and 15%. These regimes are very widely used, by many hundreds of companies.

4.22 Although these statutory tax regimes are not strictly within the scope of this report, the operation of those regimes, based on the exercise of discretion by the tax authorities can be regarded as an administrative practice. In each case the establishment of the business within the scope of the regime needs to be approved and, in the case of service and coordination centres, the percentage mark-up agreed.
The percentage is, in effect, set at 5% for distribution centres. The creation of employment is a factor which is relevant to approval of coordination centres. In other cases, approval will be given on a case by case basis.

4.23 There is no public record of the way in which approvals for the application of the statutory regimes are granted. Accordingly it is not possible to establish whether such practices are operated in a way which specifically favours particular classes of project.

5 Informal rulings

5.24 A system of informal rulings has existed for many years in Belgium, allowing taxpayers to obtain agreement in advance as to their position.

5.25 This system, in accordance with other countries’ practice, is exercised principally to resolve genuine uncertainties as to the application of the law to particular facts. As such, we have found no evidence that it influences the location of business, save to the extent that any system providing greater certainty for taxpayers creates a more attractive environment than one that does not.

5.26 Informal rulings are also given in a number of situations which could be construed as going beyond that necessary for the better administration of the tax system, and operate in a manner favourable to inward investors, and likely to influence the location of business. The examples of costs plus rulings and the treatment of headquarters activities fall into this category.

5.27 In contrast to the formal ruling procedure there is no central office responsible for giving or at least checking the consistency of informal rulings. Requests are generally sent to the relevant local inspector, although if particularly complex they may be dealt with centrally.

5.28 Informal rulings are binding on the tax authorities, and any tax assessment in contradiction of a ruling is null and void, as long as the ruling does not violate any Belgian statute law.

5.29 There is no public record of the way in which informal rulings are given. We therefore cannot be certain of the extent to which informal rulings have been given in order to assist inward investment projects or to ensure a competitive environment for international business. We are aware of at least one major multinational financial institution operating in Belgium on what may be a concessionary agreement that it should not be liable to tax.

5.30 Administrative guidance on tax issues is also provided in the form of circular letters in which the tax authorities set forth the official view on the interpretation and application of tax statutes and regulations. Additional guidance is obtained from the replies given by the Minister of Finance to questions raised by members of
Parliament.

6 Formal rulings

6.31 The law relating to formal rulings has been recently reformed by the Royal Decree of May 3 1999 with the specific aim of improving the investment climate for foreign companies. Under this Decree a number of different elements of the tax base of businesses establishing in Belgium may be agreed in advance, including whether a permanent establishment of a foreign corporation exists. The exercise of discretion pursuant to this Decree is likely to have a significant effect on the location of business. There will be greater publication of such rulings than under existing arrangements - see below.

6.32 Provisions approved in June 1998 but not yet legislated would have given the tax authorities the ability to grant ‘informal capital’ rulings to a Belgian company incorporated by a foreign investor, which would have created a depreciation charge to reduce tax liability over 10 or 12 years.

7 Transparency

7.33 There is no publication of informal rulings, but formal rulings have been occasionally published by the tax authorities on an anonymised basis. there will be greater publication of rulings under the Royal Decree of May 3 1999.

8 Transfer pricing

8.34 The Belgian tax authorities have adopted the OECD report as the basis for their approach to transfer pricing, but do not have regard to secondary methods of pricing and will refer principally to comparable prices. In establishing whether prices conform to the arms length standard the tax authorities undertake a level of examination of the methodology adopted and ensure a degree of consistency of application of the rules which can be regarded as thorough by international standards.

8.35 Where costs plus methods of taxation are applied, transfer pricing rules are not applied, although they will be relevant in the case of coordination centres, where the tax base depends in part on the level of non-arms length transfers to the coordination centre by affiliated entities.
DENMARK

1. Summary

1.1 The administration of the tax system in Denmark is characterised by adherence to the law. Administrative practices exist to deal with areas where the law or its application is unclear. We have found no evidence of any administrative practices which are likely to influence the location of business.

2. Principal administrative practices

2.1 Denmark makes limited use of the costs plus basis of taxation, but not in a way which is inconsistent with the arms length principle. Danish transfer pricing rules are now well-organised and operated consistently with OECD guidelines.

2.2 Advance agreements are available and are widely used to achieve certainty for taxpayers. We have seen no evidence that these are ever exercised so as to favour a particular enterprise or investor in a way inconsistent with the law.

3. Costs plus arrangements

3.1 There are limited circumstances in which a costs plus or agreed mark up basis of taxation can be agreed, including royalty companies acting as intermediate royalty owners. A costs plus basis can also be applied to certain film companies forming part of foreign groups. Since the introduction of new transfer pricing rules in 1998 (see below) costs plus can only be used in cases where it corresponds to a proper arms length basis.

4. Rulings, requests and advance agreements

4.1 A wide range of advance rulings and requests are possible in Denmark, allowing taxpayers and their advisers to obtain the authorities’ views on the application of the law to particular situations. This allows advisers to seek clarification of the law and to obtain rulings on the application of specific statutory rules (particularly those relating to tax avoidance). Rulings are seen as an important aspect of the administration of the tax system, but not as a means of negotiating a particular level of taxation.

4.2 There are a number of areas in which Danish law provides for discretion to be exercised by the authorities, but this must be exercised in a manner consistent with the law, and not so as to favour particular businesses or taxpayers. In a recent case the authorities agreed a level of provisions on a merger which was held to exceed
the level provided for by law. This case resulted in a public inquiry, at which the authority was censured, with the result that it is now extremely difficult to obtain any advance agreement on a matter not covered by statute.

4.3 A significant proportion of inward investment transactions will involve an approach to the tax authorities for a ruling or to obtain an advance agreement, but this will be to obtain certainty as to the application of the law and not to achieve any special benefit.

5. Transparency

5.1 Details of some rulings are published in anonymised form.

6. Transfer pricing

6.1 Transfer pricing rules introduced in 1998 apply rules consistent with the OECD guidelines. The approach is a sophisticated one, requiring a considerable degree of compliance by multi-national businesses, including extensive documentation requirements. The rules only came into effect on 1st January 1999, but it is anticipated that the tax authorities will undertake full comparative analysis of transfer prices. The rules contemplate both transactional and profits methods of price determination.

6.2 The use of advance pricing agreements is not widespread, but it is likely to become so once the new rules are fully operational. There is already a high degree of centralisation in the operation of the transfer pricing rules, and a high degree of consistency of approach is expected in the future.
FINLAND

1. Summary

The Finnish tax system is extremely formalistic, with very little administrative discretion. There is a long history of advance rulings to ascertain the tax treatment of proposed transactions where the law is unclear. Where rulings are given, they are exclusively clarificatory and will not allow a tax treatment more favourable than that permitted by law. We have found no evidence of administrative practices which are likely to influence the location of business.

2. Principal administrative practices

The principal feature of the administration of the tax system of Finland is the availability of advance rulings confirming the tax treatment of proposed transactions (set out in more detail below). We do not believe that these influence the location of business in the European Union.

3. Costs plus arrangements

Not available.

4. Informal rulings

The only area in which informal rulings exist is in relation to VAT, where the authorities will give written guidance on the application of the law.

5. Formal rulings

5.1 Finland has a long established system of providing formal written rulings to taxpayers on how proposed transactions will be taxed. When issued, these rulings are binding on the authorities.

5.2 The rulings are governed by a statutory framework. This specifies which authorities are entitled to give rulings, the types of taxes which may be covered, conditions under which a ruling may be given and the procedure to be followed.

5.3 When given, the rulings operate to clarify rather than change the operation of the relevant law.
6. **Transparency**

The Central Tax Board publishes those rulings it considers to be important.

7. **Transfer pricing**

7.1 The Finnish approach to transfer pricing is not sophisticated. The authorities have not yet focussed on the issue in any detail. However, to the extent it is addressed, the OECD guidelines are used.

7.2 Advance pricing agreements are not available.
FRANCE

1. Summary

1.1 The French tax system is quite tightly regulated by statute. Taxpayers are entitled to apply for written rulings on the application or interpretation of law. The tax authorities have no general power to give rulings altering the tax treatment provided by statute, although there are a number of statutory provisions providing for favourable regimes to be granted in specific circumstances at the discretion of the authorities.

1.2 Some taxpayers implementing large projects have obtained tax treatments significantly more favourable than those prescribed by statute. There are no official criteria for when this may be done, but it is most likely to happen where investment (and job creation) is substantial, where the project has strategic importance, where it has national security implications or where there is international competition to host the project (see para 2.2 below). It does not appear that overseas investors are more likely to be able to benefit from such special regimes than French ones. These practices are likely to affect the location of business.

1.3 We are also aware of a perception among non-French companies that the administration of the French system consistently favours French businesses ahead of foreign ones (see para 2.4).

2. Principal administrative practices

2.1 The principal feature of the administration of the French tax system which is capable of influencing the location of business in the European Union is the apparent ability to negotiate particular deals with the French government which are significantly more favourable than would otherwise be allowed by French law, although these are largely restricted to a small number of major projects.

2.2 For example, it is public knowledge that a well-known amusement park benefitted from very favourable rulings. We do not have precise information on the size of the benefits obtained by this park. The rulings granted were so exceptional that negotiations with tax authorities took place at the highest level and the decision was taken by the Minister of Finance himself. The very nature of the project was regarded as justifying the involvement of the State to help the successful implementation of the amusement park in France (due to the economic and employment interests in the construction of the park and the expected impact on the
tourism industry). Other projects (although rare) benefit from advantageous rulings but their issue is justified by national interests including but not limited to economic and/or employment considerations. This may be the case, for example:

(A) for projects as a result of which several FF billions of investments and several thousands of new jobs are expected;

(B) for sensitive projects for which international competition is harsh;

(C) for strategic projects; and

(D) for projects closely linked with national defence or with the armaments industry.

By way of a further example, the French authorities agreed not to submit to French taxation, a portion of the profits realised by a French partnership operating a trade in France and partly held by foreign companies notwithstanding that under French statute law those profits should have been subject to tax. This was agreed by the tax authorities due to Governmental involvement in the project. The French partnership concerned was owned by European partners carrying on business in a sensitive area of high technology and created significant French exports and employment.

2.3 In addition, we would draw attention to the following features of the French tax system:

(A) There is no general ruling position in France. However, there are a number of statutory regimes providing for favourable treatment for socially or economically desirable projects. The application of many of these is discretionary (ie if a taxpayer meets certain criteria, the tax authorities will then decide whether he should receive the benefits, or whether further conditions should be attached).

(B) In granting these agreements, the French authorities evaluate whether or not the facts as explained in the request meet the expectations of the legislator (ie whether they show an interest which justifies the tax exemption. In the view of the French tax authorities, an advance agreement process is one way to adapt compulsory provisions of law to each particular situation.

(C) Taxpayers may request “written positions” from the authorities setting out their views on points. These are binding on the authorities. The authorities are not obliged to reply, but do so in around two-thirds of cases.

(D) Certain enterprises may try, for example due to their privileged link with
the State (this refers to enterprises in whose share capital the State has or had an interest or to which the State is a partner), to obtain very favourable tax advantages, which may be contrary to the law through the written position process.

For instance, a French service company whose share capital has been held by the State, obtained several written positions from the Service de la Legislation Fiscale. These rulings allowed it to determine the taxable basis of some important taxes (corporation tax and business license tax) according to methods which would give rise to significant reductions in the tax bill.

In addition, certain reorganisations have taken place within the group of the said company without a negative impact on the carrying forward of tax losses and deemed deferred depreciation. Prior to these reorganisations, the company had obtained a ruling from the tax authorities which is usually very difficult to obtain and had, up to then, been reserved for manufacturing companies.

This is not generally a procedure which the tax authorities use to encourage inward investments. It is usually aimed at the encouragement of a specific enterprise. The enterprise can then argue that the written position can be used against the French tax authorities even if it extends the scope of the provision concerned or is even contrary to the law.

2.4 Although it is less of a specific administrative practice than a general indication of the French tax authorities’ approach to taxpayers, some multinational businesses operating in France (especially those in competition with French State owned businesses) perceive their tax affairs to be subject to a greater degree of procedural scrutiny than is applied to companies based in France.

3. Costs plus arrangements

3.1 Costs plus arrangements are not generally available and other than in the cases set out below, very rarely accepted by the authorities.

3.2 The is a special regime for headquarters companies in which the costs plus basis is used. The mark up is between 6% and 10% (most commonly 8%). The headquarters company regime has not proved popular in practice.

3.3 The French authorities will also accept the costs plus basis for dealing with intra-group management charges (again, normally with an 8% mark up).
4. **Statutory regimes**

   As set out above, there are a number of French statutory regimes providing particular benefits for particular types of project. Some apply purely by reason of taxpayers meeting statutory criteria, whilst others also involve an element of discretion on the part of the authorities.

5. **Informal rulings**

5.1 As set out above, there are numerous examples of substantial projects of particular importance securing the agreement of the French government that they will be treated favourably. Frequently the resulting regimes have no basis in statute.

5.2 French taxpayers may also apply for “written positions” setting out the authorities’ views on the law. Although formal in the sense that they are binding if issued, they are informal in the sense that the authorities are under no obligation to issue them. Such written positions will normally only ever express a view on the law but not so as to give favourable treatment at variance with the law, although they may be used as the means of documenting favourable rulings of the type referred to in 5.1 above.

5.3 It is common for taxpayers to reach agreements with the authorities in settlement of disputes arising during tax audits. These may not reflect a strict statutory position, but will be in the nature of compromises.

6. **Formal rulings**

   As set out above, there are a number of particular regimes which provide for the authorities to have discretion over their application.

7. **Transparency**

   There is very little transparency in the French system. No rulings are published, even those given on a no names basis, and particular secrecy attaches to agreements reached with the government for special treatment.

8. **Transfer pricing**

8.1 The French transfer pricing regime is quite harsh and is in most cases aggressively enforced. Although to some degree embracing the OECD principles, the French approach has some idiosyncrasies. Much weight is placed on comparable
transactions. The administration of transfer pricing has recently been centralised.

8.2 Advance pricing agreements are not generally accepted. However, a few have been agreed for French banks facing global trading issues.
GERMANY

1. Summary

1.1 The German tax system is operated in strict compliance with the law, with very little flexibility. There is a limited ability to obtain agreement in advance, but only to obtain clarification of the law and not to obtain a more favourable treatment. We have found no evidence that there are any administrative practices likely to influence the location of business.

2. Principal administrative practices

2.1 Businesses mainly rely on internal and external tax advisers, and only infrequently seek an agreement or ruling from the tax authorities. Rulings can be obtained, particularly on the tax consequences of company restructurings and reorganisations, but only to clarify the application of the law. Rulings on transfer pricing issues are rare, but it is possible to agree a costs plus basis of taxation in some circumstances.

2.2 The tax authorities work closely with businesses, and larger businesses are kept under continuous tax audit. This system does not allow for significant flexibility in the application of tax rules.

3. Costs plus arrangements

Costs plus arrangements can be entered into for the German branches of foreign companies, and costs plus is an acceptable method of establishing a transfer price (see below). Although there may be preliminary agreement on the level of costs plus in advance of establishment of a branch or subsidiary in Germany, this is not binding on the authorities in any subsequent tax audit.

4. Rulings

4.1 Binding rulings can be obtained both as part of the tax audit and on the application of the tax code to specified facts. Informal agreements may be reached on some questions, but these must be on specific issues, not on the general tax position of an enterprise. In practice, little use is made of rulings. The most frequent use is to seek confirmation of the treatment of company reorganisations and restructures.

4.2 Occasionally a ruling will be given applicable to a particular business sector - for instance, following discussions with the banking industry, agreement was reached on the percentage of equity taken into account in determining the tax liability of a German branch of a foreign bank.
4.3 The tax authorities rely extensively on tax audits to ensure compliance, and even where there is preliminary agreement on the tax treatment this is not binding on the tax audit.

5. Transparency

5.1 Rulings are generally not published.

6. Transfer pricing

6.1 The tax authorities in Germany follow the OECD guidelines, but in general apply only transaction based and costs plus methods. Rules tend to be strictly applied with little scope for negotiation, or for the application of risk or functional analysis. Any costs plus agreements are strictly on the basis of arms length principles.

6.2 Transfer pricing issues are dealt with primarily by local tax offices which can lead to variations in the treatment of businesses, depending on the relative expertise of the local officer. However, there is now a growing degree of centralised control and coordination of transfer pricing issues, leading to the creation of centralised data on transfer prices which is not available to businesses.

6.3 Advance Pricing Agreements are available but uncommon.
GREECE

1. Summary

1.1 The Greek tax system is relatively simple compared with many other European jurisdictions. There is limited scope for the authorities to agree the interpretation of law with taxpayers, but no scope for the authorities to agree tax treatments more favourable than those contemplated by statute. The system is founded on the twin principles that all rules must be prescribed by statute and that the administration must have no discretionary power.

1.2 Foreign investors frequently perceive the administration of the Greek tax system as difficult to deal with and often inconsistent, but there appear to be few practices likely to influence the location of business.

2. Principal administrative practices

2.1 The principal feature of the administration of the tax system in Greece which is capable of influencing the location of business within the European Union is the grant of tax facilities to foreign manufacturing, mining or quarrying companies setting up in Greece. These are granted by ministerial decision, and effectively involve guarantees that the tax rates to which the businesses are subject will not increase. However, the grant of tax facilities takes place within a strict statutory framework so the discretion is only exercised under strict conditions.

2.2 Multinational businesses find inconsistencies in the operation of the tax system. In some cases settling tax affairs proves relatively straightforward. In others, tax liabilities have been difficult to resolve and the result often somewhat arbitrary.

3. Costs plus arrangements

None.

4. Informal rulings

4.1 Taxpayers can request that either a “circular” or an informal opinion be produced clarifying a point of uncertainty in the law. The Ministerial authorities, if they consider the request to be important enough, may ask for an opinion from the Legal Council of State (a public body made up of the "lawyers of the State", each representing the particular Ministry to which they are attached). If this opinion is "approved" by the Minister of Finance, a circular may be issued clarifying the point in question on the basis of the opinion. The Circular is for administrative use only and has no binding legal effect on individuals or companies, but may be binding on the Administration. Circulars are so called because they will be circulated to
various government departments. Individual informal "opinions" may be given by the central tax authorities after a written request regarding the interpretation of the law on the part of a taxpayer. These are addressed only to the applicant and are not binding on either the Administration, the taxpayer or the courts. Any such view can only interpret the law, not extend or circumvent it.

4.2 The authorities can reach a compromise agreement with taxpayers following an investigation into their affairs.

5. Formal rulings

None are provided for by statute beyond the grant of tax facilities referred to above.

6. Transparency

Circulars are generally published in specialised journals if the points they deal with are of general interest.

7. Transfer pricing

7.1 Where there is a difference between the price charged and the proper market price, the beneficiary is treated as receiving a taxable gain of that amount and is also fined. OECD guidelines are not generally used in determining comparable market prices. The approach to transfer pricing is relatively unsophisticated.

7.2 Advance pricing agreements are not possible.
IRELAND

1. Summary

1.1 The tax system in Ireland operates in a way which is designed to be both open and transparent and to increase the attractiveness of Ireland to international investment. The availability of a number of statutory reliefs is backed up by a general approach on the part of the Irish authorities which encourages investment in Ireland and dialogue with business. The tax authorities support this approach by providing advance opinions on the treatment of certain new industrial and development projects.

1.2 To the extent that the practices of the Irish authorities could be said to influence the location of business this is through the general approach of Government departments and agencies in assisting businesses to take advantage of the statutory reliefs and a willingness on the part of Government to change the law to facilitate business where appropriate. The tax authorities are frequently perceived by foreign investors as facilitating the taxpayer to manage their affairs in an atmosphere of certainty, rather than seeking to increase the tax yield.

2. Principal administrative practices

2.1 The principal features of the administration of the Irish tax system which are capable of influencing the location of business within the European Union are as follows:

(A) the ability of potential investors to obtain non-binding advance opinions on the treatment of new industrial and development projects which have a statutory basis;

(B) the willingness of the tax authorities to work constructively to resolve tax issues within the law.

2.2 In addition, we would draw attention to the following features of the Irish tax system:

(A) the existence of a wide range of published concessions and statements of practice, some of which are relevant to international investment projects;

(B) the limited availability of a costs plus basis of taxation;

(C) the lack of a developed transfer pricing regime, save in relation to companies benefiting from special tax reliefs.
3. **Costs plus arrangements**

3.1 Costs plus advance opinions can be available in limited circumstances, but only where a better method of determining an arms length price or allocating profit is not available. Where agreed they do not confer any significant advantage on the taxpayer.

4. **Statutory regimes**

4.1 Ireland operates a number of statutory regimes, details of which are well-known. The principal regimes are:

   (A0) Reduced rate of tax for manufacturing businesses (“manufacturing relief”)

   (B0) The application of manufacturing relief to financial services activities in the Dublin International Financial Services Centre and in the Shannon Airport Zone, and to grant-aided software and data processing activities.

   (C0) Enhanced tax allowances to aid urban and rural regeneration, business expansion schemes and Irish films

4.2 In the case of the tax reliefs for IFSC and Shannon companies certification is necessary, based on a review by a committee which includes representatives of the Revenue Commissioners. In addition to the approval of particular projects, advance opinions may be sought in relation to particular tax questions (see below).

5. **Informal rulings**

5.1 The tax authorities do not issue informal rulings. However, taxpayers can seek non-binding advance opinions in certain circumstances. The ability to obtain advance opinions on the tax treatment of particular transactions is, in theory, limited to circumstances involving industrial or development projects which are being considered for implementation in Ireland - principally those projects falling within the terms of the statutory reliefs (see above). In other cases the tax authorities can decline to give opinions until a transaction has already taken place, although in practice they will sometimes give advance opinions.

5.2 The tax authorities may also give confirmations of the applicability of a particular relief to a new project if requested, even though there is no obligation to do so, and the application of the law is fairly straightforward, in order to provide additional comfort for investors.

5.3 Advance opinions cannot depart from an interpretation of the law, but the impression gained by foreign investors is the tax authorities in Ireland tend to be more willing to try to resolve the issues than Revenue authorities in other countries.
6. **Formal rulings**

6.1 The tax authorities do not issue formal rulings, only advance opinions based on the facts presented. Where an international project is considering locating in Ireland, obtaining an advance opinion from the Revenue on the application of a particular tax incentive will be important where there is uncertainty in terms of what is planned versus the ambit of a particular incentive. For example, clarification may be sought that a particular securitisation transaction falls within the specific IFSC securitisation provisions. This may include seeking confirmation of the deductibility of associated expenses, but only within the parameters of the law. Although no formal rulings are available, the tax authorities do issue a wide range of statements of practice and concessions on the application of the law, which are published. Statements of practice clarify how the tax authorities will deal with a particular issue where the application of tax law is unclear. Extra statutory concessions are granted where the application of the particular statutory provisions would result in hardship or unfairness irrespective of whether the taxpayer is domestic or international. Extra statutory concessions granted by the Revenue are published. In most cases, these operate to clarify genuine uncertainty or to rectify what would otherwise be inequitable treatment.

7. **Transparency**

7.1 Statements of practice, concessions and precedents applied by the tax authorities are all published and are available under the Freedom of Information Act. Opinions given to individual taxpayers are not published, although general details may be contained in published precedents, where the issue has general application.

8. **Transfer pricing**

8.1 Companies taking advantage of manufacturing relief, or benefiting from the IFSC reliefs, are required to adhere strictly to arms length pricing in transactions with affiliates. The requirement on IFSC companies to produce annual auditors’ certificates confirming compliance with arms length pricing goes beyond the normal requirements of transfer pricing rules.

8.2 In other cases, the tax authorities’ approach to transfer pricing is not well-developed. There is only limited use of Advance Pricing Agreements.
ITALY

1. **Summary**

   The administration of the tax system in Italy is characterised by a decentralised approach involving a vigorous approach to the collection of tax. Where favourable treatment has been achieved for particular sectors or industries this has been through successful lobbying for a change in law, rather than through administrative practices. The system is regarded as aggressive by taxpayers and as being unsympathetic to foreign investors, who tend to find it confusing and somewhat arbitrary to deal with. If anything, the Italian tax system tends to favour domestic and State-owned enterprises above foreign businesses and we found little evidence for the existence of administrative practices likely to distort the location of business.

2. **Principal administrative practices**

   2.1 A system of rulings is operated but only for the purpose of clarifying the law, not to obtain favourable treatment. It is not widely used as a means of obtaining certainty for new enterprises or investments. The experience of foreign enterprises is that a good knowledge of the system and the availability of good contacts are essential in dealing with tax in Italy.

   2.2 More favourable tax treatment has been achieved by some State-owned businesses. The close connection which such businesses have with Government has also made it easier to facilitate changes to the law in their favour.

   2.3 The relationship between taxpayer and tax authorities is not one of co-operation. The authorities’ approach is aimed at maximising tax yield, supported by an incentive scheme that rewards tax offices for additional tax collection.

3. **Costs plus arrangements**

   3.1 Costs plus arrangements are not used in Italy. At least one foreign company was unable to agree a costs plus treatment for a coordination centre based in Italy, despite offering to employ a certain number of people.

4. **Informal Rulings**

   4.1 The emphasis of the Italian tax administration is towards maximisation of tax yields, rather than generating particular economic results. This approach is applied both to tax collection generally and to the interpretation of specific legislative provisions. Tax authorities are unsympathetic towards businesses and there does not exist a culture which would allow the widespread use of advance rulings to
facilitate particular business projects.

4.2 A system of binding and non-binding rulings exists. Binding rulings are given to clarify the application of the law to specific, itemised transactions. Non-binding rulings are not generally given in a way which offers favourable or concessionary treatment, although there is a tendency (although less now than in the past) for state-owned enterprises to obtain more favourable rulings than other businesses. Non-binding rulings are issued on a variety of topics, principally to assist in better compliance, but again, not to offer a more favourable treatment to particular taxpayers or classes of taxpayers. Seeking such rulings is the exception rather than the rule.

4.3 The experience of foreign investors has been that the Italian tax authorities are unsympathetic, and often overtly hostile. We did however, find one instance of the authorities agreeing to apply a ‘light touch’ on transfer pricing to a major inward investor, but this was not regarded as particularly concessionary.

4.4 Where there is political desire to favour particular enterprises or businesses, this is achieved through a change of law, rather than through the application of administrative practices. Special tax regimes have been created in the past to benefit specific areas.

4.5 The central tax authorities issue circulars on the interpretation of new legislation, which bind the local tax authorities. Trade associations and others influence the publication of favourable interpretations in such circulars. Such influence has recently led to a relaxation of the disclosure requirements on non resident intermediaries using omnibus accounts with Italian financial intermediaries.

5. Formal rulings

5.1 Binding rulings are available only in relation to specified provisions, including the application of certain anti-avoidance rules, the treatment of transactions with tax haven companies and the qualification of capital contributions to the reduced rate under the Dual Income Tax rules.

6. Transparency

6.1 Details of rulings are extensively published in professional journals.

7. Transfer pricing

7.1 The OECD guidelines have not been formally adopted by the Italian tax authorities but can be relied upon. The approach to transfer pricing is decentralised. It is characterised more by a desire to increase tax yield at a local level than by any great degree of consistency in the application of the rules. The expertise of the tax authorities in the field of transfer pricing is poor. Adjustments are sought on the
basis of any available information, whether or not this complies with the arms length principle. For example, attempts have been made to adjust the price of supplies to foreign related distributors by reference to prices charged to unrelated retailers in Italy, regardless of the differences in the relevant markets and in the level of the chain of trade. Advance pricing agreements on transfer prices are not available.
1. Summary

1.1 A number of statutory rules have encouraged the establishment in Luxembourg of a range of businesses, particularly holding companies and investment funds.

1.2 Administrative practices include the ability to obtain agreement on a costs plus or mark-up taxation basis for specified services or activities. Advance rulings are available. These practices are a relatively insignificant factor in the location of business in Luxembourg.

2. Principal administrative practices

2.1 The principal features of the administration of the tax system in Luxembourg which may be capable to influencing the location of business within the European Union are:

(A) The ability, by way of ruling, to agree a costs plus basis for a number of administrative activities ("headquarters operations") and to agree on an agreed interest rate spread for finance companies.

(B) The ability, by way of ruling, to agree on the proportion of the income of branches (particularly finance branches in low-tax locations) of Luxembourg companies that is attributable to the principal office and thus made subject to tax in Luxembourg, where such income is otherwise excluded from the tax base by virtue of a double tax treaty.

(C) The general ability to obtain rulings, allowing taxpayers to obtain certainty in advance as to the tax treatment of particular transactions or enterprises.

3. Costs plus arrangements

It is possible to agree a costs plus or agreed mark-up basis of taxation for certain activities, as follows:

(A) for intra-group administrative services, where a costs plus 5% has been possible for headquarter activities, based on a minimum figure published in an official Circular which was withdrawn in 1996. This ruling was not extensively used but some rulings may still be given for existing operations.

(B) for financing activities, where an agreed spread on borrowing and lending interest can be agreed, again as was previously set out in a Circular withdrawn also in 1996.
4. Statutory regimes

4.1 There are a number of statutory regimes which may, among other factors, encourage investment in Luxembourg:

(A) Article 11 of the law of 27th July 1993 provides partial and temporary tax exemption to manufacturing businesses offering specific economic benefits to Luxembourg, such as of regional, research or environmental development nature. This exemption replaced the ability to determine a lump sum system of taxation under Article 9 of the Income Tax Law which was enacted to encourage the establishment of businesses in Luxembourg and whose use has been discontinued.

(B) The exemption from corporate income and tax and wealth tax for holding companies incorporated under the law of 31 July 1929 which applies to companies not carrying on commercial or industrial activities.

4.2 There is no public record of the way in which approvals for the application of these statutory regimes are granted, but the administration does not appear to, and is not authorised to, operate such regimes in a way which would specifically favour particular classes of projects other than as provided for by the law.

5. Rulings

5.1 A system of ruling has existed for many years in Luxembourg, allowing taxpayers to obtain agreement in advance as to their position.

5.2 This system is exercised principally to resolve genuine uncertainties as to the application of the law to particular facts. As such, no evidence is found that it influences the location of business, save to the extent that any system providing greater certainty for taxpayers creates a more attractive environment that one that does not.

5.3 A number of the statutory regimes (including tax benefits under the law of 27 July 1993) also require advance application to be made to the tax authorities, but there is no discretion as to whether or not such application is granted.

5.4 Other matters are dealt with by the issue of circulars or instructions covering the operation of technical rules, for instance, the way in which banks create reserves and provisions. These circulars and instructions are, in effect, of a regulatory nature and, once issued, are applied without discretion.
6. **Transparency**

There is no publication of rulings given to individual taxpayers, but circulars setting out the way particular rules and regimes will be operated are published and freely available.

7. **Transfer pricing**

Luxembourg does not have a specific system for adjusting transfer prices, but relies on the statutory provision which treats any variation from an arms length price as taxable profit and subject that amount to withholding tax. There appears to be no centralisation of transfer pricing reviews within the tax administration. Luxembourg has not adopted the OECD Guidelines into Luxembourg law but transfer pricing is not used to influence the location of business in Luxembourg.
NETHERLANDS

1. Summary

1.1 The Netherlands has a developed tax system which has many statutory features (notably the participation exemption regime) which are attractive to business. The administration of the tax system in the Netherlands operates in a manner designed to attract international business but which is intended to be open and transparent.

1.2 The ability to obtain rulings and advance agreements on a wide range of taxation issues offers certainty and flexibility. In addition, the availability of tailor-made rulings and ‘Greenfield’ rulings for major inward investors undoubtedly has a significant effect on the location of business in Europe.

2. Principal administrative practices

2.1 The principal features of the administration of the tax system in the Netherlands which are capable of influencing the location of business within the European Union are:

(A) standard rulings on a wide range of situations commonly encountered by those undertaking international business, generally so as to allow a costs plus, or fixed mark up, basis of taxation. Rulings on the effect of ‘informal capital contributions’ are also available;

(B) tailor-made and ‘Greenfield’ rulings offering particular benefits (in terms of reduced and/or agreed tax liabilities) to foreign investors.

2.2 In addition we would draw attention to the following features of the Dutch tax system:

(A) the availability of rulings (both formal and informal) on a wide range of taxes and tax questions in advance;

(B) the fact that there is limited transparency or publication of tailor-made and Greenfield rulings;

(C) the ability to agree the treatment of a foreign finance branch of a Dutch company;

(D) the fact that the widely available costs plus basis of taxation under standard rulings may, with the passage of time, not always accord with the application of arms length pricing standards.
2.3 We regard the availability of Greenfield rulings to be the single practice operated by the Netherlands which is most likely to influence the location of business. This allows the Netherlands to offer a reduction in tax liability, with in some cases a significant tax deferral, in order to attract business.

3. Rulings (general)

3.1 The Netherlands has an extensive rulings system, derived from its desire to attract investment after the Second World War. The term ‘ruling’ encompasses both formal and informal rulings and agreements. Rulings allow companies to determine, usually in advance, the application of tax rules (either specifically or more generally) to their business, originally with the intention of achieving certainty.

3.2 In the 1980s the system became more formalised, following concern that the system was being misused by taxpayers. This led to the creation of ‘standard’ rulings, based on a published “tariff”.

4. Standard rulings

4.1 Standard rulings provide an agreed basis of taxation for a number of activities. The principal rulings likely to influence the location of business are:

(A) an agreed ‘mark-up’ or return on financing costs and royalties for group finance or licensing companies

(B) a costs plus (or sales minus) basis for a range of auxiliary and sales related activities. The costs plus mark up will be based on 5% with higher percentages applicable to activities carrying a greater degree of risk.

(C) the exemption in connection with income attributable to a foreign finance branch.

4.2 A number of standard rulings have been in place for six years or more, and, without being updated, may arguably no longer represent an arms length treatment.

4.3 Standard rulings will normally last for an initial (renewable) period of four years.

5. Tailor-made and Greenfield rulings

5.1 Tailor made and Greenfield rulings are formal rulings which go beyond the terms of published standard rulings. They allow businesses, normally larger companies, to achieve certainty ahead of undertaking particular projects and cover a much wider range of issues than standard rulings.
5.2 Greenfield rulings are issued by the Potential Foreign Investor Board which is part of the centralised Inspectorate of Large Enterprises based in Rotterdam. They are available only to foreign investors proposing to invest at least Hfl10m in the Netherlands and generate significant employment. The Dutch authorities can take a number of factors into account in deciding whether, and on what terms, to give such a ruling, including the tax charge that would be incurred if the investment were to be made in another territory. Such rulings play a significant part in attracting large investment projects to the Netherlands.

5.3 The terms of such rulings are a matter for agreement on a case for case basis. The size of the investment, and the number of jobs being created will influence the terms of any ruling. Rulings can offer a costs plus basis for activities which go beyond the merely auxiliary. Rulings can provide for the deferral of the date on which profit has to be recognised for tax purposes. In a few cases start-up expenses can be set against the mark-up over the first three to four years, resulting in a nil tax charge in early years.

5.4 Greenfield rulings can last for up to eleven years.

5.5 Rulings can also confirm the imputation of ‘informal capital’ as a result of a contribution in kind from shareholders which, if consisting of a depreciable asset, can be depreciated over time hence creating a tax deduction. Such informal capital rulings can be combined with costs plus rulings.

6. Transparency

6.1 Standard rulings are published. To ensure maximum transparency any rulings which did not conform to one of the standard published rulings had to be published. In practice few of these ‘tailor made’ rulings have been published: seven were published in 1999, the first to be published since 1994.

7. Transfer pricing

7.1 The Dutch authorities have adopted the OECD report as the basis for their approach to transfer pricing, but do not have regard to secondary methods of pricing and will refer principally to comparable prices.

7.2 Responsibility for transfer pricing has been centralised in the Netherlands with the creation of a transfer pricing coordination group (CGTP) in 1998. This group is responsible for ensuring consistency in the application of transfer pricing rules. The approach to transfer pricing and the methodology adopted can be regarded as reasonably thorough by international standards. The approach of the tax authorities is to seek to minimise the administrative burden on taxpayers.

7.3 It is possible to enter into a wide range of unilateral and bilateral Advance Pricing
Agreements, but details of these are not published. We have seen no evidence to suggest that the availability of APAs in the Netherlands influences the location of business.

7.4 The costs plus basis applied in standard rulings may arguably be consistent with arms length pricing. It is less clear that the basis adopted in relation to Greenfield rulings can be said to be on an arms length basis.
PORTUGAL

1. Summary

1.1 The Portuguese tax authorities have little discretion in interpreting their legislation. Mostly they are restricted to “technical discretion” - i.e. clarifying the meaning of unclear law. There is a statutory procedure for the giving of binding rulings on interpretation, but if a quicker response is needed on a question of statutory construction the authorities will provide it in a non-binding form.

1.2 There is a statutory regime allowing favourable tax treatment to be agreed for large investment projects in Portugal which requires the exercise of a degree of discretion at a governmental level. The scope of the tax benefits available under this regime has recently been defined. Apart from the operation of this regime we have not found any evidence of administrative practices likely to influence the location of business.

2. Principal administrative practices

2.1 The principal feature of the administration of the tax system in Portugal which is capable of influencing the location of business inside the European Union is the power of the Government to agree favourable regimes to investment projects with a value exceeding PTE 5,000,000,000 (approx Euro 25,000,000) (recently reduced to PTE 1,000,000,000) (approx Euro 5,000,000). Such incentives can be achieved by agreeing with the authorities a specified maximum amount of tax relief. This can then be given through a combination of benefits including tax deductions for investment expenditure and exemptions from property taxes.

2.2 Where such a regime is agreed, the Government’s discretion is not absolute. The project must fulfil statutory criteria (basically, that it is beneficial to the economy and will contribute towards its modernisation). The Government may then choose from a specified range of different incentives to offer the project in question.

2.3 We would also draw attention to the following features of the Portuguese tax system:

(A) There is a system of binding rulings, where taxpayers can seek confirmation of the tax treatment of a given situation. The authorities will only agree a treatment within that provided by law.

(B) Binding rulings can be time consuming to obtain, and in less important cases a more informal contact with the authorities can be made. “Non
binding informations” may then be given to taxpayers as comfort as to a prevailing tax treatment, but these are not binding on the authorities.

(C) In some circumstances (chiefly where for whatever reason the amount of a company’s taxable profits cannot be directly determined) the authorities will use “indirect methods” to estimate what the profits should be. When the Revision Committees assess the taxable basis using indirect methods, in addition to using legally established technical elements (such as average profit margins, direct investment costs, size and location, development costs, and previous taxable bases), their technical decisions may be influenced by economic and social factors not covered by the legislation. Such assessments will be made on a case by case basis, and can involve a degree of negotiation with the authorities. However, taxpayers, in general terms, tend to have the perception that they will pay more tax if these methods are used than if their profits could have been ascertained by conventional means.

3. Costs plus arrangements

None.

4. Statutory regimes

As set out above, the Government has statutory power to agree a favourable treatment for large investment projects.

5. Informal rulings

As set out above, where the statutory binding ruling procedure is considered too slow or unwieldy, taxpayers sometimes contact the Tax Administration informally for guidance. If this is given, it is non-binding.

6. Formal rulings

As set out above, the Tax Administration is empowered by statute to give binding rulings on questions of the application and construction of legislation.

7. Transparency

Where rulings are given which the authorities believe are of general interest or application, they are published. Other rulings are not.
8. **Transfer pricing**

Transfer pricing is still a relatively new concept in Portugal. Generally speaking, the OECD guidelines are used as guidance by the tax authorities in particular cases. However, the system is relatively undeveloped. Advance pricing agreements are not possible.
SPAIN

1. **Summary**

1.1 The Spanish tax system is very formalistic. Procedures which may be followed by the administration are laid down in statute, so discretion is very limited. There is a system of rulings to clarify the position where the law is unclear. These are binding in limited cases provided by statute and non-binding in other cases.

1.2 However, there are a number of local taxes within the jurisdiction of the local governments within Spain, and, in some cases, these are used to influence the location of investment within Spain.

1.3 At a national level, the practices of the tax authorities are not always consistent, but we have not seen any evidence that administrative practices operate so as to influence the location of business.

1.4 The Basque region has its own system which is not covered separately by this report although there are understood not to be any material differences in administrative practices compared with the rest of Spain.

2. **Principal administrative practices**

2.1 The principal feature of the administration of the Spanish tax system is the system of statutory rulings. These are used to clarify the law rather than relax its scope. We do not believe it is likely that this affects the location of business within the European Union, although it can be seen from the list of areas in which binding rulings are permitted by Spanish law that many of these areas will be of interest primarily or exclusively to inward investors.

2.2 At the local level, varying rates of local taxes may affect where businesses locate within Spain but it is not clear to us whether the resulting variations in the tax burden are significant enough to affect decisions as to whether to locate in Spain at all or not.

3. **Costs plus arrangements**

3.1 Where foreign companies are carrying on ancillary activities through a permanent establishment in Spain, Spanish law provides that the costs plus basis must be used. The percentage mark up is provided by the Ministry of Economy and Finance and applies to all taxpayers of the relevant type. The tax authorities have no discretion to agree a different basis of taxation or a different percentage.

3.2 Costs plus arrangements are not available in other situations.
4. Informal rulings

4.1 There is a specified list of matters in relation to which taxpayers are entitled to apply for a formal binding ruling on the interpretation of law.

4.2 In other areas, taxpayers may apply for a non-binding ruling. If such a ruling is granted, the tax authorities will not be bound by it, but if they change their view, the taxpayer cannot suffer any penalties for late or non-payment of tax as a result of its following the non-binding ruling.

4.3 There are frequent changes in the criteria applied by the authorities in considering rulings which leads to a significant degree of inconsistency, with similar cases being treated differently.

4.4 Normally where the ruling involves interpreting unclear legislation, the authorities will construe the law as narrowly as possible to the detriment of the taxpayer. Rulings are not used to produce more favourable tax treatments.

5. Formal rulings

5.1 Taxpayers are entitled to apply for formal, binding rulings in seven areas:

   (A) foreign investments in Spain concerning business assets;

   (B) tax incentives for investment granted on a temporary basis or based on strategic economic reasons;

   (C) intra-EU transactions carried out by persons or entities established in the EU;

   (D) interpretation and application of double tax treaties;

   (E) certain employment taxation issues;

   (F) the treatment of financial products and life insurance policies; and

   (G) group reorganisations within the EC Mergers Directive.

5.2 Any ruling given will be made in response to a taxpayer with an interest in the result, and will only bind the authorities with respect to their dealings with that taxpayer. The same issues of inconsistency arise as set out above in the section on non-binding rulings.

5.3 It is apparent from this list that the areas in which the Spanish legislation allows binding rulings are weighted towards areas which will be of interest to inward investors.
6. **Transparency**

Both binding and non-binding rulings are published by the tax authorities. However, given the inconsistency referred to above the extent to which taxpayers would be sensible to rely on them must be open to question.

7. **Transfer pricing**

7.1 The Spanish authorities basically use the OECD guidelines in assessing transfer prices, although they are required by statute to use the comparable uncontrolled price method wherever possible. The administration of transfer pricing issues is not centralised.

7.2 There is a detailed statutory framework governing the provision of advance pricing agreements.
SWEDEN

1. Summary

There is little administrative discretion in the Swedish tax system. There is a limited system of advance rulings under which a ruling committee will confirm how the law applies to particular facts. There is no discretion to apply a different tax treatment from that prescribed by statute. We have found no evidence of administrative practices which are likely to influence the location of business.

2. Principal administrative practices

The principal feature of the administration of the Swedish tax system is the system of formal advance rulings and other more informal rulings. However, this is exercised within a statutory framework and we do not believe it influences the location of business within the European Union.

3. Costs plus arrangements

3.1 Costs plus arrangements for Swedish permanent establishments of overseas companies are rare, although will occasionally be accepted if it is impossible accurately to ascertain the permanent establishment’s actual profit.

3.2 Costs plus arrangements for Swedish subsidiaries of overseas companies are more common, but are primarily used where they accurately reflect those subsidiaries’ accounting treatment.

4. Informal rulings

Swedish taxpayers may contact the authorities for an informal expression of their opinion on the application of the law in a particular area. Such opinions are given on an ad-hoc basis and will not be binding on either the authorities or the taxpayer, and will not deviate from a strict application of the law.

5. Formal rulings

Taxpayers can apply for formal advance rulings in most areas of Swedish taxation. These are granted by a ruling committee separate from tax authorities and can take up to six months to be given. Again, they will not deviate from a strict application of the law, principally being issued only on matters relating to interpretations of law (as opposed to interpretations of facts). For example, generally advance rulings cannot be obtained on transfer pricing issues or on the attribution of income to a permanent establishment. The ruling committee may at its discretion reject an advance ruling request if the subject matter is not suitable. An advance ruling comes in the form of answers to specific questions asked by the taxpayer in
the light of a set of unambiguous facts. The rulings are binding on the authorities, but are given expressly for limited duration.

6. **Transparency**

Rulings which are applicable to single taxpayers are not published. However, informal rulings which affect a class of taxpayers will be published. Formal rulings are confidential, but may sometimes be published on an anonymised basis.

7. **Transfer pricing**

7.1 The Swedish transfer pricing system is unsophisticated. Although nominally adhering to the OECD guidelines, the authorities tend to “cherry pick” the alternative methods of pricing to find the one most favourable to them, even if it is not the most appropriate to the facts. Where transfer pricing cases come to court, the authorities therefore usually lose.

7.2 Advance pricing agreements are not available.
UNITED KINGDOM

1. Summary

1.1 The United Kingdom has a relatively complex tax system. There is a considerable amount of dialogue between taxpayers and tax authorities, and a large volume of published guidance on statutory interpretation. The tax authorities’ approach is to protect the UK tax base, but in administering the system to have regard to the interests of the UK economy. Informal rulings are frequently given but only so as to clarify the law. Advance agreements are possible on occasions, but these are with the aim of easing the administration of the tax system, for both taxpayer and tax authorities, rather than to grant a more favourable treatment.

1.2 There are no significant administrative practices likely to influence the location of business. To the extent that the practices of the tax authorities could be said to influence the location of business this is through an approach which is open and even-handed, together with a pragmatic approach to the taxation of international businesses operating through UK branches or subsidiaries. The authorities are commercial in approach and are aware of the importance of the City of London and inward investment to the UK economy.

2. Principal administrative practices

2.1 The principal features of the administration of the UK tax system which are capable of influencing the location of business within the European Union are as follows:

(A) It is possible to agree a costs plus basis of taxation for UK branches of foreign companies whose activities can be said to be ancillary to those of a foreign parent company;

(B) The tax authorities will agree the applicable debt:equity ratio of a UK subsidiary in advance.

2.2 In addition there is an extremely large amount of published guidance on the application of tax law. This operates to clarify genuine uncertainty and, in the case of extra-statutory concessions, to deal with inequities in the strict application of the law.

3. Costs plus arrangements

3.1 Informal costs plus rulings can be obtained from the Inland Revenue. These are most common where a UK subsidiary exists to provide services to related entities or carries on activities as part of a global business, where the separate contribution
to profits cannot be determined.

3.2 Typically the percentage mark-up in the UK will be 10% to 15%. However, any costs plus ruling will only be given on the basis that it is consistent with arms length transfer pricing (and the tax authorities have considerable resources to determine what arms length prices should be). Costs plus rulings have been operated reasonably flexibly allowing, on occasions, senior or key personnel in an international group to operate in the UK without creating significant tax liabilities.

3.3 The tax authorities apply a degree of pragmatism in their approach to costs plus rulings, reflecting both a desire to maintain the UK as an attractive place to do business and an acknowledgement that if costs plus rulings are not given for certain types of business, that business could well relocate elsewhere.

4. Informal rulings

4.1 Informal rulings (ie rulings on the interpretation of the law which the revenue authorities are not obliged by statute to provide) are reasonably common, and are made in response to specific enquiries from taxpayers. Where such rulings are given they will normally only clarify how the law should be applied to a particular set of facts. Informal rulings are overwhelmingly given for the better administration of the tax system.

4.2 It is common for inward investors into the UK to agree a level of debt equity ratio acceptable to the revenue authorities in advance. However, the revenue authorities are reluctant, outside the financial sector, to move beyond a 1:1 ratio and so, although agreement can be reached in advance, it is on a basis which is not generous by international standards.

4.3 The tax authorities have granted a large number of generally applicable concessions to deal with inequities in the law. These are all intended to achieve a result consistent with the intention of the law, and are publicly available. They also regularly publish their views on the interpretation and operation of contentious pieces of legislation.

5. Formal rulings

5.1 There are only very limited areas in which UK statute law expressly provides for the availability of rulings. These are principally advance clearances on the application of anti-avoidance legislation.

6. Transparency

6.1 A large amount of guidance of general application, interpretations and concessions is published by the revenue authorities. However, rulings given to individual
taxpayers are confidential.

7. **Transfer pricing**

7.1 The UK has a sophisticated transfer pricing regime which has recently been updated. As part of that updating process, the OECD guidelines have been expressly incorporated into UK statute law. The administration of transfer pricing is centralised, and relatively sophisticated by European standards.

7.2 The UK is in the course of implementing new legislation which will allow for formal advance pricing agreements. Previously there was some scope for reaching such agreements, but it was not on a statutory footing.
ANNEX

INSTRUCTIONS FROM EUROPEAN COMMISSION

Detail of the Comparative Study of Administrative Practices

A. Based on extensive practical experience of the administrative practices in the area of business taxation, the contractor shall provide comparisons of those aspects of the administrative practices that may have an influence on the location of business activity in the European Community.

B. The information about the administrative practices in the Member States shall cover:

(1) The scope and degree of administrative discretion with regard to business taxation. This should cover approvals with regard to special tax regimes, advantageous treatment, reliefs and exemptions, with regard to intra-group services (co-ordination, distribution and service centres and holding regimes) financial services (financial and insurance companies) and offshore companies.

(2) The practical procedures used for determining transfer prices for controlled transactions in relation to intra-group service activities and financial services. This should cover the following questions:

   - How, in practice, does the tax administration verify whether transfer prices are at arms length and how is this done when no comparable uncontrolled prices are available? What methods are used and how are these chosen?

   - How does the national tax administration ensure that the factors determining comparability, as defined by the OECD Transfer Pricing Guidelines, are taken into account? In particular, does the national tax administration perform verifiable functional and risk analysis in each case separately or does it rely on sector specific and industry averages without, in practice, undertaking a case by case analysis?

   - What administrative flexibility is available in the application of formal or informal Advance Pricing Agreements?

   - What are the disclosure and documentation requirements? Are there regular enquiries and are the enquiry practices centrally monitored? Which party has the burden of proof regarding the
The contractor shall provide information in respect of each Member State. The information shall provide cross-country comparison of the administrative practices in the Member States. The contractor shall therefore provide the information about each Member State in a separate section. The structure of each section shall be identical. If a particular administrative practice exists only in certain Member States, the report will set out whether there are other comparable practices in the other Member States.

The contractor shall not provide detailed descriptions of the administrative rules or evaluations of the administrative practices but shall provide such information as would facilitate comparisons of the administrative practices in the different Member States.

The contractor shall describe the legal or published administrative rules only to the extent that it is necessary to explain the scope for administrative discretion and the possible variations in the practical application of tax rules. The contractor shall give examples to illustrate the explanations.

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