

THE HARMONIZATION OF ADVANCE TAX RULINGS SYSTEMS IN EUROPEAN UNION MEMBER STATES – WHY?

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1. Introduction

The need for an efficient flow of information between tax administrations and taxpayers has often been considered of fundamental importance in order to solve the (sometimes) problematic application and interpretation of tax law provisions.

The difficulties related to the application and interpretation of tax law provisions are enhanced in cross-border situations. It is obvious that taxpayers making investments or having business activities in a country different from that where they are resident shall encounter the difficulties related to the compliance with the foreign tax system, with language barriers and legal concept which they are not familiar with. The compliance with complex tax provisions belonging to foreign legal systems is rendered more difficult due to the interaction of several rules originating from “different legal orders” such as double taxation conventions. These difficulties are enhanced within the European Union, where also the impact of European law must necessarily be ascertained.

An advance tax rulings system has been considered in the literature “...an indispensable tool in the modern world of tax administration”. It is undeniable that tax rulings have several advantages both from the perspective of the taxpayers and of the tax authorities. Notwithstanding these advantages enhancing the functioning of the tax system, the different set of rules governing the various advance tax rulings systems in each Member State may also constitute an obstacle for the development of cross-

border investments in light of the common market. For this reason, it is appropriate to eliminate any doubt about the opportunity of implementing a well structured advance tax rulings system within a national jurisdiction.

2. Why harmonize advance tax rulings systems?

■ To reach a higher certainty of law

Tax law is often obscure. The causes of the opacity of tax provisions are several, namely:

- the massive legislative production of tax rules, with many provisions often being spread across several laws, including those not related to taxation;
- continuous legislative changes, which are often dependent upon a government’s coalition partners’ pursuing different tax policies;
- an inherent interdisciplinary character of tax law, which often refers to other fields of law like constitutional, administrative and commercial law. It could be argued that this uncertainty about the interpretation and application of tax law is inherent because it depends upon transactions (acts or facts) regulated by other fields of law. In other words, the interdisciplinary character of tax law is stronger than in many other areas of law and may be considered one of the causes of uncertainty;
- budgetary reasons that force the adoption of ad hoc rules not always well reasoned and well planned.

Next to the obscurity of the tax systems as such, there are the various

and conflicting interpretations given by the tax administrations and the (sometimes) divergent judicial decisions issued on the same legal provisions.

Similar remarks could be made for European tax law. Although European legislation in the tax field is rather limited as compared with any single national tax system. The process of harmonizing or coordinating direct and indirect taxation in the Member States has passed through amendments to the fundamental treaties and through the adoption of several directives, regulations and many other soft-law instruments. This massive legislative production of tax rules, their continuous changes, the necessity to refer to other fields of law for the interdisciplinary character of tax law have resulted in the creation of a European tax order which is difficult to administer, implement and comply with. This is also evidenced by the increasing number of cases brought to the European Court of Justice, which, in some instances with conflicting interpretations, have contributed to the creation of uncertainty in the interpretation and application of European tax law.

■ To improve the dialogue between taxpayers and tax administrations

The complexity and consequent uncertainty of tax law has increased the role and the importance of an efficient information system for both taxpayers and tax authorities. Most tax administrations of EU Member States are trying to improve the quality of the services rendered to the taxpayers, introducing different forms of dialogue between tax authorities and taxpayers.

It is undeniable that advance tax rulings play a fundamental role in improving the dialogue between taxpayers and tax authorities and give rise to a more efficient exchange of data between the two subjects of the tax system.

■ To improve consistency in the application of tax law

Another fundamental reason for establishing an advance tax rulings system is to achieve a higher consistency in the application of law. Indeed, the value of precedent attached to rulings in some jurisdictions, together with their publication, could offer taxpayers significant guidance in structuring their business in the most convenient manner from a tax point of view.

■ To improve the decision-making process of tax administrations

As a result of the increased uniformity in the tax policy and the higher consistency in the interpretation and application of tax law provisions, another important advantage of an advance tax rulings system is the improvement in the decision-making process by the tax authorities. This may become more efficient and more transparent. By having available a body of law represented by the tax rulings previously issued, tax authorities may be faster in taking their decisions and, generally, more efficient in the heavy burden of the administration of the tax system. The existing tax rulings may represent a point of reference for the tax administration to readily solve the same or similar questions over the time.

■ To reduce litigation to a minimum

One of the positive consequences of a functional tax rulings system is a decrease in tax litigation with the related benefits of the decrease of overburdening the courts and of associated costs. Tax rulings help reduce the potential disputes between taxpayers and tax authorities and the necessity of recourse to the courts. As far as favourable rulings are concerned, this result may be achieved only when the tax administration is obliged to respect the tax rulings issued and does not act against a taxpayer who is following the result of the ruling. In other words, in order for a tax rulings system to operate as a mechanism for dispute resolutions, it

is essential to attribute binding effects to the rulings at least on the side of the tax administration.

3. Conclusions

From a legal point of view, the advantages of a harmonization of advance tax rulings systems in the EU Member States are the following:

- to obtain a higher degree of certainty in the interpretation and application of tax law provisions;
- to have greater consistency and uniformity in the application and interpretation of the law;
- to enhance the transparency of the decision-making process of the tax authorities

- to reduce tax litigation;
- to give the tax administrations the possibility to gather information from taxpayers;
- to avoid harmful tax competition regimes and practices.

An advance tax rulings system should comply with the generally prevailing principles of a tax order, like principle of legality, of equality and of transparency. These legal principles represent the minimum legal framework within a harmonized advance tax rulings procedure must be established in the national legal orders of the EU Member States.

REFERENCES

M. Ellis	<i>General report, Advanced rulings, cahiers de droit fiscal international</i> , vol lxxxivd, 1999
Carlo Pinto	<i>Tax competition and EU law</i> , Doctoral thesis, University of Amsterdam, Faculty of Law
C. Romano	<i>The international guide to advanced rulings</i> , International Bureau of Fiscal Documentation, Amsterdam, 2001