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ADVANCE TAX RULINGS IN THE TAX LAW OF THE REPUBLIC OF CROATIA*

ABSTRACT

Advance tax rulings are part of modern tax systems that aim to protect taxpayers' rights and achieve the predictability of tax authorities' actions. Advance tax rulings are fundamental in providing business certainty regarding the tax treatment of particular transactions. Advance tax rulings are particularly useful when: a) the law is unclear and there is more than one possible interpretation, b) new legislation applies to the transaction, c) the transaction is novel, sensitive, or controversial, d) significant issues arise or may have a wide impact and e) the arrangement is a complex financing transaction. The tax authority in the Republic of Croatia is authorized to provide, upon written request from the taxpayer, an advance tax ruling on the tax treatment of future and intended transactions, i.e. business events and activities of the taxpayer. The very legal nature of the advance tax ruling is questionable. Therefore, the authors of this paper have provided answers to complex legal questions: a) is an advance tax ruling an administrative act or not?, b) is the adopted advance tax ruling effective erga omnes or only inter partes? and c) does the adopted advance tax ruling have a unilateral or bilateral binding legal effect? The authors also analyzed the liability of the Republic of Croatia for damage caused by the issuance of an illegal advance tax ruling by the competent tax authority, based on which the taxpayer acted because he was in good faith.

Keywords: *tax ruling, advance tax ruling, good faith, tax authority, taxpayer*

1. INTRODUCTION

With the development of society, with the acceptance of new organizational forms of social communities, and with the change in the relationship between the individual and the state government, there is a need for new legal regulation in many legal areas. This need is particularly pronounced in the tax procedure, as one of the most sensitive procedures in the legal system of every country, because every citizen is involved in it, without their will, and even against it. Therefore, legal science and judicial practice must follow these changes and react to them with appropriate legal postulates and legal institutes.¹

One of the principles of the rule of law, which is also respected in public law, and therefore in tax law, is the principle of acting in good faith (Latin: *bona fide*). In the context of the concept of good faith, it is customary to distinguish between good faith in the objective sense and good faith in the subjective sense. Good faith in an objective sense assumes that all participants act in accordance with honesty and trust, while in a subjective sense, it represents a certain state of a person that refers to the case when a person, in exercising their right, is unaware of the violation of the interests of another person; or is unaware that they are violating someone else's rights.²

The principle of good faith and fair dealing was for the first time introduced in Croatian Tax Law in 2001. The contemporary legal framework of the introduced institute of good faith in revenue procedure did not contain provisions that would more precisely define the content of the notion or criteria to assess such acting. Subsidiary sources of law were equally modest.³

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¹ Lončarić-Horvat, O., *Prilog europeizaciji hrvatskog postupovnog prava*, Zbornik radova znanstvenog skupa Hrvatska pred vratima EU – fiskalni aspekti, HAZU, Zagreb, 2005, p. 234.

² See more: Contrino, A.; Corasaniti, G.; della Valle, E.; Marcheselli, A.; Marelllo, E.; Marini, G.; Messina, S. M.; Trivellin, M., *Fondamenti di diritto tributario*, Terza edizione, Wolters Kluwer, CEDAM, 2024, pp. 393-396.

³ Žunić-Kovačević, N., *Primjena načela dobre vjere u poreznom postupku – neuspjeli pokušaj uvođenja instituta obvezujuće informacije u hrvatsko porezno pravo*, Zbornik radova Pravnog fakulteta u Rijeci, Supplement, Vol. 31, 1/2010, p. 149.

The principle of acting in good faith in the tax law of the Republic of Croatia is regulated by Article 9, paragraphs 1 and 2 of the General Tax Act⁴ which states: "Participants in tax-legal relations are obliged to act in good faith. Acting in good faith means acting conscientiously and honestly in accordance with the law".⁵ In other words, there should be a mutual relationship of trust and fair dealing between the taxpayer, other participants, and the tax authority when conducting a tax procedure in which the provisions of substantive tax law are enforced. Acting in good faith in a broader sense means acting conscientiously, honestly, and in accordance with the law, i.e. in resolving legal relationships (obligatory relationships, tax-legal and tax-debt relationships) one should, whenever possible, start from the assumption that the participants in the tax procedure acted conscientiously and without dishonest intent, i.e. strive for trust, mutual understanding, and respect.⁶

The principle of good faith is regulated similarly in other Member States of the European Union. For example, in the Republic of Italy, the principle of good faith is regulated in Article 10 of the Taxpayers' Statute (Italian: Statuto del contribuente) under the title "Protection of trust and good faith. Taxpayer errors", according to which the relations between the taxpayer and the tax authorities are based on the principle of cooperation and good faith.⁷ In the Federal Republic of Germany, the principle of good faith is generally not regulated in tax law. Nevertheless, the principle of good faith regulated in Articles 242 and 157 of the German Civil Code⁸ also applies to tax law, both for the taxpayer and the tax authority. Also, the principle of acting in good faith is reflected in other regulations, for example in Article 174 German Fiscal Code.⁹ The principle of good faith in tax law assumes the existence of a specific tax-legal relationship between the taxpayer and the tax authority, on which the trust is based, which is decisive for the application of the principle of acting in good faith. Only those involved in this relationship, i.e. the individual taxpayer and the relevant tax

⁴ General Tax Act, Official Gazette, No. 115/16, 106/18, 121/19, 32/20, 42/20, 114/22, 152/24 (hereinafter: OPZ).

⁵ The Minister of Finance shall lay down the manner of acting in good faith in an ordinance (Article 9, paragraph 3 of the OPZ).

⁶ Matković, B., *Komentar Općeg poreznog zakona*, RRIF, Zagreb, 2009, p. 8.

⁷ Statuto del contribuente (Legge 27 luglio 2000, *Gazzetta Ufficiale*, n. 212.) aggiornato con le modifiche apportate, da ultimo, dal D. L. 9 agosto 2024, *Gazzetta Ufficiale*, n. 113., convertito, con modificazioni, dalla L. 7 ottobre 2024, *Gazzetta Ufficiale*, n. 143.

⁸ German Civil Code - Bürgerliches Gesetzbuch (hereinafter: BGB), Ausfertigungsdatum: 18. 08. 1896, „Bürgerliches Gesetzbuch in der Fassung der Bekanntmachung vom 2. Januar 2002. (BGBl. I S. 42, 2909; 2003 I S. 738), das zuletzt durch Artikel 14 des Gesetzes vom 23. Oktober 2024. (BGBl. 2024 I Nr. 323) geändert worden ist“.

⁹ German Fiscal Code – Abgabenordnung (hereinafter: AO), Ausfertigungsdatum: 16. 03. 1976, „Abgabenordnung in der Fassung der Bekanntmachung vom 23. Januar 2025. (BGBl. 2025 I Nr. 24)“.

authority, are bound by the principles of good faith. Within a specific tax-legal relationship, each participant is required to take into account the legitimate interests of the other participant and to gain the trust of the other participant through their consistent actions, i.e. not to contradict their own previous actions. The institution of advance tax rulings is one of the ways of applying and realizing the principle of acting in good faith.¹⁰

Therefore, in the remainder of this paper, more will be said about the concept and types of advance tax rulings, the legal nature of advance tax rulings, and the liability of the Republic of Croatia for damage caused by the issuance of an illegal advance tax ruling by the competent tax authority, based on which the taxpayer acted because he was in good faith.

2. THE CONCEPT (DEFINITION) OF ADVANCE TAX RULINGS

Given the special nature of tax law norms, often sub-special, predictability of the application of tax regulations is not easy to ensure. One of the instruments that contributes to this is the Institute of advance tax rulings. The legal literature related to advance tax rulings presents, analyzes, and defines different approaches of individual jurisdictions and their attempts to contribute to legal certainty through advance tax rulings. From other aspects and areas of observation, in addition to the fundamental, legal standpoint, advance tax rulings can be given other functions, which is why the economic role of advance tax rulings is often emphasized.¹¹ Therefore, the broader role of advance tax rulings is often seen not only as an instrument for achieving and increasing tax and legal certainty¹² that contributes to the consistent application of tax regulations, but also as an instrument that contributes to reducing tax disputes, strengthening cooperative relations between tax authorities and taxpayers, and harmonized and non-contradictory actions and decisions of tax authorities in similar matters.¹³

There are similar definitions of advance tax rulings in doctrine and practice. Advance tax rulings are official administrative explanations of a particular issue

¹⁰ Žunić-Kovačević, N., *Prethodna obvezujuća porezna mišljenja – novi institut hrvatskog poreznog postupka*, Zbornik radova Pravnog fakulteta u Rijeci, Vol. 37, 1/2016, p. 287.

¹¹ *Ibid.*, pp. 267-268.

¹² Gadžo, S., *Tax Procedure Law in Transition: Croatian Experience*, Eds: B. Milisavljević et al., *Law and Transition: Collection of Papers*, Pravni fakultet Univerziteta u Beogradu, Beograd, 2017, p. 186.

¹³ Žunić-Kovačević, *op. cit.* note 10, p. 268.

in the context of tax law. They support taxpayers in the proper interpretation and application of tax law provisions.¹⁴

Advance tax rulings have been a topic of discussion for at least the last few decades. Two IFA studies adopted the same definition in 1992 and 1999. These studies defined advance rulings as "a more or less binding statement by a tax authority, at the voluntary request of a private individual, concerning the conduct and consequences of one or a series of planned future actions or transactions". A similar definition was also adopted in The International Guide to Advance Rulings as "...a statement issued, upon request, to a (potential) taxpayer, stating the tax authority's view on the tax treatment of a particular set of facts and circumstances that are under consideration, in the process of being finalized or have been finalized but not yet evaluated".¹⁵ Combining these definitions, an advance tax ruling can be broadly defined as any advice, information, or statement that a tax authority gives to a particular taxpayer or group of taxpayers regarding their tax situation concerning future transactions and on which they are (to some extent) entitled to rely. Advance tax rulings are opinions issued by a tax administration or, in some countries, other independent bodies. A request for an advance tax ruling comes from a taxpayer and is made on a specific set of facts. The taxpayer seeks certainty about how tax provisions will be applied in a certain way to become aware of the fiscal consequences of his transactions. To this end, the taxpayer submitting a request for an advance tax ruling must fully disclose all relevant facts in his request for a ruling and will receive the tax administration's official position on these facts. The effects of these decisions on tax authorities, taxpayers, or tax courts vary from country to country. According to the above definitions, advance tax rulings qualify only as statements by tax authorities that have some binding effect on the tax administration.¹⁶

Taxpayers are usually not bound by the issued ruling, but in some jurisdictions, penalties may be imposed when a taxpayer fails to comply with the terms of the advance tax ruling. Due to the application of the doctrine of separation of powers in most legal systems, the statement of the executive branch, in our case the tax administration, does not have to be binding on the other two sovereign branches, the legislative and judicial branches. Therefore, advance tax rulings usually do not have a binding effect on parliaments or courts.¹⁷

¹⁴ What are tax rulings?, <https://cgofinance.com/tax-rulings/>, February 18, 2025.

¹⁵ According to: Romano, C., *Advance Tax Rulings and Principles of Law –Towards a European a Tax Ruling System*, IBFD, Amsterdam, 2002, pp. 118-119.

¹⁶ Romano, *op. cit.* note 15, pp. 119-120.

¹⁷ *Ibid.*, p. 120.

However, in the opinion of Žunić-Kovačević, Gadžo and Klemenčić the biggest challenge in the times ahead lies not so much in further transformation of the legal framework, but rather in the commitment of tax authorities and other stakeholders to fully make use of existing instruments (e.g. conferment of special status to certain taxpayers, tax settlements, advance rulings) in accordance with best practices.¹⁸

3. LEGAL NATURE AND TYPES OF ADVANCE TAX RULINGS

Regarding the legal nature of advance tax rulings, they can be considered as 1. private law agreements (or contracts); 2. public law agreements; or 3. unilateral acts of public administration.¹⁹

The characterization of advance tax rulings as private law contracts cannot be accepted. This does not depend on the public nature of the entity issuing the tax rulings (i.e. usually the tax administration). In most, if not all, jurisdictions, a public administration can also act as a private person using private law instruments (i.e. *iure privatorum*). The choice between adopting a private rather than a public law instrument depends on the objectives that the public administration wishes to pursue. The distinction between private and public law instruments is very important since the principle of legality and the reservation of a legal rule can only exist about public powers. These principles are indeed limitations on public power and guarantees for citizens that would have no significance when the public administration acts as a private person on an equal footing with other private persons. The reason against characterizing advance tax rulings as private law contracts is that in tax law fundamental public interests are at stake, and this is usually an area whose discipline is reserved for statutory laws (ie enacted by parliaments). Therefore, in principle, only the use of public law instruments should be justified. In principle, the public administration can use all instruments of private law by the limitations arising from the legal order. However, certain areas should not be regulated by private law because the public interests involved are essential to the life of the state. This is a typical situation of tax law, through which the state collects the revenues necessary to achieve its goals. This fundamental function of tax law also includes the fact that the tax liability cannot be freely disposed of. Tax law protects the fundamental interest of the state in collecting

¹⁸ Žunić-Kovačević, N.; Gadžo, S.; Klemenčić, I., *Flexible Multi-Tier Dispute Resolution: The Croatian Experience*, Eds: P. Pistone et al., *Flexible Multi-Tier Dispute Resolution in International Tax Disputes*, IBFD, Amsterdam, 2020, p. 21.

¹⁹ Romano, *op. cit.* note 15, p. 120.

revenues, which is the collective interest of every citizen. This public interest could, in principle, be realized through instruments of administrative law or private law. In situations, such as the work performed by the tax administration in tax law, the tax administration has a superior position about taxpayers and acts to achieve the collective interest of every citizen. Therefore, the basic guarantees for citizens under procedural administrative law, such as those stemming from the legality, impartiality, and transparency of administrative activities, should be applied instead of the weak guarantees provided for in civil law. As an example of a different system of checks and guarantees, one could mention that an administrative act is generally invalid if it is adopted for purposes not foreseen by the enabling provision, while a private law contract is valid regardless of its ability to achieve public objectives. However, there must also be recognition of the greater flexibility of private law instruments compared to administrative law instruments which could lead to optimization of the efficiency of public (and tax) activities.²⁰

One of the most important classifications of advance tax rulings, although there are others, is the one that distinguishes advance tax rulings as individual or individual and general or public advance tax rulings. Most often, the term advance tax ruling has the meaning of individual or individual advance tax ruling. In this sense, primarily due to the distinction between the above-mentioned basic types or forms of ruling, general or public tax rulings could also be terminologically designated as, simply, tax opinions. Advance tax ruling can be defined as an interpretation of tax law provisions by tax authorities, whereby the interpretation is binding on the tax authority, assuming that the facts and circumstances on which the opinion is based have not changed. The reason for issuing an advance tax ruling is always a formal request from a taxpayer that concerns the application of tax rules to a planned, future tax-relevant transaction or activity.²¹ Therefore, an advance tax ruling only applies to future planned or intended transactions and never applies to initiated tax procedures.

The characterization of an advance tax ruling as an administrative act rather than a (public or private) contract would seem fundamental in terms of the protection of the taxpayer, which may be more effective within the system of guarantees provided by administrative law. The consequences of considering advance tax rulings as administrative acts are also relevant in terms of the legal effects of advance tax rulings. Advance tax rulings (also called advance, private, or letters) are legal instruments under which taxpayers (or their tax advisors) can obtain a more or less binding statement from the tax authorities regarding the treatment of

²⁰ *Ibid.*, pp. 120-122.

²¹ Žunić-Kovačević, *op. cit.* note 10, p. 270.

a transaction or a series of contemplated future (and sometimes past) actions or transactions. Advance tax rulings are issued to specific taxpayers upon request and explain how the tax administration will apply the law to a specific taxpayer or group of taxpayers with a transaction or series of specified facts or transactions. They are commonly referred to as "advance rulings" because they are usually issued before the taxpayers enter into a transaction or arrangement or (in certain jurisdictions) after the event but before the taxpayer files a tax return. Such solutions are tailored to the taxpayer in question because they take into account the factual situation of the taxpayer and are therefore not directly applicable to other taxpayers. They may also decide whether and how the general ruling applies to the facts and circumstances of a particular taxpayer.²²

Another form or type of ruling is a general or public (binding) ruling. The obligation of tax authorities to issue general (binding) rulings, known in tax practice as or simply as rulings, is reduced to rulings addressed to all taxpayers, which do not relate to the specific elements and facts of a tax case or particular or individual taxpayers. Therefore, general rulings or just rulings are a kind of "public" notices or public advance rulings (Public advance ruling system).²³ It can be said that this obligation of tax authorities to issue general opinions is broader in scope since all taxpayers are addressed. Such rulings and their publication aim to contribute to the information of taxpayers about the taxation system and the manner of application of individual provisions, to create trust among participants in tax-legal relations, and to achieve the principles of acting in good faith. Such so-called public advance rulings, in Croatian tax law, known as opinions, are generally issued after a large number of individual requests for advance tax rulings have been received from taxpayers. The publication of a public ruling eliminates the need to issue individual advance tax ruling, as it can be assumed that there is no basis for requesting it.²⁴

From an international comparative perspective, an institution similar to the rulings of the Ministry of Finance of the Republic of Croatia is not unknown in theory and practice. It is the institution of advance tax ruling. Namely, taxpayers planning a certain transaction can consult the tax authorities in some countries to gain insight into all the tax consequences related to that transaction. In tax systems where there is an institute of advance tax rulings, their application is limited to the prior regulation of "extremely important and special cases with certain characteristics". The United States of America (hereinafter: USA) Tax Administration (Internal

²² Romano, *op. cit.* note 15, pp. 77-78.

²³ Žunić-Kovačević, *op. cit.* note 10, p. 270.

²⁴ Žunić Kovačević, *op. cit.* note 3, p. 140.

Revenue Service - IRS) issues written instructions (so-called letter rulings)²⁵ that respond to taxpayers' inquiries regarding the tax treatment of some of their planned transactions. Although written letter rulings are published and delivered to lawyers and accountants, they do not have the significance of a precedent and cannot be cited as such. The similarity of the written instructions with the practice of formulating and publishing the ruling of the Ministry of Finance is striking. But there are also significant differences. Written letter rulings have a precisely defined status and role in the USA tax system, and there can be no doubt about their significance; in particular, it can be said with certainty that it is not an autonomous source of law. These are some indications of the actions of the tax administration of the USA, which do not bind either the court or the tax administration itself for future cases.²⁶

In the Netherlands, advance tax rulings began to develop immediately after the end of World War II. It is known worldwide that the Netherlands has a long-established practice of issuing rulings, which has historically contributed to the Netherlands' position as a favorable location for investments by multinational corporations.²⁷ Several definitions of advance tax rulings can be found in Dutch literature, case law, and the practice of the Ministry of Finance. As a preliminary remark, it should be noted that over the years there has been a general trend to consider advance tax rulings as unilateral positions, which was the prevailing view until the second half of the 1980s. Since then, the prevailing opinion has been that they should be considered contracts governed by the Civil Code.²⁸ The characterization of advance tax rulings as public law contracts should also be rejected. A public law contract includes private law and public law elements. Therefore, the actual goal to be pursued, the type of contract, and its basic elements are generally prescribed by administrative law, while the contract as such is governed by private law. However, the taxpayer's consent is missing in the advance rulings procedure, which is one of the fundamental aspects of a private law contract. An issued tax ruling can produce effects regardless of the taxpayer's will. The taxpayer's participation in the ruling process is mainly limited to presenting a request for the ruling, which is certainly a necessary condition for an administrative act containing the tax administration's interpretation to be considered an advance on a tax ruling. An issued tax ruling can produce effects regardless of the taxpayer's will. The taxpayer's participation in the ruling process is mainly limited to presenting a request for the ruling, which is certainly a

²⁵ About the letter rulings see: Portney, G. G., *Letter Rulings: An endangered species?*, The Tax Lawyer, Spring, Vol. 36, 3/1983, pp. 751-758.

²⁶ Arbutina, H., *Ustavna i nadnacionalna ograničenja ovlaštenja na oporezivanje*, Zbornik radova Pravnog fakulteta u Zagrebu, Vol. 62, 5-6/2012, p. 1307.

²⁷ Romano, *op. cit.* note 15, p. 96.

²⁸ *Ibid.*, p. 96.

necessary condition for an administrative act containing the tax administration's interpretation to be considered an advance on a tax ruling. This participation in the issuing of the ruling is limited to the initial phase of the ruling procedure. The interests of the private individual (taxpayer) and the tax administration are not merged into a common interest arising from the contract but remain legally independent. Taxpayers should be free to take a position that deviates from the advance tax ruling issued and to file their tax returns accordingly.²⁹

It could be argued that, in settled jurisdictions where advance tax rulings are to some extent also binding on taxpayers, those opinions should be considered unilateral administrative acts with double effect. However, the prevailing opinion is that advance tax rulings are considered unilateral acts of public administration. It is considered that the tax administration does not, as a rule, enter into a contractual relationship with the taxpayer by issuing a ruling. As stated above, the advance tax decision is valid even without the consent of the taxpayer who submitted it. The binding effects of advance tax rulings arise either directly from a specific legal provision or, in the absence of such a legal provision, from unwritten general principles of proper administration.³⁰ Some scholars distinguish between formal advance tax rulings based on specific rules (statutes, regulations, etc.) and informal rulings that are not based on any specific rule. According to them, formal advance tax rulings should be considered as unilateral administrative acts, and informal rulings as agreements. In the Netherlands, there has been a long-standing debate about whether an advance tax ruling is an agreement subject to civil law or an administrative act subject to administrative law. This means that the agreed tax treatment will be determined by a written agreement between the taxpayer and the tax authorities. According to some scholars, under the new system of rules, it appears that the taxpayer is also bound by the agreement, whereas this was not stated in the old solution policy. Since the 2001 amendments to Dutch tax legislation, an advance tax ruling has been defined as an agreement between the taxpayer and the tax authorities, which agreement is also binding on the taxpayer himself.³¹

The situation in the Republic of Italy is interesting because there are 5 types of advance tax rulings (Italian: *Interpello*). The *interpello* procedure gives a taxpayer the possibility of obtaining an advance-written opinion from the Italian Tax Agency on a particular question or tax-related issue. Both resident and non-resident taxpayers (directly or by means of their elective representatives in Italy) are entitled to forward a query to the Italian Revenue Agency. The Italian Revenue

²⁹ *Ibid.*, pp. 122-123.

³⁰ *Ibid.*, pp. 123-124.

³¹ *Ibid.*, p. 124.

Agency can accept a request for an advance tax ruling only when taxpayers require clarifications about a tax provision: whose interpretation is objectively uncertain, relating to state (and not local) taxes, and applicable to a real (not hypothetical) and personal case. The request must be submitted before the relevant tax provision is applied (for example, before submitting the tax return, before applying a withholding tax, before issuing an invoice, etc.). The opinion expressed by the Revenue Agency in the advance tax ruling is not binding on the taxpayer, however, it is binding on the Revenue Agency, which cannot issue assessments or impose fines or penalties that would be in contrast with the opinion expressed in the advance tax ruling. The Revenue Agency has 90 days to reply to the query and another 60 days if, in the meantime, asks for further clarification or documents from taxpayers to form its opinion. If the Revenue Agency doesn't answer within the time limits, the taxpayer's interpretation is deemed to be accepted based on tacit consent. There are the following types of advance tax rulings: a) Ordinary ruling: All taxpayers, including non-residents, may submit a query to obtain an opinion about the correct interpretation of an objectively uncertain tax provision or in case the objective uncertainty is related to the legal and fiscal analysis of a specific case. The interpretation of a tax provision is „objectively uncertain“ when there is no official interpretation available (circular letters, resolutions, etc.) that applies to the taxpayer's specific case or when such official interpretation is too generic, b) Probatory ruling: taxpayers can request an opinion about the fulfilment of the conditions and the assessment of the elements of proof required for the adoption of specific tax regimes, in cases expressly provided by law, c) Anti-abuse ruling: taxpayers can ask an opinion about the application of the „abuse of law“ principle to a specific case, aiming at verifying if a transaction may be considered as abusive, d) Anti-avoidance ruling: a ruling in order to fight tax avoidance aimed at the disapplication of tax provisions limiting deductions, tax benefits, tax credits or other subjective positions of the taxpayer and e) the ruling on new investments allows investors, whether Italian or foreign, to seek an opinion on the tax treatment applicable to major investments (worth not less than 20 million euros and with significant and lasting employment effects) made in the territory of the State. For applications submitted from 1 January 2023, even if they relate to investments before that date, the minimum amount of investments must not be less than 15 million euros.³²

³² Ministero dell'Economia e delle finanze, Agenzia Entrate <https://www.agenziaentrate.gov.it/portale/schede/istanze/scheda-interpello/tipologie-di-interpello/interpello--ordinario>, March 5, 2025, Gian Marco, IL SECONDO BOLLETTINO DELL'AGENZIA DELLE ENTRATE SUL „RULING“ INTERNAZIONALE, <https://www.acptax.it/wp-content/uploads/2015/03/22-IL-SECONDO-BOLLETTINO-DELL'AGENZIA-DELLE-ENTRATE-SUL-%C2%ABRULING%C2%BB-INTERNAZIONALE.pdf>, March 5, 2025.

In Germany, taxpayers have the right to request a ruling from the tax authorities provided the ruling is intended to receive clearance with regard to a legal question. Nonetheless, the issuance of a ruling is up to the tax authority's discretion. The right to request a ruling is granted under the provision of the tax law (i.e. Article 89 AO). The AO differs generally between rulings considering the tax procedure provisions and rulings considering the substantive tax provisions. The issuance is – for both matters – generally not limited to certain topics but the taxpayer has to claim a special interest in obtaining the ruling (e.g. relevant future tax effects on a business activity) as far as rulings on substantive tax provisions are concerned. The request for a ruling is charged with a fee irrespective of whether the tax authorities finally issue the ruling. Tax rulings can be revoked by tax authorities under certain circumstances whereby the AO does especially differ between the revocation of a lawful and an unlawful ruling. No tax court authorization is required for a revocation. As mentioned before AO does differ between the revocation of a lawful or an unlawful ruling. While lawful rulings which can in general be revoked under much stricter provisions than unlawful rulings can be revoked only with future effect, unlawful rulings can also be revoked with retroactive effect. Nevertheless, the retroactive revocation of an unlawful ruling does not lead to a retroactive liability (i.e. no interest liability for the past) unless the ruling was obtained in an attempt of tax evasion.³³

The advantages of advance tax rulings and the arguments for their implementation are: 1) promoting clarity and consistency in the application of tax law for both taxpayers and the tax authority; 2) enhancement of certainty of tax treatment of transactions and dealings, thereby also increasing taxpayer/investor confidence in the tax system; 3) encouraging compliance with tax law to ensure the proper functioning of the self-assessment system; 4) strengthening the relationship of trust between taxpayers and the tax authority; 5) and reducing conflicts.³⁴ However, there are also arguments against implementing advance tax rulings due to certain shortcomings, namely: 1) the risk of reducing the tax base if a advance tax ruling is issued incorrectly or inappropriately; 2) the system can lead to 'privatization' of the tax law. This is particularly the case where the ruling regime is used as a means of attracting tax base from other jurisdictions. This is also of concern where there is a substantial cost associated with applying for an advance tax ruling (e.g. because of very detailed application and supporting information requirements), and/or private rulings are not; 3) the system can be costly to administer, as compared to where no such system exists; 4) and the process can

³³ Tax Rulings A Global Practice Guide prepared by the Lex Mundi Tax Group, https://www.acc.com/sites/default/files/resources/vl/membersonly/Article/1449528_1.pdf, pp. 43-44, March 5, 2025.

³⁴ Waerzrggers, C.; Hiller, C., *Introducing an Advance Tax Ruling (ATR) Regime*, Tax Law IMF Technical Note, Vol. 1, 2/2016, p. 3.

take too long for a advance tax ruling to be issued or published, particularly in complex and/or significant matters made public.³⁵

4. ADVANCE TAX RULINGS IN THE TAX LEGISLATION OF THE REPUBLIC OF CROATIA

This chapter will present the institute of advance tax rulings in the Republic of Croatia. Attempts to introduce advance tax rulings into the Croatian tax system can be discussed in the context of regulating the principle of good faith (which was already discussed in the introduction to the paper).

The principle of good faith was first introduced into Croatian tax law in 2001 with the first enactment of the General Tax Act. This Act did not contain provisions that would more precisely define the content of the concept or the criteria for assessing such conduct - bona fide, while at the same time, the subsidiary legal sources that would provide answers to such open questions were equally modest. The new General Tax Act from 2008 hinted at a change in the approach to regulating conduct in good faith by prescribing the adoption of implementing regulations on the manner of applying the legally prescribed principle of tax procedure. This was the main reason for the expectations of the profession regarding the introduction of advance tax rulings, then terminologically defined in the literature as the institute of binding information in taxation. However, an analysis of the subordinate legislation adopted to implement the principle of acting in good faith did not lead to the conclusion that advance tax rulings should be applied in taxation procedures. It could only be determined that it was a failed attempt to regulate the institute of advance tax rulings.³⁶ The use of advance tax rulings as a means with a purpose other than that assigned to them by the system poses a threat to the realization of the principle of legality and thus jeopardizes legal certainty in the area of taxation. The institution of advance tax rulings or written instructions is a good tool for clarifying the application of regulations in individual cases. Its application avoids possible conflict situations between the tax administration and taxpayers. However, the legal significance of such acts must be clearly defined in the system that applies them, as is the case, for example, in the USA. In this sense, the introduction of a similar, legally precisely defined, institute into the taxation system of the Republic of Croatia was certainly beneficial because such an institute makes the procedures of the tax administration and the tax position of

³⁵ *Ibid.*, p. 4.

³⁶ Žunić-Kovačević, *op. cit.* note 10, p. 280. For more information on the history of introducing the institute of advance tax rulings into the Croatian tax system, see: Žunić-Kovačević, *op. cit.* note 10, pp. 280-283.

taxpayers transparent. According to the previous solution, which existed in the Republic of Croatia until the adoption of the Ordinance on Advance Tax Rulings, Correction of Declarations, Statistical Reports and Tax Settlements in 2015 (author's note), the lack of definition of the legal significance of the opinions of the Ministry of Finance caused important questions - for example, can these opinions be successfully used as an argument in administrative proceedings or court proceedings? It was assumed that subjects of tax-legal relations would increasingly seek answers to questions arising from the then status of the institute of rulings. Since, over time, the rulings of the Ministry (public rulings) have become established as an (informal) source of law, based on the fact that taxpayers must take them into account when planning and implementing their private and business activities, the question arose - is there a possibility of challenging them using some legal remedy? The answer is negative. This remedy is not a proposal for a constitutional review, as it can only be raised if the applicant considers that a regulation of a general nature is contrary to the Constitution.³⁷

Arbutina argued that *de lege ferenda* should be changed. He thought that "given the importance that rulings have acquired, they can potentially significantly affect the tax situation of a natural or legal person, thus making the overall legal position of such a person uncertain, so that a way of effective legal control of these opinions should be found or they should be defined as advance tax rulings, with a clear legal status".³⁸

Arbutina also states that, regardless of future developments, an analysis of the then-current place and role of rulings (in 2012, author's note) in the tax system leads to the conclusion that they negatively affect the realization of the principle of the rule of law (i.e. the principle of legality), differently from case to case, but potentially even very significantly. As far as he knew, such opinions issued for individual cases were binding on Tax Administration officials, regardless of possible different interpretations of higher-level regulations that they might give, so it could be concluded that for them they had the significance of binding instructions for resolving such cases. Therefore, they truly acquired the status of a source of sui generis law that even lives its own separate "legal life", creating a de facto legal "recess" (niche) in which, due to the lack of regulation in the field, one opinion, referring to individual cases, often contradicts others referring to similar cases. Such a situation necessarily raises doubts among Tax Administration officials regarding which of the conflicting opinions to apply to a specific case. Of course, such doubts also arise among taxpayers - such an effect of legal uncertainty in a situation where very significant amounts of money may be involved in

³⁷ Arbutina, *op. cit.* note 26, p. 1308.

³⁸ *Ibid.*, p. 1308.

fulfilling a tax obligation calls into question the legality and constitutionality of the operation of the entire tax system.³⁹

Advance tax rulings in the Republic of Croatia have been regulated, since 2016, by the OPZ and the Ordinance on the Implementation of the General Tax Act.⁴⁰ Before that, from July 2015 until April 2017, i.e. until the entry into force of the Ordinance on the Implementation of the General Tax Act of 2017,⁴¹ they were regulated in Articles 2-13 of the Ordinance on Advance Tax Rulings, Correction of Declarations, Statistical Reports and Tax Settlements.⁴²

In accordance with Article 10 of the OPZ,⁴³ the tax authority is authorized to issue an advance tax ruling upon a written request from a taxpayer. A request for issuing an advance tax ruling (hereinafter: the request) may be submitted by a resident or non-resident taxpayer, or by his or her authorized representative or tax advisor. A request may also be submitted by a natural or legal person who has not yet acquired the status of a taxpayer or has not yet registered for the performance of an activity under special regulations, or by his or her authorized representative or tax advisor.⁴⁴ The Tax Administration, Central Office, is responsible for issuing advance tax rulings. Under Article 8 of the Tax Administration Act⁴⁵ the Director of the Tax Administration appoints an Advisory Board for advance tax rulings, which consists of Tax Administration officials. An external associate court expert from the list of permanent court experts from a particular area may also be appointed to the Advisory Body. The advance tax ruling is signed by the Director of the Tax Administration.⁴⁶

³⁹ *Ibid.*, p. 1309.

⁴⁰ Ordinance on the Implementation of the General Tax Act, Official Gazette, No. 45/19, 35/20, 43/20, 50/20, 70/20, 74/20, 103/20, 114/20, 144/20, 2/21, 26/21, 43/21, 106/21, 144/21, 156/22, 16/25 (hereinafter: *Ordinance*).

⁴¹ See articles 6-16 of the Ordinance on the Implementation of the General Tax Act of 2017, Official Gazette, No. 30/17.

⁴² Ordinance on Advance Tax Rulings, Correction of Declarations, Statistical Reports and Tax Settlements, Official Gazette, No. 78/15, 16/16.

⁴³ The tax authority is authorised to provide, upon written request from the taxpayer, a binding opinion on the tax treatment of future and intended transactions, i.e. business events and activities of the taxpayer. The costs of issuing binding opinions are to be borne by the taxpayer in their entirety. The Minister of Finance shall determine the application, deadlines and costs for issuing binding opinions in an ordinance. - Translation of Article 10, paragraphs 1-3, taken from the website of the Tax Administration of the Republic of Croatia, https://www.porezna-uprava.hr/en_propisi/_layouts/15/in2.vuk2019.sp.propisi.intranet/propisi.aspx?id=pro136, March 8, 2025.

⁴⁴ Article 6 of the Ordinance.

⁴⁵ Tax Administration Act, Official Gazette, No. 115/16, 98/19, 155/23, 152/24.

⁴⁶ Article 7 of the Ordinance.

The request referred to in Article 6 of the Ordinance shall in particular contain: 1. the name and surname/title of the applicant, personal identification number (hereinafter: OIB) or tax number, passport number if the applicant has not been assigned an OIB by a special law, the VAT ID number of the taxpayer if he/she has one; 2. details of the authorized representative or tax advisor who is involved in the procedure for issuing a advance tax ruling by the taxpayer, OIB and number of the tax advisor's work permit; 3. a detailed description of the planned (intended) business transactions and the business and financial consequences of the transaction, business event or activity; 4. specific questions and proposed answers regarding relevant legal provisions; 5. a statement by the applicant as to whether a decision-making procedure regarding legal remedies or a court proceeding related to the request for an advance tax ruling in which the applicant participates as a party is in progress; 6. documents or documentation relating to the request for an advance tax ruling or to which the applicant refers; 7. all advance tax rulings from the competent tax authorities of other countries on the same issue or whether a request for an advance tax ruling has been made on the same issue before the tax authorities of another country with related persons. The Tax Administration may also request other documentation from the applicant necessary for the issuance of an advance tax ruling.⁴⁷

The Tax Administration may invite the applicant or his/her authorized representative or tax advisor to hold a preliminary interview.⁴⁸ An advance tax ruling must be marked as such. An advance tax ruling must contain the questions asked, the answer, the facts, and the analysis of the presented case or transaction, business event, or activity.⁴⁹ Following Article 14 of the Ordinance, an advance tax ruling has a binding effect on the Tax Administration.

An advance tax ruling is valid from the date of delivery to the applicant. An advance tax ruling ceases to be valid if: 1. it is based on provisions of regulations that have been amended or have ceased to be valid, based on which the opinion was issued; 2. there have been changes in circumstances that have a significant impact on the advance tax ruling; 3. it is determined that the advance tax ruling is based on false or incomplete information.⁵⁰

⁴⁷ Article 8 of the Ordinance.

⁴⁸ Article 10, paragraph 1 of the Ordinance.

⁴⁹ Article 13, paragraphs 4 and 5 of the Ordinance.

⁵⁰ Article 15 of the Ordinance.

5. DOES AN ADVANCE TAX RULING HAVE THE CHARACTERISTICS OF AN ADMINISTRATIVE ACT IN THE TAX LEGISLATION OF THE REPUBLIC OF CROATIA?

Since an administrative act is the most important act of administration, and mandatory opinions in some legal systems have the character of an administrative act, this chapter will briefly present its characteristics.

When defining the concept of an administrative act, different approaches to interpreting its essential properties have led to the emergence of many different definitions in theory. All these different understandings of the substantive and formal qualities of an administrative act carry within them some characteristics that appear as common features more or less in all definitions. The term "administrative act" (French: *acte administratif*) originated in France at the beginning of the nineteenth century. Its emergence should be seen as a product of the time marked by the process of bringing administration under the law and establishing the principle of legality of administration. As a product of a certain time in the development of modern administration, the administrative act becomes its fundamental instrument by which the administration now, in its basic activity, applies a legal rule to a specific case. The administrative act still arouses the interest of theory, especially the theory of administrative law, today. This interest is particularly pronounced in Germany and Austria, which are countries with exceptionally developed administrative law. French administrative law theory is also of great interest, although its approach to the general problem of administrative acts is somewhat narrower than that which exists in Germany and Austria. However, this is a consequence of certain circumstances characteristic of the organization and development of administrative law in France. The fact that the French theory of administrative law in the domain of the administrative act is too burdened by the fact that the administrative act is the object of an administrative court lawsuit is particularly significant, so the analysis of its characteristics is primarily based on that aspect, which puts its other properties in the background.⁵¹

The essential characteristics of an administrative act in contrast to other legal acts and activities are the following: its concreteness; its authoritativeness; its direct legal consequences (the concreteness of the administrative act); and its author.⁵²

⁵¹ Borković, I., *Upravno pravo*, Narodne novine, Zagreb, 2002, pp. 357-358.

⁵² Ivančević, V., *Institucije upravnog prava, knjiga I.*, Pravni fakultet u Zagrebu, Zagreb, 1983, p. 234.

The authoritativeness of an administrative act is understood to mean that it is the unilaterally expressed will of its author sanctioned by the use of coercion in the event of the involuntary execution of the act by the addressee. It is a commanding, prohibiting, and substantively similar form of executing the will of the author of the administrative act who stands in an administrative-legal relationship with the addressee, but the addressee is subordinate to it.⁵³ The authoritativeness of an administrative act is connected to its unilaterality. An administrative act is always unilateral. The unilaterality of an administrative act is manifested in the circumstance that the administrative act itself, its content, as well as its legal effect arise as a consequence of the expressed will of one subject, namely the unilateral author.⁵⁴ Furthermore, a characteristic of an administrative act is that it must produce direct (concrete) legal effects.⁵⁵ This immediacy (concreteness) of an administrative act goes in two directions. According to the subject matter being decided, i.e. the specific administrative matter, and according to the subjects whose rights and obligations are being decided by the administrative act (the specific addressees of the act). It is characteristic of an administrative act that it has a legal effect, i.e. that it produces a direct legal effect. This is the most essential feature of an administrative act because an administrative act is passed to achieve a certain legal effect. Therefore, an authoritative statement in the form of an administrative act leads to the fact that a legal relationship is: a) established, changed, or terminated, or b) established. In both cases, we are talking about the legal effect caused by the administrative act. The difference is that in the first case, the legal effect of the administrative act is constitutive, while in the second case, it is declaratory.⁵⁶ The legal effect of an administrative act is directed primarily towards its addressee, i.e. the party whose rights and obligations are decided by the administrative act itself. However, an administrative act also acts toward its issuer, and here, as with the act's effect on the party, we speak of its direct effect.⁵⁷ In the legislation of the Republic of Croatia, the Administrative Disputes Act⁵⁸ in Article 3, paragraph 1, item 1 states that, among other things, the subject of an administrative dispute is: the assessment of the legality of an individual decision by which a public body⁵⁹ has decided on the right, obligation or legal interest of a party in an administrative matter (administrative act) against which it is not permitted to file a regular legal remedy. In the same way, the 2010 Administrative

⁵³ *Ibid.*, p. 237.

⁵⁴ Borković, *op. cit.* note 51, p. 361.

⁵⁵ Ivančević, *op. cit.* note 52, p. 246.

⁵⁶ Borković, *op. cit.* note 51, p. 361.

⁵⁷ *Ibid.*, p. 362.

⁵⁸ Administrative Disputes Act, Official Gazette, No. 36/24 (hereinafter: ZUS).

⁵⁹ Under Article 1 of the General Administrative Procedure Act (Official Gazette, No. 47/09, 110/21, hereinafter: ZUP), public law bodies are: state administration bodies and other state bodies, bodies of local and regional self-government units, and legal entities with public authority.

Disputes Act indirectly defined an administrative act, following the logic of the characteristics of an administrative act, which is defined as an authoritative decision to cause a direct legal effect in the rights and duties of natural and collective persons for a specific case in the field of administrative activity.⁶⁰ Therefore, an administrative act is a decision by which a public law body decides on the right, obligation, or legal interest of a party in a specific administrative matter.⁶¹

From the above characteristics of an administrative act, it is evident that advance tax rulings do not have the character of an administrative act. Namely, advance tax rulings do not decide on taxpayers' rights and obligations, nor do taxpayers have the possibility of filing a legal remedy or other means of legal protection against them.

6. LIABILITY OF THE REPUBLIC OF CROATIA FOR DAMAGES CAUSED BY ISSUING AN ILLEGAL ADVANCE TAX RULING

The bases of non-contractual liability for damage are generally set out in the Civil Obligations Act.⁶² However, the ZOO does not list general assumptions of liability for damage but rather states that liability for damage is based on the principle of presumed fault, that ordinary negligence is presumed, and that liability for damage caused by a dangerous object or activity and in other cases provided for by law is imposed regardless of fault. In legal theory, there is no dispute that the scope and assumptions of liability for damage are the harmful action of the harmdoer, damage, causal link, illegality, and the existence of subjects of the contractual relationship of liability for damage, namely the injured party, the harmdoer, and the responsible person. If it is a matter of liability based on fault, the existence of fault is required, which is divided into intent and negligence.⁶³ Article 14 of the

⁶⁰ Britvić-Vetma, B.; Pičuljan, Z., *Pravno uređenje i glavna obilježja upravnog postupka u Republici Hrvatskoj*, Elektronički zbornik radova Veleučilišta u Šibeniku, Vol. 10, 3-4/2016, p. 39.

⁶¹ According to Article 2 of the ZUP, an administrative matter is any matter in which a public law body decides in administrative proceedings on the rights, obligations, or legal interests of a natural or legal person or other parties by directly applying laws, other regulations and general acts governing the relevant administrative area. Any matter that is defined by law as an administrative matter is also considered an administrative matter.

⁶² Civil obligations Act, Official Gazette, No. 35/01, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, 155/23 (hereinafter: ZOO).

⁶³ Jug, J.; Vezmar-Barlek, I., *Naknada štete u upravnom sporu*, Zbornik radova Pravnog fakulteta u Splitu, Vol. 50, 2/2013, p. 443.

State Administration System Act⁶⁴ stipulates that the Republic of Croatia shall compensate for any damage incurred by a natural or legal person due to the unlawful or improper performance of state administration duties. Article 118, paragraph 1 of the ZUS states that the court shall decide on compensation for damage and the return of property within the scope of the claim.

For the liability of a public legal body to exist, all general and special prerequisites for that special type of liability for damage must be met. Special assumptions would be that the harmful action was committed in a specific administrative case, that the injured party was a party in that procedure and the claimant in the administrative dispute, and that it must be irregular or illegal work. Since ZUS does not prescribe whether it is an objective or subjective liability, the question arises as to what type of liability is involved in the case of compensation for damages. In the previous judicial practice that considered the issue of illegal and irregular work, the position was taken that in the case of unlawful and irregular work, there must also be a will or consent to damage the rights or interests of the party by such action. Such case law refers to the work of public law bodies and courts or judges. Given this position, which essentially amounted to the interpretation that a certain omission or action contrary to the law, other regulation, or general act, and a certain act or omission contrary to the usual or prescribed manner of performing an activity, constitutes illegal or irregular work only if, in addition to the above, there is a will or consent to cause damage to another, it can be concluded that the principle of liability based on fault was accepted. The will and consent of the harm-doer to cause damage was one of the assumptions that were interpreted depending on all the specific circumstances of the case. This would mean that in the past period, the subjective attitude of the harmdoer towards causing damage, whether it was intentional or careless, was one of the assumptions of illegal and improper work, i.e. that the principle of subjective liability based on fault was accepted.⁶⁵

However, the Constitutional Court issued a decision stating that "...the ZSDU establishes a system of objective liability of the Republic of Croatia for damage due to the unlawful or improper operation of state and public administration bodies, which is based on the principle of causation (*causa*), and not on the principle of fault (*culpa*). The primary and direct liability of the state for damage due to the unlawful or improper operation of state and public administration bodies is a special expression of the principle of the rule of law, one of the highest values

⁶⁴ State Administration System Act, Official Gazette, No. 66/19, 155/23 (hereinafter: ZSDU).

⁶⁵ Jug, Vezmar-Barlek, *op. cit.* note 63, p. 445.

of the constitutional order of the Republic of Croatia, established in Article 3 of the Constitution."^{66,67}

Regarding illegal work in the event of erroneous legal positions, legal opinions, or decisions of the state and public administration, Jug and Vezmar-Barlek essentially point out that the state and public administration act according to the principles of vertical supremacy, in a system in which lower administrative bodies are obliged to act by the mandatory instructions of a higher body, and within one administrative body, officials act according to the principle of subordination concerning the head of the body. They further state that "... State bodies act from a public law perspective, i.e. as *iure imperii*, even when it is not a bilateral legal relationship and it would be unacceptable for the party opposing the state body to bear any potential damage if it were an incorrect legal position and if a certain decision were to be later annulled. Therefore, the aforementioned decision of the Constitutional Court of the Republic of Croatia, which also relates to the work of state bodies, is also applicable to any illegal work of state administration bodies that would relate to both the incorrect application of law and an incorrect legal position".⁶⁸

The Supreme Court of the Republic of Croatia stated in its decision that for the existence of state liability, three prerequisites must be cumulatively met: 1. unlawful or improper operation of a state administration body, 2. existence of damage that has occurred to the claimant, 3. causal link between the unlawful or improper operation of a state administration body and the damage incurred, whereby the damage incurred must be a direct consequence of the unlawful or improper operation of a state administration body, i.e. that the damage would not have occurred if such operation had not occurred.⁶⁹ In the same decision, it also points out that for state liability, it is not decisive at which level of the state administration body the harmful act occurred, as the Constitutional Court of the Republic of Croatia also points out in its decision.⁷⁰

In France, about the issue of fault as a prerequisite for state liability for damage, the general position is that for state liability it is sufficient that the damage was

⁶⁶ Decision of the Constitutional Court of the Republic of Croatia, case no. U-III-2314/05 of 21 February 2007.

⁶⁷ See also: Bukovac-Puvača, M.; Žunić-Kovačević, N., *Problem temelja odgovornosti države za štetu prouzročenu nezakonitim i nepravilnim radom njenih tijela*, Zbornik radova Pravnog fakulteta u Rijeci, Vol. 32, 1/2011, pp. 271-272.

⁶⁸ Jug, Vezmar-Barlek, *op. cit.* note 63, p. 449.

⁶⁹ Decision of the Supreme Court of the Republic of Croatia, case no. Rev-1726/12 of 11 January 2017.

⁷⁰ See Decision of the Constitutional Court of the Republic of Croatia, case no. U-IIIB-1373/2009 of 7 July 2009.

caused by a breach of official duty. What is considered a breach of official duty depends on the nature of the duty and the circumstances of the specific case, and in any case, it is an inappropriate, imperfect performance of duty. A specific official doesn't need to be at fault, but rather the service is generally at fault. Case law on fault generally accepts the principles of civil law. Therefore, simple negligence is generally sufficient for liability. Gross negligence (*faute lourde*) is required as a presumption of liability in cases where the performance of official duties involves great difficulties or dangers (police, tax authorities, supervisory and regulatory authorities), and when the authorities have discretionary powers in performing them. The state may also be held liable based on objective liability, which in French administrative law is based on risk and the principle of equality in the bearing of public burdens. It is based on the idea that the state acts in the interest of the entire community, and if this action causes disproportionate damage to some citizens, it must be compensated so that they do not have to bear a greater burden.⁷¹

In Germany, an official who intentionally or negligently violates his official duty is obliged to compensate third parties for any damage caused by such violation. If the violation was caused by the official's negligence, he will only be liable if the injured party cannot obtain compensation from the other party. This provision, although it prescribes the liability of officials, is applied to determine the liability of the state, and case law considers the state to be primarily liable instead of the official who cannot be directly liable to a third party, but owes the state the amount paid only if the damage was caused intentionally or through gross negligence. The state replaces the official with the injured party, and its liability is assessed according to the assumptions prescribed for his liability: if the damage was committed in the performance of official duties (*Amtspflichten*), the violated interest falls within the circle of interests protected by the violated legal norm, the official acted negligently, i.e. intentionally or negligently, the injured party cannot obtain compensation from the other party and has failed to use other legal means for his protection. The liability of the state for damage is decided by civil courts. It is pointed out that fault as a prerequisite for state liability is that, since the burden of liability has been transferred from the official to the state, it has much less justification than it had at the time of the adoption of the BGB. Case law has long shown a tendency towards a strict interpretation of the standard of due care so that sometimes this liability becomes almost identical to objective liability. In Germany, too, the state can be held liable based on objective responsibility, based on the customary rule on the so-called special victim (*Sonderopfer*), according to

⁷¹ Bukovac-Puvača, Žunić-Kovačević, *op. cit.* note 67, pp. 273-274.

which an individual who bears a special burden for the benefit of the general interest has the right to fair compensation.⁷²

The Republic of Croatia is liable for damage incurred by a taxpayer who acts (or fails to act) by the advance tax ruling opinion issued. This is because, if a taxpayer acts by the ruling issued, he may encounter a situation where the first-instance and second-instance tax authorities do not act following the ruling of the Central Office of the Tax Administration, even though it binds the Tax Administration. This was also evident in one tax procedure when the tax authorities did not act following the advance tax ruling of the Central Office.⁷³ In another situation, when the taxpayer would not act by the issued ruling because he believes it is unfavorable for him⁷⁴ and illegal, but in the way he considers it is legal. However, in this situation, the first-instance and second-instance tax authorities act following the ruling of the Central Office and issue a decision that becomes final in the tax procedure and is unfavorable for the taxpayer. The taxpayer must pay the tax liability after the final decision becomes enforceable. If the tax decision (administrative act) is unlawful, the taxpayer incurs damage.

If the courts, when controlling the tax administration in response to a taxpayer's lawsuit, determine the illegality of an administrative act (tax ruling), they are obliged to award the taxpayer compensation for damages under Article 118, paragraph 1 of the ZUS, because the state administration acted following the advance tax ruling of a higher body that incorrectly presented a legal position and accordingly incorrectly applied the law.

The administrative court will decide on compensation for damages in an administrative dispute at the request of the taxpayer (claimant) when the claimant requests compensation for damages in addition to the main claim. If the claimant requests compensation for damages in addition to the main claim for annulment of an unlawful tax decision (administrative act), the court in the administrative dispute must also consider the request for compensation for damages and decide on that request in a judgment.⁷⁵ This is because the judge in an administrative dispute with full jurisdiction, which is implemented in Croatian law, has extended powers that allow him not only to cancel the act but also to make other decisions about the administration. In a full jurisdiction dispute, the judge has wider powers

⁷² *Ibid.*, pp. 274-275.

⁷³ Arbutina, H., *Croatia: The residence of individuals; the income from dependant personal services; director's fee*, Eds: E. Kemmeren et al., Tax Treaty Case Law around the Globe 2022, IBFD, Amsterdam/Linde, 2023, pp. 265-274.

⁷⁴ It is illogical that he should submit legal remedies favorable to him.

⁷⁵ Đerđa, D.; Šikić, M., *Komentar Zakona o upravnim sporovima*, Novi informator, Zagreb, 2012, p. 258.

than in a legality dispute, and a full jurisdiction dispute manifests itself as a civil dispute. A judge with full jurisdiction, such as a judge in a legality dispute, can, for example, set aside the decision and declare the contract illegal. He can also, and only he has these powers, award damages and a monetary amount.⁷⁶

7. CONCLUSION

An advance tax ruling is a formal decision provided by a tax authority, clarifying how specific tax laws and regulations apply to an individual taxpayer or a corporate entity in particular circumstances. Often sought before a significant financial transaction or investment, advance tax rulings offer legal certainty by outlining the tax implications and obligations in advance. Such rulings are pivotal for multinational corporations, tax professionals, revenue authorities, and consultants, helping to ensure compliance and to manage potential tax risks proactively.⁷⁷

Advance tax rulings are particularly useful when: a) the law is unclear and there is more than one possible interpretation, b) new legislation applies to the transaction, c) the transaction is novel, sensitive, or controversial, d) significant issues arise or may have a wide impact and e) the arrangement is a complex financing transaction.⁷⁸

The tax authority in the Republic of Croatia is authorized to provide, upon written request from the taxpayer, an advance tax ruling on the tax treatment of future and intended transactions, i.e. business events and activities of the taxpayer.

Since an advance tax ruling does not have the character of an administrative act in the Republic of Croatia, and the authors believe that it should not have, given its content and legal nature, an administrative dispute cannot be initiated against it before the Administrative Courts. Consequently, to avoid illegality, the ZUS should introduce the possibility that the tax authority deciding in the first-instance tax procedure and the taxpayer may request the judicial authority to review the legality of the advance tax ruling within 30 days from its issuance if they believe that the advance tax ruling of the Central Tax Administration Office is illegal. This would raise the legal certainty of the taxpayer to a higher level, and the obligation

⁷⁶ Britvić-Vetma, B., *Spor pune jurisdikcije prema Zakonu o upravnim sporovima iz 2010.*, Zbornik radova Pravnog fakulteta u Rijeci, Vol. 32, 1/2011, pp. 390-391.

⁷⁷ Tax Ruling - Academy of Tax Law, <https://academyoftaxlaw.com/glossary/tax-ruling/>, March 10, 2025.

⁷⁸ What is a binding ruling?, <https://www.taxtechnical.ird.govt.nz/apply-for/apply-for-a-ruling/what-is-a-binding-ruling>, March 10, 2025.

to compensate for damage by the Republic of Croatia would be reduced. This type of administrative dispute should be prescribed as an urgent procedure. Consequently, all terms should be shorter, and the second-instance court should issue a decision on the appeal within four months from the date of initiation of the administrative dispute.

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