

Advance Rulings as a Tax Transparency Tool: Trends from the EU to Slovenia

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Abstract: Tax transparency is a growing concept, incorporating legal, economic, IT related, administrative and similar dimensions. Consequently, various legal and other tools emerge in individual countries and the European Union (EU) alike, to enhance transparency as such but more importantly also lawfulness, efficiency and accountability in the taxation system. Nevertheless, law enforcement must contribute to these goals or an implementation gap is occurring. In this context, the main aim of the paper is to examine the theoretical framework, normative grounds at the EU and national scales in Slovenia, as well as empirical data about one of the most promising tax transparency instruments, i.e. (binding) advance ruling. Advance ruling is an act issued by tax authority to define the future tax obligation should an individual taxpayer execute a planned taxable activity. It represents a form of a guarantee act, which is usually a mixed type according to traditional administrative-legal acts in central Europe. However, the analyses' results show that this tool is highly underemployed compared to its potentials and as characteristic for Western countries, hence the authors call for a more debureaucratized approach to its usage in Eastern Europe as well, also in a anonymised form for any taxpayer dealing with an equal activity.

Points for Practitioners: This papers provides an analysis of advance ruling in one of EU Member States. It established that legal regulation in Slovenia is not serving the purpose of comparably understood institute and its goals in majority of other countries. Through theoretical, comparative and especially empirical insights (e.g. statistical overview and case law analysis), practitioners from policy making authorities and tax services in other countries can assess their systems in comparison to Slovenian one. Moreover, any national regulation and its enforcement must be improved if the research findings show that current system is not meeting the aim of advance ruling in the framework of tax transparency.

Key words: tax procedures, legal certainty, tax transparency, advance rulings

1. Introduction

Administrative relations, which include tax and customs matters, have often been the main subject of attention and change in recent years, both in general and in terms of administrative procedure regulation. Due to the growing complexity and scope of said relations, where authorities intervene in relation to private natural and legal persons with different goals, the administrative procedure arrangements and their implementation are also changing, among other to be more transparent (Watson, 2016, Basaran Yavaslar and Hey, 2019). This is due to several factors in tax proceedings; among the priorities are this pursuit of globalisation of business at the level of the European Union (EU), simplification and elimination of administrative barriers, equality between competitors, etc. Transparency is also a factor of tax compliance. Tax administrations are organised differently in individual countries, though, they share some common principles and rules of operation, mostly deriving from EU directives and their transposition into national law (more in Pistone et al., 2020).

Any (administrative and) legal relationship, and even more so, the government-imposed burdens and relations with market entities must be legally predictable in a democratic state. International and constitutional principles are applicable also in any EU MS (Galletta et al., 2015). Legal provisions and certainty are, inter alia, in the direct interest of market players, although this sometimes entailing administrative burdens on them. Among the objectives and the corresponding measures of fiscal procedural law reforms are both proportionately institutes that ensure the protection of the public good, as well as solutions that more strongly protect the rights and legal interests of taxpayers.

Therefore, tax procedures are sometimes simplified and regulated even more often after such reforms. The tax procedure is also one of the special administrative procedures in Europe (Pistone at al., 2020). This is the case following the objectives of legal certainty and well-founded expectations, the most legally detailed administrative relationship, where a series of regulations applies only in respect of procedure and at the legal level under the Tax

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Procedure Act (TPA, abbreviation in Slovenian: ZDavP-2, adopted in 2006) through so-called five subsidiarity (more in Jerovšek and Kovač, 2008).

As a rule, the characteristics of tax procedures, such as Europeanisation, complexity and legal determination, lead to ambiguities and different interpretations. Among other things, the abundance of taxpayers (in the Republic of Slovenia, around 1.5 million prefilled personal income tax declarations are issued at first instance only) and a deconcentrated organisation of the competent authorities is issued without income tax calculations. As a rule, acts on tax collection are enforceable immediately upon delivery; yet any individual act can be appealed before the Ministry of Finance. Moreover, after completeness in administrative procedure, taxpayers can dispute decisions before the Administrative Court and further before the Supreme and Constitutional Courts. In Slovenia, the tax procedures are mainly carried out by the Financial Administration of the Republic of Slovenia (FARS) and at the second stage by the Ministry of Finance (MF). FARS operates at regional level with 15 regional and partially specialised financial offices, and the unity of work is sought by the Special and in particular the General Financial Office.

In order to overcome these difficulties, the Slovenian legislature opted for two completely new institutes by introducing the current TPA in 2006 in force since 1 January 2007. These are mandatory instructions for a unified interpretation of the rules and advance rulings as provided for in Articles 13 and 14 of TPA. It is an expression of a number of fundamental principles in tax procedures, in particular the principles of legality and certainty, knowledge and assistance (Article 4 and 7 of TPA). Within the framework of these principles, taxpayers have the right to information, including specific acts intended to reduce legal uncertainty and inequality of interpretation. Moreover, the act amendment at the end of 2015, i.e. amendment TPA-I, has been slightly redefined in this part on mandatory instructions, and advance pricing arrangements are added as a cornerstone in tax procedures (advance pricing arrangements, APA, 14.a-14.g Article of TPA).

However, not all these innovations, although entirely new legal instruments have been considered, have been weighed in theory, so questions are being raised about their legal nature and regulation is being corrected as to their ad hoc categorisation. The dilemmas are several. For example, it is an open issue, which of these acts are the source of law, whether they have an effect *inter partes* or *erga omnes*, even if they are individual acts, and what is the form of judicial protection of those liable for these acts. Since each act has its own characteristics, here we focus on advance ruling.

The purpose of this paper is to analyse the legislator's objectives at EU and national levels with regard to advance rulings. Further, an examination of administrative and case law in Slovenia is provided, together with its assessment to the arrangements in selected EU countries. In sum, a conclusion is established that the legal nature of the advance ruling is uncertain, so its regulations should *de lege ferenda* be improved to avoid the current ambiguities. Only a comprehensive theoretical and practical interpretation of the legal nature of a given act, especially if it deviates from the established categorisations of regulations and (administrative) decisions, can ensure the effective implementation of the law and the protection of legally relevant interests in the proceedings.

2. Methodology and Framework of Advance Rulings

2.1 Methodological outline

In order to analyse the institute of advance rulings, several complementary research methods were employed, albeit all at a qualitative levels. Firstly, the insights of theoretical and comparative state of the art on the field is provided. Secondly, in-depth normative analysis of legal regulation is carried out. Namely, tax sector regulation is highly detailed comparatively since it defines relations that usually impose burdens among others to businesses as taxpayers. Regulation should therefore serve as a predictable and proportionate tool to guarantee public revenues and simultaneously prevent tax evasion on one hand and the abuse of power by the tax authority on the other.

With regard to empirical views, three approaches were applied, initially with an overview of various advance rulings in tax and customs areas were analysed through the annual report of tax service to show what the extent of usage and the trends is over years. Further, some cases from case-law were elaborated to see what the problems are hereby. Finally yet importantly, more or less subjective opinions on advance rulings were gained by interviewing FARS and tax advisors in Slovenia to compare both sides on applicability, usefulness and efficiency of advance ruling on a national scale in practices.

2.2 Basic theory and legal regulation in the EU

The main purpose of taxation is to collect revenues or, to put it more broadly, to finance the government and welfare state (Watson, 2016, Kovač and Jovanović, 2017). However, this goal is multifaceted since taxes have economic, social and political functions. Speaking in terms of economy, the most important are the principles of neutrality and stability, yet in social, political and administrative terms equally crucial are the allocative, redistributive and developmental functions. The purpose of taxation shall not be raising money only for the sake of it, but rather the participation of authorities (state, municipality or the EU) in the profits and surpluses of private incomes and assets. Therefore, legal regulation must enable tax liability fulfilment in different ways. Primarily, it should be simple enough to run effective tax policies and not put unnecessarily burden to neither taxpayers nor the tax administration. Tax law, with the overall harmonisation and rule of reason of tax authorities, activities, is in this sense of growing importance at the European level to ensure the rule of law, efficiency and good administration (Lang, 2010, Kovač and Bileišis, 2017).

Advance ruling is one of the tax instruments closely related to several of the fundamental principles of administrative affairs in general and tax procedures in particular, such as legality, legal certainty, transparency, equality, efficiency, etc. (Romano, 2002, Kovač, 2012, Galetta et al., 2015, pp. 2, 17). Consequently, many countries have enacted such instrument for various reasons and in different forms. These legal arrangements differ by legal source as well as by content and legal nature of advance ruling (see for instance for the US, the Netherlands, Germany, Czech Republic, Finland, France, Spain, Hungary or Croatia since 2015; more in van de Velde, 2015, Pistone et al., 2020).

Nevertheless, in the majority of respective countries, the reasons for the argumentation of this instrument originate from the need to inform the taxpayers, provide legal predictability and non-discrimination in tax matters, and raise the level of trust into law and public administration. Slovenia followed the trends in the field by adopting the Tax Procedure Act (TPA) in 2006 (more on the Act as a whole and regarding specific provisions in Jerovšek, Simič, Škof, 2008). Slovenia, as one other new EU MS from CEE follows this path, based on its legal German-Austrian and post-socialist heritage, its independence since 1991, its full EU membership since 2004, and the economic crisis and other key milestones of political and administrative development (Kovač and Bileišis, 2017, pp. 302ff). Slovenia adopted many new legislative acts because of EU harmonisation, as goes for most of the tax related regulations (Jerovšek, Simič, Škof, 2008, p. 6). Furthermore, it is important not to regulate a principle or a right just on paper but to also regulate its effective protection (Kovač, 2012, p. 401).

The purpose of taxation seems clear, i.e. to obtain public funds for common societal needs as defined by existing EU and Member States legislation. However, the seemingly straightforward goal is in fact multifaceted, as the functions of taxes are economic, social and political. For example, if the principle of neutrality or stability is important for economics, it is equally important to understand the allocation, redistributive and developmental function of fiscal policy. This is precisely why legal predictability in tax procedures is even more important. The rule of reason further emphasises the theory through stricter legality in tax matters, where the tax liability cannot be determined by a lower rule than the law (Article 147 of the Constitution of the Republic of Slovenia). Already slightly ambiguous provisions must be interpreted in favour of the taxable person, since the purpose of public levies is not determined and consumption is independent of the will and information of the individual party. By the nature of the case, taxes usually affect the legal or economic situation of the taxpayer (more in Jerovšek and Kovač, 2008, p. 52ff, Podlipnik in Avbelj, 2019, commentary to Article 147, Galetta et al., 2015, p. 17ff).

Instruments for the development of information and the specificity of tax legislation are also an expression of the traditional characteristics of a good tax system, such as fairness, proportionality, transparency, etc. The principle of legal certainty is one of the fundamentals in administrative law throughout the European area. In addition, according to theory and jurisprudence at both national and EU level, it represents a part of the rule of law and legality, according to which the rules should be clear and precise, that they are predictable and allow the principles of EU law to be put into effect; this is efficiency and equality. The Court of Justice of the EU's emphasis is, inter alia, on restrictive and proportionate interference with a person's legal position if a public decision is different from the acquired rights and legitimate expectations.

One of the instruments in the direction of those principles is advance ruling, as all EU countries know, with a view to raising the security of taxpayers in the face of tax liabilities. The arrangements are convergent, but different, both in terms of legal source and content and in the legal nature of (tax) advance ruling. They share fundamental principles such as legality, good faith (*bona fidae*), and the differences begin with the competent issuer, the type of procedure,

the degree of commitment and the possibility of legal remedies (see van de Velde, 2015, Lang et al., 2010, Romano, 2002³). In some cases, this information is issued based on legal regulation (as in the Republic of Slovenia) and elsewhere bypassed formalisation, but because of general principles, implementing management, and organisational rules. The latter solution does not mean a lower level of legal certainty, as it usually occurs in legal orders that are generally less rigorously regulated, for example in the UK and the Netherlands, while Slovenia, for instance, seems closer to the Germanic and Austrian approach. Furthermore, they provide almost only the option of that act, but elsewhere they define in detail the conditions and limitations of its issue or the effect of the undertaking. In some cases, this information can only be challenged by administrative means, elsewhere only before a court (for example, Hungary through renovation in 2014). The third solution is a successive administrative and judicial (e.g. in Austria or Finland since 1940), in the fourth there is no legal remedy at all (predominantly in Anglo-Saxon environment) or even unclear what is with legal protection, for example, in Belgium, Croatia or mostly in CEE.

Advance ruling is regulated by individual countries by the same argument, i.e. to increase the level of information and legal certainty or determination in tax relationships and to raise confidence in law and public administration. However, it is expressly referred to in the implementing act as a supplementary taxation act, that is to say, as a kind of regulation, and others expressly as an administrative decision. The latter solution was adopted, for example, in Finland, mainly due to the consequent guarantee of judicial protection for taxpayers. As one of the most advanced countries in the field of advance ruling, the Netherlands is usually highlighted, a model for Slovenian law as well. As an exemplary country, it has very few restrictions (for example, it also issues advance ruling regarding transfer pricing, which is explicitly excluded in several countries, including Slovenia). From the point of view of the legal nature of the information, it is separating the general and individual, with the emphasis on the first ones, in addition to the objective of information, also ensuring equality between taxpayers in the same situations. Moreover, individual information may be published and categorised by anonymization into a general standard. In Austria, which is usually the most comparable to us, even though advance ruling has been introduced for four years later than the Republic of Slovenia. It is issued as an "informative decision" and is not published as a general nor individual administrative act, and the reasons for the non-application and of the elimination are quite comparable to other administrative decisions. In Hungary, where advance ruling was introduced in 1996, it is referred to in an analogous manner as a provisional tax assessment.

In sum, with regard to tax advance rulings, EU law does not have a uniform regime, although comparative analysts (e.g. Romano, van Velde, and Pistone) are in favour of this, in particular a uniform procedure and legal protection. However, the EU is striving for so-called fiscal transparency at the level of national data collection. This is shown in particular by the recent amendment and adoption of the extended Council Directive (EU) 2015/2376 (OJ L 331/1, 18 December 2015) instead of the previous Directive 2011/16 / EU on the mandatory automatic exchange of information in the field of taxation. The new arrangement covers tax information and advance pricing agreements, effective from 1 January 2017. In addition, all EU MS have Common Binding Tariff Information (BTI) on the classification of certain goods in the Customs Tariff nomenclature and Binding Origin Information (BOI). For both, the legal nature of the administrative decision is explicitly determined by the Union Customs Code (UCC, OJ L 269), and delegated regulation of Commission, Nos. 2015/2446 and 2015/2447, as an individual administrative act. This review shows that the legal nature of a particular act, despite the same goal, convergence of solutions and even the same title of the act, is (may be) different depending on the legal order and tradition at the state level, so the institute in each country regime, theory, positive law, administrative and judicial practice (German *kopieren, nicht kopieren*).

3. Advance Rulings in National Legislation

In Slovenia, tax advance ruling was enacted in 2006, so that the institute could be used since 2007. The purpose, as follows from the explanation of the TPA proposal, was to increase the legal security of taxpayers and help them meet their obligations. Advance ruling should be the same as in the EU institute, which provides the taxpayer with legal certainty regarding future transactions and helps him to decide what obligations will arise from future operations. With regard to the tax treatment of his intended transactions or intended business events, the taxpayer may submit a request for the issuance of written advance ruling on the tax treatment of these transactions or events. The content of the advance ruling will be, among other things, the basis on which the taxpayer will decide whether to actually carry out

³ Romano, for instance, states the origin of this instrument as early as Roman times, and in today's sense after World War II (ibid., pp. 13, 49).

the intended transactions or business events. This is especially important for investors, who also assess the attractiveness of a certain economic environment through the aspect of legal certainty in the field of tax legislation.

According to the qualification of advance ruling in law, this is understood primarily as a supplement to legality by placing it in the introductory provisions and immediately after the basic principles. Therefore, it is explained in theory that advance ruling (together with instructions for mandatory interpretation and prior pricing agreements) constitutes an additional legal source. Namely, it is an act, which obliges both the tax authority and the taxpayer in concrete taxation, even though it is not a tax regulation. It therefore acts as a complementary legal basis in addition to tax regulations, although by serving on the taxpayer it has the effect of an individual administrative act. However, the subject of the procedure of issuing advance ruling is not (yet) deciding on the right or obligation of the client, so this is not a special tax procedure, as is the case when issuing an assessment decision (Jerovšek et al., 2008, Kovač, 2012, 2016, 2018). Although the law stipulates that advance ruling is binding in a specific case, it has an additional prejudicial effect for other identical or comparable cases, which the competent tax authority (may) implement by anonymising the publication of this generalised information.

However, it seems to point out that the diction of Article 14 of TPA (even for otherwise complex tax regulations!) is particularly detailed, non-transparent and contains a large number of reserve or exclusion clauses when the institute is introduced. Second, the advance rulings, regulated by Article 14 of TPA based on the Dutch and Austrian model (Kovač, 2016). At the EU level, tax advance ruling is not unified, thus allowing Member States to adopt different solutions even though the EU and experts (see Romano, 2002) try to implement convergent solutions, such as adoption and implementation of Directive 2015/2376 on exchange of tax data. On the contrary, unification is present regarding customs rulings, especially on tariff classification and origins as stipulated by Article 33–37 of the Union Customs Code (UCC, Regulation (EU) No 952/2013). As regards customs, the EU emphasises the binding, i.e. mandatory (especially for tax authority) rather than advance character (as in Slovenia Article 14 of TPA).

Regarding Slovenian tax advance rulings, TPA and the related Rules on the implementation thereof specify the requirements, the procedural elements and the effects of these acts. As put forward by the proposal of TPA, the aim is to increase legal certainty and support taxpayers at fulfilling their tax liabilities. According to TPA, advance ruling refers to information issued by the principal (central) financial office of tax authority (FARS) at the request of a taxpayer on the tax treatment of planned transactions or business events with a 6-month reply timescale (compared to 30 days in Austria, for instance). It concerns future taxation and thus facilitates the taxpayer's decision whether the expected tax, as part of expenses compared to the expected profit, is an acceptable burden for a business transaction to be undertaken. Information is binding for the authority in relation to a concrete taxpayer. The provisions on advance ruling are highly detailed, but most importantly full of excluding clauses, e.g. the tax authority can decide within 15 days not to issue the advance ruling at all. Additionally, the ruling is not binding when even the slightest element fails to comply with the circumstances given in the application (similarly but rarely so exclusive in some other countries also for otherwise binding acts, cf. van de Velde, 2015, Watson, 2016, pp. 19, 20, 23–25, 39). Costs are calculated based on the Rules separately from the proceeding for the issuing of advance ruling, amounting to EUR 50 for an hour of work but no less than EUR 500, with prior payment if costs exceed EUR 2,000. The average costs are indeed high, i.e. EUR 4,770 per ruling issued.

In the case of online publication, Slovenian advance ruling takes precedent effect to a certain extent (see the same on 'public ruling' in Romano, 2002, pp. 61, 82, Žunić Kovačević, 2016, p. 271, but not so in US letter rulings). However, judicial review is allowed only regarding the compliance of inferior acts versus superior ones before the Constitutional Court. Such legal regulation means that advance rulings serve as a complementary legal source since they are binding for the tax authority when the transaction in question is finally made (Žunić Kovačević, 2016, p. 281). However, issuing advance rulings does not represent a decision on the already existing taxpayer's liability despite its individuality. Consequently, it is not regarded as 'classical' tax administrative proceeding and the act is not taken as a decision with a defined legal protection before the Ministry of Finance and Administrative Court (Jerovšek et al., 2008, p. 24, Kovač, 2012, p. 400). The above elements of tax advance rulings regulation lead to a rather low use of this instrument in Slovenia (see annual reports of the FARS, 2017, Kovač, 2012, p. 403, Kovač, 2016, p. 1565). Practice in fact shows that most applicants are not familiar with the goal of advance ruling and its legal characteristics (Kovač and Jovanović, 2017).

4. Empirical Analysis of Advance Rulings in Slovenia

4.1 On legal nature of tax advance ruling in Slovenia

The core dilemma seems to concern the legal nature of tax advance ruling and (the lack of) their further effects. Namely, tax advance ruling – as pursued by Article 14 of TPA and its interpretation – is a hybrid since it indeed addresses specific taxpayers, yet it refers to future and potential relevant facts. This is of major importance since the Slovenian legal system does not acknowledge such hybrid acts. In fact, theory and practice only know: (1) abstract and general acts addressing future facts regarding undefined (non-individualised) parties; and (2) concrete and individual (administrative) acts, referring to specific taxpayers and already existing relevant facts, i.e. finalised tax transactions for tax collection. Customs related information such as BTI fits in the second category; hence, the statistics on their application and judicial review are expectedly high and stable (see Tables 1 and 2). Advance rulings have been since then issued – as stipulated by Article 14 of TPA – in individual cases based on future and potential relevant facts. Therefore, the legal nature of this Act is a hybrid one. For this reason, as well as due to other issues, such as relatively high fees (EUR 4,770 on average) and excessive length of procedures (five months on average) the implementation of TPA is problematic. Moreover, the Slovenian tax authority seems reluctant in informing the taxpayers; hence, this instrument is rarely applied. This is evident from less than nine cases of advance rulings claimed and even less issued annually despite nearly three million taxpayers in Slovenia (see FARS annual reports). On the other hand, tax advance rulings are very rare, which refers to both applications for and, more so, the issuing of rulings based on Article 14.

Basic problems in Slovenia is not clear legal nature of tax advance ruling. The legal nature of the act is extremely important, especially for two groups of legal consequences. First, it is about the legal effects of an act, if they arise (!) And if so - when and to whom they are binding. Secondly, it is a question of legal protection against these acts, as the prescribed procedure of issuance, the necessary guarantees to those involved and their final legality, and thus (non) challengeability, are assessed according to the type of act. As this is a fundamental issue, it often opens up in the judiciary, especially in administrative areas, which are changing rapidly and comprehensively in the social context, while public governance requires effective outcomes. Common knowledge from court decisions in the fields of taxes, construction, home affairs, agriculture, culture, etc. is that it is not the authoritative title of the act but its theoretical characteristics and legal effects.

This applies to a number of cases where the court has dealt with both the qualification of acts by field (administrative / authority / or civil or punitive acts) and the associated guarantees as well as the difference between general abstract and individual concrete acts or the dilemma of whether it is a legal or perhaps (only) an internal or real act. But how to understand advance ruling - as a regulation, internal act or (administrative) decision or even a legal, only real act? If either advance ruling were a non-legal act that did not establish legal effects, an internal or a real act, it would be a *contradictio in adiecto*, a contradiction in the concept itself, since the title of that act "binds" the issuer. Thus, we can firmly state that this act has legal consequences and does not mean, for example, the execution of a legal act, as is the case with real acts (for example, the issuance of a certificate). Advance ruling is not only an internal act, as it affects the rights of legal addressees, so such acts, even if they were formally internal, according to recent practice are considered according to material criteria before the Constitutional Court of the Republic of Slovenia. This should be pointed out because at the beginning of the use of the TPA tax service, it explicitly published the *Instruction on the preparation of advance ruling no. 007-58 / 2007-01131-03 of 4 May 2007*. This document states that this information does not work externally and is intended only for a specific addressee for a specific case; it is published only on the intranet and served on the specific debtor. However, this classification is avoided by the FARS in recent publications in 2015, except in the case of uniform BTI as administrative law under EU law (more in Kovač, 2016 and 2018).

The above shows that the TPA is not clear and explicitly points out the issuance of otherwise named acts, such as "letter" (on / not / issuance of advance ruling) and the "advance ruling" itself, which raises many problems according to tax advisors (see Kovač and Jovanović, 2017). We can agree that advance ruling is a *sui generis* act, not that it is not a (legal) act. There is no argument at all for claiming that advance ruling is "not an administrative act", as they claim at FARS, except in the form of a letter. Nevertheless, theory and jurisprudence emphasize that the title or form of an act is not authoritative to judge the type of act. After all, the fact that it is an administrative act stems from the fundamental and indisputable fact that this act is issued by an administrative body in the capacity of authority, which is the basic constitutive sign of an administrative act. Next, the question arises: if the advance ruling is a (administrative) legal act, does it belong (more) to regulations or decisions? In roughly, the classical division of legal acts establishing legal effects can be given according to two criteria, i.e. (1) a level of generality or individuality and

(2) abstraction or concreteness (Table 2). With few exceptions, norms and acts are either abstract and at the same time general or concrete and at the same time individual. Same classification is applied in the Constitution of the Republic of Slovenia, which speaks only of general and individual acts. While general abstract and individual concrete acts work in the sense of a functional whole, abstract acts generally come to life through concrete (rarely do the regulations effect because of which the rights and obligations for a particular person would already arise *ex lege*). If the first acts constitute the creation of a law, the second means its application.

Table 1: Types of legal acts by classical categorisation

Persons covered by the act	<i>Unspecified persons by name/title</i>	<i>Identified (or identifiable) persons</i>
Actual status		
<i>The facts are future, potential</i>	↓ → General and abstract acts = regulations	?← (Anonymised and publicly published) → advance ruling under TPA ? ↓
<i>The facts have already come</i>		↓ → Individual and specific acts as well binding tariff information (BTI, BOI)

As revealed in Table 1, it is generally automatically combined, on the one hand, by any person in terms of future status, that is to say, uncreated and potential facts, which will be required to use the law in a concrete case if and when those facts are realised at the level of a single (or identifiable) person. They are issued in normative procedures where, in terms of formal legality, constitutional principles (such as publication before its application) and provisions of the rules of procedure or other metaregulation of the issuer (parliament, government, etc.) are applied. Any illegality is invoked in the process of assessing constitutionality and legality before the Constitutional Court and, in the case of compliance with EU rules, before the Court of Justice of the EU. The externality of legal effects is, in this context, a cumulative condition of abstraction, and not its compensation.

Therefore, all abstract acts, which have external effects, even if they are not regulations, and in any event specific acts, are subject to an assessment in the context of the constitutionality or legality procedure. Specific and individual acts shall be regarded as decisions, administrative or judicial, relating to a person of name or at least one-person identifiable who, through certain specific circumstances, have fulfilled the signs of a regulation and, consequently, the competent authority shall determine, by means of a rule, the legal position of the entity. They are subject to a specific procedure, for example in the case of administrative decisions, subject to the General Administrative Procedure Act (ZUP). Legal protection is provided through appeal and extraordinary remedies under this statute, while judicial review is given to us in the form of an administrative dispute and after finality through a constitutional appeal to the Constitutional Court of the Republic of Slovenia or even an action before the European Court of Human Rights. However, the effect itself is linked to enforceability, which, as a rule, is by finality or, in the case of no appeal, by the service of the decision upon the relevant entity (see Article 14(5) of TPA).

4.2 Empirical data and case law regarding advances ruling in Slovenia

As regards the usage of tax advance rulings, is, consequently, extremely low (Table 2), particularly in comparison to customs BTI to provide more comparable framework on a national scale. The FARS annual reports (Table 2) show that taxpayers do not opt for this institute or, if so, are even less likely to be issued. The information issued included, for example, the tax treatment of transactions with the supply of equipment and the treatment of an atypical silent partnership or shareholder. Most requirements under Article 14 of TPA are legally reclassified in to information under Article 13 of TPA (for example, in as many as seven out of eight requests in 2010 or in 2013 in six of the seven requests or in 2015 in four of the five requirements (cf. Kovač and Jovanović, 2017). Thus, tax advance rulings and similar institutions seems dead in practice, while new mechanisms are introduced as a response to convergence or EU law, i.e. as indirect coercion rather than national activity. Much more, presumably also due to the clear legal character of the act and the impact throughout the EU, is the issue of BTI as administrative decisions, the number of which is added in the table above for comparison. In customs matters, taxpayers are more likely to turn to FARS as regards the classification of goods for taxation also because, in customs procedures, unlike taxation, customs procedures are

generally carried out through levies and other forms of self-taxation, not through the classical fact-finding procedure for taxation and the issuing of a decision by authority.⁴

Table 2: Statistical data on advance ruling (FARS, annual reports for 2008–2020)

Year	No of applications	No of tax rulings	No of BTI
2007	14	2	No data
2008	7	3	No data
2009	12	0	No data
2010	8	2	317
2011	7	0	296
2012	4	0	215
2013	7	1	197
2014	9	2	234
2015	5	1	176
2016	6	1	206
2017	6	3	148
2018	12	1	176
2019	9	2	139
2020	9	3	95

The publication of advance ruling and similar acts in the sense of the same objective, i.e. increase of information and trust of taxpayers, is intertwined in theory and practice at home and abroad. This means that from the point of view of TPA regulation there is no clear distinction between advance ruling, mandatory instructions for uniform interpretation and other general information (see Article 13 TPA), for which the law or the issuer's management stipulates publication on FURS or MF websites. For instructions under Article 13 of the TPA issued by the Minister or the Director of FURS with different interpretations of tax regulations by individual offices, the law explicitly determines external effects, binding on the tax authority (and taxpayers), and the effect itself is linked to publication on the Internet. not intranet). That is to say, implicitly but clearly, the instructions in question are considered a kind of administrative regulation (Jerovšek et al., 2008), and although due to difficulties in practice, the TPA amendment at the end of 2015 determined that the instructions are no longer a legal source. However, it should be added that the problems were largely due to the controversial operation of FARS, which published some such instructions, then changed them without noting the date of publication, and considered the change retroactively. However, FARS itself often finds that binding institutes and instructions have the same function and are not even separated by taxpayers (FARS, Kovač and Jovanović, 2017). Below the line, we find that publication as a key element of the act, in order to be considered general, in the case of advance ruling is provided by anonymising or translating individual advance ruling into a formally different document, although substantially the same (for example, in our country, standard information in the Netherlands). It should also be emphasised that the anonymization of tax data is necessary from the point of view of the tax secrecy regime as an expression of the basic principle of tax secrecy, in the Republic of Slovenia (TPA, Articles 8 and 15-30) and at EU level (Article 23a of the Council Directive). EU) 2015/2376). However, this is a comparatively accepted form of disclosure of information, insofar as it is generalised, although perhaps only some of it is relevant for public disclosure, such as in Belgium or Spain, the Czech Republic or Denmark.

In the Slovenian case-law (portal www.sodnapraksa.si, SCRS) there are no examples of the assessment of advance ruling under the TPA, but more cases where taxpayers have challenged various notifications or customs advance ruling as administrative decisions. These are worth a look, as despite the key difference between TPA and UCC information. From the arguments in the assessment of the legality of BTI or BOI as administrative decisions, we can draw some lessons for our discussion and a conclusion. The judgment of the Supreme Court of the Republic of Slovenia X Ips 76/2014 of 23 April 2015 in the audit case should be emphasised. In this case, it was a tax document entitled "explanation", which raised the question of whether this act has the legal nature of a mandatory instruction under the second paragraph of Article 13 of the TPA or whether it is considered a binding general legal source, although it is not for regulation. The Court emphasizes, which is also important for the assessment of advance ruling, that informing taxpayers through the tax service is in the function of unifying the practice of implementing regulations and limits the

⁴ Around 50,000 BTI is issued across the EU, of which about half in Germany, followed by France and the UK, each with around 15 percent.

arbitrary conduct of the tax authority. He goes on to say that the concrete decision of the tax authority (from November 2012 assessment of personal income tax on the basis of self-declaration), which arbitrarily deviates from such explanations, but these were not revoked or replaced by new explanations, should be considered a deviation from the established practice of tax authorities. With this instruction, it recognizes the same effect as would apply to a regulation or arbitrary violation of the equality of taxpayers and their justified expectation that the information published through the tax service is considered reliable. We quote the judgment (point 14): “If the explanations of the Tax Administration of Slovenia, regardless of how they are named, interpret individual legal provisions in a general and abstract manner and if they are published on the Tax Administration's website, they meet the definition, which reads in the text in force at the relevant time: *‘Instructions... shall be binding on the conduct of the tax authority in the tax procedure. The instructions shall be published on the issuer's website.’* Therefore, the responsibility for the content of these explanations lies with the issuer, as taxpayers rely on such explanations and reasonably expect that the tax authority will act in accordance with the interpretation of such explanations in this particular case. At the same time, the party lost the dispute in the case because the court further pointed out that according to the principle of *exceptio illegalis* the court is not bound by these same instructions or information, but only by the administrative body, while the court judges only by the constitution and laws.

This dispute also led to an amendment to the TPA that the instructions are no longer explicitly considered a legal source, although we believe that in the present case, despite this amendment, the court would have ruled the same with the above reasoning. See paragraph 17 of the judgment: “The explanation of the Tax Administration of the Republic of Slovenia is not legally relevant because it is a binding legal source, but because it ensures uniform practice of tax authorities. Uniform practice, which is also not a binding legal source, is important because one of the requirements arising from Article 22 of the URS, which also binds administrative bodies, is that in an individual case they do not decide arbitrarily differently than otherwise in substantively similar cases. ”, As the position of the Constitutional Court in case Up-320/11 of 21 March 2013.

5. Further considerations

One can see that advance ruling introduces new approaches to traditional legal theory. These have been taken over by both theory and administrative-tax practice with virtually no theoretical consideration of what this type of act brings. A clear position applies to customs information, as its legal nature is determined by uniform and direct application of the EU law. However, in the procedures for issuing and assessing the legality of tax advance ruling, only one of the key criteria for defining the type of act has been adopted in order to follow certain legal consequences and legal protection. This is a measure of the definition of the individual taxpayer and thus the individuality of the act, while the abstractness of the act has been neglected as an equally important identifying moment. If we look through the goal of the institute in the EU, i.e. increase legal and economic security in the market for investors and their equality in the context of limiting the arbitrariness of power, and the second element even prevails. In this sense, advance ruling may be closer to an implementing or administrative regulation than an administrative decision. In any case, the affected taxpayers must be provided with adequate judicial protection when issuing any tax act, as this is not just an internal act.

Also, regarding the search for good governance, advance rulings should fit systematically in the so called three dimensions tax transparency (Basaran Yavaslar and Hey, 2019), addressing simultaneously protection of the public interest, and taxpayers rights (through the transparency of tax authorities as tax advance rulings), as well as the protection of democracy and general public through proactive information activities. In addition, advance rulings can be the most effective tool for alternative dispute resolution as a win-win approach to tax procedures (Kovač, 2018).

In the future, the law, especially when it comes to such mixed acts, should necessarily determine the procedure for their issuance and legal protection. It seems that with the existing institute of judicial protection, for instance in Slovenia, in order not to introduce a new path, the criterion of individuality should prevail, since any issued advance ruling primarily concerns an individual subject, directly its legal position. A strong argument for the predominance of advance ruling as an administrative decision is further comparability with customs BTI and BOI. On the other hand, the existence of circumstances for taxation varies from the present to only potential facts, and future facts will come into play if the basis for taxation as a transaction is established at all and a settlement or assessment decision has to be issued. It is actually possible to exclude legal protection in the case of advance ruling, saying that it makes sense for direct legal effects only at the time of calculation or assessment of tax, but in our opinion, this would be a worse option. Advance ruling is, however, an authoritative unilateral act of the tax authority and as such has the least indirect

effect on the legal position of an individual taxpayer, so the public administration decision should not be the last, but enable judicial control, not least for future similar cases. Namely, although the law stipulates that advance ruling is binding only in an individual case, it has an additional prejudicial effect for other identical or comparable cases, which the competent tax authority (may) implement by anonymizing the publication of this generalised information.

6. Conclusion

In the context of theoretical guidelines and comparative experience in the EU, advance ruling is a prospective tool to enhance tax transparency. However, due to the autonomy of member states in EU, any country can and do regulate the institute a bit or even significantly different. For Slovenia, the analyses reveal that it will be advisable to reconsider its legal system and even more so its implementation, in order to redefine and thus clear currently dubious legal nature of advance ruling in Tax Procedure Act. Any EU MS can be active in this process or wait for harmonisation to come eventually from Brussels. Only a proactive and systematic approach can contribute to the development of legal certainty, tax transparency and sound public governance.

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