

Introduction (Excerpt)

Apart from cross references to several advance tax rulings systems around the world, this study analyses in depth the advance tax rulings systems in the United States, the Netherlands and Italy. The choice for investigating the US letter rulings system is motivated by the fact that the United States presents one of the most developed tax rulings system in the world with a wide variety of legal instruments of guidance to taxpayers. In the United States, the letter rulings system originated in order to manage the complexity and technicality of the very extensive US tax legislation and became a commonly used feature by taxpayers in the fulfilment of their tax obligations. In the Netherlands, the reasons for the introduction of advance rulings are clearly related to international commerce. Dutch rulings originated as instruments to give certainty to foreign taxpayers investing in the Netherlands, especially in the situation of uncertainty generated by the Second World War. Over the years, the main purpose of advance rulings - the provision of certainty to taxpayers - was distorted and rulings became an instrument to attract foreign business to the Netherlands. In Italy, the reasons for the introduction of advance rulings appear to be mainly related to the increased need for the simplification of the tax system and as an attempt to establish new forms of active participation by taxpayers, especially in the grey areas of the tax systems (i.e. anti-avoidance legislation). The first forms of rulings introduced in Italy are limited to anti-avoidance legislation. The analysis of the differences in the origin, development, structure and functioning of each of these advance tax rulings systems revealed itself to be particularly useful in ascertaining the positive and negative features of the systems in question.

Though starting from a comparative analysis on the main substantive and procedural aspects of advance tax rulings - such as the persons who should be entitled to request rulings, the topics for which they might be asked, the disclosure of the rulings issued and the related administrative costs - the investigation also looks at advance tax rulings from a cross-border perspective and, in particular, from a EC law standpoint.

By pointing out the main similarities and divergences in advance tax rulings systems in EU Member States, and their relative positive features, it is argued that the different set of rules governing the various advance tax rulings systems in each EU Member State (or the absence of rules) might constitute an obstacle to the development of cross-border investment in the European Union. The harmonization of domestic advance tax rulings procedures and the institution of a notification procedure to a central EU body represent a step forward in the achievements of the institutional and political objectives of the European Union.

The study consists of four parts:

Part I identifies some rudiments of tax rulings in the first contacts between a tax administration and citizens in Roman law and primarily deals with the origin and

the historical development of the tax rulings systems in the United States, the Netherlands and Italy. These historical annotations, tracing the roots of the present advance tax rulings systems, were useful in gaining a better understanding of the developing trends of this legal institution.

Part II is divided into Chapters 2 and 3. Chapter 2 defines advance tax rulings and contains an analysis of their legal nature within the respective US, Dutch and Italian legal systems. The analysis is aimed at identifying sharply delineated borders for a common definition of advance tax rulings. The aim of Chapter 3 is to distinguish advance tax rulings from other forms of guidance provided by the tax administration to taxpayers in order to help them fulfil their tax obligations.

Part III consists of Chapters 4 and 5. Chapter 4 investigates the main procedural and substantive elements of current advance tax rulings systems around the world, such as the subjective and objective scope of advance tax rulings procedures, the ruling authority, the time-related aspects, the legal consequences, the different approaches to public disclosure and the costs. Chapter 5 identifies the legal principles underlying advance tax rulings procedures in the United States, the Netherlands and Italy in order to ascertain the actual and potential impact of the constitutional and administrative law principles on domestic rulings systems. The legal principles discussed throughout this chapter may influence the law making functions of the legislature, the executive and the judiciary in the establishment as well as in the functioning of an advance tax rulings system.

Part IV contains Chapters 6, 7 and 8. Chapter 6, which is of a descriptive nature, contains a synthetic overview at the time of writing of the status quo of advance tax rulings systems in EU Member States. It is aimed at pointing out the main similarities and differences on the topics for which an advance tax ruling might be requested, the persons entitled to request the ruling, the effects on tax authorities, taxpayers and tax courts, the fees to be eventually paid and the different approaches to the publication of the advance tax rulings issued. This survey lays the groundwork for the discussions in Chapter 7 of the proposed harmonization of advance tax rulings systems in the European Union. The chapter also contains an in-depth analysis of the reasons for the adoption of a harmonized advance tax rulings procedure. On the basis of the European legal principles, including those enhanced by the harmful tax competition debate, the substantive and procedural elements of a harmonized advance tax rulings system in EU Member States are discussed by taking as a point of reference the European ruling (i.e. binding tariff information) in the field of customs duties. Chapter 8 contains a summary and the main conclusions of this study.