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Digital Era - Croatia**

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# Europeanization of Croatian tax procedural law – example of advance rulings implementation

IBFD Observatory on the Protection of Taxpayers' Rights – influence on international, European and national tax law

- Croatian tax procedural law

- advance tax rulings as means of tax certainty
- the actual and the anticipated effects in the application of the institute of advance tax rulings
- Croatian tax law has adopted this institute through the General Tax Act amendments in 2015, after previous failed attempt in 2009: Advance rulings are seen as part of modern tax systems that aims are the protection of taxpayers' rights and achieving the predictability of tax authorities' actions.
  - Thus, rule of law and legal certainty are main targets as expected effects
- Unsuccessful attempts - as the principle of *bona fidae*;
- successful incorporation in national law just as the consequence of the implementation of directive on administrative cooperation (Directive 2011/16/EU) - The Europeanization
- Croatian tax law has recently introduced similar instruments as e.g. advance ruling, advance pricing agreements, granting special status to taxpayers, etc. due to the process of implementation of instruments of positive integration
- there is still many criticisms on the practice of the application of those instruments but - this was a way of Europeanisation of Croatian tax (procedural) law
- advance tax rulings as means of tax certainty
- Taxpayers rights - judicial protection –
  - criticism when we come to the resolution of tax disputes.
  - reasonable to ask - if we can gain some benefits from TDRD implementation?
    - Bering in a mind that TDRD *ratione materiae* applies only to disputes related to the application of the tax treaties between EU Member States

# Europeanization of Croatian tax procedural law – example of Mechanisms of TDRD



- Directive on tax dispute resolution mechanisms in the European Union brings (a significant) improvement to resolving tax disputes.
- These rules are ensuring that taxpayers will resolve disputes related to the interpretation and application of tax treaties more speedily and effectively
- standards of dispute resolution mechanisms - TDRD - Directive 2017/1852: in a tax dispute with an international or European element:
  - mandatory nature of dispute settlement mechanisms
  - time limits for dispute settlement and
  - obligation to achieve solution/end result.

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- As mentioned before - Croatian tax law has developed legal framework of dispute prevention instruments
  - instruments in the dispute avoidance level - advance rulings are not sufficiently recognized – reasons
  - there is a need for stronger dialogue and cooperation in the stage of tax administrative procedure especially
  - Croatian academic literature and practice - identified problems in the second-instance administrative instance of the tax dispute resolution that raise questions of changing the institutional framework and strengthening ADR mechanisms for tax disputes prevention
  - Well known advantages of the "neutral early evaluation" mechanism and preventing disputes mechanisms
  - important - mentioned European standards for tax dispute resolution regarding time limits as in national tax disputes - the huge importance and influence on taxpayers fundamental rights

# Concluding remarks

- process of the evolution is continuing - it is obvious from the definition of international tax law, that European tax law is part of this higher body of rules and it contributes to the development of international tax rules.
- Then again, international tax law influences the understandings and role of the CJEU with its rules, mechanisms, methods and instruments.
- Hence, this is a reversible relationship regarding the development of tax rules.
  - This relationship includes almost equal relationship and influence on national tax law.
  - At the European level of this processes - the importance of positive integration as preferable in terms of meeting the requirements of legal certainty.
  - However, as it is good to invoke the development of tax rules through positive integration, there is awareness of highly abstract nature of some provisions in positive integration instruments and some sort of a fear that comprehensive regulation may bring to an end the main strength of the internal market.

- So called “overproduction” or hyper-regulation might again bring the unpredictability to the taxpayers rightsd and tax administration.
- This brings us back again to the significance of negative integration is a key factor in answering any unregulated question.
- CJEU ensures in that sense the consistency of the internal market and the coherence of European tax law.
- The role of the ECtHR is directly important for tax issues
  - Finally, all this affects the outcome of in concreto tax proceedings in which taxpayers protect and exercise their rights.
- Although we currently have a negative integration of tax procedural and dispute regulation issues, in terms of a kind of a prohibition on inefficient tax procedures and disputes, the TDRD has raised questions about whether we need positive integration in this segment of taxation
- . In anticipation of such a step, standards and solutions in the new mechanisms for resolving European disputes should be taken over into national tax systems

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