

## Re NDAYISABYE

[Rwanda SUPREME COURT – RS/INCONST/SPEC 00001/2020/SC – (Ntezilyayo, P.J., Cyanzayire, Muhumuza, Rukundakuvuga, Mukamulisa, J.) October 30, 2020]

*Tax law – Advance tax ruling – The ruling issued before tax payment – It is an administrative act to be honoured by the tax administration which issued it and implemented by the taxpayers in accordance with the principle of Good faith – A taxpayer may apply for the cancellation of such ruling through ordinary administrative procedure or seize a competent court in case he/she is not satisfied with the legal position provided.*

*Constitution – Equality of people – The fact that the Commissioner General of the Revenue Authority is entrusted by the law the power to issue advance tax ruling, despite equality of people before the law, it does not place him in a superior with regard to other taxpayers because they belong to different categories and with different responsibilities before the law.*

**Facts:** Ndayisabye petitioned the Supreme Court to declare article 9 of the Law n° 026/2019 of 18/09/2019 on tax procedures inconsistent with articles 15 and 96 of the Constitution of the Republic of Rwanda of 04 June 2003, revised in 2015 on ground that it vested the Commissioner General of Rwanda Revenue Authority (RRA) with the power to issue advance tax ruling to taxpayers. He motivates that article 9 of the aforementioned law n° 026/2019 of 18/09/2019 contradicts the constitutional principle of equality and equal protection before the law provided under article 15 of the Constitution, because the Commissioner General is not treated like other taxpayers for he has the power to issue binding advance tax ruling.

He further submits that it is in his finding that the power vested with the Commissioner correspond with authentic interpretation of laws provided under article 96 of the Constitution of the Republic of Rwanda, whereas he/she is not the person entrusted with this power. He bases his statements on the following three grounds that is; the formulation of Kinyarwanda version of article 9 of the aforementioned Law n° 026/2019; the text of Kinyarwanda version is different from the text in other languages, namely “*advance tax ruling/décision anticipée*”; and the fact that the ruling of the Commissioner General is final.

The State Attorney argues that the petition of Ndayisabye is baseless, as article 9 of the Law n° 026/2019 aforementioned does not in no way contradict article 96 of the Constitution, rather, the petitioner confused the power of the Commissioner General for issuing advance tax ruling with the power of authentic interpretation of laws done by the Supreme Court.

She added that article 9 of the Law n° 026/2019 of 18/09/2019 on tax procedures does not contradict article 15 of the Constitution because among general duties and responsibilities of the Revenue Authority include educating and sensitizing the population on tax payment. It is in carrying out this responsibility that the Commissioner General refers to the provisions of article 9 of that law to issue advance tax rulings. She motivates that because of such responsibilities of the Commissioner General, she/he is placed in a superior position with regard to other taxpayers, but any taxpayer is not contented with the advance tax ruling on a particular tax law, has the right to seize the competent courts in the form of administrative action for annulment in case they are inconsistent with the law.

**Held:** 1. An advance tax ruling issued by the Revenue Authority is an administrative act which has to be enforced by that Authority and implemented by a taxpayer following the principle of Good Faith. A taxpayer may apply for cancellation of such decision through an ordinary administrative procedure or seize a competent court in case he/she is not satisfied with the legal position provided.

2. The fact that the Commissioner General of the Revenue Authority is entrusted by the law the power to issue advance tax ruling despite equality of people before the law, it does not place him/her in a superior position with regard to other taxpayers because they belong to different categories and with different responsibilities before the law.

**The petition lacks merit.**

**Statutes and statutory instruments referred to:**

Constitution of the Republic of Rwanda of 2003, revised in 2015, articles 15, 29 and 96;  
International Covenant on Civil and Political Rights, 1966, article 26;  
International Covenant on Civil and Political Rights, 1966, article 26;  
Universal Declaration of Human Rights of 1948, article 7;  
Law n° 026/2019 of 18/09/2019 on tax procedures, articles 9, 52 and 53.  
Law n° 37/2012 of 09/11/2012 establishing value added tax, article 30;  
Law n° 08/2009 of 27/04/2009 determining the organization, functioning and the duties of Rwanda Revenue Authority (RRA), article 3;  
Law n° 25/2005 of 04/12/2005 on tax procedures, article 27.

**Cases referred to:**

RS/INCONST/SPEC 00001/2019/SC, Re. Murangwa rendered by the Supreme Court on 29/11/2019;  
RS/SPEC/00001/2017/SC, Rwanda Bar Association rendered by the Supreme Court on 28/04/2017;  
RS/SPEC/0001/16/CS, Re Akagera Business Group rendered by the Supreme Court on 23/09/2016;  
Delhi-V, Supreme Court of India, Civil Appeal Nos. 5105-5107 of 2009, Judgment rendered on 11 September 2020, Postscript 1, paragraph 11.

**Authors cited:**

G. Michiels, *Normae Generales Juris Canonici* (Tournai: Desclée, 1949), vol. I, p. 483. Cited by Msgr; John F. McCarthy, (in) *The canonical meaning of the recent authentic interpretation of canon 230.2 regarding female altar servers*, *Organ of the Roman Theological Forum*, January 1995;  
Waerzeggers, C., & Waerzeggers, C. (2016). *Introducing an Advance Tax Ruling (ATR) Regime* (No. 16/2). Washington, DC: International Monetary Fund, p.1.  
Alia, D. U. T. A. (2009). *The harmonization of advance tax rulings systems in European Union member states Why? Finante-provocarile viitorului (Finance-Challenges of the Future)*, 1(9), 122, 248-250, P.248, 249.  
Carlo Romano, *Advance Tax Rulings and Principles: Towards a European Tax Rulings*, IBFD, 2020, pge 44, 77.

## **Judgment**

### **I. BACKGROUND OF THE CASE**

[1] Counsel Ndayisabye Alexis petitioned the Supreme Court to declare article 9 of the Law n° 026/2019 of 18/09/2019 on tax procedures is inconsistent with the Constitution of the Republic of Rwanda of 04 June 2003, revised in 2015 in its articles 15 and 96, on ground that it vested the Commissioner General of Rwanda Revenue Authority (RRA) with the power to issue advance tax ruling to the taxpayers. He states that when one analyses the power entrusted to the Commissioner General, you would find it contradictory to the provisions of the Constitution on matters related to authentic interpretation of laws normally exclusively done by the Supreme Court, upon request by Cabinet or the Bar Association.

[2] Counsel Ndayisabye Alexis also states that, as a lawyer, he finds such article prejudicial to the constitutional principle of equality and equal protection before the law. He indicates that with respect to taxation, the Commissioner General does everything in the interest of Rwanda Revenue Authority he/she represents, even when issuing advance tax ruling, he does not do it in a satisfactory manner for the taxpayers. He submits that the fact that the ruling of the Commissioner General has a binding force for a taxpayer, the law does not treat equally all taxpayers of the Rwanda Revenue Authority represented by the Commissioner General.

[3] Counsel Ndayisabye Alexis states that in examining his petition, the Court should base on the provisions of the article 9 of the Law on tax procedures in Kinyarwanda version, because that article entrusts the Commissioner General the power to interpreted tax laws, while in English version, that article stipulates the power of the Commissioner General to issue an advance tax ruling, and this is far different from interpreting laws.

[4] Counsel Kabibi Specioza, the State Attorney argues that the petition of Ndayisabye Alexis lacks merit, that article 9 of the Law n° 026/2019 of 18/09/2019 on tax procedures does not contradict article 15 of the Constitution <sup>1</sup>because the general duties and responsibilities of the Revenue Authority includes education and sensitization the population on tax payment. She added that it is in carrying out this responsibility that the Commissioner General refers to the provisions of article 9 of that Law n° 026/2019 on tax procedures in issuing an advance tax ruling. She motivates that of such responsibilities elevate him/her in a superior position over taxpayers, but the latter have the right to seize competent courts in the form of administrative action procedure in case they are not contented with the advance tax ruling, for annulment in case they were not made in accordance with the law.

[5] She also advances that article 9 of the aforementioned Law n° 026/2019 does not in no way contradict article 96 of the Constitution, that the petitioner confused the power of the Commissioner General for issuing advance tax ruling with the power of authentic interpretation of laws done by the Supreme Court.

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<sup>1</sup> That article provides that: “All persons are equal before the law. They are entitled to equal protection of the law”.

[6] The submissions by Counsel Ndayisabye Alexis can be summarized in two grounds:

- a. The first ground relates to the fact that the power entrusted by article 9 of the Law n° 026/2019 of 18/09/2019 on tax procedures to the Commissioner General to issue an advance tax ruling consists of an authentic interpretation of laws provided by article 96 of the Constitution of the Republic of Rwanda, of which this article does not entrust to the Commissioner General. He bases these allegations on the following three grounds:
  - I. The formulation of article 9 of the Law n° 026/2019 of 18/09/2019 on tax procedures in Kinyarwanda version;
  - II. The text in Kinyarwanda version is different from the text in other languages, notably “*advance tax ruling/décision anticipée*”;
  - III. The fact that the ruling of the Commissioner General is final.
- b. The second ground relates to the fact that the Commissioner General is not treated like other taxpayers because he/she has the power to issue an advance tax ruling, which contradicts the principle provided under article 15 of the Constitution of the Republic of Rwanda that all persons are equal before the law , and entitled to equal protection of the law.

[7] Following the consideration of the submissions of Counsel Ndayisabye Alexis and the retorts by the State Attorney, the Court finds that the issue to be analyzed in this case consists of whether article 9 of the Law n° 026/2019 of 18/09/2019 on tax procedures is inconsistent with the provisions of articles 15 and 96 of the Constitution of the Republic of Rwanda of 2003 revised in 2015.

## **II. LEGAL ISSUE AND ITS ANALYSIS**

### **1. Whether the article 9 of the Law n° 026/2019 of 18/09/2019 on tax procedures is inconsistent with the articles 15 and 96 of the Constitution of the Republic of Rwanda of 2003, revised in 2015**

[8] Counsel Ndayisabye Alexis states that article 15 of the Constitution of the Republic of Rwanda of 04 June 2003, revised in 2015, providing that all persons are equal before the law and are entitled to equal protection of the law. In addition, its article 96 reads that Authentic interpretation of laws is done by the Supreme Court. Authentic interpretation of laws may be requested by Cabinet or the Bar Association. Any interested person may request for an authentic interpretation of a law through the Bar Association. In case of conflict between the languages in which a law was published in the Official Gazette, the language in which that law was adopted prevails. He confirms that such provisions concur with the holdings of the Supreme Court in the judgement RS/SPEC 0001/2017/SC.

[9] He also advances that article 9 of the Law n° 026/2019 of 18/09/2019 on tax procedures provides that subject to the provisions of other laws, on request or by his or her own initiative, the Commissioner General issues an advance tax ruling. In case this ruling is for the public, it is published through a nationwide media. The rules of the Commissioner General determine modalities for establishment of an advance tax ruling.

[10] Counsel Ndayisabye Alexis adds that, according to the Constitution, an authentic interpretation of laws is done by the Supreme Court upon request by the Cabinet or the Bar Association and that any interested person may sue before the Supreme Court requesting for an authentic interpretation of a law through the Rwanda Bar Association. He indicates that the publication of law on tax procedures providing that, the Commissioner General issues in writing an advance tax ruling on request or by his or her own initiative, which is not provided by the Constitution, he finds such article inconsistent with the Constitution because his/her ruling is final.

[11] He further contends that in Kinyarwanda version the text reads that the Commissioner interprets laws, but in other languages, they have used the text “*advance tax ruling*” and “*décision anticipée*”, and this has nothing to do with interpretation of laws. He prays that in examining his petition, they should consider the Kinyarwanda version in providing a legal position because it is the language of adoption of the law.

[12] He gives an example of where the Commissioner General issued an advance ruling on article 15, subparagraph 7 of the Law on income tax, where it is stated that in implementing the subparagraph 7 relating to moral damages for widow(er)s and orphans on whether those moral damages can be considered as taxable employment income, the commissioner stated that those damages consist of moral compensation and not employment income. the petitioner finds this ruling of the Commissioner General final.

[13] He gives another example of the ruling issued by the Commissioner General on article 27 of the Law n° 25/2005 of 04/12/2005 on tax procedures, where he states that we have decided the following: The rectification note may be issued in a period of five or ten (10) years in case of tax evasion, starting from January 1<sup>st</sup>, following the tax period, which was not provided by the law. The second example is about the advance tax ruling by the Commissioner General on article 30 of the Law n° 37/2012 of 09/11/2012 establishing the value added value where he states that we decided the following: in any other case apart from importation of goods, the amount is to be converted into Rwandan francs at the National Bank of Rwanda exchange rate applying between the foreign currency and Rwandan franc on the date on which the amount is given, which was not provided by that article.

[14] He also motivates that in case of conflict of interpretations of tax laws, the Commissioner General provides interpretation basing on his/her personal conviction, which is different from *Advance Tax Ruling* issued upon request of the taxpayer about individual concerns, and this ruling is not made public. He added that in interpreting the law, the Commissioner General does it in the interests of the institution under his/her management instead of public interests, and this proves an inequality between the Commissioner General and taxpayers, and obstructs the implementation of government policy of doing business adopted by the Republic of Rwanda in order to speed up business and respect the legislation thereof because potential investors in Rwanda may be discouraged by the excessive powers entrusted to the Commissioner General.

[15] Counsel Tugirumuremyi Raphael assisting him advances that the Law establishing Rwanda Revenue Authority entrusted the Commissioner General the power to educate and sensitize the population on tax legislation, where it determines the mission of that institution, but he finds it unnecessary to do it in accordance with the provisions of article 9 of the aforementioned law, because it is clear that the advance ruling is not different from the authentic interpretation.

[16] He also states that the statements of the State Attorney according which the interpretation provided by the Commissioner General under e article 9 of the aforementioned law is an “*Advance Tax Ruling*” which is not mentioned in the Kinyarwanda version in which the law was adopted. He motivates that they conducted a research on “*Advance Tax Ruling*” and came to the conclusion that it concerns one taxpayer or a group of taxpayers, and that such ruling issued does not concern other taxpayers whereas the ruling issued for the Rwandan taxpayers is final, the situation which he deems violating the principle of separation of powers, because executive organ cannot be also entrusted the power to enact the law. He prays that the power of interpretation of the laws remains in the jurisdiction of the same organ provided by Constitution.

[17] He further submits that article 9 of the Law n° 026/2019 mentioned above, does not treat equally the taxpayer and the Commissioner General, because the Commissioner General has the excessive power to implement the law and provide his/her discretionary interpretation, which is not the case for the taxpayer, but he/she is instead bound to execute even the advance tax ruling issued by the Commissioner General. He prays the Supreme Court to declare article 9 of the Law n° 026/2019 of 18/09/2019 on tax procedures inconsistent with the Constitution, as revised up to date.

[18] Counsel Kabibi Specioza, the State Attorney, states that the allegations of Counsel Ndayisabye Alexis that the Commissioner General is not treated like other taxpayers because he/she is entrusted the power to issue a final advance tax ruling, the Supreme Court motivated thereon in the judgements RS/SPEC/0001/16/CS rendered on 23/09/2016 and RS/INCONST/SPEC 00001/2019/SC rendered on 29/11/2019, where it held that the equality and prohibition of distinction of persons do not mean that distinction of persons amounts always to discrimination, since distinction and or categorization of persons can be necessary depending legitimate or rational purpose.

[19] In motivating on the reason the Commissioner General is treated differently from other taxpayers or he/she is not included in the same category with them, Counsel Kabibi Specioza states that article 3, paragraph 3 of the Law n° 08/2009 of 27/04/2009 determining organization, functioning and responsibilities of Rwanda Revenue Authority (RRA), reads that the responsibilities of RRA include educating and sensitizing the population on tax legislation, which includes issuing to them an advance tax ruling provided in article 9 of the aforementioned Law n° 026/2019 alleged to be unconstitutional.

[20] Counsel Kabibi Specioza added that the Commissioner General of Rwanda Revenue Authority (RRA) cannot belong to the same category with other taxpayers, the reason why the law entrusts him the power to issue administrative acts such as “*Advance Tax Ruling*”, and this act has an immediate effect, in to the context of raising awareness of the taxpayers about tax legislation, accountability and transparency with regard to that institution, in order to avoid fines imposed to taxpayers for mistakes occasioned misinterpretation of tax legislation. She also motivates that this cannot deprive the taxpayer of the right to seize the court to mend injustice that would have resulted from that act.

[21] Counsel Kabibi Specioza declares that the advance tax ruling issued by the Commissioner General is not considered as the law with binding force, but rather an administrative act that can be welcomed by its subjects or not. She indicates that in case the taxpayer is not contented with

such act, he/she is allowed to exercise the right conferred by articles 52 and 53 of the aforementioned Law n°026/2019 and article 29(3<sup>o</sup>) of the Constitution of the Republic of Rwanda, and attack it before a competent court.

[22] Counsel Kabibi Specioza also submits that article 9 of the law on tax procedures does not contradict article 96 of the Constitution because the petitioner confused the power of the Commissioner General of issuing an advance tax ruling with the power to do authentic interpretation. She motivates that such advance tax rulings (ATR) by the Commissioner General normally aims at indicating the level of autonomy of the institution expressed by its transparency, accountability, collaboration between RRA and taxpayers, as well as the capacity of the institution to settle disputes, and this is what she explained in English as follows<sup>2</sup>.

[23] She quotes Gommar Michiels, a Law scholar, who further defined authentic interpretation as follows: “...*authentic interpretation is an act of the will commanding that the determined meaning of the law be accepted as obligatory, and not just an act of the intellect defining the meaning that was originally intended by the lawmaker*”. (such as an interpretation note given through an advance tax ruling issued by the Commissioner General). This indicates that the authority doing an authentic interpretation issues commanding and binding interpretation, and thus, advance tax rulings issued by the Commissioner General are not binding.<sup>3</sup>

[24] She states that the advance tax ruling issued by the Commissioner General is used in levying taxes on some goods and services considered as difficult to understand by the taxpayer issued upon request by the taxpayer or by the Commissioner General on his own initiative, that the intended purpose of the Commissioner General herein to demonstrate the stance of the revenue authority on certain articles of the law or on matters related to taxation of certain goods and taxation modalities, and this helps a taxpayer who has a good faith to honour them as they are set in order to avoid fines and penalties in case he/she fails to respect it due to wrong interpretation of the law.

[25] She added that the petitioner’s statements that an “*Advance Tax Ruling*” concern one individual or a group of individuals are not true, because the taxpayer may request in writing for an clarification on an article which he/she considers unclear. In such case, the Commissioner General addresses only the request from the sender (*Private Tax Ruling*). In some other cases, especially in monitoring tax recovery activities, the Commissioner General may find out that the majority of taxpayers have conflicting interpretation about a certain article and thereby issue what is known as *Public Tax Ruling* and this ruling is published because it is made for all taxpayers. With regards to the binding force of that ruling, she motivates that what Counsel Ndayisabye Alexis states that all taxpayers are bound to execute that ruling, is not true, instead, RRA which issued such ruling has to honour it, and the taxpayer may or may not comply with it.

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<sup>2</sup> Transparency, clarity, consistency, certainty; compliance and proper functioning of a self-assessment system, healthy relationship of taxpayers with the tax authority and reduction of conflict.

<sup>3</sup> G. Michiels, *Normae Generales Juris Canonici* (Tournai: Desclée, 1949), vol. I, p. 483. Cited by Msgr. John F. McCarthy, (in) The canonical meaning of the recent authentic interpretation of canon 230.2 regarding female altar servers, *Organ of the Roman Theological Forum*, January 1995.

[26] Counsel Kabibi Specioza also motivates that international organizations for economic development<sup>4</sup> as well as expert in fiscal law<sup>5</sup> explain advance tax ruling (ATR) issued by the Commissioner General as a written statement issued to a taxpayer by a Revenue body that interprets and applies the tax law to a specific set of facts and is binding upon the Revenue body before taxation process. In other words, this is an act of the Commissioner General about clarification of taxation. She alleges that the analysis of the provisions of the aforementioned article 9 suggests that the advance tax ruling of the Commissioner General is issued in order to clarify the articles of tax laws for the taxpayers and other users who do not have a clear or same understanding about them, and who may face some difficulties in implementing or using them in general.

[27] She further alleged that when the Commissioner General issues that ruling, his/her purpose is not to enact laws which contradict or conflict with articles of the law as purported by the petitioner, he/she rather aims at helping taxpayers and other users to have a clear understanding of those provisions. She additionally submits that what justifies the necessity of such ruling is the fact that many taxpayers and users of tax laws use to write to the Commissioner General requesting a legal position to be referred to about legal provisions for which they do not have a clear understanding or same assumption.

[28] She motivates that those advance tax rulings are uploaded on the website of Rwanda Revenue Authority (RRA) for all taxpayers and other users to have access on the stance of the revenue body on tax laws, in order to avoid that this stance remains exclusive to those who requested advice, therefore that such rulings cannot be considered as new laws enacted by the Commissioner General, meaning that Rwanda Revenue Authority cannot only rely on those rulings to impose taxes.

[29] She also motivates that the statements of Counsel Ndayisabye Alexis that those rulings contradict the principle of “*Doing business*”, are baseless, because that principle is based on the transparency, the reason why in order to avoid fines and penalties imposed to taxpayers due to misunderstanding of the laws they may have and to reduce disputes between the taxpayer and the revenue authority, they are given explanations in advance, which is the basis of the principle of “*Doing business*”.

[30] He also states that the Kinyarwanda version of article 9 of the aforementioned law does not clarify the meaning of “*Advance Tax Ruling*” where it reads that the Commissioner General interprets laws, while it would be clear if the translation “icyemezo gifashwe mbere” meaning “(*advance ruling*)” was used.

[31] Counsel Ndayisabye Alexis and his counsel submit that a ruling issued by the Commissioner General is by nature an unappealable administrative act, which, is normally subject to appeal, and with regards to interpretation of law, you cannot appeal before the Commissioner General telling him/her that he/she misinterpreted the law, and this is not even provided by the law.

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<sup>4</sup> Counsel Kabibi indicates that OECD (Organisation for Economic cooperation and Development) defines ATR as follows: “a written statement issued to a taxpayer by a Revenue body that interprets and applies the tax law to a specific set of facts and is binding upon the Revenue body”.

<sup>5</sup> Counsel Kabibi Spéciose argues that an International guide to advance ruling defines ATR as a “statement issued upon request to the (potential) taxpayer indicating the tax administration’s view of the tax treatment of the particular set of facts and circumstances contemplated in the process of completion, or completed but not yet assessed”.



[32] On matters related to practices of revenue authorities in other countries (elucidations on ATR provided by OECD), Counsel Ndayisabye Alexis states that the Republic of Rwanda is not a member state of OECD, in so much that the Commissioner General may apply practice of the Commissioners General of the revenue authority in those member countries, that those Commissioners do not issue advance tax rulings as it is the case in Rwanda, they rather give their opinions like other scholars from universities and experts from research institutions.

## **DETERMINATION OF THE COURT**

### **a. Whether article 9 of the Law n° 026/2019 of 18/09/2019 on tax procedures contradicts article 96 of the Constitution of the Republic of Rwanda of 2003, revised in 2015**

[33] The principal ground on which Counsel Ndayisabye Alexis relies his petition that article 9 of the Law n° 026/2019 of 18/09/2019 contradicts article 96 of the Constitution of the Republic of Rwanda, is the fact that the Commissioner General was entrusted by the Law on tax procedures the power to provide interpretation of the law, while the power to do an authentic interpretation of laws is vested with the Supreme Court by article 96 of the Constitution. In examining its basis, the Court finds that it has to examine the nature of the advance tax ruling in order to be able to determine whether that advance tax ruling issued by the Commissioner General is an authentic interpretation.

[34] Article 9 of the Law n° 026/2019 of 18/09/2019 on tax procedures provides that : “Subject to the provisions of other laws, on request or by his or her own initiative, the Commissioner General issues an advance tax ruling. In case this ruling is for the public, it is published through a nationwide media. The rules of the Commissioner General determine modalities for establishment of an advance tax ruling”.

[35] The Court finds that article 9 of the aforementioned Law n° 026/2019 to imply that the Commissioner General issues an advance tax ruling in the following circumstances:

- Upon request by a taxpayer or a group of taxpayers;
- By the Commissioner General’s own initiative in case where various taxpayers have a different perception on a given law.

[36] The Court finds that, because the Commissioner General has not yet set up the rules determining the modalities of issuing an advance tax ruling, a reference must be made to the motivations provided in decided cases or opinions from scholars, wherein the types of such documents, their importance, nature as well as their impact on tax administration and taxpayers.

[37] In the judgement rendered by the Supreme Court of India, it was motivated that a strong system of issuing an advance tax ruling can play a vital role in reducing the number of taxation litigations. They state that instead of declaring tax first and face disparate tax perception with tax administration later, a system of issuing an advance tax ruling can avoid such disputes and litigations.<sup>6</sup>

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<sup>6</sup> “In our opinion, a vibrant system of advance ruling can go a long way in reducing taxation litigation. (...) Instead of first filing a return and then facing consequences from the Department because of a different perception which the Department may have, an Advance Ruling system can facilitate not only such resolution, but also avoid the tiers of litigation which such cases go through.”

[38] In that judgement, they also stated that the aim of any properly framed advance ruling system ought to be a dialogue between taxpayers and revenue authorities to fulfil mutually beneficial purpose for taxpayers and revenue authorities of bolstering tax compliance and boosting tax morale.<sup>7</sup>

[39] Christophe Waerzeggers and Cory Hillier, legal experts, in their article: *Introducing an advance tax ruling (ATR) Regime*, also show the difference between *Private Advance Tax Ruling* and *Public Advance Tax Ruling* as follows: A private tax ruling consists of advice that a taxpayer may seek from the tax authority in relation to the application of the tax law to their particular arrangement. The ruling typically binds the tax authority in relation to the arrangement for which it is issued. As such, the taxpayer will ordinarily be protected from additional tax, penalties and interest when relying on the ruling issued. The benefit of a private tax ruling is typically personal to the taxpayer to whom that ruling is issued and is not binding on the tax authority as against other taxpayers, even if the same or similar circumstances exist.<sup>8</sup>

[40] With regard to Public Advance Tax Ruling, experts mentioned in the previous paragraph, define it as a written opinion by the tax authority dealing with the way in which the tax law applies to taxpayers, or a class of taxpayers, generally. A public ruling is made publically available in full and can be used as a primary means of publishing and disseminating advice on the tax authority's interpretation of the tax laws they administer. These instruments also serve important functions in tax law administration, particularly where they provide guidance with respect to the exercise of discretionary powers contained in a tax law. Public rulings may or may not have legally binding force per se but may, at the very least, create legitimate expectations for taxpayers under general principles of administrative law.<sup>9</sup>

[41] The Court finds that the provisions of article 9 of the Law n° 026/2019 of 18/09/2019 on tax procedures and the statements of various experts, both state that an Advance Tax ruling is in two categories to wit *Private Advance Tax Ruling* and *Public Advance Tax Ruling*. Therefore, the allegations of Counsel Ndayisabye Alexis and his legal counsel that they conducted a research on "*Advance Tax Ruling*" and found that it only concerns taxpayers and a class of taxpayers, and that such ruling does not concern others, is baseless.

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See National C-operative Development Corporation Vs. Commissioner of Income Tax, Delhi-V, Supreme Court of India, Civil Appeal Nos. 5105-5107 of 2009, Judgment rendered on 11 September 2020, Postscript 1, paragraph 11, <https://www.advocatekhaj.com/library/judgments/announcement.php?WID=13147>

<sup>7</sup> "The aim of any properly framed advance ruling system ought to be a dialogue between taxpayers and revenue authorities to fulfil mutually beneficial purpose for taxpayers and revenue authorities of bolstering tax compliance and boosting tax morale." See National C-operative Development Corporation Vs. Commissioner of Income Tax, Delhi-V, Supreme Court of India, Civil Appeal Nos. 5105-5107 of 2009, Judgment rendered on 11 September 2020, Postscript 1, paragraph 19, <https://www.advocatekhaj.com/library/judgments/announcement.php?WID=13147>

<sup>8</sup> Waerzeggers, C., & Waerzeggers, C. (2016). *Introducing an Advance Tax Ruling (ATR) Regime* (No. 16/2). Washington, DC: International Monetary Fund, p.1: A private tax ruling consists of advice that a taxpayer may seek from the tax authority in relation to the application of the tax law to their particular arrangement. The ruling typically binds the tax authority in relation to the arrangement for which it is issued. As such, the taxpayer will ordinarily be protected from additional tax, penalties and interest when relying on the ruling issued. The benefit of a private tax ruling is typically personal to the taxpayer to whom that ruling is issued and is not binding on the tax authority as against other taxpayers, even if the same or similar circumstances exist.

<sup>9</sup> IDEM, A public ruling: a written opinion by the tax authority dealing with the way in which the tax law applies to taxpayers, or a class of taxpayers, generally. A public ruling is made publically available in full and can be used as a primary means of publishing and disseminating advice on the tax authority's interpretation of the tax laws they administer. These instruments also serve important functions in tax law administration, particularly where they provide guidance with respect to the exercise of discretionary powers contained in a tax law. Public rulings may or may not have legally binding force per se but may, at the very least, create legitimate expectations for taxpayers under general principles of administrative law.

[42] The Court finds that what is not mentioned in the formulation of article 9 of the aforementioned Law n° 026/2019 in Kinyarwanda version, but explained in other languages and in agreement with legal experts is to the effect that such ruling is issued before the taxpayer starts taxable activities, and Counsel Kabibi Specioza admitted that it would be clear if the legislator stated “Icyemezo gifashwe mbere” (an advance ruling). The fact that such term was not used is not regarded as a concern, because the rationale of the legislator is clearly conveyed in other languages.

[43] The Court finds Counsel Ndayisabye Alexis and his legal counsel’s allegations according to which article 3 of the Law n° 08/2009 of 27/04/2009 determining organization, functioning and responsibilities of Rwanda Revenue Authority assigns to the Commissioner General the responsibility of educating and sensitizing the population on tax payment, therefore it was not necessary to also assign him/her the responsibility of interpreting laws, baseless, because article 3, subparagraph 3° of the Law n° 08/2009 provides for the responsibilities of Rwanda Revenue Authority including educating and sensitizing the population on tax payment, whereas article 9 of the aforementioned Law n° 026/2019 provides that the Commissioner General has the responsibility to issue an advance tax ruling. This responsibility is premised on the frequent changes in tax legislation or sometimes misunderstanding of such laws by given their formulation, as motivated by the State Attorney. The revenue authority clarifies them for the taxpayers on request or by their initiative, in order to settle disputes that may arise or already occurred, to promote cooperation between taxpayers and revenue authority, reducing disputes that may result from conflicting perception of tax laws and for transparency purpose.

[44] The Court also finds that legal experts also emphasise the importance of an advance tax ruling, such as Alia Duta, in her writing titled: “*The harmonization of advance tax rulings systems in european union member states – why?*”, wherein she states that using that ruling is important for both taxpayers and revenue authority, because of frequent changes of tax legislation and sometimes taxpayers misunderstand the text of such legislation due to their formulation. The expert indicates that those rulings serve as a barometer of the capacity of the revenue authority in disputes settlement, and the use of such rulings help in promoting cooperation between taxpayers and revenue authorities and reduction of litigations. She added that those advance tax rulings system should comply with the generally prevailing principles of a tax order, like principle of legality, of equality and of transparency.<sup>10</sup>

[45] Basing on the statements of expert Alia Duta, the Court finds that, in issuing an advance tax ruling, the Commissioner General does not base on his/her own assumption, as alleged by Counsel Ndayisabye Alexis and his counsel, he/she instead issues it basing on the generally prevailing principles of a tax order, like principle of legality, of equality and of transparency.

[46] This is also emphasised by that expert, where she explains that in enforcing advance tax rulings (ATR), the tax administration stands in a position of supremacy in its relation with taxpayers and is acting in order to realize the collective interest of every citizen.<sup>11</sup>

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<sup>10</sup> Alia, D. U. T. A. (2009). *The harmonization of advance tax rulings systems in European Union member States-Why? Finante-provocările viitorului (Finance-Challenges of the Future)*, 1(9), 248-250, P.248, 249 An advance tax rulings system should comply with the generally prevailing principles of a tax order, like principle of legality, of equality and of transparency.

<sup>11</sup> IBIDEM, P.122. In many instances, such as for the functions performed by the tax administration in tax law, the tax administration stands in a position of supremacy in its relation with taxpayers and is acting in order to realize the collective interest of every citizen.

[47] Considering also the explanations provided by experts on “*Advance Tax Ruling*”, the Court finds that they confirm that an advance tax ruling is an administrative act. This is stressed by Carlo Romano in his book titled *Advance Tax Rulings and Principles: Towards a European Tax Rulings* where he explains that the fact that an advance tax ruling is considered as an administrative act instead of an agreement binding public institutions or an individual, plays a vital role in protecting the taxpayer and is also beneficial depending on the legal modalities of issuing those rulings[.....].<sup>12</sup> He adds that “The information given by the respective authority is legally not binding, but protected under the principle of good faith, but when he does, he has to do it as mentioned in the ruling request.”<sup>13</sup>

[48] The Court finds that the fact that an advance tax ruling is an administrative act, which has to be enforced by the Revenue authority that issued it, means that a taxpayer may request for its invalidation through ordinary procedure applied in administrative acts or seize a competent court in case he/she is not contented with the ruling by the Commissioner General.

[49] With regard to authentic interpretation provided under article 96 of the Constitution of the Republic of Rwanda, a one John M. Huels, who is a legal expert explains that an authentic interpretation of laws is made in a special way by competent persons, and resolves the meaning of a doubtful law. He states it as follows: “[...] *there is a special form of interpretation that officially and authoritatively resolves the meaning of a doubtful law. This is called "authentic interpretation" and may only be made by the legislator or one to whom he has entrusted the power to interpret the law authentically.*<sup>14</sup>

[50] In the judgement RS/SPEC/00001/2017/SC rendered by the Supreme Court on 28/04/2017, the Court basing on the fact that an authentic interpretation refers to interpretation of laws done in accordance with the provisions of the law and by competent persons, declared that an authentic interpretation cannot be compared to an ordinary interpretation of laws.

[51] Basing on all foregoing elucidations, the Court finds that an advance tax ruling issued by the Commissioner General is different from an authentic interpretation under the jurisdiction of the Supreme Court, therefore, article 9 of the Law n° 026/2019 of 18/09/2019 on tax procedures is thereby not inconsistent with article 96 of the Constitution of the Republic of Rwanda of 2003, revised in 2015.

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<sup>12</sup> Carlo Romano, *Advance Tax Rulings and Principles: Towards a European Tax Rulings*, IBFD, 2020, pge 77, Advance tax rulings (also called advance, private or letter rulings) are legal instruments under which taxpayers (or their tax advisors) may obtain a more less binding statement from the tax authorities concerning the treatment of transaction or a series of contemplated future (and sometimes past) actions or transactions. Advance tax rulings are addressed to particular taxpayers upon request and explain how the tax administration will apply the law to a particular taxpayer or group of taxpayers in relation to a transaction, or a series of specified facts or transactions. They are usually referred to as “advance rulings”, since they are usually provided before the taxpayers enter into a transaction or arrangement, or (in certain jurisdictions) after the event but before a taxpayer files a tax return. Such rulings are tailor made for the taxpayer concerned because they take into account the factual situation of the taxpayer and are thus not directly applicable to other taxpayers. They may also provide a determination of whether or how a general ruling applies to the facts and circumstances of a particular taxpayer.

<sup>13</sup> IBIDEM, Pge 44 “The information given by the respective authority is legally not binding, but protected under the principle of good faith. This means that the taxpayer in general can trust the information, if it is not obviously illegal. In general, the applicant-taxpayer is not bound by the obtained advance tax ruling, which means that he can choose not to do the transaction (but when he does, he has to do it as mentioned in the ruling request).”

<sup>14</sup> John M. Huels, *Classifying Authentic Interpretations of Canon Laws*, *The Jurist* 72 (2012).

**b. Whether article 9 of the Law n° 026/2019 of 18/09/2019 on tax procedures contradicts the article 96 of the Constitution of the Republic of Rwanda of 2003, revised in 2015**

[52] Article 15 of the Constitution of the Republic of Rwanda of 04 June 2003, revised in 2015 provides that all persons are equal before the law. They are entitled to equal protection of the law.

[53] Article 7 of *Universal Declaration of Human Rights of 1948* stipulates that all persons are equal before the law and are entitled without any discrimination to equal protection of the law.<sup>15</sup> And article 26 of *International Covenant on Civil and Political Rights, 1966* provides that all persons are equal before the law and are entitled without any discrimination to equal protection of the law.<sup>16</sup>

[54] Basing on the provisions of the International covenant mentioned in the previous paragraph, and in alignment with the provisions of article 15 of the Constitution which provides the principle that each person must be treated equally before the law and that all are subject to the same laws. Therefore, the law must guarantee that no individual nor group of individuals be privileged or discriminated against by the government.<sup>17</sup> However, equality before the law and non-discrimination of individuals do not mean that distinction of individuals per se amounts always to discrimination. As stated by the Court,<sup>18</sup> distinction or categorization of individuals can be necessary, when it is done for legitimate or rational purpose.

[55] This means that the fact that the Commissioner General of Rwanda Revenue Authority is vested by the law with the power to issue an advance tax ruling, it does not mean that the law places him/her in a superior position with regard to other taxpayers because they do not belong in the same category and their responsibilities are not similar. In addition, the statements of the petitioner to the effects that the Commissioner General makes decisions when issuing advance tax rulings with the sole purpose of protecting the interests of the institution under his/her management, differ from the motivations provided in the instant case on matters related to private and public advance tax rulings, because they are issued with the purpose of facilitating the taxpayers to have a clear understanding on tax laws, and hence comply with tax payment, thereby reducing taxation litigations.

[56] Basing on the premises, the Court then finds that, the article 9 of the Law n° 026/2019 of 18/09/2019 on tax procedures is not inconsistent article 15 of the Constitution of the Republic of Rwanda of 2003, revised in 2015.

### **III. DECISION OF THE COURT**

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<sup>15</sup> All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against discrimination in violation of this Declaration and against any incitement to such discrimination.

<sup>16</sup> All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status.

<sup>17</sup> Equality before the law, (...) is the principle that each independent being must be treated equally by the law (...) and that all are subject to the same laws of justice (...). Therefore, the law must guarantee that no individual nor group of individuals be privileged or discriminated against by the government. See [https://en.wikipedia.org/wiki/Equality\\_before\\_the\\_law](https://en.wikipedia.org/wiki/Equality_before_the_law).

<sup>18</sup> See judgement RS/SPEC/0001/16/CS rendered on 23/09/2016 and the judgment RS/INCONST/SPEC 00001/2019/SC rendered on 29/11/2019.

[57] Declares baseless the petition initiated by Counsel Ndayisabye Alexis;

[58] Declares article 9 of the Law n° 026/2019 of 18/09/2019 on tax procedures not inconsistent with articles 15 and 96 of the Constitution of the Republic of Rwanda of 2003, revised in 2015.