

Re NDAYISABYE

[Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/SPEC 00001/2020/SC (Ntezilyayo, P.J., Cyanzayire, Muhumuza, Rukundakuvuga, Mukamulisa, J.) 30 Ukwakira 2020]

Amategeko agenga imisoro – Isobanura ry'amategeko y'imisoro mbere y'isoreshwa – icyemezo gifatwa mbere y'isoreshwa – Ni icyemezo cy'ubutegetsi kigomba kubahirizwa n'Ubuyobozi bw'imisoro bwagifashe kigashyirwa mu bikorwa n'umusoreshwa hakurikijwe ihame rya “Good faith” – Umusoreshwa ashobora gusaba ko gikurwaho mu buryo busanzwe bw'ibyemezo by'ubutegetsi cyangwa kuregera urukiko rubifitiye ububasha mu gihe atemeranya n'umurongo wafashwe.

Itegeko Nshinga – Gudatandukanya abantu – Nubwo abantu bagomba kureshya imbere y'amategeko, kuba Komiseri Mukuru w'Ikigo cy'Imisoro n'Amahoro itegeko rimuha ububasha bwo gufata ibyemezo bisobanura amategeko y'imisoro, atari ukumushyira hejuru y'abasoreshwa kuko bombi batari mu cyiciro kimwe n'inshingano zabo imbere y'amategeko zikaba zidahuye.

Incamake y'ikibazo: Ndayisabye yatanze ikirego mu Rukiko rw'Ikirenga asaba kwemeza ko ingingo ya 9 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha inyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04 Kamena 2003 ryavuguruwe mu wa 2015, mu ngingo zaryo za 15 na 96, kuko yahaye ububasha Komiseri Mukuru w'Ikigo cy'Igihugu gishinzwe imisoro n'amahoro (RRA) bwo gusobanurira abasoreshwa amategeko y'umusoro. Asobanura ko ingingo ya 9 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 ryavuzwe inyuranye n'ihame riteganyijwe n'Itegeko Nshinga mu ngingo yaryo ya 15 ry'uko abantu bose bareshya imbere y'amategeko kandi abarengera ku buryo bungana kuko Komiseri Mukuru adashyirwa mu rwego rumwe n'abasoreshwa kubera ko we afite ububasha bwo gusobanura amategeko, kandi ibyo asobanuye nta musoreshwa wabirengaho ahubwo bifatwa nk'itegeko.

Avuga kandi ko asanga ubwo bubasha Komiseri yahawe ari isobanurampamo ry'amategeko riteganywa mu ngingo ya 96 y'Itegeko Nshinga rya Repubulika y'U Rwanda, kandi atariwe iyi ngingo yahaye ubwo bubasha. Ibyo akabishingira ku bintu bitatu aribyo: uburyo ingingo ya 9 y'Itegeko N° 026/2019 ryavuzwe yanditse mu rurimi rw'ikinyarwanda; ibyanditse mu kinyarwanda bikaba bitandukanye n'ibiri mu zindi ndimi, aribyo “*advance tax ruling/décision anticipée*” no kuba icyemezo gifatwa na Komiseri Mukuru ari ndakuka, kidashobora gusubirwaho.

Uhagarariye Intumwa Nkuru ya Leta y'u Rwanda avuga ko ikirego cya Ndayisabye nta shingiro gifite, ko ingingo ya 9 y'Itegeko N° 026/2019 ryavuzwe haruguru nta na hamwe inyuranyije n'ingingo ya 96 y'Itegeko Nshinga, ahubwo ko urega yitiranyije ububasha bwa Komiseri Mukuru bwo gusobanura itegeko “*advance tax ruling*” n'ububasha bwo gutanga isobanurampamo ry'amategeko bufitwe n'Urukiko rw'Ikirenga.

Akomeza avuga ko ingingo ya 9 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha itanyuranyije n'ingingo ya 15 y'Itegeko Nshinga kubera ko mu nshingano za buri muni z'ikigo cy'Imisoro n'amahoro harimo kwigisha no gukangurira abaturage igikorwa cyo gutanga umusoro n'amahoro. Mu kuzuzwa iyo nshingano akaba ariho hazamo ko Komiseri Mukuru akoresha inyandiko ziteganywa mu ngingo ya 9 y'iryo tegeko, asobanurira abasoreshwa amategeko y'imisoro. Asobanura ko kubera izo nshingano Komiseri Mukuru afite zo gufata ibyo byemezo, bituma adashobora kureshya n'undi musoreshwa, ariko ko mu gihe umusoreshwa

atishimiye icyemezo gisobanura itegeko runaka ryerekeye imisoro, ashobora kubiregera mu nkiko zibifitiye ububasha nk'ibindi byemezo byose byo mu rwego rw'ubutegetsi bikaba byakurwaho mu gihe byaba byafashwe hadakurikijwe amategeko.

Incamake y'icyemezo: 1. Icyemezo gifatwa mbere y'isoreshwa n'Ubuyobozi bw'imisoro ni icyemezo cy'ubutegetsi kigomba kubahirizwa n'ubwo buyobozi bwagifashe kigashyirwa mu bikorwa n'umusoreshwa hakurikijwe ihame rya "Good faith". Umusoreshwa ashobora gusaba ko gikurwaho mu buryo busanzwe bw'ibyemezo by'ubutegetsi cyangwa kuregera urukiko rubifitiye ububasha mu gihe atemeranya n'umurongo wafashwe.

2. Kuba Komiseri Mukuru w'Ikigo cy'Imisoro n'Amahoro itegeko rimuha ububasha bwo gufata ibyemezo bisobanura amategeko y'imisoro, atari ukumushyira hejuru y'abasoreshwa kuko bombi batari mu cyiciro kimwe n'inshingano zabo imbere y'amategeko zikaba zidahuye.

Ikirego nta shingiro gifite.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 15, 29 n'ya 96.

Amasezerano Mpuzamahanga ku burenganzira Mbenezamubano n'ubwa Politiki (International Covenant on Civil and Political Rights, 1966), ingingo ya 26.

Itangazo ry'Umuryango w'Abibumbye ku burenganzira bwa muntu, (Universal Declaration of Human Rights), ryo mu mwaka wa 1948, ingingo ya 7.

Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha, ingingo ya 9, 52 n'ya 53.

Itegeko N° 37/2012 ryo ku wa 09/11/2002 rishyiraho umusoro ku nyongeragaciro, ingingo ya 30.

Itegeko N° 08/2009 ryo ku wa 27/04/2009 rigena imiterere, imikorere n'inshingano by'Ikigo cy'Imisoro n'Amahoro (RRA), ingingo ya 3.

Itegeko N° 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha, ingingo ya 27.

Imanza zifashishijwe:

RS/INCONST/SPEC 00001/2019/SC; Re. Murangwa rwaciwe n'Urukiko rw'Ikirenga ku wa 29/11/2019.

RS/SPEC/00001/2017/SC Re Urugaga rw'Abavoka mu Rwanda rwaciwe n'Urukiko rw'Ikirenga ku wa 28/04/2017.

RS/SPEC/0001/16/CS; Re Akagera Business Group rwaciwe n'Urukiko rw'Ikirenga ku wa 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.

Inyandiko z'Abahanga zifashishijwe:

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.

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Urubanza

I. IMITERERE Y'IKIBAZO

[1] Me Ndayisabye Alexis yatanze ikirego mu Rukiko rw'Ikirenga arusaba kwemeza ko ingingo ya 9 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha inyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04 Kamena 2003 ryavuguruwe mu wa 2015, mu ngingo zaryo za 15 na 96, kuko yahaye ububasha Komiseri Mukuru w'Ikigo cy'Igihugu gishinzwe imisoro n'amahoro (RRA) bwo gusobanurira abasoreshwa amategeko y'umusoro. Avuga ko iyo usesenguye ubwo bubasha bwahawe Komiseri Mukuru usanga bunyuranyije n'ibiteganywa mu Itegeko Nshinga ku bubasha bwo gutanga isobanurompamo ku mategeko, kubera ko bwahariwe gusa Urukiko rw'Ikirenga, bisabwe na Guverinoma cyangwa Urugaga rw'abavoka.

[2] Me Ndayisabye Alexis avuga ko kandi nk'umunyamategeko, asanga iyo ngingo ibanganye cyane ku bijyanye n'ihame riteganyijwe n'Itegeko Nshinga ry'uko abantu bose bareshya imbere y'amategeko kandi akaba abarengera ku buryo bungana. Agaragaza ko mu bijyanye n'umusoro, Komiseri Mukuru ibyo akora byose abikora mu nyungu z'Ikigo cy'imisoro n'amahoro ahagarariye, ko n'iyo asobanura itegeko abikora mu nyungu zacyo, akaba adashobora kurisobanura mu buryo bunogeye abasoreshwa. Asobanura ko kuba ibyo Komiseri Mukuru asobanuye nta musoreshwa wabirengaho ahubwo bifatwa nk'itegeko, asanga Itegeko ritarengera kimwe abasoreshwa n'Ikigo cy'imisoro n'amahoro gihagarariwe na Komiseri Mukuru.

[3] Me Ndayisabye Alexis avuga ko mu gusuzuma ikirego cye, Urukiko rwashingira ku bisobanuro bitangwa mu ngingo ya 9 y'Itegeko rigena uburyo bw'isoresha mu rurimi rw'ikinyarwanda, kuko iyo ngingo iha Komiseri Mukuru ububasha bwo gusobanura amategeko mu gihe iyo bisobanuwe mu rurimi rw'icyongereza iyo ngingo yumvikanisha ububasha bwa Komiseri Mukuru bwo gushyiraho "*tax ruling*" kandi ibi bikaba ntaho bihuriye no gusobanura amategeko.

[4] Me Kabibi Spécisoe, uhagarariye Intumwa Nkuru ya Leta y'u Rwanda mu rubanza avuga ko ikirego cya Ndayisabye Alexis nta shingiro gifite, ko ingingo ya 9 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha itanyuranyije n'ingingo ya 15 y'Itegeko Nshinga¹ kubera ko mu nshingano za buri munsu z'ikigo cy'Imisoro n'amahoro harimo kwigisha no

¹ Iyo ngingo ivuga ku ihame ry'uko abantu bose bareshya imbere y'amategeko, kandi itegeko rikaba ribarengera kimwe.

gukangurira abaturage igikorwa cyo gutanga umusoro n'amahoro. Uhagarariye Leta y'U Rwanda akomeza avuga ko mu kuzuza icyo nshingano ariho hazamo ko Komiseri Mukuru akoresha inyandiko ziteganywa mu ngingo ya 9 y'iryo tegeko N° 026/2019 rigena uburyo bw'isoresha, asobanurira abasoresha amategeko y'imisoro. Asobanura ko kubera izo nshingano Komiseri Mukuru afite zo gufata ibyo byemezo, bituma adashobora kureshya n'undi musoresha, ariko ko mu gihe umusoresha atishimiye icyemezo gisobanura itegeko runaka ryerekeye imisoro, ashobora kubiregera mu nkiko zibifitiye ububasha nk'ibindi byemezo byose byo mu rwego rw'ubutegetsi bikaba byakurwaho mu gihe byaba byafashwe hadakurikijwe amategeko.

[5] Avuga kandi ko ingingo ya 9 y'Itegeko N° 026/2019 ryavuzwe haruguru nta na hamwe inyuranyije n'ingingo ya 96 y'Itegeko Nshinga, ahubwo ko urega yitiranyije ububasha bwa Komiseri Mukuru bwo gusobanura itegeko "*advance tax ruling*" n'ububasha bwo gutanga isobanura-mpamo ry'amategeko bufitwe n'Urukiko rw'Ikirenga.

[6] Mu magambo make, iby'ingenzi Me Ndayisabye Alexis aburanisha byashyirwa mu ngingo ebyiri:

- a. Ingingo ya mbere irebana no kuba asanga ububasha ingingo ya 9 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha iha Komiseri Mukuru bwo gusobanura amategeko y'imisoro, ari isobanurampamo ry'amategeko riteganywa mu ngingo ya 96 y'Itegeko Nshinga rya Repubulika y'U Rwanda, kandi atariwe iyi ngingo yahaye ubwo bubasha. Ibyo akabishingira ku bintu bitatu bikurikira:
 - i. Uburyo ingingo ya 9 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha yanditse mu rurimi rw'ikinyarwanda;
 - ii. Ibyanditse mu kinyarwanda bikaba bitandukanye n'ibiri mu zindi ndimi, aribyo "*advance tax ruling/décision anticipée*";
 - iii. Kuba icyemezo gifatwa na Komiseri Mukuru ari ndakuka, kidashobora gusubirwaho.
- b. Ingingo ya kabiri irebana no kuba Komiseri Mukuru adashyirwa mu rwego rumwe n'abasoresha kuko afite ububasha bwo gusobanura amategeko, ibyo bikaba binyuranye n'ihame rikubiye mu ngingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda ry'uko abantu bose barareshya imbere y'amategeko, kandi akabarengera kimwe.

[7] Urukiko rumaze kubona imyanzuro ya Me Ndayisabye Alexis no kubona ibitekerezo byayitanzweho n'uhagarariye Leta y'u Rwanda, rurasanga ikibazo kigomba gusuzumwa muri uru rubanza, ari ukumenya niba ingingo ya 9 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha inyuranyije n'ingingo ya 15 n'ya 96 z'Itegeko Nshinga rya Repubulika y'U Rwanda ryo mu 2003 ryavugururwe mu 2015.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

1. Kumenya niba ingingo ya 9 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha inyuranyije n'ingingo za 15 na 96 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku mu 2003 ryavuguruwe mu 2015

[8] Me Ndayisabye Alexis avuga ko ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04 Kamena 2003 ryavuguruwe mu 2015, iteganya ko abantu bose barashyira imbere y'amategeko. Itegeko ribarengera ku buryo bumwe naho ingingo yaryo ya 96 ikavugaga ko isobanurampamo ry'amategeko rikorwa n'Urukiko rw'Ikirenga. Iryo sobanurampamo rishobora gusabwa na Guverinoma cyangwa Urugaga rw'Abavoka. Umuntu wese ubifitemo inyungu ashobora gusaba isobanurampamo abinyujije ku Rugaga rw'Abavoka, iyo Itegeko ritumvikanye kimwe mu ndimi ryatangajwemo mu Igazeti ya Leta, hitabwa ku rurimi iryo tegeko ryatowemo. Yemeza ko ibyo ari nako Urukiko rw'Ikirenga rwabyemeje mu rubanza RS/SPEC 0001/2017/SC.

[9] Avuga kandi ko ingingo ya 9 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha ivuga ko haseguriwe ibiteganywa n'andi mategeko, abisabwe cyangwa abyibwirije, Komiseri Mukuru akora inyandiko isobanurira abashyirahamwe ingingo z'amategeko agenga imisoro. Iyo inyandiko igenewe rubanda, itangazwa hakoreshejwe uburyo bw'itangazamakuru bugera mu Gihugu hose. Amabwiriza ya Komiseri Mukuru akena uburyo inyandiko isobanurira abashyirahamwe ingingo z'amategeko agenga imisoro ikorwa.

[10] Me Ndayisabye Alexis akomeza avuga ko asanga Itegeko Nshinga ryarateganyijwe ko Urukiko rw'Ikirenga ari rwo rwonyine rufite ububasha bwo gusobanura ingingo z'amategeko bisabwe na Guverinoma cyangwa Urugaga rw'Abavoka mu Rwanda, rigakomeza rinagaragaza ko ubifitemo inyungu wese nawe yabiregere Urukiko rw'Ikirenga abinyujije ku Rugaga rw'Abavoka mu Rwanda. Agaragaza ko kuba rero hasohotse Itegeko rigenga isoresha rivugaga ko na Komiseri Mukuru abisabwe cyangwa abyibwirije, nawe afite ububasha bwo gusobanura amategeko y'imisoro akabimenyeshya mu nyandiko kandi ntaho byigeze biteganywa n'Itegeko Nshinga, asanga iyo ngingo inyuranyijwe n'Itegeko nshinga kuko ibisobanuro atanze ntawushobora kubirengaho.

[11] Akomeza avuga ko mu rurimi rw'ikinyarwanda bavugaga ko Komiseri asobanura amategeko ariko mu zindi ndimi bakaba barakoresheje ijamba “*advance tax ruling*” na “*décision anticipée*”, bikaba ntaho bihuriye no gusobanura amategeko. Asaba ko mu gusuzuma ikirego cye hashingirwa kubyanditse mu Kinyarwanda kugira ngo hatangwe umurongo kuko arirwo rurimi itegeko ryatowemo.

[12] Atanga urugero rw'aho Komiseri Mukuru yasobanuye ingingo ya 15 agace ka 7 y'Itegeko rishyiraho umusoro ku musaruro aho yavuze ko mu gushyira mu bikorwa agace ka 7 kajyanye n'indishyi mpozamarira k'uwapfakaye n'impfubyi ku byerekeye kumenya niba izo ndishyi zafatwa nk'umusaruro ukomoka ku kazi ushushyirahamwe, yaravuze ko izo ndishyi ari impozamarira atari umusaruro ukomoka ku kazi, urega akavugaga ko icyo gisobanuro cya Komiseri Mukuru ari ndakuka.

[13] Atanga na none urugero ku bisobanuro Komiseri Mukuru yatanze ku ngingo ya 27 y'Itegeko N° 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha, aho avugaga ngo twemeje ibi bikurikira: “*nous avons pris la décision suivante*”: inyandiko ikosora umusoro ishobora gutangwa mu gihe cy'imyaka itanu cyangwa icumi igihe habayeho ibikorwa byo

kunyereza umusoro uhereye ku itariki ya mbere Mutarama ikurikira igihe cy'isoresha, ibi bikaba ataribwo itegeko ryavugaga. Urugero rwa kabiri yatanze ni ibisobanuro bya Komiseri Mukuru ku ngingo ya 30 y'Itegeko N° 37/2012 ryo ku wa 09/11/2002 rishyiraho umusoro ku nyongeragaciro, aho avuga ngo twemeje ibi bikurikira: ku bindi bitari ibitumizwa mu mahanga iyo umubare wanditswe cyangwa wishyurwa mu mafaranga y'amahanga uwo mubare uhindurwa mu mafaranga y'u Rwanda ku gipimo cy'igura gitangwa na Banki Nkuru y'u Rwanda ku itariki uwo mubare w'amafaranga utangiwe, ko ibyo bitari biteganyijwe muri iyo ngingo.

[14] Asobanura kandi ko iyo habaye imyumvire itandukanye ku mategeko y'imisoro, Komiseri Mukuru atanga ibisobanuro ashingiye ku myumvire ye, ibyo bitandukanye na *Advance Tax Ruling* kuko isabwa n'umusoreshwa ku giti cye asobanura ibimureba, icyemezo gifashwe kikaba kimureba wenyine, kandi ko kidatangazwa. Akomeza avuga ko mu gusobanura itegeko, Komiseri Mukuru abikora mu nyungu z'Ikigo ayobora aho kuba mu nyungu z'abantu bese, ibyo bikaba bigaragaza ko hari ubusumbane hagati ya Komiseri Mukuru n'abasoreshwa, kandi bikanadindiza Politiki ya Leta y'ishoramari (*Policy of doing business*) u Rwanda rugenderaho mu kwihutisha ishoramari no kubahiriza amategeko arigenga kubera ko umuntu uje gushora imari mu Rwanda acibwa intege no kubona Komiseri Mukuru afite ububasha bw'ikirenga.

[15] Me Tugirumuremyi Raphael umwunganira avuga ko Itegeko rishyiraho Ikigo cy'Imisoro n'amahoro ryahaye Komiseri Mukuru ububasha bwo kwigisha abasoreshwa amategeko y'imisoro, aho rigena inshingano z'icyo Kigo, ko ariko asanga bitari ngombwa ko bikorwa mu buryo buteganywa mu ngingo ya 9 y'Itegeko ryavuzwe haruguru cyane ko urebye uburyo ibyemezo Komiseri Mukuru afata asobanura amategeko usanga ntaho bitaniye n'isobanurampamo.

[16] Avuga kandi ko ibivugwa n'uhagarariye Leta ko ibisobanuro bitangwa na Komiseri Mukuru bivugwa mu ngingo ya 9 y'Itegeko ryavuzwe haruguru ari "Advance Tax Ruling" ntaho bigaragara mu rurimi rw'ikinyarwanda itegeko ryatowemo. Anasobanura ko bakoze ubushakashatsi kuri "Advance Tax Ruling" bagasanga ireba umusoreshwa umwe cyangwa itsinda, kandi ko icyemezo gifashwe kiba kitareba abandi basoreshwa mu gihe icyemezo gifatiwe abasoreshwa bo mu Rwanda kiba ari ndakuka. Akaba asanga bibangamiye ihame ryo gutandukanya ububasha kuko urwego rugomba gushyira mu bikorwa itegeko rudashobora guhindukira ngo ruhabwe ububasha bwo gushyiraho amabwiriza. Asaba ko gusobanura amategeko byagumana abo itegeko nshinga ryabiteganyirije.

[17] Asobanura kandi ko iyo ngingo ya 9 y'Itegeko N° 026/2019 ryavuzwe haruguru itaringaniza umusoreshwa na Komiseri Mukuru ku rwego rumwe imbere y'amategeko, kuko Komiseri Mukuru we afite ububasha bw'ikirenga bwo gushyira mu bikorwa itegeko no kurisobanura uko abyumva, mu gihe umusoreshwa atabyemerewe, ahubwo ategetswe no kubahiriza ibyo Komiseri Mukuru yasobanuye ku mategeko y'imisoro. Asaba Urukiko rw'Ikirenga kwemeza ko ingingo ya 9 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha ko inyuranyije n'Itegeko Nshinga nk'uko ryavuguruwe kugeza ubu.

[18] Me Kabibi Spéciose uhagarariye Intumwa Nkuru ya Leta avuga ko ibyo Me Ndayisabye Alexis asaba by'uko Komiseri Mukuru adashyirwa mu rwego rumwe n'abandi basoreshwa kubera ko afite ububasha bwo gusobanura amategeko y'imisoro kandi ibyo asobanuye ntihagire umusoreshwa ubirengaho kuko bifatwa nk'itegeko, Urukiko rw'Ikirenga rwarabisobanuye mu rubanza RS/SPEC/0001/16/CS rwaciwe ku wa 23/09/2016 no mu rubanza RS/INCONST/SPEC

00001/2019/SC rwaciwe ku wa 29/11/2019, aho rwemeje ko kureshya imbere y'amategeko no kutavangura bitavuze ko gutandukanya abantu ubwabyo mu bihe byose ari ivangura, ko gutandukanya abantu cyangwa gushyiraho ibyiciro by'abantu bishobora kuba ngombwa bitewe n'ikigambiriwe, hari impamvu zumvikana zishingiye ku ntego ifite ireme (*legitimate or rational purpose*).

[19] Mu rwego rwo gusobanura impamvu Komiseri Mukuru atandukanywa n'abasoreshwa cyangwa adashyirwa mu byiciro bimwe n'ibyabo, Me Kabibi Spéciose avuga ko ingingo ya 3 y'Itegeko N° 08/2009 ryo ku wa 27/04/2009 rigena imiterere, imikorere n'inshingano by'Ikigo cy'Imisoro n'Amahoro (RRA), mu gace kayo ka 3, ivuga ko mu nshingano z'icyo kigo harimo kwigisha no gukangurira abaturage igikorwa cyo gutanga imisoro n'amahoro. Muri icyo nshingano yo kwigisha abaturage (ari bo basoreshwa), akaba ariho hazamo kubasobanurira amategeko y'imisoro hakoreshejwe inyandiko zisobanura amategeko y'imisoro ziteganywa n'ingingo ya 9 y'Itegeko N° 026/2019 ryavuzwe haruguru zivugwa ko zinyuranyije n'Itegeko Nshinga.

[20] Me Kabibi Spéciose akomeza avuga ko Umuyobozi w'Ikigo gishinzwe imisoro n'amahoro (RRA) adashobora kujya ku rwego rumwe n'abasoreshwa ariyo mpamvu itegeko rimuha ububasha bwo gufata ibyemezo by'ubutegetsi (*administrative acts*) nk'ibyabo gusobanura amategeko y'imisoro "*Advance Tax Ruling*", kandi icyo cyemezo kigahita gikurikizwa, mu rwego rwo korohereza abasoreshwa kumva neza amategeko y'imisoro, gukorera mu mucyo no kubazwa inshingano (*accountability and transparency*) mu mikorere y'icyo Kigo, hirindwa guca ibihano umusoreshwa wibeshye kuko atumvise neza itegeko. Anasobanura kandi ko ibyo bitabuza ko umusoreshwa utishimiye icyemezo cyafashwe yakwegera inzego z'ubutabera nk'inkiko kugira ngo zimufashe kurenganurwa mu gihe icyo cyemezo cyaba cyaramurenganyije.

[21] Me Kabibi Spéciose avuga ko inyandiko isobanura amategeko y'imisoro ikorwa na Komiseri Mukuru idasobanurwa nk'itegeko rigomba kubahirizwa, ahubwo yashyizwemo nk'icyemezo cy'ubutegetsi gishobora kunyura abo kireba cyangwa ntikibanyure. Agaragaza ko icyo cyemezo kitanyuze uwo kireba, yemerewe gukoresha uburenganzira ahabwa n'ingingo ya 52 n'ya 53 z'Itegeko N° 026/2019 ryavuzwe haruguru, kimwe n'ubwo ahabwa n'ingingo ya 29, 3^o y'Itegeko Nshinga rya Repubulika y'u Rwanda, akakiregera mu rukiko rubifitiye ububasha.

[22] Me Kabibi Spéciose avuga kandi ko ingingo ya 9 y'Itegeko rigena isoresha nta na hamwe inyuranyije n'ingingo ya 96 y'Itegeko Nshinga kubera ko urega yitiranyije ububasha bwa Komiseri Mukuru bwo gusobanura itegeko "*advance tax ruling*" n'ububasha bwo gutanga isobanura-mpamo. Asobanura ko ubusanzwe ibyo byemezo bya Komiseri Mukuru asobanura amategeko "*ATR*" bigamije kwerekana ubushobozi bw'urwego mu kwigenzura bigaragazwa no gukorera mu mucyo, kubazwa inshingano, ugutahiriza umugozi umwe hagati y'urwego rushinzwe imisoro n'umusoreshwa ndetse bikerekana ubushobozi bw'urwego mu gukemura ibibazo aribyo yasobanuye mu cyongereza muri aya magambo².

[23] Avuga ko umwanditsi Gommar Michiels we yongeraho ko isobanura mpamo ari ibisobanuro by'itegeko bifatwa kandi bikemerwa nk'itegeko atari igitekerezo cy'ubuhanga cyerekana ibyo umushingamategeko yari agamije gusa (nk'ibisobanuro bitangwa n'inyandiko

² 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.

zisobanura amategeko y'umusoro byakozwe na Komiseri Mukuru). Abivuga muri aya magambo "...*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*"³. Umuntu agerageje kubisobanura mu Kinyarwanda bivuze ko isobanura mpamo ari igikorwa gitegeka ko ibisobanuro byahawe itegeko bigomba gufatwa kandi bikemerwa nk'itegeko; ntibigomba gufatwa nk'igitekerezo cy'ubuhanga (gusa) cyari kigamijwe n'umushingamategeko. Ibi byerekana neza ko mu gihe utanga isobanura mpamvu atanga ibisobanuro-ntegeka (bifite uburemere bw'itegeko) kand biri "*binding*"; ko rero inyandiko zisobanura amategeko y'umusoro zitangwa na Komiseri Mukuru zo aba atari itegeko.

[24] Avuga ko icyemezo cya Komiseri Mukuru gisobanura itegeko "*ATR*" gikoreshwa mu isoresha ry'ibintu bimwe na bimwe bisa n'aho bitoroheye umusoreshwa kubyumva mu gihe uwo musoreshwa abisabye cyangwa Komiseri Mukuru abyibwirije, ko Komiseri Mukuru aba agamije kwerekana uburyo ubuyobozi bw'imisoro bwumva ingingo zimwe z'amategeko y'imisoro, cyangwa uburyo bumva ibintu bimwe byasoreshwa, ndetse n'uburyo bazabisoresha, ibyo bigafasha umusoreshwa ufite ubushake "*good faith*" kubukurikiza neza kugira ngo yirinde ibihano mu gihe yaba abikoze nabi bitewe n'uko atumvise neza ikigomba gukorwa.

[25] Akomeza avuga ko ibyo urega ashaka kugaragaza ko "*Advance Tax Ruling*" zireba umuntu umwe cyangwa itsinda ry'abantu gusa ataribyho kuko hari igihe umusoreshwa asaba mu buryo bw'inyandiko gusobanurirwa ingingo y'itegeko atumva neza. Icyo gihe Komiseri Mukuru asubiza uwamwandikiye gusa ku cyasabwe (*Private Tax Ruling*). Hakaba n'igihe Komiseri Mukuru, mu igenzura ry'uburyo abasoreshwa bagiye basora ashobora kubona abantu benshi bafite imyumvire itandukanye ku ngingo runaka maze agatanga inyandiko isobanura iyo ngingo, kandi iyo nyandiko igatangazwa kuko iba ireba abasoreshwa bese, aribyo bita *Public Tax Ruling*. Ku bijyanye n'ububasha izo nyandiko zifite, asobanura ko ibivugwa na Me Ndayisabye Alexis ko abasoreshwa bese bagomba kuzishyira mu bikorwa ataribyho, ko ahubwo RRA yafashe icyo cyemezo ariyo itegeko kugukurikiza naho umusoreshwa ashobora kwemeranywa nacyo cyangwa ntacyemere.

[26] Me Kabibi Spéciose asobanura kandi ko imiryango mpuzamahanga igamije iterambere ry'ubukungu⁴ ndetse n'abahanga mu mategeko y'imisoro⁵ basobanura iyo nyandiko ya Komiseri Mukuru isobanura amategeko y'imisoro "*ATR*" nk'inyandiko itangwa n'Ubuyobozi bw'Imisoro isobanura imyumvire y'ubwo buyobozi ku isoresha ry'ibintu bimwe cyangwa ibindi bitandukanye mu gihe isoresha ritaraba. Mu yandi magambo, ni icyemezo cya Komiseri Mukuru kigaragaza imyumvire y'ibijyanye n'isoresha. Avuga ko iyo usesenguye icyo iyi ngingo ya 9 y'itegeko ryavuzwe haruguru iteganya, usanga ibyo byemezo bya Komiseri Mukuru "*Advance tax Ruling*" bishyirwaho hagamijwe gusobanura ingingo z'amategeko y'imisoro abasoreshwa n'abandi bantu

³ 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.

⁴ Me Kabibi agaragaza ko umuryango wa OECD (Organisation for Economic cooperation and Development) sobanura iyo nyandiko "*ATR*" mu magambo akurikira: "a written statement issued to a taxpayer by a Revenue body that interpretes and applies the tax law to a specific set of facts and is binding upon the Revenual body".

⁵ Me Kabibi Spéciose avuga ko International guide to advance ruling isobanura "*ATR*" ko ari "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

bayakoresha badasobanukiwe neza cyangwa batumva ku buryo bumwe, ku buryo binabagora mu kuyashyira mu bikorwa cyangwa kuyakoresha muri rusange.

[27] Yakomeje avuga ko iyo Komiseri Mukuru ashyizeho ibyo byemezo ataba agamije gushyiraho amategeko atandukanye cyangwa avuguruza ingingo z'amategeko nk'uko uwareze ashaka kubyumvikanisha, ahubwo aba agamije gufasha abasoresha n'abandi bantu bayakoresha kuyumva mu buryo bwagutse. Avuga kandi ko ikigaragaza ko izi nyandiko zisobanura amategeko zikenewe, ari uko byagaragaye ko abasoresha n'abandi bantu bakoresha amategeko y'imisoro, bakunze kwandikira Komiseri Mukuru bamusaba kubaha umurongo bajya bagenderaho ku ngingo z'amategeko batabasha kumva neza cyangwa batabasha kumva kimwe.

[28] Asobanura ko ibyo byemezo bisobanura amategeko y'imisoro bishyirwa ku rubuga (*website*) rw'Ikigo Gishinzwe imisoro n'amahoro (RRA) kugira ngo abo bigenewe bose hatabuzemo n'umwe (abasora bose n'abandi...) bashobore kubona imyumvire (*interpretation*) y'icyo Kigo ku mategeko y'imisoro, hakirindwa ko bimenywa gusa n'abanditse bagisha inama, ko izo nyandiko atari amategeko mashya Komiseri Mukuru aba ashyizeho bivuze ko Ikigo cy'Imisoro n'Amahoro kidashobora guca umusoro gishingiye kuri izo nyandiko zonyine.

[29] Anasobanura ko ibyo Me Ndayisabye Alexis avuga ko ibyo byemezo bibangamira ihame rya "*Doing business*" ataribyho kuko iryo hame rishingiye ku gukorera mu mucyo (*transparency*), ariyo mpamvu mu rwego rwo kwirinda ko abasoresha bahanwa kubera kutumva neza amategeko, ahubwo basobanurirwa mbere, kandi bigabanya n'impaka hagati y'umusoresha n'umusoresha. Ibyo byose bikaba aribyo ihame rya "*Doing business*" rishingiyeho.

[30] Avuga kandi ko ingingo ya 9 y'Itegeko ryavuzwe haruguru mu rurimi rw'ikinyarwanda itumvikanisha neza "*Advance Tax Ruling*" aho ivuga ko Komiseri Mukuru asobanura amategeko, ko byari gusobanuka iyo havugwa "icyemezo gifashwe mbere.

[31] Me Ndayisabye Alexis n'umwunganira bavuga ko icyemezo gifatwa na Komiseri gifite kamere y'icyemezo cy'ubutegetsi gifunze kubera ko kiba cyafashwe n'umuyobozi ariko kidashobora kuregerwa kuko mu busanzwe icyemezo yafashe kijuririrwa, naho ku bijyanye no gusobanura itegeko ko utajuririra Komiseri Mukuru umubwira ko yasobanuye nabi itegeko, kandi nta n'aho itegeko ribiteganywa.

[32] Ku bijyanye n'ibyo ibigo bishinzwe imisoro bikora ahandi mu mahanga (ibisobanuro by'inwandiko ya *ATR* byatanzwe na OECD), Me Ndayisabye Alexis avuga ko u Rwanda atari umunyamuryango wa OECD ku buryo Komiseri Mukuru yakora nk'ibyo abayobora Ibigo bishinzwe imisoro muri ibyo bihugu bakora, avuga ko kandi muri ibyo bihugu, abo bayobozi badafata ibyemezo byo gusobanura amategeko nk'uko Komiseri Mukuru mu Rwanda abikora ahubwo batanga ibitekerezo byabo nk'abandi bahanga bo mu bigo bya kaminuza n'ibindi bigo by'ubushakashatsi.

UKO URUKIKO RUBIBONA

- a. Kumenya niba ingingo ya 9 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha inyuranyije n'ingingo ya 96 y'Itegeko Nshinga rya Repubulika y'U Rwanda ryo mu 2003 ryavuguruwe mu 2015**

[33] Igiterekerezo nyamukuru Me Ndayisabye Alexis ashingiraho avuga ko ingingo ya 9 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 inyuranye n'ingingo ya 96 y'Itegeko Nshinga rya Repubulika y'u Rwanda, ni ukuba Komiseri Mukuru yarahawe n'Itegeko rigena uburyo bw'isoresha ububasha bwo gusobanura amategeko, kandi Urukiko rw'Ikirenga arirwo rwahawe ububasha bwo gukora isobanurampamo ry'amategeko n'ingingo ya 96 y'Itegeko Nshinga. Mu gusuzuma ishingiro ryabyo, Urukiko rurasanga rugomba gusuzuma kamere y' icyemezo gisobanura amategeko arebana n'imisoro mbere y'isoreshwa kugira ngo rushobore kwemeza niba isobanura ry'amategeko arebana n'imisoro rikorwa na Komiseri Mukuru ari isobanurampamo.

[34] Ingingo ya 9 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha iteganya ko haseguriwe ibiteganywa n'andi mategeko, abisabwe cyangwa abyibwirije, Komiseri Mukuru akora inyandiko isobanurira abasoreshwa ingingo z'amategeko agenga imisoro. Iyo inyandiko igenewe rubanda, itangazwa hakoreshejwe uburyo bw'itangazamakuru bugera mu Gihugu hose. Amabwiriza ya Komiseri Mukuru akena uburyo inyandiko isobanurira abasoreshwa ingingo z'amategeko agenga imisoro ikorwa.

[35] Urukiko rusanga ingingo ya 9 y'Itegeko N° 026/2019 rimaze kuvugwa haruguru yumvikanisha ko Komiseri Mukuru atanga inyandiko isobanurira abasoreshwa ingingo z'amategeko agenga imisoro mu bihe bikurikira:

- Iyo hari umusoreshwa cyangwa itsinda ry'abasoreshwa babisabye;
- Iyo Komiseri Mukuru abyibwirije kubera ko hari itegeko ritumvikana kimwe ku basoreshwa batandukanye.

[36] Urukiko rurasanga kubera ko Komiseri Mukuru atarashyiraho amabwiriza akena uburyo inyandiko isobanurira abasoreshwa ingingo z'amategeko agenga imisoro ikorwa, hagomba kwifashishwa ibisobanuro byatanzwe mu manza cyangwa mu nyandiko z'abahanga aho hagaragazwa ubwoko bw'izo nyandiko, akamaro kazo, kamere, ububasha zigira ku buyobozi bw'imisoro no ku musoreshwa.

[37] Mu rubanza rwaciwe n'Urukiko rw'Ikirenga rw'Ubuhandi, hasobanuwe ko sisitemu ihamye y'icyemezo gifatwa mbere y'isoreshwa ishobora gufasha cyane mu kugabanya imanza z'imisoro. Bavuga ko aho kubanza gutanga imenyekanisha hanyuma ugahura n'ingaruka zo kudahuza imyumvire n'ubuyobozi bw'imisoro, sisitemu yo gutanga ibyemezo mbere ishobora gutuma ibibazo by'imisoro bikemuka, ikanakumira imanza z'imisoro.⁶

[38] Muri urwo rubanza kandi bavuze ko intego nyamukuru ya sisitemu iteguye neza y'ibyemezo bisobanura amategeko y'imisoro bitangwa mbere y'isoreshwa ari ugutuma haba kuvugana hagati y'abasoreshwa n'abasoresha kugirango bombi bagere ku ntego rusange ku

⁶ "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." 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>

mpande zombi yo gutuma amategeko y'imisoro yubahirizwa uko bikwiye kandi abasoreshwa bakomeza kugira ubushake bwo gusora.⁷

[39] Abahanga mu mategeko Christophe Waerzeggers na Cory Hillier mu nyandiko bise: *Introducing an advance tax ruling (ATR) Regime*, nabo basobanura itandukaniro riri hagati y'icyemezo cyihariye gisobanura amategeko arebana n'imisoro mbere y'isoreshwa (*Private Advance Tax Ruling*) n'icyemezo rusange gisobanura amategeko arebana n'imisoro (*Public Advance Tax Ruling*) mu buryo bukurikira: Ibyemezo byihariye bisobanura amategeko arebana n'imisoro mbere y'isoreshwa (*Private Advance Tax Ruling*) bifatwa mu gihe umusoreshwa mbere yo gutangira igikorwa gisoreshwa, abanje gusaba inama mu buyobozi bushinzwe imisoro kugira ngo azazigendereho mu gushyira mu bikorwa uwo mushinga we kandi Ubuyobozi bw'imisoro bukubahiriza icyo cyemezo bwafashwe. Icyo cyemezo kigaragaza inshingano z'urwego rushinzwe isoresha nko kurinda umusoreshwa kwishyura umusoro w'inyongera, kutamuca ibihano cyangwa inyungu bushingiye kuri icyo cyemezo. Ibyemezo byihariye bisobanura amategeko arebana n'imisoro mbere y'isoreshwa bireba umusoreshwa wabisabye, ariko ntibikurikizwa ku bandi basoreshwa kabone n'iyi nabo baba barebwa n'impamvu yashingiweho gitangwa.⁸

[40] Ku birebana n'icyemezo rusange gisobanura amategeko arebana n'imisoro gitangwa mbere y'isoreshwa (*Public Advance Tax Ruling*), abo bahanga bavuzwe mu gika kibanziriza iki bagisobanura nk'inyandiko itanzwe n'urwego rushinzwe isoresha irebana n'uburyo amategeko agenga isoresha azubahirizwa n'umusoreshwa cyangwa itsinda ry'abasoreshwa. Icyemezo rusange cy'imisoro gitangazwa ku mugaragaro kandi kikagaragaza uko urwego rushinzwe isoresha rusobanura amategeko rushingiraho mu kugitanga. Izi nyandiko zifite agaciro gakomeye mu birebana n'iyubahirizwa ry'amategeko agenga imisoro, cyane cyane ku birebana no gutanga umurongo ngenderwaho ku bubasha bwihariye bukubiye mu mategeko agenga imisoro. Ibyemezo rusange by'imisoro bishobora gushyirwa cyangwa kudashyirwa mu bikorwa uko byakabaye ariko bigomba gufasha abasoreshwa kugera ku cyo bifuzwa hakurikijwe amahame agenwa n'amategeko agenga ubutegetsi.⁹

⁷ "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.advocatehoj.com/library/judgments/announcement.php?WID=13147>

⁸ 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.

⁹ 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.

[41] Urukiko rurasanga ibiteganywa n'ingingo ya 9 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha n'ibivugwa n'abahanga, bihuriza ku kuba inyandiko zisobanurira abasoreshwa ingingo z'amategeko agenga imisoro ziri mu bwoko bubiri, iya mbere ikaba icyemezo cyihariye gitangwa mbere y'isoreshwa (*Private Advance Tax Ruling*) naho iya kabiri ikaba icyemezo rusange gitangwa mbere y'isoreshwa (*Public Advance Tax Ruling*). Bityo ibivugwa na Me Ndayisabye Alexis n'umwunganira ko bakoze ubushakashatsi kuri "*Advance Tax Ruling*" bagasanga ireba gusa umusoreshwa umwe cyangwa itsinda, kandi ko icyemezo gifashwe kiba kitareba abandi, bikaba nta shingiro bifite.

[42] Urukiko rusanga ibitagaragara mu myandikire y'ingingo ya 9 y'Itegeko N° 026/2019 ryavuzwe haruguru mu rurimi rw'ikinyarwanda, ariko byasobanuwe mu zindi ndimi ndetse n'abahanga mu mategeko akaba ariko babisobanura ni uko iyo nyandiko itangwa mbere y'uko umusoreshwa atangira ibikorwa bisoreshwa, ndetse na Me Kabibi Spéciose yemereye mu iburanisha ko byari gusobanuka iyo umushingamategeko avuga "Icyemezo gifashwe mbere". Kuba iryo jambo ritaranditswe ariko si ikibazo kuko icyo umushingamategeko yari agamije cyumvikana harebwe ibyanditswe mu zindi ndimi.

[43] Urukiko rurasanga ibivugwa na Me Ndayisabye Alexis n'umwunganira ko kuba ingingo ya 3 y'Itegeko N° 08/2009 ryo ku wa 27/04/2009 rigena imiterere, imikorere n'inshingano by'Ikigo cy'Imisoro n'Amahoro iha ububasha Komiseri Mukuru bwo kwigisha amategeko y'imisoro, bitari ngombwa ko anahabwa ububasha bwo gusobanura amategeko nta shingiro bifite kuko mu ngingo ya 3 y'Itegeko N° 08/2009 hasobanurwa inshingano z'Ikigo cy'Imisoro n'Amahoro mu gace kayo ka 3 zirimo kwigisha no gukangurira abaturage igikorwa cyo gutanga imisoro n'amahoro naho mu ngingo ya 9 y'Itegeko N° 026/2019 ryavuzwe haruguru hakaba hateganyijwe ko Komiseri Mukuru afite ububasha bwo gusobanura amategeko arebana n'umusoro. Iyi nshingano ikaba ikomoka ku kuba amategeko y'imisoro ahinduka kenshi cyangwa hari igihe abasoreshwa batayasobanukirwa bitewe n'uburyo yanditse nk'uko byasobanuwe n'Uhagarariye Leta. Ubuyobozi bw'imisoro bukayasobanurira abasoreshwa bubyibwirije cyangwa bubisabwe mu rwego rwo gukemura ibibazo byavuka cyangwa byagaragaye, hagamijwe kuzamura imikoranire hagati yabwo n'abasoreshwa, kugabanya amakimbirane yazaterwa n'uko kumva amategeko mu buryo butandukanye no gukorera mu mucyo.

[44] Urukiko rurasanga kandi abahanga mu mategeko nabo bashimangira akamaro k'icyemezo gisobanura amategeko arebana n'imisoro mbere y'isoreshwa, nka Alia Duta mu nyandiko ye yitwa: "*The harmonization of advance tax rulings systems in european union member states – why?*", avuga ko gukoresha izo nyandiko bifitiye akamaro umusoreshwa ndetse n'ubuyobozi bushinzwe imisoro, kubera ko amategeko agenga imisoro ahinduka kenshi, ndetse hakaba n'igihe abasoreshwa batayasobanukirwa mu buryo bumwe bitewe n'uburyo yanditse. Agaragaza ko ibyo byemezo bituma urwego rushinzwe imisoro rwerekana ubushobozi bwarwo mu gukemura ibibazo, gukoresha ibyo byemezo bikazamura urwego rw'imikoranire hagati y'Ikigo gishinzwe imisoro n'umusoreshwa, bikanagabanya imanza. Akomeza avuga ko ibyo byemezo bigomba gufatwa hubahirijwe amahame rusange areba amabwiriza ku bijyanye n'imisoro nk'ihame ryo kureshya imbere y'amategeko, no gukorera mu mucyo no kubahiriza amategeko.¹⁰

¹⁰ 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), 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.

[45] Urukiko rushingiye ku bivugwa n’umuhanga Alia Duta, rurasanga mu gufata icyemezo gisobanura amategeko arebana n’imisoro mbere y’isoreshwa, Komiseri Mukuru adashingira ku myumvire ye nk’uko Me Ndayisabye Alexis n’umwunganira bashaka kubyumvikanisha ahubwo agifata ashingiye ku mahame rusange akurikizwa mu ishyirwaho ry’amabwiriza ku bijyanye n’imisoro nk’ihame ryo kureshya imbere y’amategeko, no gukorera mu mucyo no kubahiriza amategeko.

[46] Ibyo kandi binashimangirwa n’ibivugwa n’uwo muhanga aho asobanura ko mu bijyanye n’ishyirwa mu bikorwa ry’ibyemezo bifatwa mbere y’isoreshwa (*ATR*), Ubuyobozi bw’imisoro budashobora kujya ku rwego rumwe n’umusoreshwa, buba bufite ububasha bwinshi, ugereranyije n’ubw’umusoreshwa kuko ibyo bukora byose biba bigamije kugera ku nyungu rusange.¹¹

[47] Urukiko rugendeye kandi ku bisobanuro bitangwa n’abahanga kuri “*Advance Tax Ruling*”, rurasanga bemeza ko icyemezo gisobanura amategeko arebana n’imisoro mbere y’isoreshwa ari icyemezo cy’ubutegetsi. Ibi bivugwa na Carlo Romano, mu gitabo cye yise *Advance Tax Rulings and Principles: Towards a European Tax Rulings* asobanura ko kuba icyemezo gisobanura amategeko arebana n’imisoro mbere y’isoreshwa (*Advance Tax Ruling*) gifatwa nk’icyemezo cy’ubutegetsi aho gufatwa nk’amasezerano areba inzego za Leta cyangwa umuntu ku giti cye biba ingirakamaro mu kurengera umusoreshwa, kandi bikagira inyungu bitewe n’uburyo bwashyizweho n’amategeko bwo kugena ibyo byemezo [.....].¹² Avuga kandi ko abasoreshwa badategetswe gushyira mu bikorwa ibyo byemezo, ko hakurikizwa ihame rya “*Good faith*” ariko iyo babikoze, bagishyira mu bikorwa uko byateganyijwe.¹³

[48] Urukiko rurasanga kuba icyemezo gisobanura amategeko arebana n’imisoro mbere y’isoreshwa ari icyemezo cy’ubutegetsi, kandi kikaba kigomba kubahirizwa n’Ubuyobozi bw’imisoro bwagifashe, byumvikanisha ko umusoreshwa ashobora gusaba ko gikurwaho mu buryo busanzwe bw’ibyemezo by’ubutegetsi cyangwa kuregera urukiko rubifitiye ububasha mu gihe atemeranya n’umurongo wafashwe na Komiseri Mukuru.

[49] Ku birebana n’isobanurampamo rivugwa mu ngingo ya 96 y’Itegeko Nshinga rya Repubulika y’U Rwanda, umuhanga mu mategeko John M. Huels, yasobanuye ko

¹¹ 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.

¹² 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.

¹³ 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).”

isobanurampamo ry'amategeko rikorwa mu buryo bwihariye, rigakorwa n'ababifitiye ububasha bahabwa n'amategeko, hakanagaragazwa ibisobanuro by'itegeko ritumvikana neza. Abivuga muri ubu buryo: "[...] *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.*"¹⁴

[50] Mu rubanza RS/SPEC/00001/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 28/04/2017, Urukiko rushingiye ku kuba isobanurampamo ari ugusobanura amategeko bikozwe mu nzira zagenwe kandi bigakorwa n'ubifitiye ububasha, rwemeje ko isobanurampamo ritagereranywa n'isobanura ry'amategeko risanzwe.

[51] Hashingiwe ku bisobanuro byose byatanzwe, Urukiko rurasanga isobanura ry'amategeko y'imisero rikorwa na Komiseri Mukuru, ritandukanye n'isobanurampamo riri mu bubasha bw'urukiko rw'Ikirenga, bityo ingingo ya 9 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha ikaba itanyuranyije n'ingingo ya 96 y'Itegeko Nshinga rya Repubulika y'U Rwanda ryo mu 2003 ryavuguruwe mu 2015.

Kumenya niba ingingo ya 9 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha inyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'U Rwanda ryo mu 2003 ryavuguruwe mu 2015

[52] Ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04 Kamena 2003 ryavuguruwe mu 2015, igira iti abantu bose bararashya imbere y'amategeko. Itegeko ribarengera ku buryo bumwe.

[53] Ingingo ya 7 y'Itangazo ry'Umuryango w'Abibumbye ku burenganzira bwa muntu, (*Universal Declaration of Human Rights*), ryo mu mwaka wa 1948, ivuga ko abantu bose bareshya imbere y'amategeko kandi barengerwa kimwe n'amategeko nta vangura iryo ari ryo ryose.¹⁵ Naho ingingo ya 26 y'Amasezerano Mpuzamahanga ku burenganzira Mbenezamubano n'ubwa Politiki (*International Covenant on Civil and Political Rights, 1966*) igateganya ko abantu bose bareshya imbere y'amategeko kandi barengerwa kimwe n'amategeko nta vangura iryo ari ryo ryose.¹⁶

[54] Hashingiwe kubiteganyijwe n'amasezerano mpuzamahanga avugwa mu gika kibanziriza iki, binahuye n'ibyo ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda iteganya, uburinganire imbere y'amategeko ni ihame ry'uko buri muntu agomba gufatwa kimwe n'undi n'amategeko, kandi abantu bose bagengwa n'amategeko amwe. Kubera izo mpamvu, amategeko agomba gutuma nta muntu ku giti cye cyangwa itsinda ry'abantu ritoneshwa cyangwa rivangurwa

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

¹⁵ 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.

¹⁶ 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.

bikozwe na Leta.¹⁷ Kureshya imbere y'amategeko no kutavangura ariko ntibivuze ko gutandukanya abantu ubwabyo buri gihe ari ivangura. Nk'uko uru Rukiko rwabivuze,¹⁸ gutandukanya abantu cyangwa gushyiraho ibyiciro by'abantu bishobora kuba ngombwa bitewe n'ikigambiriwe, hari impamvu zumvikana zishingiye ku ntego ifite ireme (*Legitimate or rational purpose*).

[55] Ibi byumvikanisha ko kuba Komiseri Mukuru w'Ikigo cy'Imisoro n'Amahoro itegeko rimuha ububasha bwo gufata ibyemezo bisobanura amategeko y'imisoro, atari ukumushyira hejuru y'abasoresha kuko bombi batari mu cyiciro kimwe n'inshingano zabo imbere y'amategeko zikaba zidahuye. Ikindi ni uko ibyo urega avuga ko Komiseri Mukuru afata ibyemezo bisobanura amategeko mbere y'isoreshwa agamije kurengera gusa inyungu z'Ikigo ayobora bitandukanye n'ibisobanuro byatanzwe muri uru rubanza ku byerekeye ifatwa ry'ibyemezo byihariye n'ibyemezo rusange bisobanura amategeko y'imisoro mbere y'isoreshwa, kuko bifatwa hagamiywe gufasha abasoresha kumva neza amategeko y'imisoro, bityo bigatuma basora neza, bikanakumira imanza z'imisoro.

[56] Kubera izo mpamvu zose rero, Urukiko rukaba rusanga ingingo ya 9 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha itanyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015.

III. ICYEMEZO CY'URUKIKO

[57] Rwemeje ko ikirego cyatanzwe na Me Ndayisabye Alexis nta shingiro gifite.

[58] Rwemeje ko ingingo ya 9 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha itanyuranyije n'ingingo ya 15 n'iya 96 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015.

¹⁷ 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.

¹⁸ Reba urubanza RS/SPEC/0001/16/CS rwaciye ku wa 23/09/2016 n'urubanza RS/INCONST/SPEC 00001/2019/SC rwaciye ku wa 29/11/2019.