

Abuse of law in taxes – abstract

The author has decided to choose this particular topic as it concerns her occupations as tax advisor. The doctrine of abuse of law is actually becoming more frequent not only in the tax cases decided by the Court of Justice of the European Union, by the Czech Supreme Administrative Court and lower Czech courts but also often occurs in the regular tax proceeding conducted by all levels of the Czech tax administration. The aim of the author was to analyse the doctrine and try to develop a practical instrument for decision making of common Czech taxpayers.

The thesis is divided into two parts and conclusion. In the first part, the doctrine of abuse of law and related concepts as tax avoidance, tax evasion, substance-over-form rule, sham transactions and tax optimization in the Czech law theory and legislation is analysed, in second chapter the author has looked more closely into cases decided by Czech courts. In the third chapter are analysed the most important cases concerning abuse of law decided by the Court of Justice of the European Union.

In second part of the thesis are commented some practical measures to avoid harmful tax planning arrangements used as in the Czech republic as abroad, including the recently adopted BEPS Action Plan of OECD which refers to tax planning strategies that exploit gaps and mismatches in tax rules to make profits disappear for tax purposes or to shift profits to locations where there is little or no real activity but the taxes are low resulting in little or no overall corporate tax being paid. The BEPS Action Plan provides a consensus-based plan to address these issues and is part of the OECD's on-going efforts to ensure that the global tax architecture is equitable and fair. This part of thesis is finished with description of practical attitude to avoid abuse of law for a common Czech taxpayer.

In conclusion of the thesis are repeated the key principles of application of the doctrine of abuse of law. The author finishes with the observation that each taxpayer has right to structure his or her business so as to limit the tax liability, as there is no legal obligation to run a business in such a way as to maximise tax revenue for the state.