

General anti-abuse rule in tax law and its application on select tax optimization methods

Abstract

This master's thesis presents a study of general anti-abuse rule applicable within the scope of tax law of the Czech Republic. The goal of the study is to analyze current state of body of law behind the institute, create a legal framework for assessing the conformity of commonly employed methods of tax optimization with this legal institute and finally apply this framework on selected historical methods of tax optimization, namely issuance of one-crown bonds and so-called real estate share deals.

The thesis primarily employs qualitative methods of research, mainly document analysis, typical for the field of legal science. Additionally basic quantitative methods are employed. The thesis is structured into five distinct parts, with an introduction, three chapters and a conclusion. The first chapter is focused on the origins of general anti-abuse rules in tax law with regards to international law, European Union law and national law. The second chapter breaks down the current legislative definition of the rule into trichotomic hypothesis-disposition-sanction structure. The third chapter applies the general learnings contained in the previous chapters on the two above mentioned methods of tax optimization.

Legal analysis of the general anti-abuse rule in tax law first covers the origins general anti-abuse rules in tax law with regards to international law, European Union law and national law, with emphasis on Court of Justice, Supreme Administrative Court and Constitutional Court case-law analysis. It is concluded that the institute in its current form differs from historical form applicable before entry in force of the act no. 80/2019 and that the institute in its current form is aligned with the European law. The legal framework proposed by this thesis is composed of testing algorithm in itself composed of three testing conditions, namely (i) concluding that the tax optimization method constitutes a tax advantage, (ii) concluding that gaining such advantage defeats the object or purpose of the applicable tax law and (iii) concluding that obtaining said tax advantage constitutes the main purpose when compared with other potential purposes. By applying this legal framework it can be concluded that the tax optimization in the form of issuance of bonds with nominal value of one-crown bonds constitutes abuse of the tax law whereas the real estate share deals do not.

Keywords:

tax law abuse; GAAR; one-crown bonds