

## **Abstract**

The topic of the thesis is the tax aspects of the real estate in the context of the international taxation. The thesis focuses not only on the valid regulation of the domestic law, but also on the basic relevant standards of the European law that make impact on the international taxation in the Czech Republic either directly or after their transposition into the domestic law.

The scientific intent of the thesis is to show the basic principles and starting points of the real estate taxation and the yield from real estate, which determine the decision-making of the individual natural persons or legal entities, in which country these subjects will invest in real estate or in which country they will have their domicile and what legal form they will choose for the business activity related to the ownership and the disposition of the real estate.

In the introduction to the thesis I analyze the basic theoretical grounds of the issue, while defining the basic concepts within the framework of this thesis, such as the basic elements of the tax construction. In this section, I have also included the fundamental regulations of the real estate and its transactions covered in the Civil Code, taking into account the intended provisions of the new Civil Code. In this respect I would like to point out particularly to the new delimitation of the legal nature of buildings – the new Civil Code does not consider them as basically independent real estate but only as a part of the land where they are constructed.

In the second part of the thesis I discuss the tax system in the Czech Republic and define the sources of the tax law with a view to the real estate taxation. I also focus on the

concept of both the real estate ownership taxation and the real estate transactions taxation in the Czech Republic. Within the tax transactions, I mention the rate of taxation in the individual types of transactions. Last but not least, I discuss with the taxation of the real estate ownership in the Federal republic of Germany and compare the Czech and the German legal regulations.

In the third part, I deal with the theoretical delimitation of the international double taxation system and with the principles of the international tax law. The international taxation is governed by the national legal regulations as well as by the international contractual law, or by the custom law respectively. I compare the international treaties on the avoidance of double taxation with the domestic legal regulations, drawing the reader's attention to the fact that under the international treaty regulation takes precedence over the domestic regulation. The basis of the correct application of the international and the domestic regulations is the correct specification of the payer's tax domicile and the country where the payer has taxable income (sources of income). This part covers also the application and the interpretation of the tax agreements with a view to the Czech and German Double Taxation Avoidance Treaty and taking into account the constant judicial decisions in the international taxation.

The fourth part covers the individual methods of the double taxation. I explain the application of the set-off method and the extraction method including their respective modifications. I also mention the question of tax exemptions within the double taxation avoidance as well as the possibility to deduce the tax paid abroad as the deductible expense decreasing the income tax base.

The fifth part of the thesis deals with the international double taxation avoidance treaties. I discuss in detail the individual contractual models (OECD and UN) and analyze the aspects of the individual cross-border tax events, emphasizing the taxation of the yield from the real estate sale. This part covers also the taxation of the sale of a property located in the Czech Republic owned by a non-resident, the taxation of shares in the non-resident's profits from the domestic companies as well as the tax aspects of the transfer and the termination of the non-resident's participation in the domestic companies owning the real estate. I include here the comparison with the German legal regulation, focusing mainly on the differences in the German law.

Each investment into real estate includes the investor's considerations on the tax aspects of the intended real estate transaction. The investor is naturally and legally interested that the rate of taxation of the yields from the transaction is as low as possible. Therefore, in the sixth part, I focus on the legal tax optimization – that is the choice of such legal form of the intended transaction with the lowest possible taxation for the payer. In principle, I refuse limiting the tax planning to the use of the so-called off-shore companies which are only formal subjects and make advantage of the low taxation in the foreign “tax paradise” without actually conducting their business activity there or even being actually controlled from such territory.

The seventh part of the thesis covers the specific issues related to the specific questions related to the international taxation of a holding. I focus particularly on the questions of the low capitalization, as well as on the question of the transfer prices which is often subjected to examination by the tax offices and the source of conflicts with the tax

administrators both in the Czech Republic and abroad. I point out to the common judicial decisions of the domestic courts and of the European Court of Justice.

In the conclusion, I provide the summary of the *de lege ferenda* suggestions which I would recommend implementing into the Czech law. I consider the requirement for a considerable simplification of the legal regulation, for the effective tax collection and for the fair tax process as the principal requirement common to all of these suggestions.