

Prohibition of abuse of law is a general legal principle. It enables judge not to follow wording of certain prohibition of law, if he comes to conclusion that the tax subject abuses law contrary to its purpose. As the result, the respective tax subject is not granted with that right. In the Czech Republic this principle can be found mostly in the area of private law. However it is more controversial in the tax law area, where the principle of abuse of law serves as an instrument for hindering too aggressive tax planning. This thesis deals with the principle from various points of view.

After a theoretical introduction it describes evolution of the doctrine in the European law, from where the so called “two-tier abuse test” was implemented into Czech tax law. Few examples are provided to describe the concept of abuse of law in private law, where this principle forms a subset of conducts contrary to bonos mores. Then the work describes the judicial doctrine of the Supreme Administrative Court in tax matters. Since 2005 the notion of abuse of law has been determined and defined towards other institutes which serve as weapons of Tax Authorities against too aggressive tax planning. These other institutes are sham transactions (dissimulation), tax fraud or even invalidity of the transaction due to non-compliance with Section 39 of Civil Code (prohibition of law evasion).

The fourth part provides for a comparative analysis. Foreign states are divided into two groups – states with common law and those with civil law culture. It comes out that the attitude towards the doctrine of abuse of law in tax law varies in individual states. The most advanced legal culture in this regard is (unsurprisingly) the one in the USA.

The fifth, concluding chapter, is inspired by the literature and legal doctrine of the United States. In this part the principle of abuse of law is confronted with other principles and values of the Czech legal order.