

Aggressive tax planning – definition and limits in the light of case law and implementation of international initiatives

Abstract

The thesis deals with aggressive tax planning, its definition and limits in jurisprudence and international initiatives. In addition to the introduction and conclusion, the thesis is divided into six consecutive parts. In the first part, the very concept of aggressive tax planning is introduced, the legal status *de lege lata* is described, the opinions of various legal experts are presented on the legally unestablished concept of aggressive tax planning, and the relationship between aggressive tax planning and abuse of law is theoretically defined. The second part contains a detailed analysis of the sources of aggressive tax planning in the form of specific OECD and EU initiatives aimed at combating aggressive tax planning, decision-making and other activities of the Court of Justice of the European Union (judgments, opinions of advocates general and requests for preliminary rulings), and judgments of the Supreme Administrative Court and courts of lower levels. In the third part, the thesis examines the model structures of aggressive tax planning, while the structure using the benefits of double taxation treaties (treaty shopping), the structure of debt financing (debt push-down) and the structure with more favourable taxation of intellectual property (IP/patent box) is analysed in greater detail. This part of the thesis also includes an analysis of the relevant jurisprudence of the Court of Justice of the European Union and the Supreme Administrative Court. The fourth part follows on the results of the analysis carried out in the previous parts of the thesis and deals with the burden of proof of the tax subject and especially its content and limits. An analysis of selected judgments of the Supreme Administrative Court is included. The fifth part is crucial to the thesis and evaluates all performed analyses and partial conclusions. In this part, the research questions posed in the introduction are answered. The last, sixth part is devoted to specific cases of the implementation of international initiatives aimed at combating aggressive tax planning into the Czech legal system (GAAR, ATAD, DAC 6, Pillar 2).

Keywords: aggressive tax planning, abuse of law, BEPS, GAAR, ATAD, Pillar 2