

Title in English: Legal aspects of tax planning in the direct tax area

Abstract:

In 2012, the European Commission published its Recommendation on aggressive tax planning (2012/772/EU). To counteract aggressive tax planning, Member States should adopt a general anti-abuse rule (GAAR), which is drafted in the Recommendation. At that time, no one knew that GAARs would become obligatory for member states from 2019. In 2013, Organization for Economic Co-operation and Development (OECD) started the BEPS Project, which is considered the biggest revolution in the international tax law system since its creation in the 1950s.

I introduce these initiatives and the legal instruments they bring. I focus on GAARs, which I consider to be the most important instruments. Their vagueness allows them to tackle any tax planning scheme. Their importance in the direct tax area grows as they become part of tax treaties based on the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed on 7 July 2017 and part of the national legal systems of the EU member states based on the Council Directive (EU) 2016/1164 of 12 July 2016, laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

First part of this thesis focuses on the theory of abuse of law. Second part presents the case law which formed the abuse-of-law principle in the Czech legal system. Third part brings comparison with selected EU member states that adopted a written GAAR in their tax legislation. Fourth part is dedicated to the recent supranational initiatives which bring abuse of law into the area of tax law. These initiatives are scrutinized using the outputs of the first part. I conclude that GAARs strengthen the societal pressure against aggressive tax planning. They can deter some taxpayers from engaging in such a planning. On the other hand, their vagueness negatively affects legal certainty, deteriorates the quality of court judgements, and shifts responsibility for determining the correct amount of tax due from legislators onto taxpayers and judges.