

## SUMMARY OF A DOCTORAL DISSERTATION

### *The Boundaries of Application of General Anti-Abusive Rule in Poland*

The theme of the dissertation is an epistemological problem of the boundaries of application of the general rule against tax avoidance. The key thesis here is a statement that application of the general anti-abusive rule in the Polish fiscal system has boundaries which are subject to changes that follow amended legal norms, doctrine and practice. The aim of the deliberations presented in the dissertation is to set boundaries of application of the general rule against tax avoidance in Polish fiscal system through their presentation in existing legal norms, in the practice and theory of law. The author of the dissertation defines conditions to be met so that delimitation of functioning of the institution could be as precise as possible.

The fundamental research method of the study is the formal-dogmatic approach complemented by historical, formal and comparative approaches. In order to embrace the specific context of the notion of tax avoidance and to determine its semantic scope, the linguistic analysis was also performed.

The dissertation consists of six chapters. Chapter one introduces and discusses elementary terms related to reduction of tax burden and isolates the basic forms of the phenomenon in order to attempt to localize within its scope the notion of tax avoidance. Multidimensional analysis of tax avoidance from the perspective of definition problems and the economic theory of law is not complete without its ethical status. Therefore, chapter one also discusses tax avoidance versus issues like common good, fiscal justice, certainty of law and loyalty in the relationship between the tax payer and the state.

Chapter two deliberates on legality as a definitional element of tax avoidance and legalism as the prerequisite behind activities undertaken by fiscal administration with respect to tax avoidance.

Upon completion of introductory issues, chapter three can enter into subject matter closely related to the very topic of the dissertation i.e. the normative boundaries of the general anti-abusive rule. Historical overview is preceded by the presentation of the background for the Polish doctrine and judicature in which the institution was born. The general anti-abusive rule is not the only regulation in the Polish fiscal system which is intended for counteracting fiscal erosion. Special *ad hoc* provisions made for the purposes of specific cases of tax avoidance complement the system and contribute to its sealing. The boundaries of application of these provisions are at the same time the boundaries of application of the general rule.

Another important element of the Polish fiscal system discussed in chapter three which is aimed at counteracting tax avoidance are means limiting contractual benefits – clause procedure in factual states with international element.

Chapter four discusses the application of the general rule against tax avoidance in Poland. It touches upon such issues as competences of organs, sources of information on tax avoidance, legal instruments in interpretation of fiscal law in tax avoidance proceedings and finally, the model of application of the rule against tax avoidance.

Chapter five contains the study of refusals in proceedings for issuance of advance opinions. Presentation of verdicts of the head of the National Revenue Administration is a simple, direct and powerful indication of what tax avoidance is, and what stays outside the brackets of application of the anti-abusive rule.

Chapter six features the analysis of financial consequences and possible penal-fiscal ailments related to tax avoidance.

The dissertation culminates with conclusions and final remarks. The recapitulation, however, does not set the definite boundaries of the application of the general rule against tax avoidance in Poland – the boundaries are unfold throughout the pages of the whole dissertation. Nevertheless, the final section plays an important role as it points to some solutions regarding tax avoidance e.g. the concept of a radical simplification of fiscal law by P. Kirchhof, the scheme of correct calculations based on cooperative compliance and finally, fiscal democratization theory by P. Sloterdijk. Revolution, evolution or change of thinking about taxes – whatever the ‘brave new world’ of the tax payer against the state will be, when it comes to tax avoidance, these are the directions which should seriously be taken into consideration.