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„The scope and conditions of liability of bodies governed by public law to Value Added Tax”

The subject matter of this dissertation is legal assessment of VAT taxation of bodies governed by public law in the light of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) and settled case-law of Court of Justice of the European Union.

The main thesis of the work is that bodies governed by public law who independently carry out any economic activity specifically defined in law on value added tax, are taxable persons like any private entity. Author also upholds the stand, that the key term for VAT taxation of public sphere is the term ‘bodies governed by public law’, not ‘public authorities’; likewise the term ‘powers of an authority’ that is generally accepted both in Polish doctrine of law and case-law of Court of Justice of the European Union, is in fact irrelevant to establish the scope of taxation of bodies governed by public law .

According to settled case-law of Court of Justice of the European Union, in order bodies governed by public law are not subject to tax two conditions must be fulfilled: firstly the activities must be carried out by a body governed by public law, secondly they must be carried out by that body acting as a public authority. Even though those two conditions are met a body governed by public law is still liable to tax if that was found that its treatment as a non-taxable person would lead to significant distortions of competition. Likewise in any event, bodies governed by public law shall be regarded as taxable persons in respect of the activities listed in Annex I to the directive 2006/112, provided that those activities are not carried out on such a small scale as to be negligible.

The detailed analysis of settled case-law of the Court of Justice of the European Union brings the conclusion that Polish Parliament made incorrect transposition of European Union law, and as a result of it the scope of taxation of bodies governed by public law is in vast difference, not only from the wording, but mainly from the meaning of directive 2006/112.

Incorrect transposition of directive 2006/112 to Polish legal system has brought about results which could not be accepted both in jurisdiction and interpretations of fiscal authorities. They put much effort to give Polish transposition the meaning more in line with directive 2006/112. The fiscal authorities made it through the concept of own and commissioned tasks; courts through the concept of criterion of powers of authority. Unfortunately, both stands do

not conform to settled case-law of the Court of Justice of the European Union, and cannot be considered as correct implementation of art. 13 of directive 2006/112 to Polish legal system.

The Court has repeatedly contended that none of the EU Member States is free to interpret European Union terms through the agency of the concepts and understanding of law of this country. Criteria of derogation from taxation of bodies governed by public law should be interpreted in each EU Member States in an autonomous and uniform manner.