

Streszczenie rozprawy doktorskiej mgr Sylwii Adamczyk-Kaczmary
/j.angielski/ pt: „ ABUSE OF LAW AND THE PRINCIPLE OF
NEUTRALITY OF THE VALUE ADDED TAX”

This thesis concerns mainly the analysis of the institution of abuse of law and regulations implementing it in the Polish act on the goods and services tax, as well as the national and European Union judicature in this respect. Fight against abuse under the value added tax is a goal recognized and supported by European Union law and case law of the European Court of Justice. Nevertheless, the measures used by the member states in this respect should not outreach what is indispensable to achieve such goals as securing a proper collection of tax and elimination of abuse.

In the framework of the analysis, an attempt was made to find out whether in respect of the institution of abuse of law there are any limits in which the tax authorities can impact the taxpayer's freedom of activity, as well as to outline some of them. A key role in this respect is played by the principle of neutrality. It constitutes some kind of protection against excessive interference of the tax authorities in taxpayer's activity. In particular, the principle of neutrality should be taken into account by the tax authorities in determining whether there is any abuse of law. Prohibition of abuse as a rule of interpretation is not applicable when the taxpayer's activity has other purposes than to get tax benefits. As a consequence, in order to determine that the institution of abuse of law should apply in a particular case, a deep and exhaustive analysis of all aspects of the taxpayer's activity is required. The tax authority should proceed taking into account the principle of neutrality in order not to expose the taxpayer to arbitrariness from the tax authorities' side. The abuse of competence by the tax authorities cannot be an answer to the potential abuse of law by the taxpayer.

The analysis made within the scope of this thesis indicates that the tax authorities' actions in applying the institution of abuse of law may eventually breach the principle of VAT neutrality. First of all, a breach may result from the fact that the „redefinition” of a transaction that constitutes abuse may outreach the measures necessary to secure a proper collection of VAT. Secondly, a breach may arise from the approach of the tax authorities to apply one general benchmark situation treated as a point of reference to assess the right to deduct input VAT of

all taxpayers, instead of making a deep and exhaustive analysis of the backgrounds and purposes of the actions of a given taxpayer.

As a result of considerations included in this thesis, it was determined that the tax authorities' rights and obligations connected with the identification of potential abuses are crucial in applying the institution of abuse of law. The tax authorities, in the assessment of gathered evidence e.g. regarding the correctness of the deduction of input VAT, should take into account the actual course of transaction and apply the institution of abuse of law only to cases of tax avoidance. These considerations allowed to formulate general conclusions regarding the application by the tax authorities of the institution of abuse of law (and starting from 15th July 2016 – also the appropriate VAT provisions), as well as to make some *de lege ferenda* proposals, such as clarification of current definition of abuse of law, formulation of guidelines for the tax authorities regarding application of this institution and introduction to the act on the goods and services tax the instrument similar to protective opinion under Tax Ordinance. Whereas, *de lege lata* it should be proposed to the tax authorities to take into consideration the principle of neutrality in applying institution of abuse of law.