

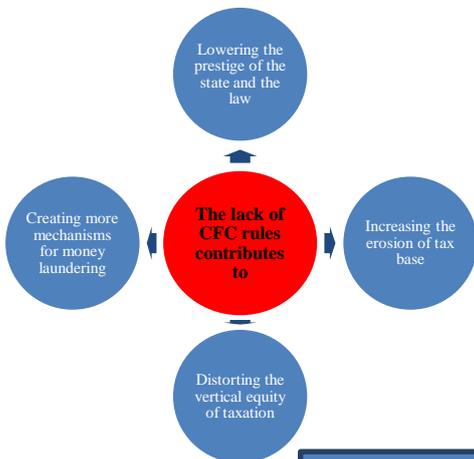
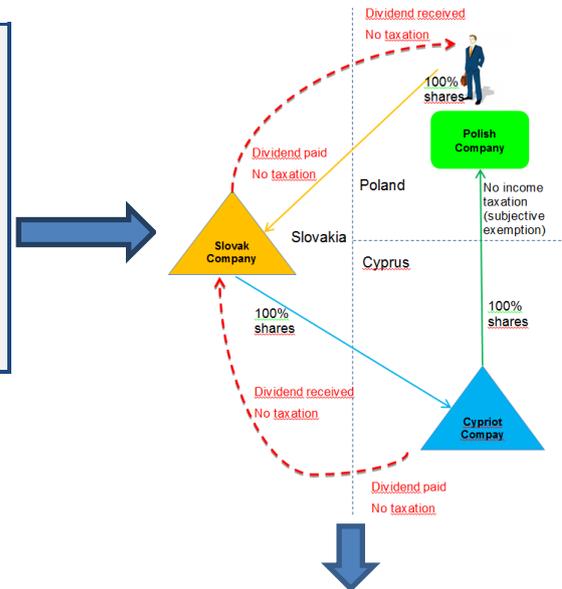
"The Taxation of Controlled Foreign Companies: Analysis of Justifiability and Potential Outcomes of Introducing CFC rules into Tax Law System in Poland"

Abstract: The main aim of the dissertation is to make an attempt to answer to the question; how the CFC rules may be introduced to the Polish tax law without infringement of the EU law, tax treaty imperatives, constitutional law, and simultaneously do not render the cross-border investments more burdensome than the domestic one?

Polish taxpayers and CFCs – an example taken from current practice

1. Polish Company constitutes permanent establishment of Cypriot Company and its income is subject to tax only in Poland
2. Cypriot company is subjectively exempted from taxation under the Polish tax law
3. Dividend payments from Cypriot Company to the Slovak Company is not taxed both in Cyprus and in Slovakia under the ordinary domestic tax law provisions of these states
4. There is also no taxation of dividend paid by the Slovak Company to its Polish shareholder – no dividend taxation in Slovakia and exemption from taxation in Poland

Conclusion: income from current business activity run in Poland is reduced by a Polish taxpayer (shareholder) from 19% to 0% through the use of wholly artificial structure with CFCs



Due to the fact that the wealthy Polish taxpayers avoid taxation through the use of CFCs and the scale of this phenomenon has increased over the past few years, and that currently there are no Polish anti-avoidance measures which may allow to effectively combat this phenomenon, it is fully justifiable to conclude that CFC rules should be considered a part of a future tax law reform in Poland.

Consequently the main aim of the dissertation is to

analyse the justifiability and potential outcomes of introducing CFC rules into tax law system in Poland

The problems dealt with in the dissertation and the research questions

concern the following issues: (i) What are the origin, historical developments, axiology, object, purpose, and legal, economical and social consequences of application of CFC rules?; (ii) Whether CFC rules may be in line with the Polish constitutional principles regarding taxation?; (iii) Whether the CFC rules may be compatible with tax treaty provisions based on the OECD MTC?; (iv) Whether an application of the CFC rules by a Member State constitutes an infringement of the EU/EEU law, and if so, whether an acceptable justification exists for it?; (v) How the states, in particular Member States of the EU/EEA, with no CFC rules handle the problems of the erosion of tax base and ensuring the equal taxation of all domestic taxpayers – alternatives to CFC rules?

The structure of the dissertation (discussion points)

may be divided into three basic parts. The first (consisting of Sections I, II, III and IV) presents the use of CFCs as an example of international tax avoidance, legal and economic factors conducive to the development of tax avoidance through the use of CFCs, and the comparative analysis of CFC rules as special anti-tax avoidance measures combating this phenomenon on the examples of the selected EU/EEA countries (the United Kingdom, Norway and Germany). The second (consisting Section V), regards the analysis of the justifiability and potential outcomes of introducing CFC rules into tax law system in Poland. Lastly, the third (consisting of Sections VI, VII and VIII), includes an analysis of the compatibility of CFC rules with Polish constitutional principles, double tax treaties provisions and the EU law.