



Thesis title: Abuse of Tax Law in the EU
Judicial and statutory GAARs in Slovakia, Czech republic and Poland

Judicial anti-avoidance (background)

- two ECJ lines of abuse developed by *Halifax* (indirect tax), *Cadbury Schweppes* (direct tax)
- abuse of tax law as a latecomer in national case law
- abuse of tax law and the question of constitutionality (TK K 4/03 of May 11, 2004)

Research question?

- What is the line of judicial anti-avoidance and in what way do national courts reflect ECJ case law on abuse of tax law?
- What is the way of correct implementation of statutory EU GAARs and what role do they play in counteracting abuse?

Landmark cases of tax abuse

Czech Republic: Judgment of Supreme Administrative Court: 1 Afs 107/2004 - 48 of November 2005 - personal income tax issue - reducing tax base of individual by the value of gifts donated to civic association (which was formed by family members in order to finance their personal needs) - not substance over form rule, but rather **abuse of tax law**

Slovakia: Judgment of Supreme Court: 5 Sžf/66/2011 of December 2011 (preliminary ruling of ECJ - Tanoarch (assignment of the share in the co-ownership of an invention, even if the invention is not registered as a patent may be an economic activity), under objective and subjective element national court found out that this is the **abuse of tax law**

Judgment of Supreme court: 5Sžf/11/2015 of September 2015 - VAT returns - **abuse of tax law is not easy to prove**

Statutory anti-avoidance rules - what are the key elements of statutory GAARs

<i>Statutory prerequisites</i>	Slovakia	Czech Republic	Poland
<i>Entry into force</i>	§ 3 p. 6 of the Act. no. 563/2009 Coll. (Tax Code) 01.01.2014	Substance over form rule only (§ 8 p. 3 of Tax Code)	§119a) of Tax Ordinance Act 15.07.2016
<i>Arrangements covered</i>	A legal action or other fact	Legal action or the other fact	Activities (arrangements)
<i>Taxes covered</i>	All taxes	All taxes	Income taxes
<i>Objective testing</i>	No economic substance or no objective test?	Decisive for tax administration	Contrary with circumstances of object and the purpose of tax law norms
<i>Subjective testing</i>	(result) 1. intentional circumvention of tax liability or 2. obtaining such benefit to which taxpayer would not be entitled otherwise or 3. intentional reduction of tax liability	The real substance	If action/arrangement is artificial
<i>Purpose</i>	Present under 1. and 3.	Not defined	One of purposes or the only
<i>Tax advantage</i>	Present under 2.	Not defined	Present
<i>Consequences</i>	Shall be disregarded	Shall be taken into account	Does not lead to obtaining tax benefit

Labyrinth of GAARs in Slovakia?

Correct implementation of EU GAAR?
(Recommendation on ATP, 2012)

Other GAARs - FTT, CCCTB

GAAR in Income Tax Law (PSD GAAR)

- 50a) of the Act no. 595/2003 - 01.01.2016
- applies only to distribution of profits
- special GAAR?

Treaty Abuse (BEPS 6)?

ATAD GAAR and its implementation?

GAAR in Tax Code