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Application of the Principle of Abuse of Law from the Perspective of the Czech Constitutional Limitation of Tax Imposition

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The principle of abuse of law is expressly regulated in the Czech Republic as one of the basic legal principles in the field of tax law and tax administration. However, its application is not unlimited and is restricted by the constitutional limits of tax imposition. The article aims to define the limits of its application from the perspective of constitutional conformity. The paper points out the very anchoring of the principle in the legal system, including relevant case law, and analyses possible situations of its application from the perspective of the actions of tax subjects. An integral part of the article is the presentation of specific tax law issues where the principle of the prohibition of abuse of law has been applied across the board in the Czech Republic. In the conclusion, the conflict of the principle of prohibition of abuse of law with the principles of *in dubio pro fisco* and in *dubio pro lebertate* is pointed out.

Keywords: General Anti-Avoidance Rule, nullum tributum sine lege, constitution, tax administration, tax

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Introduction

Proper compliance with the obligations set out in tax law is a basic prerequisite for the collection of taxes and the fulfilling of public budgets. Therefore, on the one hand, there is general interest in securing additional resources for public budgets, and on the other hand, there are the interests of individual taxpayers who are subject to tax liability. In view of the divergent interests, it is possible to identify efforts on the part of taxpayers to minimize their tax liabilities, both legally and illegally. The principle of the prohibition of abuse of rights, which is the final corrective to seemingly permissible conduct, but which is not protected, finds its application at the interface between these routes.

Specific legislation has been adopted at the European Union level, namely the Anti-Avoidance Directive Council Directive (EU) 2016/1164 of 12 July 2016, laying down rules against tax avoidance practices that directly affect the functioning of the internal market, hereafter to as the ADAT Di-

rective] and its extension in the case of hybrid mismatches (Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries). The ADAT Directive obliges Member States to introduce a general anti-avoidance rule for corporate income tax. As part of the implementation in the Czech Republic, a more general and broader regulation was adopted, where the principle of prohibition (or ineffectiveness) of tax law abuse was explicitly introduced into the Tax Code as a general procedural rule.

Over time we have observed a gradual and relatively rapid expansion in the arguments of tax administrators in tax disputes. However, the application of this principle cannot be limitless, since in a state governed by the rule of law this principle must also be interpreted in a constitutionally consistent manner. The aim of the article is to point out the limits to the application of the principle of prohibition on abuse of law from the perspective of the constitutional limitation of tax imposition.

The analysis method and subsequent synthesis of the findings should be used to evaluate the hypothesis that "the principle of the prohibition of abuse of law is consistent with the constitutionally guaranteed rights of taxpayers with regard to the constitutional limitation of the imposition of taxes".

In practice, abuse of tax law is found in breach of both substantive and procedural law. Although in many cases there is an apparent attempt to reduce the tax liability of taxpayers, this in itself does not mean that the law has been abused.

Abuse of tax law principle

One of the core principles of a democratic legal order is the principle of non-abuse of law (see Neckář, 2016). Historically, it is a typical private law principle that has been applied in various legal systems based on the Roman classical foundations or on the adopted Roman law.

"In terms of the place of the prohibition of misuse in the system of principles or in the system of legal regulation, the original objective of the prohibition of misuse as developed in Roman law plays an important role. It was originally aimed at limiting the 'asocial' exercise of absolute rights. In this sense, the prohibition of abuse was applied in a situation of the exercise of an absolute right, i.e. a minimum mediated personal and property freedom, in other words, in a situation of exercised personal or property superiority. This position of power given by the absolute nature of the right exercised created a position of power in which the principle of liberty, but not the principle of equality, was exercised" (Hurdík, 2010, p. 130).

Abuse of a right can be defined as "a situation in which someone exercises a subjective right to the unjustified detriment of another or of society; such conduct, which achieves an illicit result, is only apparently permissible. It is only apparently permissible for the reason that objective law does not recognize conduct that is both permissible and impermissible; since the principle *lex specialis derogat legi generali* implies that the prohibition against abuse of the law is stronger than the permission given by the law, such conduct is not the exercise of a right but an unlawful act" (Knapp, 1995, p. 184).

However, the principle of prohibition of abuse of law, which is included among the general legal principles that are the source of law in the Czech legal system (see Decision of the Constitutional Court of 17 December 1997, Pl. ÚS 33/97), is not applied identically in all branches of law. There is no doubt that this principle will be applied more frequently in private law than in public law; in tax law, its application will be significantly limited by the constitutional limits on the imposition of taxes.

Czech law regulates the principle of prohibition of abuse of rights in the Civil Code: "obvious abuse of rights does not enjoy legal protection" (Section 8 of the Act No. 89/2012 Coll., Civil Code, as amended). From this wording it is necessary to infer that not every abuse of law entails a statutory consequence, for this it is necessary that the abuse is manifest. In addition, in the case of Czech tax law, the principle in question has been explicitly introduced into the general procedural rules for tax administration with effect from 1 April

2019, whereby the Section 8(4) of the Tax Procedure Act (Act No. 280/2009 Coll., as amended) determines that "legal acts and other facts relevant to tax administration, the predominant purpose of which is to obtain a tax advantage contrary to the meaning and purpose of the tax legislation, shall not be taken into account in tax administration". Thus, here again, the abuse of tax law argument is only a final corrective that cannot be applied in all cases and to all conduct of taxpayers.

It is evident from both of these definitions that even the institution of the prohibition of abuse of rights could be abused and ultimately applied arbitrarily by the administrative authorities. However, this cannot be allowed to happen. In the case of the Civil Code, the legal obligation of 'obviousness' is laid down, whereas in the Tax Code, the condition of 'overriding purpose' of the conduct will be decisive. In both cases, therefore, there is no absolute impermissibility of abuse of the law, but the consequences must be assessed. At the same time, it should be stressed that the abuse of law must be proved, both as regards the establishment of the facts and the legal assessment.

The application of the principle of the prohibition of abuse of rights has its limits set out in the Constitution, whereby the principle of the enumeration of public law claims applies, i.e. that "State power may be exercised only in the cases and within the limits set by law, and in the manner prescribed by law" (Article 2(2) of the Charter of Fundamental Rights and Freedoms) and that "everyone may do what is not prohibited by law, and no one may be compelled to do what is not required by law" (Article 2(3) of the Charter of Fundamental Rights and Freedoms; similarly, Article 2(2) of the Constitution of the Czech Republic: "Every citizen may do what is not prohibited by law, and no one may be compelled to do what the law does not require"). In addition to this, a fundamental limitation is imposed by the constitutionally enshrined rule of *nullum tributum sine lege* in relation to restrictions on the ownership of property: "Taxes and fees may be imposed only by law" (Article 11(5) of the Charter of Fundamental Rights and Freedoms).

"The institution of prohibition of abuse of subjective rights (to the unjustified detriment of another or to the unjustified detriment of society) represents a material corrective to the formal conception of law, through which the aspect of equity (justice) is introduced into the legal system. The law, which is general in nature, cannot conceptually take into account all conceivable situations in life that may arise during its operation. As a result, it may happen that certain conduct formally conforms to a legal norm (or, better, to the dictates of a legal provision) but is at the same time perceived as manifestly unjust because it causes harm to others in contravention of certain fundamental values and the reasonable ordering of social relations. Such conduct is then in the nature not of the exercise of a subjective right, but of its (legally reprobated) abuse" (Judgment of the Supreme Administrative Court of 10 November 2005, 1 Afs 107/2004-48).

A milestone in the application of the abuse of rights in the tax area was the judgment of the European Court of Justice of 21 February 2006 in Case C-255/02 Halifax. In that judgment, the Court held that 'in order to establish the existence of an abuse, it is necessary, first, that the transactions in question, despite the formal application of the conditions laid down in the relevant provisions..., result in the acquisition of a tax advantage the granting of which would be contrary to the objective pursued by those provisions. In addition, it must be apparent from all the objective circumstances that the main purpose of the transactions in question is to obtain a tax advantage' (Points 74 and 75 of the judgment of the European Court of Justice of 21 February 2006 C-255/02 Halifax plc, Leeds Permanent Development Services Ltd a County Wide Property Investments Ltd vs. Commissioners of Customs & Excise). The prohibition of abuse is not relevant where the transactions in question may have a justification other than merely to obtain tax advantages vis-à-vis the tax authorities. The concept of the 'main purpose' can be defined as such a purpose which, in comparison with any other purposes it may have, is so incomparably more important that it essen-

tially overshadows and fundamentally marginalizes those other purposes, so that they can be disregarded when examining the economic purpose of the transaction in question (see Judgment of the Supreme Administrative Court of 23. August 2006, 2 Afs 178/2005-64).

However, in connection with the above, it should be stressed that "in the field of public law, public authorities may do only what the law expressly allows them to do; it follows from this maxim that when imposing and enforcing taxes according to law (Article 11(5) of the Charter of Fundamental Rights and Freedoms), i.e. when *de facto* taking away part of the acquired property, public authorities are obliged, in the sense of Article 4(4) of the Charter of Fundamental Rights and Freedoms, to respect the essence and meaning of fundamental rights and freedoms – i.e. to proceed more leniently (*in dubio mitius*) in case of doubt. The essence of the protection of the right to property in the area of setting and collecting taxes and fees is not merely the formal subordination of a particular tax to a particular provision of law, but this protection must also apply in a substantive rule of law (Article 1(1) of the Constitution of the Czech Republic) to cases of application and interpretation of a particular statutory provision that establishes a tax or fee obligation" (Decision of the Constitutional Court of 16 August 2007, IV. ÚS 650/05).

Conduct of tax subjects and tax law consequences

When applying the principle of prohibition of abuse of tax law, the conduct of the tax subject must be assessed in all its aspects and consequences. Individual entities seek to comply with the law in fulfilling their tax obligations while seeking to minimize their tax liability. Within each type of conduct, a distinction can be made between cases where they may have acted in full compliance with the applicable legislation (not only the law) and situations where they are in total contradiction with it. The legitimate interest of taxpayers is to pay the tax at the most necessary level, but at the same time the State has an interest in collecting the tax at the correct level as set by the tax law.

It is the duty of the tax authorities to respect "tax optimization carried out using all the statutory provisions that apply to the taxpayer's facts. On the other hand, however, it is understandable and desirable for tax authorities to penalize the conduct of taxpayers where they abuse the provisions of the tax laws contrary to their manifest purpose" (Kohajda, 2010, p. 302). Tax optimization can be defined as the use of all the possibilities provided for by law in order to determine the tax at the most necessary level, while respecting all the relevant provisions of the applicable legislation in the case in question and in accordance with its interpretation.

For the possible application of the principle of the prohibition of abuse of law, it is decisive whether the legislation envisages and links the tax consequences of the taxpayer's conduct and whether the predominant objective of the conduct is to create a situation in which the tax liability is reduced. The other effects on the taxpayer of the chosen solution cannot be overlooked. "The prohibition of abuse contrary to its purpose should derogate from the right when, without a proper benefit, the realization of the right either cannot be achieved or the person entitled does not wish to achieve it. In other words, a right should be given only when its realization can objectively produce a proper benefit and the beneficiary wants to achieve that benefit" (Pulkrábek, 2007, p. 135).

Several types of conduct can be identified in relation to the law. The overall assessment of the taxpayer's conduct and the totality of the circumstances can then be used to decide whether such a conduct constitutes an abuse of law.

Actions under the law

The most common type of conduct will be statutory conduct associated with statutorily defined tax law consequences. Thus, the tax subject will act as the legislator anticipated when adopting the tax law, the anticipated consequences occur, and the

determination of the tax thus corresponds to the objective of the legislation. The legal assessment of the conduct will be the same on the part of both the tax subject and the tax authority.

An example of such an action may be the sale of real estate where the seller enters into a purchase agreement and the purchase price is duly taxed. Here the objectives of income taxation on transfer of ownership are met.

It is clear from the nature of the case that the conduct does not amount to an abuse of law under the law.

Incorrect application of the law

Another possible situation is the conduct of a taxpayer in which an incorrect application of a legal provision occurs, regardless of whether such an application is intentional or unintentional. Even such a conduct does not meet the requirements for the application of the abuse of law. This is a situation where the law defines the consequences of a certain conduct, but the taxpayer associates other, more favourable consequences with the conduct. Here, however, there is no abuse of law, but a breach of the law (the regulation should have been applied differently) and there is a power to impose tax in the amount provided for by the tax law.

An example of such a conduct is the claim for a deduction of value added tax on a supply not used for economic activity. No deduction may be claimed on such a supply (Section 72 and following of VAT Act - Act No. 235/2004 Coll., as amended) and the tax authorities have the right to assess the tax retrospectively if they find such a conduct.

Simulated legal transaction

Dissimulation of a fact giving rise to an unjustified tax advantage also does not fulfil the characteristics of abuse of law. These are cases in which a fact is artificially created with which the law associates tax consequences more favourable than in the case of taxation of the taxpayer's actual conduct. The difference with the misapplication of the law is that in dissimulation the factual situation is covered by an artificial situation.

In this respect, in addition to the principle of the prohibition of abuse of law, the Tax Code also provides expressly for the principle of substantive truth, according to which "the tax administrator shall base his decision on the actual content of a legal act or other fact relevant to tax administration" (Article 8(3) Tax Procedure Act). The simulation of a legal act must be assessed in the light of its actual effects and consequences. Once the tax authority has established all the relevant facts, it is then entitled, in accordance with the applicable rules, to classify the taxpayer's conduct under the relevant rules and to tax it as if the taxpayer's actual conduct had been admitted from the outset (the principle of the prohibition of abuse of law cannot be applied in a situation where an explicit legal regulation of the written law can be applied (e.g. the codified principle of material truth under Section 2(7) of the Tax Administration Act or Section 8(3) of the Tax Code). The principle of prohibition of abuse of law is thus the *ultima ratio* in the event that the law does not provide for another appropriate legal institution. See Judgment of the Supreme Administrative Court of 13 May 2010, 1 Afs 11/2010–94).[1]

An example of such an act is the sale of immovable property between close relatives, which is effected by two separate gift agreements – one gift changes ownership and the other gift donates the relevant amount of money to the donor of the property. From a factual point of view, this is a pecuniary change of ownership (sale of the property)

[1] The principle of the prohibition of abuse of law cannot be applied in a situation where an explicit legal regulation of written law can be applied (e.g. the codified principle of material truth under Section 2(7) of the Tax Administration Act or Section 8(3) of the Tax Code). The principle of prohibition of abuse of law is thus the ultima ratio in the event that the law does not provide for another appropriate legal institution. See the Judgment of the Supreme Administrative Court of 13. May 2010, 1 Afs 11/2010 – 94.

which is not generally exempt and should therefore be taxed. By simulating the gift, the transfer is made exempt from taxation and the true nature of the transaction is thus concealed.

Here again, therefore, the taxation is made because of a breach of the law and is not an abuse of the law.

Conduct of the taxpayer not foreseen by tax law

The creation of legal norms is regularly a response to a stimulus that triggers the need for norms capable of dealing with a given situation, or the norms may seek to create an environment that enables the desired objective to be achieved. Thus, lawmaking is usually dictated by the achievement of a certain (both subjective and objective) purpose that can be presented externally. In its background, in turn, certain group, individual or even social interests can usually be discerned (see Harvánek, 2008, p. 225).

Legal norms are in a vast majority constructed as general rules of conduct. Tax law rules then stand between the requirement of generality and the requirement of certainty, so that the tax is determined in accordance with the rule *nullum tributum sine lege*. The legal order does not and cannot regulate every behaviour of the addressees of the rules, so it is not possible to define a closed group of relations subject to tax law rules. In accordance with the legal license, according to which everything that is not prohibited by law (or the law) is legally permissible (Article 2(4) of the Constitution of the Czech Republic and Article 2(3) of the Charter of Fundamental Rights and Freedoms), new situations may arise that are not provided for and not regulated by the law.

At the same time, however, there is a constitutional requirement that taxes and fees can only be imposed by law (Article 11(5) of the Charter of Fundamental Rights and Freedoms). Therefore, there may be cases where a tax entity creates, in accordance with the law, a completely new situation, which does not have tax consequences under the law. In such a case, an abuse of law could be considered if the taxpayer's actions were caused by or for the predominant purpose of avoiding the tax. The decisive factor will be the justification of the solution chosen by the taxpayer, i.e. an assessment of whether tax avoidance was the sole or predominant reason for the solution implemented in the entire situation or whether there are others.

Choice of tax consequence

It is not uncommon for legislation to provide for different tax consequences depending on the chosen solution to a case, even if the same objective is achieved by different routes. In the case of the application of the abuse of rights argument, "a careful distinction must be drawn between a situation in which the taxpayer chooses, from among various alternatives which have their own independent purpose, the one which is most advantageous to him in tax terms, which is a legitimate, legally approved course of action, and a situation in which the sole purpose of the activity or transaction in question is to obtain an illegitimate tax advantage" (Judgment of the Supreme Administrative Court 1 Afs 35/2007-108).

In the case of a choice, it can be concluded that it is the legitimate choice of the taxpayer which solution he chooses and what tax burden he will therefore be subject to. Given that this is statutory conduct which entails clearly defined tax obligations, the choice of the tax consequence cannot be regarded as an abuse of law either.

An example of such a situation of a possible tax consequence is the athlete's decision whether to pursue his or her relationship as an employee or as a self-employed person. In both cases, the actual activity carried out by the athlete will be identical, but the legal relationship defines different tax consequences (Judgment of the Supreme Administrative Court 6 Afs 278/2016–54).

Even in this case, the taxpayer's action in choosing the tax consequences of the relationship that are more favourable from his/her point of view cannot be considered an abuse of law; it is pre-

cisely a case of tax optimization, where the taxpayer is taxed at the lowest possible rate.

Application in a specific case: crown bonds

The most extensive systemic application of the abuse of law argumentation in the Czech Republic can recently be described as the assessment of interest on 'crown' bonds as tax deductible costs for corporate income tax (on the side of the issuer) and as income on the side of bondholders from the perspective of personal income tax.

In 2012, legislation was enacted that allowed the issuance of bonds in any denomination. The Income Tax Act then provided for a special method of determining the amount of tax, whereby interest income was taxed separately for each bond and the amount of tax was rounded down to whole crowns. As a result, the interest income was not effectively taxed, even though it was taxable income. In the vast majority of cases, the issuers and holders of the bonds were related parties – typically partners, shareholders, family members.

To illustrate it, a specific example can be given:

> The issuer issued bonds with a nominal value of CZK 1,000,000,000 and the bondholder was promised by the terms of the issue to receive interest at 10% per annum.
> The issuer then calculated the tax for each individual bond separately when paying the interest income to the bondholder, i.e. the yield on CZK 1 was CZK 0.1 and this yield was taxed at CZK 0 after rounding. This was, therefore, taxable income, but effectively there was no taxation and the bondholder was paid the full amount of the interest income, i.e. CZK 100,000,000.

The issuers of the bonds were known to the financial administration because the bonds were registered with the Central Securities Depository. As a result, the tax administration started extensive control procedures, checking a vast majority of issuers and their compliance with their obligations. As part of the results of these checks, the institute of abuse of law was repeatedly applied, whether in terms of the formality of the issuance of the bonds (according to the assessment, the entire transaction lacked rational economic justification; e.g. the Judgment of the Supreme Administrative Court of 8. June 2023, 10 Afs 272/2021-85), the real failure to secure external sources of financing (for example, a situation where a shareholder and future holder borrowed an amount from the issuer (the company owned by the shareholder) and immediately used it to repay the bonds; see, e.g., the Judgment of the Supreme Administrative Court of 31 May 2022, 4 Afs 376/2021-60 and the Judgment of the Supreme Administrative Court of 28 April 2023, 5 Afs 45/2022-48. Similarly, cases of transformations of business corporations where the claim for the issued bonds was extinguished have been assessed (see, e.g. the Judgment of the Supreme Administrative Court of 21 December 2022, 7 Afs 175/2022-17), or even in terms of the purposeful use of the transitional provision of the amendment to the Act, which abolished the rounding off of the proceeds of individual bonds separately for bonds issued after 1 January 2013 (in a case known to the author, the legality of the tax assessed and thus the justification of abuse of law has not been decided by a court yet).

Interestingly, the simplest argument about abuse of the law has not been made (at least it has not been made public in any way yet): why were crown bonds issued and not multi-crown bonds? Is it logical for a bondholder associated with the issuer to buy 1,000,000,000 bonds with a face value of CZK 1 when he could have bought 1 bond with a face value of CZK 1,000,000,000? I think this clearly shows that abuse of law has occurred in a vast majority of cases. In the case of some issuers not related to bond purchasers, the conduct was assessed as fully compliant with the applicable law. These were, for example, banks issuing bonds to investors.

It is worth noting that the application of the principle of abuse of rights in relation to 'crown bonds' has generally been defended by the tax administration in court cases.

Priority of property protection

In the jurisprudence of the Constitutional Court and, in connection with this, also in the subsequent jurisprudence of the Supreme Administrative Court, a tendency can be observed to decide according to the rule *in dubio mitius* or *in dubio pro libertate*, i.e. *in doubt in favour of the individual*.

According to this approach, where there are two comparable legal interpretations of a provision in public law, the court should always choose the one which is more favourable to the individual. Such an interpretation should also be adopted in the field of taxation.

It follows from the systematic inclusion of the *nullum tributum sine lege* principle in the Charter of Fundamental Rights and Freedoms that taxes are regarded as a restriction on the right to property. The restriction that taxes and fees can only be imposed by law must be interpreted as "a constitutional mandate for Parliament to legitimately restrict the right to property through the law it enacts" (Šimáčková, 2012, p. 320).

A characteristic feature of financial law relations, of which tax law relations are a subset, is the property aspect, where "for some subjects of these relations, their participation in them represents a certain property damage and for some, on the contrary, a benefit" (Mrkývka, 2008, p. 81). Tax law relations can then be characterized as monetary "relations *sui generis*, where the object of these relations is public funds, i.e. claims of public funds on tax subjects and other subjects with a similar status" (Mrkývka, 2008, p. 59).

From the definition of taxes and other compulsory payments as a restriction of the right of property and the systematic inclusion of the *nullum tributum sine lege* principle in the Czech constitutional order, it can be concluded that taxes and other similar payments are a property damage to the tax subject. They are perceived by the obliged subjects in a predominantly negative way, given that their payment results in a reduction of the tax subject's assets. This is something that the person in question tries to avoid by optimizing the tax liability, circumventing the law, abusing the law, or even deliberately reducing the tax.

"The limits of fundamental rights and freedoms may, under the conditions laid down in the Charter of Fundamental Rights and Freedoms, be regulated only by law, while the application of the provisions on the limits of fundamental rights and freedoms must respect their essence and meaning, and such limits may not be abused for purposes other than those for which they were established. These constitutional principles also apply in the case of the right to property and its limits in the form of taxes, fees, and other similar charges" (Boháč, 2013, p. 70).

The above understanding of taxes, fees, and other similar monetary benefits as a restriction on the right to property leads to the conclusion that it is necessary to assess tax law relations in accordance with the of *in dubio pro libertate* principle. "Where several interpretations of a public law norm are available, the one which affects the fundamental right or freedom in question at all, or as little as possible, must be chosen" (Decision of the Constitutional Court of 13. September 2007, I. ÚS 643/06). According to the Constitutional Court, this principle follows directly from the constitutional order, and it is a principle expressing the priority of the individual and his or her freedom over the State. According to these conclusions, it can thus be argued that there is a priority for the protection of property over the establishment of tax obligations and the payment of taxes.

In addition to understanding taxes as a restriction of property rights, they can also be seen as a financial participation of a given entity in the functioning and financing of public affairs and goods. Tax revenues constitute a crucial type of revenue for public budgets, which in turn are the source for financing the functioning of the state, local governments, and other public entities. Thus, in this sense, paying taxes is considered not as a 'punishment' but as an 'honour', where payment is seen positively as paying for the services provided by the State. However, the current constitutional law does not take such anchoring of taxes into account; the individual right to own

property is preferred to the State's power to impose a tax and thus collect the funds that ensure its functioning (see Boháč, 2013, p. 71).

In dubio pro fisco?

It is obvious that the application of the principle of the prohibition of abuse of law will always be controversial and the opinion of the tax administrator and the tax subject will differ in principle. However, at this point in time, a constitutionally compliant interpretation of the tax law regulations that would be interpreted strictly in favour of the public budgets according to the principle of *in dubio pro fisco* cannot be assumed.

"If the abuse of law argumentation is to be used, care must be taken to ensure that it is used only in situations where there is an elementarily obvious attempt by the taxpayer to use a formal, even 'unreasonable' interpretation of the text of the law, which obviously completely distorts the purpose and meaning of such a legal norm in favour of the taxpayer. However, as soon as even a slight reasonable doubt arises which undermines this conclusion, it is necessary to follow the principle of *in dubio pro reo* and to accept the way in which the taxpayer has applied this legal provision" (Kohajda, 2010, p. 310).

It is undoubtedly true that the legislator is free to implement tax law relations while respecting the constitutional limits of taxation. If they are ignored, it is not possible to speak about the compliance of the imposed tax with the constitutional order; such a norm cannot create a tax obligation and becomes unenforceable. In other words, it is the legislator's decision how to set the tax liability of taxpayers, to whom and in what amount the tax credit is granted or not, and so on. On the other hand, however, it is his fundamental duty to ensure that the laws adopted meet qualitative requirements, in particular that they are clear and comprehensible. The application of the principle of non-abuse of the law must not be allowed where the legislation adopted is flawed and it is only by virtue of that principle that taxation would occur, nor in a situation where there are several interpretations of a rule of law. In such cases, it is necessary, in accordance with the understanding of taxation as a restriction on the right to property, to weigh the effects on taxpayers and to determine the tax in accordance with the principle of *in dubio pro libertate*.

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