

## The General Anti-Avoidance Rule in Czech case law

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The General Anti-Avoidance Rule is a globally widespread principle applied in the tax administration framework that is supposed to act as a safety brake against the taxpayer's conduct, which, although formally fulfills the letter of the law, is contrary to its purpose. The provisions of Article 6 of 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, as amended, establishes the obligation of the Member States of the European Union to implement the General Anti-Avoidance Rule against abuse of the tax regime of corporate income tax. However, each country implements it differently. The aim of this article is not only to acquaint the reader with the approach chosen by the Czech legislator but also to point out the development of the application of this principle in Czech tax law.

**Keywords:** General Anti-Avoidance Rule, tax benefit, purpose of the law, conduct, taxpayer, tax administrator

**JEL Classification:** K34

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### Introduction

The General Anti-Avoidance Rule is a globally widespread principle applied in the tax administration framework that is supposed to act as a safety brake against the taxpayer's conduct, which, although formally fulfills the letter of the law, is contrary to its purpose. The provisions of Article 6 of 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, as amended (hereafter referred to as 'ATAD directive'), establishes the obligation of the Member States of the European Union to im-

plement the General Anti-Avoidance Rule against abuse of the tax regime of corporate income tax. However, each country implements it differently.

Undoubtedly, the jurisprudence of the Court of Justice of the European Union has a significant influence on the application of the General Anti-Avoidance Rule, which, through its decisions, established the basic rules for the application of this rule and defined the criteria that the tax administrator must verify to be able to reliably evaluate whether it is an abuse of law, i.e. whether it is a conduct that is not approved and protected by law. The difference between a conduct that complies with the law and its purpose and that does

not fulfill these attributes can be almost negligible in practice. In general, the primary goal of tax regulations is to secure tax payment, i.e. reduction of the taxpayer's economic income. On the contrary, taxpayers aim to maximize profit, especially those who carry out economic (business) activity. A natural part of this is, definitely, the effort to minimize the tax burden. In this context, it is necessary to draw attention to the fact that the General Anti-Avoidance Rule has, as the name suggests, general validity, i.e. its application is not necessarily limited to business entities. Legislators in EU countries, even at the level of the European Union itself within the framework of harmonization tendencies, necessarily work with this fact. In addition to the allocation function, tax regulations also have a regulatory function. This is because they are a tool for the implementation of fiscal policy. Tax law regulates, for example, various tax advantages whose purpose is to support specific activities of the taxpayers. However, it follows from the nature of the matter that taxpayers also use these advantages to reduce tax liability. It is, therefore, the task of the tax administrator to control them. However, at the theoretical level, any provision of tax law can be the object of avoidance, and it should be noted that taxpayers, in some cases, create incredibly complex tax planning structures to use the rules to their advantage to reduce their tax liability to a minimum. Tax administrators are thus entrusted with a complicated task, namely, to verify whether the measures implemented by the taxpayer are under the relevant legal regulations.

This article aims not only to acquaint the reader with the approach chosen by the Czech legislator concerning the implementation of the ATAD directive General Anti-Avoidance Rule but also to point out the development of the application of this principle in Czech tax law. In this context, the following hypotheses were chosen for verification: for applying the ATAD directive general anti-avoidance rule, adopting an explicit legal regulation was unnecessary since this prohibition was applied as a legal principle even before. The amendment of Act No. 280/2009 Coll., Tax Proce-

dure Code, as amended (hereinafter referred to as the 'Tax Procedure Code'), which implemented the ATAD directive, did not have a significant impact on the application of the General Anti-Avoidance Rule in the Czech tax environment.

The system analysis method was primarily chosen for compiling this publication regarding the established hypotheses. System analysis consists of dividing the investigated element into parts and analyzing the characteristics of these parts and their mutual relations to understand the investigated aspect (Molnár, 2012; Šíroký, 2010). The basic set of jurisprudence, which is the object of the analysis, consists of decisions of the Supreme Administrative Court of the Czech Republic (hereinafter referred to as the 'Supreme Administrative Court'), which substantively deal with the general anti-avoidance rule. A list of analyzed decisions is given in the references at the end of this publication. These are decisions issued since 2005, when the Supreme Administrative Court first defined avoidance of law concerning tax regulations, to the present, i.e. even after the entry into force of the provisions of Section 8, Paragraph 4 of the Tax Procedure Code, which implemented the general anti-avoidance rule according to the ATAD Directive. Based on the analysis of the decisions of the Supreme Administrative Court, the individual elements of the General Anti-Avoidance Rule are identified and described in detail in this publication. Namely, it is the content and nature, especially the conditions of its application, including the procedural specificity, which is the transfer of the burden of proof from the taxpayer to the tax administrator.

## **The abuse of law**

The essence of the abuse of law is the artificial creation of conditions to obtain a tax advantage. The taxpayer acts contrary to the meaning and purpose of the law but under its text and creates a permissible situation. If a taxpayer within its (business) activity can choose between different alternatives, he/she naturally chooses the one more economi-

cally advantageous. This means that the taxpayer naturally selects the more favourable one from a tax perspective. This is legitimate, expected, and approved by tax law. However, this needs to be distinguished from the cases where a taxpayer takes a specific measure, the sole purpose of which is to obtain an illegitimate tax advantage, i.e. an advantage that the legislator did not intend. In these cases, it is an abuse of law (Rozehnal, 2019).

The basis for the application of the institute of abuse of tax law was laid by the Supreme Administrative Court, which, in its decision, based on the theory of Viktor Knapp (1995), defined abuse of law as “a situation where someone exercises his subjective right to the unjustified harm of someone else or society; such behaviour, which achieves an illegal result, is only ostensibly permitted. It is behaviour that is only apparently permitted for the reason that objective law does not recognize behaviour that is both permitted and prohibited at the same time since it follows from the principle of *lex specialis derogat legi generali* that the prohibition of abuse of law is stronger than the permission given by law, such behaviour is not an exercise of right, but an illegal act. Therefore, the court will not protect the exercise of the right, which is an abuse of it”.<sup>1</sup> Viktor Knapp (1995) draws attention to the apparent paradox. It is valid at the same time that particular behaviour is both permissible because it is the exercise of a right and, at the same time, illegal because it is prohibited by law. When applying the *lex specialis derogat legi generali* principle, however, it is necessary to conclude that a legal norm that allows for a particular behaviour *a priori* represents a *lex generalis* concerning a legal norm that prohibits conduct that abuses behaviour approved initially by law. The prohibition of abuse of law, therefore, constitutes a *lex specialis*. In this context, Viktor Knapp (1995) concludes that the behaviour that leads to the abuse of the law is not the exercise of the right but an illegal act. Abuse of law must be distinguished from conduct, which is only pretended; it is not

<sup>1</sup> Judgment of the Supreme Administrative Court of 10 November 2005, 1 Afs 107/2004–48.

implemented because another real conduct is obscured through it.<sup>2</sup>

## Nature of the General Anti-Avoidance Rule

The general anti-avoidance rule “performs the function of a ‘safety brake’ for the case that legal rules, when applied literally in a specific case, would lead to a contradiction with material justice, as they would be used contrary to the meaning and purpose of the given legal arrangement”, or serves as “a material corrective to the formal conception of law, through which the aspect of equity (justice) is introduced into the legal order”.<sup>3</sup>

The General Anti-Avoidance Rule was reflected in the legal system of the Czech Republic with effect from April 1, 2019, in the form of the provisions of Section 8, paragraph 4 of the Tax Procedure Code, which stipulates: “When administering taxes, no account shall be taken of any legal acts and other facts relevant for tax administration, the predominant purpose of which is to obtain a tax benefit contrary to the meaning and purpose of tax legislation”, and the related provision of Section 92, paragraph 5, letter f) of the Tax Procedure Code, from which it follows that “facts relevant for the assessment of the purpose of a legal act and other facts relevant for tax administration, the predominant purpose of which is to obtain a tax benefit contrary to the meaning and purpose of tax legislation” are proved by the tax administrator.

The provision of Section 8, Paragraph 4 of the Tax Procedure Code was adopted into the legal system of the Czech Republic as one of the basic principles of tax administration. It is included in the first part of the Tax Procedure Code, which regulates the introductory provisions, and in its second chapter, entitled Basic Principles of Tax Ad-

<sup>2</sup> Judgment of the Supreme Administrative Court of 13 May 2010, 1 Afs 11/2010–94. Judgment of the Supreme Administrative Court of 3 April 2007, 1 Afs 73/2004–89.

<sup>3</sup> Judgment of the Supreme Administrative Court of 26 October 2016, 8 Afs 87/2016–60.

ministration. It follows from the explanatory report that this provision aims to “cover those cases of aggressive tax planning that are not covered by other provisions governing special rules against tax avoidance. It, therefore, serves to fill the gaps in the law, which are used to achieve unintended advantages, which may exist in the tax legislation and are difficult to eliminate only by special anti-avoidance rules”.<sup>4</sup>

Provisions of Section 8, paragraph 4 of the Tax Procedure Code implement the provisions of Article 6 of the ATAD Directive, which regulates the general rule against abuse of the tax regime of corporate income tax. Unlike the ATAD directive, however, the provisions of Section 8, paragraph 4 of the Tax Procedure Code apply to all ‘taxes’ defined in the provisions of Section 2, Paragraph 3 of the Tax Procedure Code: “For this Act, tax shall mean a) monetary performance identified by law as a tax, customs duty or fee, b) monetary performance, provided that the law stipulates that the procedures laid out in this Act shall apply to its administration, c) monetary performance under divided administration”. The General Anti-Avoidance Rule, therefore, applies not only to direct and indirect taxes, as follows from the jurisprudence of the Court of Justice of the European Union and the Supreme Administrative Court, but theoretically, it can also be applied to local fees, administrative and court fees, and other performance that fulfills the defining features of the tax according to the provisions of Section 2, Paragraph 3 of the Tax Procedure Code.

Even though the scope of the General Anti-Avoidance Rule, which is established in the provisions of Section 8, Paragraph 4 of the Tax Procedure Code, is significantly broader than the ATAD Directive assumes, this does not mean that this is automatically gold-plating of EU law.<sup>5</sup> The analysis of the jurisprudence of the Supreme Admin-

istrative Court confirms the position of the Ministry of Finance that the provisions of Section 8, Paragraph 4 of the Tax Procedure Code primarily contain, concerning the requirement of legal certainty, the established decision-making practice of the Supreme Administrative Court and subsequent practice of tax administrators. Until the entry into force of the provisions of Section 8, paragraph 4 of the Tax Procedure Code and Section 92, paragraph 5, letter f) of the Tax Procedure Code, the General Anti-Avoidance Rule was applied as an unwritten principle. At the same time, jurisprudence formulated the arguments’ supporting points (Rozehnal, 2019). The General Anti-Avoidance Rule was applied as a legal principle, similar to the prohibition of acting contrary to good morals, the protection of good faith, the protection of fair trade, or the prohibition of circumventing the law.<sup>6</sup> The Court of Justice of the European Union defined the General Anti-Avoidance Rule in the same way as a legal principle generally recognized in law (regardless of the specific field).<sup>7</sup>

The conduct of a taxpayer whose only goal is to obtain an illegitimate tax advantage cannot be considered approved by law and, therefore, does not deserve legal (judicial) protection.<sup>8</sup> Suppose there is an abuse of the right. In that case, the tax administrator should draw adequate legal consequences from it, even if particular acts do not expressly regulate the abuse of the law.<sup>9</sup> The provisions of Section 8, Paragraph 4 of the Tax Procedure Code can only be applied to the taxpayer’s

<https://www.psp.cz/sqw/text/tiskt.sqw?O=8&CT=206&CT1=0> (accessed: 1.10.2023).

<sup>6</sup> Judgment of the Supreme Administrative Court of 7 June 2015, 8 Afs 34/2015–71.

<sup>7</sup> Decision of the Court of Justice of the European Union of 14 December 2000, C-110/99 Emsland-Stärke Case.

<sup>8</sup> Judgment of the Supreme Administrative Court of 10 November 2005, 1 Afs 107/2004–48. Judgment of the Supreme Administrative Court of 17 December 2007, 1 Afs 35/2007–108. Judgment of the Supreme Administrative Court of 30 November 2016, 4 Afs 137/2016–43. Decision of the Municipal Court in Prague of 22 February 2021, 10 Af 29/2019–123.

<sup>9</sup> Decision of the Constitutional Court of 6 August 2008, II. ÚS 2714/07.

<sup>4</sup> Explanatory report on the government’s bill amending specific laws in the field of taxation. Retrieved from: <https://www.psp.cz/sqw/text/tiskt.sqw?O=8&CT=206&CT1=0> (accessed: 1.10.2023).

<sup>5</sup> Explanatory report on the government’s bill amending specific laws in the field of taxation. Retrieved from:

conduct after it became effective, i.e. after April 1, 2019. The Supreme Administrative Court states: “Even though the Tax Procedure Code is a procedural regulation, the cited provisions of Section 8, paragraph 4 of the Tax Procedure Code remove the protection of legal conducts. That is why the inter-temporal rules must be applied to changing substantive law, not procedural. While for a change in procedural law, it applies that the new rule is applied to all ongoing proceedings (unless a transitional provision stipulates otherwise), in the case of a change in substantive law, the principle applies according to which the new rule cannot be applied to conducts that took place in their entirety in the past, even before the new rule comes into effect (unless the transitional provision stipulates otherwise). Because Act No. 80/2019 Coll. did not contain any transitional provisions to amend the Tax Procedure Code, the traditional rules for changes to substantive law rules shall apply to the new wording of Section 8, Paragraph 4 of the Tax Procedure Code. Therefore, even legal proceedings before 1 April 2019 are an object of the abuse of law as an unwritten general legal principle”.<sup>10</sup>

### Conditions of the General Anti-Avoidance Rule application

The claimed right can be denied only on the condition that the measures have no other objective explanation than obtaining a claim, i.e. that there are no proper economic reasons for the measures and granting the right would be contrary to the meaning and purpose of the law, i.e. that the only reason for the implementation of specific measures is to obtain an illegitimate tax advantage.<sup>11</sup>

<sup>10</sup> Judgment of the Supreme Administrative Court of 26 April 2022, 10 Afs 289/2021–42.

<sup>11</sup> Judgment of the Supreme Administrative Court of 17 December 2007, 1 Afs 35/2007–108. Judgment of the Supreme Administrative Court of 28 April 2023, 5 Afs 45/2022. Judgment of the Supreme Administrative Court of 23 August 2006, 2 Afs 178/2005–64. Judgment of the Supreme Administrative Court of 16 October 2008, 7 Afs

The principle of the General Anti-Avoidance Rule can only be applied if a specific legal provision cannot be applied, e.g. the provision of Section 8, Paragraph 3 of the Tax Procedure Code, which regulates the institute of dissimulation. This provision establishes that “the tax administrator shall base its steps on the actual content of the legal act or another fact decisive for tax administration.” Rozehnal (2019) adds that the tax administrator is “obliged to assess whether the taxpayer’s conduct shows signs of absolute or relative simulation. Absolute simulation is a situation where the participants pretend to do a legal act, even if they do not want to conclude any legal act (e.g. they claim that the goods have been acquired, but this is not the case). In a relative simulation, the participants pretend to conduct but only conceal another legal act. In the case of relative simulation, the tax administrator is obliged to reveal the real, non-simulated act, in other words, to perform a ‘dissimulation’ (judgment NSS 1 Afs 11/2010).”

Following the Supreme Administrative Court model, tax administrators apply in the case of suspected abuse of the law two-stage test, introduced by the Court of Justice of the European Union in the Emsland-Stärke case<sup>12</sup> and further elaborated in the Halifax case<sup>13</sup> and confirmed, among other things, in the decision in the T Denmark and Y Denmark Aps case.<sup>14</sup> The first phase assesses whether the meaning and purpose of the applied tax regulation was fulfilled (objective element). The second phase assesses whether there was an intention to obtain a tax advantage by creating artificial conditions. To conclude that there has been an abuse of law, both the objective and subjective

54/2006–155. Judgment of the Supreme Administrative Court of 27. November 2008, 5 Afs 61/2008–80. Decision of the Municipal Court in Prague of 22 February 2021, 10 Af 29/2019–123.

<sup>12</sup> Decision of the Court of Justice of the European Union of 14 December 2000, C-110/99 Emsland-Stärke Case.

<sup>13</sup> Decision of the Court of Justice of the European Union of 21 February 2006, C-255/02 Halifax Case.

<sup>14</sup> Decision of the Court of Justice of the European Union of 26 February 2019, C-116/16 a C-117/16, T Denmark a Y Denmark Aps Case.



aspects must be fulfilled.<sup>15</sup> To assess the objective criterion, it is first necessary to define the purpose of the legislation, and then the tax administrator must examine whether this purpose has been fulfilled. When assessing the subjective criterion, the purpose of the taxpayer's conduct is assessed, i.e. whether the implemented measures are economically justified.<sup>16</sup> The tax administrator must evaluate whether the measures implemented by the taxpayer could have a different explanation than the attempt to obtain an unauthorized tax advantage and possibly identify artificially created conditions that served to obtain a tax advantage.<sup>17</sup>

Judgments issued after the entry into force of the provisions of Section 8, Paragraph 4 of the Tax Procedure Code do not change the current interpretation of the general anti-avoidance rule. Over the years, the Supreme Administrative Court has set methods for applying this provision by tax administrators and administrative courts, albeit initially in the form of a legal principle. Currently, the activity of the Supreme Administrative Court is more focused on verifying whether this method is followed in practice. Two identified faults can be pointed out from the analyzed decisions. The first can be characterized as an individual misconduct of the administrative court. Although the administrative court concluded that even if the tax was paid abroad, there could have been an abuse of Czech law, the court also noted that facts that occurred abroad may also be relevant to assess whether the signs of an abuse of Czech law were fulfilled. However, the administrative court did not justify these conclusions.<sup>18</sup> A specific gener-

alization of the identified fault can be seen in the second case.

The Supreme Administrative Court drew attention to the fact that, in practice, the tax administrators and administrative courts mix the objective and subjective elements of the abuse of law.<sup>19</sup> The Supreme Administrative Court points out that it is necessary to consistently differentiate both elements (objective and subjective) when arguing and justifying a decision, even though, especially in the case of direct taxes, the difference between the two elements blurs considerably. Objective circumstances relating to the taxpayer's conduct, from which the tax administrator concludes that this conduct was not justified by economic needs but by an attempt to obtain an unjustified tax advantage, are evaluated within the subjective aspect. On the other hand, the essence of the objective side is assessing whether the taxpayer's conduct corresponds to the meaning and purpose of the assessed law.<sup>20</sup> In carrying out the test, it is necessary to consider not only the transactions concerned but also the background of the case and the related circumstances in a mutual context to assess their economic rationality.<sup>21</sup>

## **Burden of proof in applying the General Anti-Avoidance Rule**

The provisions of Section 92, paragraph 5, letter f) of the Tax Procedure Code and also from the settled jurisprudence of the Supreme Administrative Court<sup>22</sup> establish that “ facts relevant for the as-

<sup>15</sup> Judgment of the Supreme Administrative Court of 16 August 2022, 7 Afs 49/2022–27. Judgment of the Supreme Administrative Court of 24 August 2022, 7 Afs 167/2022–23. Judgment of the Supreme Administrative Court of 18 September 2023, 8 Afs 53/2022–59.

<sup>16</sup> Judgment of the Supreme Administrative Court of 8 August 2023, 2 Afs 167/2022–52.

<sup>17</sup> Judgment of the Supreme Administrative Court of 26 April 2022, 10 Afs 289/2021–42. Judgment of the Supreme Administrative Court of 8 August 2023, 2 Afs 167/2022–52.

<sup>18</sup> Judgment of the Supreme Administrative Court of 15 June 2023, 8 Afs 105/2021–91.

<sup>19</sup> Judgment of the Supreme Administrative Court of 26 April 2022, 10 Afs 289/2021–42.

<sup>20</sup> Judgment of the Supreme Administrative Court of 26 April 2022, 10 Afs 289/2021–42.

<sup>21</sup> Judgment of the Supreme Administrative Court of 14 November 2019, 6 Afs 376/2018–46. Decision of the Constitutional Court of 10 March 2020, I. ÚS 264/20. Decision of the Municipal Court in Prague of 22 February 2021, 10 Af 29/2019–123.

<sup>22</sup> Judgment of the Supreme Administrative Court of 6. February 2019, 6 Afs 44/2018–31. Judgment of the Supreme Administrative Court of 28 November 2019, 7 Afs

assessment of the purpose of a legal act and other facts relevant for tax administration, the predominant purpose of which is to obtain a tax benefit contrary to the meaning and purpose of tax legislation” are proved by the tax administrator. This rule is based on the Judgement of the Court of Justice of the European Union in the Halifax case,<sup>23</sup> and results from the nature of the abuse of the law. In the same way, the tax administrator shall prove “facts decisive for the assessment of the actual content of a legal conduct or other facts”,<sup>24</sup> and “facts decisive for imposing a consequence for a breach of an obligation in tax administration”.<sup>25</sup>

Related to the reversal of the burden of proof, the Supreme Administrative Court reminds that even in these cases, where the proof is primarily up to the tax administrator, it is necessary to provide the taxpayer with sufficient possibilities for defense, i.e. for explaining facts and presenting relevant evidence. If the taxpayer wants to reverse the conclusions of the tax administrator, he must show procedural activity and present the claims, including supporting evidence, to the tax administrator.<sup>26</sup>

## Conclusion

Based on the analysis of the decisions of the Supreme Administrative Court, which has dealt with the general anti-avoidance rule since 2005, the individual elements of the general anti-avoidance rule are identified and described in detail. Namely, it is the content and nature, especially the con-

ditions of its application, including the procedural specificity, which is the transfer of the burden of proof from the taxpayer to the tax administrator. The essence of the abuse of law is the artificial creation of conditions to obtain a tax advantage. The taxpayer acts contrary to the meaning and purpose of the law but under its text and creates a permissible situation. The general anti-avoidance rule was reflected in the legal system of the Czech Republic with effect from April 1, 2019, in the form of the provisions of Section 8, paragraph 4 of the Tax Procedure Code, which stipulates: “When administering taxes, no account shall be taken of any legal acts and other facts relevant for tax administration, the predominant purpose of which is to obtain a tax benefit contrary to the meaning and purpose of tax legislation”, and the related provision of Section 92, paragraph 5, letter f) of the Tax Procedure Code, from which it follows that “facts relevant for the assessment of the purpose of a legal act and other facts relevant for tax administration, the predominant purpose of which is to obtain a tax benefit contrary to the meaning and purpose of tax legislation” are proved by the tax administrator. These provisions implement the provisions of Article 6 of the ATAD Directive, which regulates the general rule against abuse of the tax regime of corporate income tax. Unlike the ATAD directive, however, the provisions of Section 8, paragraph 4 of the Tax Procedure Code apply to all ‘taxes’ defined in the provisions of Section 2, Paragraph 3 of the Tax Procedure Code (e.g., local fees, administrative, and court fees). The analysis of the jurisprudence of the Supreme Administrative Court and the provisions of Section 8, Paragraph 4 of the Tax Procedure Code establish the decision-making practice of the Supreme Administrative Court and the subsequent practice of tax administrators; therefore, they cannot be considered as gold-plating of EU law.

The hypotheses established at the beginning of the work were confirmed. For the application of the ATAD Directive General Anti-Avoidance Rule, it was not necessary to adopt an explicit legal regulation since this prohibition was applied in the form of a legal principle even before. The analy-

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114/2019–33. Judgment of the Supreme Administrative Court of 16 August 2022, 7 Afs 49/2022–27. Judgment of the Supreme Administrative Court of 13 May 2010, 1 Afs 11/2010–94.

<sup>23</sup> Decision of the Court of Justice of the European Union of 21 February 2006, C-255/02 Halifax Case.

<sup>24</sup> The provisions of Section 92, paragraph 5, letter d) of the Tax Procedure Code.

<sup>25</sup> The provisions of Section 92, paragraph 5, letter e) of the Tax Procedure Code.

<sup>26</sup> Judgment of the Supreme Administrative Court of 16 August 2022, 7 Afs 49/2022–27. Judgment of the Supreme Administrative Court of 28 November 2019, 7 Afs 114/2019–33.

sis of the jurisprudence of the Supreme Administrative Court confirms the position of the Ministry of Finance that the provisions of Section 8, Paragraph 4 of the Tax Procedure Code primarily contain, concerning the requirement of legal certainty, the established decision-making practice of the Supreme Administrative Court and subsequent practice of tax administrators. Until the entry into force of the provisions of Section 8, paragraph 4 of the Tax Procedure Code and the provisions of Section 92, paragraph 5, letter f) of the Tax Procedure Code, the General Anti-Avoidance Rule was applied as an unwritten principle. At the same time, the supporting points of the arguments were formulated by jurisprudence. The General Anti-Avoidance Rule was applied as a legal principle, similar to the prohibition of acting contrary to good morals, the protection of good faith, the protection of fair trade, or the prohibition of circumventing the law. The Court of Justice of the Eu-

ropean Union defined the General Anti-Avoidance Rule similarly.

The amendment of the Tax Procedure Code did not significantly impact the application of the General Anti-Avoidance Rule in the Czech tax environment. Judgments issued after the entry into force of the provisions of Section 8, Paragraph 4 of the Tax Procedure Code do not change the current interpretation of the General Anti-Avoidance Rule. In essence, over the years, the Supreme Administrative Court has set methods for applying this provision by tax administrators and administrative courts, albeit initially in the form of a legal principle. Currently, the activity of the Supreme Administrative Court is more focused on verifying whether this method is followed in practice. In this regard, the Supreme Administrative Court pointed out, in particular, that the objective and subjective elements of abuse of law are mixed in practice.

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Received: October 23, 2023  
Accepted: November 6, 2023  
Published: December 31, 2023



Centre for Analyses and Studies of Taxation  
Centrum Analiz i Studiów Podatkowych

· PUBLISHER ·

CENTRE FOR ANALYSES AND STUDIES OF TAXATION SGH · Al. Niepodległości 162 · Warsaw 02-554 · Poland  
DOMINIK J. GAJEWSKI (General Editor) · GRZEGORZ GOŁĘBIEWSKI · ADAM OLCZYK (Managing Editor)

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