

Michał Ciecierski

Summary of the doctoral dissertation prepared under the supervision of Prof. Artur Mudrecki and auxiliary supervision of PhD Piotr Stanisławiszyn pt.: „Limits of shaping a tax liability in the tax on goods and services (VAT) by civil law transactions”

In Poland, tax law and civil law are separate branches of law, and it may lead to the conclusion that there are no relations between these branches. However, situations in which taxation occurs and terms used in the provisions of tax law indicate that there are links between events in the field of civil and tax law.

One of the basic concepts of tax law in Poland is the tax liability. This concept has been regulated in Art. 4 of the Tax Ordinance Act and is an unspecified duty “resulting from tax Acts, to make a compulsory pecuniary performance in relation to the occurrence of an event specified by such Acts.”. On the other hand, one of the basic concepts and “tools” of civil law are civil law transactions that enable, among others, conclusion of civil law contracts. The performance of obligations arising from these contracts, leads to events that are relevant to the provisions of the Goods and Services Tax Act.

In the provisions of the Goods and Services Tax Act, to define the subject of taxation, which is related to the tax liability, terms used are separate from terms of civil law. This results, among others, from differences in civil law regulations in EU countries.

The doctoral dissertation entitled “The limits of shaping the content of the tax obligation in the tax on goods and services through civil law transactions” consists of five chapters. The first chapter is devoted to the characteristics of tax law and civil law, as well as the characteristics of basic concepts such as a civil law transaction, contract and tax liability. This chapter also includes a general description of relationships between civil law and tax law, as well as between civil law transactions and the tax liability.

In the second chapter, the author deals with the definition of the concept of tax liability in the tax on goods and services (VAT) based on provisions of Directive 2006/112/EC and the Goods and Services Tax Act. The analysis carried out in this chapter shows that in fact the provisions of the Directive do not use the concept of “tax liability” within the meaning of Art. 4 of the Tax Ordinance Act. The further analysis of the tax liability carried out in this chapter covers the provisions of the above-mentioned act that affect the tax liability in the tax on goods and services. Isolation of individual provisions affecting the tax liability in the tax on goods and services found a broader discussion, which made possible to analyse in detail the impact of civil

law transactions (contracts) on the content of the tax liability in the tax on goods and services in subsequent chapters.

The third and fourth chapters are devoted to the discussion of the impact of civil law transactions on the content of the tax liability in the tax on goods and services in the scope of delivery of goods and providing of services. In relation to each of these areas, contracts regulated by the Civil Code were selected, which are characterized by the delivery of goods or providing of services. Then, in each of those chapters, a comparison was made of an impact of selected contracts on the creation and content of the tax liability, in terms of the taxpayer and a party to a contract, the subject of taxation and the subject of contracts, the moment of taxation and contractual regulations, the place of taxation and a place of performance, the tax base, the tax rate and exemptions tax. In the final part of each of these chapters, characteristic events related to selected contracts are discussed, which are usually independent civil law transactions, such as reduction of contractual remuneration, in terms of their impact on the content of the tax liability in the tax on goods and services. These chapters present how the individual elements of presented contracts shape the content of the tax obligation in the tax on goods and services, as well as the limitations in the scope of this impact resulting from the provisions of the Goods and Services Tax Act.

The fifth chapter is the last chapter of the dissertation, which contains a model description of how civil law transactions shape the content of the tax liability in the tax on goods and services. This model shows that the main reason for this influence is the creation of a factual state through civil law transactions that contributes to the creation, under the provisions of the Goods and Services Tax Act, of the tax liability in this tax. This influence may additionally result from special relationship between the provisions of the Goods and Services Tax Act and the sphere of civil law, such as the use of terms (e.g. a legal or natural person), similar meaning of terms used in the provisions of the Goods and Services Tax Act and the Civil Code (e.g. the concept of things) or references in the provisions of the Goods and Services Tax Act for contractual arrangements (Article 15(3)(3) or Article 29a(1) and (13) of the Goods and Services Tax Act was cited as an example of this type of relationship). Then, the general limitations in the application of the model in which civil law transactions shape the content of the tax liability in the tax on goods and services are discussed. The presented considerations show that these restrictions are related to the provisions of the Goods and Services Tax Act, which prohibit the formation of the tax base in transactions between related entities in a manner other than market or abuse of law within the meaning of Art. 5 sec. 4 and 5 of the Goods and Services Tax Act. Further indicated limitations are related to the jurisprudence of administrative courts, tax

authorities, such as interpretations or binding rate information, as well as the Court of Justice of the European Union and the Constitutional Tribunal. These rulings may have a general impact on the understanding of tax law norms, as well as may directly affect this tax liability (when an administrative court's ruling concerns this individualized tax liability). The final element of this chapter is a discussion of the possible shaping of the content of the tax liability in the tax on goods and services as part of tax proceedings. In tax proceedings, the tax authority has, within the powers specified in the Tax Ordinance Act, the possibility of shaping the content of the tax liability in the tax on goods and services, which limits the use of the model discussed in the initial part of the fifth chapter.

At the end of the dissertation, the author summarizes the most important issues raised in the work. In particular, it refers to views expressed in the doctrine regarding the autonomy of EU tax law and the separation of activities which are subject to VAT from civil law transactions. The author notes that this principle applies to the normative side (legal norms), but does not cover the actual connection that exist between civil law transactions and the occurrence of the tax obligation. Additionally at the end of the dissertation, exemplary references in the provisions of Goods Services Tax Act to civil law were also indicated, and attention was paid to the factual (functional) relationship of civil law transactions discussed in the dissertation, the performance of obligations arising from them and the provisions of Goods Services Tax Act that shape an individually defined (within the meaning of Article 4 of the Tax Ordinance) tax liability in the tax on goods and services. These relationships confirm that civil law transactions have a direct or indirect impact on the creation and content of the tax liability in the tax on goods and services.