INTERPRETATION OF LAW AS AN ALTERNATIVE TO THE NORMATIVE METHOD AGAINST THE TAX AVOIDANCE

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This study is connected with the subject matter of the interpretation of the tax law as a method against tax avoidance. Substantial thesis included in this paper are at the same time the methodological basis in conducting analyses and interpretation of selected research problems in the field of tax law. The choice of the theme of this paper is dictated by the need to systematize concepts and structures related to the issues of the subject due to their paradigmatic significance in the context of the methodology of tax law. One of the most important theoretical and methodological issue is undoubtedly subject matter of application and interpretation of tax law by administrative courts. Under certain circumstances tax case-law of administrative courts may in fact become a source of knowledge on methods and principles of the interpretation of the tax law. First of all is to place direct and indirect guidance about the principles and methods of interpretation of tax law in verdicts of administrative courts. Direct statements of court are the statements of hierarchy and relation between the known methods of interpretation of the tax law. On the other hand there is a considerable danger connected with the complete acceptance of declarations made by courts of the methodology of interpretation of the tax law. In fact this kind of declaration are not very frequent as well as there is lack of the consistency in the context of judicial practice.

Without any doubt paying taxes is essential and inseparable duty connected with the functioning of the state, regulated in tax acts[485]. By using taxes there is made a compulsory transfer of some part of income of taxpayers to the state budget. Therefore, taxes as a non-equivalent benefits always reduce the consumption of goods by taxpayers and indeed may be the reason of growth of tax resistance. Therefore, the natural economic reaction is pursuit by the taxpayers to reduce the

[485] P. Karwat, *Obejście prawa podatkowego*, Warszawa 2003, p. 10.

tax burden[486]. This problem has a source in the essence of the tax-legal relationship. The existence of this relationship is inseparably connected with the creation of the first tax acts[487]

It is impossible at present to definitely identify and determine all behaviors of taxpayers which are legal and illegal methods of tax burden reduction[488]. This is caused due to numerous factors and rules affecting the tax system as well as natural desire of every taxpayer to the maximum possible reduction of the tax burden[489]. In this regard problematic issue is the phenomenon of tax avoidance. Tax avoidance is based on forming of the actual state of affairs in the way which will help to reduce the tax burden, and therefore it is a kind of substitution[490]. The main aim of tax avoidance is to variously arrange, in terms of tax law, identical economic activities, what allows to achieve different effects on the height of the tax burden. In other words it is a replacement of one legal action with another that brings on similar economics results established by the taxpayer. However it is connected with lower level of tax burden or even complete elimination of it[491]. The universality of the phenomenon of tax avoidance to a certain extent is a consequence of the lack of tax regulations which would introduce the order to bear the tax burden on the highest possible level or ban on paying taxes at possible lowest height. However, as for the tax avoidance, there are some demands of using some methods of prevention of tax avoidance, such as those used to strictly illegal behaviors. Tax avoidance is a negative phenomenon with a very far-reaching consequences for the fiscal situation of the state. First of all tax avoidance causes a breakdown of the balance established by the legislator of the tax system. Some taxpayers will avoid the payment of the tax while others for which there is exactly the same actual state of affairs will have to bear fully the tax burden[492]. Such a disturbance of the tax balance, particularly as a part of professional trade, is highly disadvantageous to the entire economy[493]. This situation can also lead to disturbance in the macroeconomic area of the state as well as in the competitiveness of individual entities. Moreover the tax avoidance on a large scale threats to the functioning of the budget

[486] J. Sokołowski, *Strategia podatkowa przedsiębiorstwa. Jak zmniejszyć obciążenia podatkowe*, Warszawa 1994, p. 135.
[487] J. Wyciślok, *Optymalizacja podatkowa. Legalne zmniejszanie obciążeń podatkowych,* Warszawa 2013, p. 7.
[488] P. Karwat, *op.cit*., p. 46-49.
[489] B. Brzeziński, *Anglosaskie doktryny orzecznicze dotyczące unikania opodatkowania,* Toruń 1996, p. 9, S. Owsiak, *Finanse publiczne. Teoria i praktyka,* Warszawa 1997, p. 189.
[490] M. Kalinowski, *Granice legalności unikania opodatkowania w polskim systemie podatkowym,* Toruń 2001, p. 19-20.
[491] M. Kalinowski, *op. cit.,* s. 20, A. Ladziński, *Prawne granice optymalizacji podatkowej*, „Przegląd Podatkowy" 2008, no. 6, p. 18-19.
[492] M. Kalinowski, *op. cit.,* p. 18.
[493] J. Sokołowski, *op. cit.,* p. 136.

system and consequently of the financial system of the state as a whole[494]. In the Polish doctrine and case law the choice of the lowest taxed way is fully legal and permissible[495].

On the other hand, due to the efficiency of the tax system and the principle of tax justice taxpayer can not use the legal methods in order to completely avoid paying the tax[496]. There are undertaken some efforts to eliminate the phenomenon of tax avoidance. On that account there were attempts to introduce to the Polish law system tax avoidance clause[497]. The last such attempt was taken in 2002, when there was introduced to the Tax Ordinance Act[498] Article 24b[499]. This provision concerning the tax avoidance was supposed to become a tool that would allow the tax authorities to effectively combat tax avoidance. Because of this provision tax authorities were obliged to omit tax effects of the legal action if there was proved that from this action there should not be expected any other significant benefits than those connected with reduction of tax burden, increase of tax loss, tax overpayment or tax refund. However, due to numerous doubts of interpretation of this provision there has been introduced control of its constitutionality[500]. As a result Constitutional Tribunal decided that this provision is not in a conformity with Polish Constitution[501]. The Constitutional Tribunal has stated that tax avoidance clause which was in Article 24b § 1 of Tax Ordinance Act did not meet the constitutional standards of appropriate legislation, violated the principle of trust in state and constituted law and did not realize the requirement of definiteness of tax liabilities. It was pointed out that phrases such as "it was not possible to expect" whether "other essential benefits" are imprecise and do not give the chance to create uniform line of jurisprudence. The vagueness and ambiguity of this regulation make the citizens are not able to predict legal consequences of their action. However, this statement was not uniform[502]. From that moment of abolition of tax avoidance clause there were not introduced

[494] M. Kalinowski, *op. cit.*, p. 18, A. Nita, *Upływ czasu w prawie podatkowym. Studium z dziedziny zobowiązań podatkowych,* Gdańsk 2007, p. 78-79.
[495] A. Melezini, *Optymalizacja podatkowa w przedsiębiorstwie jako element wychodzenia z kryzysu gospodarczego*, „Prawo i Podatki" 2012 no. 3, p. 1-2, J. Wyciślok, *op. cit.*, p. 29-30, L. Kleczkowski, *Unikanie opodatkowania, a obejście prawa*, „Monitor Podatkowy" 2000, no. 7, p. 6-7, P. M. Gaudement, J. Molinier, *Finanse publiczne,* Warszawa 2000, p. 585-586, verdict of Supreme Administrative Court from 10thJuly 1996, SA/Ka 1244/95, Monitor Podatkowy 1997, no. 8, pos. 239.
[496] M. Kalinowski, *op. cit.*, p. 31.
[497] K. J. Stanik, K. Winiarski, *Praktyczne problemy nadużycia i obejścia prawa podatkowego,* Wrocław 2012, p. 54-55.
[498] Tax Ordinance Act from 29th August 1997, (Jurnal of Law 2013, pos. 35).
[499] P. Karwat, *op. cit.*, p. 137-146.
[500] B. Brzeziński, *Narodziny i upadek orzeczniczej doktryny obejścia prawa podatkowego*, „Przegląd Orzecznictwa Podatkowego" 2004, no. 1, p. 7.
[501] Verdict of Constitutional Tribunal from 11th May 2004, K 4/03 (Journal of Law 2004 no. 122, pos.1288).
[502] Dissenting opinion was created by the judges of Constitutional Tribunal Marian Grzybowski, Adam Jamroz, Marek Mazurkiewicz i Bohdan Zdziennicki.

to Polish tax system any other provisions which would replace this clause. It should be pointed out that at present there are some legislative works in progress aimed at creation and introduction to Polish tax law again tax avoidance clause.

Because of presented reasons it was necessary to find other methods against the tax avoidance. Recently the interpretation of tax law made by tax authorities and administrative courts has become another, next to the normative method against this phenomenon. This method already has functioned in many European legal systems, not only where tax avoidance clause was not implemented but also in which this kind of provisions were introduced[503]. In the Polish legal system the great importance in defining and searching for methods against the tax avoidance after abolition of the tax avoidance clause gained the interpretation of law made in the process of application of tax law by the administrative courts[504]. It should be noted that especially the resolutions of the Supreme Administrative Court affect the interpretation of tax law made by the tax authorities[505]. This happens, despite the fact that the interpretation of law made by the Supreme Administrative Court is binding only the administrative courts and formally is not binding neither tax authorities nor parties and participants of the proceedings[506]. This influence has its source in so-called "prognostic motivation[507]". The tax authorities will in fact apply the interpretation of tax law presented by the Supreme Administrative Court in case of control of their decisions by the administrative courts. In this respect it is also important that following the interpretation of tax law presented by the Supreme Administrative Court makes it easier for the tax authorities to adjudicate the case[508].

When there is applied the method against the tax avoidance based on interpretation of provisions first there is used language interpretation. The principle of the primacy of language interpretation was exhibited in many verdicts of the Supreme Administrative Court[509]. Moreover Article 84 of

[503] P. Karwat, *op. cit.*, p. 187.
[504] M. Zirk-Sadowski, *Uchwały Naczelnego Sądu Administracyjnego a wykładnia prawa administracyjnego* [in:] *System Prawa Administracyjnego v. 4, Wykładnia w prawie administracyjnym*, (ed.) R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2012, p. 419.
[505] A. Skoczylas, *Wpływ uchwał NSA na wykładnię dokonywaną przez organy administracji* [in:] *Koncepcja systemu prawa administracyjnego*, J. Zimmermann, (ed.), Warszawa 2007, p. 697, J. P. Tarno, *Naczelny Sąd Administracyjny a wykładnia prawa administracyjnego,* Warszawa 1999, p. 173.
[506] A. Skoczylas, *Moc wiążąca uchwał NSA, a prawa jednostki* [in:] *Jednostka w demokratycznym państwie prawa*, J. Filipek (ed.), Bielsko – Biała 2003, p. 600.
[507] W. Sawczyn, *Związanie kasacyjnym orzeczeniem Naczelnego Sądu Administracyjnego*, Warszawa 2014, p. 214.
[508] A. Skoczylas, *op. cit.*, p. 701.
[509] Resolution of Supreme Administrative Court from 20th May 2002, OPK 20/02, ONSA 2003, no. 1, pos. 11, resolution of Supreme Administrative Court form 4th June 2001, FPK 5/01, ONSA 2001, no. 4, pos.

Polish Constitution[510] provides that everyone is obliged to bear public burdens, including taxes specified in particular acts. Polish Constitution states that law is the only source of tax obligations and therefore its literal meaning has a priority in determining the range of these obligations[511]. According to the principle of reasonable taxation sense of the tax act should be sought as far as it is possible regarding the text of this act. The language interpretation in this regard refers to linguistic context of the norm, and thus to the language in which the legal text was created. There should be taken into consideration the rules of syntax and semantic rules[512]. When there is conducted language interpretation of law there should be applied rules associated with the vocabulary, syntax and the structure of the legal text. However the language interpretation of law appoints some limits of possible meaning of words used in the legal text[513]. In the rule of law can not be done the interpretation of law which would be in contrary to this meaning. The language interpretation of tax law should apart from the general rules concerning the interpretation of law, be guided also by the specific features of tax law. Moreover the literal meaning of the words used in the tax law is much greater than in the case of civil law. In case of civil law the literal meaning of the words used in the legal text create only a certain framework of the regulation of law, which will be completed by the practical application of law. Economic phenomena which are the main object of the tax regulations should be in turn determined in clear and precise way. As a result in case of tax law the language interpretation plays much greater role than in the civil law. In terms of language interpretation of tax law there should be defined the meaning of particular words or phrases included in the legal norms constructing the actual state of affairs[514].

However the process of defining becomes complicated for several reasons. It should be pointed out that some branches of law use specific to some extend vocabulary, which in great measure depends on the subject and method of legal regulation of particular branch. In this respect there is significant a concept of the autonomy of tax law, more widely known as the autonomy of tax legislation[515]. The followers of this concept point out that tax law is a separate branch of law with separate system of apprehensions specific to this branch and adjusted to its purposes and the

160, verdict of Supreme Administrative Court from 5th August 2004, FSK 372/04, POP 2004, no. 3, pos. 70.

[510] Article 84 of Constitution of Republic of Poland from 2nd April 1997 (Journal of law 2009 no. 114, pos. 946).

[511] B. Brzeziński, *Wykładnia prawa podatkowego*, Gdańsk 2013, p. 23-24.

[512] M. Kalinowski, *op. cit.*, p. 45.

[513] Verdict of Supreme Administrative Court from z 23rd April 1998 I SA/Po 1782/97, Lex no. 35472.

[514] R. Mastalski, *Prawo podatkowe*, Warszawa 2012, p. 128-129.

[515] P. Karwat, *op. cit.*, p. 188, R. Mastalski, *op. cit.*, p. 130, R. Mastalski, *Interpretacja prawa podatkowego. Źródła prawa podatkowego i jego wykładnia*, Wrocław 1989, p. 98, A. Mariański, *Rozstrzyganie wątpliwości na korzyść podatnika. Zasada prawa podatkowego,* Warszawa 2011, p. 15.

apprehensions typical for the other branches of law do not bound the tax legislator[516]. Moreover at determining the meaning of particular word used by the legislator, first there should be taken appropriate position as to relation between the tax law and other branches of law, especially the civil law. Concepts from other branches of law may in fact be not sufficiently precise in terms of tax law[517]. It is postulated that in the context of tax law should be created and used only own concepts of tax law. This concept significantly complicates process of language interpretation of law as well as imposes additional obligation on the interpreter in determining and defining particular mechanisms of tax law. The principle of autonomy of tax law in the context of language interpretation is opposed to the concept of the adopted notions[518]. According to this concept if tax legislator uses some notions from civil law it means that tax law has taken over particular institution, mechanism or definition of civil law[519]. In Polish system of tax law there is lack of tax avoidance clause. In this case the follower of this conception use civil avoidance clause to prevent from tax avoidance[520]. In this respect it should be pointed out that tax law as any other branch of law functions for a specific purpose and that purpose is most essential of every legal system. Demands of followers of this concept as for instance a simplification of tax system can be considered only if they do not become in conflict with this primary purpose. In addition structure of civil law provisions is created according to different assumption and for other purposes that institutions of tax law. On the other hand inadmissibility of application of Article 58 § 1 of the Civil Code[521] under tax law is provided by Article 1 of the Civil Code[522] according to which this act is regulating relations under civil law between individuals persons and legal persons.

Two other concepts which can be used at this stage of interpretation of law: concept of specific notions and concept of the will of the legislator[523] should be also presented. Those concepts will be presented together because they have got common assumption according to which there is no identity of notions of tax law an civil law. The concept of specific notions assumes that in the tax law there are not any adopted notions but only sometimes there appears explicit reference to the

[516] P. Karwat, *op. cit.*, p. 104-106.
[517] Verdict of Constitutional Tribunal from 13th September 2011, P 33/09, OTK-A 2011 no. 7, pos. 71.
[518] P. Karwat, *op. cit.*, p. 190.
[519] Verdict of Supreme Administrative Court from 19th March 1997, SA/Ka 3005/95, Lex no. 29768, verdict of Supreme Administrative Court from 23rd January 1998, I SA/Łd 1054/97, Lex no. 32719,
[520] Verdict of Supreme Administrative Court from 29th May 2002, III SA 2602/00, Monitor Podatkowy 2002, no. 10, pos. 39, K. J. Stanik, K. Winiarski, *op. cit*, p. 21.
[521] Article 58 § 1 of Civil Code from 23rd April 1964 (Journal of Law 2009, no. 42, pos. 341).
[522] Article 1 of Civil Code.
[523] P. Karwat, *op. cit.*, p. 197.

provisions of civil law[524]. On the other hand, according to the concept of the will of the legislator the will of application in tax law some notions of civil law does not need to be clearly articulated. It is enough if it can be deduced from the context of the whole regulation[525]. At present using either of these two concepts is unrealistic. Tax law regulates economic relations which as very dynamic undergo constant changes. Those changes are not accompanied with the introduction of new legislation. At the same time introduction of any of these concepts would lead to creation of extensive and casuistic regulations which would violate the stability of tax system and further complicate this system. The interpreter who decides to apply the language interpretation of tax law as a tool against tax avoidance must therefore choose between one these concepts. The phenomenon of tax avoidance appears in fact on the border of two different branches of law[526].

For these reasons language interpretation of tax law is not an effective method against the tax avoidance. In order to make this interpretation of law sufficient method against the tax avoidance it is necessary that the legislator at creating norms of tax law would find a compromise between the situation of the state and the situation of the taxpayer as well as coherence and completeness of the legal system. Moreover for shaping relation between tax law and civil law, the legislator should take into consideration so that civil law in this respect is not used for tax avoidance[527]. Since the language interpretation of tax law turned out to be insufficient mechanism against tax avoidance there has appeared some proposal to make a general assumption that the effectiveness of civil law actions in the tax law would depend on whether they do not aim at tax avoidance. The language interpretation of tax law in this case would be in fact just a stage of the process of interpretation of tax law. However, the final result of the whole process of the interpretation of tax law should be preceded by the examination whether those results are within the verbal formula of the legal text. The next stage would be teleological interpretation of tax law, namely the specific type of this interpretation called economic way of consideration of tax law also known as economic interpretation of the tax law[528]. What is mote there are two types of teleological interpretation of law – historical and dynamic.

In case of the historical interpretation of law the point of reference is the aim of the legislator at the time of the creation of the act. In terms of dynamic interpretation of tax law to find *reatio*

[524] Verdict of Supreme Administrative Court from 23rd March 1995, SA/Po 3636/93, Monitor Podatkowy 1996, no. 5, pos. 150.
[525] Resolution of Supreme Administrative Court from 24th June 1996, FPK 6/96, ONSA 1996, no. 3, pos. 106, M. Kalinowski, *op. cit.*, p. 178.
[526] K. J. Stanik, K. Winiarski, *op. cit.*, p. 26, P. Karwat, *op. cit.*, p. 42-46.
[527] R. Mastalski, *Prawo podatkowe*, Warszawa 2012, p. 132.
[528] P. Karwat, *op. cit.*, p. 207, R. Mastalski, *op. cit.*, p. 150, B. Brzeziński, *op. cit.*, p. 114-116.

legis of the particular regulation there should be sought the main aim of the act, the meaning of the provisions of the act for the current economic reality as well as there should done the analyze of the act from a point of view of contemporary needs of law[529]. The dynamic interpretation of tax law aimed at finding the will of the contemporary legislator in which an important role have dynamics aspects connected with the development of language as well as social and economic changes. Moreover the economic interpretation of tax law is a type of the teleological interpretation which is based on the assumption that the tax law is associated with the economic phenomena, such as wealth, income, trading, consumption even if particular provisions of tax law do not refer to them directly[530]. Therefore for interpretation of particular provisions of tax law firstly there should be determined particular aim of the taxation. This means that in the process of the interpretation of tax law there should be sought economic occurrence which the legislator wanted to embrace with hypothesis of the tax norm.

Teleological interpretation of tax law is the interpretation from a point of view of economic reality. At the same time there is conducted the distinction between content and form of legal activities. In this respect the essence is the real content of these activities, rather than their external form. As a consequence an economical analysis of the taxation is done as well as sociological analysis taking into account social, political and even ethical content of taxation. In the economic interpretation of tax law it is examined whether the words used by the legislator to create tax state of affairs are the synonyms of terms used in civil law and subsequently there is made the analysis of this expressions from the point of view of the purpose of the tax law. There is also checked if used expressions have any economic meaning different from the typical meaning of these expressions for civil law. Teleological interpretation of tax law has taken over from the theory of law more widely framework of the interpretation of law, "from the meaning of the words of the act to the sense of these words"[531]. This means that in some situations when economic and social relations are changing there is possible the teleological interpretation of tax law which will be in contrast with "the meaning of the words of acts" but still will be in accordance with "the sense of these words". The purpose of the tax law act has to be in accordance with its content. At the teleological interpretation of tax law the economic point of view should be based only on the meaning and the purpose of the tax act, rather than economic meaning resulting from the state economic. This interpretation is supposed to constitute legal rather than

[529] R. Mastalski, *op. cit.*, p. 145, B. Brzeziński, *op. cit.*, p. 117.
[530] H. Litwińczuk, *Obejście prawa podatkowego w świetle doświadczeń międzynarodowych,* „Przegląd podatkowy" 1999, no. 9, p. 4.
[531] R. Mastalski, *op. cit.*, p.150.

economic view at the economy of the taxpayer, so in some cases different from those arising from the principle of rational management of the taxpayer[532]. The basics of economic interpretation of tax law can be found in the German tax law. Tax Ordinance of Reich of 1919 contained in § 4 general instruction of the interpretation of tax law: "at the interpretation of tax acts there should be taken into consideration the purpose of the act, the significance of this act for the economics as well as for the changes in the economics and legal relations "[533]. A lot of contemporary systems of tax law – including the Polish tax system – were influenced by the German science of this law. In some of these systems there was introduced to the tax law acts normative directive of the interpretation of tax law. In other system in turn this influence is connected with postulate of economic interpretation of tax law when there is a suspicion of tax avoidance.

On the other hand in the common law systems there were created numerous case law doctrines which help to reduce the tax avoidance[534]. These doctrines are very often in the science of tax law determined as far-reaching interpretation of tax acts[535]. There should be pointed out that those doctrines are a counterbalance for the continental doctrine of tax avoidance[536]. Even though in the Polish tax law system there are not any case law doctrines there can be easily pointed out that particular verdicts of the administrative courts are becoming a part of interpretation of tax law[537]. Business purpose doctrine[538] allows tax authorities to omit such legal activities which apart from the desire to avoid the tax have no economic purpose. The substance over form doctrine assumes that from the tax point of view the most important is an economic result of legal activities carried

[532] *Ibidem*, p. 151.
[533] P. Karwat, *op. cit.,* p. 207.
[534] M. Kalinowski, *op. cit.,* p. 38-41 i 45.
[535] B. Brzezinski, *Anglosaskie doktryny orzecznicze*, Toruń 1996, p. 23, H. Litwińczuk, *Prawo podatkowe przedsiębiorców,* Warszawa 2000, p. 34.
[536] B. Brzeziński, R. Korgol, *Doktryna substance over form w orzecznictwie podatkowym sądów w Kanadzie* [in:] „Toruński Rocznik Podatkowy" 2011, p. 62, B. Brzeziński, *Unikanie opodatkowania w orzecznictwie anglosaski*m, „Monitor Podatkowy" 1996, no. 7, p. 195, B. Brzeziński, *Anglosaskie doktryny orzecznicze*, Toruń 1996, p. 23, H. Litwińczuk, *op. cit.,* p. 22 i 23-24, M. Kalinowski, *op. cit.,* p. 42-43, L. Kleczkowski, *op. cit.,* p. 5.
[537] In the Polish case law there can be found the idea of substance over form doctrine in verdict of Supreme Administrative Court from 17th July 1998, III SA 683/97, Lex no. 36207. The example of application step transaction doctrine is verdict of Supreme Administrative Court from 9th February 2000, I SA/Gd 2036/97, OSP 2001, no. 10, pos. 153. In case of disregarding of corporate entity doctrine there should be pointed out verdict of Supreme Administrative Court from 23rd February 2000, SA/Wr 2094/99, Lex no. 39803. The influence of sham transaction doctrine on polish case law reflected in verdict of Supreme Administrative Court from 8th December 1999, SA/Sz 85/99, Lex no. 39036, as well as in verdict of Supreme Administrative Court from 17th November 1999, I SA/Gd 969/98, Lex no. 39025.
[538] The name of business purpose doctrine can be explain as an economic purpose. Business purpose doctrine was the basis of other concepts which aimed at specification of business purpose doctrine.

out by the taxpayer, rather than their legal form. Step transaction doctrine[539] is applied when the taxpayer makes several transactions leading to an aim that could be achieved just by one of these transaction. However, the only reason for this several transactions is to reduce the tax burden. Disregarding of corporate entity doctrine[540] allows the tax authorities to assume that on the grounds of tax law the company is not a separate entity in relation to its shareholders. This means that tax authorities may impose a tax on a taxpayer who is a shareholder of the company as if the company does not exist assigning him income achieved by the company. Sham transaction doctrine[541] is applied to the apparent legal transaction as well as to those which form does not correspond to the economic content of the transaction. All presented doctrines even though allow to some extend to reduce the tax avoidance are not without defects. In this regard, there should be pointed out their very general character as well as lack of the precise answer to the question what consequences may cause a legal activity deprived of any economic purpose performed by the taxpayer. Moreover case law doctrines can not be applied in case when the tax avoidance is not connected with the business activity[542].

To sum up it should be pointed out that in the situation of the lack in Polish tax law system tax avoidance clause one of the method against tax avoidance is interpretation of tax law connected with some specific rules. In this respect language interpretation of tax law is not sufficient. However, in this regard very useful method is type of teleological interpretation of tax law known as economic interpretation of law. Polish courts apply methods of interpretation of tax law similar to the economic interpretation of tax law. This method does not have any normative basis but its justification is connected with the main purpose of tax law and its autonomy from other branches of law. However, the economic interpretation of tax law has much less followers than for instance the concept of the autonomy of the tax law[543]. The reason for this is the fact that after the abolition of tax avoidance clause views of the judicature and representatives of doctrine on methods against the tax avoidance have not been already formed. In this respect there is lack of any coherent concept. For this reason in case of economic interpretation of tax law there mustn't be any abuses of the administrative courts or tax authorities. What is more there mustn't be any unlawful abuse of freedom of interpretation of law by the tax authorities[544]. This rule should be especially applied

[539] This name means step or moving transaction. Sometimes step transaction doctrine is treat as a type of substance over form doctrine.
[540] Literally it means omission of legal person.
[541] This name means the feigned legal transaction. This doctrine is generally not used alone, but only together with other doctrines.
[542] B. Brzeziński, *op. cit.*, p. 27.
[543] P. Karwat, *op. cit.*, p. 219.
[544] A, Mariański, *op. cit.*, p. 36.

to the actual state of affairs which always has to be formed with clear and unequivocal expressions. It is unacceptable in case of teleological interpretation of tax law going beyond the elements of the actual state of affairs which can be determined on the basis of the sense of words of the tax act[545]. Moreover the teleological interpretation of tax law can not be applied apart from other types of interpretation of law, especially the language interpretation of tax law. In case of this interpretation of tax law every assessing element which can led to dangerous for taxpayer freedom of interpretation by the tax authorities should be eliminated. The tax authorities using the teleological interpretation of tax law often consider only the fiscal situation of the state and act in accordance with the rule *in dubio pro fisco*[546]. This leads only to the intensification legal and even illegal actions of taxpayers aimed at reduction of the tax burden. The limit of the interpretation of tax law as a method against tax avoidance should be sought in connection of economic interpretation of tax law with the principle of restraint of taxation. What is more there should be maintained the balance between static and dynamic elements of the interpretation of tax law in order to ensure certainty of law and conformity with social and economic development.

[545] R. Mastalski, *op. cit.*, p. 147 i 151.
[546] Latin legal maxim *in dubio pro fisco* can be directly translate as: in case of doubts in favor of the fiscal situation of the state. It involves the interpretation of tax provisions in such way to improve fiscal situation of the state what is usually connected with the infringement of the taxpayers rights and entitlements.