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Legal definitions in tax law serving to limit the area of vagueness (remarks against the background of the anti-avoidance clause)

**Definicje legalne w prawie podatkowym służące
ograniczeniu obszaru nieostrości
(uwagi na tle klauzuli przeciwko unikaniu
opodatkowania)**

Abstract. Searching for normative solutions that at least to a certain extent limit the dynamics of changes in tax law regulations is one of the important tasks of the tax law doctrine. This trend includes the use by the legislator of both the legislative technique ensuring the flexibility of tax law regulations, as well as of legal definitions. However, the application of one of the specific normative solutions may be assessed as a combination of these two means of legislative technique. What is meant are legal definitions that serve to limit the area of vagueness. While these definitions are used by the tax legislator, their normative form and placement in legislation and legal regulations do not lead yield the results that

could be expected given the determinants of their formation. Therefore, the article examines in detail the determinants of establishment of legal definitions aimed at limiting the areas of inaccuracy. At the same time, these determinants are referred to legal definitions aimed at limiting the said areas, which have been used by the legislator in the regulations specifying a legal definition of an artificial action. The structure of the anti-avoidance provisions is based on such definitions. Therefore, the review of these regulations from the point of view of the postulated determinants is important, taking into account not only the specificity of the anti-avoidance clause, but also the taxpayer's situation.

Keywords: legal definition; limitation of the area of inaccuracy; determinants for the development of legal definitions; legal definition of an artificial action.

Streszczenie. Poszukiwanie rozwiązań normatywnych przynajmniej w pewnym stopniu służących ograniczeniu dynamiki zmian przepisów prawa podatkowego jest jednym z istotnych zadań doktryny prawa podatkowego. W ten nurt wpisuje się korzystanie przez ustawodawcę zarówno ze środków techniki prawodawczej zapewniających elastyczność przepisów prawa podatkowego, jak również z definicji legalnych. Przy czym posługiwanie się jednym ze specyficznych rozwiązań normatywnych można ocenić jako powiązanie tych dwóch środków techniki prawodawczej. Chodzi o definicje legalne służące ograniczeniu obszaru nieostrości. Ustawodawca podatkowy posługuje się tymi definicjami, jednakże ich kształt normatywny, a także umiejscowienie w przepisach oraz instytucji prawnej nie prowadzą do takich rezultatów, jakie można byłoby oczekiwać, biorąc pod uwagę determinanty ich tworzenia. Stąd też w artykule poddano szczegółowym badaniom determinanty tworzenia definicji legalnych służących ograniczeniu obszaru nieostrości. Jednocześnie odniesiono je do definicji legalnych służących ograniczeniu nieostrości, które normodawca użył w przepisach określających definicję legalną sztucznego sposobu działania. Konstrukcja przepisów dotyczących klauzuli przeciwko unikaniu opodatkowania oparta jest na tego rodzaju definicjach. Stąd też zbadanie tych unormowań z punktu widzenia postulowanych determinantów jest istotne, biorąc pod uwagę nie tylko specyfikę klauzuli przeciwko unikaniu opodatkowania, ale także sytuację podatnika.

Słowa kluczowe: definicja legalna; ograniczenie obszaru nieostrości; determinanty tworzenia definicji legalnych; definicja legalna sztucznego sposobu działania.

1. General remarks

When considering tax law regulations that are faced with, or are a kind of reaction to, the dynamic development of the social and economic reality, one should continue to seek normative solutions, which will at least to some extent have the effect of limiting the scale of changes introduced to this law. The practice of the tax legislator has accustomed the addressees of legal norms to constant changes in this law. There is no doubt that these modifications are necessary as a consequence of the dynamic development of the social and economic reality. Therefore, the change of this law itself is not a problem, but its scale is of key importance. It seems that the tax legislator does not always perceive and take into account the context of tax law changes as a kind of reaction to the dynamics of social and economic transformation. It may sometimes appear that the legislators tries to protect themselves against the possible tax consequences of economic trade by preparing and implementing normative solutions which not only are not an appropriate response to these changes, but at the same time in a way are ahead of the regulations concerning economic trade. Such situations cannot be assessed positively owing not only to the context of changes in the tax law itself, but also to the systemic context of changes in the law in general.

At the same time, such legal and tax regulations have a negative impact on the assessment of the relationship between the delay in tax law solutions and the regulation of those areas of law that concern economic trading.

The presented general remarks concerning one of the significant problems related to the changes in tax law constitute the starting point for the key considerations in this study. The aim is to introduce normative solutions that will ensure proper relations between changes in tax law and changes in the branches of law regulating economic trading.

The first level of deliberations concerns legislative technique measures ensuring the flexibility of tax law provisions, i.e. in particular

through vague terms and general clauses¹. Unquestionably, they are a relatively easy solution when it comes to covering a wide range of regulations – in the case of vague terms, and even going beyond the system of law in force – when it comes to general clauses. Analyses of their application both at the stage of creating tax law² and its application appear in the doctrine of tax law³.

Another normative solution, which at least at first glance is easier owing to the requirement for an administrative and legal method of regulation, is legal definitions (which pertain to the second level of considerations). The importance of this measure of legislative technique for tax law is indisputable, as is confirmed not only by the practice of developing these definitions, but above all by the administrative and legal method of regulation and the specificity of this public law. These definitions ensure the fulfilment of the requirement of the administrative and legal method of regulation and at the same time serve the proper description of the behaviours of entities shaping legal relations in the area of this law. Legal definitions constitute a direct implementation of the principle of certainty in tax law. It can be assumed, in somewhat simplified terms, that they ensure the implementation of this principle. Therefore, they should guarantee the accurate description of the behaviour of particular entities and prepare these entities for changes in the legal situation. The analysis of definitions contained in particular normative acts of general and detailed tax law should be one of the important issues for both the doctrine and the tax practice. Only by way of an example can we point out the problems that arise in tax practice from the incorrect location of these definitions both

¹ In accordance with Section 155 of the Ordinance of the Prime Minister of 20 June 2002 on “Principles of legislative technique” (consolidated text: Dz.U. [Polish Journal of Laws] of 2016, poz. [item] 283).

² P. Borszowski, *Określenia nieostre i klauzule generalne w prawie podatkowym*, Warszawa 2017.

³ A. Choduń, A. Gomułowicz, A. Skoczylas, *Klauzule generalne i zwroty niedookreślone w prawie podatkowym i administracyjnym. Wybrane zagadnienia teoretyczne i orzecznicze*, Warszawa 2013; M. Münnich, *Nieostre zwroty ocenne w polskim prawie podatkowym*, Lublin 2017.

within a given legal regulation and in the area of a given legal regulation⁴. This is particularly important in view of the linguistic interpretation of the terms used in a particular definition. Moreover, mistakes made by the legislator at the stage of formulating this definition, for example by selecting the wrong scope to be defined or by choosing the wrong measures of legislative technique, not only have negative consequences for the area of regulation where the definition has been introduced, but may also, in tax practice, cause difficulties in its application. It is unwelcome practice for tax law enforcement bodies to act in such a way that, on the basis of an existing legal definition, a new scope is created and, as a result, a new legal definition is formed. Therefore, research on the shape of legal definitions in the tax law and formulation of certain guidelines concerning their creation should become one of the important tasks of the tax law doctrine, but also of the tax practice.

The two levels of research on legislative technology measures can be brought together in one common framework, the aim of which will be, at least in a certain sense, to limit the scale of changes in tax law and ensure an appropriate balance between economic trade and tax law. What is meant are legal definitions which are introduced into the tax law as a limitation of the area of vagueness. By definition, they fulfil two functions, i.e. the first, to ensure a proper relationship between economic trading and the tax law, which is implemented through the defined area of inaccuracy, and secondly, to specify this area and thus to fulfil the requirement of the administrative and legal regulation method.

The functioning of this type of legislative technique measures can be more and more often observed in tax law regulations, as exemplified by the solutions concerning the anti-avoidance clause implemented in the Polish tax law system. One may even risk a statement that these normative solutions are characteristic of the regulation of the anti-avoidance clause.

⁴ One example was the regulation in force until the end of 2015, indicating technical considerations in Article 1a(1)(3) of the Act of 12 January 1991 on local taxes and charges (currently – consolidated text: Dz.U. of 2018, poz. 1445). This solution hindered the application of the legal definition of land, buildings, and structures related to business activity.

Taking into account the already mentioned, and *de facto* only outlined problems concerning legal definitions in the tax law regulations, one should consider the determinants of their implementation in the tax law regulations. A separate issue requiring analysis is the assessment of those regulations concerning legal definitions which are currently formulated in the provisions of the “Principles of Legislative Technique” Regulation. The aim is to initiate a debate on the creation of a separate catalogue of grounds for formulating these definitions in the tax law owing to its specific nature.

The aim of this paper is to identify the determinants behind the formulation of legal definitions in the tax law, which constitute a limitation of the area of inaccuracy and, at the same time, an attempt to refer them to those definitions introduced in the anti-avoidance clause provisions. The hypothesis concerns the statement that the tax legislator does not make full use of these determinants, which may be a consequence of the lack of in-depth research in this area.

2. The determinants for the development of a legal definition in tax law serving to limit the area of vagueness

Considering the determinants of creating legal definitions aimed at limiting the area of vagueness should be one of the important tasks of the tax legislator who intends to make use of this legislative technique measure. It is important to bear in mind the two-level effect of the introduction of these definitions, i.e. firstly, owing to the strengthening of the implementation of this objective, for which the legislator used the vague definition, and secondly, owing to the objective of the introduction of the legal definition itself. Therefore, when formulating these determinants, both levels should be taken into account, not only determining the legislative correctness in this respect, but also serving to ensure the proper shape of this definition and its functioning in tax practice. It is possible to note the problems that arise when, despite the introduction of a legal definition to

a given provision, the entities applying tax law in practice redefine a given term.⁵ It cannot be concluded that the use of determinants in creating legal definitions will always eliminate an occurrence of such a situation in tax practice that the tax authority or administrative court will apply the statutory expression in such a way that it will in fact redefine this term. This is a much broader problem concerning, on the one hand, the relationship between the established and the applied law, and, on the other hand, the consequences of the dynamically developing social and economic reality, the effects of which should be viewed in specific tax law regulations and their application in practice.

The consideration of the determinants for the creation of legal definitions to limit the vague areas cannot be limited to the phase of formulation of these definitions alone. This phase, undoubtedly crucial for the process of formulation, should, however, be preceded by an examination of the legitimacy of taking the decision to define as such. The need to take into account the stage preceding the formulation of the definition is a consequence of an area of vagueness, the occurrence of which results in considering the introduction of this measure of legislative technique. In other words, these determinants should be considered both at the stage preceding the formulation of the definitions as well as at the stage of formulation of these definitions.

The determinants of creating legal definitions at the stage prior to their formulation are a consequence of the existence of a vague area resulting from a certain vague term. Therefore, the first determinant in this case will be the existence of a vague area. It should be emphasized that the fulfilment of this determinant signifies at the same time not only a transition to the stage of formulating the definition, but also a decision as to the defining of the term itself. This is, to put it simply, the first determinant, the absence of which makes it impossible to consider the very decision to introduce this definition. It is worth noting that it is irrelevant whether the vague area will be a consequence of the inclusion of a vague

⁵ As an example, we may mention the judgment of the Voivodeship Administrative Court in Bydgoszcz of 19 September 2017, I Sa/Bd 734/17, Central Database of Decisions of Administrative Courts (CBOSA).

term in a given regulation or in a group of related regulations, or whether it will result from the context of a tax-law provision. While in this case it does not matter, it seems that it should be important to consider further at the stage of formulation of definitions. The determinant of placement of a legal definition should therefore be considered as part of its formulation process.

At the stage prior to the formulation of a legal definition, one more determinant should be pointed out. It concerns the limitation of the first degree vague area. It was purposefully specified that it is a matter of considering it as a first degree, as its full application should be assessed at the stage of formulation of the definition. As a result, this determinant boils down to an assessment of the vague area from the point of view of normative consequences in general without reference to the level of a regulation, group of regulations, or the level of a tax-law regulation. It is not only a matter of a high degree of vagueness, but also of a recognisable requirement to limit it. In other words, there is no doubt as to whether the requirement to reduce vagueness has been met. In fact, in a situation where doubts arise as to whether this requirement has been satisfied, there are no grounds for moving to the second stage, i.e. the formulation of legal definitions. Therefore, the determinant of the limitation of the first degree vague area is reduced to the necessity of establishing a high-level vague area and a notable requirement of its limitation.

Fulfilling these two determinants is therefore a prerequisite for making a decision on the formulation of a legal definition in tax law.

Moving on to the stage of formulating a legal definition aimed at limiting the area of inaccuracy, it should be stressed first of all that the consideration of these two stages does not have to be linked to the existence of a certain explicit temporal relationship. There is no doubt that the first stage, and thus the relevant determinants, are examined first; nonetheless the subsequent stage, which includes the relevant determinants, can be examined immediately following this first stage.

In the first place, the determinant of the limitation of the second degree vague area should be indicated. This means reference of a high degree of vagueness to a regulation, or a group of regulations, as well as to

a tax-law regulation, depending on where the considered area is found. Therefore, if a vague term causing such a degree of inaccuracy is included only in a given regulation, then an assessment concerns the requirement to limit the area of inaccuracy exclusively for this regulation. A legal definition should therefore be formulated in relation to this regulation. It is no coincidence that the expression 'in relation to this regulation' is used. It will not always be possible to place a legal definition within the framework of a given regulation. It can also occur within the framework of general provisions, where, for example, a catalogue of such definitions has been included. A separate issue in this case is the decision to include such a definition in the existing catalogue. A good solution would be to place it in the initial part, given that the definition performs in fact two functions. However, owing to the regulation covered by this definition and the importance of this regulation for the entire tax-law regulation, the legislator's decision may be different.

If such a vague term is included in a group of interrelated regulations, this requirement should apply to that group. In other words, the established high degree of inaccuracy for this group should be limited by a legal definition. Also in this case, the location of the legal definition should be taken into consideration. The tax legislator may choose between various variants regarding the location in a specific regulation from a given group and the choice of formulations from the existing glossary of legal definitions. On the other hand, in the case of its placement in a group, a separate issue will be the choice of the regulation, where this definition should be formulated. It seems that priority should be given to determining which of the regulations where the vague term has been introduced generates the highest degree of inaccuracy, and thus there emerges a requirement to reduce inaccuracy in relation to it in the first instance. In the absence of such a determination, the legislator should relativize the consequences of including a legal definition in a given regulation in relation to the purpose of the regulations contained in this group.

If it is assumed that a high degree of inaccuracy should be considered for the tax-law regulation as a whole, the formulation of a legal definition should meet the requirement of reducing the ambiguity for the entire regu-

lation concerned. In this case, the legislator *de facto* has a choice between the entire set of rules of a given tax law regulation when it comes to the placement of a legal definition. At the same time, the legislator should strive to achieve the objective of the given regulation. In other words, the location of a given legal definition, and thus the reduction of the degree of inaccuracy, should be directly conducive to the achievement of the regulation's objective. If a catalogue of legal definitions has been introduced, the legislator may also place the definition in such a catalogue.

The second determinant of creating legal definitions at the stage of their formulation concerns the way they are expressed. It can therefore be assumed that this concerns a determinant of how a legal definition is expressed. It manifests itself in two forms, i.e. first of all by the avoidance or rare use of vague terms for such legal definitions. Secondly, in the case of exceptional use of such terms, it is necessary to respect consistency as regards the scope covered by the vague terms.

The determinant of avoidance or exceptional use of vague terms results from the very essence of these legal definitions. Since the aim is to limit the area of vagueness, it is first of all necessary to avoid the use of such legislative technique measures as would make this impossible. However, this is a starting point, which, as legislative practice shows⁶, is difficult to achieve. Nevertheless, it should constitute a starting point for the tax legislator not to overuse such solutions, when the legal definition aimed at limiting the area of inaccuracy is formulated using traditionally vague terms. When considering the application of this determinant in exceptional cases, it should be pointed out that the starting point for this should be the solutions proposed in the Regulation on the "Principles of Legislative Technique" when introducing measures to ensure the flexibility of the text of the normative act. The criterion of the necessity of flexibility should be narrowed down to indicate the need to ensure it. The limitation of this criterion is first of all a consequence of its reference to tax law, i.e. public law with the administrative and legal method of regulation,

⁶ In particular as regards the solutions adopted for the regulation of the anti-avoidance clause, which will be examined in the final part of this article.

and secondly of the use of these legislative techniques in legal definitions. Therefore, the use of vague terms when formulating legal definitions should be dictated by the need to ensure the flexibility of tax law provisions. At the same time, two levels of assessment of such a necessity should be noted: the first – initial, with regard to ensuring flexibility, the consequence of which is the said inaccuracy, and the second, where the aim is to simultaneously mitigate such inaccuracy. The use of vague terms in the formulation of legal definitions must be de facto consistent with two criteria, i.e. ensuring flexibility and at the same time limiting the area of vagueness. This is a task to be performed by the tax legislator.

The second conventionally named form of the determinant for expressing a legal definition relates to area conformity. Therefore, we can use the term area conformity determinants. It follows from the essence of formulating this type of definition, which is to limit the area of inaccuracy. The application of this determinant requires, first of all, the determination of the area of vagueness, which is subject to assessment from the point of view of its limitation. This area is a consequence of the existence of a vague term. We may thus use the expression – ‘initial area of inaccuracy’. Next, an assessment should be made of the area of inaccuracy resulting from the use of a blurred term within the legal definition. This area is crucial from the point of view of the criterion to be indicated. Not only can it not be any broader than the baseline area, but it should also be included in it and at the same time constitute a constraint on it to the extent that the need for definition arises. This has a direct impact on the use of a vague term within a legal definition. It is thus a question of using such a vague term which would have the effect of limiting the initial area of vagueness. The degree of limitation of the said area and its direction will be a consequence of the location of a given definition within the framework of tax law regulations or a tax law regulation. Therefore, it may involve a limitation with regard to an entity or an object.

3. The determinants of the formulation of a legal definition of an action considered artificial under the anti-avoidance clause

Examples of the application of the discussed definition can undoubtedly be identified in the regulation of the anti-avoidance clause in the provisions of the Tax Ordinance Act of 29 August 1997⁷. As noted, this solution is becoming characteristic of this clause and it seems that it would be difficult to construct this regulation without such kind of legal definitions. One of the key solutions within the clause, where the scope of use of these definitions is significant, is the regulation under which an action can be regarded as artificial. Therefore, given the importance of this provision for the entire anti-avoidance clause, as well as the scope of application of these definitions, the normative solution for declaring the mode of action artificial will be analysed. At the same time, its location in the structure of the clause, i.e. in the final fragment of Art. 119a sec. 1 of the Tax Ordinance, may be taken as an argument for accepting this solution in the analysis. The assumption of the need to assess the area of inaccuracy therefore becomes relevant in view of the requirement to close the scope of the meaning of the anti-avoidance clause. When creating a legal definition using vague terms, the legislator should avoid such solutions that would make it impossible to close the scope of the meaning.

Moreover, the changes that came into force on 1 January 2019 may serve as an additional justification for the study of this area of regulation, which will also allow for their assessment from the point of view of the examined determinants for the formulation of legal definitions.

The regulation under consideration, which allows the considering of an action as artificial is important as it conditions the application of the definition of tax evasion. Therefore, the assessment of the determinants of its formulation should have value not only for this particular definition, but also for the whole provision of the anti-avoidance clause. Owing to the fact that the regulation containing provisions defining an action which

⁷ Dz.U. of 2018, poz. 800 with subsequent amendments, hereinafter: "o.p."

may be considered artificial was included in the provision of Article 119c of the o.p., only the determinants of its formulation will be analysed. Owing to the introduction of changes as of 1 January 2019, the consideration of determinants will first of all concern the legal status until the end of 2018, which will be followed by an assessment of these determinants in a new normative shape.

In examining these determinants, it is important to emphasise first of all, as already pointed out, that the wording indicating an artificial action has been included in the final part of the definition of tax evasion. This is therefore important from the point of view of assessing the determinant of reducing the scope of vagueness at the level of the anti-avoidance clause as a whole. In other words, the legal definition of an artificial action is intended both to limit the area of inaccuracy resulting from the legal definition of tax avoidance and the expression itself indicating an artificial action. It should be assumed that this determinant was fulfilled by including this definition in the provision of Article 119c of o.p., i.e. immediately after indicating the definition of tax evasion and describing cases in which the provision of Article 119a of o.p. does not apply. Therefore, despite the fact that in the structure of Article 119a § 1 of o.p. this expression was located at its end, the legislator legitimately places the definition of an artificial action first, immediately after the catalogue of exclusions, which in practice should signify the necessity of considering such action as the first element immediately after establishing whether in a given case it was possible to determine whether the exclusions apply to a particular case. Thus, the legislator ensures that the determinant of limiting the scope of inaccuracy in relation to the anti-avoidance clause is met taking into account the level of the entire regulation.

On the other hand, when examining the determinant of limiting the area of vagueness and taking into account the regulation of Article 119 c of o.p., it should be stressed that it is required to assess it from the point of view of the group of regulations. For this reason, the application of this determinant should in principle⁸ be assessed positively, as is confirmed by

⁸ Meaning the shape of the regulation.

the method of regulation where Article 119c of o.p., in which the initial area of inaccuracy was determined, plays an important role. On the other hand, Article 119c Sec. 2 of o.p., indicates the directional criteria for the assessment of an artificial action. At the same time, these directional criteria are also exemplary. Therefore, there is still an area of vagueness between these exemplary criteria and the initial area of inaccuracy. From the point of view of the analysed determinant, and most importantly the application of these regulations, it becomes necessary to determine such criteria for the assessment of an artificial action, so that they do not go beyond the area of inaccuracy considered as initial, i.e. resulting from Article 119c of o.p. In the normative form of Article 119c Sec. 1 of o.p., in the legal status until the end of 2018, the assessment of the fulfilment of the analysed determinant at the regulatory level allowing the considering of an action as artificial did not present itself as unequivocally positive as it can be seen with respect to the entire regulation of the tax evasion clause. Despite the formulation of this provision indicating an artificial activity, the area of vagueness was too broad to make it possible in practice to unambiguously determine which mode of action was artificial. The scale of the situation, i.e. the methods of action corresponding to this formulation, whereby the legislator referred to its non-application, was too broad, taking into account the criterion of reasonable action and the criterion of being guided by lawful objectives other than obtaining a tax advantage contrary to the subject and purpose of the provision of the tax act. Thus, the legal definition did not fulfil its role in the previous legal situation.

The amendment introduced on 1 January 2019 seems to have limited the initial area of inaccuracy to a certain extent and therefore, in principle the legislator actualizes the aforementioned determinant of the limitation of the secondary area of inaccuracy. A good solution in this respect is to point to a method of action which is not considered artificial. This leads to the limitation of the scope of situations that create an area of vagueness, with a simultaneous indication of what kind of action should undoubtedly not be treated as artificial. The formulation adopted also deserves a positive assessment in the sense of fulfilment of the analysed determinant, as it points to an action predominantly due to justified economic reasons as

a basis for assuming that in a given situation an artificial action does not occur. The main aim is to identify a single category of causes, i.e. economic causes, without simultaneously adding economic causes. In practice, doubts will arise from the assessment of the so-called dominant measure, however, the clarification of this formulation should be provided in the jurisprudence of administrative courts. As the law currently stands, the provision of Article 119c Sec. 1 of o.p. fulfils the role that should be assigned to a legal definition aimed at limiting the area of vagueness.

Therefore, while the fulfilment of the determinant of the limitation of the second degree vagueness area can be positively assessed, the actualization of the determinant regarding the method of expression of a legal definition may evoke doubts. Therefore, it concerns the determinant of exceptional use of vague terms and area compliance. The assessment of their cumulative fulfilment leads to doubts as to the terms relating to justification (unjustified division), economic and business substantiation, as well as economic and business risk. The legislator has currently abandoned only the distinction between economic and business risk, which should be assessed positively from the point of view of the determinant under examination.

Given the area of vagueness resulting from the use of these terms, such as “situations” at the interface between those that are classified as economic or commercial, or those that are classified as unjustifiable in relation to economic or commercial grounds, further clarifying measures should be adopted. There is nothing to prevent the introduction of definitions of economic or commercial justification. Such a solution would lead to the cumulative fulfilment of the two determinants identified.

The inclusion of further provisions⁹ clarifying the situations indicating an artificial action, i.e. the so-called directional criteria for the assessment of an artificial action, should be regarded as positive. In addition, a positive assessment should be made of the fact that in Art. 119 Sec. 2 point 6 of o.p. the expression used refers exclusively to the economic risk without taking into account the commercial risk. However, when creating

⁹ A reference to Article 119 c Sec. 2 pt 6–8 of o.p.

these new regulations, the legislator should pay attention to the use of further vague terms, which increase the area of inaccuracy. This involves using the expression referring to an actual economic activity or the actual economic loss incurred. The introduction of further vague terms would at the same time require these terms to be accompanied by new legal definitions.

4. Conclusions

Legal definitions aimed at limiting the area of inaccuracy indicated in the study may become one of the important legislative tools in tax law. This, however, requires in the first place an analysis of the previously introduced legal definitions from the point of view of determinants discernible both before their introduction, as well as at the stage of their formulation. In such cases, when the determinants visible at the stage prior to their formulation are not met, it would be advisable to eliminate such definitions from legal transactions and replace them with new definitions based on the indicated determinants. On the other hand, if appropriate determinants are identified at this preliminary stage, it becomes necessary to assess the fulfilment of determinants at the stage of the formulation of the definition. The absence of these determinants should trigger the necessity to verify the introduced legal definitions.

The adopted general considerations have provided an opportunity to examine the application of these determinants in the regulation of the anti-avoidance clause and, more specifically, in the construction of a legal definition allowing for the assessment of behaviour as an artificial action. The changes made in the regulation of Art. 119 c of o.p. as of 1 January 2019 confirm that the tax legislator is beginning to recognize these determinants and is shaping the regulations in such a way as to limit the area of vagueness. It would, however, be worth considering adding further legal definitions owing to the use of other vague terms within the content of Article 119 § 2 of o.p.

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