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### **Abstract of a Ph.D. thesis**

#### ***“Taxation of derivatives”***

The Ph.D. thesis aims at researching the issue of taxation of derivatives. Tax rules were analyzed in terms of the personal income tax, the corporate income tax, the goods and services tax, the tax on act in civil law, and the inheritance and donation tax.

In the author's opinion, this doctoral dissertation is relevant for developing the science of tax law or its practical applications. In Poland, the number of transactions that subject are derivatives is significant. According to the most recent research conducted by the National Bank of Poland, in April 2019, the average daily net turnover in the domestic foreign exchange market (options, forwards, and swaps) amounted to USD 6308 million. Their crucial impact on the economy was particularly visible in the United States and Western European countries during the financial crisis of 2007-2009.

The trading practice of derivatives is often ahead of applicable legal regulations in this area. In addition, equally often the civil law and the financial market law regulations, that directly concern financial instruments, especially derivative financial instruments, are ahead of tax regulations in this field. It is impossible to resist the impression that the Polish and European Union legislator focuses mainly on securities and not the derivatives themselves while developing tax regulations.

As a result, the aforementioned regulations cause far-reaching divergences in their interpretation. On the basis of income taxes, they concern in particular the issues of the date of arising revenues, impact of an instrument performance by delivery or a financial settlement on taxation of income, determining the amount of revenue earning costs, taxation of incentive programmes, application of provisions on taxation of derivatives in a situation where selling and exercising underlying rights of derivative financial instruments takes place in the performance of commercial activities. Equally problematic seems to be issues related to tax base determinations and tax exemptions in the goods and services tax, the tax on act in civil law, and the inheritance and donation tax.

These problems are often related to the lack of regulations that would sufficiently define the taxation model of derivatives. The situation caused by the flexibility of tax authorities or even taxpayers themselves in interpreting the regulations can lead to abuse of the law and contribute to a lack of legal certainty.

The research's primary aim was to comprehensively analyze legal and tax effects of the conclusion of derivative contracts. In this manner, the dissertation is an attempt to describe the rules of taxation of derivatives consistently. The author takes into account the entire tax law system binding in Poland. Furthermore, the author is paying attention to the views represented in literature and the case law in this regard. Reaching the aims of this doctoral dissertation would be impossible without terminological ordering in the aspect of understanding derivative financial instruments and their different types.

The structure of the dissertation is based on two parts. The first part concerns the general presentation of the concept of a derivative financial instrument. The second part relates only to the issue of tax law. The dissertation is divided into four chapters, preceded by an introduction. Each chapter corresponds to the established objective.

The first chapter is a starting point for later analysis. It aims to organize derivatives' terminology and their different types of contracts, such as forwards, futures, options, and swaps.

Findings presented in the second chapter of the dissertation concern issues related to the taxation of incomes received by a taxpayer from derivative financial instruments under the personal income tax act. Deliberations in this chapter concentrate on an attempt to present a description of models of taxation dedicated mainly to incomes derived as a result of selling these financial instruments and as a result of the exercise of their underlying rights.

The third chapter presents rules of taxation of derivative financial instruments on the basis of the corporate income tax. Deliberations were extended to include an analysis of regulations concerning corporate income tax only, including possibilities to qualify revenues from derivatives for revenues from capital gains and somewhat differently formulated criteria for determining the date of arising revenues. This chapter also contains an analysis of rules in the context of counteracting tax avoidance with debt financing costs and cross-border hybrid instruments.

The last fourth chapter focuses on the taxation of derivatives in the area other than income taxes. In particular parts of the chapter, the author analyzes regulations contained in the goods and services tax act, the tax on act in civil law act, and the inheritance and donation tax act. In the field of the goods and services tax describes the problem with

taxation of activities related to derivative financial instruments, which can not be regarded as a supply of goods and perhaps even a supply of services. Particular attention was paid not only to Polish and EU legislation but also, and above all, case-law of the Court of Justice of the European Union. Research on the tax on act in civil law act and the inheritance and donation tax act focuses on the determination of the tax base, scope of taxation of derivatives, and place of performance of the contract.

The subject of the research is not only law regulations but also court judgments, decisions of tax authorities, and tax law literature. Particular emphasis was placed not so much on the formulation of *de lege ferenda* postulates but rather on the formulation most accurate directions of interpretation of described regulations while attempting at the same time to systematize scientific and judicial opinions. The conducted research allowed to determine the consequences of concluding contracts for derivative financial instruments.

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