

## **SUMMARY OF THE DOCTOR'S THESIS**

**of**

**Maja Czarzasty-Zybert, Master of Law**

under the title "The concept of legal and tax qualification of greenhouse gas emission allowances on the example of regulations in French and Polish law"

The main purpose of the thesis is to analyze the legal model of greenhouse gas emission allowances, legal and tax qualifications of the concept of emission allowance, including an attempt to define it necessary for legal transactions in the field of financial law. The translation of the original English version of Directive 2003/87/EC into Polish allows the term "greenhouse gas emissions allowances" to be used interchangeably with "greenhouse gas emissions permits".

Basic acts regarding climate change - The Kyoto Protocol and Directive 2003/87/EC did not specify the legal nature of greenhouse gas emission allowances. This omission seems to be expedient so that Member States can regulate this issue themselves.

Directive 2014/65/EU on markets of financial instruments ("MiFID II Directive") provides that emission allowances should be considered financial instruments. This change was introduced only by extending Annex I, Section C of the current MiFID Directive by a new point 11, in which another category of financial instruments including emission allowances was added.

An analysis of the legal nature of emission allowances from a historical perspective provided by chapter I of this paper. This chapter indicates how the increase in emissions of pollutants into the atmosphere had led to irreversible climate change on a global scale, which took the governments to undertake joint effort on the international scene to reduce greenhouse gas emissions to the atmosphere, by means of legal and financial mechanisms.

The chapter II of the paper draws attention to the important role of the European Union in international negotiations leading to the creation of the Kyoto Protocol in 1997 and Directive 2003/87/EC. Directive 2003/87/EC established a scheme for greenhouse gas emission allowances trading within the Community. Its purpose is to promote the reduction of greenhouse gas emissions in a cost-effective and economically efficient manner. The European legislator has not undertaken a detailed indication of the legal nature of emission allowances.

Due to the lack of legal qualification of emission allowances and their tax regulations, emission allowances themselves have become the subject of tax fraud the so-called carousel fraud in EU countries. The phenomenon of carousel fraud in the field of VAT became common

case after the lifting of customs barriers between individual Member States, i.e. from 1 January 1993. The remedy for carousel fraud was to be the introduction of the optional and temporary application of the reverse charge mechanism contained in Directive 2010/88/EU.

Due to the fact that the legal classification of allowances had been omitted in international documents until the MiFID II Directive was introduced, the French legislator considered it necessary to develop a legal definition of emission permits. I analyze it in chapter IV and V of the thesis.

In most Member States covered by the emissions trading scheme, including Poland, there is no legal definition of emission allowances. Therefore, chapter VI was dedicated to Polish legislation in the field of the emissions trading system. The negative Polish specificity is the issue of using emission allowances instrument as defraudation for VAT refunds, as described in detail in chapter VII of the thesis.

The chapter VIII of the thesis attempts to determine to which category of law, emission allowances should be classified or at least the characteristics of what category/categories of law, emission rights are closest to. This new type of right has the following features:

- is good;
- is convertible;
- is consumable;
- is a registered right as an object registered on the account opened on behalf of every person with emission allowances.

The last three subchapters have been dedicated to the qualification of emission allowances as quasi-intangible, movable property and the legal consequences resulting from.

The doctor's thesis was prepared taking into account the legal status as of January 1, 2019.

*Keywords:* movable goods, carbon dioxide, MiFID Directive, carbon dioxide emissions, greenhouse gases, global warming, financial instrument, reverse charge mechanism, accounting methods, tax abuse, taxation, air, energy law, financial law, property law, Protocol of Kyoto, misappropriation, accounting, emissions trading system, value added tax, legal system, greenhouse gas emission allowances