

§ 5¹ “Transaction for purpose of obtaining tax advantage” of the Income Tax Act

According to the general anti-abuse provision (**§ 5¹ of the Income Tax Act**), in the case of income tax, no account shall be taken of a transaction or chain of transactions

- ✓ the principal purpose of which or one of the principal purposes is to **obtain a tax advantage** which is contrary to the content or purpose of the applicable tax law or international agreement
- ✓ which **is not actual** having regard to all the relevant circumstances.

Both conditions must be met for the provision to apply.

A chain of transactions may consist of more than one intermediate stage or part (subsection 1 of § 5¹ of the Income Tax Act).

A transaction or chain of transactions is not considered actual **unless it is made for real vital or commercial reasons**, which reflect the actual economic substance of the transaction (subsection 2 of § 5¹ of the Income Tax Act).

Vital and commercial reasons are all circumstances other than those related to taxation.

A tax advantage is permissible if, considering all life and commercial circumstances, the transaction or chain of transactions would have been organised without the tax advantage.

A tax advantage is not permissible if, considering all the circumstances, the transaction or chain of transactions would not have been organised without receiving the tax advantage.

Last updated on 08.01.2025