

5th Chamber, judgment [sentenza] of 2 Apr. 2021 No 9135, legally summarised as follows: «*On the abuse of rights. Under EU law and the case-law of the Court of Justice a circumvention practice requires, in addition to the objective element of failing to achieve the objective pursued by EU law (albeit in formal compliance with the conditions laid down by it), that there be also a subjective element: indeed, it must be apparent - from a set of circumstances - that the main purpose of the operations at issue is that of achieving a tax saving. Such a saving is always unlawful where it constitutes the predominant part, or in any event the prevailing part, of the subject-matter of the contract or of the agreements taken as a whole. That is because the economic motives of the transaction, when taken as a whole, appear to be merely marginal or theoretical and therefore are to be regarded as manifestly unreliable or in any case irrelevant with respect to the aim of achieving an (undue) tax saving*» (Rv. 661166-01);