Doctoral dissertation entitled "Inference *per analogiam* in tax law"

Summary

Reasoning per analogiam has accompanied man for a very long time and has penetrated many areas of life. An interesting field for the study of analogy is also noticeable on the grounds of tax law, the specificity of which makes this issue unique and worth attention.

The main research problem of this dissertation is to determine the admissibility and scope of application of reasoning per analogiam in tax law, to indicate its limits and to dispel the stereotype of inadmissibility of using analogy in tax law.

This dissertation consists of nine chapters. The first one presents the initial theses and describes the methodology used in the work, the state of research so far and the results of preliminary research.

In the next chapter attention is paid to a detailed description of the concept inherent in analogy, i.e. a loophole in the law. In addition to the presentation of the distinctions made in the doctrine of loopholes, the causes of their formation and the issue of admissibility of their removal by courts and tax authorities are considered. Consecutively, a theoretical and legal analysis of the concept of reasoning *per analogiam* is presented, starting with a linguistic analysis and its meaning, general assumptions and divisions noticeable in the doctrine. Further, a number of detailed issues are considered, such as, inter alia, the purposes and functions of analogy in law. Chapter IV focuses on the body of rulings and doctrine in civil, criminal and administrative law due to the fact that tax law does not operate in a systemic vacuum and other branches of law co-shape the perception of analogy in the Polish tax law system to a certain extent.

The fifth chapter consists of considerations on analogy in the context of EU and international law, as well as in this chapter reference is made to foreign jurisdictions. Subsequently, the specific conditions of tax law for the application of reasoning *per analogiam* are presented. In particular, such issues as the interfering nature of the norms of tax law, the important systemic principle of statutory taxation, as well as the juxtaposition of analogy with the basic general principles of tax law are considered. The considerations end with an attempt to create a model of the application of analogy against the background of the specific conditions of tax law.

Chapter VII was devoted to the scope of application of reasoning per analogiam in tax law. The above subject matter obliges to address such issues as the evolution of views on the permissibility of applying reasoning per analogiam in tax law, the analysis of the law-making

character of reasoning by analogy, the arguments for and against the use of analogy, and a number of specific issues.

In Chapters VIII and IX attention is paid to practical issues, in particular to the identification of areas of application of analogy in Polish tax law on the basis of the analysis of the jurisprudence of administrative courts, the Constitutional Tribunal and the practice of administrative authorities. The final stage of the work presents statistical issues concerning the use of the concept of analogy by administrative courts. The whole work is concluded with a synthetic summary.

In the light of the research it was possible to establish that there is a growing interest in the concept of analogy in tax law, which is a consequence of the evolution of the jurisprudence and doctrine. In the course of the study it was also demonstrated that currently there is no general prohibition of using analogy in tax law, expressed directly in the provisions of the law in force.

All these considerations lead to the conclusion that *per analogiam* reasoning exists in tax law and that an attempt to impose general prohibitions on its application would not be an appropriate solution. The problem of gaps in the law will not disappear due to the dynamics of social relations. Furthermore, if a general ban on the use of analogy were to be imposed, the jurisprudence and tax authorities would continue to use this method under the cloak of other terms, making it more difficult to qualify the concept of the instrument used as an analogy, instead of using the developed canons and principles of analogy application. The loopholes in the law will always exist and analogy will always be needed as a method of closing them. A better solution is to accept the existence of this phenomenon and try to guard its limits than to deny the possibility of using it in practice.

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