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(compiled by: *mgr Marta Jaszczuk*)

Summary

of the article: **Theoretical and legal assumptions of the role of legal principles in the process of applying law**

This article is dedicated to the concept of legal principles interpreted as a supplementation to the traditionally understood positive law consisting only of legal rules. The role of legal principles indicates the indispensable relationship between law and morality, which is manifested by referring through them to the values underlying a given society. The debated concept of principles is replenished with the requirement of balancing them in the adjudication process, resulting from their relative importance in resolving the disputed case.

Keywords: legal principles, legal discourse, moral discourse, legal rulet, weighing of principles, application of law

Summary

of the article: **Administrative court judge vs principle of tax justice**

The application of law in accordance with the principles of *aequitas*, *veritas* and *iustitia* is the canon of the legal culture of judges. This holds true since the administration of justice depends not only on the content of the law, but above all on the judge's attitude, and the judge's attitude in the process of interpreting and applying the law is affected by a specific legal culture, as well as the ways of attributing valuing that are accepted and approved in the judicial community. It therefore happens that justice *in concreto* in the judicial application of law is an objection to that law which, as the legislator intends, has the element of *iniuria*. Thus, in the process of applying the law, equity is inherently related to the requirement to issue an appropriate (fair) individual decision. It is always a question of the appropriateness of a particular decision, which may be an improvement of the enacted law in the sense of its practical concreteness. The duty to decide cases taking the above into account arises not only from the very idea of law (*ius*), but also from the function that the judge must perform. In view of this, a judge, for the sake of the universal constitutional value that the principle of justice has, not only may but should in certain special cases depart from the literal wording of the provision. A judge can do so to give the law, in the process of its interpretation and application, an equitable content. The duty of a judge to decide difficult cases in a morally responsible manner and in accordance with constitutional values is warranted by the constitutionally established principles of judicial power (Articles 10, 173, 175(1), 178, 186(1) of the Polish Constitution). The judge's power in non-standard cases also involves 'reviewing the acts of Parliament' since the judge's fidelity and loyalty to the Constitution requires a judge to oppose the law that becomes its opposite. Such jurisprudential trend in the administrative judiciary also applies to tax issues.

Keywords: *ius* vs *lex*, principle of equity, principle of justice in administrative court decisions, judicial independence, value of law, direct application of the Constitution, importance of the constitutional principle of the tripartite division of powers

Summary

of the article: **Principle of legalism – is it merely a principle of tax proceedings?**

The principle of legalism plays an important role in tax law. It is an extremely important instrument in protecting taxpayer's rights. The considerations presented hereinabove allow us to assume that the question posed in the title should be answered negatively. However, the main research hypothesis that the principle in question not only applies in tax proceedings, but is also used in the application of substantive tax law was confirmed. This view is unambiguously supported by tax law scholars.

In its numerous rulings, the Supreme Administrative Court has interpreted the provisions of procedural law and substantive tax law on the basis of the principle of legalism. Those rulings in which the principle of legalism affects the interpretation of legal provisions in correlation with other general principles are particularly interesting. Also, the Court of Justice of the European Union, when interpreting legal provisions, refers to the principle of legalism, which it calls a 'a general principle of European Union law'.

Keywords: principles of law, principle of legalism, case law of the Court of Justice of the European Union, case law of the Supreme Administrative Court

Summary

of the article: **Principle of proportionality as a basis for an administrative court ruling in a tax liability case**

The principle of proportionality is a general principle of law that limits the legislature's discretion in choosing the spheres of social life that are subject to legal regulation. This principle is present in Polish law; it is also a constitutional principle of the European Union. In both national and EU terms, it applies to law-making and applying. The substance of this principle is determined by three requirements: adequacy, necessity and proportionality *sensu stricto*. A legal instrument meets the proportionality test when it jointly meets all three – and not just some – of the requirements defining the principle of proportionality. This means that the proportionality test fails even if one of these requirements is not met. This principle is relied upon by administrative courts when verifying the lawfulness of law application by public administration authorities, among others in tax cases.

Keywords: general principles of law, principle of proportionality, criterion of adequacy, criterion of necessity, criterion of proportionality *sensu stricto*

Summary

of the article: ***In dubio pro tributario* principle after being introduced into the legal system**

The article concerns the understanding of *in dubio pro tributario* principle as introduced in Article 2a of the Act of 29 August 1997 – Tax Ordinance. The result of the principle having been introduced into the legal system is, in particular, that as an element of the legal text, the provision of Article 2a of the Tax Ordinance is itself subject to interpretation. The legislator has decided to restrict the applicability of Article 2a of the Tax Ordinance exclusively to the provisions of tax law, i.e. to substantive tax law only. Article 2a of the Tax Ordinance provides for three conditions which, if met jointly, enable application of the principle set out therein: first, doubts must arise as to the content of the tax law regulations; second, such doubts must be of a specific nature, which the provision describes as 'irremovable'; third, the consequences for the taxpayer resulting from competing understandings of the unambiguous provision must differ in terms of 'benefits'.

Keywords: *in dubio pro tributario* principle, Tax Ordinance, tax authorities, administrative courts

Summary

of the article: **Procedural significance of the principle of objective truth in shaping the burden of proof in tax proceedings**

The article seeks to answer the question whether and to what extent the principle of objective truth determines the burden of proof in tax proceedings. The author also poses a question whether there is any burden of proof in tax proceedings. While attempting to answer them, he confronts the views presented by scholars and case law.

Keywords: burden of proof, tax proceedings, principle of objective truth

Summary

of the article: **Limitations on the implementation of the principle of objective truth due to evidence being unlawful**

The article focusses on the issue of limitations on the use of unlawful evidence in tax evidentiary proceedings. The issue has been addressed in historical, constitutional, intersectional, and comparative law aspects. When looking at the examples derived from case law of administrative courts, it is possible to observe a trend in the change in the approach of administrative courts – from a liberal to more restrictive one – in enforcing this constitutional requirement for tax authorities to act on the basis and within the limits of law.

Keywords: Tax Ordinance, tax proceedings, evidence, unlawfulness of evidence

Summary

of the article: **Violation of the principle of active participation of a party in tax proceedings and its judicial assessment**

The article addresses the issue of qualifying, in the case law of administrative courts, the consequences of violation of the principle of active participation of a party in tax proceedings, with particular emphasis on its aspect concerning a party's right to express its opinion on the evidence gathered in the case before a tax decision is issued. The author positively evaluates the view presented in the case law with regard to the necessity to distinguish between the consequences of violation of a party's right to active participation in proceedings and those of violation of the right to express an opinion on the outcome of such proceedings. She demonstrates that the latter is not an objective in itself, but rather a tool to achieve the objective of ensuring a party's right to participate in proceedings, which essentially boils down to a party's right to participate in evidence gathering. According to the author, it is only in this context, and not in isolation from it, that the consequences of violation of Article 200 § 1 of the Tax Ordinance in tax proceedings should be assessed.

Keywords: right to a hearing, principle of active participation of a party in tax proceedings, right of a party to express an opinion on evidence gathered, judicial review of a tax decision, party to tax proceedings

Summary

of the article: **Judicial review of tax authorities' relief decisions on the basis of administrative discretion**

The article addresses the issue of limits of judicial review of discretionary decisions regarding reliefs in repayment of tax liabilities on the basis of Polish legal regulations and case law of administrative courts. It can be noted that despite the presence of the issue of administrative discretion in scientific literature, the issue of limits of judicial review of discretionary decisions still raises some doubts in the jurisprudence practice of administrative courts. Therefore, it is appropriate to analyse the main theses formulated by scholars and in the judicial and administrative jurisprudence with regard to the issue, from the perspective of the limits of judicial review of discretionary decisions. The thesis of the article is the assumption that the nature of discretionary decisions aimed at applying relief in the repayment of tax liabilities, determined by the function of administrative discretion, and, at the same time, the criteria set out in the law for judicial review of public administration acts, limit the role of the administrative court to verifying compliance with procedural law of tax proceedings preceding the issue of such a decision and the respect by tax authorities of the fundamental constitutional values of the legal system. They set out a framework of administrative discretion within which the choice of one of the potential outcomes remains beyond the judicial review of the administration. *De lega lata*, therefore, there are no grounds for administrative courts, provided that tax authorities respect the fundamental constitutional values of the legal system, to formulate judgments as to the circumstances and reasons justifying the granting or refusal to grant a tax relief or its scope. The concept of internal and external limits of discretion may be useful in this respect for administrative court decisions.

Keywords: discretionary decisions; limits of judicial review of discretionary decisions; directives for choosing legal consequences

Summary

of the article: **Procedural institutions ensuring the implementation of the principle of providing solid arguments**

The principle of providing solid arguments serves to assist the parties in understanding unclear and complex tax laws and the rulings issued thereunder. Once they are clarified to participants in tax proceedings, this may be helpful in limiting the number of disputes with tax authorities. This may also reduce the costs of administration of justice. The article presents the way of understanding the principle of providing solid arguments and is addressed primarily to the authorities deciding on tax cases.

Keywords: principle of providing solid arguments, procedural legal institutions, trust in state authorities, tax proceedings

Summary

of the article: **Principle of trust and principle of protection of legitimate expectations in tax law**

The article addresses the issue of two general principles of European administrative law – the principle of trust and the principle of legitimate expectations (legal certainty). The discussion begins with their origin and function. Both of these principles are hereinafter characterised in the context of domestic procedural administrative law. The legal regulations of general administrative and tax proceedings which implement the principle in question have been analysed. Examples of rulings issued by national administrative courts and the CJEU on the basis of the above-mentioned general principles are also provided. The authors intended to demonstrate that the principles should not be perceived only as abstract demands addressed to public administration authorities, but must be treated as legal norms, the application of which will have a specific dimension.

Keywords: general principles of European administrative law, principle of trust, principle of legitimate expectations, principle of legal certainty

Summary

of the article: **Basic VAT principles – practical implications for interpretation of the provisions**

The article addresses the issue of basic principles of common VAT system. The discussion begins with their function and origin. Individual principles are hereinafter described separately. Those include universality of taxation, taxation of consumption, multi-phase and single tax collection proportionality of tax to price, deductibility and neutrality, and prohibition of abuse of law. In each case, the legal regulations setting out the principle in question have been analysed. Attention is also drawn to selected practical problems faced by the Court of Justice of the European Union and national administrative courts in respect of individual principles. Finally, it has been concluded that the general principles of the common VAT system – although being the result of interpretation – are of fundamental importance in the process of interpreting VAT regulations, in particular those of individual Member States of the European Union.

Keywords: common system of VAT, principle of VAT neutrality, principle of VAT universality, taxation of consumption, abuse of law

Summary

of the article: **The way the general principles of tax law are presented in the draft of the new Tax Ordinance**

The General Tax Law Codification Commission, of which the Author was a member, has prepared a draft of the new Tax Ordinance. The draft suggests, inter alia, a completely new approach to general principles of tax law. Although the legislative process for the new Tax Ordinance has not yet been completed, the content of the draft is genuinely noteworthy. The article analyses the content of the new Tax Ordinance draft, indicating how the proposed regulations have changed in the course of the legislative process. It discusses the systematics of the proposed general principles and compares their list and content with the currently applicable ones. In the Author's opinion, the draft corresponded much better with the realities of the functioning of the fiscal system and the needs of taxpayers than the provisions of the currently applicable Tax Ordinance.

Keywords: General Tax Law Codification Commission, new Tax Ordinance, general principles of tax law, general principles of tax proceedings