ANNOTATION

OF THE WORKS OF ASSOC. PROF. KRASIMIR SIMEONOV MUTAFOV PhD, SUBMITTED FOR PARTICIPATION IN A COMPETITION FOR AWARDING THE ACADEMIC POSITION OF PROFESSOR IN AREA OF HIGHER EDUCATION 3. SOCIAL, ECONOMIC AND LEGAL STUDIES, PROFESSIONAL FIELD 3.6 LAW /FINANCIAL AND TAX LAW/ AT THE FACULTY OF LAW OF THE UNIVERSITY OF PLOVDIV "PAISII HILENDARSKI" ANNOUNCED IN STATE`S GAZETTE NO. 96 of 17.11.2023

I. MONOGRAPHIC WORK: Liability For Foreign Tax Debt - second supplemented and revised edition, S. 2023, ed. "New Star".

1. General review:

1.1. The book consists of 234 pages, including the literature used. The book is the first monographic work dedicated to this tax law-specific legal responsibility that is not found in some of the other legal branches. In our legal literature there are separate publications and works in which attention is paid to separate issues related to this topic, having an episodic nature or being part of textbooks. Unlike them, the monograph represents a comprehensive scientific development that covers all aspects of liability for foreign tax debt and is based on historical and comparative legal analysis. Plenty of case law on the subject of the study was analyzed as a critical analysis in dedicated both to the regulatory framework and the acts of the administrative courts, as well as those of the Supreme Administrative Court including its interpretive activity. Attention has also been paid to the EU Court of Justice practice on preliminary rulings inquiries on tax matters, as it has to do with the subject of research, because these acts from the point of view of their legal essence are non-normative source of Tax Law and through them the Court gives mandatory instructions regarding the interpretation and application of Community law.

1.2. In terms of structure and composition the book includes introduction, three chapters and conclusion:

- Chapter One – Legal responsibility - essence, types;
- Chapter Two – Liability for foreign tax debt - general characteristics, entities, realization;
- Chapter Three – Types of liability for foreign tax debt.

2. Chapter one - Legal responsibility - essence, types.

In the first paragraph of this part of the work, attention is paid to the theoretical propositions related to the legal essence of legal responsibility as known to us from the general theory of law.

In the definitions of legal responsibility specified in our and foreign legal literature, it seems that it is perceived more in its procedural aspect, or in other words from the point of view of the moment when it will already be realized in relation to the subject who committed offense. As seen through the prism of its imposition, it is actually realized through a system of legal relations that arise, develop and terminate within the framework of strictly regulated procedural rules, and this cannot be denied. In this direction, an opinion is rightly expressed in our literature that the manifestation of legal responsibility is similar to a system of legal relations. But this is observed only when it is implemented in relation to legal entities.

We shall arrive at a different view of the essence of legal responsibility if we try to get out of the plane of its manifestation, i.e. from the procedural side.

Legal responsibility, regardless of the exact form in which it will be realized (criminal, administrative punitive, tort, disciplinary) is the negative legal consequence of an unfulfilled, poorly fulfilled obligation of the legal entity, which it is obliged to bear.

Historically, it arose in order to be able to guarantee the validity of the law, its integrity, and this is achieved with state coercion, an expression of which is the demand for legal responsibility of those of its subjects that hinder the exercise of a subjective right with their behavior. This concept was adopted in the law as a result of the need to impose a legal sanction on those persons who violate its prescriptions. It objectively exists in the legal system, regardless of whether and how often it will be applied to its addressees.

From this point of view, legal liability could be regarded as an abstract possibility recognized and guaranteed by the law for a person to be legally sanctioned for an offense committed by him. It will find a specific manifestation, it will develop as a system of legal relations only when the legal fact that could give rise to it occurs - the offense. Perceived in this way, legal responsibility must equally apply to all legal entities that are recognized as such by the relevant legal system. The main legal characteristics of legal responsibility, as well as its functions, are presented here. Attention was paid to the so-called "objective non-guilt liability" in cases where administrative criminal liability is realized against legal entities and sole traders and a "property penalty" is imposed, and the interpretative practice of the Supreme Administrative Court has been subjected to a critical analysis.

In the second paragraph, the types of legal liability known in our legal system - criminal, administrative penalty, disciplinary and civil, as well as some other types adopted in foreign legal doctrines are discussed.

3. Chapter two - Liability for foreign tax debt - general characteristics, entities, implementation.

In the first paragraph, a general description of this type of legal liability is made, and some terminological clarifications are made in view of the term "substitution" sometimes used in the scientific literature, and in practice, as a synonym for liability for foreign tax debt. The research presents the relevant arguments on the basis of which an opinion is defended that between liability for foreign tax debt and "tax substitution" one cannot put a sign of equality, since substitution does not find application in tax law. With a careful look at the regulations regulating the liability for foreign tax debt, we shall see that when it is implemented, the tax debtor is not replaced by a third party, as a result of which he is freed from his obligation. Here we are talking about a separate type ***of legal responsibility***, for a committed offense of tax legal norms.

The main characteristics of this type of liability are derived, distinguishing it from joint and several liability and from property accountance liability under the State Financial Inspection Act, as well as from liability for foreign debt in private law.

In paragraph two, the procedure in connection with the realization of the responsibility for a foreign tax debt is reviewed. In the context of the topic, attention has been paid to the audit /general and special in accordance with Article 122 of the Tax-Insurance Procedure Code/ as one of the forms of tax-insurance control through which this responsibility is realized, as well as to the acts by which it is established. Arguments are given in support of the view that the revision proceedings pursuant to Art. 122 of the Code may not be considered a manifestation of discretion by the revenue authorities, and that it is applied in the realization of the responsibility.

Paragraph three is dedicated to the entities that can bear this tax-specific legal responsibility. Only those persons to whom the tax law recognizes the quality of passive tax subjects may be attracted to it, which has led the author to pay the necessary attention to this issue. Here, the persons who can be constituted as subjects of responsibility are examined in a more abstract

sense from the point of view of their legal organizational form. In this aspect, an attempt has been made to justify the thesis that the subjects of responsibility for foreign tax debt in all its varieties may also be natural persons registered as sole traders in the sense of the Commercial Code, as far as we believe they are independent subjects of tax law.

Chapter Three - Types of Liability for Foreign Tax Debt.

In this part of the work, the individual types of liability for foreign tax debt, regulated in our legislation, are considered - the liability of third parties under Article 19 of the Tax-Insurance Procedure Code, the liability of persons in cases of abuses of VAT taxation, including joint and several liability, which, according to us, in some cases, contains the elements of this type of legal responsibility.

In the first paragraph, the prerequisites leading to its occurrence - the illegal behavior of the responsible third parties, the damage caused, the cause-and-effect relationship between them, as well as the guilt as a subjective element - are comprehensively examined.

In the second paragraph the questions related to the responsibility for foreign tax debt under Art. 19, paras 1-9 of the Tax-Insurance Procedure Code have been studied and subjected to a thorough analysis. Criticism on the legislator and the case law, including the interpretative one of the Supreme Administrative Court, has not been spared, as the latter unjustifiably expands the circle of persons who can be its bearers, as well as its subject matter and scope /regarding Art. 19, paras 1 and 2 of Tax-Insurance Procedure Code/. With regard to the provision of Article 19, paragraph 6 of the Code, here the main critical remarks are addressed to the legislator, insofar as its adoption, in our opinion, is not in accordance with one of the main principles in law regarding the fact that legal responsibility is personal.

The third paragraph covers the matter related to the responsibility of the persons in cases of abuses pursuant to Art. 177 VAT Act. In this regard, the book substantiates the opinion that it cannot be defined as joint liability from the point of view of its legal essence, but is a modification of liability for foreign tax debt. And this is so, since it does not possess any of the marks that are inherent to joint and several liability. Each of the passive entities in the tax relationship arising from the execution of a delivery /the supplier and the recipient/ has its own rights and obligations in relation to VAT taxation and there is no way they can be united under a common denominator and be considered carriers of indivisible tax debt. Although the legal fact that gives rise to them is the same, namely the performance of a taxable supply within the meaning of Article 12 of VAT Act, the rights and obligations of each of the participants in the legal relationship are different, which circumstance excludes the possibility of joint and several liability between them. Considered in substance, it reveals in its content all the elements that are inherent in the responsibility for a foreign tax debt, regardless of the presence of certain features regarding the prerequisites for its occurrence, determined by the specific mechanism of VAT taxation and more precisely by its multi-phase and non-cumulativeness.

The last fourth paragraph of this part of the work is an attempt to justify the opinion that in some cases, in essence, joint and several liability has the marks of liability for foreign tax debt, in essence, it should be considered as its variety. A careful reading of the provisions of Art. 211 and Art. 265 of the Tax-Insurance Procedure Code shall lead us to the logical conclusion that in this case we cannot speak of "joint and several liability", even though the legislator uses this notion in relation to third parties. And this stems from the fact that the main element that would allow us to characterize it as such is missing - the presence of a common legal fact from which the tax liability arose for the debtor and the subjects of responsibility. In the specific hypothesis, it cannot be assumed that there is a common indivisible obligation

between them, which leads to the logical conclusion that we are faced with the so-called in the right "*false solidarity*", similar to the liability under Art. 177 of VAT Act.

Proposals *de lege ferenda* have also been made, with a view refinement on the current one to the moment normative arrangement in relation to the research questions.

II.MONOGRAPHIC PAPER: Special regimes of taxation under the order of VAT, S.2013, ed. "Feneya", ISBN 978-619-163-012-7, issued on the basis of a defended dissertation with the same title.

The subject of the monograph is the special taxation regimes under the Value Added Tax Act.

At the time of its publication, our legal literature lacked a comprehensive scientific study of the special taxation regimes under the VAT system, which determined its relevance /as it is also lacking at present/. The basis for this was also the completely new regulatory framework and the special taxation regimes introduced with it, which until that moment were unknown in our tax legislation. There are several reasons for the existence of special taxation regimes in the Bulgarian VAT. The main one is the membership of our country in the EU, and the resulting from that fact obligation to harmonize the internal legislation in the field of taxation with that of the Community. The others should be sought in the goals pursued by the state with the introduction of some of the special regimes using the economic and fiscal function of the tax.

At the special taxation regimes according to the VAT system, the legislator has foreseen specific rules which are different from the generally accepted ones. Adoption of a such approach in taxation is dictated by the type of service or product, concerning which the right of ownership or established property rights are transferred. This is the main criterion by which supplies of goods and services subject to taxation under a regime other than the general one may be specified. Namely, it is the type of goods or the activity in which finds an expression the service that condition the introduction of special rules for their treatment for tax purposes under the VAT system.

These special rules may find specific expression in the formation of the tax base, the occurrence of the tax event, with the right to a tax credit or the need to special registration for their implementation. These are still unexplored questions in the tax law literature, to which is directed the emphasis on development of the work .

When examining the special taxation regimes, the issues related to clarifying the concept of "supply" as an object of taxation, the date of occurrence of the tax event, the tax base, intra-community supply and intra-community acquisition may not be overlooked, as the nature and mechanism of the tax credit. The possible examination of the special regimes without developing the basic concepts related to VAT, as far as the latter are of course related to the topic of work, including the concept of the tax, would be inappropriate. The need for such an approach is a prerequisite for greater completeness and consistency in the study of matter, following the rule of moving from the general to the specific.

Based on this, the special taxation regimes under the VAT system are discussed below.

In the study, the special regimes are divided into two main groups, separated in two chapters, and the main criterion adopted in their distinction is the obligation for their application.

The paper also examines deliveries under the terms of a commission contract. This type of supply, if we look at the structure of the law, is not part of the special taxation regimes under the VAT system. The reasons that motivated the author to include them in the subject of the study are the complex nature of the tax legal relationship that arises and develops during their implementation, its subject structure and, last but not least, their wide application in practice.

In their taxation, there are peculiarities in relation to the subjects, the formation of the tax base and the date of occurrence of the tax event, which are conditioned by the legal essence of the commission contract. This, of course, with a certain degree of conditionality, gives us reason to accept the order of their taxation as part of the special regimes. Considered from this aspect and taking into account the mandatory application of the specific rules for taxation of supplies under the terms of a commission contract, their systematic place should be in Chapter II of the work, where they are also included.

In the course of the study, all concepts, rules and procedures related to the special taxation regimes were considered, which presupposes its practical importance.

The work contains a critical analysis of the judicial practice in tax cases and some proposals ***de lege ferenda*** for changes in the current VAT with a view to further improving the legislation in relation to the mechanism of taxation under the special regimes, as well as the administration of the tax. The work complies with the regulations valid as of June 1, 2012.

The work consists of an introduction, three chapters and a conclusion, as well as a bibliography.

1. Liability for Foreign Tax Debt - General Characteristics, paper in "Obshtestvo i pravo" magazinep issue 2 / 2022, pp. 31-54, ISSN 0204-85-23.

The study substantiates the conclusion that liability for foreign tax debt and "tax substitution" cannot be equated, since substitution has no application in tax law. If we take a closer look at the legislation regulating liability for foreign tax debt, we shall see that when it is implemented, the tax debtor is not replaced by a third party, as a result of which he is freed from his obligation. Here we are talking about a separate type ***of legal responsibility***, imposed for an offense of tax law, which we cannot refer to any of its varieties known to us from the general theory of law -

criminal, administrative criminal, civil and disciplinary. It is inherent to tax law and does not find application in other legal branches, we must note that the legal doctrine in the past has paid attention to this institution, but not in sufficient depth due to the relatively underdeveloped legal framework. The final conclusion that we can make is that liability for foreign tax debt and "tax substitution" cannot be equated, since substitution has no application in tax law.

The main features are listed, as they are:

1. It arises always and only by virtue of the law. The legal norm is the one that regulates both the legal fact that gives rise to it, as well as its subjects, size, as well as the way in which it will be implemented and established. Liability for foreign tax debt cannot arise by contract or in any other way. Moreover, in contrast to, for example, some other types of legal liability /administrative criminal/ which may arise in the application of a lower-level normative act /ordinance, decree of the Council of Ministers, etc./, in the case of liability for foreign tax debt this is impossible, which is a direct expression of the fundamental tax law principle of legality of taxes.

2. The next feature of this specific type of legal responsibility is manifested in the sanction imposed on the subjects for their illegal behavior. It is expressed in ***the third party's obligation to pay a foreign tax debt***[1]. In view of this, the tax of the third party determined by the revision act, in our opinion, should be considered only as the *amount of the sanction* that he must pay as a result of the offense committed by him. This means that the revision act determines the legal basis of liability, the sanction that is imposed, as well as its amount, which is why it will be incorrect to assume that it establishes a tax due in its classical understanding.

3. Tax law has adopted the rule that liability for foreign tax debt is ***a subsidiary liability***. This means that the third party will bear it only when the state could not satisfy its claim from the real tax debtor. For this reason, it is limited to the amount and type of what could not be paid and/or collected by the tax subject, as a result of the illegal actions or omissions of the third party.

4. The responsibility for foreign tax debt, similar to the property accountancy responsibility under the State Financial Inspection Act, is ***culpable responsibility*** . Upon a careful reading of the normative framework, one comes to the logical conclusion that the factual composition that gives rise to it implies guilt as one of the prerequisites for its occurrence from the subjective side of the offense.

5 . Similar to the property accountancy responsibility existing in the financial law, the responsibility for foreign tax debt is in addition to our familiar functions of legal responsibility - educational, preventive, possessive and restorative. The foreign tax liability that must be paid by the third party upon realization of the responsibility for the offense committed by him serves to repay the unpaid or collected tax from the bearer of the tax burden, which is in defense of the public interest, insofar as tax revenues are used to finance a non-productive sphere in the activities of the state - education, social activities, health care, security, etc.

A comparative legal analysis was also made with the property accounting liability under the order of the State Financial Inspection Act, highlighting the differences between them.

2. The State and Municipalities as Active Entities in Tax Law, paper, "Norma" magazine /online format/, issue 7/2019, pp.7-32, ISSN 1314-5126.

[1]Minkova, G. Cit . op. p. 189.

The legal personality of the active entities in the material tax legal relationship is expressed in their competence. Since the moment a state body or local self-government body is established and its powers of authority in the field of legal relations regulated by tax law are defined by law, from that same moment it acquires its sectoral tax legal personality. This legal personality is the necessary prerequisite for it to enter into the material tax legal relationship from the position of power and administration. From this point of view, the state can participate in the tax legal relationship both as a form of self-governance of the society and through its various bodies - National Assembly, President. In addition, the state, as the bearer of political sovereignty, can also acquire the status of a subject in material tax relations, in cases where it appears as a party to international treaties that have a direct impact on the taxation of individuals. A typical example in this regard are the treaties for avoidance of double taxation that our state has concluded with other countries.

Municipalities may also be constituted as active subjects in material tax relations. Pursuant to Article 136, paragraphs 1 and 3 of the Constitution, the municipality is the main administrative-territorial unit in which local self-government is carried out and is a legal person.

Pursuant to the provision of Art. 14 of the Local Self-Governance and Local Administration Act, the municipality as a legal person and, in addition, it states that it has the right to property and an independent budget.

When we consider the issues related to the entities in the tax law, we should distinguish between the municipality as a legal person in the sense of the Local Self-Governance and Local Administration Act and the possibility of it constituting itself as an active entity in this legal branch. As a legal person, the municipality has an independent budget, which means that, according to the specified norm, it has financial legal personality, and we can reasonably assume that it can be an active entity in financial law. Of course, as a personified entity, the municipality may also be a passive entity in financial legal relations – e.g. in the budgetary relations with the central budget under Art. 52 of the Public Finance Act.

In addition, by owning property /movable and immovable/ the municipality can participate with it in civil, obligational or commercial relations, which circumstance predetermines the possibility that the same as a legal entity can be constituted only as a passive subject in tax legal relations when taxing with different types of taxes - VAT, taxes withheld at source under Article 195 of the Corporate Income Tax Act, income tax under Chapter Thirty-two of the same Act, etc. The current legislation does not allow municipalities as legal entities to be able to participate in material tax relations as active entities.

In this regard, like the state, municipalities can participate in these legal relations through the municipal councils as bodies of local self-government. Attention has been paid to the fact that the opportunity granted to them to determine by ordinances the specific amounts of local taxes and fees payable by individuals under the order of the Local Taxes and Fees Act cannot be considered a violation of the principle of legality of taxes, proclaimed in the Constitution.

3. Tax Law in the Legal System of the Republic of Bulgaria, article, Studia Juris magazine, edition of the Faculty of Law of the Plovdiv University, issue 1/2021, pp. 22-38, ISSN 2367-5312.

The place of the Tax Law in our legal system is still controversial as to whether it is an independent branch of law or should be considered as part of the Financial Law. The author's categorical opinion is that it is an independent legal branch with its own specifics that distinguish it from other public law branches.

In our opinion, the arguments in support of such a thesis should be sought in the relationship between financial and tax law. Both branches of law use the same method of legal regulation – authoritarian, from the position of bound competence. Here there are certain

nuances regarding the discretion, which is more widely used in Financial Law than in Tax Law. Without ignoring the presence of this feature, the main differences between them may be derived from the subject of Financial, resp. of Tax Law. The theory of law considers the subject of legal regulation as an answer to the question of what is regulated or can be regulated by law. Based on this, the article argues that Tax Law is an independent legal branch in our legal system and cannot be considered as a sub-branch of the Financial Law, much less as a part of it.

In this sense, the subject of legal regulation by tax law is the public relations that *arise between the state, in the capacity of an active entity, and local and foreign persons, including legal entities equated to them as passive entities in connection with the establishment of taxes, as well as those related to the occurrence and repayment of tax liabilities.*

When studying the subject of Tax Law, it is necessary to pay attention to the fact that the relationship between tax and budget legal relations, the latter being part of Financial Law, is indisputable, because the predominant part of revenues in the budget are result of the emergence, development and termination of the former. A similar relationship also exists with other legal relationships, insofar as non-tax revenues also enter the budget, such as public receivables under Article 162, Paragraph 2, Item 5 of the Tax-Insurance Procedure Code, but they cannot be defined as part of the Financial Law. The separate legal branches as building elements of the overall structure of law, despite their differences dictated by the various types of social relations that they regulate, are a single functional whole - the active law. Therefore, from the existence of a similar relationship between the two types of legal relations, one cannot conclude that it is a question of uniform relations and that there are no qualitative differences between them. On the contrary, tax legal relations have both a different subject and a different subject composition, which logically excludes the possibility of accepting them as part of the subject of the Financial Law. The article also presents additional arguments in support of the author's opinion - a different subject composition of the material tax legal relations, the presence of a developed normative procedural framework, different legal essence of the individual administrative acts in the two legal branches, specific types of legal responsibility that is applied in them for committed offences /property accountant responsibility in Financial Law and responsibility for foreign tax debt in Tax Law/ etc.