

## REVIEW

by Prof. Dr. Lyuben Kirov Karanikolov - Professor in the field of higher education 3.Social, Economic and Legal Sciences, professional direction 3.6 Law (Administrative Law and Administrative Process) - on the competition for "Professor" in professional direction 3.6. Law, scientific specialty "Financial and Tax Law", announced by the Plovdiv University "Paisii Hilendarski" (Official Gazette No. 96/17.11.2023) with only candidate Assoc. Prof. Dr. Krasimir Simeonov Mutafov

Pursuant to Order No. RD-21-81 / 16.01.2023 of the Rector of Plovdiv University Paisii Hilendarski I have been appointed as a member of the scientific jury - reviewer for the academic position of "Professor" in the mentioned field and direction of higher education. Krassimir Simeonov Mutafov was born on 27.11.1967, he completed his secondary education at the Technical School of Mechanical Engineering in the town of Burgas. He graduated with a degree in Mechanical Engineering in Burgas in 1986. He graduated in law from the Higher Institute of the Ministry of Interior - Sofia. He has a post-graduate qualification in tax law at St. Kliment Ohridski University. On 06.11.2011 he successfully completed his doctoral dissertation at "Neofit Rilski" South-West University with thesis "Special Regimes of Taxation under the VAT Act". Since December 2006 he has been a lecturer, and subsequently a full-time assistant professor in Financial and Tax law at Burgas Free University, and from 27.04.2012 to 30.01.2015 he held the academic position of "senior assistant professor", when he was elected "associate professor" at the same university. From 01.06.2020 to the present moment he holds the academic position of "Associate Professor" at the Faculty of Law of the University of Plovdiv "Paisii Hilendarski", Public Law Department, where he teaches the lecture courses on Tax and Financial Law. At present, along with the development of his teaching and academic career, he is an attorney specializing in tax law cases. He enjoys an established and undisputed reputation among students and academics. He has participated in a number of prestigious scientific conferences with international participation.

The candidate participates in the competition with one monograph entitled "Liability for Foreign Tax Debt" - second supplemented and revised edition, a monograph "Special Regimes of Taxation under the VAT Act", published on the basis of a defended dissertation with the same title, two studies and one article, which meet the scientometric requirements in accordance with the requirements of the Promotion of Academic Staff in Republic of Bulgaria Act, the Regulation on its implementation and the Regulation on Promotion of Academic Staff of Plovdiv University.PPRAASB. All the works are listed in NACID and have not been used in previous procedures for academic positions and/or the award of a

doctoral degree. Additionally, after obtaining the academic position of Associate Professor, K. Mutafov has published one monograph, two textbooks, one textbook and more than ten articles and reports, all of which are listed in NACID.

I. The habilitation thesis/monograph submitted for review "Liability for Foreign Tax Debt" - second supplemented and revised edition has 234 pages and 299 footnotes have been made. Structurally, the monograph is divided into an introduction, three chapters, a conclusion and a bibliography. 100 references, 11 of them to foreign literature, have been made and correctly cited. The habilitation thesis has a topic that is particularly important and up-to date, since it raises issues that have so far remained out of sight of legal doctrine. It should be noted the fact that our legal literature lacks a comprehensive scientific understanding and critical analysis of the matter related to this type of legal liability, despite the fact that sporadic attention has been paid to it in legal science, which in itself constitutes a significant scientific contribution that takes its rightful place in legal science.

The scientific problem posed by the monograph, in view of its interdisciplinary nature, requires in-depth legal knowledge not only in tax law, but also in a number of other branches of law - administrative, commercial, contract law, as well as in the general theory of law, which the author undoubtedly possesses. The work is of considerable theoretical and practical-applied value, and some of the conclusions contain recommendations for amendments to the current legal framework with a view to its improvement. The significant practical and applied value is also contributed by the rich case law, subjected to a thorough analysis with a reasoned and constructive criticism, including the interpretative decisions of the Supreme Administrative Court. The study of such a matter also requires relevant knowledge in the field of EU law and more specifically in relation to the case law of the ECJ on preliminary rulings in tax cases, which shows the very good knowledge of the candidate and in this aspect the work has a significant practical application. The relevance of the work is undeniable, as it represents the first comprehensive scientific study devoted to the subject of this legal liability, which is unique to tax law and which can be imposed on both natural and legal persons.

Chapter one of the work entitled "Legal liability - types" is devoted to the theoretical formulations related to the legal nature of legal liability and its varieties known to us from the general theory of law. The author has rightly judged that such an approach is necessary, first of all, because there are not a few things in common between them, insofar as liability for another's tax debt is a type of legal liability, since it is realized in the field of law and by legal means. The next prerequisite is that in this way greater completeness and consistency in

the treatment of the subject matter is achieved by following the rule of moving from the general to the special. To deal with the main topic covered by the monograph without addressing these concepts, rules and mechanisms relevant to all types of legal liability would lead to an incomplete work and constitutes a useful and necessary introduction to the main issues.

In chapter two "Liability for foreign tax debt - general characteristics, subjects, implementation", the author has examined the legal nature of liability for foreign tax debt and has outlined its distinctive features. I fully share the author's well-founded and argued thesis that these differences are assumed by the subject content of the tax considered as a legal relationship, as well as in the subject of legal regulation of tax law. Its distinction from the joint and several liability and from the property reporting liability under the Financial State Control Agency Act, as well as from the liability for foreign debt in private law, which has not been done with the necessary thoroughness so far and is undoubtedly a scholarly contribution, makes a positive impression. Only those persons to whom the tax law recognises the status of passive tax subjects can be attracted to it, which has led the author to pay due attention to this issue. Here, the persons who can be constituted as subjects of liability are considered in a more abstract sense in terms of their legal form. In this aspect, the author has defended and substantiated the thesis that the bearers of liability for foreign tax debt in all its varieties may also be natural persons registered as sole traders within the meaning of the Commercial Code, insofar as they are independent subjects of tax law. A reasoned and substantiated statement about this peculiarity of sole traders as independent subjects of tax law can also be regarded as a scientific contribution of the author. In the context of the topic, attention is also paid to the procedure by which this liability is realized, as well as to the acts by which it is established.

An analysis of the procedure in relation to the implementation of this specific type of legal liability is also made. In the context of the topic, the author has argued the view that the audit proceedings under Article 122 of the Tax Code cannot be considered as a manifestation of operational independence on the part of the revenue authorities, and that it can also find application in the implementation of liability.

Chapter Three is entitled "Types of liability for foreign tax debt".

In this part of the work the different types of liability for foreign tax debt contained in our tax law are examined and subjected to a thorough analysis - the liability of third parties under Article 19 of the Tax-Insurance Procedure Code, the liability of persons in cases of abuse in VAT taxation, including the joint and several liability, which the author has reasonably assumed that in some hypotheses contains the elements of this type of legal liability.

Here the prerequisites leading to its occurrence are exhaustively examined - the unlawful conduct of the responsible third parties, the damage caused, the causal link between them, as well as the fault as a subjective element.

The following parts of this chapter are also of considerable interest, in which the issues related to the liability for foreign tax debt under Art. 19, paras 1-9 of the Code. The criticism of the legislator and the case-law, including the interpretative case-law of the Supreme Administrative Court, is not spared. I share the author's view that it is inadmissible for a court's interpretative act to expand the circle of persons who may be its bearers, as well as its subject matter scope /in connection with Art. 19, para. 1 and 2 of the Code/. With regard to the provision of Article 19 (6) of the Code, the criticism of the legislator is fully justified, insofar as its adoption is not in line with one of the fundamental principles of law relating to the fact that legal liability is personal.

Paragraph three covers the matter related to the liability of persons in cases of abuse under Article 177 of the VAT Act. Here an opinion is defended that this type of liability cannot be defined as joint and several liability (as well as that under Article 19 of the Tax Code) in terms of its legal nature, but is a type of liability for foreign tax debt, which is also contributory. This is because it has none of the characteristics inherent in of joint and several liability. It has been rightly pointed out in this regard that each of the passive subjects in the tax relationship arising from realisation of a supply (the supplier and the recipient) have their own rights and obligations in relation to VAT and they cannot be brought together under a common denominator and be regarded as having an indivisible tax debt. Although the legal fact giving rise to them is the same, namely the making of a supply taxable within the meaning of Article 12 of the VAT Act, the rights and obligations of each of the participants in the legal relationship are different, which excludes the possibility of joint and several liability between them. All this has been correctly captured by the author, which leads to the logical conclusion that, considered in its essence, it reveals in its content all the elements that are inherent in liability for foreign tax debt, notwithstanding the existence of certain peculiarities concerning the preconditions for its occurrence, conditioned by the specific mechanism of VAT taxation and, more precisely, by its multiphase and non-cumulative nature.

The fourth and final paragraph of this part of the work defends the view that joint and several liability in individual cases essentially possesses the characteristics of liability for another's tax debt, from which it is concluded that it should essentially be regarded as a form of it, which is also contributory in nature. In order to substantiate this view, the author relies on the private law (law of obligations) approach, and considers that this stems from the fact that the essential element which may allow it to be characterised as such is lacking - the existence of a common legal fact from which the tax liability has arisen for the

debtor and the subjects of the liability. Hence the conclusion that there is not a common indivisible obligation between them, which means that we are faced with what is known in law as a "*false solidarity*", similar to the liability under Article 177 of the VAT Act. This demonstrates the interdisciplinary approach used by the author when examining the different types of liability for foreign tax debt, which leads to the introduction of additional arguments in defence of one or another of the opinions expressed by him.

In the Conclusion, reasoned outcomes are drawn on the specific features of liability for foreign tax debt, which essentially summarise the legal nature of this type of legal liability as well as its distinctive characteristics. Numerous well-reasoned proposals are also made for amendments to the current legislation aimed at improving it, which are also of a contributory nature and demonstrate a sound knowledge of the tax legislation as a whole.

II. In addition to the habilitation thesis, the author has submitted for participation in the competition a monograph "Special Regimes of Taxation under the VAT Act", published on the basis of a defended dissertation with the same title, two studies - "Liability for Foreign Tax Debt - General Characteristics", "The State and Municipalities as Active Subjects in Tax Law" and an article "Tax Law in the Legal System of the Republic of Bulgaria", the latter two being subject to review.

In the study "The State and Municipalities as Active Subjects in Tax Law", the candidate examines the question through the prism of substantive tax law. In this regard, he assumes that the legal personality of active subjects in the substantive tax law relationship is expressed in their competence, a view which is shared in legal science. From the moment a state or local authority was established and its powers in the field of legal relations regulated by tax law were defined by law, it acquired its sectoral tax personality. This legal personality is a prerequisite for it to be able to enter into the substantive tax legal relationship from a position of authority and management. From this point of view, the State can participate in the tax legal relationship both as a form of self-government of society and through its various organs - the National Assembly, the President. In addition, the state as the bearer of political sovereignty may also acquire the status of a subject in substantive tax relations in cases where it enters as a party into international treaties that directly affect the taxation of individuals. A typical example in this respect are the treaties for avoidance of double taxation that our country has concluded with other countries.

Municipalities may also be constituted as active subjects in substantive tax relations. Pursuant to Art. 136, paras. 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 entity.

Article 14 of the Local Self-Governance and Local Administration Act also defines the municipality as a legal entity and furthermore regulates that it has the right to property and an independent budget. The author has quite rightly drawn attention to the fact that in this case a distinction must be made between the municipality as a legal entity within the meaning of the Act and the possibility for it to constitute itself as an active subject in tax law. As a legal entity, the municipality has an autonomous budget, which means that it has financial personality under the aforementioned provision and we can quite reasonably assume that it can be an active subject in financial law. Of course, as a personified entity, the municipality may also be a passive subject in the financial legal relationship - e.g. in the budgetary relationship with the central budget under Article 52 of the Public Finance Act. The author's conclusion that, under the legislation currently in force, municipalities as legal persons cannot participate in the substantive tax relations as active subjects is entirely correct. In this respect, like the state, municipalities can participate in these legal relations through municipal councils as local self-government bodies. Attention is drawn to the fact that the possibility granted to them to determine by ordinances the specific amounts of local taxes and fees payable by persons under the Local Taxes and Fees Act cannot be regarded as a violation of the principle of the legality of taxes, which is proclaimed in the Constitution and is fundamental for tax law.

In his article "Tax Law in the Legal System of the Republic of Bulgaria", Assoc. Prof. Dr. Mutafov argues that tax law is an independent branch in our legal system and should not be perceived as a sub-branch or part of financial law in view of the existence of the opposite opinion in the legal doctrine.

In support, the author makes a number of arguments, one of which is the different subject of legal regulation of these two branches of law. Based on the general theory of law, the candidate assumes that the subject of legal regulation by tax law are the social relations that arise between the state, as an active subject, and local and foreign persons, including legal entities equivalent to them, as passive subjects in connection with the establishment of taxes, as well as those related to the creation and repayment of tax liabilities.

When examining the subject of tax law, attention is drawn to the fact that the relationship between tax and budgetary legal relations, the latter as part of financial law, is indisputable, since it is as a result of the emergence, development and termination of the former that the overwhelming part of the budget revenue is secured. A similar relationship exists with other legal relations, insofar as non-tax revenues, such as the public claims under Article 162(2)(5) of the Tax-Insurance Procedure Code, are also received by the budget, but they cannot be defined as part of financial law, a fact which the author rightly cites in support of his thesis. The separate branches of law as building blocks of the overall structure of law, despite their differences dictated by the

different types of social relations they regulate, are a single functional whole - the applicable law. Therefore, from the existence of a similar relationship between these two types of legal relations, it cannot be concluded that there is a procedural regulation, a different legal nature of individual administrative acts in the two branches of law, specific types of legal liability that applies in them for misconduct/property accountability in financial law and liability for foreign tax debt in tax law, differences in the method of legal regulation, insofar as in the FP operational independence finds much wider application

I have known Assoc. Prof. Dr. K-Mutafov since the beginning of his scientific activity as a PhD student, I have followed his scientific publications and my personal impressions are that he has established himself as a respected scholar and lecturer.

On the basis of the above, I confidently propose to the members of the scientific jury that Assoc. Prof. Dr. Krasimir Simeonov Mutafov to be proposed for election to the academic position of "Professor" at Paisii Hilendarski University of Plovdiv in professional direction 3.6.Law /Financial and Tax Law/.

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(Prof. Dr. Lyuben Karanikolov)