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THE TAX AS A LEGAL RELATIONSHIP

ABSTRACT

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I. GENERAL CHARACTERISTICS OF THE WORK

1. Relevance of the Topic.

As the title of the monograph suggests, the author's efforts are directed towards the subject matter related to the consideration of the tax as a legal relationship. In Bulgarian legal literature, there is a lack of a comprehensive scientific study dedicated to this issue, a circumstance which in itself determines the relevance of the topic. In legal doctrine, attention to this problematic area is paid by Prof. P. Stoyanov in his textbook on tax law, where he makes a brief and at the same time substantial introduction to this substantive legal relationship, marking some of its inherent characteristics.

The objective we have set for ourselves with the study presented to the reader's attention is to derive the theoretical foundations for the existence of this substantive legal relationship specific to tax law, characterizing those features which, from their substantive side, distinguish it from the tax law relationship. Sufficient attention has been paid to the latter in the literature, which is why the focus is predominantly directed towards the tax as a legal relationship – its inherent characteristics, object, subject matter, subjects, and the factual composition upon the realization of which it arises. The issues related to this part of substantive tax law have not yet been fully investigated by legal doctrine, a circumstance that indisputably presupposes the relevance of the work.

2. Subject Matter and Tasks of the Study.

The topic of the dissertation thesis predetermines the subject matter of the study.

The analysis and clarification of the issues raised in the work are based on the concept of tax, from which all those features can be derived that, in our opinion, give us reason to accept the theoretical construction for the existence of such a legal relationship. The study of the matter related to this part of tax law validation undoubtedly has its significance, as it contributes to the building of a more coherent system of concepts, rules, and mechanisms in tax law, which in turn influences the development of the regulatory framework. In the context of the research, the theoretical formulations related to the object and the subject matter of the legal relationship, the emergence of public legal relationships, and their subjects known to us from the general theory of law, which are discussed in a number of places in the work, carry their own significance. The necessity of such an approach is conditioned, in the first place, by the fact that there are not a few commonalities between them and the tax as a legal relationship, insofar as it concerns relationships of law and their generic characteristics are similar. The next prerequisite is that in this way a greater completeness and consistency is achieved in the examination of the matter, following the rule of proceeding from the general to the specific.

A possible examination of the main theme covered by the monograph without paying attention to these concepts, rules, and mechanisms applicable to all types of legal relationships would lead to the incompleteness of the study.

In view of our full membership in the EU, there is an obligation for our country to harmonize its tax legislation with that of the Community, which in turn necessitates the need to examine the degree of this harmonization through the prism of the studied matter. In this sense, attention is also paid to the case law of the CJEU on preliminary rulings in tax cases in its capacity as a non-statutory source of tax law. The task of the study is to derive and analyze the elements of the tax as a legal relationship and to substantiate the theoretical construction for its presence in tax law, as well as those of its characteristics that distinguish it from the tax law relationship.

The comparative legal analysis and the results of the scientific research also set the task to make the relevant proposals de lege ferenda for amendments to the currently effective tax legislation, which aim at its improvement.

3. **Methodology of the Study.**

In the course of the study, application was found in the comparative legal method, which allows answering the question regarding the achieved degree of harmonization of our tax legislation with that of Community law. Its use also allows searching for and making proposals for amendments to the currently effective regulatory framework based also on foreign experience in the field of tax legislation of non-EU countries. The system method was also used to clarify the issues related to the main characteristics of this legal relationship. The approach chosen in this direction for their analysis is based on the general theory of law, including how some of these specificities are perceived in other legal branches, both public and private law. The interdisciplinary approach used in the work allows for the investigation of the connections and dependencies of the institutes used by tax law, similar to those in other legal branches, but perceived with a different content.

4. **Scientific Novelty of the Work.**

The matter related to the tax considered as a legal relationship has not been investigated in our tax law. For the most part, publications in this field are dedicated to tax law relationships, but not to the tax as such. Deriving the features of this legal relationship through the prism of the concept that doctrine gives for the tax as a type of monetary payment has so far remained outside the field of vision of legal science and can be considered as a scientific novelty and a contribution to the development of tax law theory.

5. **Practical Significance of the Work.**

The practical significance of the work can be sought in several directions. The features of the tax as a legal relationship derived in the study could find application in the interpretation and application of tax law norms in the phase of tax and social security control and in judicial practice, taking into account its contradictory nature.

The analysis made of judicial practice, including interpretative practice, as well as of the existing literature on the studied issues, also holds practical value.

Last but not least, some of the conclusions, as well as the proposals made for the amendment of the currently effective regulatory framework, could serve for its further improvement.

6. **Structure and Volume of the Work.**

Structurally, the dissertation consists of an introduction, three chapters, and a conclusion, and is in a volume of 357 pages. A bibliographic reference for the literature used is also attached.

II. CONTENT OF THE WORK

1. **Introduction.**

In the introduction, the relevance of the topic is substantiated, and the subject matter, scope, and method of research are outlined. The goals and tasks set by the author are indicated. In the context of the study, the theoretical formulations related to the object and the subject matter of the legal relationship, the emergence of public legal relationships, and their subjects known to us from the general theory of law, which are discussed in a number of places in the work, carry their own significance. The necessity of such an approach is conditioned, in the first place, by the fact that there are not a few commonalities between them and the tax as a legal relationship, insofar as it concerns relationships of law and their generic characteristics are similar. The next prerequisite is that in this way a greater completeness and consistency is achieved in the examination of the matter, following the rule of proceeding from the general to the specific.

A possible examination of the main theme covered by the monograph without paying attention to these concepts, rules, and mechanisms applicable to all types of legal relationships would lead to the incompleteness of the study.

2. **Chapter One.**

Chapter One is dedicated to the features of the tax as a legal relationship, its object, and its subject matter.

In paragraph one, the essence of the tax is examined as a monetary, unrequited, and non-refundable payment established unilaterally and in a general manner by the state, which has the ability to collect it through enforcement proceedings. The necessity of its presence is related to the fact that the specificities of the tax considered as a legal relationship are derived from the concept given to it by doctrine.

In addition to being a payment, the tax is also examined as a **legal relationship** that arises between the state and tax-obligated persons as a consequence of the occurrence of the legal facts provided for in the legal norm. The essence and the subject matter of this substantive-in-character legal relationship is the payment.

The tax as a legal relationship arises, exists, and terminates as a result of the unilateral, authoritative manifestation of the will of the state, finding concrete expression in the adoption and repeal of tax laws by the National Assembly. This legal relationship is **public law in character**, since the active subject in it is always the state, which enters from a position of authority and governance. The principle of the statutory establishment of taxes predetermines that the method of regulation of the tax as a legal relationship is authoritative, from the position of bound competence.

In paragraph two, the features of the tax as a legal relationship are derived. In our legal doctrine, Prof. P. Stoyanov was the first to draw attention to this problematic area, according to whom, besides being a payment, the tax can also be viewed as a **legal relationship** that arises between the state and tax-obligated persons as a consequence of the occurrence of the legal facts provided for in the legal norm. The essence and the subject matter of this substantive-in-character legal relationship is **the payment**. I am inclined to accept that the subject matter of the tax considered as a legal relationship should be viewed in a broader scope from its substantive side, by including in it all methods that lead to the discharge of the tax debt.

The tax as a legal relationship arises, exists, and terminates as a result of the unilateral, authoritative manifestation of the will of the state, finding concrete expression in the adoption and repeal of tax laws by the National Assembly. In this manner, the state interferes in the legal sphere of persons by expropriating a part of their income or property in the form of taxes in accordance with its fiscal interests. In this connection, the first essential feature of this legal relationship manifests itself, which is expressed in the fact that it ***initially arises on the basis of the law***, which is an expression of the fundamental principle upon which tax law is built and developed – for ***the statutory establishment of the tax.***

The significance of this principle through the prism of the researched problem area is of exceptional importance when conceptualizing the tax as a legal relationship, as it exerts a significant influence on all its specificities, including with a view to certain negative trends in the interpretative practice of the Supreme Administrative Court (SAC), to which the necessary attention has been paid in the work.

The second essential feature of the tax considered as a legal relationship is that it is **public law and authoritative** in character, since the active subject in it is always the state, which enters from a position of authority and governance. In tax law, the state is the one that, by virtue of the law, possesses the authoritative powers allowing it to interfere in the legal sphere of tax-obligated persons and to take a part of their income in the form of taxes. In this way, it also exercises control through the tax over compliance with the regulatory framework related to public finance.

It would be erroneous if this interference were justified solely by the fact that the state is the bearer of authoritative powers. In order to arrive at it, it is necessary that those legal facts have arisen, with the occurrence of which the tax law norm links the obligation to pay taxes. All of this leads to the logical conclusion that the tax relationship is a relationship of law, since it arises, develops, and terminates solely and exclusively by virtue of the law.

When considering the tax as a legal relationship, administrative discretion (operational independence) as a manifest form of the authoritative method of legal regulation is impossible. This stems from the very legal essence of the tax as a statutorily established monetary payment, which is secured by the possibility of being collected through enforcement proceedings. The arising and due nature of the tax cannot be made dependent on the assessment of one or another administrative body based on expediency or other considerations. The principle of the statutory establishment of taxes, expressed in the establishment of the type and rate of taxes solely and exclusively by law, excludes the possibility of assessments regarding the determination of the tax debt. What has been said so far predetermines that the method of regulation of tax law, which also reflects upon the tax as a legal relationship, is authoritative, from the position of bound competence.

This, in turn, conditions the next feature of this legal relationship – its **imperative nature**. This inherent characteristic finds manifestation in two or rather three directions – *in the essence of substantive tax law norms, their interpretation in the phase of tax and social security control, in law enforcement, including in the interpretation by the Constitutional Court (CC), the Supreme Administrative Court (SAC), and the Supreme Court of Cassation (SCC), as well as in the subject structure of the tax as a legal relationship.*

The next feature of the tax considered as a legal relationship finds manifestation in its **object and subject matter**. The specific thing about every tax, regardless of whether it is direct, indirect, state, local, proportional, or progressive (of which, unfortunately, there are none in our tax system), is that it possesses its own object. The individual tax laws exhaustively regulate the object or objects of the respective tax. Here we must draw attention to the fact that it is completely possible for a tax to have more than one object of taxation, as is the case, for example, with VAT taxation. Pursuant to the norm of Art. 1 of the VAT Act, the object of taxation with this tax can be: taxable supplies of goods or services, including gratuitous ones, intra-Community acquisitions (ICA), intra-Community supplies (ICS), import, and export of goods. In the case of taxation with excise duty and patent tax under the procedure of the Local Taxes and Fees Act (LTFA), this feature is also observed, with the legislator tolerating certain criticism regarding the incorrect use of the relevant terminology, an issue on which, along with some other questions related to the object and subject matter of the tax considered as a legal relationship, we will dwell further on. In our legal doctrine, the payment that the obligated person must make in favor of the budget is accepted as the subject matter of the tax as a legal relationship. Every tax law explicitly regulates the method and deadlines for the payment of the respective taxes, as well as where this must be done. In our opinion, it is perhaps not entirely justified to limit the subject matter of this legal relationship solely to the payment, regardless of the fact that this is the method of discharging tax obligations most desired by the state. In our view, the subject matter of the tax considered as a legal relationship should include all methods known in our law that lead to its discharge, and detailed arguments in support of this proposition will be presented in the next part of the work.

Another essential feature of the tax as a legal relationship is related to its arising, which is the result of the realization of a **complex homogeneous factual composition**. This factual composition is connected, first, with the arising of the tax law relationship – the occurrence of the tax event provided for by law, the expiration of the tax period, and finally, with the subsequent determination of the legal basis and the amount of the tax debt of the obligated person – by a tax return from the person itself or by an act on the part of the revenue bodies competent for this. However, the arising of the tax law relationship will not always automatically lead at a subsequent stage to the arising of the tax as a legal relationship.

The final feature of the tax as a legal relationship finds manifestation in **the subjects of the tax and its subject composition**. Every tax law explicitly indicates which persons can be a subject of the respective type of tax, and the taxation mechanism reveals to us the subject composition of the tax law relationship. This, however, by no means implies that these persons – meaning those participating in the mechanism of taxation with a specific tax – will necessarily also be constituted as subjects of the tax as a legal relationship. The acquisition of the capacity of a subject of the tax law relationship is an absolutely necessary prerequisite for a person to subsequently, at a later stage, be constituted as a subject of the tax. Since this is a public law, authoritative legal relationship, it is completely logical that at least two subjects exist in its composition – active (the state or the municipality) and passive (local and foreign natural and legal persons, as well as legal entities equated to them). A subject of the tax as a legal relationship can only be that tax-obligated person who is explicitly indicated by law as its possible addressee even before this legal relationship has arisen. It is necessary, however, to point out that it will always arise between a specific person, for whom the tax is determined by its legal basis and amount, and the state in its capacity as an active subject having the authority to claim the discharge of the tax debt, represented by the organs competent for this. Between these three conventionally speaking "categories" of the tax as a legal relationship – object, subject matter, and subject – there exists a correlative relationship that arises, is regulated, and terminates ex lege, by virtue of the law. This relationship also has its socio-economic basis related to the acquisition of property, the performance of independent economic activity, the realization of income, profit, etc., but when, as a consequence of this, the tax as a legal relationship will arise is "decided" by the law.

Paragraph three is dedicated to the object and the subject matter of the tax as a legal relationship.

In our opinion, from a legal point of view, it is more sound to differentiate between the object and the subject matter of the legal relationship. In this sense, I am inclined to accept that under the subject matter of the legal relationship, placed in a general theoretical plan, one should understand the final result towards which the parties to the legal relationship strive in connection with its object. Of course, in public law branches, given the method of legal regulation, it is possible for this final result to be "embedded" in the legal norm itself and for the law not to be concerned with the subjective attitude of the parties towards it.

In tax law, this approach has been adopted, with a clear delineation between the subject matter and the object of the legal relationship, which is conditioned by the very essence of the tax, respectively by its elements, as well as by the principle of statutory establishment as a foundational block in building the legal branch. Regardless of this, when analyzing these two concepts with regard to the topic of the study, we should build upon the achievements of the general theory of law so that we can clarify, on this basis, the differences between the tax law relationship and the tax as such.

In modern doctrine, it is accepted that the object of the tax law relationship is not an external given to it, but is part of the factual composition that leads to the arising of the obligation itself. In principle, we agree with this position, but in our opinion, it requires a certain clarification, which necessitates a deeper analysis of the object of the tax law relationship and of the tax as such, or more precisely, of the content of these concepts. The tax law relationship can arise, develop, and terminate without an object of taxation being present as part of its factual composition, even if it is sometimes provided for in the legal norm. And this means that the final result towards which its subjects strive by virtue of the law will not be related to the payment (discharge) of a tax and will have a completely different content, i.e., its subject matter will be different.

In this direction, the provision of Art. 50, Para. 1, Item 5 of the Personal Income Tax Act (PITA) provides for an obligation for natural persons to declare, within the period established by law (Art. 53, Para. 1 and Para. 2 of PITA), the monetary loans provided or received by them. In this specific example, the object of the tax law relationship cannot be equated to the object of the tax; rather, it concerns certain actions ex lege on the part of the obligated persons aimed at preventing tax avoidance. There are a number of other similar examples in the legislation, which are indicated in the work. Does this mean that there is no tax law relationship in the specified hypotheses, i.e., that it has not arisen? The answer is more than obvious.

Every tax, regardless of whether it is direct, indirect, state, local, proportional, or progressive (of which, unfortunately, there are none in our tax system), possesses its own object. The individual tax laws exhaustively regulate the object or objects of the respective tax. Here we must draw attention to the fact that it is completely possible for a tax to have more than one object, as is the case, for example, with VAT taxation. Pursuant to the norm of Art. 1 of the VAT Act, the object of taxation with this tax can be supplies of goods or services, including gratuitous ones, ICA, ICS, import, and export of goods, and this feature is also observed in taxation with excise duty and patent tax under the procedure of the LTFA.

In the doctrine, a certain confusion is observed between the object of the tax law relationship and of the tax as such, at the foundation of which lies the perception of these two legal relationships as equivalent, which in our opinion is not entirely sound. Tax law relationships have a much broader scope with regard to their object or, if we can express it so, from its substantive side. They possess a much higher degree of abstractness than the tax as a legal relationship, and their object, as well as that of any other legal relationship (administrative, constitutional, commercial, obligation law, etc.), is a certain circle of social relations that they regulate. True, when the legal fact envisioned in the tax law norm occurs, it acquires significantly greater concreteness and we already have a precisely determined person or persons who enter into this legal relationship as its subjects. But this does not mean a priori that an object of taxation will be present, and consequently, that its subject matter will be the payment of the tax debt. Obligations for the passive subject in the tax law relationship will undoubtedly arise, but the examples indicated in the study clearly show that this does not always have as a legal consequence the payment (discharge) of the respective tax. And this is in sync with the concept of the object of the legal relationship supported also in the general theory of law, in which a material thing, an immaterial good, or behavior towards which the subjective right or obligation of the parties in it is directed is accepted as such. Hence the logical conclusion follows that it is completely possible for the object of the tax law relationship to be the behavior of its subjects when it has independent legal significance.

In conclusion, we can say that the object of the tax law relationship has a much broader scope from its substantive side and, as a general rule, we can hardly say that it will coincide with the object of the tax, regardless of the fact that it can sometimes be part of the legal fact that generates it. The subject matter of this legal relationship is also different, which cannot coincide with that of the tax as such, since the complex factual composition from which its arising is reached has not yet been realized. And very often, it is possible not to arrive at the arising of the tax as a legal relationship at all, respectively at its determination by legal basis and amount and the subsequent discharge of a tax obligation.

In the case of the tax perceived as a legal relationship that arises between the state in its capacity as an active subject and a specifically determined person, a completely different individualized legal bond is revealed by means of the rights and obligations granted by virtue of the law. At the foundation of this bond, there always stands a material thing, a given, or an activity that we define as the object of the tax, and it is expressed in the obligation of the person to pay the tax liability determined by its legal basis and amount, and the authority of the state to claim it or to collect it through enforcement proceedings if it has not been paid in full within the deadline for voluntary performance. This legal bond between the parties cannot always arise in the tax law relationship, which, as we saw, can have a completely different object and subject matter.

If there is no object of taxation envisioned in the respective law, the tax as a legal relationship cannot arise from the outset. It is completely possible for the object of taxation to be defined in the legal norm and for the legal fact from which the tax law relationship originates to have occurred, but despite this, not to arrive at the arising of the tax as such, a matter to which additional attention is paid when examining the subject matter related to the factual composition that generates it. The next feature of the object of the tax in this aspect is its connection with the subject of the tax – the tax-obligated person. This connection can only be a legal one, with the law exhaustively determining which persons can potentially acquire the capacity of a subject for each tax in the respective regulatory act. Of course, looked at in a broader sense at its foundation, in order to be placed in legal frameworks, there stand some socio-economic relations that condition the bond between the persons and the eventual object of the tax – the possibility of developing economic activity, acquiring income, property, kinship or other bonds between the persons with a view to representation, guardianship, and other similar ones. It is completely possible for this bond to be only a legal one, i.e., not to be accompanied by any economic or kinship or other relations. But only the law is that which can "place" this bond in the factual composition that is to generate the tax as a legal relationship. Every single tax factual composition includes an object that generates tax rights and obligations for a specific legal subject indicated by law according to its factual and legal connection with the objective given. In our opinion, from this bond, concrete powers also arise with respect to the active subject of the tax as a legal relationship, to which the necessary attention has been paid in the work.

When we analyze the object of the tax as a legal relationship, the question can justifiedly be raised whether it could lead to any complications in it that would result in an unlawful determination primarily of the amount of the tax due, i.e., lead to tax avoidance?

In order to answer this question, we will again have to recall that the tax is a monetary payment and therefore must be determined in money so that it can be paid. However, the object of taxation will not always have a monetary expression, as is the case in the exercise of various types of activities in taxation with patent tax or tax on real estate under the procedure of the LTFA, in the case of so-called barter transactions in taxation with corporate tax under the Corporate Income Tax Act (CITA), etc. Even when the income or revenue is received in money, they will not always be taxed in the entire realized amount. For this purpose, every tax law envisions the mechanism by which the tax base is determined in taxation with the respective tax, which, as we already said, represents the monetary expression of the object of taxation for tax purposes. In the overwhelming majority of cases, the persons themselves determine their tax base, respectively the legal basis and the amount of the taxes due by them, with the filing of their tax return. The revenue bodies in the phase of tax and social security control – verification or audit – have the authority to issue Acts for Assessment of Tax Liabilities (AATL) with which to initially determine the taxes due by the persons if they have not filed such a return, or to correct the liability determined therewith. The activity of determining the tax base and the amount of the tax due is performed before the tax as a legal relationship has arisen, i.e., before it is determined by its legal basis and amount, due to which such a complication of the object of this legal relationship is, in our opinion, impossible. When the tax is determined with a tax return, it is still not final, as visible from the systematic place that this proceeding occupies in the Tax and Social Security Procedure Code (TSSPC) – Chapter Fourteen, Section I, entitled "Preliminary Assessment" (Art. 105), but the tax as a legal relationship has already arisen. The proceeding for the assessment of tax liabilities initiated within the time limit under Art. 109 of the Code may lead to the issuance of an act establishing another legal basis and/or amount of the tax, different from that determined by the person with the tax return. In such a hypothesis, it will lead to the arising of a new legal relationship, which confirms the correctness of the expressed position.

The object of the tax also has its theoretical and practical significance in the classification of the individual types of taxes. Thus, for example, according to this criterion, they are:

- direct – with them, the object of taxation is an activity, income, property, profit (corporate taxes, local taxes with the exception of tourist tax, personal income taxes);
- indirect – in which the turnover of goods and services is subject to taxation (VAT, excise duty, tourist tax under the LTFA, tax on insurance premiums).

The subject matter of the tax as a legal relationship is the payment that the obligated person must make to the budget. Some authors consider the payment as the subject matter of the tax law relationship, which also cannot be accepted uncritically, insofar as, as we already noted, it is completely possible for it to occur, but not to arrive at the determination of a tax at all, and hence for the latter to arise as a legal relationship. Regardless of this, the tax law relationship must terminate over time, and there is no dispute that this will happen in the cases provided for by law, but not through payment or another method for the discharge of monetary obligations, such as tax obligations.

In our opinion, when we analyze the tax in this aspect of it, it is perhaps not entirely justified to accept that its subject matter can be limited only to the payment of the tax debt. If we attempt to derive this concept from the definition of tax given by the doctrine, it is indeed so. Provided that we "look" at the legal relationship from the point of view of the passive subject in this legal relationship, its obligation is to pay the established tax, and this seems to exhaust its content. But a slightly deeper analysis of this problem area will likely lead us to different conclusions. In order for a legal relationship to terminate, it is necessary for its subjects to exercise their subjective rights in accordance with the prescriptions of the legal norm, which also exhausts its content. As we mentioned above, one of the features of the tax as a legal relationship is its public law character. This means that in order for this legal relationship to terminate, it is necessary for the active subject in it to exercise its powers related to the collection of the tax debt if it has not been paid in full or in part within the deadlines provided for by the respective law. In this direction, in order for the tax as a legal relationship to terminate, the legal fact provided for, generally speaking, in the law must occur, as a result of which the tax obligation determined by its legal basis and amount is discharged. Before it is discharged, the obligation to pay the tax remains, and the administrative bodies, in their capacity as active subjects in this legal relationship, can or rather have the obligation to exercise their powers and undertake all methods permitted by law to collect it.

In the currently effective legislation, under the norm of Art. 162, Para. 2, Item 1 of the TSSPC, taxes are defined as public claims by their legal essence, and as such, they can be discharged by all methods provided for in the law.

Part of the ways and methods for discharging tax obligations are regulated in the norm of Art. 168 of the TSSPC. Outside the scope of the above-cited provision of the TSSPC remain the following methods for discharging public claims:

- discharge through rescheduling or deferral (Art. 183 et seq. of the TSSPC);
- in cases of financial amnesty;
- revocation of an AATL in the phase of administrative or judicial appeal;
- revocation of an effective AATL under the procedure of Art. 133-134 of the TSSPC;
- revocation of an effective court decision confirming an AATL appealed before the court under the procedure of Art. 237-249 of the Administrative Procedure Code (APC).

The final conclusion we can make is that by the subject matter of the tax considered as a legal relationship, we should understand not only the payment of the tax by the obligated person, but the **discharge** of the determined tax obligation, regardless of through which of the above-mentioned methods it will be performed. And this is so because in this manner the legal relationship itself terminates, which has arisen between the state, represented by the respective competent body, and the obligated person due to the elimination of part of the factual composition that generated it.

When we analyze the matter related to the subject matter of the tax as a legal relationship, the question is raised whether we can include in it the cases when we are faced with the hypothesis of tax remission (tax retention/concession), insofar as in this case it does not lead to the discharge of the tax obligation? In our opinion, the answer to this question should be positive, as we can derive this position of ours from the legal essence of remission. The legal definition of this concept is contained in the norm of Art. 166 of CITA and reads that the remission of corporate tax is the right of a tax-obligated person not to remit to the state budget the amounts determined under the procedure of this Act for corporate tax, which remain in the patrimony of the tax-obligated person and are expended for purposes determined by law.

In this case, the circumstance that this is a form of tax relief in corporate taxation and does not lead to a real discharge of the tax obligation is irrelevant. Leading for me here is that it will be part of the factual composition that will lead to the arising of the tax as a legal relationship, and this is the main argument with which I support such a proposition. Of course, the presence of such an exception can in no way exert an influence on the understanding of the subject matter of this specific legal relationship.

From this point of view, if we turn to tax law relationships, we will see that they can also terminate without it being necessary to arrive at the discharge of the tax. We have already drawn attention to the fact that this will be so in the absence of an object of taxation, as in such a hypothesis the tax law relationship can arise, but its termination will not be related to the discharge of a tax obligation. In this sense, if we build upon the theoretical construction that the object of tax law relationships is significantly broader from its substantive side, we will undoubtedly establish that this also applies to their subject matter. Generally speaking, through the prism of the passive subjects in the legal relationship, its subject matter is related to the performance of an obligation provided for by law in connection with taxation, and this will not always represent the payment of a tax due or discharge through some of the other methods provided for by law.

3. **Chapter Two.**

Chapter Two of the dissertation examines the issues related to the arising of the tax as a legal relationship.

Paragraph one is dedicated to the factual composition upon the realization of which this legal relationship specific to tax law arises. In legal theory, there is an expressed view that the classic law-generating fact in public law is the authoritative act. Looked at through the prism of administrative law, which has as its subject matter the regulation of social relations in the sphere of executive power, this has its foundation. The administrative act generates its legal consequences unilaterally as a result of the authoritative manifestation of the will of an organ competent for this, and the parties in the substantive administrative legal relationship thus created are not on an equal footing. The creation of the administrative legal relationship, regardless of whose initiative it was, and the determination of its content are placed in dependence on the manifestation of the will of the administrative organ. Only it has the right, under strictly defined conditions, to amend the legal relationship or to terminate it. Even when the law allows for the possibility of the citizen having only rights and the administrative organ having only obligations towards them, the relationship will still remain administrative law in nature with an authoritative character due to the unilateral arising of rights and obligations for its subjects.

The position regarding the authoritative act as the main law-generating fact in the field of public legal relationships as a whole has its place in the arising of the tax as a legal relationship, but not in this almost absolute sense attributed to it as if it were the only possibility for the arising of such legal relationships. Additional arguments in support of this position of ours can be derived from the legal essence of the Act for Assessment of Tax Liabilities (AATL). One of the most essential features of this type of act is that they are **declarative** by their legal essence, which means that the tax obligation does not arise, is not generated, on the basis of the authoritative manifestation of the will of the respective competent organ materialized in the act issued by it, but by virtue of the law. The tax law norm is the one that regulates when in time and upon the occurrence of exactly which legal fact tax obligations arise for persons. The AATL only makes the obligation liquidated and exigible, i.e., determines it by basis and amount, as well as its maturity. It recognizes subjective rights and obligations that arose prior to its issuance, and its issuance plays the role of an enforcement title. An AATL cannot be anything other than declarative, which stems from the method of legal regulation used in tax law – authoritative from the position of bound competence.

Tax law follows the view adopted in the general theory of law that in order for a legal relationship to arise, the legal fact provided for in the legal norm must occur. After this happens, the rights and obligations provided for by law arise for the addressees of the legal norm, respectively the subjects of the legal relationship, which they must exercise. In doctrine, it has long been accepted and the circumstance is not subject to doubt that the legal facts upon the occurrence of which legal relationships in this legal branch are generated belong to the category of legal events. This is so because conscious human will is not directed directly towards the occurrence of the legal consequences envisioned in the tax law norm.

In order to clarify the issue of in which cases the arising of the tax law relationship will also lead at a later stage in time to the generation of the tax as such, it is necessary to pay attention to the specific legal fact that lies at the foundation of the tax law relationship. In cases where the legal fact can potentially lead to the arising of a tax obligation, the tax law relationship must be viewed as the prerequisite from which the tax as such could be generated. And this, in our opinion, will be so provided that this legal fact is in a causal relationship with the object of taxation for the respective tax. Such a fact will be the receipt of income, revenue, the performance of an activity, the realization of a taxable supply within the meaning of the VAT Act, the acquisition of real estate, etc., i.e., the tax event. The date on which this legal fact occurs is defined in tax law as the date of occurrence of the tax event, which, with a view to the studied matter, we can define as the date on which the substantive tax law relationship will arise. It is precisely this legal fact – **the occurrence of the tax event** with respect to a specifically obligated person – that is the first of the factual composition, which in its entirety and sequence of realization as a result of the logical interconnection between the individual facts will lead to the arising of the tax as a legal relationship.

The next legal fact, in a chronological aspect, which must be realized in order for the tax as a legal relationship to arise is the **expiration of the tax period** for the respective type of tax. This is a time limit established by law, after the expiration of which an obligation arises for the persons bearing the tax burden and/or who are payers of the tax to file a tax return with which they themselves determine the legal basis and the amount of the taxes due by them. Only after this time limit expires do the revenue bodies have the authority to exercise tax and social security control aimed at determining tax obligations with the respective act. They can realize this power of theirs regardless of whether a tax return has been filed or the person has evaded this obligation of theirs.

In essence, this is the **final legal fact** that must be realized for the tax as a legal relationship to arise.

If we systematize what has been said so far, the conclusion we can make is that the tax considered as a legal relationship arises in the presence of several interconnected legal facts, different in their legal essence, which occur in a sequence determined by the tax law, and in their entirety generate legal consequences, i.e., we are faced with a complex homogeneous factual composition that generates this legal relationship.

These legal facts, arranged chronologically, are the following:

- occurrence of the tax event provided for by law, i.e., arising of the tax law relationship, which fact from the point of view of its legal essence represents a legal event;
- expiration of the tax period – a time limit provided for by law, upon the expiration of which an obligation arises for tax-obligated persons to file a tax return with which to determine the legal basis and the amount of the taxes due by them or therewith to provide information on the basis of which the organs authorized for this will assess the respective tax. This legal fact also represents an event by its legal essence;
- determination of the legal basis and the amount of the tax due by the person, which is performed with a tax return or with an act issued by the competent organs – revenue bodies in the Territorial Directorate of the National Revenue Agency (TD of NRA) by place of registration or by explicitly authorized officials of the municipal administration. These two legal facts by their legal nature are legal actions.

The necessity of a comprehensive view of this part, which is important in our opinion for the clarification of the tax as a legal relationship connected with its arising, has motivated the author to examine also the various methods for determining the legal basis and the amount of tax obligations as perhaps the most important part of the factual composition that generates it and to which the subsequent parts of this chapter of the dissertation are dedicated.

Paragraph two investigates the matter related to the determination of the tax through a return on the part of the obligated persons.

The filing of tax returns is a personal obligation that arises for tax subjects on the basis of the law (obligatio ex lege). The tax law is the one that regulates within what time limit, with respect to exactly what tax obligation, and who should file a tax return. The fulfillment of this obligation marks the beginning of the taxation proceeding. The grounds for such a position are at least two. The first is that the filed tax return serves as a basis for taxation, i.e., for a lawful AATL to be issued. Of course, there is no obstacle for a lawful AATL to be issued even when a tax return has not been filed, but its presence, with a view to the information contained therein, facilitates its issuance. The second is that with the filing of the first tax return, the general registration for a part of the tax subjects is performed (Art. 82, Para. 2 of the TSSPC).

Bearing in mind that the tax return is filed by tax subjects, by its legal essence it represents a private document and as such must mandatory be signed. It can be filed both by the person who is the bearer of the tax obligation and by their representative. Representation in these cases can arise on the basis of the law, as is the case, for example, with minors, or on the basis of an explicit authorization, which can be with or without notary certification of the signature of the representing party, at the discretion of the tax subject. In a number of cases, the obligation to file a tax return is not linked to realized economic activity for the period of time covered by the return. Thus, for example, the provision of Art. 125, Para. 4 of the VAT Act regulates that registered persons are obliged to file a monthly VAT return for the respective tax period also when they have not performed taxable supplies or acquisitions.

In our tax law, tax returns are always filed in writing, according to an approved template.

The filing of the respective tax return can be carried out at the offices of the TD of NRA by place of registration of the tax subject, through a licensed postal operator, or electronically.

The provision of Art. 104 of the TSSPC provides for the possibility for persons to make corrections to an already filed tax return by filing a new return, but before the expiration of the time limit established by law for its filing. If the correcting tax return is filed after this time limit, it does not generate legal consequences. An exception to this rule will be present when the revenue bodies have granted the person a time limit to perform a correction and it expires after the statutorily established one or is shorter than it. In the first case, the filing of the return within the time limit indicated by the administrative organs will generate the legal consequences provided for by law, and in the second case, the statutory time limit will apply. This is the general procedure for correcting an already filed tax return, with special rules provided for in individual tax laws. The presence of a mechanism for the correction of an already filed return is indisputably a step forward in the development of our tax legislation.

The obligation to file a tax return is of an administrative nature, is an expression of the authoritative powers of the state, and its non-compliance constitutes an administrative offense.

We will also be faced with the hypothesis of an administrative offense when the data in the return filed within the time limit are incorrect and lead to the determination of the tax obligation in an amount different from the one actually due. In some cases, the failure to file a tax return or the incorrect declaration of data therein can also lead to the arising of criminal liability for the tax subject.

In legal literature, it is accepted that this is due to the binding force that tax returns possess with respect to the declared facts and circumstances for the persons who have filed them.

The negative legal consequences of failing to file a tax return within the statutorily established time limit or of incorrectly filling it out are not limited only to the possible imposition of administrative or criminal liability. When such a return has not been filed, the revenue body, when assessing the tax obligations of the person, is obliged to apply the special procedure for an audit regulated in Art. 122-124 of the TSSPC.

The acceptance of the tax return by the organs of the NRA in no way officializes it, i.e., does not give it the quality of an official document, and even less of some auxiliary financial act.

On the basis of this, we can accept that from the point of view of its legal essence, it is a ***private document with which the person itself determines the tax due by them or contains information provided by the tax subject regarding facts and circumstances that are of significance for the determination of the tax obligation, and which they, by virtue of the law, are obliged to provide to the revenue administration.***

Paragraph three has as its subject matter the determination of the tax with an act by the revenue bodies as part of the complex factual composition generating the tax as a legal relationship.

In **Item 1** thereof, the act issued under the procedure of Art. 106 of the TSSPC is analyzed. In order to proceed to the issuance of this type of act, the cumulative presence of the following prerequisites is necessary:

- the person must have filed a tax return with which it itself determines, calculates the amount of the taxable (tax) base and of the tax due by it for the respective tax period;

- the revenue body must have established irregularities that exert an influence on the amount of the tax base, respectively the amount of the tax due. This discrepancy may be due to an incorrect mathematical calculation by the tax subject of the taxable base and/or the amount of the tax, an incorrect determination of one or several elements of taxation – the tax event, the date of its occurrence, etc. It is possible that the person has not correctly determined also the legal basis on the basis of which the tax is due. The reason that led to this discrepancy is irrelevant; relevant in this case is that this irregularity has exerted an influence on the amount of the tax due, regardless of whether this is in the direction of its reduction or increase, or on the legal basis that generated the tax obligation;

- these discrepancies must not have been removed under the procedure of Art. 103 of the TSSPC after the return was accepted by the organs of the revenue administration. The cited provision of the TSSPC regulates that the revenue body is obliged to notify the person to correct an already filed return within a 14-day period from receipt of the message when, upon its acceptance, discrepancies have been established between the information contained in the tax return and the requirements of the law. This procedure is resorted to also in cases of discrepancy between the data contained in the return and those that came to the knowledge of the revenue bodies from other administrative organs or third parties.

When it establishes the presence of these three prerequisites, the revenue body issues an act for assessment of the tax obligation with which, pursuant to Art. 106, Para. 1 of the TSSPC, it "...corrects the return". Here, the expression used by the legislator should be understood in the sense that a proceeding is present for the assessment of the legal basis and the amount of the tax, which differ from those indicated in the tax return.

In **Item 2**, attention is turned to the act issued under the procedure of Art. 107 of the TSSPC, with which the revenue bodies assess obligations for taxes. This type of AATL is issued in cases where persons, through the filing of a tax return, provide information on the basis of which the revenue body determines the taxable base and the amount of the tax obligation. By means of the issuance of such acts, certain tax obligations are determined under the procedure of the LTFA – the inheritance tax, in isolated cases for the real estate tax (Art. 14, Para. 1 of the LTFA), and the motor vehicle tax (Art. 54, Para. 4 of the LTFA).

The specific thing about this type of act is that its issuance is not always imperative in order to arrive at a voluntary payment of the tax due by the persons. The general rule is that the person is notified of the tax due by them through the sending of a message with which the revenue body notifies them of the tax due by them based on the information that the tax subject has provided with the return filed by them. Upon request on the part of the person, the administrative organ is obliged to present a reference regarding the method in which the obligation was calculated, its type, the legal basis, the total and the unpaid amount. The analysis of the norm of Art. 107, Para. 3 of the TSSPC shows that the issuance of this type of act is proceeded to:

A. Upon explicit request of the obligated person. It makes an impression that the TSSPC does not introduce any requirements as a condition for the admissibility of such a request, except that it be made by the tax subject, respectively their representative or legal successor. This means that whenever the person wishes, regardless of the reasons that motivated them, they can request the issuance of such an act and the respective administrative organ is obliged to issue it. The cited provision is imperative in its character and leaves no room for interpretation, which means that the revenue body cannot refuse the issuance of the act under any pretext.

B. Upon initiative of the revenue body when:

- a discrepancy has been established between the declared data and the information received from third parties or organizations, provided that the procedure under Art. 103 of the TSSPC has been exhausted;
- a tax return has not been filed;
- the obligation has not been paid within the time limit and no audit has been performed for the tax period. The issuance of an act in these cases is justified since the message with which the persons are notified of the amount of the tax due by them is not a valid enforcement basis pursuant to Art. 209 of the TSSPC.

It is necessary to draw attention to the fact that, unlike the act under Art. 106 of the TSSPC, with this type of act it would not be possible to perform a set-off or refund, since they do not perform a correction of an already declared tax, but an initial determination of the legal basis and its amount, based on information regarding the object of taxation provided by the tax subject.

Since both types of AATL are issued after a verification has been performed, a similarity is observed in them in the legal relationships that arise, develop, and terminate during its performance. The legal relationships that arise when performing the verification could be separated into two main groups.

The first group of legal relationships are those that arise between the revenue body performing the verification itself and subsequently issuing the act, and the tax subject. They develop in the course of the verification and we can define them as mandatory, since without them it is impossible to realize the control activity of the administrative organ.

The second group of legal relationships can arise between the revenue body and third parties who have some relationship to the establishment of the facts and circumstances leading to the determination of the taxable base and the amount of the tax due. Their arising is not always imperative and depends on the specific case placed before the revenue administration, which gives us ground to characterize them as non-mandatory or auxiliary, secondary legal relationships.

The provisions of Art. 106, Para. 3 and Art. 107, Para. 3 of the TSSPC, as well as the practice of the court in tax cases relating to this type of act issued by the revenue bodies, are subjected to critical analysis.

In **Item 3**, the matter related to the determination of the legal basis and the amount of the tax with an audit assessment act as part of the factual composition leading to the arising of the tax as a legal relationship is investigated. Attention is turned also to both its varieties known in our legal system – the audit assessment act issued under regular accounting and under the procedure of the special proceeding under Art. 122 of the TSSPC. A thorough analysis has been made of these two types of acts, including in a historical-legal aspect, as the main ones with which obligations for taxes are assessed and with a view to the broad powers that the revenue bodies possess with them within the meaning of Art. 118 of the TSSPC. The procedure for their issuance is examined, including in a historical aspect, with the interpretative practice of the SAC regarding the scope of the personal competence of the revenue bodies and on questions related to their regularity being subjected to critical analysis. Proposals have also been made for amendments to the currently effective regulatory framework in the direction of its improvement.

In paragraph four, attention is turned to the assessment of the tax through an act for set-off and refund. By its legal essence, it is an individual administrative act, which, with a view to the matter in which it finds application, we define as an individual tax act. As such, it has all the features characteristic of an IAA, but at the same time possesses the specific features inherent to the other types of AATL, with the thesis of its declarative character being substantiated.

With a view to this, the question also arises regarding the possibility, with this type of act issued by the organs of the revenue administration, to assess obligations for taxes, respectively for it to be part of the factual composition that generates the tax as a legal relationship.

In our opinion, the answer should be positive, and we will attempt to present the relevant arguments in support of this position of ours.

One of the features of these acts, pursuant to Art. 129, Para. 2 of the TSSPC, is that they can be issued after the assignment of a verification or an audit. It is a matter of administrative discretion (operational independence) as to which of the two forms of tax and social security control the authorized revenue body will stop in its assessment, after its initial assessment of the merits of the set-off is positive. Regardless of which one will be applied, the goal pursued in the assessment stage is to clarify whether the legal facts provided for in the tax law are present, which would condition the issuance of an ASR (Act for Set-off and Refund) with which to perform a set-off and/or refund of an unduly paid or overpaid tax.

When the two counterclaims are determined with the respective effective acts, we cannot accept that tax obligations are assessed with the ASR. It will be so when the audit assessment act has been revoked by an effective court decision and the state owes the return of the unduly paid, while at the same time a sanction has been imposed on the same person with an effective penal decree for an administrative offense committed against tax legislation. In this specific case, the assessment stage preceding the set-off itself is not characterized by any complexity, since during the verification or audit it is not necessary to newly establish or correct the legal basis and/or the amount of either of the two counterclaims. Therefore, with an ASR issued in this hypothesis, it cannot be claimed that obligations for taxes are determined from the outset.

However, this is not always the case. It is possible, and it not infrequently happens, that one of the counterclaims, and sometimes both, are not determined by an act of an administrative organ or an effective court decision. As an example in this respect, we can point to the set-off and refund of the result for the tax period – the tax for refund under the procedure of the Value Added Tax Act (VATA), where the most ASRs are issued.

The topic of the study does not allow us to thoroughly enter into the problem area related to the arising of the tax credit and the procedure for its deduction; therefore, in only a few sentences, we will attempt to bring clarity to this specific mechanism in VAT taxation, which will help us substantiate our position that it is possible to determine tax obligations with an ASR.

Within a 14-day period after the expiration of the monthly tax period, persons who are registered under the VATA are obliged to file a monthly VAT return. With it, pursuant to Art. 88, Para. 4 of the VATA, they themselves determine their result for the tax period, which can be tax for payment or tax for refund. When the amount of the tax charged by the person for the respective period exceeds that of the tax credit, the difference represents tax for payment, and conversely, when the magnitude of the tax credit exceeds that of the tax charged by the person, the result for the period is tax for refund.

Provided that the result for the tax period is tax for refund, pursuant to Art. 92, Para. 1, Item 1 of the VATA, the revenue body is obliged to perform a set-off if, by the date of filing the monthly VAT return, other exigible and unpaid obligations collected by the NRA have arisen. If such obligations are not present or if, after the performed set-off, tax for refund remains, it is deducted by the registered person during the next two consecutive tax periods. It should be pointed out that the concept "deduction" used by the legislator is equivalent to set-off.

This is also the most essential feature of set-off in taxation under the procedure of the VATA, expressed in the possibility for the registered person itself to perform a deduction of the tax during the next two consecutive tax periods. The subjective right granted by virtue of the law to persons to themselves perform a deduction is by no means absolute, and the tax for refund will not be returned merely because a monthly VAT return has been filed with which it was declared. The tax return, as we indicated earlier in this work, is a private document by its legal essence and possesses binding force only with respect to the subject that filed it. In addition, the specified subjective right of persons registered under the procedure of the VATA is limited in time and covers only the two consecutive tax periods after the arising of the tax for refund as a result for the tax period.

After the expiration of this time limit, if tax for refund is still present, it is set off by the revenue body for obligations collected by the NRA that have arisen by the date of the monthly VAT return filed for the last period and/or is refunded to the person. For this purpose, it must undertake the procedure regulated in Art. 129, Para. 2 of the TSSPC, i.e., perform a verification or an audit.

The main goal of tax and social security control in this specific hypothesis, regardless of under what form it will be realized, is to establish whether the registered person has lawfully determined the amount of its tax base when calculating its result for the tax period. Since the result for the tax period represents the difference between the amount of the tax charged by the person for taxable supplies performed by it and the amount of the tax credit, both magnitudes will be an object of control. This means that the control activity carried out in the course of the assessment stage preceding the issuance of the ASR will be in two directions. On the one hand, the revenue body will have to establish whether the person complied with the requirements of Art. 26-27 of the VATA when determining its tax base, and hence whether the amount of the VAT charged by it was lawfully determined. The other "direction" of tax and social security control will be aimed at whether the registered person complied with the provisions of the law regarding the arising and exercise of the right to a tax credit, whether its amount was correctly determined, etc., and in both cases, if irregularities are found, they should be corrected with the act for set-off and refund. Whether a non-compliance with the substantive tax law will be established when determining the result for the tax period on the part of the registered person and whether it will actually be corrected with the ASR is not so essential. What is more important in the present case is that the tax and social security control, regardless of its form, verification or audit, is aimed at establishing the legal basis and the amount of the claim of the tax debtor against the state in its capacity as a creditor. And the determination of the amount of the claim in the present case is inseparably linked with the realization of control regarding the lawful determination of the tax base and the amount of the tax due for the taxable supplies of goods and services performed by the person, i.e., the total amount of the charged tax, which participates as an independent magnitude in the formation of the result for the tax period. Incidentally, in the same manner, control is performed by the revenue body also with respect to the lawful determination of the tax base and of the tax due on supplies under which the person is a recipient and which form the magnitude of its tax credit. Hence the logical conclusion follows that, as a whole, the legal basis and the amount of the claim of the registered person are assessed with the issued ASR, with which the set-off and/or refund itself is performed. This also gives us ground to answer positively to the question of whether tax obligations can be assessed with an ASR.

Still, it would be far-fetched to say that obligations for taxes are always determined with an ASR. This necessitates the deriving of a criterion that would allow us to determine when with this type of act issued by the revenue administration tax obligations are assessed, respectively will be part of the factual composition upon the realization of which the tax as a legal relationship will arise.

It is obvious that the form of tax and social security control cannot serve as such, since, as we already said, this separation is to a significant degree conventional. In our opinion, the main criterion that will allow us to determine when tax obligations are assessed with an ASR is the direction of the authoritative manifestation of the will of the revenue body in the assessment stage preceding the issuance of the ASR. The direction of the authoritative powers of the revenue body reveals to us the subject scope of the control activity, i.e., what is the object of the tax and social security control, regardless of whether it is realized under the form of an audit or a verification. When the object of control, besides everything else, is also whether the person correctly and in accordance with the requirements of the applicable substantive tax law determined the tax base and/or the amount of at least one of the two counterclaims, there is no doubt that tax obligations are determined with the issued ASR.

Outside the considered hypothesis of set-off and refund of the tax for refund under the procedure of the VATA, it is possible to determine obligations also for other types of taxes with an ASR. The TSSPC does not exclude the possibility for the claim of the debtor, when it arises on the basis of a filed tax return, to be corrected in the direction of its reduction or increase, where here again the object of control under the form of an audit or verification will be the tax base and the amount of the tax due, which can inevitably reflect upon the amount of the claim claimed by the person.

In the same way, things will stand when a set-off is performed for an obligation that arose as a consequence of a filed tax return. The tax obligation thus determined by the person can also be increased and reduced if, in the course of the audit or verification, it is established that the legal norms applicable to the specific case regulating the determination of the tax base and the amount of the tax due were not complied with.

In the indicated examples, it is precisely the ASR that is the act with which the tax declared with the tax return (as overpaid or respectively due) can be changed both by basis and by amount.

The conclusion we can make is that it is possible to determine obligations for taxes with an ASR in cases where the tax and social security control, regardless of its form (verification or audit), in the phase of the assessment stage preceding the issuance of the act has the possibility to be aimed at correcting the tax base, respectively the amount of the tax due, which forms the magnitude of the claim and/or obligation subject to set-off.

The provision of Art. 129, Para. 3 of the TSSPC is subjected to critical analysis through the prism of the case law of the CJEU on preliminary rulings in tax cases as contradicting both EU law and the rule of stability of an effective individual administrative act.

4. **Chapter Three** In this chapter, the subjects of the tax as a legal relationship, its subject structure, as well as the complications that may arise are investigated in detail.

In paragraph one, sectoral and special tax legal capacity are examined and analyzed as necessary prerequisites for a person to be able to be constituted as a subject of the legal relationship.

In legal science, and more precisely in the general theory of law, it is accepted that legal capacity as a socio-legal quality can be differentiated into general, sectoral, and special.

General legal capacity is the abstract possibility of persons to be legal subjects at all in a legal system.

Sectoral legal capacity presupposes the possibility of persons to be constituted as legal subjects in a specific legal branch. It relies on general legal capacity and is its derivative, insofar as if a person does not possess general legal capacity, i.e., if it is not recognized by law at all as its subject, it cannot acquire a sectoral one either.

Special legal capacity is the ability of the person to be a subject only in a specific circle of legal relationships within a given legal branch.

The place of tax law as an independent branch in our legal system is indisputably that circumstance which conditions the presence of a separate sectoral legal capacity, which has its own features distinguishing it from that of the other legal branches.

On the basis of this, we can attempt to give an exemplary concept of **tax legal capacity** as the abstract possibility, recognized and guaranteed by the norms of tax law, of legal subjects to be participants in tax law relationships. Here it should be pointed out that tax law, similarly to financial law, and as every other legal branch, also operates with the concepts of a subject of tax law and a subject of the legal relationship. All of them in their semantic content are identical to those used in other legal branches, with the only difference between them being the circle of social relations, i.e., the legal relationships in which persons potentially can or actually do participate. In this sense, **a subject of tax law** is that person who possesses the potential possibility to be constituted as a participant in one or more tax law relationships and who, by exercising the powers or subjective rights and obligations granted to them by virtue of the law, can exert an influence on their arising, development, and termination. This is also the main prerequisite for a person at a certain stage in time to be constituted as a subject of the tax as a legal relationship.

A subject of the tax law relationship is a person who really, actually participates in a concrete, precisely determined tax law relationship through the powers or subjective rights and obligations that it possesses and as a result of which influences its arising, development, and termination. Of course, there is no obstacle for a legal subject, regardless of whether it will be a state organ, another collective, or an individual subject, to participate also in more than one tax law relationship.

In our opinion, this theoretical construction should be expanded, and we should include in it the concept of a subject of the tax as a legal relationship. The main argument upon which we can stand in defense of this position of ours is the unquestionable presence of this legal relationship inherent only to tax law and its specific distinctive characteristics, which we derived and analyzed earlier. This concept, of course, is in a causal relationship with the previous two, i.e., if we can express it so, a derivative of them. In this sense, in order for a person to be able to be constituted as a subject of the tax considered as a legal relationship, it must mandatory possess the quality of a subject of tax law and have entered as such into a specific tax law relationship.

A subject of the tax as a legal relationship is a precisely determined person for whom, by virtue of the law, the tax burden arises and/or for whom the tax is determined by legal basis and amount with a tax return or an act of an organ competent for this, and who, exercising the subjective rights, obligations, or powers granted to them by virtue of the law, can discharge the tax obligation through some of the methods provided for in the law. To them, we must add also the persons who, by virtue of the law, are obliged to pay the tax obligation of the bearer of the tax burden and/or the payer of the tax. And here it is completely possible for a person to be a subject of more than one tax considered as a legal relationship depending on the economic activity.

In the theory of law, when the types of legal capacity are considered, the view is supported that besides general and sectoral, there exists also special legal capacity. The latter represents the ability of the person to be a subject only in a specific circle of legal relationships within a given legal branch.

In my opinion, when investigating questions related to special legal capacity, we must not direct ourselves towards the hierarchical structure on the basis of which these legal relationships, in particular tax ones, arise, develop, and terminate. It should be sought in the factual composition of the tax law norm, which allows, in the presence of the conditions provided for therein, a person, regardless of their legal-organizational form, to be able to be constituted as a subject in a specific circle of legal relationships regulated by tax law. This requires that participation in these tax law relationships, which are narrower in their scope, be conditioned by the presence of certain prerequisites envisioned in the legal fact of the legal norm, without which the person cannot acquire the quality of a tax subject, i.e., they must have a constitutive character. It would be erroneous if these prerequisites were sought in the object of taxation with a specific type of tax such as activity, income, profit, property, or consumption of goods and/or services. The object of taxation finds manifestation in two directions. The first is that it presupposes the presence of individual types of taxes – corporate tax, where the object of taxation is the tax profit, tax on expenses under the CITA, the various types of income taxes under the PITA, LTFA, etc.

The second is that the object of taxation can lead to the existence of one or another regime of taxation with a specific type of tax, and not to the arising of special legal capacity to be viewed as a prerequisite for its application. Thus, for example, under the special regimes of taxation under the VATA, rules have been adopted that differ from the generally accepted ones. The adoption of such an approach in their taxation is dictated by the type of service or of the good over which the right of ownership is transferred or property rights are established. This is the main criterion by which supplies of goods and services subject to taxation under a regime different from the general one can be distinguished. These special rules can find concrete expression in the formation of the tax base, the occurrence of the tax event, in the right to a tax credit, or the necessity of a special registration for their realization. For a person who has already once acquired the quality of a subject in VAT taxation, no special legal capacity is necessary to allow them to apply the respective regimes of taxation.

All of this, in our opinion, leads to the necessity for special legal capacity not to be sought along the "vertical" of the tax law relationship, where it cannot exist, but along the "horizontal", i.e., its acquisition to be a necessary condition that the tax law norm requires in order for the person to participate in a specific type of legal relationships as a tax subject and, as a final result, to be constituted as a subject of the tax as a legal relationship.

In this direction, an attempt is made in the work to substantiate the thesis for the presence of special legal capacity, which in our opinion can be acquired only by the passive subjects of tax law, which presupposes the possibility of persons to be constituted as subjects only in a specific part of the legal relationships appearing as its subject matter. A starting point, in our opinion, in such an approach should be the clarification of the mechanism of taxation with some of the types of taxes adopted in our tax system, and more specifically of the value added tax.

The essential characteristics of the value added tax, briefly indicated in the study, predetermine its specific mechanism of taxation. In order for a person to be able to join in their capacity as a full-fledged subject in VAT taxation, i.e., to be able to charge VAT and to exercise their right to deduct a tax credit and with respect to them the tax to be non-cumulative, it is necessary for them to be registered under the procedure of the VATA. Only this category of persons is fully covered by the mechanism of the value added tax and does not bear the final tax burden.

In modern legal doctrine, an opinion is expressed that when, by virtue of the law, tax subjects are assigned the obligation to undertake procedural actions in connection with special registration for indirect taxes, their fulfillment does not create a special tax legal capacity. These actions do not make a person or an entity a tax subject. The special registration indicates that persons must charge VAT. If persons have not fulfilled their obligation to register but meet the conditions for mandatory registration, they are obliged to charge VAT. The lack or presence of special registration does not generate the obligation to charge tax. The substantive prerequisites for the arising of the obligation for indirect taxes are different and do not depend on the timely fulfillment of the obligation for special registration. The termination of the special registration does not mean that the person has ceased to be a tax subject, but only that they do not charge indirect taxes.

Other authors are also of the opinion that the lack of general and special registration cannot be a prerequisite for the constitution of persons as tax subjects. They are tax-obligated persons regardless of their tax registration. Tax registration, both general and special, is viewed as an additional obligation created by the legislator to put persons on notice, to keep them on tax record, i.e., to the foreground is placed, conventionally speaking, the "informational" function of registration. Indisputably, tax registration, regardless of its type, has such a function, and it should by no means be underestimated. But with such a proposition we could not agree, since in our opinion it views registration only as a legal action (a procedure established in the law) and to a certain extent neglects its legal essence by abstracting itself from the specificity of value added tax taxation and the legal consequences that it generates.

Of course, beforehand we want to emphasize that it would be a mistake if we accept that tax registration at all – meaning the general one under the TSSPC – has any relationship to legal capacity in tax law. General tax registration can rather be viewed as a preliminary stage in the proceeding for tax and social security control with a view to the information contained in the registers under Art. 81 and 87 of the TSSPC, which applies in equal measure to special registration under the VATA, insofar as under it the respective registers are also created and maintained. But this by no means implies that an equal sign can be placed between the two types of registration.

General tax registration is not and cannot be viewed as a prerequisite for the arising of legal capacity. The various substantive tax laws that regulate the remaining types of state and local taxes (CITA, PITA, LTFA, TIPA) in no way link the registration of a person with the possibility for them to acquire the quality of a tax subject in taxation with any of these taxes, respectively do not use the concept "registered person". Things stand in exactly the opposite direction under the special registration under the VATA, and here, in the legal consequences that it generates, is the essential difference between the two types of registration known in our tax law.

In tax law theory, registration under the procedure of the VATA is defined as **special**, insofar as it is made only by a specific circle of tax subjects in connection with their VAT taxation. It is perceived also as secondary because a necessary prerequisite for its realization is the presence of a general tax registration under the procedure of Art. 82 of the TSSPC, where, unlike it, it is not performed ex officio, but through the issuance of an act for registration pursuant to Art. 101, Para. 7 and Art. 102, Para. 1 of the VATA. In this direction, it is necessary to turn attention to the circumstance that special registration under the procedure of the VATA has **a constitutive effect**, which is confirmed by the fact that only after it is realized can the person be part of the mechanism of VAT taxation. This is the most essential legal consequence of this type of registration, which allows a person to be constituted as an active participant, a subject in the mechanism of VAT taxation. Only for registered persons, after the occurrence of the date of occurrence of the tax event, does the obligation arise to charge VAT through the issuance of a tax invoice under the procedure of Art. 113 of the VATA or a protocol under Art. 117 of the Act. These are also the persons for whom, pursuant to Art. 25, Para. 6, Item 2 of the VATA, a ground arises for exemption from charging tax for exempt supplies and supplies with a place of performance outside the territory of our country.

In the next place, the tax credit in VAT taxation, which is one of the main institutes of tax law in taxation with this indirect tax, is linked with the quality "registered person" pursuant to Art. 68, Para. 1 of the VATA. The right to deduct a tax credit as a subjective non-self-executing right, representing the opportunity recognized and guaranteed by law for the recipient to deduct its tax credit in the manner provided for by law, is also in the patrimony only of persons registered under the VATA. The specified regulatory act introduces and uses the concept "**registered person**", in this manner designating the persons tax-obligated under the VATA, i.e., those who are active participants in the mechanism of VAT taxation. This means that the subject of the substantive tax law relationship in VAT taxation is precisely the "registered person". Persons acquire this quality of theirs only after some of the registrations under the VATA have been realized. Said in other words, the procedure for registration under the Act leads to the arising of a full-fledged tax subject for the purposes of VAT. Especially clearly this is seen when we are faced with the hypothesis of registration upon initiative of the revenue administration. In such cases, pursuant to Art. 102, Para. 1 of the VATA, the revenue body that has established that the person has not fulfilled its obligation to register registers it if the conditions are present. Only after this, pursuant to Art. 102, Para. 2 of the VATA, is the procedure proceeded to for the assessment of the tax obligations of the person with an audit assessment act, accepting that the person owes tax for the taxable supplies and taxable intra-Community acquisitions performed by it and for the taxable supplies of services received for which the tax is exigible from the recipient:

- for the period from the expiration of the time limit within which the act for registration should have been issued, if the person filed the application for registration within the time limit, until the date on which it was registered by the revenue body;
- for the period from the expiration of the time limit within which the act for registration should have been issued, if the person filed the application for registration within the time limit, until the date on which the grounds for registration ceased to exist.

Pursuant to Art. 102, Para. 3 of the VATA, for the determination of the tax obligations of the person in cases where it was obliged but failed to file an application for registration within the time limit, it is accepted that the person owes tax for the taxable supplies and taxable intra-Community acquisitions performed by it and for the taxable supplies of services received for which the tax is exigible from the recipient. The cited statutory text unambiguously shows that even in this hypothesis, the person must first register under the VATA, i.e., acquire the quality of a subject of the tax, and only after that can the VAT due for the respective period be determined for it. But attention should be turned to the fact that for this entire period, a right to deduct a tax credit does not arise for the person, which is a direct expression of one of the main principles adopted in law that no one can derive rights from their own unlawful conduct.

The purpose of registration under the VATA is to determine exactly those persons who will have rights and obligations in connection with value added tax, i.e., to outline the circle of **subjects under this tax**. From what has been said so far, one of the features in the mechanism of VAT clearly stands out, and it is expressed in that the quality of a passive subject in this specific circle of legal relationships, which are part of the subject matter of tax law, is possessed only by that category of persons who have a special registration under the VATA. Only they can participate as full-fledged subjects in this limited circle of legal relationships in the field of tax law. This quality of theirs is linked with the arising of rights and obligations that are inherent only to them, but not to the other participants in tax legal relationships.

In addition to everything said so far, registration under the procedure of the VATA should with good reason also be accepted as part of the factual composition from which the obligation to charge VAT arises, and cannot be viewed merely as a legal-technical action or procedure. Its absence would also lead to the absence of an object of the tax, and under such a hypothesis, taxation cannot be performed. The special tax registration under the VATA is that which grants the quality of a tax subject to persons for the purposes of VAT, due to its constitutive effect. And this, we must emphasize once again, is a consequence of the specific mechanism of taxation with the value added tax conditioned by its multi-stage and non-cumulative nature.

It is indisputable that in order for a person to be able to be constituted as a subject in VAT taxation, it must possess sectoral tax legal capacity as an opportunity, recognized and guaranteed by the norms of tax law, to participate in the legal relationships regulated by it. It is an absolutely necessary prerequisite for the subsequent arising of special legal capacity, as a result of which persons acquire the opportunity to be constituted as tax subjects in the mechanism of the value added tax.

All of this leads to the logical conclusion that in the field of tax law, the theoretical construction can be accepted that special legal capacity is present, which allows a part of the persons possessing general tax legal capacity to participate in a narrower circle of legal relationships within the framework of the legal branch. The acquisition of this special legal capacity, i.e., the opportunity to be constituted as tax subjects in VAT taxation, is inseparably linked with registration under the VATA due to its constitutive effect, including because it appears as an element of the factual composition upon the occurrence of which the tax as a legal relationship arises.

In paragraph two of the dissertation, attention is dedicated to the active subjects in tax law who can be constituted as such in the tax as a legal relationship.

The main or, let us call it, the leading active subject in tax law is the state as a form of self-governance of society, which is constituted in various legal relationships by character, both private and public. One of the features of public legal relationships, to which tax ones belong, is that it enters into them from a position of authority and governance, which is conditioned by the method of legal regulation in these legal branches, regardless of its variety – administrative discretion (operational independence) or bound competence. In all these legal relationships, the state is constituted as a subject through various organs, each of which possesses its own competence, exercising the authoritative powers granted to it by virtue of the law, which gives us ground to define it as an active subject.

In the field of tax law, the state enters into substantive tax law relationships through the National Assembly in its capacity as the supreme organ of state power and bearer of state sovereignty. There are two norms of the Constitution that are dedicated to this matter. One is the provision of Art. 60, pursuant to which citizens are obliged to pay taxes and fees established by law in accordance with their income and property, as well as that tax relief and tax liabilities can be established only by law. The other is Art. 80, Item 4 thereof, which regulates that it is solely within its competence to establish taxes by law and to determine the rate of state taxes. In Russian legal doctrine, Prof. K. S. Belskiy fully justifiedly defines this as a legal bond between the state and the taxpayer and views it as a constitutional legal relationship between these two subjects.

In no other way in our legal system can taxes be established and their rate determined, which, as we have already turned attention to above, is the first legal fact of the complex factual composition leading to the arising of the tax as a legal relationship. In essence, the principle of the statutory establishment of taxes is the foundational one upon which tax law is built, and it determines the leading role of the state as an active subject in tax legal relationships.

The state, through administrative organs authorized for this (NRA), can be constituted as an active subject of the tax as a legal relationship in the final stages of the realization of its factual composition. This will be so when:

- the revenue bodies issue an act determining the legal basis and the amount of the tax;
- they receive payment within the time limit for voluntary performance of the tax or payment before proceedings for its enforcement are initiated, regardless of whether it is in full or in part;

- they undertake actions for enforcement of the tax not paid within the time limit for voluntary performance, including when they assign this enforcement to a private enforcement agent (PEA).

The principle of the statutory establishment of taxes finds expression also in the opportunity of the National Assembly, granted to it by the provision of Art. 84, Item 13 of the Constitution, to adopt laws for tax amnesty.

The state as a bearer of political sovereignty can also acquire the quality of a subject in substantive tax law relationships when it enters as a party into international treaties that exert a direct influence on the taxation of persons. A typical example in this respect are the Treaties for the Avoidance of Double Taxation (TADT) that our country has concluded with other states.

Another supreme organ through which the state participates as an active subject in tax legal relationships is the President of the Republic of Bulgaria, who is the head of state, embodies the unity of the nation, and represents the state in international relations. Regardless of the fact that his powers could to some extent be accepted as close to those of executive organs, he is not an organ of this power and stands outside the system of the legislative, executive, and judicial powers.

The powers of the President are regulated in the provisions of Art. 98-101, as well as in some other norms of the Constitution. Part of them are connected with the possibility for him to remit uncollectible state claims, where the constitutional text is not entirely precise in our opinion. Upon a literal interpretation, we would arrive at the conclusion that the remaining public claims are outside the scope of this power of the President, in particular municipal claims. In our opinion, logical interpretation is that which will clarify the meaning of a provision to the fullest extent, but at the same time, it is also the most difficult. In this type of interpretation, we should be guided by the fundamental ratio legis, i.e., by the purpose of the law, which means that the law must be perceived as the means through which a specific purpose is achieved. In addition, a number of techniques find application here, such as that of similarity (a pari), which consists in deriving a conclusion based on two similarities (facts, circumstances, etc.). Another technique is that of the stronger reason (a fortiori), i.e., "He who can do the greater can also do the lesser," etc.

From what has been said so far in connection with the interpretation of the above-mentioned constitutional text, we should also turn to the provision of Art. 162, Para. 1 of the TSSPC, which regulates the presence of two types of claims – state and municipal, depending on who their bearer is. The same provision envisions that the claims of the state, respectively of the municipalities, are subdivided into *public and private*. Public claims are assessed and collected in EUR and are exhaustively regulated in Art. 162, Para. 2, Items 1-9, Para. 5-7 of the TSSPC. On the principle of exclusion, all other claims of the state and municipalities fall into the category of private ones.

It is true that public municipal claims are not state claims because their bearer is the municipality, but by argument of the stronger reason, since the President can remit public state ones, there is no obstacle for him not to be able to exercise this power of his also with respect to municipal ones.

Municipalities can also be constituted as active subjects in tax law, respectively in the tax as a legal relationship. When considering questions related to the subjects in tax law, we should make a distinction between the municipality as a legal entity within the meaning of the Local Self-Government and Local Administration Act (LSGLAA) and the possibility for it to be constituted as an active subject in this legal branch. In its capacity as a legal entity, the municipality has an independent budget, which means that pursuant to the specified norm it possesses financial legal capacity, and we can fully justifiedly accept that it can be an active subject in financial law. Of course, as a personified entity, the municipality can also be a passive subject in financial legal relationships – e.g., in budget relations with the central budget under Art. 52 of the Public Finance Act (PFA).

In addition, possessing property (movable and immovable), the municipality can participate with it in civil law, obligation law, or commercial relations, a circumstance which predetermines the possibility for the same as a legal entity to be able to be constituted only as a passive subject in tax legal relationships in taxation with various types of taxes – VAT, taxes withheld at source under Art. 195 of the CITA, tax on revenues under Chapter Thirty-Two of the CITA, etc. The currently effective legislation does not allow municipalities as legal entities to be able to participate in substantive tax law relationships as active subjects.

For municipalities represented by the municipal councils as subjects of tax law in their capacity as organs of local self-government, one can speak only recently. More precisely, after the amendments to the LTFA adopted with State Gazette No. 110 of 2007, when with the newly adopted provision of Art. 1, Para. 2 of the LTFA, municipal councils were granted the power to determine by ordinance the rate of local taxes under the conditions, in the manner, and within the limits established in the law. Only after this amendment in the legislation can municipal councils perform changes in one of the elements of the tax – its rate, but within the limits established by the LTFA for the individual types of local taxes, which translated into legal language means that:

- they can determine the specific rate of the local taxes regulated in Art. 1, Para. 1, Items 1-9 of the LTFA within the limits of their administrative-territorial boundaries;
- when determining the rate of these taxes, they cannot determine a higher one than that envisioned in the LTFA for the specific tax;
- they cannot undertake any changes or amendments in the remaining elements of the tax – the legal fact that generates the tax debt, the tax event, the date of its occurrence, the tax base, the circle of tax-obligated persons;
- they cannot on their own initiative establish any other local taxes besides those indicated in the LTFA or by another regulatory act. Tax frameworks created not by law are unconstitutional.

In this manner, the fundamental principle upon which tax law is built – that for the statutory establishment of taxes – is strictly guaranteed and complied with.

Municipal councils can exercise this power of theirs through the adoption of ordinances until the end of the calendar year. Otherwise, pursuant to the provision of Art. 1, Para. 3 of the LTFA: "*Where by the end of the preceding year the municipal council has not determined the rate of local taxes for the current year, local taxes shall be collected on the basis of the effective rate as of December 31 of the preceding year.*"

Paragraph three is dedicated to the passive subjects in tax law.

The currently effective tax legislation does not operate with the concept of passive subjects. It is introduced in legal terminology and used by legal doctrine, designating therewith the persons who have a subordinate position in public law branches where the authoritative method of legal regulation is used. Judicial practice in the face of the administrative courts and the SAC also adopts this concept without embedding a different semantic content into it.

The individual regulatory acts in the field of tax law do not operate with this concept, but use the category "*tax-obligated persons*". Every tax law contains provisions regarding tax-obligated persons, in which are indicated those who can be participants in substantive legal relationships in taxation with the respective types of taxes. Tax laws regulating individual taxes, regardless of whether direct or indirect, do not give a legal definition of the concept of an obligated person.

In our tax legislation, the norm of Art. 14 of the TSSPC is the one that envisions the persons falling within the scope of the category "tax-obligated persons" or, in other words, on the basis of generic features with a maximum degree of abstractness, determines the passive subjects in tax legal relationships. Regardless of the fact that it is contained in a procedural regulatory act, it is substantive by its legal essence and regulates that this quality is held by natural and legal persons who:

- are bearers of the obligation for taxes or mandatory social security contributions. These are the persons for whom the tax burden arises as a result of activity performed by them, property possessed, income received, revenue, realized tax profit, participation in economic turnover;
- are obliged to withhold and remit taxes or mandatory social security contributions. Upon these persons, the law assigns the obligation to determine the legal basis and the amount of the tax due by the bearers of the tax burden, to withhold it and remit it to the account of the budget. This type of obligated persons stands out most vividly in taxation with those taxes where the mechanism of tax automatism is introduced. For example, in the taxation of dividend income distributed by local legal entities in favor of local legal entities that are not merchants, including municipalities under Art. 194, Para. 1, Item 2 of the CITA, the tax is withheld and remitted by the local legal entity that distributed the dividend;

- are liable for the obligation of the preceding two groups of persons. These are third parties who do not have a direct connection with the object of taxation and by virtue of the law are determined as payers of the tax on another legal basis. Into this category will fall the legal representative of an incapacitated person who is the owner of real estate and owes real estate tax under the procedure of the LTFA. To them, we can also refer the accredited representative under Art. 135 of the VATA, who represents the foreign person in all tax legal relationships in connection with VAT taxation and is jointly and severally liable with it.

Similar is the figure of the tax representative within the meaning of Art. 19 of the TIPA, who represents the insurer in tax legal relationships under this Act and is jointly, severally, and unlimitedly liable for the tax on insurance premiums.

A critical analysis of the cited provision is also made in the work with a view to the precision of the statutory text, and hence to the scope of passive subjects in tax law. Pursuant to the specified legal norm, "*Obligated are natural and legal persons...*", i.e., from the outset, the legislator approached inaccurately, not to say incorrectly, in the drafting of the text. A literal reading would mean that passive subjects in tax law can be only local and foreign natural and legal persons, which means that such cannot be other legal entities. At the same time, individual substantive tax laws include in the circle of subjects of tax law also other participants who by their legal form are not natural or legal persons.

The conclusion is substantiated in the work that in order for a person, regardless of their legal-organizational form, to be constituted as a passive subject of the tax as a legal relationship, it is necessary:

- to be a bearer of the tax burden and/or payer of a tax obligation determined by its legal basis and amount. This will be so when a legal bond of these persons with the object of taxation with the respective type of tax is present, conditioned by socio-economic prerequisites (receipt of income, mechanism of tax automatism, as is the case in the taxation of income from employment relationships, etc.);
- to be liable by virtue of the law for a specific obligation or obligations of the person bearing the tax burden and/or the one who must pay it. In this category of subjects, their legal bond with the preceding category of persons takes precedence, with the legal norm being that which constitutes them as such without taking into account any economic or other prerequisite that would connect them with the object of taxation.

Further in this part of the work, attention is turned to natural persons and the conditions they must meet in order to be able to be constituted as passive subjects in tax law, and hence as subjects of the tax as a legal relationship. A special place is reserved for sole proprietors in this capacity of theirs, with the thesis being substantiated that this category of persons should be perceived as independent subjects of tax law, different from natural persons who are not registered as such. In favor of this proposition, the relevant arguments are presented with a view to the currently effective tax legislation, including the case law of the CJEU.

In this sense is the provision of Art. 10, Para. 1, Item 2 and Para. 2 in connection with Art. 107, Item 3 of the VATA. In accordance with the first two provisions, the transfer of an enterprise of a sole proprietor under the procedure of Art. 15 of the Commercial Act (CA) is not a supply within the meaning of the VATA, and the acquirer is deemed a legal successor of the transferor with respect to all rights and obligations under the VATA, including the right to deduct a tax credit. On this ground, the purchaser of the enterprise of the sole proprietor is subject to registration pursuant to Art. 132, Para. 1 of the VATA. Under such a hypothesis, the natural person who transferred its commercial enterprise is mandatory deregistered pursuant to Art. 107, Item 3 of the VATA, i.e., can no longer be a subject of tax legal relationships in VAT taxation unless:

- the person is subject to mandatory registration under the procedure of Art. 96 of the VATA;
- the conditions under Letter "a" are not present and the person, within a 7-day period from the entry of the deletion in the commercial register, files an application for registration with the competent territorial directorate of the National Revenue Agency, in which it declares continuation of the registration under the conditions of Art. 100, Para. 1 of the Act.

A similar difference between the natural person and the sole proprietor is contained also when we are faced with some of the cases of specific registration under the VATA. Thus, upon inheritance of a natural person – sole proprietor whose enterprise is taken over by inheritance or by legacy, where the independent economic activity of the deceased person is continued by a person who is not registered under this Act and for whom the conditions for mandatory registration under Art. 96, Para. 1 are not present, the person has the right to register under this Act, with a similar opportunity provided for also when a natural person who is not a merchant is inherited (Art. 132a of the VATA).

From the indicated examples, it is visible that in the VATA, the sole proprietor appears as an independent subject, different from the natural person, of the substantive tax legal relationships that arise in taxation with this tax.

In other regulatory acts in the field of tax law, a similar difference is also made – CITA, PITA, LTFA. In the realization of administrative-penal liability for tax violations committed by persons, a similar difference is also made. The specific thing about this type of liability towards sole proprietors is that for tax violations committed by them, in accordance with Art. 83, Para. 1 of the Administrative Offenses and Sanctions Act (AOSA), a punishment of "property sanction" is imposed. Upon a natural person who is not registered as a sole proprietor under the CA, such an administrative punishment cannot be imposed.

This feature in the administrative liability of sole proprietors exists not only in tax law and, in our opinion, is indicative that these persons have their place as independent subjects in the legal relationships regarding its realization.

From these and the other examples indicated in the work, it is visible that sole proprietors can in this capacity of theirs participate as subjects in individual substantive tax legal relationships in connection with taxation with various types of taxes. A number of tax law norms contain in their factual composition the requirement for a subject of a specific tax to be a person who is a sole proprietor, and if it does not possess this quality, it cannot participate in the respective legal relationship.

From what has been said so far, the following conclusions can be substantiated:

- sole proprietors as such fall within the scope of the provision of Art. 14 of the TSSPC;
- they can in this capacity of theirs participate in specific tax legal relationships as their subjects;
- the tax law allows a person to participate simultaneously in two or more substantive tax legal relationships as a natural person and as a sole proprietor.

And this, in our opinion, means that sole proprietors should indisputably be viewed as subjects of tax law in this capacity of theirs, respectively can participate as subjects of the tax viewed as a legal relationship.

Further on, attention is turned to legal persons in their capacity as subjects of tax law.

In tax law, both local and foreign legal persons are recognized as subjects. To all of them, the law has granted subjective rights and obligations and has recognized their potential opportunity to be participants in substantive tax legal relationships.

The main regulatory act regulating the legal status of legal persons for the purposes of taxation is the CITA. The cited Act recognizes as subjects of substantive tax legal relationships two types of legal persons – local and foreign. The main criterion used by the legislator in their differentiation is the procedure under which their registration was performed, on the basis of which they acquire their commercial or, generally speaking, their civil legal capacity. In this manner, in accordance with the provision of Art. 3 of the CITA, local legal persons are considered to be:

- those that are registered in accordance with the requirements of Bulgarian legislation, regardless of whether they are capital companies under the CA or their registration is under another regulatory act. Influence in this respect is exerted neither by the ownership of the capital of the legal person, nor by the fact that foreign persons can participate in it as founders;

- the companies established in accordance with Council Regulation (EC) No. 2157/2001, and the cooperatives established pursuant to Council Regulation (EC)

No. 1435/2003, when their registered office is in the country and they are entered in a Bulgarian register.

Into the category of local legal persons should also be included the unincorporated civil societies under the Obligations and Contracts Act (OCA) and the insurance funds established under Art. 8 of the Social Insurance Code (SIC), which through a legal fiction are equated to legal persons.

On the principle of exclusion, it is envisioned in the norm of Art. 4 of the CITA that foreign persons are all those that are not local. In order for them to be able to be constituted as subjects in specific substantive tax legal relationships, it is necessary:

- to exercise economic activity through a permanent establishment on the territory of the country;
- to realize profits from the disposal of property of such a permanent establishment;
- to receive income that has a source on the territory of our country.

Legal persons acquire the quality of a subject of tax law after they acquire their commercial, respectively civil legal capacity (meaning non-profit legal entities). Legal capacity and capacity to act arise for them simultaneously at the moment of their registration. Pursuant to Art. 67 of the CA, the company is deemed established from the day of its entry in the commercial register. This means that it is an element of the factual composition of the arising of the company and has a constitutive effect.

Tax law recognizes as its subjects also certain legal entities/formations that do not fall into the category of natural and legal persons. Such are the branches of foreign persons that are registered under their national legislation with the right to perform commercial activity, since pursuant to Art. 17a, Para. 1 of the CA, they are subject to entry in the Bulgarian commercial register.

Other persons participating in specific tax legal relationships and whom we can consider as subjects of tax law, the regime of taxation of whom is equated to legal persons (regardless of the fact that some of them might not be such) are:

- the National Assembly for the tax on additional expenses of national representatives under the CITA;
- budget enterprises, which are taxed with a tax on revenues under Art. 248 of the CITA from transactions under Art. 1 of the CA and from the renting out of movable and immovable property.

The state, state and local organs are also considered as tax subjects for all activities and/or supplies performed by them in their capacity as organs of state or local power indicated in Art. 3, Para. 5, Item 1 and Item 2 of the VATA.

In the final, **fourth paragraph** of this chapter of the work, the subject structure of the tax as a legal relationship and the complications that may arise in the same are analyzed.

The features of the tax in this aspect of it, as well as that in this capacity of its it arises as a result of a complex homogeneous factual composition, part of which is also the determination of the tax by legal basis and amount, leads to certain features in its subject structure that distinguish it from that of tax law relationships.

In the first place, the persons participating as subjects in the tax law relationship will not always be able to be constituted as such in the tax viewed as a legal relationship. The presence of such a specificity can be conditioned by two reasons.

The first is connected with the mechanism of taxation under some types of taxes, in particular under VAT. The tax legal relationships that arise in VAT taxation have a three-party subject structure, which is conditioned by the character of the tax as indirect, multi-stage, and non-cumulative. The first subject in the legal relationship in connection with the performance of a taxable supply is the state, which through its authoritative powers – first determines when a supply will be considered taxable, respectively will be an object of VAT taxation, and in the second place, transfers a significant part of the management of the tax to the second subject in the legal relationship. As the second subject in the tax legal relationship generated by VAT, the tax-obligated person (supplier) is constituted, which performs the supply and by virtue of the law is obliged to charge the tax due for the latter, including it in the price of the provided good or service. Its obligation is also to remit the tax due on the supply, regardless of whether it was actually paid by the recipient, due to the adopted accrual principle.

The third subject is the recipient of the good or service, which should pay the tax calculated in the price of the received supply and has the right to claim a refund of the tax if it uses the good or service in its independent economic activity for the performance of taxable supplies. Provided that it is an end consumer, the person, by virtue of the law, loses the opportunity to transfer the tax and bears the tax burden. In this manner, the state, using its authoritative powers, indicates what the rights and obligations of each of the parties to the supply are and in what chronological sequence they should be exercised so that the tax legal relationship can arise, develop, and terminate in accordance with the requirement of the law. As a consequence of this, each of the indicated subjects possesses respective independent rights and obligations connected with the arising and development of the tax legal relationship, which also determines its three-party subject structure.

After the tax period expires, within a 14-day period, the supplier is obliged to file a monthly VAT return with which to determine its result for the tax period under the procedure of Art. 87-88 of the VATA. From this moment onward, after the factual composition leading to the arising of the tax as a legal relationship is realized, it is constituted as its subject with the respective rights and obligations, depending on what the specific result for the period is – tax for payment or tax for refund. In this specific legal relationship, the recipient under the supply cannot be constituted as its subject. With respect to it, a separate legal relationship will arise after it files the monthly VAT return for the respective tax period, and in this manner, the factual composition from which it will arise is realized.

A similar subject structure of tax legal relationships is observed also in the taxation with other types of taxes where, by virtue of the law, in the determination of the tax due, the mechanism of so-called "tax automatism" is adopted – some personal income taxes under the procedure of the PITA, the tax withheld at source under the procedure of the CITA.

The second reason to a certain extent also depends on the mechanism of taxation with the respective tax, but upon a closer look, we will see that it rather depends on whether an object of taxation will be present, where here it is possible not to arrive at the arising of the tax as a legal relationship at all. What do we mean?

In some types of taxes, the object of taxation is a result of the performance of economic activity, which tax-obligated persons must reflect in their accounting records in the manner provided for by law so that the same can be determined. An example in this respect is the corporate tax under the procedure of the CITA, where the object of taxation is the tax profit. Whether such will be present depends on what the tax financial result of the persons will be. When it is a negative magnitude, i.e., a tax loss, an object of taxation will not be present and this legal relationship will not arise at all. Can we, however, accept that in the indicated example the tax legal relationship has not arisen? Of course not; it will arise from the very moment the person begins to exercise its economic activity and it falls within the scope of the CITA, since according to the requirements, generally speaking, of accounting and tax legislation, it is obliged to reflect the same in its accounting documentation.

What has been said so far regarding the subject structure of the tax as a legal relationship applies also to cases where the tax is initially determined by its legal basis with an act issued by the revenue bodies, i.e., when for some reason the person failed to file a tax return, or such is not required by law.

When considering this problem area, we must pay attention to the general rule, which is expressed in that the tax law exhaustively regulates exactly which person has the potential opportunity to be a subject of the tax legal relationship, respectively at a later stage in time of the tax as such. In view of the fact that tax obligations are personal, it is understandable why persons do not have a right of choice when entering into this legal relationship. Nevertheless, in the provision of Art. 45, Para. 1, second and third sentences of the LTFA, an exception to this rule is provided for. The currently effective wording of the cited legal norm reads that: "*In the case where it is agreed that the tax is due by both parties, they shall be jointly and severally liable. Where the parties have agreed that the tax is due by the transferor, the other party shall be a guarantor.*"

In the second place, one of the essential features of the tax as a legal relationship finding manifestation in its subject structure is connected with exactly which tax-obligated person can enter into it. Above, in the preceding paragraphs of this chapter, we thoroughly investigated the matter related to the subjects of substantive tax law, since they have the potential opportunity to be subjects also of this specific legal relationship.

Then, the question logically arises: which is that prerequisite that must mandatory be present so that the person can be determined as a passive subject?

In my opinion, the answer to this question "hides" in the factual composition from which the tax as a legal relationship arises, and as a consequence of this, also in its subject matter.

The final legal fact of this complex composition, as we already clarified above, is the determination of the legal basis and the amount of the tax with a return by the person or an act issued by the organs authorized for this. Precisely because of this, into the legal relationship will enter that person who filed the tax return or, more precisely, is entered therein as the payer of the tax or the addressee of the AATL.

The conclusions we can make in this direction are:

- the quality of a subject is acquired by virtue of the law, with the legal norm determining exactly which person can enter into it;
- the subject composition of the tax legal relationship does not always coincide with that of the tax as a legal relationship;
- as a rule, its subject structure is two-party, since tax obligations are personal and cannot be transferred, just as the assignment (cession) of public claims is prohibited – Art. 190 of the TSSPC. The state, respectively the municipality, represented by the competent organs, we define as active subjects due to the authoritative powers possessed by them;
- the subjects of the legal relationship are constituted as such after the factual composition from which it arises is realized and, as part of it, the tax is determined by its legal basis and amount;
- a passive subject of the legal relationship is the person who, by virtue of the law, is obliged to declare and remit the tax. If with the filed return the person unlawfully determined the legal basis and the amount of the taxes due by it or failed to file such at all, the revenue bodies, in execution of their powers, will issue an AATL of which it will be the addressee. In the next place, in this part of the work, the complications in the subject structure of the tax as a legal relationship upon the arising of joint and several liability and upon legal succession are subjected to a thorough analysis. The difference between liability for another's tax debt and the complication in the subject composition of the tax legal relationship is outlined. In my opinion, the perception of liability for another's tax debt as a form of complication of the subject composition of the tax legal relationship is not entirely sound and is due to its misunderstanding as a specific type of legal liability on the one hand, and on the other, from placing an equal sign between this legal relationship and the tax as such.

Separately from this, detailed considerations are presented in the work regarding the place of tax law in our legal system in support of the author's position that it should be perceived as an independent legal branch, and not as a part/sub-branch of financial law.

Conclusion

In the concluding part of the work, the findings are reflected that can be made on the basis of what has been said so far regarding the legal essence of the tax as a legal relationship and its distinctive characteristics.