

LIABILITY IN POLISH FINANCIAL LAW, EXEMPLIFIED BY LIABILITY FOR TAX COMMITMENTS

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Abstract

Legal liability means to bear legal consequences for the conduct which is not compliant with the obligatory legal standards. The legal construction of liability includes defining the object of the liability (conduct, which one can be sued for), subjects of the lawsuit, legal basis of the liability, subjects that one is legally responsible for the effects of their specific conduct to, and the procedures in cases of liability. Usually liability refers to conduct (acts or omissions) which a subject is directly responsible for, but legal regulations may distinguish liability for conduct of other subjects. There are several types of liability: criminal, civil, administrative, constitutional, financial, employment or international one. Taking into account legal consequences of the liability and the procedures of applying it, the liability in the financial law can be characterised by: 1) variability of sanctions (economic, legal sanctions stated in the financial law regulations and in the regulations of other fields of law); 2) its diversification in relation to the active and passive subjects of the financial law; 3) the possibility to result from several Acts dealing with the liability of the same subject and the same conduct; 4) its basic prerequisite is the protection of financial interests of the state; 5) there is no uniform jurisdiction and procedure in the cases of the liability in the financial law. The liability for tax commitments, which is regulated in the tax law, may serve as an example of the liability in the financial law. In principle, the liability refers to the subjects responsible for their conduct, the taxpayer and tax bearer and the collector (as well as their spouses) subsequently to the obligations imposed by the law regulations. Besides, the tax law regulations projects the liability of someone else's debt, which is based on the unpaid taxes of the taxpayer, resulting from the taxpayer's conduct, which is not paying the tax commitment in the due time and in full amount. Such liability includes the third party. The basis for the third party liability is an assumption that they had or might have had benefited from the taxpayer's conduct. The Tax Ordinance Act precisely defines the subjects, who may bear the liability as the third parties, for the specified in the Act commitments, for the defined time of the unpaid taxes, from the defined in the Act assets. The liability of the third parties has to be linked with the necessity of protecting the financial interests of the state.

Key words

Subject of the liability; Object of the liability; Primary liability; Secondary liability; Liability in the financial law; Liability for tax commitments; Taxpayer collector; Third party.

1. THE NOTION OF LIABILITY

Legal liability means to bear legal consequences for the conduct which is not compliant with the obligatory legal standards. The legal construction of liability includes defining the object of the liability (conduct, which one can be sued for), subjects of the lawsuit, legal basis of the liability, subjects that one is legally responsible for the effects of their specific conduct to, and the procedures in cases of liability¹.

Usually liability refers to conduct (acts or omissions) which a subject is directly responsible for, but legal regulations may distinguish liability for conduct of other subjects.

There are several types of liability: criminal, civil, administrative, constitutional, financial, employment or international one.

The liability in financial law is of varied character, which is a result of diversified subject matter of financial law. Therefore, we can differentiate the liability regarding actions defined by currency and foreign currency law, levy regulations, and public finance law.²

Taking into account legal consequences of the liability and the procedures of applying it, the liability in the financial law can be characterised by:

1. variability of sanctions (economic, legal sanctions stated in the financial law regulations and in the regulations of other fields of law);
2. its diversification in relation to the active and passive subjects of the financial law;
3. the possibility to result from several Acts dealing with the liability of the same subject and the same conduct;
4. its basic prerequisite is the protection of financial interests of the state;
5. there is no uniform jurisdiction and procedure in the cases of the liability in the financial law.³

¹ . Korybski, L. Leszczyński, A. Pieniążek, *Wstęp do prawoznawstwa*, Lublin, Wydawnictwo Uniwersytetu Marii-Curie Skłodowskiej, 2007, s. 192-193, ISBN 978-83-227-2756-0

² C. Kosikowski, *Odpowiedzialność za naruszenie dyscypliny finansów publicznych (nowa koncepcja)*, Państwo i Prawo, nr 12 z 2006 r., Warszawa, s. 3-4, ISSN 0031-0980

³ C.Kosikowski, *Prawo finansowe. Część ogólna*, Dom Wydawniczy ABC, Warszawa 2003, s. 275-276, ISBN 83-7284-842-4

2. LIABILITY FOR TAX OBLIGATIONS

The liability for tax obligations may serve as an example of the liability in financial law.

According to the article 84 of the Polish Constitution every citizen is obliged to comply with the responsibilities and public duties, including the payment of taxes, as specified by statute. The Tax Act (in compliance with Art. 217 of the Polish Constitution) defines a subject, an object of taxation and tax rates, as well as the regulations for tax benefits, deductions and relieves and the categories of subjects with tax exemptions. It is, therefore, the only source of tax obligations, which is the tax payer's liability to pay taxes to State Treasury, province, county or community (gmina) in the amount and on time and in place defined in the tax law regulations. In case of a voluntary realization of a tax obligation, most often by its payment, the obligation terminates. It means that the tax-legal relation between the taxpayer and the public law subject finishes. The tax liability appears when the obliged subject does not meet the obligation voluntarily.

The tax liability is a right of a tax obligee to claim the tax from the obliges subjects, as well as the right to apply the lawful means of mandatory execution of the tax due from the possessions of responsible persons.⁴ When defining the tax liability, therefore, it should be defined who and to what extend the tax obligee can claim the tax payment from and if necessary who and to what extend execute the tax from.

In the obligation relations there is a debt from responsibility. In a civil law it is stressed that a debt is a kind of obligation, which is the obligation of the debtor, whereas the obligation is related not to the obligation itself, but to covering the debt, connected with the obligatory realization of the rendition. As far as the principle of the responsibility is concerned, it applies to the subjects responsible for their conduct, in the range resulting from the obligations set by law regulations. The law regulations may also include the responsibility for a debt of others, which is a guarantee to satisfy the obligee.

3. THE LIABILITY OF A TAX DEBTOR, TAXPAYER AND A TAX COLLECTOR

According to the Tax Act⁵, firstly the tax liability refers to the primary tax debtor – the taxpayer. It appears ipso jure, independently from the taxpayer wish. In case the taxpayer does not pay the tax following from the tax

⁴ A. Mariański, *Odpowiedzialność za zobowiązania podatnika, płatnika, inkasenta w prawie polskim*, Dom Wydawniczy ABC, Warszawa 1999, s. 13.

⁵ Ustawa z dnia 29 sierpnia 1997 r. Ordynacja podatkowa (t.j. Dz.U. z 2005 r. Nr 8, poz. 60 z późn. zm.)

obligation, tax obliges has a right to execute it. Article 26 of the Tax Act states that a taxpayer is accountable with all his possessions for the taxes due to the tax obligations. Such liability is a responsibility for the tax, not for the tax arrears (it is the beginning of the obligation to be set, not its subject matter).⁶ The subject matter of the taxpayer obligation includes the main active debt (the tax) as well as interests (if there is any tax overdue) on the arrears and other charges, such as respite charge (in case of prolonging the due date or the instalments are arranged) or the costs of the execution proceedings.

As it has been mentioned before, the taxpayer's liability includes their all possessions. The notion of possessions has not been defined on the basis of Polish law. Possessions can be widely understood as all the assets and liabilities, which are the rights and obligations related to the possessions; or in its narrower meaning as the whole of the assets which a person is entitled to. It is assumed that the possessions included in the taxpayer's responsibility are the properties, as the Civil Code Act (further referred to as: CCA) defines, consisting of ownership and other transferable possessions rights (Art. 44 of the CCA), where the liabilities do not account as the possessions.⁷

The taxpayer's responsibility is of a personal and unlimited. It covers all the possessions of the taxpayer, which exists at the time when the tax appears, as well as at the time of the tax obligation execution, till the limitation of the liability.⁸ It means that the tax obligee may execute the obligation on all the possessions belonging to the taxpayer and on the possessions rights. It should be noticed that according to the regulations of an act on the execution proceedings in administration some objects are excluded from the execution.⁹

The taxpayer can be a co-owner of an object. If the object is a joint ownership in fractional parts, the taxpayers' possessions include their share in the joint ownership. The situation is quite different when the taxpayer has a joint property of spouses. According to the Family and Guardianship Code Act¹⁰ (later referred to as FGC), at the moment of contracting a marriage

⁶ W. Wojtowicz (red.), *Prawo podatkowe-część ogólna i szczegółowa*, Oficyna Wydawnicza Branta, Bydgoszcz-Lublin 2005, s. 95, ISBN 83-89073-84-6

⁷ C. Kosikowski, H. Dzwonkowski, A. Uchla, *Ustawa ordynacja podatkowa. Komentarz*, Dom Wydawniczy ABC, Warszawa 2004, s.143, ISBN 83-7416-005-5

⁸ A. Mariański, *Odpowiedzialność za zobowiązania ...*, s. 34.

⁹ Ustawa z dnia 17 czerwca 1966 r. o postępowaniu egzekucyjnym w administracji (t.j. Dz.U. z 2005 r. Nr 229, poz. 1954 z późn. zm.), porównaj art. 8-10.

¹⁰ Ustawa z dnia 25 lutego 1964 r. Kodeks rodzinny i opiekuńczy (Dz.U. Nr 9 poz. 59 z późn. zm.)

the joint property of spouses (statutory joint property) appears ipso jure. It includes all the possessions purchased during the marriage by both spouses or by one of them (joint possessions). The possessions not included in the statutory joint property belong to the personal possessions of each spouse (Art. 31 § 1 FGC). The personal possessions of each spouse include, among others: the possessions purchased before the statutory joint property came into being, those that they came into possession by inheritance, legacy or donation, unless the testator or the donor has decided otherwise. They also include the possessions right resulting from the joint ownership and being regulated by separate regulations, possessions objects which serve to fulfill the personal needs of one of the spouses, inalienable rights that only one person can be entitled to, copyright and related rights, patents, trademarks and other intellectual rights. In case of a tax bearer who is married the liability for the taxes resulting from the tax obligations include both the separate as well as joint property of spouses (Art. 29 § 1 TOA). The situation is quite different in case if the joint property of spouses was limited, abolished or excluded by contract or legal decision. According to Article 47 § 1 of FGC spouses may limit or abolish statutory joint property in a form of a notary deed (such an agreement may proceed the contract of marriage). In case of an exclusion of joint property there is a separate estate in matrimony. Each spouse may also, by important reasons, demand an abolition of a joint property by court. Also a creditor of one of the spouses is entitled to do so, if one can prove that settling the claim stated in executory document requires a division of joint property of spouses. Separate estates in matrimony appears on the date defined in the document of judgement, which established it. The TOA states that from the cessation of the joint property the joint property of spouses terminates, therefore it is impossible to settle the claim of a creditor from the joint property.

The Tax Ordinate Act regulates the matter of the tax obligations of a tax debtor and their spouse differently. The legal effects, limitations, abolition, exclusion or termination of a joint property do not apply to the tax obligations which appeared before the day;

1. of concluding a contract of limiting or excluding statutory joint property;
 2. of abolishing joint property by a legal court order;
 3. of termination of joint property in case of incapacitation of a spouse;
 4. of validation of a court order deciding separation.
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It means that the execution of tax obligations can proceed as if the joint property of spouses still existed.¹¹

Exclusion or limitation of joint property does not exclude the spouse from the responsibility. They are still responsible as a third party, with their whole property, together with the tax bearer, who does business, for the tax arrears that resulted from the business and appeared when they cooperated in the business and the spouse was benefiting from the business activity (Art. 111 TOA). The responsibility is limited to the amount of benefits.

Marriage termination does not exclude totally the ex-spouse's liability. Divorced spouse of the taxpayer is responsible with his/her whole property on even basis with the ex-spouse for tax debts that resulted from tax liabilities of their joint property time but only to the amount reflecting the part of his/her share in that property. (Art. 110 § 1 TOA).

The taxpayer's responsibility can be, in some cases, excluded and transferred on the tax bearer (Art.26 TOA). This is the case if the taxpayer receives money under a business contract, work contract, outwork, cooperative work contract, business activities (for example revenue of artistic, literary or scientific activities) as well as property rights revenue (for example author's rights, invention projects rights, brands and decorative patterns) and the tax bearer understated or did not reveal the proper taxation base. In this case the taxpayer's liability is limited to the amount of the advance payment that the tax bearer is obliged.

Tax Ordinate Act and some other tax acts (for example Civil Activities Tax Act, Treasury Fees Act or Local Tax and Fees Act regarding taxes on real estate) say that there can be more than two subjects on the passive side of legal-tax relation, but the regulations indicate only one tax debt. In this situation there is so called debtors solidarity. According to TOA (Art. 91) Civil Code regulations apply to the joined and several obligations for tax liabilities. Joint and several debtor means that a few debtors can be obliged in the way that the creditor can claim the whole or a part of the debt from all the debtors together, from some of them or from each one separately, and repayments made by any of the debtors exempt the other debtors. All joined and several debtors are obliged to make payments for the creditor's benefit until the whole debt is repaid (Art. 366 CC). This means that each debtor is obliged to repay the whole debt as if he was the only debtor. The creditor can claim the repayment of the whole or a part of the debt from all the debtors together, from some of them or from each one separately according to his choice. The creditor is obliged to accept the repayment from any of the debtors even if he asked the repayment from another debtor.

¹¹ B. Brzeziński, M. Kalinowski, M. Masternak, A. Olesińska, *Ordynacja podatkowa. Komentarz*, Dom Organizatora, Toruń 2002, s. 124, ISBN 83-7285-076-3

If, according to tax regulations, the taxpayers are jointly responsible for tax liabilities and the liabilities arise on the day of receiving the tax office decision defining the level of liability, jointly responsible are the taxpayers who received the decision defining the liability level.

Tax liability of a taxpayer is independent of revenue penal liability. The Revenue Penal Code¹² (from now on called RPC) states that the liability is on the taxpayer who neglects taxation (Art. 54 RPC), to conceal running a business on his own or the actual size of the business, use the first name and surname, company name or a firm of another subject (55 RPC), reports untruly or conceals the truth or does not act according to the obligation of providing information about data changes (Art. 56 RPC); constantly refrains from promptly payments of taxes. (Art.57 RPC).

Tax Ordinate Act, apart from taxpayer liability indicates a liability of tax bearer and tax collector.

Tax bearer liability (excluding the case indicated in Art. 26 TOA) and tax collector liability is a liability for not fulfilling their obligations under TOA. This means that their liability reflects their duties and the tax debt existence.¹³

The tax bearer is obliged to calculate and collect the tax from the taxpayer and pay it promptly to the tax office. In case of not fulfilling or improper fulfilment of the duties the tax bearer is liable for unpaid tax or collected and not paid in one (Art. 30 § 1 TOA).

Tax collector is obliged to collect the tax from the taxpayer and pay it in promptly to the tax office. However, the collector's responsibility is limited to the tax collected and not paid in (Art. 30 § 2 TOA). This means that the collector is not liable for not collecting tax from the taxpayer although he is obliged to do so. This model of the collector's liability can be of disadvantageous consequences for the taxpayer who is liable for tax under regulations of Art. 26 TOA.

Tax bearer's and collector's liability is of personal and property character. They are liable with their whole property, both current and future, until the tax liability terminates. Liabilities of the tax bearer and collector who are married and who have joint property extend on their separate properties and joined properties of the tax bearer and collector and their spouses.

¹² Ustawa z dnia 10 września 1999 r. Kodeks karny skarbowy (t.j. Dz.U. z 2007 r. Nr 111, poz. 765 z późn. zm.)

¹³ W. Wojtowicz (red.), Prawo podatkowe-część ogólna i szczegółowa, Oficyna Wydawnicza Branta, Bydgoszcz-Lublin 2005, s. 97, ISBN 83-89073-84-6

As it was mentioned, the tax bearer is responsible for the taxes resulting from the tax obligations ipso jure, regardless the tax bearer's will. The base of tax bearer's and collector's liability is a decision on tax bearer's or collector's liability issued by the tax office defining the due payment of not collected or collected but not paid in tax. It means that the tax office has to institute tax proceeding in order to decide about the tax bearer's and collector's responsibility.

Tax bearer's and tax collector's liability is excluded in a situation when the tax was not collected through the fault of the taxpayer. In such cases the tax office issues a decision on the taxpayer's liability (Art. 30 § 5 TOA).

Apart from liabilities under TOA the tax bearer and tax collector act under revenue penal liability. It concerns a tax bearer or collector who does not pay in promptly the collected tax in the proper tax office (Art. 77 RPC), tax bearer who does not collect taxes or collects it in the amount lower than the due amount (Art. 78 RPC), tax bearer or collector who does not appoint on due time a person responsible for calculating and collecting taxes and prompt payments of the collected amounts to the tax office, or who do not inform the local tax office about the required data of such a person (Art. 79 RPC).

4. THE LIABILITY OF LEGAL SUCCESSORS AND THE THIRD PARTY

4.1 THE LIABILITY OF LEGAL SUCCESSIONS

As said before the tax liability refers to the subjects responsible for their conduct, the taxpayer and tax bearer and the collector (as well as their spouses) subsequently to the obligations imposed by the law regulations. Besides, the tax law regulations projects the liability of someone else's debt, which is based on the unpaid taxes of the taxpayer, resulting from the taxpayer's conduct, which is not paying the tax commitment in the due time and in full amount. Such liability includes mainly so called 'the third party'

„The middle category includes legal successors who are responsible for liabilities of the others – the successor, but they are responsible as if the liability was their own.”¹⁴

The substance of legal succession (universal succession) is that the rights and duties of one subject are transferred to the other. Two main groups of regulations regarding the universal succession can be distinguished in the

¹⁴ A. Mariański, Podstawy odpowiedzialności w prawie podatkowym na przykładzie członków zarządu spółki z z.z., Monitor Podatkowy, nr 1 z 2004 r., s.31, ISSN 1231-1855

tax statute: legal succession of legal persons and other business subjects and legal succession of heirs¹⁵

Tax legal succession regarding the legal persons and other business subjects can happen as a result of an acquisition, transformation, commercialization or privatization of the above subjects as well as their take over or division. On principle the legal persons and other business subjects that were created through an acquisition, transformation, commercialization and privatization success all defined by tax regulations rights and duties of each acquired, transformed, commercialized or privatized subjects. The legal persons that acquire or the legal persons created by division success on the date of the acquisition or division all defined by tax regulations rights and duties of the divided legal person that relate to the property allotted them in the division plan.

Heirs' responsibility for tax liabilities are defined by the Civil Code regulations regarding legacy acceptance and rejection and liability for tax debts. Under Art.1012 CC a heir can accept the legacy without tax debt liability limitations (simple succession) or with the limitations (successions with benefit of inventory) or reject the legacy. To accept or reject the legacy a heir has to, according to the regulations, submit a correct declaration. The declaration regarding acceptance or refusal of the legacy can be submitted within 6 months from the date of acknowledging by the heir his/her legacy right. If a heir does not submit the declaration described above means (apart from exceptions defined by the act) simple succession of the legacy. A heir who rejects the legacy is excluded from inheriting as if he had died before the legacy was opened (Art.1020 CC).

Until the date of legacy acceptance the heir is liable for legacy debts only of the legacy (Art. 1030CC). From the moment of legacy acceptance the heir is liable for these debts with his/her whole property, and in case of simple succession the heir is liable for the legacy debts without limitations, in case of acceptance of the legacy with benefit of inventory the heir is liable for tax debts only to the value specified in an inventory of the active status of the legacy (Art. 1031CC).

The decision about the way of acceptance or rejection of legacy should be based on proper information about tax obligations of the testator. The tax office, on request of a person who lends credence to his/her rights for the inheritance, has a duty of issuing a letter listing all and any of the known tax obligations of the testator regarding:

5. tax arrears

6. interest on tax arrears of the testator

¹⁵ A. Gomułowicz, J. Małecki, *Podatki i prawo podatkowe*, LexisNexis, Warszawa 202, s. 310, ISBN 83-7334-123-4

7. collected but not paid in taxes that the testator was obliged to pay as a tax bearer or collector,
8. down payments not paid back by the testator for due tax on goods and services and interest on them
9. prolongation fee
10. tax proceeding costs
11. tax reminder and execution proceeding conducted in case of the testator since the date of the opening of the succession

costs of a reminder and costs of execution proceedings against the testator aroused until the date of opening the inheritance.

If tax proceedings in regard to listing or defining the amount of the testator's due taxes has not been finished until the letter issue date the approximate value of the obligation is given on the basis of obtained data concerning the taxation base (Art. 306 f TOA)

According to the tax law regulations the taxpayer's heirs inherit property rights and duties of the testator. If the testator had non-material rights deriving from business activity the rights are inherited under condition that the business is continued on the heirs account. It also concerns rights and duties of the testator who was a tax bearer as well as the ones indicated in any of the issued tax decisions.

The responsibility is also inherited by the one endowed. However, the scope of responsibility in this case is limited to the value of received goods.

Therefore it should be said that heir's (endowed person's) responsibility depends on the way of accepting the inheritance and also on issuance by the proper tax office a decision on the scope of his obligations. The tax office defines in separate decisions the obligations of each heir (endowed person).

4.2 THE LIABILITY OF THE THIRD PARTI

The basis for the third parties liability is an assumption that they had or might have had benefited from the conduct of taxpayer who had different relations with them.¹⁶ The Tax Ordinance Act precisely defines the subjects, that may bear the liability as the third parties, for the specified in the Act commitments only, for the defined time of unpaid taxes, from the defined in the Act assets. The liability of the third parties has to be linked with the necessity of protecting the financial interests of the State Treasury

¹⁶ C. Kosikowski, H. Dzwonkowski, A. Uchla, Ustawa ordynacja..., op.cit. s. 329

and local communities. The subject and object scope of the third parties responsibility is precisely defined in the Tax Ordinance Act.

The third parties' responsibility is of joint, accessory (held by the third parties next to the tax payer), subsidiary (supportive, the execution is first directed to the tax payer and if insufficient the whole or part of it can be directed to the third party) and personal (with the third party's whole property) character.¹⁷

In regard to the subject scope the Tax Ordinate Act in Art from 110 to 117a TOA lists the subjects that might bear the responsibility as the third parties. They include:

- an ex-spouse of the tax payer
- the tax payer's family member and spouse who concluded with the tax payer an agreement on limited or excluded joined property, whose joined property was excluded by a court decision, and a separated spouse,
- a buyer of a company or an organized part of it
- one giving his name
- an owner, a sole proprietor or perpetual user of goods or material right of family, capital or property relations, in the meaning of the income tax regulations, or deriving from work relations with the owner of the goods or material right
- a lessee or a user of a real estate if there are any family, capital, property or deriving from work relations between the lessee or the user and the tax payer
- a partner in a civil partnership, general , partner one and an active partner of a limited or a registered-limited company
- board members of a limited liability company, limited liability company under organization, joint-stock company, joint-stock company under organization,
- members of the managing bodies of legal persons other than limited liability company and joint-stock and the companies under organization,

¹⁷ L. Etel (red), Prawo podatkowe, Difin, Warszawa 2008, s. 207, ISBN 978-83-7251-871-2

- legal persons acquiring or legal persons created by a division (new related persons) of other legal person,
- a guarantor or a backer whose guarantee was accepted by the tax office.

The object scope of the responsibility includes not only joint liability with the tax payer (joint debtors) for the tax arrears but also joint liability with the legal successor of the tax payer for any accepted tax arrears. Furthermore, the third parties responsibility includes not collected taxes or collected but not paid in by the tax bearers or collectors, interest on tax arrears, down payments not paid back promptly for due tax on goods and services and interest on them and execution proceedings costs (Art.107 TOA).

The responsibility of the third parties is announced in a separate proceedings by the tax organ that issues a decision about it defining its scope and financial duty. The decision is legally binding after being delivered, and the arrears payment time is 14 days excluding the date of delivery of the decision concerning the third party's liability.

Delivery of the decision concerning the third party's liability does not exclude the tax payer's liability.

The third party's liability terminates when the tax obligation terminates.

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