



**WYDZIAŁ PRAWA
I ADMINISTRACJI**
Uniwersytet Łódzki

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***Sytuacja prawna wspólnika spółki niemającej osobowości prawnej jako
dłużnika podatkowego***

(The legal position of the partner in the partnership as a tax debtor)

SUMMARY

This PhD thesis was prepared
At the Department of Financial Law
under supervision of Prof. T. Dębowska-Romanowska

Łódź 2019

This dissertation focuses on determining the legal situation of the partner in the partnership under general tax law. Given the scope of the thesis, no detailed analysis is made regarding the determination of the partner's legal position under private law. However, it is impossible not to consider private law at all in the course of these analyses. This results from the private law nature of partnerships and the fact that essential characteristics of partnerships are determined mainly by private law. However, the analyses made based on private law are limited only to those issues that are significant from the perspective of the mainstream discussions that are embedded in tax law. Also, the issue of taxation of individual events regarding the creation, operation and dissolution of partnerships is not discussed in the dissertation. The conducted research focuses on norms of general tax law and not specific tax law.

The basic thesis statement of this dissertation is that given the legal nature of partnerships and the resulting interpenetration of the legal sphere of the partnership and partners, who guarantee its operation with their assets, partners cannot be included in the category of third parties within the meaning of the Tax Code. Partners of partnerships show more qualities of the original tax debtor (first party) than of a third party who is secondarily liable for someone else's tax liability. Significant features characterizing tax liability of a third party cannot be fully applied to partners of partnerships.

The subject of the dissertation and its objectives have a direct impact on its scope and structure. The dissertation consists of an introduction, five chapters and a conclusion.

The first chapter presents discussions on the legal structure of partnerships and their legal nature. Partnerships are established through civil law activities and thus constitute private law institutions. Hence, private law first determines their legal form. As part of the discussions, including those led from a historical perspective, the sources of law governing the partnership law are determined in the first place. Next, individual types of partnerships as prescribed by law as well as their significant features are defined. These questions are directly related to the issue of liability for private law obligations of these partnerships, which are imposed on their partners. Then, the entity status of partnerships under civil law (in evolutionary terms) and their property structure determined directly by this status are explained. Further discussions concern the rules of managing their affairs and representation, that the partners of partnerships are directly entitled to. All these partial elements determine the legal position of the partner in the partnership under private law and have a significant impact on choices made by the legislator in the field of tax regulation of the legal position of

the partner as a tax debtor. The issues presented in this part of the dissertation are a reference point for the assessments and conclusions formulated in further parts of the thesis.

The second chapter deals with the issue of the entity status of partnerships under tax law. Due to the fact that the legal position of the partner is determined by the perception of the partnership through the system of personification of tax law entities, it is necessary to analyse the issue of tax subjectivity of partnerships and their capacity to act as tax law entities. This analysis is conducted from the perspective of legal theory as well as legal doctrine, in particular in the context of detailed tax law. This chapter concludes with the discussion of the tax liability of these partnerships.

The third chapter is dedicated to the partner of the partnership as a subject of tax liability. The concept of a third party in tax law and the reasons for establishing this category of subjects of tax law, as well as the significant features of this legal institution are analysed. Further, the analysis provides explanation of the reasons why the partner is made liable and included in the category of third parties. Separate discussion has been devoted to the legal basis of the partner's liability and the consequences arising from the choice made by the legislator in this respect. Further, the thesis identifies the legal nature of the partner's liability and the structure of the partner's tax liability. In the last part of this chapter, the scope of the subject and object of liability for the obligations of the partnership are analysed.

The fourth chapter focuses on the mutual relations between obligations of the partnership and obligations of the partner who has tax liability. Therefore, the issues of the accessoriness of the partner's obligation, the subsidiary nature of this obligation and solidarity are analysed.

The fifth chapter deals with the implementation of the partner's liability. Therefore, the conducted analysis focuses on two elements. First of all, it focuses on procedural issues related to proceedings aimed at the issuance of a ruling on the liability of the partner. Secondly, it concentrates on procedural issues related to possible forms of discharging the obligation of the partner.

The above approach to the scope of the dissertation and its goals determined the methods used in the course of the research conducted.

The method of legal doctrine (formal-dogmatic method) is of fundamental significance. It was applied in three areas of the analysis and evaluation, i.e. under applicable legislation, legal doctrine and judicial decisions.

The historical and legal method was also used in the research conducted. The results of historical and legal research are not presented in a separate chapter. Analysis of the evolution

in respect of individual aspects determining the legal position of the partner as a tax debtor is presented in individual content-related chapters to better illustrate the changes taking place over time, which ultimately led to the formation of the legal position of the partner in the current legal form.

The legal theory method has also been widely used.

In the case of partnerships, there is a considerable diversity in their possible forms, their property structure, legal position of individual categories of partners, recognition as an entity under private and tax law, etc. Due to the far-reaching diversity of these partnerships, in order to ensure transparency of the reasoning in respect of detailed substantive analyses, only the above-indicated research methods were used.

The dissertation reflects the legislation in force as at 1 September 2019.

Ludh, 13.09.2019.

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