

Lazarski University

Faculty of Law and Administration

Ilona Szczepańska, LL.M.

Summary of my doctoral thesis

“The child’s status in the legal construction of natural persons’ income tax” written
under auspices

of Artur Kuś, Professor Habilitated Doctor.

The doctoral dissertation reveals the issues connected with the child’s status in the legal construction of natural persons’ income tax. Its subject matter concerns the analysis of legal regulations, doctrines, judicature of the Constitutional Tribunal, the Supreme Court, the Supreme Administrative Court, the Voivodship Administrative Courts and Chancery Courts presenting the child’s status in the legal construction of natural persons’ income tax. The thesis deals to a lesser extent and refers to the interpretation of tax law rules, for they refer to a more narrow tort group resulting in legal consequences with the presence of the juvenile.

In the dissertation the main research thesis is set: the income tax from natural persons involves tax consequences primarily from natural persons with full legal capacity. Its construction foresees tax consequences from natural persons, who due to their age do not possess full legal capacity, namely underage children. There have been given answers to substantial questions concerning the principal thesis – e.g. the Polish construction of natural persons’ income tax preference allocations in regard to the child’s position. Furthermore arises a question: is the tax relief and exemption an effective instrument of managing the family income of the juvenile or is there enforced a just division of tax burdens? The thesis explains whether the issue of the cost fixing method of the tax deductible expenses enables to balance real expenditures covered for the child’s upbringing. Finally: does the income tax from natural persons execute the rule of tax justice? Does its construction take into consideration the concept of financial credibility extent from the point of view of the family situation of the juvenile?

The thesis encompasses issues associated with the concept of a child, the legal tax subjectivity prerogative and tax consequences related to achieving an income by a minor child including tax preferences. The thesis structure and applied systematics of raised items are determined by above mentioned questions and the principal thesis.

The first chapter is general and introductory, it is targeted at the child's positioning in the legal system and at the correlation thereof with the legal principles of the binding legal system. Consequently there has been analysed not only the definition ground, but mainly the child's position within the family. In this chapter there has been taken a stab at the child's positioning in the Constitution of the Republic of Poland. The rights for uprating in family, for education and for work constitute therefore a connection between constitutional regulations and detailed tax law. This chapter deals also with an overall deliberating about the tax legal subjectivity of a child.

The second chapter presents the income tax evolution imposed on natural persons in Poland and in Europe, it is devoted to the elements of the construction issues of the income tax earned by individuals, which have the superior meaning in regard of the child's status. There has been investigated the evolution of the income tax construction within a period of approximately 100 years. This chapter deals with significant child-related tax preferences.

The third chapter exposes the income tax issues earned by the minor child, subsequently follows the analysis of potential income sources of the minor. This chapter delineates the rules of tax justice, especially connected with tax consequences of the child's working activity.

The fourth chapter deals with the income tax from natural persons in regard of mandatory tax preferences and the construction thereof. There are researched such tax preferences which can be used just through the existence of the child – for instance joint income taxation of child and parents, taxation of single persons raising children as well as detailedly covered tax reliefs and exemptions.

The basic research method is the dogmatic-legal approach and analysis aimed at systematisation and analyses of legal standards in regard to events resulting in tax consequences towards a minor child. Under this way conducted analysis are defined concepts, the analysis of law enforcement practice is undertaken and changes are propounded. In order to conduct a complex analysis of the child's status there is

reference to the historic-legal view in my thesis. The evolution of the Polish income tax from natural persons is analysed starting from the moment the implementation of the first taxation forms having taken into account the analysis of respective historical periods until the time of currently obligatory Act on Income Tax Earned by Individuals. Tax systems imposed on natural persons in other countries have not been considered. There has been reflected methodologically the enforcement practice of tax law. The conclusions prove that the tax law subjectivity of a child equals the one of an adult. The taxation takes place by the implementation of general rules retaining exceptions due to the personal qualification of the taxed subject. The lawmaker applies the rule of children' income recognition to parents' income or singles' income, whereas it applies solely to income beyond the narrow group of increments, in relation to those the child is a separate taxation subject, so it applies to work income, internships or objects passed to the child for free use i.e. those excluded from parental management. The taxation method depends therefore on two factors: firstly – on the income source and secondly – on the conducted management range of the child's property. Moreover, the conclusions prove that the lawmaker of the income tax construction has implied too many exemptions of subject type – contradictory to the rule of common law taxation. Solutions applied in the income tax of individuals are therefore an instrument of family policy, for example the establishment of joint taxation of singles raising children and spouses, the relief commonly known as the "family allowance" or other reliefs from disabled persons. The conclusions demonstrate that the construction solutions of the income tax do not always favour the rule of taxation justice which is meant to treat citizens by the state in regard to the totality of public services. Finally, the conclusions prove that the income tax is of individualised character, whereas the individualisation is executed by the system of untaxed allowances. The amount of these allowances stands in no relation to effective maintenance costs of the juvenile. The income tax does therefore not fulfil the constitutional prerogatives of family and child welfare.

The thesis refers to legal status as per 31st of October, 2021. In the summary have been pointed out legal solutions under the Law of 29th of October, 2021 about the Law Amendment of Income Tax Earned by Individuals, the Law of Income Tax Earned by Legal Persons and about several Law having become binding the 1st of January, 2022 (Journal of Laws of the Republic of Poland, 2021, item 2105).