

# *Heirs' Responsibility for the Decedent's Tax Debts in the Republic of Slovenia*

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This paper analyses the responsibility of heirs in the Republic of Slovenia for tax debts for which their dead ancestors (decedents) were liable. The main rule is the same as in the general inheritance law: heirs take over all tax debts. Not only are there more exceptions to this main rule than in the general inheritance law, but similar exceptions differ a bit. Different general regulations exist where the deceased had an annual personal income tax debt, because the legislator believes that such tax debt is strictly personal by nature. As such, it ceases to exist when the taxpayer dies unless additional conditions are met, in which case the heirs are responsible for it. Since these conditions depend not only on the day that the taxpayer died, but also on the activity of either the tax authority or the taxpayer, the paper ar-

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gues that the current legislation violates the constitutional equality before the law clause.

*Key words:* taxation, Personal Income Tax, inheritance, Slovenia, tax debt, equality before the law

## 1. Introduction

The inheritance law is one of the classic subareas of civil law. In Slovenia the general rules for universal succession when a natural person dies are enacted in the Inheritance Act (IA).<sup>1</sup> Article 1 of the IA states that its provisions are used unless another (special) act stipulates otherwise. Slovenia enacted special rules<sup>2</sup> for tax receivables and debts in the Tax Procedure Act (TPA).<sup>3</sup> These rules can be divided into two separate groups. The first group (general rules) contains rules that apply to all tax receivables and debts unless otherwise stipulated, the second one (specific rules) applies only to the resident's annual personal income tax. Simply put, according to the general rules, the heirs are responsible for the decedent's tax debts, unless one of the general exceptions apply, but according to the specific rules it is the other way around, the heirs are responsible only if additional administrative conditions are met and if the general exceptions cannot be applied. Since the rules on the responsibility of heirs has not yet been fully scientifically shown, the first aim of this paper is to describe the content of the valid general and specific rules and the exceptions to them on the responsibility of heirs for the decedent's tax debts and the tax debts of the decedent's estate in the Republic of Slovenia. The content of the IA on the responsibility for the debts of the deceased is not included in this paper as a special chapter, however, in some of its parts the content of the IA is mentioned for a comparison between the two legal arrangements. The presentation of the tax

<sup>1</sup> Official Journal of the Socialist Republic of Slovenia, Nos. 15/76, 23/78, Official Journal of the Republic of Slovenia, Nos. 13/94, 40/94, 117/00, 67/01, 83/01, 31/13, 63/16.

<sup>2</sup> Although a comparative law perspective is not included in this paper it must be noted that countries that have similar tax law systems as those in Slovenia usually include provisions on the heirs' responsibility for the decedent's tax debts in their general tax laws, e.g. Croatia (Arbutina & Rogić Lugarić, 2017, p. 15), Serbia (Popović, 2014, p. 134), Poland (Popławski, 2011, pp. 109-112), Germany (Helmschrott et al., 2016, pp. 28-30) and Austria (Ritz, 2011, pp. 89-94).

<sup>3</sup> Official Journal of the Republic of Slovenia, Nos. 13/11 – officially consolidated text, 32/12, 94/12, 101/13, 111/13, 25/14, 40/14, 90/14, 91/15, 63/16, 69/17, 13/18.

rules enables the achievement of the main goal of the paper – the analysis of the compliance of the specific rules with the principle of equality before the law which is guaranteed by the Constitution of the Republic of Slovenia (Constitution).<sup>4</sup> Unlike the general rules, the author hypothesizes that the specific rules are contrary to the mentioned principle because administrative conditions either performed by the tax authority or by the taxpayer cannot be the basis for differentiation. It should be emphasized that the paper does not specifically deal with the inheritance of the tax receivables that the dead ancestors had at the time of their death, but the results of the analysis *mutatis mutandis* are also applicable to it.

From the methodological perspective, a comparison between civil law and tax law regulation is made based on the collection of the relevant primary and secondary sources and their analysis and interpretation. The author also critically evaluates certain valid general exceptions included in the TPA and applies the views of the Slovenian Constitutional Court to the rules under consideration in this paper. Slovenian tax literature on the topic is scarce, so the author uses the available Slovenian tax and civil law jurisprudence, the findings of the Slovenian and foreign civil and tax law literature, the Slovenian constitutional law literature and the case law of the Slovenian Constitutional Court.

This introduction is followed by a chapter that presents and analyses the general responsibility for the deceased's tax debts according to Articles 48 and 107 of the TPA. The chapter after that consists of two subparts. The first part is dedicated to the examination of the heirs' responsibility for the decedent's personal income tax debts, especially those that are levied using the annual tax base. In the second part the author analyses whether the current regulation is compliant with the constitutional principle of equality before the law. The paper is concluded with the most important findings and a proposal to amend the legislation.

## 2. General Responsibility for the Decedent's Tax Debts

The tax status of universal successors is regulated in Article 48 of the TPA. Tax legislation does not determine situations when universal succession

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<sup>4</sup> Official Journal of the Republic of Slovenia, Nos. 33/91-I, 42/97, 66/00, 24/03, 47, 68, 69/04, 69/04, 69/04, 68/06, 47/13, 47/13, 75/16.

occurs because this is determined by non-tax legislation (Cöster et al., 2009, p. 421), e.g., civil law and commercial law. The mentioned provision prescribes certain legal consequences that universal succession has for the decedent's tax receivables and debts (liabilities). Universal succession is only possible if prescribed by law (Brus, 2011, pp. 323-324). Hence, ancestor and legal successor cannot contractually agree to such a type of succession. Although the IA does not explicitly specify that heirs are universal successors, this is unquestionable in Slovenian civil law theory (Zupančič & Žnidaršič Skubic, 2009, p. 27)<sup>5</sup> and case law (Supreme Court of the Republic of Slovenia II Ips 1118/2008). The fact that inheritance constitutes universal succession is also indirectly derived from several paragraphs of Article 48 of the TPA, which regulate the exceptions to the general rule on the complete responsibility of universal successors for tax debts of ancestors prescribed in Article 48.1 of the TPA. These exceptions relate to inheritance, as was also confirmed by the case law (Administrative Court of the Republic of Slovenia I U 147/2010).

## 2.1. Decedent's Tax Debts and Tax Debts of the Decedent's Estate

Just like the IA, the TPA only explicitly regulates the heirs' responsibility for the decedent's tax debts, but does not mention the responsibility for tax debts of the decedent's estate. The two types of debts differ according to the time of their existence. A decedent's tax debts are those that exist at the moment when the taxpayer dies, while the debts of the decedent's estate arise after their death and they are estate related (Finžgar, 1962, p. 135). The latter also include all kinds of debts for managing the decedent's estate (Zupančič & Žnidaršič Skubic, 2009, p. 232) that arise from the moment of the decedent's death until the heirs actually accept the inheritance and become so called definitive heirs.<sup>6</sup> Taxes that must

<sup>5</sup> The same applies to comparable arrangements, e.g. Germany (Maier & Grimm, 2014, p. 280), Serbia (Vuković, 2007, pp. 11-12) and Croatia (Gavella & Belaj, 2008, p. 255).

<sup>6</sup> According to civil law theory, one becomes a definitive heir when their right to renounce the heritage extinguishes (Zupančič & Žnidaršič Skubic, 2009, p. 214; Gavella & Belaj, 2008, p. 102). This happens when they state that they accept the heritage, when they dispose with the whole of the heritage, or, at the latest, when the court issues a decision on inheritance (Supreme Court of the Republic of Slovenia II Ips 303/2008). From the time that the decedent dies until one of these moments or the time that a person renounces their right to inherit (Supreme Court of the Republic of Slovenia II Ips 198/2000), they are a so

be paid on ownership of the estate (e.g. annual real estate tax) or on the economic exploitation of property (e.g. income and turnover taxes on the leasing of real estate and income and turnover taxes on continuation of the independent economic activity of the deceased), are typical examples of the decedent's estate management debts. According to the interpretation of the IA, the rules on responsibility for the decedent's debts also apply to debts of their estate (Higher Court in Ljubljana I Cp 345/2017).<sup>7</sup> In the absence of an explicit legal basis in the TPA that would otherwise deal with such a legal situation, it seems that this position also applies to the heirs' responsibility for tax debts of the decedent's estate.

To ensure that the tax liabilities of the decedent's estate are fulfilled regularly, the tax law states who is obliged to pay such tax debts until it is established who the definitive heirs are. Such a rule is enacted to enable regular tax revenues from the time of death to the actual acquisition of property. In article 48.7 the TPA stipulates who is obliged to fulfil the tax debts connected with the management of the decedent's estate from the time the taxpayer dies to the actual acquisition of property by the legal successors. The persons who manage the estate of the deceased have an obligation to pay such tax debts either from the property they manage (e.g. funds in banks), or from the income derived from the property they manage (e.g. rents from exploitation of the property). The managers of the decedent's estate are either the executor of a will, the community of heirs, the heritage manager or the administrator of the legacy (Zupančič & Žnidaršič Skubic, 2009, pp. 216-218, p. 222). As already mentioned, the persons who manage the assets are required to fulfil tax debts of the decedent's estate only from the property they manage, or the income derived from that property. However, they become jointly and severally responsible with their own funds if the tax is not (fully) paid and they transferred the property or the income from the property for their own benefit or for the benefit of another person in a manner that breaches the obligation to act with due care and attention.<sup>8</sup>

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called temporary heir. As such, they are not responsible for the deceased's debts with their own property. It seems that the Administrative Court of the Republic of Slovenia (III U 216/2015) partly departed from these views stating that a person becomes a definitive heir with the finality of the court's decision. The court did not explain why the finality and not the issuance of the decision is crucial. Since this is the only decision on this issue, it could be that the court just made a mistake.

<sup>7</sup> By doing so, the case-law has filled the legal lacuna (loophole).

<sup>8</sup> This is a so called tax guarantee. A responsibility for the tax debt of another person (the principal tax debtor).

The difference between the decedent's tax debts and the tax debts of the decedent's estate is in the time limit within which they must be fulfilled. The heirs must settle the first within 60 days after the decision on inheritance becomes final (Article 48.2 of the TPA),<sup>9</sup> while the latter must be settled promptly by the managers of the decedent's estate. For this 60 day statutory postponement of payment (Jerovšek et al., 2008, p. 123), the heirs are not obliged to pay any interest, while the accrual of default interests which started before the decedent's death stops until the 60 day period expires (Article 48.5 of the TPA).

The law does not explicitly specify the delimitation between the decedent's tax debts and the tax debts of his estate. According to the civil law jurisprudence (Supreme Court of the Republic of Slovenia II Ips 690/2003), the decedent's tax debts are all those that existed at the time of death. The tax law theory (Jerovšek et al., 2008, p. 121) agrees with this interpretation and adds that it does not matter whether the tax debts are already established in an enforceable title (tax decision or tax return) at the time of death or not.<sup>10</sup> A tax debt that has not yet incurred at the moment of death cannot be passed on to legal successors (Jerovšek et al., 2008, p. 111). All tax debts that arise after the time of death are tax liabilities of the decedent's estate, even if they also include taxable events that occurred when the deceased was still alive.<sup>11</sup> It is therefore necessary

<sup>9</sup> The theoretical dilemma exists whether the heirs are also responsible for the decedent's tax debt if the decision on inheritance is not issued at all. The heirs can inherit the property even if the decision on inheritance is not issued. If the inheritance consists only of movable property, the court issues the decision on inheritance only upon the request of one of the heirs (Article 203 of the IA). The decedent's (tax) creditor is not entitled to file such a request (Kreč & Pavič, 1964, p. 698). If issuance of the decision on inheritance is *ex offio* not obligatory and none of the heirs demands it, the court issues a decision to stop the proceedings, usually with an entry in the certificate of death (Rijavec, 1999, p. 178). In such cases the heirs exercise their rights without the inheritance decision. Nevertheless, problems with proving their status can occur – the civil law theory resolves this with the view that the court issue a certificate that they are heirs (Zupančič & Žnidaršič Skubic, 2009, p. 254).

<sup>10</sup> The Administrative Court of the Republic of Slovenia (I U 923/2017) has a different view, stating that only those material rights and obligations can be transferred which, at the moment of death, have either already been identified (in an enforceable title) or are in the process of being established. This view seems wrong, because the general law does not state that rights and obligations cease to exist if the debtor dies.

<sup>11</sup> A typical example would be the death of an individual performing an economic activity (e.g. an entrepreneur). His revenue is derived from the activity at the time he was still alive, but he died before the tax year was over. The legislation in such cases prescribes that the tax period ends with the end of the day of death (Article 296.4 of the TPA). At the end of the day of death the tax liability for the advance payment of personal income tax arises (Article 44.3 of the TPA).

to take into account the rules that determine when a tax debt for each tax arises (i.e., whether it is when the taxable event occurs or when the tax period ends). If the tax debt arises when the taxable event occurs, taxes are usually calculated separately for each taxable event (e.g., real property transaction tax, inheritance and gift tax). If the end of the tax period is essential for the arising of the tax debt, then all relevant taxable events are taken into account when calculating the tax (e.g., personal income tax and corporate income tax).

Those taxes for which the tax debt incurs when the taxable event occurs, but are determined at the end of the period are problematic (e.g., value added tax and motor vehicles tax). The current legislation does not explicitly state that the whole tax debt is treated as tax debt of the decedent's estate, but such a practise has been established even though part of the tax debt already existed when the decedent was still alive. This practise affects the deadline within which tax debts are due and the fulfilment of the conditions for its write-off if, on the day of death, the tax debt does not exceed 80 EUR. It is questionable whether the legislator was aware of the mentioned dilemma, because even part of the tax law theory (Jerovšek et al., 2008, p. 113) erroneously claims that value added tax debt arises at the end of the tax period.<sup>12</sup>

## 2.2. General Exceptions to the General Responsibility for the Decedent's Tax Debts

The general rule that heirs are responsible for the decedent's tax debts is not without exceptions that apply to all taxes (general exceptions). These are prescribed in Article 48.2 to 48.4 and in Article 107 of the TPA and are discussed below.

*The Termination of Tax Debt due to Inadmissibly of its Execution on the Inherited Property.* According to point 1 of Article 107.1 of the TPA, the tax debt or part of the tax debt is written off if the taxpayer (natural person)

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<sup>12</sup> The Value Added Tax Act (VATA, Official Journal of the Republic of Slovenia, Nos. 13/11 – officially consolidated text, 18/11, 78/11, 38/12, 83/12, 86/14, 90/15) does not use the term occurrence of tax liability, but chargeability of tax (Article 32.2 ZDDV-1), which is just different wording with the same meaning. This view was already expressed in Slovenian tax law theory (Beč et al., 1999, p. 172). It would be better if the VATA expressly stated that chargeability occurs when the tax period ends like in Germany (Kurz & Meissner, 2017, p. 491).

dies and does not leave any property from which the tax can be recovered. With the write-off the tax debt ceases (Article 107.4 of the TPA). The content of these provisions is unusual, because it could be understood that tax debt can be recovered directly from the estate, as is considered in part of the tax theory (Jerovšek et al., 2008, p. 276), but this is not possible according to the IA (Zupančič & Žnidaršič Skubic, 2009, p. 230) that also applies to tax debts. The provision is to be interpreted in a such a way that when the deceased leaves only property that is exempt from execution (e.g. clothing, footwear, heating, basic household items, etc.), then his tax debt ceases and his heirs are not responsible for it. This interpretation is derived from the logical interpretation according to which the tax creditor cannot be better off because the taxpayer died. If the tax authorities could not be successful in an enforcement procedure against the deceased taxpayer, while he was still alive, then they also cannot be successful because the heirs inherited only property on which tax execution is inadmissible, even though they may also own property on which tax execution is admissible, but which they did not inherit from the deceased taxpayer.

*The Tax Debt Exceeds the Value of the Inherited Property.* The responsibility of an individual heir for the decedent's tax debt is limited to the value of the property he inherited, but his overall responsibility is generally not limited to the property he inherited (Article 48.2 of the TPA). The tax creditor may claim repayment from both the inherited property and the heir's remaining assets (so called *pro viribus hereditatis* responsibility). If the amount of the tax debt exceeds the value of the inherited property, the surplus is written off (Article 48.4 of the TPA) and the tax debt is terminated (Article 107.1 and 107.4 of the TPA).<sup>13</sup> Therefore, the value of the property at the moment of death is significant.<sup>14</sup>

<sup>13</sup> This is different in comparison to civil law where the obligation does not cease but becomes a so called natural obligation (Plavšak et al., 2009, p. 1038). A natural obligation is one which binds the debtor, but the creditor cannot enforce it if the debtor resists the enforcement. It is hence an obligation without legal protection.

<sup>14</sup> The same applies in Serbia (Popović, 2003, p. 39). A different view is presented in Croatian literature, according to which the value of the inherited property should be determined at market prices on the day that the decision on inheritance becomes final (Antolić et al., 2009, p. 47). The latter interpretation is directly derived from the rule according to which the tax authority must determine the value of the inherited property on the basis of market prices (Arbutina & Rogić Lugarić, 2017, p. 15). The law does not expressly state on which day the market price of the inherited assets must be determined.



It is worth mentioning at this point the relationship of this provision with Article 107.1 of the TPA, which was analyzed above. It seems that the only logical interpretation is that if the inherited property is exempt from tax execution, its value cannot be taken into account when calculating the value of the inherited property. Article 48.2 of the TPA should be interpreted in such a way that the responsibility of the heir for the debts of the deceased is limited by the amount of the value of the inherited property from which the tax debt can be enforced (the total value of the inherited property less the value of the property which is exempt from execution or is limited to execution). A different interpretation would cause an unfair distinction between persons who inherited only assets exempt from tax execution and persons who inherited both assets that are exempt and not exempt from tax execution. The first ones would not be responsible for tax debts while the others would be, and for the whole value of the inherited assets even though some of them are exempt from tax execution.

*The Divided (Shared) Responsibility of Each Heir.* According to Article 48.2 of the TPA the responsibility of heirs is divided (shared). This means that an heir is responsible only for his own part of the tax debt and the tax creditor can only claim the amount that equals that part (Plavšak et al., 2009, pp. 1079-1080). As such, each heir is responsible only for that part of the decedent's tax debt that equals his part of the inherited property.<sup>15</sup> This differs from the IA according to which heirs are jointly and severally responsible for the decedent's (non-tax) debts. This rule is not only special in relation to the IA, but also to the general TPA rule (Article 47), according to which, when several persons are obliged to fulfil the same tax debt, they are jointly and severally responsible.

The reason for this divided (shared) responsibility could be connected to the execution procedure rule according to which tax debts generally have absolute priority over other (e.g. civil law) debts (Article 94 of the TPA). Since the tax creditor generally has a more favourable position in the enforcement procedures, the joint and several responsibility of the heirs would be unfair. Once one of the heirs paid the tax debt with absolute priority instead of the other heirs, he could only claim repayment from them as a regular (non-priority) creditor.

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<sup>15</sup> For example, if person A inherits 2/3 of the decedent's assets and person B the rest (1/3), then the tax authority is entitled to claim 2/3 of the decedent's tax debt from heir A and 1/3 from heir B.

*On the Day of Death the Tax Debt does not Exceed 80 EUR.* According to Article 48.4 of the TPA, the tax liability is not transferred to heirs, but is written-off and thus ceases, if on the day of the decedent's death it does not exceed 80 EUR. For this ceasing to come into effect the amount of the decedent's total tax debt is relevant and not the amount that each heir is obliged to pay according to his own divided (shared) responsibility.

The purpose of this limitation of the heirs' responsibility is to ensure the principle of economy, since the procedures are expensive (Jerovšek et al., 2008, p. 124). If the tax debt did not cease, the tax authority would need to, on its own initiative, demand its fulfilment. The way in which the legislator calculated the amount determined by the law is unknown. This amount is determined irrespective of the method of determining the tax debt (tax return or decision), and regardless of whether the tax debt is already determined and only the payment must be made. The amount is also independent of the number of heirs who share responsibility for the decedent's tax debts.

The provision is a bit unusual because it explicitly mentions the day and not the moment of the decedent's death. This means that it includes the decedent's tax debts and the tax debts of the decedent's estate which arose until the end of the decedent's day of death. It is therefore important to determine the amount of the tax debt at the end of the decedent's day of death, and the amount at the moment of death, if these two differ.

The oddity of the arrangement was, in the fact, already discussed above. Managers of the decedent's estate are responsible for payment of tax debts that arise after the decedent's death. Can they refuse to pay stating that the tax debt was lower than 80 EUR? If not, can the heirs later demand a refund of the tax that was paid unnecessarily? The arrangement also allows the speculative behaviour of heirs who may know that a tax debt exists. On the day of death they could partially repay it, knowing that the remainder will cease. *De lege ferenda* it would make sense to correct the provision so that it explicitly determines that the amount of the tax debt at the time of death is significant for its cession.

A separate question is whether the amount of 80 EUR includes only real taxes or also the corresponding duties (e.g., tax interest and costs of the tax proceedings). Pursuant to Articles 3 and 44 of the TPA, which define what is a tax and what is a tax debt, and with regard to the purpose of those who benefit from it (the principle of economy), it seems that the amount does not include purely fiscal debt, but also all corresponding duties.

*The Absence of Heirs.* Only a person who has actually become a final heir is responsible for the decedent's tax debts. If the decedent has no heirs

then his tax debts are written-off and cease (Article 48.3 of the TPA). It makes no difference if no heirs existed or if they existed but all of them later renounced their inheritance.

According to Articles 9 and 130 of the IA, an inheritance without heirs becomes the property of the Republic of Slovenia (so called escheat), unless a bankruptcy procedure is initiated against the estate without heirs. The current solution is controversial in terms of taxes that do not belong to the state but to self-governing local communities as the legislator has decided to terminate the tax liability, regardless of whether the recipient of tax funds is a state or a self-governing local community. For non-tax debts, the IA has a different solution. If the state becomes the owner of the decedent's property it becomes liable for the debts (Zupančič & Žnidaršič Skubic, 2009, p. 236) like an heir (Supreme Court of the Republic of Slovenia II Ips 265/2011), although it is clear that the state is actually not an heir (Supreme Court of the Republic of Slovenia II Ips 115/2011).

The current content of the TPA is in some cases problematic even to the state. Suppose that a decedent has two creditors. The first one is the state that has a tax claim and the other is a private person with a civil law claim. Since the value of the decedent's assets is lower than the value of his debts, all the potential heirs decide to denounce the inheritance. The state becomes the owner of the assets, its tax claim ceases but it has to fulfil the other debt up to the amount of the inherited property. It can thus happen that the state ends up without any gain in property and without tax (Supreme Court of the Republic of Slovenia II Ips 265/2011). This would not happen if the IA rules were used, because the state could then repay its debt from the received property.

*The Transfer of the Inheritance to the State or Self-Governing Local Community.* According to Article 48.3 of the TPA, the tax debt is fully or partly written off, and thus ceases if the heirs accept the inheritance and then denounce it for the benefit of the state or self-governing local community. The use of the term denunciation of inheritance is not appropriate, rather the transfer of inheritance (Zupančič & Žnidaršič Skubic, 2009, p. 242) should be used. Inheritance can either be transferred to a person who is also an heir or to a third party. According to the IA, the person who transfers his share of the inheritance remains an heir and therefore remains responsible for the debts of the decedent (Zupančič & Žnidaršič Skubic, 2009, pp. 223-224). Hence, the transfer of inheritance makes sense when the decedent only has tax debts.

In order for the tax debt to fully or partly cease, the TPA does not require an heir to transfer his or her share to the person who is entitled to receive the collected tax. Thus, the heir can transfer the inheritance to the self-governing community despite which the state would still receive the collected tax, and vice versa. This solution is similarly unusual as the one mentioned above, according to which the tax debt ceases if there are no heirs and the state becomes the owner of the decedent's assets despite which, the collected tax would still belong to the self-governing local community.

### 3. The Responsibility for the Decedent's Personal Income Tax Debts

This section consist of two subsections. In the first subsection special rules on the responsibility of heirs for the taxpayer's annual personal income tax are introduced. In the second subsection an analysis of this particular arrangement is made in light of the principle of equality before the law. It should be noted that unless otherwise provided in this section, everything that is written above also applies to the heirs' responsibility for the decedent's personal income tax debts (e.g., the differentiation between the decedent's debts and the debts of the decedent's estate).

#### 3.1. The Arrangement

As already mentioned, the responsibility of the heirs for the decedent's tax debts differs from the general responsibility when it comes to annual personal income tax debts. The Slovenian tax law theory (Šinkovec & Tratar, 2002, p. 58; Jerovšek & Kovač, 2008, p. 108) believes that annual personal income tax debts require a different treatment because they are strictly personal by nature, but does not state the reasons for this point of view. Personal income tax is usually a so called subjective (personalized) tax (Jelčić et al., 2008, pp. 105-106), which means that for calculating the amount of tax debt in addition to objective circumstances (the amount of income), the subjective circumstances of the taxpayer (e.g. age, health status, number of dependent family member) are also taken into account (Škof et al., 2007, pp. 137-138). The latter could be the reason why Slovenian tax law theory believes that annual personal income tax debt is a strictly personal obligation by nature. Strictly personal obligations are generally not transferred to the heirs, but cease when the debtor dies

(Plavšak et al., 2009, p. 1038). It is questionable whether debts arising from subjective taxes are strictly personal obligations which arise due to the personal characteristics of the taxpayer, although their amount certainly depends on some of the taxpayer's personal characteristics, but a more detailed consideration of this issue would exceed the purpose of this paper. Besides which, the legislator is free to define a particular obligation as a strictly personal one (Constitutional Court of the Republic of Slovenia U-I-88/15, Up-684/12).

It should be noted that not all tax debts according to the Personal Income Tax Act (PITA)<sup>16</sup> are strictly personal obligations. Only those that cumulatively fulfil two conditions are considered as such. The first refers to the type of taxable income, while the other refers to the status of the taxpayer.

For the purpose of this paper, the two groups of incomes should be distinguished depending on whether the PITA includes them in the annual personal income tax base or not. The annual personal income tax base consists of employment income, income from economic activity that is established on the basis of actual revenue and actual expenses, income from basic agricultural and basic forestry activities, income from transfer of property rights, and other income. All other types of income under the PITA (income from economic activity that is established on the basis of actual revenue and lump-sum expenses, income from leasing of assets and income from capital) are taxed independently of other incomes (so called schedular tax). Specific rules regarding the responsibility of heirs for the decedent's personal income tax debts apply only to the first group of incomes and only to the annual tax debt, but not to the advance payments of the personal income tax. The general rules referred to in Article 48 are fully applicable to the second group of incomes because personal circumstances of the taxpayer are not taken into account when calculating the tax liability.

Under the PITA, the annual income tax is not determined for each taxpayer, but usually<sup>17</sup> only for those who are considered Slovenian residents

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<sup>16</sup> Official Journal of the Republic of Slovenia, Nos. 13/11 – officially consolidated text, 9/12, 24/12, 30/12, 40/12, 75/12, 94/12, 52/13, 96/13, 29/14, 50/14, 23/15, 55/15, 63/16, 69/17.

<sup>17</sup> Those non-residents under the PITA who are income tax residents of either an EU Member State or a state that is a member of the European Economic Area, and who attain at least 90% of the taxable income in Slovenia and are excluded from taxation in the country of residence (Article 116 of the PITA and Article 269 of the TPA) can demand to be taxed as residents of Slovenia.

according to the PITA. During the tax year, PITA residents are obliged to make advance payments of the personal income tax, either directly or indirectly through persons who must withhold the tax,<sup>18</sup> and on December 31 their annual tax liabilities arise. The amount of annual tax liability is determined by a decision and the advance payments are considered as already paid tax which is subtracted from the calculated tax liability. This data is used to determine whether the taxpayer owes the tax authority or *vice versa*. Exceptionally the result of the subtraction is null. The annual tax debt is usually determined by a tax declaration prepared by the tax authority (pre-prepared declaration) that automatically becomes a formal decision if no objection is made against it by the taxpayer. If on the other hand the taxpayer objects to the pre-prepared declaration, the objection is considered as his own declaration and the tax authority must issue a „real” income tax decision on the basis thereof. If the taxpayer does not receive a pre-prepared declaration by June 15, either because it was not prepared and dispatched by the tax authority or because of errors that occurred with its delivery, the taxpayer must file a tax declaration by July 31. In this case, the tax authority also issues a „real” income tax decision. Since pre-prepared declarations are sent to taxpayers as ordinary postal items, the law presumes that the taxpayers received them in the 15 days from the date of dispatch. This presumption can be challenged by the taxpayers by submitting tax returns by July 31.

When calculating the annual income tax, the general income tax allowance, allowances for family members that the taxpayer is obligated to maintain (if they cannot do it themselves), allowances for disabled taxpayers, etc. are taken into account in addition to the amount of income.<sup>19</sup> Considering that this is a personal tax and that obligations of a personal nature cease with the debtor's death, Article 267.8 stipulates that if a resident taxpayer dies before the pre-prepared declaration is sent to him or before he files the declaration, the annual personal income tax is not calculated and the advance payments of this tax are considered as final tax, the same as would apply for non-residents.

Regarding this provision, two situations should be distinguished: the first is when the resident taxpayer dies during the income tax year. In this case, the annual tax liability has not arisen till the moment of death, since the

<sup>18</sup> For non-residents according to the PITA these payments are not advance payments but final taxes.

<sup>19</sup> Some of these can already be taken into account when calculating the amount of advance payments.

tax year has not yet passed. Since the law does not stipulate that the annual income tax debt occurs at the time of death or afterwards, if an annual tax liability does not exist at the time of death or occurs later, heirs cannot be responsible for it. The other situation is when a resident taxpayer dies after the expiration of the tax year (after December 31). In this case, the tax debt already occurred so there are no „technical” obstacles for the responsibility of heirs for the annual income tax debt. Although this is not explicitly specified by the law, it follows from its meaning that the annual tax debt, which occurred on December 31, ceases if a tax declaration was either not sent by the tax authority or not filed by the decedent when he was still alive.

To avoid confusion it should be noted again that only the annual personal income tax debts cease, not the tax debts for annual income tax advance payments. For the latter the general provisions (Article 48 of the TPA) apply. In some articles of the TPA this is especially emphasized in certain provisions (e.g. Articles 279 and 307d). However, these provision are superfluous as they stipulate what follows from the general rule.

### 3.2. The Equality before the Law Analysis

The topic of this subsection is whether the current regulation, according to which some heirs are responsible for the decedent's annual personal income tax debts while others are not, is consistent with the principle of equality before the law which is protected by Article 14.2 of the Constitution. More precisely, are procedural acts, which are either performed by the tax authority or by the decedent, objective and justified reasons that enable different treatment before the law of two persons who are in the same legal position (e.g., they are both heirs of a decedent with a tax debt). If the answer to this question is negative, then the distinction between them is arbitrary and hence violates the principle of equality before the law.

The principle of equality, which according to the Constitution is a fundamental human right, must be respected in the formulation of regulations and in their application (Grad et al., 2016, pp. 745-746). In essence, this principle requires that legal positions that are essentially equal are treated equally before the law, and that legal positions that are essentially different are treated differently and not equally. But different treatment of essentially equal legal positions and equal treatment of essentially different legal positions is not absolutely forbidden. It is admissible, if it is not

arbitrary, which means that it is supported by an objective and justified reason (Constitutional Court of the Republic of Slovenia U-I-59/2003). Hence, it must pass the test of arbitrariness.

The heirs of decedents who die within the personal income tax year are not treated differently since none of them is responsible for the decedent's annual personal income tax debt as this tax debt does not arise. However, they will all be responsible for the personal income tax advance payments debt. Due to equal treatment of all, no further analysis of the equality before the law principle is required.

The rules apply otherwise to the heirs of decedents who die after the tax year ends. In this case, the heirs are responsible for the decedent's annual personal income tax debts only if the tax authority acts before the taxpayer dies or the taxpayer acts before his death. The law stipulates that the heirs are not responsible for the decedent's annual personal income tax debts if he dies either before the tax authority sends the pre-prepared declaration, or before the taxpayer files his annual personal income tax declaration if the pre-prepared declaration is not sent to him. If the heirs are not responsible for the decedent's personal income tax debts, they cease to exist.

If the taxpayer dies after the end of the tax year, the annual personal income tax liability for the previous year already occurred and hence could theoretically be calculated. It could therefore be determined whether the resident taxpayer needs to pay an additional amount to the budget or has a claim for reimbursement of the prepaid personal income tax through advance payments made during the previous tax year. We can say that all taxpayers who die after the end of the previous tax year are in essentially the same legal position, since for all of them an annual personal income tax liability already occurred. The same applies to their heirs. All heirs would be treated equally before the law if Article 48 of the TPA was used as the basis for their responsibility for the occurred annual personal income tax debts of the decedents for the previous tax year. The legislation stipulates otherwise. The heirs are responsible only if further procedural activities for the previous tax year are performed before the decedent's death. Hence the responsibility of the heirs depends on the actual activity of either the tax authority or the taxpayer. It is of no importance whether they needed to act according to the law, but only if they actually acted (e.g., the heirs will not be responsible if the decedent did not act, but should have).

The practice of the tax authority should firstly be explained. Not all pre-prepared declarations for previous tax years are sent to the taxpayers



at once. The tax authority sends them in two bundles. The first is usually dispatched at the end of March and the second at the end of May.<sup>20</sup> This practice clearly shows that the responsibility of the heirs for the decedent's annual personal income tax debts also depends on the bundle in which the pre-prepared declaration is placed. The legislation does not specify that pre-prepared declarations must be sent in several bundles. It prescribes only that the last date by which the pre-prepared declarations must be sent is May 31. Maybe the legislator did not expect that the tax authority would send the pre-prepared declarations in several bundles when the law was adopted. If all pre-prepared declarations for the previous tax year were dispatched to taxpayers at the same time, then all their heirs, to whom the pre-prepared declarations were dispatched, would be treated equally regarding the responsibility for annual personal income tax debts. However, the problem would still remain for those taxpayers for which the pre-prepared declarations were not prepared and dispatched at all. Thus, the fact that the responsibility of heirs for the decedent's tax debts depends on both the fact whether the tax authority actually dispatches pre-prepared declarations and its established practice to dispatch them in two bundles opens the question of unequal treatment of the heirs before the law according to the way the tax authority acts in a particular case. The Constitutional Court of the Republic of Slovenia (Up-492/2011) has already taken the view that, if the distinction between persons is based on the effectiveness of the functioning of the organs, then it is not based on a reason that arises from the nature of the matter. If the responsibility of the heirs for the decedent's personal income tax debts depends (also) if the tax authority dispatches the pre-prepared declaration at all and on the bundle in which it is dispatched, then it depends on how effectively the organs function.

The second option provided by the law for cases when the pre-prepared declaration is not dispatched is also questionable. The responsibility of heirs for personal income tax debts of their decedents depends on whether or not the decedent actually filed the tax declaration or not, not on whether he had an obligation to do so and maybe abandoned his duty. Legislation thus „encourages” taxpayers for whom pre-prepared tax declarations have not been dispatched, not to file the tax declarations themselves, because if they die, their heirs will not be responsible for their tax debts. Such a regulation that „encourages” speculations is not in line with

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<sup>20</sup> E.g. for personal income tax calculation in 2017, the first bundle was dispatched on March 30, 2018, and the second on May 31, 2018.

the rule of law principle, according to which the legal order should be respected by everybody.

In the end, it is necessary to analyze whether the current legislation is such because the legislator is not able to impose a different solution, which would mean that the current regime is necessary and therefore reasonable and justified. It is certainly possible to prescribe a different solution which does not violate the equality before the law principle. The first one would be not to treat annual income tax debts as strictly personal. In this case, the heirs would not be responsible for them only if additional conditions are met, but would still be responsible for them according to the general provisions on the responsibility of heirs (Article 48 of the TPA). However, if the legislator insisted on treating the annual personal income tax liability as strictly personal, which is in his discretion, he could link the responsibility of heirs to some point which would not depend on how effectively the tax authority works or whether and when taxpayers actually fulfil their legal responsibilities. This could, for example, be a deadline for sending pre-prepared tax declarations or a deadline by which taxpayers are required to file tax declarations if a pre-prepared tax declaration was not dispatched to them.

## 4. Conclusion

Although the provisions on the responsibility of heirs for the decedent's tax debts are often used in tax practice, Slovenian tax law literature and jurisprudence only seldom deal with it. It seems that in the absence of theoretical debates on this topic, the tax authority interprets the rules in its favour, and the taxpayers are completely subordinate to them because they lack the knowledge to fight back. The general arrangement of responsibility for tax debts partly deviates from the one according to the IA, but does not open up any major dilemmas. This cannot be stated for the responsibility of the decedents' debts arising from annual personal income tax when they die after the occurrence of the tax liability. The Slovenian legislator considers an annual personal income tax liability as a liability that is strictly personal in nature. This means that heirs are not regularly responsible for such tax debts, but are responsible only if additional conditions are met. These conditions however, do not depend only on the day when the taxpayer dies, but also on the way the tax authority acts or the taxpayer behaves. Such a legal solution is problematic from the

principle of equality before the law point of view (Article 14.2 of the Constitution) because it distinguishes between the heirs regarding the responsibility for the annual personal income tax debts of their ancestors without a reasonable and justified reason. Two persons who are in essentially the same legal position cannot be treated differently before the law due to the effectiveness of the work of the tax authority. The same goes for different treatment based on the fact whether the taxpayers acted or not. The current rule „encourages” taxpayers not to respect the rules, as their heirs could be „rewarded” for their illegal actions. It should also be noted that the solution prescribed by the legislator is not the only one possible and thus necessary. The legislator could either abandon the treatment of the annual personal income tax liability as a strictly personal one, or maintain such a treatment, but enact a solution that would not be contrary to the principle of equality before the law. It seems that *de lege ferenda* it would be best to eliminate the strictly personal nature of the annual personal income tax liability, and hence completely suspend its termination due to the decedent's death, unless some other procedural acts were performed. In the event of the preservation of this status, the law should prescribe such conditions for the responsibility of heirs for the decedent's tax debts that do not depend on the actual behaviour of the tax authority or the actual conduct of the taxpayer in the specific case.

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## HEIRS' RESPONSIBILITY FOR THE DECEDENT'S TAX DEBTS IN THE REPUBLIC OF SLOVENIA

### *Summary*

*In this paper the author discusses the Slovenian tax rules on the responsibility of heirs for tax debts that their ancestors (decedents) had at death and also tax debts of the estate. Generally the heirs must fulfil all of them, but two groups of exceptions exist. The first one consists of exceptions applicable to all types of tax debts, e.g., liability only up to the amount of inherited property, liability of each heir in relation to his share of the inherited property, non-liability if the heir transfers the inheritance to the state or the local community, non-liability when the amount of tax is 80 EUR or lower. The second group of exceptions apply only to the personal income tax residents' liability for that part of the personal income that is taxed annually (employment income, income from economic activity that is established on the basis of actual revenue and expenses, income from basic agricultural and basic forestry activities, income from transfer of property rights, and other income). Since personal circumstances (e.g. living costs, number of children, age) are taken into account when calculating the annual tax base, the legislator believes that part of the personal income tax is a strictly personal obligation by nature. Hence, it ceases to exist when the tax debtor dies. The heirs are responsible for such tax debts only if the tax is either declared by the tax authority or by the deceased when he is still alive. The author of this paper claims that because the responsibility of the heirs depends on the activity of the tax authority or on the deceased taxpayer and not only on the moment of death, the constitutional equality before the law clause is breached.*

*Key words: taxation, Personal Income Tax, inheritance, Slovenia, tax debt, equality before the law*

## ODGOVORNOST NASLJEDNIKA ZA POREZNA DUGOVANJA OSTAVITELJA U REPUBLICI SLOVENIJI

### *Sažetak*

*Autor rada preispituje slovenska porezna pravila po kojima se utvrđuje odgovornost nasljednika za porezna dugovanja ostavitelja, u času ostaviteljeve smrti, te za porez na ostavinu. U pravilu nasljednici odgovaraju za sve ostaviteljeve dugove međutim, postoje dvije grupe iznimki. Prva grupa se odnosi na sve vrste porezna dugovanja, npr. odgovornost samo do visine vrijednosti naslijeđene imovine, odgovornost pojedinog nasljednika samo za nasljedni dio ostavine, nepostojanje odgovornosti ako je nasljednik nasljedstvo prenio državi ili lokalnoj zajednici, nepostojanje odgovornosti ako porezni dug iznosi 80 EUR ili manje. Druga grupa iznimki odnosi se isključivo na poreznu obvezu onog dijela poreza na dohodak koji se oporezuje godišnje (dohodak od nesamostalnog rada, dohodak od gospodarske djelatnosti koji se izračunava na temelju stvarnih prihoda i rashoda, dobit od poljoprivrede ili šumarstva, prihod od prijenosa prava vlasništva i ostali prihodi). S obzirom da se godišnja porezna osnovica temelji i na životnim uvjetima poreznog obveznika (npr. troškovi života, broj djece, starost), zakonodavac smatra da je jedan dio poreza na dohodak po svojoj prirodi isključivo osobna obveza i stoga nestaje u trenutku smrti poreznog obveznika. Odgovornost nasljednika za takva porezna dugovanja nastaje samo ako je podnesena porezna prijava od strane porezne uprave ili poreznog obveznika za vrijeme njegova života. Autor rada tvrdi da ako odgovornost nasljednika ovisi o aktivnostima porezne uprave ili poreznog obveznika, a ne samo o trenutku smrti, krši se ustavni princip jednakosti građana pred zakonom.*

*Ključne riječi: oporezivanje, porez na dohodak, nasljedstvo, Slovenija, porezna dugovanja, jednakost pred zakonom*