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## **THE CHILD AS A PARTY TO TAX PROCEEDINGS**

## ABSTRACT

There are two categories of entities in legal-tax relationships. These include tax authorities, the active party in the legal-tax relationship, and taxpayers, the passive party in the legal-tax relationship. While there is no ambiguity in identifying and defining the rights and obligations of tax authorities, this issue can become more complex concerning the taxpayer. Especially when it comes to taxpayers who are natural persons and have not attained the age of majority. It should be noted that the attendance of minors in economic events, such as advertisements or competitions, is becoming increasingly significant. Minors often become parties to donation agreements, leading to the acquisition of certain assets. It is essential to mention that each of these events, if associated with income generation, results in the emergence of tax liability. This necessitates accurately determining the liability and initiating tax proceedings if the relevant factual conditions are present. This article seeks to answer whether a child can be a party to tax proceedings and what rights they have in this respect. To explore this issue, the definitional scope of the term 'child' was first outlined, followed by examining their legal-tax capacity and, ultimately, considering the child as a party to tax proceedings.

**KEYWORDS:** *child, tax legal capacity, party to tax proceedings, taxpayer, tax proceedings*

## INTRODUCTION

The doctrine of tax law states that tax capacity is a normative feature defined by tax law provisions, which grant the capacity to have rights and obligations as well as the capacity to exercise them. As a result, the taxable entity can enter into specific legal-tax relationships that entitle or obligate it to certain conduct within the scope of tax law (B. Brzeziński, 2009, p. 53). Legal-tax capacity is associated with the status of being a party to tax proceedings. Since minors generally lack legal capacity, they cannot effectively enter into contracts or act as parties in legal acts. However, the tax effects of specific events can directly affect them. Thus, examining the issue of being a party to tax proceedings from the perspective of a minor individual is crucial, as it entails the need to protect the child's rights as a vulnerable entity. Determining and defining the term of a child, as well as determining the scope of rights they are entitled to in this context, to avoid interpretative errors in exercising their entitlements. Legal-tax capacity and the event causing a tax effect represent one of the most

critical elements in tax systems. Its correct determination leads to assessing the amount of tax liability and fulfilling this obligation, especially when it involves interaction with tax authorities.

## DEFINITION OF A CHILD

Determining whether a child has legal-tax capacity under tax law, and therefore whether they also have the status of a party to tax proceedings, first requires addressing the scope of the definition of a child.

In legal discourse, the definition of a *child* does not have clear-cut connotations with strictly defined boundaries. Terms encountered include *adolescence* (International Covenant on Civil and Political Rights, 1966, Article 14(1) and (4)), *minor* (International Covenant on Civil and Political Rights, 1966, Article 24(1)), and *juvenile* (Fourth Geneva Convention, 1965, Article 76). There is also a differentiation between the terms children and adolescence (International Covenant on Civil and Political Rights, 1966, Article 10(3)). The dictionary definition indicates that a child is *an immature human being from birth to adolescence* (E. Skorupka, H. Auderska, 1968, p. 151) or *an immature human being until adolescence* (Szymczak, 1978, p. 498). Dictionary definitions referring to a child's age address its legal capacity without specifying when this capacity is acquired or what it entails (B. Olszewski, 2011, p. 214).

In the Polish legal system, the definition of a child is stipulated in the Act of January 6, 2000, on the Ombudsman for Children's Rights. The aforementioned legal act states that (...) *a child is every human being from the moment of conception to reaching the age of majority* (Act on the Ombudsman, 2020, Article 6). The definition of a child as accepted by the Polish legislator means that protection extends to a conceived child, which, although lacking legal capacity in the Polish legal system, is not deprived of legal protection. The legal framework allows for the conditional acquisition of rights and obligations through nasciturus. The legislator has established the possibility for a conceived child to acquire the capacity to inherit, provided it was conceived at the time of the inheritance opening. This concept entails a conceived child's limited and conditional legal capacity, indicating that a child conceived at the time of the

intestate's death may be a successor if born alive. A child has legal capacity upon birth, even if it passes away shortly thereafter.

In Polish legislation, there are various terms referring to the definition of a child. To describe an unborn child, the legislator uses the term *conceived child* (Civil Code, 1964, Article 927). The legal term for a person under the age of 18 demonstrating signs of demoralisation is *minor* (Law on Proceedings in Juvenile Cases, 2018, Article 1, Paragraphs 1 and 2). A person aged 13 to 17 who has committed criminal acts, as well as individuals up to 21 years old subject to educational and corrective measures ordered by the court, are considered *juveniles* (Law on Proceedings in Juvenile Cases, 2018, Article 1(1)(2) and (2)). Another term is *adolescent*, referring to a person aged 15 to 18 who may be employed under an employment contract (Labour Code 1974, Article 190). The term *adolescent*, as used in the Labour Code of 26 June 1974, does not correspond to the concept of a *minor* under the Civil Code. According to civil law rules, a minor who has reached the age of 13 has limited legal capacity. Under the Labour Code, individuals under the age of 16 are deprived of the legal capacity to enter into employment relationships; however, upon reaching 16, their rights increase. The Labour Code stipulates that a person with limited legal capacity may enter into an employment relationship and perform legal actions related to that relationship without the consent of a legal representative. However, if the employment relationship is contrary to the well-being of this individual, the legal representative, with the permission of the guardianship court, may terminate it (Labour Code, 1974, Article 22). The term *minor* refers to individuals aged 16 to 21 who have committed a crime and are criminally liable for their actions. Another term is *adolescent*, which describes one of the three protected subjects listed in Chapter XXV of the Act of 6 June 1997—the Penal Code. Another term is *juvenile*, referring to a person who commits offences prohibited by the Penal Code after turning fifteen years old.

When considering the definition of a child, it is also necessary to take into account the provisions of the Act of 26 July 1991 on personal income tax (Income Tax Act, 1991). Solutions provided in the framework of personal income tax indicate that the legislator uses the term *child*, especially in the context of a *single parent raising a child*, who, upon meeting the conditions

stipulated by law, is entitled to tax preferences. According to the legislator, a *single parent raising a child* is entitled to joint taxation with their child, provided that the parent cares for a minor child, a child, irrespective of age, who is subject to care allowance or social pension as stipulated by separate provisions; and a child who has not yet reached the age of twenty-five and is still studying in institutions specified in the education system regulations.

Although the tax legislator directly refers to the term of a child, it identifies a broad range of individuals who may be considered as such. The age range considered is much wider compared to civil law, criminal law, or labour law. According to tax legislation, a child is defined as a person who has not yet reached the age of 25 (Income Tax Act, 1991, Article 6(4)(c), point 3). Therefore, the definition of a child outlined in these provisions aligns with constitutional prerogatives, which primarily mandate guardians to foster a child's development, including educational and professional aspects.

Given the above considerations, it should be noted that the definition of a child in the provisions of the Convention on the Rights of the Child and in Polish law is similar. Neither the Convention on the Rights of the Child nor Polish legislation precisely regulates the initial boundary of childhood. The first of these acts discusses *protection of the child before birth*, while Polish law, except for civil law provisions on inheritance rights and the recognition of a child, does not address the issue of an unborn child. Therefore, Polish law does not need to be amended to align with the provisions of the Convention on the Rights of the Child. It is also important to mention that setting the boundary of childhood entails two aspects. On the one hand, the boundary of childhood in establishing protection against harmful phenomena should be positioned as high as possible; on the other hand, it should consider the growing autonomy and maturity of the child, along with the obligation to respect their civil rights.

## LEGAL AND TAX CAPACITY OF A CHILD

In light of the definitional scope of the term of a child, it is now necessary to explain the extent to which the recognition of a particular unit of social life – a natural person – as a taxpayer is associated with specific rights and obligations.

In tax law, the consequence of having legal-tax capacity is the obligation to fulfil tax liabilities, which includes participating in tax proceedings. Legal capacity is defined as the ability to participate in legal relationships (A. Wolter, J. Ignatowicz, 1996, p. 167). Given that the discussed issue concerns a child, the specified research problem necessitates an examination of legal norms concerning the passive subjects of tax law relationships. When addressing this issue, it should be noted that one of the five variable characteristics of a tax is the entity subject to taxation. The subject of taxation should not be identified with the subject of a tax law relationship, which is any natural person, legal entity, or organisational unit without legal personality that has a legal interest in the decision issued by a public administration authority in the proceedings (Tax Ordinance Act, 2023, Article 133). The subject of taxation is an element of the tax structure stipulated by tax law. The mandate to specify the elements of the tax structure in a legislative act of statutory rank was introduced by the Constitution of the Republic of Poland (Constitution of the Republic of Poland, 1997, Article 217), which allows the subject of taxation to be considered in legal-tax terms (J. Kulicki, 2001, p. 135). Hence, the subject of taxation is the entity that is legally obligated to pay the tax. In legal terms, the subject of taxation means the entity responsible for paying the tax, which may not always be the same as the economic entity that bears the economic burden of taxation. The identity of the legal and economic entity is maintained only in direct taxes, which are those where the tax effects cannot be assigned to another entity (J. Kulicki, 2001, p. 136). The most common subjects of taxes are natural persons, legal entities, or organisational units without legal personality. Hence, the scope of legal personality aligns with civil-law personality (K. Święch, 2013, p. 71). When considering the tax-law personality of a child, it is crucial to outline the definitional scope of a taxpayer first.

The Act of December 19, 1980, on Tax Obligations (Tax Obligations Act, 1980) specified the first legal definition of a taxpayer. According to this legal act,

a taxpayer was defined as a natural person, a socialised economy unit, required to pay tax due to the tax liability imposed on them (Tax Obligations Act, 1980, Article 3(3)). In the current legal system, a taxpayer is considered a natural person, a legal entity, or a business unit without legal personality, subject to tax obligations under tax laws (Tax Code, 1997, Article 7, Paragraph 1). The referenced definition covers a broad spectrum of entities considered taxpayers, as whether a person becomes a taxpayer is determined by the rules of substantive law. This pertains to the occurrence of an event that results in the emergence of a tax obligation. Hence, obtaining taxpayer status is not dependent on the will of the taxed entity (S. Babiartz, B. Dauter, 2015, p. 93). Additionally, tax laws regarding taxpayer status use the term *natural person* without providing a definition. Hence, it is necessary to adopt a systematic interpretation, which mandates the analysis of tax law provisions using regulations from civil law (P. Pietrasz, 2007, p. 99).

In civil law, a natural person is every human entity whose legal status is defined by the following attributes: legal capacity, capacity to perform legal acts, as well as surname, first name, place of residence, marital status, personal status, and personal rights (B. Ziemianin, 1999, p. 78). Legal capacity and capacity to perform legal acts represent fundamental terms for tax legal capacity. Here, consideration should be given to the principles of tax procedure, which mandate that legal capacity and capacity to perform legal acts be assessed according to the provisions of the Civil Code unless tax law provisions state otherwise (Tax Ordinance Code, 1997, Article 135). Legal capacity in civil law is defined as the ability to be a subject of rights and obligations in civil law (A. Wolter, J. Ignatowicz, 2020, p. 147). According to civil law provisions, every human being has legal capacity from birth. Legal capacity is an attribute equally applicable to every individual. It cannot be waived, limited, or transferred to another person through legal acts. Legal capacity is vested in every person from birth. Legal capacity terminates upon death. Full capacity to perform legal acts is granted to adults (Civil Code, 1964, Article 11) unless they have been incapacitated or a temporary guardian has been appointed (Code of Civil Procedure, 1964, Article 549, Paragraph 1). Limited legal capacity applies to minors, defined as those who have not yet reached the age of 13 and have not attained the age of majority through marriage, individuals partially incapacitated (Civil Code, 1964, Article 15), and individuals

for whom a temporary guardian has been appointed by the court (Code of Civil Procedure, 1964, Article 549, Paragraph 1). Minors who have not yet reached the age of 13 and individuals who have been fully incapacitated do not have the legal capacity to perform legal acts (Civil Code, 1964, Article 12).

When it comes to natural persons who are taxpayers, it should be acknowledged that the tax legislator does not link tax legal capacity to age when granting it to natural persons. This leads to the conclusion that every natural person subject to a tax obligation under tax laws is equally considered a taxpayer. However, it must be noted that individuals without or limited legal capacity must act in tax proceedings through their legal representative.

The above considerations lead to the conclusion that a child is a taxpayer and, therefore, a subject of rights and obligations under tax law. A child's tax legal capacity as a natural person should be associated with legal capacity rather than the capacity to perform legal acts. The nasciturus could also be classified as a taxpayer. Therefore, the conceived child may be entitled to both assumed obligations and essentially unlimited rights – not only in the context of broadly understood private law but also in public law, including tax law. This is evidenced by the decision of the Supreme Administrative Court dated November 28, 1985 (Case No. III SA 1183/85), which found the admissibility of donations to a conceived child. Even though the Supreme Administrative Court's aforementioned decision was made regarding tax legal capacity regarding the acquisition of a donation, the issue arising in this context is related to general tax legal capacity.

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The distinct nature of tax law, while also respecting its close ties with other branches of law, including civil law, allows us to assert that the applicable principles on defining the tax legal capacity of a child often draw upon rules applied therein. The above considerations lead to the conclusion that a child holds the status of an independent subject of tax law, whose scope of rights and obligations in procedural tax law is not dependent on age or limited legal capacity. Therefore, the tax legislator has not introduced any age-related restrictions.



Every individual, even a minor, can be a party to tax proceedings. A child's legal capacity and rights should be exercised within the specified procedures, both in court and in proceedings before tax authorities. The parties to the proceedings are entitled to express their position in procedural documents, during an informational hearing or examination, and as parties or participants in the proceedings. However, these specified entitlements are subject to limitations in the case of a child. The individual's age is a pivotal issue in legislation, as the ability to exercise these rights and freedoms depends on their respective level of maturity.

The party to tax proceedings is the taxpayer (Tax Ordinance Act, 1997, Article 133), which includes legal entities, business units without legal personality, and natural persons. However, not every natural person has the capacity to independently conduct proceedings despite having a legal interest or obligation in a specific tax-legal case. The ability of a particular entity to participate in and undertake actions in ongoing proceedings is impacted by legal capacity, capacity to perform legal acts and procedural capacity. Procedural capacity depends on having legal capacity and capacity to perform legal acts. Procedural capacity in tax proceedings refers to the ability to act in the process on one's own behalf, personally, or through a designated representative. As outlined in previous considerations, tax legislation mandates that legal capacity and capacity to perform legal acts be assessed by civil law provisions. The relevance of full legal capacity is the ability to perform all lawful acts aimed at acquiring or disposing of rights, as well as incurring obligations. In tax proceedings, full legal capacity allows a non-incapacitated natural person to effectively undertake procedural actions either personally or by appointing a representative in the pending case. Natural persons who have not attained the age of 13 and those who are fully incapacitated do not have legal capacity. An individual who has reached the age of 13 may be fully incapacitated if, as a result of mental illness, mental debility or other mental disorders, particularly alcoholism or drug addiction, they are unable to manage their own proceedings. In civil law, actions undertaken by a person lacking legal capacity are deemed invalid, meaning they do not result in legal consequences. In tax proceedings, however, a legal regulation appoints a guardian for individuals incapable of performing legal acts. In general administrative proceedings, it is specified that

natural persons lacking legal capacity act through statutory representatives (Administrative Procedure Code, 1960, Article 30(2)). Consequently, any legal action undertaken by a person without legal capacity is deemed invalid (Civil Code, 1964, Article 14(1)).

In accordance with the specified legal regulations, individuals under the age of 13 lack the capacity to participate in tax proceedings effectively. Minors who have reached the age of 13 and partially incapacitated individuals have limited capacity to perform legal acts (Civil Code, 1964, Article 15), as well as individuals for whom a temporary guardian has been appointed for the duration of proceedings concerning incapacitation (Code of Civil Procedure, 1964, Article 548(1)). An individual with limited capacity to perform legal acts may perform legal acts with the consent of their statutory representative. It should be clarified that minors who have reached the age of 13 but have not yet attained majority have limited procedural capacity, which means they only have it in cases related to legal acts they can perform independently (Code of Civil Procedure, 1964, Article 65(2)). Therefore, a minor may enter into contracts regarding less significant everyday matters and also manage earnings (Civil Code, Articles 20 and 21).

In tax proceedings, the principle is that individuals lacking legal capacity act through their statutory representatives. However, the possibility of appointing an attorney depends on the will of the statutory representative acting on behalf of the minor child. In cases where a minor child can appear in person, they may appoint an attorney (R. Zagadło, 2011, p. 61). If neither parent nor statutory representative can represent a child under parental authority, the tax authority should seek the appointment of a guardian.

A child's participation in tax proceedings requires consideration of the right to be heard, which is one of the procedural guarantees granted to parties and participants in judicial proceedings. However, its importance is also significant in proceedings before tax authorities. This includes the right to express opinions, speak up, make decisions, and the right to seek, receive, and share information. The right to be heard, inherent to children, is grounded in the Convention on the Rights of the Child (Convention on the Rights of the Child, Article 12(1) and (2)). A legal act of particular significance in this matter is also the European Convention on the Exercise of Children's Rights,

adopted in Strasbourg on January 25, 1997. The Convention primarily provides the right to information about ongoing proceedings concerning a child, the right to request the appointment of an independent representative of their interests, the right to request the presence of chosen individuals in proceedings before the court, and the right to be informed about the potential consequences of their stance and any decisions. The Convention on the Rights of the Child mandates that when appointing a representative for a child, the representative must provide the child with explanations regarding the potential consequences of their stance and actions taken by the representative, if the child is deemed to have sufficient understanding under domestic law, or provide the child with all necessary information if considered to lack sufficient understanding under domestic law.

A court decision based on considerations related to a minor child's upbringing may limit the right of a minor child to undertake actions in proceedings concerning themselves independently. Such assessment should be made on a case-by-case basis, as limitations on the child's participation in proceedings concerning them may arise not only from the nature of the case but also from specific case circumstances. According to a decision dated December 15, 1998, the Supreme Court stated that the court should take into account the viewpoint of the minor, considering their best interests and exercising discretion based on the minor's level of maturity and the nature of the case. However, doctrine deems the Supreme Court's position on this matter as inaccurate, asserting that a child is a participant in proceedings concerning their own person, and upon reaching the age of 13, they have the right to participate personally in judicial proceedings (A. Zieliński, K. Flaga-Gieruszyńska, 2002, p. 995-996). It is advocated to allow the child to independently perform actions and grant the child the status of a participant in the proceedings (R. Zagadło, 2011, p. 61). Considering the child's best interests, maturity level, and the nature of the case, an essential aspect in the ongoing proceedings is listening to the child, thereby respecting their right to be heard in the proceedings.

In the Polish legal framework, the principle concerning the hearing of children in judicial proceedings is stipulated in the Constitution of the Republic of Poland, which mandates the hearing and, to the extent possible, the consideration of the child's opinion in the process of determining their rights by

public authorities (Constitution of the Republic of Poland, 1997, Article 72, Paragraph 3). In the context of research within the defined field, the legal provisions that mandate the obligation to hear a child in matters concerning their assets are significant (Tax Ordinance, 1997, Article 155, Paragraph 1).

In tax proceedings, the tax legislator does not explicitly regulate this issue. It merely refers to summoning the party to give relevant explanations, either in person or through an attorney, for the purpose of the ongoing proceedings. From the above, it can be deduced that this will be the statutory representative for a minor child.

## CONCLUSIONS

The examination of the topic revealed that the Polish legal system lacks a single, universal definition of a child. The term 'child' is not defined in the provisions of tax law either. The legislator employs the following terminology in different legal regulations: minor, juvenile, individual under parental authority, and adopted child. According to civil law principles, a child is defined as any human being from birth until they attain adulthood. General tax law provisions state that a taxpayer is, among others, a natural person with a tax obligation. The legal capacity and capacity to perform acts in tax matters are assessed according to civil law provisions unless the tax law provisions state. Thus, children have the capacity under tax law, allowing them to be subject to rights and obligations in tax law. Therefore, a child holds the status of a party in tax proceedings, which includes the taxpayer, payer, legal successor, and third party. It is important to note that the taxable entity should not always be equated with the entity in the tax law relationship, as this entity must have a legal interest in the tax authority's decision in the tax proceedings.

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