Chapter 21

Czech Republic: Independent Tax Policy as a Part of Czech Fiscal Policy

Michal Radvan

Abstract

Tax issues are often considered crucial to public financing. Many state policies depend on tax revenue. The state sets its tax policy to collect adequate income in order to ensure the management of the state and local self-government units.[1] The position of tax law within the system of law is perceived in a variety of ways in the world and in European Union (EU) Member States. For example, in Western European countries (the old EU Member States), tax law and tax law science have long-standing traditions. Tax law is an independent branch of European law. In the new EU Member States (Central and Eastern Europe), tax law is (still) a sub-branch of financial law according to the local legal sciences; specifically, it pertains to the fiscal part of financial law, which deals with the legal relationships created, implemented, and terminated in the process of creating, distributing, and using public monetary funds. The fiscal part of financial law includes, in addition to tax law (public budget revenues), budgetary law, and public subsidy law (public budget expenditures).[2]
This chapter addresses the position and role of tax laws in the Czech legal system. The following sections identify the pros and cons of tax sovereignty and tax harmonisation in tax law regulations and reviews notable efforts in the tax avoidance field. The last section presents the conclusions and *de lege ferenda* recommendations.

1 For this subchapter, several parts from Radvan, 2020; and Hulkó and Radvan, 2022, pp. 63–73, are used.
2 Mrkývka, 2012; Boháč, 2006, pp. 6–10.

Michal Radvan (2024) 'Czech Republic: Independent Tax Policy as a Part of Czech Fiscal Policy'. In: Zoltán Nagy (ed.) *Economic Governance. The Impact of the European Union on the Regulation of Fiscal and Monetary Policy in Central European Countries,* pp. 477–501. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2024.znecogov_21

Keywords: *Czech tax law, self-application in taxation, tax sovereignty, tax harmonisation, tax avoidance*

1. Tax law in general and the specifics of Czech tax law

In the Czech Republic, tax law is defined as a system of legal norms regulating the social relationships created, implemented, and expired in the process of creating public monetary funds. In fact, taxes sensu lato (in the broader sense) are social relationships regulated by tax law. These relationships are defined by their subjects, objects, and content. The subjects can be divided into two parties as well as third parties. The weaker party in the relationship is the taxpayer or paying agent, who has fewer rights and more obligations. The stronger party is the tax administrator, who has decision–making powers. In tax proceedings, there are also third parties, such as experts, interpreters, and witnesses. The object of the tax law relationship is tax in the economic sense – public payments into public funds (e.g. the state budget, local self-government budgets, state funds). It is possible to talk about taxes sensu stricto and sensu lato. While taxes sensu stricto are public payments called 'taxes', taxes sensu lato also include charges, customs duties, and similar levies. From a legal perspective, the tax and the tax relationship can be defined as a power relationship of an economic nature, monetary, irrecoverable, usually regular, with no equivalent and no direct counter-performance by the public monetary fund to the entity fulfilling its tax law obligation (e.g. paying taxes). Charges (fees) are characterised in the same way, except that they are usually irregular, with direct counterperformance to the person paying them. For both taxes and charges, *nullum tributum sine lege* is crucial: the condition sine qua non for every tax sensu lato is the act imposing a tax. The legislator can create different titles for taxes sensu lato (e.g. customs, contributions, levies, tolls, excises, tariffs, insurance, including many other varieties in national languages). However, each payment to a public fund will always, theoretically, be classified as either a tax or a charge (fee).[3] According to the structure of all Czech legal acts dealing with taxes and charges, tax relationships share the same basic structural components (e.g. the object of taxation, tax subject, tax base, tax rate, correction components, payment conditions, tax administrator, budget destination).

Specific to tax law is its regulatory method, which is a modified version of the administrative law method. Generally, the administrative law regulation method is based on the effect that public authorities have on their subjects, especially by means of the norms that they can enforce and that are contained in normative administrative acts – that is, the bylaws and ordinances issued by public authorities, authorised in and for the implementation of the law and within limits stipulated by law

3 Hulkó and Radvan, 2022, p. 63.

(sub-statutory regulations) – as well as individual administrative acts – that is, the decisions of the public authorities authorised by law to make such decisions in a specific administrative matter. The modification may be demonstrated, for example, by: (i) The relatively limited application of sub-statutory regulations (only in the local tax area); (ii) Public administrative authorities applying a wide range of economic instruments that affect recipients (e.g. tax credits, tax holidays); (iii) The use of elements of private law (e.g. options to negotiate or postpone taxes, payment calendars); (iv) The delegation of certain administrative activities to private law entities (e.g. in a labor law relationship, the employer is obliged to deduct a personal income tax advance payment as well as social security and health contributions and other levies stipulated by law from the employee's wages and the employee is obliged to permit this; a bank withholds tax on accrued interest, a joint stock company withholds tax on dividends, a seller collects value-added tax (VAT) from a buyer along with the sale price); (v) The application of the principle of self-application (the taxpayer applies tax law norms to itself by determining the tax base using its knowledge, uses the relevant tax rate for itself, applies the corrective elements, and subsequently delivers the completed tax return to the tax administrator, which assesses the tax tacitly – that is, implicitly – provided that it has no reservations regarding the correctness and completeness of the return); the self-application principle means that, in most cases, there is no interaction between the tax administrator and the taxpayer; (vi) The introduction of elements of choice to moderate the mandatory nature of tax law relationships (e.g. voluntary VAT payments, different methods of calculating depreciation, lump-sum taxes, lump-sum expenditures for income taxes).[4]

Similar to many other branches of law and tax law in other countries, Czech tax law has both general and specific parts. The general part comprises information regarding tax law and its object, norms, and relationships. This part contains certain institutes of a general nature and general principles applied to tax law as a whole. This part is not codified; however, general issues could appear, for example, in existing regulations of a more procedural nature (e.g. the Tax Code[5]) as well as in entirely new legislation (e.g. the Public Finance Act). The specific part contains legislation regarding individual tax law relationships, which are regulated across many different legal regulations. However, it is possible to define two sub-branches of tax law – tax law and charge law – with regard to the above statement that each public payment to a public fund is always theoretically classified as either a tax or a charge (fee). As customs duties have charge characteristics, they could be part of a charge law, even if customs law sometimes creates a specific part of a financial law or tax law. The same may be stated for social security contributions (e.g. pension insurance premiums, contributions to the state employment policy, sickness insurance premiums) and health contributions – based on their characteristics, they might belong

4 Hulkó and Radvan, 2022, pp. 59–60.

5 Act no. 280/2009 Sb., Tax Code, as amended.

to tax law; however, in the Czech Republic, they are now part of social security law.[6]

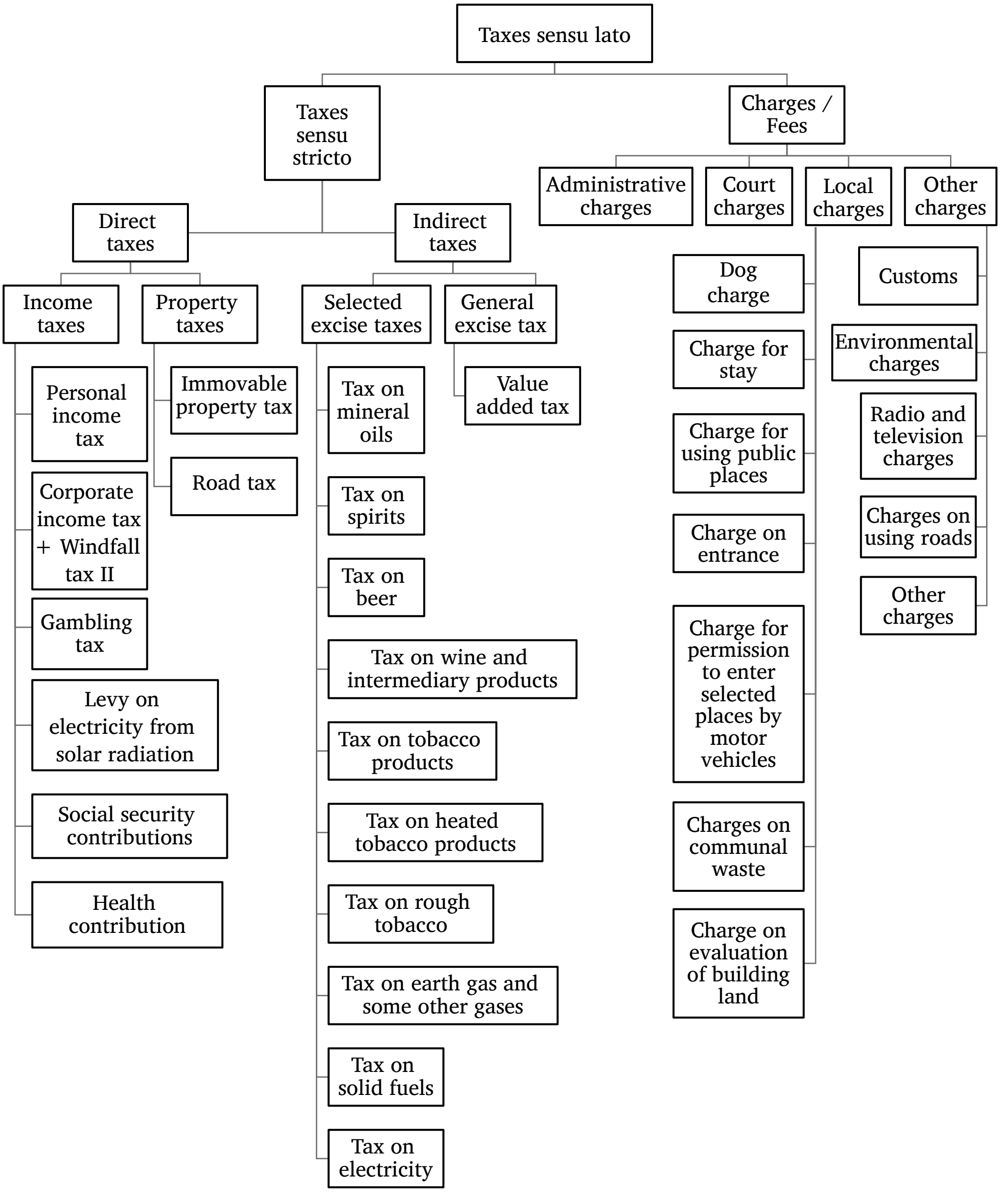
Tax law has a substantive component (substantive tax law) and a procedural component (procedural tax law). The norms of the substantive component determine the structural elements of the tax: persons burdened with tax liability (taxpayers and payers/paying agents); the object, base, and rate of the relevant tax; and other structural elements of the tax. The procedural part (procedural tax law) is a set of procedural law norms that regulate the position of entities in proceedings on rights, legally protected interests, and obligations resulting from substantive tax laws. The procedural part also deals with procedural law practices in decision-making processes before tax administration authorities and legal and natural persons – whether entrusted by law or based on the law – on the rights, legally protected interests, and obligations of other entities resulting from substantive tax law norms. The procedural component also covers the practices of subordinate entities when implementing substantive tax law – this does not involve proceedings before public authorities but does include procedures that the subject of taxation (e.g. taxpayer, payor) applies or that the payor sets as a legal obligation for the taxpayer based on substantive tax law (e.g. tax liability) using the prescribed tax technique and declares in the prescribed manner to the superior authority (which has the same legal effect as a judgment in legal proceedings) and carries out. Finally, the legislative process of creating, passing, and monitoring the fulfilment of public budgets pursuant to financial (tax) documents is part of the procedural component.[7]

In addition to its substantive and procedural components, the financial law system also includes other elements. Judicial tax law regulates decision-making processes in matters of substantive tax law in court, particularly in administrative justice and the judicial enforcement of tax administration decisions. Administrative (organisational) tax law deals with tax administration (and customs) authorities in public revenues from taxes, charges, and customs. Criminal tax law defines the foundations and consequences of the liability for breaches of tax law norms. Legal regulations are contained in the Tax Code and Criminal Code and, to a lesser extent, in individual, predominantly substantive tax regulations (e.g. the Act on Local Charges[8]).[9]

Taxes sensu lato create a tax system. The most common system divides taxes and charges (fees). Broadly, the most traditional classification of taxes is based on their impact. Direct taxes are assessed according to the taxpayer's income or property. In contrast, indirect taxes are paid and collected in the prices of goods and services, without respect to the taxpayer's personal situation.

6 Hulkó and Radvan, 2022, pp. 63–64.
7 Hulkó and Radvan, 2022, p. 64.
8 Act no. 565/1990 Sb., Local Charges Act, as amended.
9 Hulkó and Radvan, 2022, pp. 64–65.

Figure 1: The Czech tax system as of 2023[10]



Compared with other European tax systems, the Czech Republic lacks traditional property transfer taxes. Inheritance and gift taxes were abolished in 2014. However, in practice, inheritances and gifts are taxed through income tax. The tax on the

10 Hulkó and Radvan, 2022, p. 66.

acquisition of immovable property was cancelled in 2020 for all properties transferred in the cadastre as of 1 December 2019.[11]

According to the Council Directive (EU) 2022/2523 on 14 December 2022, to ensure a global minimum level of taxation for multinational enterprises and large-scale domestic groups in the EU, from 2024, the GloBE rules will be applied in the Czech Republic, and an additional amount of tax (a top-up tax) should be collected.

2. Elements of tax sovereignty in Czech tax law

The power to levy taxes is an essential part of every EU Member State's sovereignty; accordingly, the EU has limited competencies in this area. Officially, tax harmonisation is implemented to smooth the operations of the single market. Harmonisation efforts are primarily focused on indirect taxes. To secure fair competition and limit shortfalls in tax revenue, the EU is actively fighting tax evasion and avoidance.

The importance of tax sovereignty is evident in the Treaty on the Functioning of the European Union (TFEU), which states that the Council must act unanimously (in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee) when adopting provisions for the harmonisation of legislation concerning turnover taxes, excise duties, and other forms of indirect taxation. In other words, Member States must unanimously adopt tax measures. Moreover, harmonisation is necessary to ensure the establishment and functioning of the internal market and prevent competition from being distorted.[12] Other important provisions in the TFEU are included in the chapters on tax provisions[13] and the approximation of laws.[14] Meanwhile, other provisions relevant to the tax policy are hidden in articles related to the free movement of persons, services, capital, environment, and competition. Enhanced cooperation[15] can also apply to tax matters.[16] The role of the Court of Justice of the European Union (CJEU) as a negative legislator is also crucial.

It is also necessary to highlight the differences between the definitions of direct and indirect taxes. In step with the typical division of taxes stated above, traditional Czech tax law science defines direct taxes as taxes assessed by the taxpayer according to income or property and indirect taxes as taxes paid and collected in the prices of goods and services. In contrast, according to EU law, direct taxes are levied on income, wealth, and capital, while indirect taxes comprise all other taxes (e.g.

11 Hulkó and Radvan, 2022, p. 66; Kozieł, 2021, p. 28.
12 Art. 115 of the TFEU.
13 Arts. 110–113 of the TFEU.
14 Arts. 114–118 of the TFEU.
15 Arts. 326–334 of the TFEU.
16 Paternoster, 2016, p. 1.

VAT, excise tax), including energy and other environmental taxes. A good example of a different approach is the taxation of motor vehicles, which is considered a direct tax according to Czech tax science; however, it is an environmental and thus indirect tax according to the EU.

As stated above, tax policy and tax sovereignty have always been considered symbols of national sovereignty.[17] Tax sovereignty expresses the power of the state to impose, collect, and subsequently enforce taxes while autonomously redistributing the proceeds of these taxes at its own discretion and need.[18] Tax sovereignty is essential for every state because it is primarily political – states must make decisions on state revenues to finance public goods and services according to their goals. Along these lines, every government must use tax rates as an instrument of domestic economic policy. In addition, many states argue over the historical consequences of national tax systems. From an economic perspective, every state has a different economy and economic background, which is reflected in taxation issues. However, it is also important to highlight issues related to competiveness: states with lower taxes can attract workers, businesspeople, and companies as tax residents. This can be illustrated by trends in national corporate income tax rates. Germany's tax rate on corporate income, including corporate taxes, solidarity surcharges, and local trade taxes, decreased from 27% in 1995 to 30% in 2008.[19] In addition, Czech corporate income tax fell from 45% in 1993 to 19% in 2010.[20] Similar trends are visible in almost all countries worldwide, including all EU Member States. While for several countries (especially Germany and France), low corporate income taxes may be troubling and tend to harmonise, for economically weaker states (mainly Central and Eastern European countries), tax competition may be a tool for catching up with more economically developed Western European countries (old EU Member States) – a car cannot catch a car with the same engine already driving in front of it.[21]

Tax sovereignty is apparent in the regulation of direct taxes in the Czech Republic. From the revenue perspective, income tax is the most important factor. Both personal and corporate income taxes are regulated by the Income Taxes Act.[22] While personal income tax is paid by natural persons, all other entities are liable for corporate income tax; therefore, all legal subjects pay at least one income tax.

Personal income tax[23] includes five possible objects of taxation (regardless of whether income is monetary or non-monetary or acquired by exchange): income from dependent activity (employment), independent (business) activity, capital property

17 Široký, 2018, p. 21.
18 Mrkývka, 2015, p. 111.
19 *German tax rate on corporate income 1995-2009* [Online]. Available at: https://upload.wikimedia.org/wikipedia/commons/3/39/German_tax_rate_on_corporate_income_1995-2009.png (Accessed: 7 August 2023).
20 Dias and Zamazalová, 2022.
21 Macháček, 2019.
22 Act no. 586/1992 Sb., Income Taxes Act, as amended.
23 More in: Radvan, 2020, pp. 31–42.

income, rental (lease) income, and other income. The sovereignty of personal income taxation is evident in several provisions. The most important aspects are as follows: (i) Different levels of taxation for employees and self-employed persons are designed to support business creation: even though employees and entrepreneurs are taxed at the same rate, employees pay more taxes than entrepreneurs. This is primarily because small businessmen with incomes of up to CZK 2,000,000 can pay a lump-sum tax; that is, they can consolidate their personal income tax and social and health contributions into one payment and do not need to file tax returns and contribution statements. The monthly lump-sum tax small businessmen have to pay depends on their incomes.[24] Second, this difference is also because employed persons have no right to deduct any expenses from their incomes to obtain a partial tax base, while businesspeople can deduct real expenses or, even better, lump-sum expenses.[25] The differences in taxation are so significant that some taxpayers are formally entrepreneurs even if they technically obey someone else's commands while executing their work. This practice is called the Svarcsystem, and it offers benefits to the commissioning party, which has no duty to pay social security and health contributions to the worker. (ii) A relatively low tax rate, especially for high–income subjects: the tax rate is a progressive percentage of 15%, resp. 23% for income higher than the average wage, multiplied by 48; (iii) Tax benefits for low-income subjects in the form of basic tax relief;[26] (iv) No taxation of inheritance; (v) No taxation of gifts from relatives; (vi) Many 'social' exemptions from taxation, including no taxation of retirement and other pensions, alimony payments, social benefits, scholarships, incomes from the sale of an immovable property (with the time-test: only if the seller lived in the family house for at least two years immediately before the sale or if the seller owned the property for at least ten years); (vii) Tax allowances to encourage charitable gifts, pension insurance, life insurance, living in an apartment or house (housing loan interest can be deducted from the tax base); (viii) Deductibility of tax loss in the five previous taxable periods and costs of research and development from the tax base; (ix) Tax relief reflecting the social status of the taxpayer (e.g. spouse with limited income, disability, student, child in kindergarten, number of children); (x) Tax relief to stimulate the employment of disabled employees.

As with personal income taxation, in the area of social and health contributions, self-employed persons enjoy more benefits than employees. For employees, the contribution base is gross wages; for businesspeople, it is 50% of their personal income tax base (regardless of whether they use real or lump-sum expenses).

24 There are three bands. For example, in 2023, in the first band for incomes up to CZK 1,000,000, the amount is CZK 6,208 per month, including a personal income tax of CZK 100, a social contribution of CZK 3,386, and a health contribution of CZK 2,722.

25 Compared to other countries, the lump-sum expenses are very high (e.g. 80% of income from agricultural production or handicrafts, 60% from other industries and trades, 40% from other businesses such as those of lawyers and doctors, and 30% from business rents). Lump-sum expenses are limited in practice to an annual income of CZK 2,000,000.

26 Tyniewicki and Kozieł, 2021, p. 67.

Corporate income tax[27] is paid by entities such as companies, civil corporations, political parties, state corporations, banks, insurance companies, investment corporations, state funds, pension funds, and churches. The tax base is generally economic income from bookkeeping – that is, income from all activities and the management of all types of property – reduced by the expenses incurred to generate, assure, and maintain that income. In addition, several aspects of state sovereignty are evident in the legal regulations on corporate taxation, which primarily follows a linear tax percentage rate of 19%. The impulse for R&D activities is hidden in the items deductible from the tax base; in fact, R&D costs for research and development can be deducted twice. The other item deductible from the tax base is the tax loss in the previous five taxable periods. Similar to personal income tax, taxpayers can use tax relief for employees with disabilities. Czech legislators also respect the liabilities of company partners. For example, if owners are situated as responsible for the loss of a company (general partnership partners and general partners in limited partnerships), then shared profits are not subject to corporate income tax but only personal income tax. In the case of limited partners' shares in the profits of limited partnerships and limited liability companies, joint stock companies, and cooperatives, both corporate income tax and (withholding) personal income tax are to be paid – this is, in fact, an example of interstate double taxation.

Tax sovereignty in the Czech Republic is also obvious in the two windfall taxes (however, the gambling tax may also qualify as such and therefore there may actually be three winfall taxes). A windfall tax usually implies a higher tax rate on profits that result from a sudden windfall gain for a particular company or industry. This is a special tax on profits or a surcharge on the existing (corporate) income tax. The first windfall tax in the Czech Republic was adopted in 2012 as a levy on electricity generated from solar radiation.[28] The levy was adopted due to the highly guaranteed amount of support for electricity generated from renewable resources in power plants using solar radiation, which were placed in service in 2010 when construction costs were lower. These legal and economic consequences led to high profits; therefore, the levy was collected for the first time in 2014. The object of the levy is electricity generated in power plants from solar energy, from 1 January 2014, using solar radiation, and placed in service from 1 January 2010 to 31 December 2010, as long as the right to support electricity generation from renewable resources continues. The taxpayer is a producer of electricity from solar energy. The tax payor (paying agent) supplies electricity to the final consumer. The tax base is the amount (without VAT) paid by the electricity supplier to the electricity producer for electricity generated from solar energy. The tax rate is 10% (11% for green bonuses).[29]

27 For more detail, see: Radvan, 2020, pp. 45–48.

28 Act no. 165/2012 Sb., on Supported Energy Sources and on Amendments to Certain Acts, as amended.

29 For more detail, see: Radvan, 2020, p. 67.

The second windfall tax is closely related to the global energy crisis from 2021–2023 and Russian aggression in Ukraine, and follows the International Monetary Fund's recommendations to institute windfall profit taxes targeted at economic rents in the energy sector, excluding renewable energy, to prevent further development. In the Czech Republic, this tax is called the extraordinary tax on unexpected profits and is regulated by the Income Taxes Act.[30] This tax should be temporary – valid from 1 January 2023 until the end of 2025. It is applied to electricity and gas producers and traders, fossil fuel miners, fuel wholesalers, and refineries with annual sales of more than CZK 2 billion. The other group of taxpayers comprises banks with annual interest yields exceeding CZK 6 billion. The windfall tax rate is 60% and is applied to excess profit, which is specified as the difference between the tax base from 2023–2025 and the average tax base from 2018–2021 times 20%.[31]

As suggested above, the gambling tax[32] can also be considered a (corporate) income tax surcharge.[33] This tax covers both on-site and online hazards, regardless of whether they are legal or illegal. The tax base is the difference between the deposits received and the winnings paid. The tax rate is higher for the partial tax base on lotteries and technical games (35%) and lower for odds betting, totalizator games, bingo, live games, raffles, and small-sized tournaments (23%). For technical games, a minimum tax (CZK 9,200 per calendar quarter) was set for every game point.

Property taxes, as local taxes, fall under the exclusive competence of EU Member States. According to an international comparison, the Czech immovable property tax[34] is one of the lowest recurrent property taxes worldwide. Officially, immovable property taxes include land and building taxes. Practically, the building tax includes not only buildings, but also flats and non-residential premises owed by general taxpayers. The cadastre is used to identify properties and the taxpayers that own them. A unit-based system prevails in constructing the tax base. The tax rates are mostly fixed. As the revenue belongs to municipalities, they hold some authority in adjusting these taxes. Typically, several options for additional exemptions, coefficients to influence the tax rates, and the local coefficient multiplying the final tax between 1.1 and 5.

All transfer taxes in the Czech Republic were abolished over the last decade. Inheritance and gift taxes were cancelled at the end of 2013 due to civil law reform. Inheritances and gifts are now liable for income taxes. Nevertheless, all inheritances, gifts from relatives, and other small gifts, up to a specific limit, are exempt from taxation. The immovable property transfer tax was abolished in September 2020 with retroactive effects officially extending back to 31 March 2020 for all property

30 Arts. 17c, 20ba–20be, 21 para. (5) of the Income Taxes Act.

31 *Tax Changes in 2023: The Windfall Tax, the End of EET and a Higher VAT Limit* [Online]. Available at: https://shorturl.at/vrxIU (Accessed: 7 August 2023).

32 Act no. 187/2016 Sb., Gambling Tax Act, as amended.

33 Radvan, 2017; Boháč and Krasulová, 2017.

34 Act no. 338/1992 Sb., Immovable Property Tax Act, as amended. For more details, see: Radvan, 2020, pp. 49–58.

transfer tax obligations, given that entry to the cadaster was made in December 2019 or later.[35] It should also be noted that no wealth tax is collected in the Czech Republic.

Local charges, together with immovable property tax, belong to a group of local taxes in the Czech Republic. Every Czech municipality has the right to adopt local bylaws by levying local charges (fees). The generally binding municipal ordinance may be within the conditions defined by the Local Charges Act (e.g. varieties of charges or the absolute charge rate). The list of local charges is relatively broad, including a dog charge, a charge for stay (a tourist charge), a charge for using public places, a charge on entrance (to cultural, sport, sale or advertisement action), one of two possible charges on communal waste (a charge for the municipal waste management system, or a charge for the disposal of municipal waste from the immovable property), a charge for permission to enter selected places by motor vehicle, and a charge on evaluation of building land. Unlike immovable property taxes administered by tax offices, municipal offices are responsible for administering and collecting local charges.

As stated above, the EU's harmonisation efforts are primarily focused on indirect taxes. However, following the principles of the free movement of persons, services, and capital, EU Member States can adopt additional indirect taxes (excise taxes) within their sovereignty. The Czech Republic added two additional excises to the list of harmonised excise taxes: tax on rough tobacco in 2015 and tax on heated tobacco products in 2019.[36]

Since the beginning of 2013, there has been a new trend in the sale of tobacco products in the form of untaxed rough tobacco leaves offered for sale by weight as tobacco, allegedly for decorative purposes, garden work, or other declared purposes (e.g. litter for birds). However, rough tobacco does not fall within the definition of the object of excise tax on tobacco products under EU or national law. Therefore, rough tobacco is traded on the Czech market without control or registration. Considering the almost uncontrolled access to this raw material, the availability of relatively simple and inexpensive equipment for the production of tobacco products (tobacco cutting machines) and the very low cost of selling this commodity, tax fraud or tax evasion related to the handling of rough tobacco is very easy, and control by state bodies is difficult or even impossible. The new rough tobacco taxation legislation introduced approximately the same conditions as those for the (harmonised) taxation of other tobacco products. In addition, it eliminated tax evasion and simplified control activities in this area.

Heated tobacco products were introduced to the Czech market in the second half of 2017. The main reason for the taxation of heated tobacco products was to ensure that they did not enjoy a tax advantage over other tobacco products liable to excise taxes. The legal regulation of the taxation of heated tobacco products is based on the

35 Boháč, 2022; Radvan, 2022; Radvan and Svobodová, 2021.
36 Act no. 353/2003 Sb., Excise Taxes Act, as amended.

provisions of the Excise Taxes Act concerning 'traditional' tobacco products. The tax is applied on a weight basis, with the tax rate the same as that for smoking tobacco, such that the resulting level of taxation is lower than, for example, for cigarettes, owing to the low weight of tobacco contained in heated tobacco products. Such regulations also indicate that heated tobacco products are less harmful to human health than traditional tobacco products.

3. How is tax harmonisation reflected in Czech tax law?

With the development in the volume of international trade, globalisation, growth in the number and importance of multinational companies and their subsidiaries, the transfer of capital and persons (residents of a country who work in another country), and uniform rules of taxation (tax harmonisation) are needed.[37] Additionally, governments must cooperate to fight tax avoidance and share information about taxpayers and their tax duties.

In Czech tax science, tax harmonisation at the EU level represents the process of approximating Member States' tax systems based on common rules.[38] Tax harmonisation is a mechanism used to eliminate tax provisions that either create obstacles to the functioning of a single internal market or distort competition. Tax harmonisation is certainly not aimed at achieving a single tax system but rather at the approximation and synchronisation of individual tax systems.[39]

The first stage in the process of tax systems harmonisation is tax coordination, which includes concluding agreements or recommendations for limiting harmful tax competition. The objective is to set a minimum standard for transparency and exchanges of information in tax administration[40] rather than uniformity of tax systems. Bilateral agreements, especially those for the avoidance of double taxation and agreements on the cooperation of tax administrations (e.g. exchange of information, tax distraints), are examples of tax coordination. Tax coordination may be unilateral or spontaneous. A good example is the tax competition between EU Member States in decreasing corporate income tax rates. The second stage is tax approximation, which involves the approximation of tax systems but not their harmonisation. The third stage is tax harmonisation.

The tax harmonisation process comprises three stages. First, identifying the taxes to be harmonised. Second, harmonising the tax base (and, if appropriate, other tax construction elements, such as taxpayers). Third, harmonising tax rate(s). As is

37 For tax harmonisation issues, several parts from Radvan, 2011 are used.
38 Kubátová, 1998, pp. 2–7.
39 Nerudová, 2008, p. 18.
40 Široký, 2010, p. 28.

evident from the historical development at the EU level, reaching the third stage of tax harmonisation is not always necessary; EU Member States have some discretion regarding available rates, leading to a competitive environment.

European tax law science defines tax harmonisation differently with regard to the fundamental EU principles. For example, Terra[41] defines tax harmonisation as an instrument that leads to the main objective of creating a single market. Here, it is helpful to note that Terra recognised several obstacles to a single market: the taxation of the free movement of legal persons and the free transboundary movement of goods, services, capital, and revenues; the difference in the tax treatment of domestic and imported goods and services; substantial differences between national tax legislation that results in distorted markets; and differences in the tax treatment of residents and non-residents, domestic and foreign investments, and income (in particular, the double taxation of income from sources located outside a country's territory).

From our personal perspective, tax harmonisation is not merely an objective – a resulting condition – but also an actual process. This process can be either positive or negative. Positive harmonisation refers to the process of approximating national tax systems through the implementation of directives and other legislative instruments. If the directives are implemented correctly, all EU Member States apply the same rules. Negative harmonisation results from the activities of the CJEU: measures are taken in national laws (national tax systems) based on the tax-related case law of the Court. Even if only the EU Member State, a party to the proceedings, must remove the concerned defective provision, case law also pushes other countries to check their national regulations and possibly adopt the necessary amendments. Case law also provides good interpretative guidance.

The previous section discussed the benefits of national tax sovereignty. In summary, advocates highlight the power of the state to impose, collect, and subsequently enforce taxes, while the state can autonomously redistribute the proceeds of these taxes at its own discretion and need. Every government must use tax rates as an instrument of domestic economic policy. There were also historical consequences for the national tax system. Different economic backgrounds and developments should also be reflected in taxation policies. Finally, competitiveness plays a crucial role. While low corporate income taxes might be troubling for old and more prosperous EU Member States and tend to harmonise for new and economically weaker states, tax competition might be a tool to catch up with more economically developed Western European countries.

Supporters of tax harmonisation disagreed, especially regarding the benefits of tax competition. For example, Nerudová states that

> tax competition and the exploitation of mismatches between national tax systems have allowed many of the multinationals that use European infrastructure and other

41 Terra and Wattel, 2008, p. 1.

> European public goods to use tax planning tools in a very aggressive way. […] Their economic power even allows them to negotiate with Member States on the tax advantages they will grant them in order to build a warehouse or a factory in that country. Several questions need to be asked: do these companies pay an adequate level of taxes that could finance, for example, the renewal and maintenance of infrastructure?[42]

Nerudová believes that it is necessary to harmonise the rules for the construction of tax bases in the EU because unification would mean significantly eliminating aggressive tax planning techniques, a level playing field where nominal tax rates would be equal to the effective tax rate, and the reduction of taxation costs, both on the part of taxpayers and the tax administration. However, Nerudová is a fan of competition in terms of the tax rate.[43] Other Czech economic experts have the same view; for example, Skořepa adds, '*other parameters of business regulation in the Czech Republic must be set so that companies actually have an incentive to use low-taxed profits for reinvestment in the Czech Republic instead of sending them abroad.*'[44]

With regard to public budgets, Zahradník warns that

> harmonization can also be considered as a possible increase in the share of the EU Budget in the EU GDP and, in line with the subsidiarity principle, the creation of an interlinked budgetary hierarchy, where the different levels will be matched by the respective tax instruments. E.g, all environmental taxes would become compulsory revenue of the EU Budget, income taxes would remain at the level of the EU Member States, and, e.g., property taxes would be part of regional or municipal budgets.[45]

Logically, the EU is the biggest promoter and most relevant advocate of tax harmonisation. In its statements, the EU highlights that Member States have the power to introduce, remove, or adjust taxes: each Member State is free to choose the tax system it deems most appropriate, provided it complies with EU rules:

> The main priorities for EU tax policy are the elimination of tax obstacles to cross-border economic activity, the fight against harmful tax competition and tax evasion, and the promotion of greater cooperation between tax administrations in ensuring control and combating fraud.[46]

Additional topics are linked to digital and green transitions and several related important EU and international tax developments: green taxation, digital transition and its effect on taxation systems, and business taxation in the 21st century.

42 Macháček, 2019.
43 Ibid.
44 Ibid.
45 Ibid.
46 Angerer, 2023b. See also: European Commission, 2015.

One of the new ideas at the EU level is unanimous decision-making. The argument shows slow progress in agreement on proposals for directives in the tax field – the Commission intends to be more proactive and targeted in initiating legal action, believing that EU Member States' tax measures infringe upon EU law. The Commission also considers increasing the use of non-legislative approaches, such as recommendations. However, the Commission also stated that

> the route of closer co-operation between sub-groups of like-minded Member States should also be considered where appropriate. The Commission suggests that this 'enhanced co-operation' approach could, in particular be considered in the field of environmental and energy taxation, where a majority of Member States have indicated a strong desire for co-ordinated action.[47]

Most Czech tax experts do not find the idea of unanimous decisionmaking beneficial, mainly based on the argument for tax sovereignty. However, there are some exceptions. For example, Pícl states that the unanimity rule has caused proposals crucial for growth, competitiveness, or tax fairness in a single market to be blocked. He believes that unanimous decision-making might be a good tool for fighting tax evasion and that higher revenues can contribute to sustainable finance.[48] Meanwhile, Žáková points out that the unanimity rule is increasingly proving to be outdated and economically counterproductive; notably, it allows a single state to block generally well-received proposals for reasons that are unrelated to the issue at hand.[49]

In dealing with the harmonisation of Czech and European law, it must be stated that national regulations fully correspond to EU regulations. The EU's official position that direct taxation is not directly governed by its rules is not entirely true. Several directives and the case law of the CJEU established harmonised standards for the taxation of companies and private individuals.[50] Along these lines, the Merger Tax Directive[51] was transformed into the Income Taxes Act to deal with the common system of taxation for the transfer of business establishments and the exchange of shares, mergers, and divisions.[52] The basic rule is that all such transfers are tax-neutral if the transaction is carried out for compelling economic reasons and not

47 European Commission, 2001.
48 Macháček, 2019.
49 Ibid.
50 Angerer, 2023a.
51 Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States, OJ L 225, 20.8.1990, 1–5. Repealed by Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States, OJ L 310, 25.11.2009, 34–46.
52 Arts. 23a–23h of the Income Taxes Act.

for tax avoidance. The Parent Companies and Subsidiaries Directive[53] was also incorporated into the Income Taxes Act;[54] notably, it states that profits distributed by a subsidiary to its parent company will not be subject to withholding tax under the conditions set out in the Act (according to the Directive) and that withholding tax will only be applied when paid to the parent company's shareholders. These rules remove, among other things, tax obstacles to reinvesting profits. Meanwhile, the Savings Directive[55] aims to enable savings income in the form of interest payments made in one EU Member State to beneficial owners, who are individual residents for tax purposes in another Member State, to be subject to effective taxation in accordance with the laws of the latter Member State. This Directive has been incorporated into the Income Taxes Act.[56] The last Directive in the area of direct taxation is the Interest and Royalty Payments Directive,[57] copied from the Income Taxes Act.[58] This Directive states that interest or royalty payments arising in an EU Member State shall be exempt from any taxes imposed on those payments in that state, whether by deduction at source or assessment, provided that the beneficial owner of the interest or royalties is a company of another Member State or a permanent establishment situated in another Member State of a company of an EU Member State.

VAT is a general indirect tax that has traditionally been regulated at the European level. The current core EU legislative text on the VAT is the VAT Directive.[59] The Czech regulation on VAT, the VAT Act,[60] fully follows European law regarding VAT. A taxable person usually has a turnover exceeding CZK 2,000,000 in the past 12 months, while others use the possibility provided by the VAT Act to register voluntarily. There are three VAT rates: a basic tax rate of 21% and two reduced tax rates of 15% and 10%. The lists of goods and services that are liable to reduce their VAT rates create annexes for the VAT Act. In excise taxes, Czech regulations align with European law; namely: the Horizontal Excise Directive,[61] structural directives,

53 Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, OJ L 225, 20.8.1990, 6–9. Repealed by Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, OJ L 345, 29.12.2011, 8–16.

54 Art. 19 of the Income Taxes Act.

55 Council Directive 2003/48/EC of 3 June 2003 on the taxation of savings income in the form of interest payments, OJ L 157, 26.6.2003, 38–48.

56 Art. 38fa of the Income Taxes Act.

57 Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, OJ L 157, 26.6.2003, 49–54.

58 Arts. 19 and 38nb of the Income Taxes Act.

59 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347, 11.12.2006, 1–118.

60 Act no. 235/2004 Sb., VAT Act, as amended.

61 Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty, OJ L 58, 27.2.2020, 4–42.

and directives on the approximation of rates (alcohol,[62] tobacco products,[63] energy products, and electricity[64]). The national regulation can be found in the Excise Taxes Act[65] (which includes five 'old' excise taxes on petroleum oils, spirits, beer, wine and semi-products, and tobacco products, plus two non-harmonised excise taxes on rough tobacco and heated tobacco products) and, rather non-systematically, in the Act on Stabilising Public Budgets[66] (which includes three 'new' excise taxes on earth gas and other gases, solid fuels, and electricity). Generally, tax rates follow the minimum possible tax rates according to EU directives. In the case of beer taxes, small independent breweries enjoy lower rates. Meanwhile, the tax rate for non-sparkling wines is zero.

According to Czech tax law, taxes on motor vehicles are direct taxes; however, the EU classifies them as indirect taxes. This discrepancy may be due to two reasons: running motor vehicles negatively impact the environment and the registration tax on motor vehicles collected in many EU Member States has the characteristics of an excise tax. Czech legal regulations respect the Eurovignette Directive[67] only to the minimum extent necessary, officially because of Russian aggression in Ukraine and the related increase in petrol prices. Since 2022, the new definition of the object of road tax[68] has been determined by the current wording of this Directive, which regulates heavy goods vehicles as vehicles intended for the transport of goods with a maximum technically permissible laden weight exceeding 3.5 tonnes. However, only vehicles with higher permissible weights are effectively taxed based on the annual rates of the Eurovignette Directive. Thus, the new regulation reflects the fact that the effective taxation of the road tax on a vehicle with a certain number of axles occurs only from a certain specified tonnage of its maximum permissible weight (e.g. for single vehicles with two axles from 12 tons and for vehicles with three axles from 16 tons). This is achieved by selecting the categories of vehicles subject to road tax and setting the tax amount in a structured manner according to the parameters of the taxable vehicle. In other words, all vehicles with a total weight below 12 tons (and in several cases, even 16 tons) are no longer liable to road tax, regardless of whether they are used to run a business. Additionally, other structural components of road tax follow European regulations; for example, only vehicles registered in the Czech

62 Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages, OJ L 316, 31.10.1992, 21–27; Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages, OJ L 316, 31.10.1992, 29–31.

63 Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco, OJ L 176, 5.7.2011, 24–36.

64 Council Directive 2003/96/EC of 27 October 2003 on restructuring the community framework for the taxation of energy products and electricity, OJ L 283, 31.10.2003, 51–70.

65 Act no. 353/2003 Sb., Excise Taxes Act, as amended.

66 Act no. 261/2007 Sb., Act on Stabilising Public Budgets, as amended.

67 Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures, OJ L 187, 20.7.1999, 42–50.

68 Act no. 16/1993 Sb., Road Tax Act, as amended.

Republic are liable to tax, the taxpayer is the operator of the vehicle, the scope of exemptions is similar, tax relief for combined transport (transport of cargo on roads combined with transport on railroads or water roads) is similar, the tax base is the sum of the highest admissible weights on the axles in tonnes and the number of axles, and the tax rate is fixed.

The Czech Republic would like to amend the Eurovignette Directive to ensure there is no obligatory tax on motor vehicles. During the ECOFIN meeting in November 2022, the Czech Minister of Finance opened a debate on the revision of the directive in the sense that the amendment would abolish the obligation to apply the European minimum motor vehicle tax rate to trucks of over 12 tons. This move was primarily motivated by the wish to allow greater tax liberalization and support small- and medium-sized enterprises. While EU Member States can set a zero-road tax rate, they can still tax trucks. Further, this move was also related to the costly administration of this relatively budget-poor tax.[69]

It should be highlighted that the EU's efforts to harmonise taxes are ongoing. In May 2023, the European Commission published a report summarizing the results of a questionnaire on the design of the Business in Europe: Framework for Income Taxation (BEFIT) initiative. However, it did not include positive or negative feedback from Czech authorities on the initiative. On the contrary, the taxation of large-scale multinational groups in the form of a global minimum tax is taken seriously,[70] and the proposal of the Act on Equalisation Taxes for the Purposes of Ensuring a Minimum Level of Taxation of Large Multinational Groups and Large Domestic Groups is currently being discussed in Parliament, with an expectation that it will come into effect as of 31 December 2023. The aim of the new top-up taxes (equalisation taxes) is to ensure a minimum effective level of taxation for large multinational groups and large domestic groups with annual revenues of EUR 750 million or more in two of the four preceding accounting periods. The level of minimum effective taxation was set at 15% in accordance with the Directive. Under the proposed rules, a top-up tax is imposed on the parent entity of the group with respect to each country in which the group operates and in which the effective tax rate of the group is below 15%. Meanwhile, the alternative proposes that a top-up tax be imposed on each member entity of the group and not on the parent entity. Simultaneously, a qualified national (domestic) equalisation tax was introduced with the goal of preserving the Czech Republic's primary right to tax income derived from sources within its territory. The qualified national equalisation tax represents the national equivalent of the equalisation tax that would have been imposed on the parent entity if this national tax had not been introduced; further, it allows the Czech Republic to collect the

69 *ECOFIN: Ministers Discuss Assistance for Ukraine, Strengthening the Resilience of the Banks and Abolishing the Minimum Road Tax*, 2022.

70 Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, OJ L 328, 22.12.2022, 1–58; OECD initiative (Pillar 2) agreed under the OECD/G20 project Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules.

equalisation tax imposed with respect to the member entities of the group located in its territory.[71]

4. Selected tools to fight tax avoidance in the Czech Republic

Tax avoidance, tax evasion, and tax fraud have remained high on the agendas of every Czech government in the last few decades.[72] The Anti-Tax Avoidance Directive (ATAD)[73] laid down rules against tax avoidance practices directly affecting the functioning of the internal market. The ATAD also addresses hybrid mismatches with non-EU countries.[74] The anti-avoidance measures in the ATAD, other than the rule on hybrid mismatches, comprise rules on controlled foreign companies (CFCs) to prevent them from shifting profits to a low/no-tax country, exit taxation to prevent companies from avoiding tax when relocating assets, interest limitations to discourage artificial debt arrangements designed to minimise taxes, and counteracting aggressive tax planning when other rules do not apply (a general anti-abuse rule or GAAR).[75]

Except for the GAAR, all rules are transposed in the Income Taxes Act and have been in effect since the taxable period of 2020. The Czech transposition of the CFC rule[76] addresses CFC activities, including asset disposal, that contribute to the included passive income in the tax base of a Czech controlling company in a given tax year. Non-resident corporate taxpayers with direct or indirect Czech taxpayer participation (on the basis of ownership of more than 50% of share capital, voting rights, or profits) and foreign permanent establishments of Czech taxpayers are considered CFCs. As of 1 January 2021 the provision has been extended to include CFCs residing in non-cooperative jurisdictions on the EU list. Regarding exit taxation rules, only the minimalist transposition of the relevant provisions of the ATAD[77] deviates in determining the entry price during a transfer from another Member State to the domestic market (the transposition considers the market price directly, whereas the Directive primarily deals with the adoption of the foreign price if it is in line with the market price). Regarding the limitation

71 Ministry of Finance, 2023, Předkládací zpráva k návrhu zákona o dorovnávacích daních (not available publicly); Veselá and Folwarczny, 2023.
72 Kozieł, Krügerová and Bučková, 2022, p. 267.
73 Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, OJ L 193, 19.7.2016, 1–14.
74 Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries, OJ L 144, 7.6.2017, 1–11.
75 Boháč and Hrdlička, 2018.
76 Art. 38fa of the Income Taxes Act.
77 Arts. 23g and 38zg of the Income Taxes Act.

on the deductibility of excessive borrowing costs, excess borrowing costs are tax deductible up to CZK 80 million in the tax year, or, if they exceed this threshold, up to 30% of the tax profit before interest, tax, and depreciation (tax EBITDA).[78] There are doubts about why these limits are so high; with lower limits, the rule would affect more taxpayers. Notably, the hybrid mismatch rule[79] addresses three problematic situations: double counting, netting without inclusions, and imported hybrid mismatches.

The GAAR is a part of the Tax (Procedural) Code.[80] Initially, there was no will to include the GAAR explicitly in Czech law, as it is an implicit part of legal regulation. Ultimately, this became one of the fundamental principles of tax law procedures valid for all taxes.[81] Compared with the wording in the directive, two changes are essential. The first is the modification of the subjective criterion from a test of the main purpose of the conduct or one of the main purposes of the conduct. The rationale for this change is likely to alleviate interpretative ambiguities, as national courts have not yet used the test for one of the main purposes. The second change is the omission of the criterion regarding the absence of valid commercial reasons which reflect economic reality. This is probably connected to the Czech translation of the Directive, based on which this criterion could be understood as a consequence of the fulfilment of the subjective criterion.

Information exchange is a crucial tool in the fight against international trade agreements. The Act on International Cooperation in Tax Administration is the basic legal framework governing international cooperation in taxation. The Act includes the automatic exchange of information reported by financial institutions, and reporting and due diligence rules for financial account information. It also covers the entire issue of information exchange with the US. Additionally, the regulation of administrative cooperation and combating fraud in the field of VATs are directly applicable.[82]

The Act on International Cooperation in Tax Administration and Other Taxes fully copies the Council's Directive on Administrative Cooperation in the Field of Taxation[83] and its amendments. Under the automatic exchange of information according to the DAC 3, preliminary (advanced) tax rulings in the Czech legal system mainly correspond to binding assessment decisions issued under the Tax Code and Income Taxes Act. Advance assessments of transfer prices, so-called advance price arrangements or advance price agreements (APA), correspond, in Czech law, to binding assessments of the manner in which the price negotiated between related parties was

78 Arts. 23e and 23f of the Income Taxes Act.

79 Art. 23h of the Income Taxes Act.

80 Art. 8 para. (4) of the Tax Code.

81 Act no. 164/2013 Sb., on International Cooperation in Tax Administration, as amended.

82 Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax, OJ L 268, 12.10.2010, 1–18.

83 Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, OJ L 64, 11.3.2011, 1–12.

formed under the Income Taxes Act. The DAC 4 is copied in the Act on International Cooperation in Tax Administration, which states that groups with consolidated total sales of at least EUR 750 million must prepare for and submit country-by-country reports. In addition, the DAC 6 was fully transposed into the Act on International Cooperation in Tax Administration and brings mandatory disclosure rules – a new type of automatic exchange – to information exchanges by intermediaries in cross-border arrangements that have the potential to become aggressive. These intermediaries are typically tax advisors, accountants, and lawyers who design and/or offer tax planning models.

The newest DAC 7 requests became part of the Act on International Cooperation in the Tax Administration on 1 January 2023. This complements the existing automatic information exchange framework with a new circuit aimed at exchanging information from digital platform operators. The first notification and exchange of information will take place in 2024 and will concern data from the 2023 calendar year. Platform operators are required to notify tax authorities once a year, always by 31 January, of information relating to the income earned by their users, which the law refers to as vendors. The reporting obligation applies to platforms that facilitate the performance of the selected activities for consideration. There are four categories of reportable activities: (i) Provision of immovable property (residential immovable property, business immovable property, parking spaces, apartments, or any other immovable property or part thereof); (ii) Provision of a means of transport (this includes means of transport without a driver; the provision of transportation with a driver is a personal service); (iii) Personal service (the work of a natural person based on time or a task; it is irrelevant whether the service is provided online or in a physical environment); (iv) Sale of goods (tangible goods and animals).[84]

The extension of the scope of the DAC Directive to include the exchange of information on electronic money and virtual assets, and common rules on administrative sanctions and tax compliance measures (DAC 8) will be supported by the Czech Republic.

The area of tax recovery harmonised by the European Union[85] was transposed into the Act on International Assistance for the Recovery of Certain Financial Claims.[86] It regulates the procedures and conditions under which Czech authorities provide international assistance in the recovery of tax claims in relation to other countries. The EU law on tax dispute resolution mechanisms[87] – which involves a harmonised procedure to resolve disputes over the interpretation and application of

84 *Zákon o mezinárodní spolupráci*, 2023.

85 Council Directive 2010/24/EU of 16 March 2010 on mutual assistance for the recovery of claims relating to taxes, duties, customs duties and other measures, OJ L 84, 31.3.2010, 1–12.

86 Act no. 471/2011 Sb., on International Assistance for the Recovery of Certain Financial Claims, as amended.

87 Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, OJ L 265, 14.10.2017, 1–14.

double taxation treaties – became part of the new Act on international cooperation in resolving tax disputes in the EU.[88]

5. Major Findings and *de Lege Lata* Recommendations

Tax law regulations and tax issues are crucial parts of public finance as most state policies are dependent on tax revenues. In the Czech Republic, tax law is not an independent branch of law. Rather, it belongs to the fiscal category of financial law. Tax law is defined as a system of legal norms regulating social relationships created, implemented, and completed during the process of creating public monetary funds. The object of the tax law relationship is tax in the economic sense; that is, public payments into public funds (e.g. the state budget, local self-government budgets, state funds). While taxes sensu stricto comprise public payments called 'tax', taxes sensu lato also include charges, customs duties, and similar levies. Taxes sensu lato create a tax system.

When discussing tax harmonisation and sovereignty, the Czech Republic, local legal and economic experts, and politicians seem to prefer tax sovereignty. Regarding the wording of the TFEU, it is necessary to highlight the differences between the definitions of direct and indirect taxes. A good example of a different approach might be the taxation of motor vehicles, which, according to Czech science, is a direct tax, but, for the European Union, it is an environmental tax, and therefore, an indirect tax.

Regardless of prevailing sovereignty issues, the Czech Republic fully follows EU law and transposes all EU directives into its national (tax) law. This statement is valid for both substantive law (direct and indirect taxes) and procedural law (mainly in the area of international cooperation on tax issues to prevent tax evasion and double taxation). However, the Czech Republic is notably seeking to amend the Eurovignette Directive to remove the obligatory tax on motor vehicles.

The Czech Republic is also sceptical of the European Commission's proposal that the European Council (national government) should be able to vote on tax matters by majority. The Commission's proposal contains formulations such as 'rethinking the traditional concept of sovereignty'. These materials refer to the failure to introduce either a bank tax or a digital tax. The European Commission also wants to harmonise the tax base and unify the methodology for collecting VAT.[89] Fortunately, the proposal has no chance of passing given the clear and principled opposition of states such as Ireland, Luxembourg, and the Czech Republic. Tax competition is still

88 Act no. 335/2020 Sb., on International Cooperation in Resolving Tax Disputes in the European Union.

89 European Commission, 2001.

beneficial for small and poorly developed countries. In contrast, tax harmonisation may benefit large economies with high tax burdens by helping them maintain high tax rates without fear of profit and labour outflows. A reasonable compromise may be the unification of definitions and methodologies at the EU level. At the same time, decisions on the structure of taxes (tax mixes) and tax rates remain in the hands of EU Member States, who have the right to make their own policies.

De lege ferenda, it is necessary to react to the increasing public budget deficits. Primarily, it is crucial to limit the Svarcsystem: to reduce the high tax differentials between entrepreneurs and employees (including social and health contributions) and amend lum-sum expenses. Limiting the number of tax exemptions would also be helpful. The release of an electronic revenue registry makes it possible to control business entities' incomes. Other amendments are appropriate for property taxes, including increasing recurrent property taxes, re-launching car taxation based on CO_2 emissions, and re-launching property transfer taxes.

Bibliography

Angerer, J. (2023a) *Direct Taxation: Personal and Company Taxation* [Online]. Available at: https://www.europarl.europa.eu/factsheets/en/sheet/80/direct-taxation-personal-and-company-taxation (Accessed: 9 August 2023).

Angerer, J. (2023b) *General Tax Policy* [Online]. Available at: https://www.europarl.europa.eu/factsheets/en/sheet/92/general-tax-policy (Accessed: 9 August 2023).

Boháč, R. (2006) 'Daňové a finanční právo', *Daně a finance*, 2(3), pp. 6–10.

Boháč, R. (2022) 'Labutí píseň daně z nabytí nemovitých věcí (The Swan Song of the Tax on Acquisition of Immovable Property)', *Acta Universitatis Carolinae – Iuridica*, 68(4), pp. 7–14; https://doi.org/10.14712/23366478.2022.42.

Boháč, R., Hrdlička, L. (2018) 'Transpozice směrnice ATAD do právního řádu České republiky', *DAUČ*, 2 February. [Online]. Available at: https://www.dauc.cz/clanky/8001/transpozice-smernice-atad-do-pravniho-radu-ceske-republiky (Accessed: 11 August 2023).

Boháč, R., Krasulová, H. (2017) *Zákon o dani z hazardních her: Komentář*. Prague: Wolters Kluwer.

Dias, G., Zamazalová, L. (2022) 'Vývoj sazby daně z příjmů právnických osob v České republice', *EY,* 1 September. [Online]. Available at: https://www.ey.com/cs_cz/tax/tax-alerts/2022/vyvoj-sazby-dane-z-prijmu-pravnickych-osob-v-ceske-republice (Accessed: 7 August 2023).

European Commission (2001) 'Taxation: Commission Outlines its Priorities', *Press Release,* 23 May. [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_01_737 (Accessed: 9 August 2023).

European Commission (2015) *Taxation – Promoting the internal market and economic growth*. Luxembourg: Publications Office of the European Union; https://doi.org/10.2775/150928.

Hulkó, G., Radvan, M. (2022) 'Regulation of Public Finances in the Czech Republic in Light of Financial Constitutionality' in Nagy, Z. (ed.) *Regulation of Public Finances in Light of Financial Constitutionality – Analysis on Certain Central and Eastern European Countries*. Miskolc-Budapest: Central European Academic Publishing, pp. 57–81; https://doi.org/10.54171/2022.zn.ropfatilofc_4.

Kozieł, M. (2021) 'Taxes in the Czech Republic at the Time of COVID-19', *Analyses and Studies CASP,* 12(2), pp. 21–31; https://doi.org/10.33119/ASCASP.2021.2.3.

Kozieł, M., Krügerová, M., Bučková, M. (2022) 'Identification of tax fraud and analysis of their impact' in *Proceedings of the 16th International Scientific Conference INPROFORUM – DIGITALIZATION. Society and Markets, Business and Public Administration*. České Budějovice: University of South Bohemia, pp. 267–273; https://doi.org/10.32725/978-80-7394-976-1.39.

Kubátová, K. (1998) 'Harmonizace daní v Evropské unii', *Daně*, 6(7–8), pp. 2–7.

Mrkývka, P. (2012) *Determinace a diverzifikace finančního práva*. Brno: Masaryk University.

Mrkývka, P. (2015) *Propedeutika finančního práva I. Obecná část*. Brno: Masaryk University.

Nerudová, D. (2008) *Harmonizace daňových systémů zemí Evropské unie*. 2nd edn. Prague: ASPI.

Paternoster, D. (2016) *General Tax Policy* [Online]. Available at: https://www.europarl.europa.eu/RegData/etudes/fiches_techniques/2013/051101/04A_FT(2013)051101_EN.pdf (Accessed: 4 August 2023).

Radvan, M. (2011) 'Tax Harmonization' in Seng, M. P., Týč, V., Sehnálek, D. (eds.) *One or Many? The Law and Structure of the European Union and the United States*. Rock Island, IL: East Hall Press, pp. 139–144.

Radvan, M. (2017) 'Municipalities and Gambling Taxation in the Czech Republic', *Lex Localis – Journal of Local Self-Government*, 15(3), pp. 529–540; https://doi.org/10.4335/15.3.529-540(2017).

Radvan, M. (2020) *Czech Tax Law*. 4th edn. Brno: Masaryk University.

Radvan, M. (2022) 'Are Changes in (Czech Direct) Tax Law Necessary, or Is It Just a Politicum?', *Public Governance, Administration and Finances Law Review,* 7(1), pp. 39–49; https://doi.org/10.53116/pgaflr.2022.1.3.

Radvan, M., Svobodová, T. (2021) 'Reformy daňového práva v (ne)souvislosti s Covid-19', *Studia Iuridica Cassoviensia*, 9(2), pp. 69–84; https://doi.org/10.33542/SIC2021-2-06.

Široký, J. (2010) *Daně v Evropské unii*. 4th edn. Prague: Linde.

Široký, J. (2018) *Daně v Evropské unii*. 7th edn. Prague: Leges.

Terra, B. J. M., Wattel, P. J. (2008) *European Tax Law*. 5th edn. The Hague: Kluwer Law International.

Tyniewicki, M., Kozieł, M. (2021) 'Current Problems of Financial Law in Poland and in the Czech Republic Including Effects of the COVID-19 Pandemic', *Bialystok Legal Studies*, 26(4), pp. 53–71; https://doi.org/10.15290/bsp.2021.26.04.04.

Veselá, H., Folwarczny, Z. (2023) 'Article: Act on top-up taxes', *BDO,* 25 June. [Online]. Available at: https://web.archive.org/web/20231005024849/https://www.bdo.cz/en-gb/insights/tax/act-on-top-up-taxes (Accessed: 10 August 2023).

ECOFIN: Ministers Discuss Assistance for Ukraine, Strengthening the Resilience of the Banks and Abolishing the Minimum Road Tax (2022) *Ministry of Finance,* 8 November. [Online]. Available at: https://web.archive.org/web/20230925102748/https://www.mfcr.cz/en/about-ministry/media-room/news-and-press-releases/2022/ecofin-ministers-discuss-assistance-for-49271 (Accessed: 10 August 2023).

Zákon o mezinárodní spolupráci (2023) *Ministry of Finance,* 24 January. [Online]. Available at: https://web.archive.org/web/20230921230518/https://www.mfcr.cz/cs/kontrola-a-regulace/legislativa/mezinarodni-spoluprace-v-oblasti-dani/zakon-o-mezinarodni-spolupraci (Accessed: 23 August 2023).