DOES THE CZECH PARLIAMENT FOLLOW TAX LAW DRAFTING PRINCIPLES?

Michal Radvan[1]

ABSTRACT

Tax law regulation must be clear and easy to understand and apply. It must consider the level of knowledge of taxpayers, and it must follow the terminology used in other branches of law. The legislator should also be receptive to the economic aspects of private and business life. The tax office should create conditions to make filing tax returns easy and not time-consuming, ideally online, with prefilled fields and automatic calculation. Only if these requirements are fulfilled might tax administration be cheap and effective without additional compliance costs (for both taxpayers and tax administrators). To meet all of these requirements, it seems necessary for the legislator to follow tax law drafting principles. It should also be stated that these principles play an essential role not only in the process of tax law drafting but also in the interpretation and application of tax law norms. The main aim of this study was to answer the question from its title: Does the Czech Parliament follow tax law drafting principles? The hypothesis that the Czech Parliament follows tax law drafting principles when adopting tax law was confirmed. However, considering history, several exceptions and cases show that this statement does not apply in all situations. The breach of principles is not caused by a lack of the principles or unclear principles but by their application by the Parliament. To achieve a good quality tax law, it seems sufficient to follow the principles, especially for politicians. The legislator should know the tax law drafting principles described and critically analysed in this article: 1. basic principles, 2. self-application principles, 3. tax justice principles, 4. economic nature principles, and 5. professionality principles.

KEYWORDS

tax law
tax law drafting
law drafting principles
method of legal regulation

1 | Professor, Faculty of Law, Masaryk University, the Czech Republic; michal.radvan@law.muni.cz; ORCID: 0000-0002-9858-4555.

https://doi.org/10.55073/2024.1.185-202

1. Introduction

Legislative drafting is an art that is executed by specific professions, primarily lawyers; however, other professions may have the particular qualifications required to prepare the draft bill. Lawyers themselves cannot prepare draft bills because they likely do not have sufficient knowledge of the subject of regulation. Almost every act might serve as an example, with the exception of the procedural codes. For example, an act addressing nuclear energy and nuclear power plants can only be prepared with the help of experts in chemistry, physics, construction, etc. The same applies to tax law drafting: the substantive intent of the draft bill requires the input of experts in economics, the national economy, accounting, public budgets, statistics, etc. forth. Such substantive intent must then be accepted by politicians, as they almost always have their own ideas on how to design tax law according to their specific interests, the primary of which is being re-elected by voters. Only if the substantive intent is approved by experts from non-legal areas, including politicians, can lawyers start their work and prepare the sectional wording of the act, that is, the tax act itself.

As Thuronyi[2] states, 'drafting tax laws is a subspecialty of legislative drafting in general'. However, he does not explain why this is the case. In my opinion, this is hidden by the specific method of tax law regulation. This method is based on the general administrative law method of regulation, which is based on the effect of public authorities on its recipients. Public authorities enforce this effect through direct norms contained in normative administrative acts or sub-statutory regulations (bylaws and ordinances) issued by public authorities. These bylaws implement the law and can never exceed legal limits; they can only follow the limits stipulated by acts. Another way public authorities enforce the effect is through individual administrative acts. These individual administrative acts are decisions issued by public authorities authorised by law to make such decisions in specific administrative matters.[3] The administrative law regulation method is based on the public law nature of legal relationships and the protection of public interests.

The method applied in tax law is modified compared to the classical administrative law regulation method. Radvan[4] calls the former a modified version of the administrative law regulation method. The specifics are as follows:

1. Tax law has fewer sub-statutory regulations than administrative law, as tax acts give public administrative authorities very limited scope to issue bylaws. This is connected to the principle of nullum tributum sine lege: tax law regulation must primarily take the form of an act.

2. Tax law has not only fiscal functions but also regulative and stimulative functions. To affect the recipients of legal norms to behave or not to behave in the desired manner, the legislator applies economic instruments to a greater extent in the area of tax law than in other branches of law. These instruments are individual

2 | Thuronyi, 1996, p. 71.
3 | Radvan, 2020, pp. 12–13.
4 | Radvan, 2020, pp. 12–13.

taxes themselves (typically excise taxes), different tax rates for particular objects of taxation (e.g., gambling taxes), tax credits, and other corrective elements (e.g., tax relieves for students and disabled persons, tax allowances in the case of mortgage interests, etc.), or tax holidays (primarily for corporate income tax).

3. While tax law is a typical public law discipline, its regulations include several private law elements. For example, personal income taxpayers can pay a lump-sum tax instead of calculating regular personal income tax. Suppose the taxpayer does not have the current capacity to pay the tax, there exist the possibilities of postponing taxes or payment calendars, which are a kind of contract between the taxpayer and the tax office. Certain administrative activities are also delegated from the State to private law entities, typically withholding taxes: joint stock companies and limited liability companies must withhold the tax from dividends and shares on profits, and a bank withholds tax on the interest accrued. It is possible to identify typical private law relationships in tax law, such as the relationship between an employer paying wages or salaries to an employee. Such a relationship is primarily, of course, a labour law relationship; however, the employer is obliged to deduct (withhold) 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 such conduct.[5]

4. The mandatory nature of legal norms may be moderated in specific instances by an element of choice. Several examples exist, including the aforementioned lump-sum personal income tax. Other examples include voluntary VAT payments, different methods of depreciation, and lump-sum expenditures for income taxes.

5. Besides the specifics mentioned above, there is another, the most crucial aspect from my perspective, namely the self-application principle. While in other administrative proceedings and negotiations, personal contact between the office and a (natural or legal) person is assumed, in tax proceedings, no negotiations between the administrative authority (tax administrator) and the taxpayer are expected, at least before the tax return is filed. At this stage, the knowledge and orientation of the tax entity in the tax law regulation are assumed. It is the task of the taxpayer to apply tax law norms to themself (to taxable incomes, property, or legal acts) so that the taxpayer can determine the tax base, apply relevant tax rates, and use appropriate corrective components to optimise tax duty. With this knowledge, the taxpayer is responsible for delivering the completed tax return to the relevant tax administrator on time and for tax payments. It is automatically expected that the tax return is completed correctly, and the tax code sets a fiction that the tax administrator assesses the tax tacitly (that is, implicitly) provided that it has no reservations regarding the correctness and completeness of such a return. Therefore, in most cases, there is no interaction at all between the tax administrator and the taxpayer. Only later, when the tax office controls the tax return and doubts the correctness and completeness of the tax return, can it start other proceedings (e.g., proceedings to remove doubts, tax control, local investigation, etc.).

5 | Radvan, 2020, pp. 12–13.

Considering the aforementioned specifics of the tax law regulation method and the principle of self-application, it is clear that the requests on the quality of tax law must be maximal. Tax law regulation must be clear and easy to understand. Thus, the taxpayer's level of knowledge must be considered. Tax law must follow the terminology used in other branches of law. The legislator should be receptive to the economic aspects of private and business lives. The tax office should create conditions that make filing tax returns easy and not time-consuming, ideally online, with prefilled fields and automatic calculations. Only if these requirements are fulfilled can tax administration be cheap and effective without additional compliance costs (for both taxpayers and tax administrators). Taxpayers will then be ready (if probably never happy) to pay their taxes and file their tax returns, and their rights will be protected. With regard to effectiveness, Thuronyi[6] notes that

> The effectiveness of a tax law is enhanced if its words are meaningful, intelligible, well thought out, and well organized. … The tax laws of countries with established and sophisticated systems can be particularly impenetrable, as qualifications and exceptions have been heaped on top of existing rules. In this sense, those working in developing and transition countries have an opportunity to produce better laws than exist in developed countries. Poor drafting often leads to substantial problems in the implementation of a new tax law that could have been avoided.

To meet all of these requirements, it seems necessary for the legislator to follow tax law drafting principles. Note that these principles play an essential role not only in the process of tax law drafting but also in the interpretation and application of tax law norms. Etel[7] states that the principles consider both the public interest and tax subjects' individual interests or the interests of other tax law addressees. Although many of these principles are not of a normative nature, they allow for the formulation of the postulates of a rational tax system's functioning.

The following section addresses the principles that legislators should apply in the specific context of drafting tax laws. The main aim of the contributions is to answer the question from its title: Does the Czech Parliament follow tax law drafting principles? As the Czech Republic is a democratic state proclaiming in the Preamble of the Constitution[8] that the citizens are 'resolved to abide by all proven principles of a State governed by the rule of law', the hypothesis to be confirmed or disproved must be defined as follows: the Czech Parliament follows tax law drafting principles when adopting tax law.

6 | Thuronyi, 1996, p. 72.
7 | Etel, 2002, p. 47.
8 | CZ, Act. no. 1/1993 Sb.

2. Methodology and literature background

To achieve the aim of this research and test the hypothesis, the IMRaD (Introduction, Methodology, Research, Discussion) structure was chosen for the paper. First, it was necessary to identify the tax law drafting principles and create their systematics. To do this, it was necessary to critically analyse the results of previous research in this field and compare them to determine comprehensive and concise systematics of tax law drafting principles. In the second stage, it was necessary to identify particular tax law norms that do not meet the standards based on the tax law drafting principles. To provide adequate examples, it was necessary to analyse new tax acts and amendments to existing ones. It was also helpful to check whether there is any scientific literature or decisions of the Czech courts dealing with these cases and referring to tax law drafting principles. Because of the chosen structure of the contribution, the Research and Discussion sections of the paper are united. By summarising and synthesising the gained knowledge, it was possible to answer the main research question regarding whether the Czech Parliament follows tax law drafting principles and to test the stated hypothesis.

Concerning the scientific literature in a given area, numerous books, book chapters, and articles address general law drafting. Internationally, Thornton[9] is one of the most cited authors. In the Czech Republic, the book edited by Bohadlo, Harazímová, Mlsna, Vavera, and Váňa[10] should be mentioned. This publication focuses on the system of legal drafting in the Czech Republic and the various pitfalls of the process of forming legal regulations. Another practical publication following the methodological tools was prepared by Kněžínek, Mlsna, and Vedral.[11] From a more theoretical point of view, the book edited by Gerloch and Kysela[12] addresses law-making in the Czech Republic after it acceded to the European Union. Kysela[13] highlights the relationship between legislative drafting and legal political science. Šín[14] is the most general work. Škop, Malaník, Smejkalová, Štěpáníková, and Vacková[15] published a book based on known theory and empirical data from in-depth interviews. The individual parts of this book answer questions concerning the production of legal texts. The authors ask: What is the social practice of 'writing' a legislative text? Who and what influences the final form of law? Who is the author, and what is it like to be a legislator? Can writing a text affect its interpretation?

The specific issues connected with tax law drafting principles are often disregarded. However, there are outstanding publications, especially by Thuronyi, whose publication on tax design and drafting seems to be a bible for all tax legislators and who dedicated one chapter to tax law drafting principles.[16] Also, Morse and

9 | Thornton, 1996.
10 | Bohdalo et al., 2011.
11 | Kněžínek et al., 2010.
12 | Gerloch and Kysela, 2007.
13 | Kysela, 2007.
14 | Šín, 2009.
15 | Škop et al., 2019.
16 | Thuronyi, 1996, pp. 71–94.

Williams[17] should also be noted. Many excellent books have also been published in Poland, primarily Mastalski,[18] Etel,[19] Gomułowicz and Małecki,[20] Nykiel and Sęk,[21] and Brzeziński.[22] The most important expert in Slovakia is Babčák,[23] while in the Czech Republic, equivalent persons are Mrkývka[24] and Boháč.[25]

3. Research and discussion

3.1. Systematics of Tax Law Drafting Principles

Thuronyi[26] used the criteria for a well-drafted law to organise his chapter and create a system of tax law drafting principles. These criteria are understandability (brevity, transparency, avoiding legalistic language, the numbering of sections, section headings, and sentence structure), organisation (codification), effectiveness (relations between policy and drafting, anticipating application and interpretation, and drafting for a judicial audience), and integration (local drafting style, gender-neutral language, relations between tax law and other legislation, and terminology).

> Understandability refers to making the law easier to read and follow. Organization refers to both the internal organization of the law and its coordination with other tax laws. Effectiveness relates to the law's ability to enable the desired policy to be implemented. Finally, integration refers to the consistency of the law with the legal system and drafting style of the country." Thuronyi[27] is aware that these criteria are interrelated and somewhat overlapping. He demonstrates that on examples: "organization is important for understandability, and all the criteria contribute to the effectiveness of the law.[28]

Many principles defined by Thuronyi are rather technical. Moreover, Thuronyi gained experience in developed countries, whereas, in the Czech Republic, there is still no fully developed (tax) law drafting culture. For this reason, I cannot simply copy the systematics created by Thuronyi; I have to introduce such systemics myself.

17 | Morse and Williams, 2008.
18 | Mastalski, 1995; Mastalski, 2016.
19 | Etel, 2010.
20 | Gomułowicz and Małecki, 2010.
21 | Nykiel and Sęk, 2015.
22 | Brzeziński, 1986; Brzeziński, 2008.
23 | Babčák, 2008.
24 | Mrkývka, 2012.
25 | Boháč, 2023.
26 | Thuronyi, 1996, p. 72.
27 | Thuronyi, 1996, p. 72.
28 | Thuronyi, 1996, p. 72.

When drafting tax law, the legislator is limited by the boundaries of the catalogue of basic legal principles given by the country's constitution as well as by the principles generally valid for continental legal culture and the democratic rule of law. These basic principles form the first group of tax law drafting principles. The second group of principles is specific to tax law and is closely connected to the specifics of the legal method of tax law regulation. These are the self-application principles. The third group comprises tax justice principles, as there are specific conditions and rules for measuring justice in taxation. The tax law is closely related to national economics. Therefore, the fourth group of principles must cover the economic nature principles. Finally, the fifth group is connected to the quality of legislation and includes professionality principles. Similar to Thuronyi, I am aware that these criteria are interrelated and somewhat overlapping.

3.2. Basic principles

The basic principles of tax law drafting are, to a certain extent, connected to general legal drafting principles; they also include the principle of non-retroactivity and the priority of international and EU law. However, in the area of taxation, these principles play a specific and crucial role.

The most important basic principle for tax law drafting is the *nullum tributum sine lege* principle. It is a part of almost all constitutions worldwide: in Croatia,[29] Poland,[30] Romania,[31] Serbia,[32] and Slovakia.[33]

In the Czech Republic, the principle of no taxation without representation is contained in the Charter of Fundamental Rights and Basic Freedoms[34], which forms part of the constitutional system along with the Constitution. Article 11(5) of the Charter states that taxes and fees can only be imposed through acts. Interestingly, this principle is delineated in an article addressing the protection of ownership rights, and taxes then limit ownership rights. To impose any sub-statutory regulation on taxation, there must be specific authorisation in the Act. In this regard, the most significant in the Czech Republic are the generally binding ordinances issued by municipalities in the area of local taxes (i.e., recurrent property tax and local charges). Local self-governmental units have only the right to 'complete' the legal regulation following the regulation in the acts and setting the sub-structural components (additional exemptions, multiplying coefficients, specific tax rates up to the limit set in the act) according to the empowerment in the acts.

The nullum tributum sine lege principle is generally followed, and there are few cases in the history of the Czech Republic suggesting otherwise. The most common example, although rare, is the area of local charges; several municipalities have adopted local bylaws introducing charges other than those stipulated in the Local Charges Act. A very interesting decision concerning the principle of no taxation

29 | Rogić Lugarić and Klemenčić, 2022, pp. 42–43.
30 | Charkiewicz and Popławski, 2002, p. 115.
31 | Brad, 2002, p. 135.
32 | Milošević, 2022, p. 156.
33 | Štrkolec, 2022, p. 190.
34 | CZ, Act. no. 2/1993 Sb.

without representation was issued by the Constitutional Court when addressing the proposal of the Supreme Administrative Court to abolish the property transfer tax because of its alleged unconstitutionality. The Constitutional Court, i.a., summarised that it is in the public interest to collect taxes to secure public goods and services. The Court used a modified version of the principle of proportionality and examined whether there had been a violation of the prohibition of extreme disproportionality in conjunction with the criteria arising from the constitutional principle of equality. It held that the imposition of taxes was a matter for the Government and Parliament; the Court could intervene only if there was a restriction in the right to property of a choking effect or if there was a breach of the principle of equality. In this case, the court did not find grounds for cancellation of the tax.[35]

The *lex retro non agit* principle (principle of non-retroactivity) is usually defined in constitutions. In the Czech Republic, it is included in the Charter of Fundamental Rights and Basic Freedoms. Although the prohibition of retroactivity of legal norms is expressly provided for in Article 40(6) of the Charter only in the area of criminal law, it is necessary to infer from Article 1 of the Constitution that this prohibition also applies to other branches of law.[36] The prohibition of retroactivity is based on the principle that everyone must know what conduct is prohibited to be held liable for a breach of prohibition. This prohibition is also related to the function of legal norms, which impose on addressees how they should behave after their entry into force and, therefore, in principle, apply only in the future.[37]

In the area of taxation, the principle of non-retroactivity refers to the prohibition of taxation of facts that occurred in the past; that is, the obligation arising during the effectiveness of a particular regulation is governed by this regulation until its fulfilment. However, this principle may be broken if new regulations are advantageous for obligated tax subjects. A good example is the abolishment of taxes on personal motor vehicles adopted by the Czech Parliament in June 2022 with retroactive effects for the entire taxable period of 2022. Another example is the abolition of the tax on the acquisition of immovable property. The Czech Government announced its intent in the spring of 2020, and the law was approved later with effect on 26 September 2020. However, the act provided for retroactive effects of the abolition of the tax by fixing the decisive date at 31 March 2020: if the deadline for filing the tax return expires from 31 March 2020, the tax liability arising before the date of entry into force of the abolition law will cease on the date of entry into force of this law. In view of the rule that tax returns should be filed by the end of the third month following the month in which the entry was made in the cadastre, all tax obligations for which the entry was made in December 2019 or later will thus be extinguished. This procedure is referred to as super-retroactivity.[38]

Among the basic criteria, it is also necessary to include the principles of priority of international and EU law. The tax legislature must respond to developments

35 | CZ, Constitutional Court, Pl. ÚS 29/08, 21.04.2009.
36 | CZ, Constitutional Court, Pl. ÚS 21/96, 04.02.1997.
37 | CZ, Constitutional Court, III. ÚS 611/01, 13.06.2002.
38 | Radvan, 2022, pp. 46–47; Radvan and Svobodová, 2021, p. 73.

in international and European law.[39] In particular, indirect taxes (excise taxes and VAT) have been widely harmonised. In addition, double tax treaties and agreements in the area of international cooperation among tax administrations are prioritised.

3.3. Self-Application principles

The self-application principles are connected to the aforementioned specifics of the method of tax law regulation. Applying these principles should ensure that the calculation of the tax by the taxpayers and corresponding duties are easy, and not costly and time-consuming. This approach also incurs low costs for tax administrators.

Self-application principles should help taxpayers find adequate legislation for tax duties. Therefore, tax provisions should be included in separate legal acts, not hidden in one act or code consisting of several specific taxes, and without naming these taxes in the title of the act. There are several examples of bad practices in the Czech Republic. The most serious are excise taxes: while the 'traditional' Act on Excise Taxes contains five 'traditional' excise taxes (on mineral oils, spirits, wine, beer, and tobacco products) and two non-harmonised taxes (on rough tobacco and heated tobacco products), the other three new harmonised energy taxes (on gas, electricity, and solid fuels) are hidden as parts 45, 46 and 47 in the Public Budgets Stabilisation Act of 2007. It is necessary to state that initially, the Ministry of Finance contemplated that these taxes would be regulated by three separate acts, particularly given the specificity of taxation on individual commodities and the simplicity and transparency of legal regulation in general. The Financial Law Commission of the Legislative Council of the Government proposed the inclusion of energy taxes as excise duties in the existing Act on Excise Taxes. The most surprising was the government's decision, which included all three energy taxes and dozens of other laws and amendments to the Public Budgets Stabilisation Act.[40] At the local level, the most problematic are bylaws issued by municipalities on local charges: some municipalities prefer to adopt just one local generally binding ordinance on local charges, including several local fees. In such cases, taxpayers are unable to identify whether they are liable for the charge just from the title of the bylaw.

In summary, the title of the legislative instrument (act, ordinance) must be sufficiently clear and must unambiguously suggest what tax matters. A bad example in the history of Czech taxation is the tax on acquisition of immovable property. During the discussion of the draft bill in Parliament, the taxpayer was changed from the acquirer (buyer) to the seller. However, the title of the Act, the title of the tax, and the object of taxation remained unchanged. It is unsurprising that many sellers did not pay the tax without a notification from the tax office, arguing over the titles of the act and tax.

The other two principles are closely connected. It is necessary to follow uniform terminology in law. The law should be complex, and terms from other branches

39 | Gribnau and Dusarduijn, 2021, p. 167.
40 | Radvan, 2009, pp. 120–122.

of law (not only public but also private) should be used in taxation in the same manner. Tax law should not aim to create its own definitions if the term is already defined in law. Good examples might be legal personality (capacity for rights and obligations) and legal capacity (capacity to perform legal acts), which are defined in the Civil Code but are used in public law procedures, including tax procedures. It would also be inappropriate to impose an unorthodox tax or tax components. I will mention two such inappropriate tax components in Czech tax law regulations.

From 2008, the government aimed to implement a linear 15% personal income tax rate. To avoid a serious decrease in budget revenues, the government introduced a new tax base for income from dependent activities – the super-gross wage – as the brutto salary increased by social and health contributions paid by the employer at 34% (later 33.8%). The concept of super-gross wage was non-transparent, unique worldwide, and unfair. Assuming that social and health contributions are taxes sensu lato, it meant that a tax was paid on a tax. Moreover, this led to unequal income taxation of dependent and independent (self-employed) activities (more in Radvan, Neckář, 2016; Radvan, Svobodová, 2021, pp. 79-80).

Another unorthodox tax component is tax onus. Czech taxpayers can apply tax preferences for children in the form of tax reduction. However, if the tax preference is higher than the tax itself, the difference is called a 'tax bonus', which is paid back to the taxpayer. This has the characteristics of a negative tax.

Thuroniy[41] also mentions brevity as a principle of tax law drafting: 'The shorter the statute, the less effort will be required to understand it, and the lower compliance burdens will be. Elegance, brevity, and clarity of expression are therefore to be sought'. I suggest that tax duties should be formulated briefly but clearly. Sometimes, the legal text must be more detailed but must remain transparent, considering the legal and economic knowledge levels of taxpayers, tax officials, and judges.

Taxpayers and other users of tax law must have adequate time to familiarise themselves with the text of the law. Adequate *vacatio legis* is a condition for the proper (self-) application of acts. However, the practice in the Czech Republic is the opposite, especially regarding tax regulation that should be effective from the beginning of the following year. For example, amendments to many Czech tax acts effective from the beginning of the tax year 2021 were published only on 31 December 2020. The new Waste Act and related laws were adopted too late, by the end of 2020; therefore, municipalities did not have sufficient time to prepare the bylaw for waste charges collected in 2021. Only the transitional provisions in the Act allowed municipalities to use their legal authority in the abolished acts.

3.4. Tax Justice Principles

As stated by the Czech Constitutional Court,

> Distinctions leading to a violation of the principle of equality are inadmissible in two respects: they may operate both as an accessory principle, which prohibits discrimination against persons in the exercise of their fundamental rights, and as a

41 | Thuronyi, 1996, p. 73.

> non-accessory principle, which consists in the exclusion of the legislature's arbitrariness in distinguishing the rights of certain groups of subjects. In other words, in the second case, it is the principle of equality before the law.[42]

Equality is closely related to justice. Every constitution requires to follow the principle of justice, including tax justice. Tax justice is applied in two ways. Horizontal tax justice means that the same objects of taxation should be taxed equally; that is, income, property, or consumption of different persons should be taxed equally regardless of the nature of these persons, their legal status, and so on. Vertical tax justice states that an entity with higher incomes, higher valued assets, or higher consumption should pay more tax. However, there is a certain limitation: with an increasing tax base, the tax rate should not be increased highly progressively but should remain the same or be progressive proportionally. For example, in the Czech Republic, the personal income tax rate varied between 12 and 32% until 2007. Since 2008, the tax rate has been linear at 15%. However, since 2013, a solidarity tax increase of 7% was introduced. As it was, in fact, the second tax rate for higher incomes, the linear tax rate was replaced by a progressive one. Since 2021, this approach has been legal again; the solidarity tax increase was officially abolished, and the second tax rate became 23%.

To the concept of vertical tax justice, the principle of proportionality must, therefore, be maintained. The related principle of endurance states that taxes must not be of a liquidating nature. The fact that the tax should not have a choking effect is secured by corrective components. These components make it possible to respond to the disproportionate impact of taxes (exemptions, relieves, etc., or the deferral and waiver of taxes by administrative means).

It is desirable that there is no double taxation, particularly in an interstate tax system. That is, the principle of non-double taxation must be guaranteed. Even if all states are fighting international double taxation with (mostly) bilateral double tax treaties, interstate double taxation (moreover resulting from European law) is common, and the tax base for VAT also includes excise taxes. In the Czech Republic, with the concept of super-gross wage, interstate double taxation was also applied; if not health contributions, social security contributions might be considered a tax sensu lato, and being taxed by income tax represents a breach of the principle of non-double taxation.

In law generally and tax law specifically, it is necessary to follow the principle of majority protection. The legislator should protect the interests of the majority from intrusion by different lobbying interests. Respecting the aforementioned principle of endurance, corrective components must be sufficiently general to protect the interests of most taxpayers, not individual taxpayers. Not all corrective components fulfil this requirement. For example, the Czech Income Taxes Act includes some 400 corrective components (e.g., exemptions and tax reductions). This large number breaches the principles of brevity and clarity. The solution to avoid many corrective components, some of which only contribute to individuals, might be a Christmas tree strategy: the draft bill is sent to Parliament with only

42 | CZ, Constitutional Court, Pl. ÚS 29/08, 21.04.2009.

minimum corrective components (a tree), whereas the Members of Parliament are expected to add many additional corrective components (hang decorations on the tree).

3.5. Economic Nature principles

Tax law and tax law drafting are closely connected to national and international economies. In the Czech Republic, it is possible to demonstrate that tax reforms and significant amendments are linked to economic changes. The tax system changed significantly after the Velvet Revolution in 1989, when Czechoslovakia became a democratic country with a market economy. A completely new tax system needed to be established before the independence of the Czech Republic in 1993. Several substantial amendments had to be made before the Czech Republic became an EU Member State in 2004. Additional considerable changes were connected to economic crises related to the COVID-19 pandemic or Russian aggression in Ukraine.

Every state must be aware that the primary sense of taxation is the fiscal effect on public budgets, even if it is often broken, because taxes may also have reduction and stimulation functions. Drafters of tax law should respect the principles of the economy. They must consider the economic rules of the chosen economic model (the principle of an open market economy). They must consider the short- and long-term consequences of tax law regulation. They must follow the legal regulations of related sections of public financial activities. They must understand the impact of fluctuations in the value of money on the stability of tax law. Finally, they must be sensitive to continuous changes in the amount of taxes. The last two points explain why fixed tax rates and fixed corrective components (tax reductions) are not always the best solutions and why it is necessary to ensure regular amendments. The other possibility is to adopt a general inflation coefficient for tax law regulation so that tax revenue remains stable, and one-time irregular amendments will not indicate a lack of political courage to take such steps, suddenly increasing tax liability.

3.6. Professionality principles

The quality of tax law is highly influenced by the professionalism of the tax law drafters. This is why proposals for tax acts should be consulted with stakeholders (other ministries, industry unions, trade union organisations, and so forth) and discussed by professional committees with the participation also of academics. It is unfortunate that tax law is primarily addressed by professionals: draft bills are prepared by professional officials at the Ministry of Finance, discussed by other professionals within the commenting procedures, and by the Legislative Council of the Government and its committees. Professional tax advisors and attorneys, professionals working in tax administration, and tax courts apply and interpret the law. The only legal laypersons are the Government and the Parliament members, who, unfortunately, can influence the shape of the tax law the most.

An adequate explanatory report of the Act is a condition sine qua non for a complete understanding of the new legal regulation, the proper fulfilment of tax obligations by taxpayers, and proper tax administration by tax authorities. However, explanatory reports are often somewhat misleading, especially regarding the

reasons for changes in tax regulations. For example, when increasing excise taxes, the explanatory report always states that the reason for the increase is the regulative function of the tax and that the fiscal function of the excise taxes is suppressed. The lack of information and motivation for specific regulations were often omitted when adopting new tax rules as a consequence of the SARS-CoV-2 virus and the COVID-19 pandemic.

In the case of amendments made by Members of the Parliament, many breaches of tax law drafting principles are apparent. In particular, there is no explanatory report for these amendments, and sometimes even no public discussion in Parliament clarifying the motivation for submitting the proposal. The abolishment of the super-gross wage may serve as an example. The annual act amending the tax law was prepared by the Ministry of Finance and accepted by the Government for the taxable period of 2021. However, the Prime Minister, as a Member of Parliament, prepared his own amendment to this act, cancelling the super-gross wage. There was no detailed explanatory report or regulatory impact assessment, and no discussions at the level of the Ministry of Finance, relevant expert bodies in the external comment procedure, committees of the Legislative Council of the Government, or the Legislative Council of the Government itself. As the Prime Minister´s proposal meant a lower level of taxation, it was accepted and adopted. An opposition proposal to increase basic taxpayer relief was also voted through. The Czech Fiscal Council estimated that the abolition of the super gross wage would result in a shortfall in tax revenue of up to CZK 88 billion. This did not include an increase in basic taxpayer relief. With this change, a shortfall between CZK 100 and 120 billion was assumed for the taxable period of 2021[43] and even more for the following years.[44]

The solution might be for tax bills to be voted upon under so-called close rules. That is, a 'yes' or 'no' vote without the possibility of introducing amendments could be adopted. However, this never happens in practice, as it seriously breaches many constitutional rights of the Parliament and is not consistent with the democratic legal order.

The practical solution might be the aforementioned Christmas tree legislation, assuming that the decorations to be hung by the Members of Parliament are prepared in advance by the Ministry of Finance, and the Ministry of Finance also advises where on the tree (in which section and paragraph of the act) the decoration should be placed.

4. Conclusion

Summarising the knowledge gained, it is possible to state that the Czech Parliament generally follows tax law drafting principles when adopting tax law. The hypothesis stated at the beginning of this study was confirmed. However,

43 | Hlaváček and Pavel, 2020.
44 | Žurovec, 2020.

considering history, several exceptions and cases show that this statement cannot be applied to all situations. The breach of principles is not caused by a lack of principles or their lack of clarity but by their application by Parliament.

To achieve a good-quality tax law, it seems sufficient to follow the principles, especially by politicians. The legislator should know the tax law drafting principles described and critically analysed in this article.

1. Basic principles: principles given by the country's constitution and principles generally valid for continental legal culture and the democratic rule of law.
2. Self-application principles: principles specific to tax law and closely connected to the specifics of the legal method of tax law regulation.
3. Tax justice principles: specific conditions and rules for measuring justice in taxation.
4. Economic principles, as tax law has a very close relationship to national economics.
5. Professionality principles: principles connected to the quality of the legislation.

Similar to Thuronyi, I am aware that these criteria are interrelated and somewhat overlapping.

An attentive reader might have noticed that the principle in dubio pro libertate and other similar principles (in dubio mitus, in dubio contra fiscum, in dubio pro tributario) as analysed by Morawski and Boháč[45] are missing in the list of principles. According to the Czech Constitutional Court, in dubio pro libertate (in dubio mitius) is one of the basic constitutional principles. The Court also stated that

> If several interpretations of a public law norm are available, it is necessary to choose the one that does not interfere at all, or as little as possible, with the fundamental right or freedom in question. … In a situation where the law allows for a double interpretation, it cannot be ignored that in the field of public law, the public authorities may only do what the law expressly allows them to do; it follows from this maxim that when imposing and enforcing taxes according to the law …, i.e., when de facto depriving a part of the acquired property, the public authorities are obliged … to respect the essence and meaning of fundamental rights and freedoms - i.e., in case of doubt, to proceed more leniently (in dubio mitius).[46]

It follows that the legislator should adopt tax legislation that is as uncontroversial as possible to avoid possible double interpretation. However, even if this ideal state of affairs is achieved, the principle of in dubio pro libertate leads to the principle that in interpreting legislation governing taxes, the property of the individual takes precedence over the right of the State to determine and pay taxes. That is, even in the absence of a conflict between two possible alternative interpretations,

45 | Morawski and Boháč, 2023.
46 | CZ, Constitutional Court, IV. ÚS 666/02, 15.12.2003.

the courts have held that the above principle must be considered and cannot be disregarded.[47]

However, the international literature on tax law[48] points to the inappropriateness of the in dubio pro libertate/in dubio contra fiscum principle. Although it used to be popular, many states abandoned this principle because of its inconsistency with the purposive approach to interpretation. Nevertheless, it appears here and there, and in some states (e.g., Belgium), it is still very important. However, if the principle of in dubio contra fiscum prevails in the courts' decisions, there is a danger: if a State loses a dispute with a taxpayer because of an unclear legal rule, it tends to correct its 'mistake' by clarifying the wording of the rule, but not its content. Thus, in the next tax year, there is no doubt about the rights and, in particular, the (tax) obligations of the tax subject. Although his behaviour is identical to that of the previous tax year, the taxpayer's taxation will be different. Therefore, it is pertinent to ask whether it is possible to speak of equality among taxable persons, both within themselves and between tax periods.

47 | Boháč and Radvan, 2015, p. 37.
48 | Thuronyi, 2003, p. 136.

Bibliography

Babčák, V. (2008) *Dane a daňové právo na Slovensku (Taxes and Tax Law in Slovakia)*. Bratislava: Epos.

Boháč, R., Radvan, M. (2015) 'Vnímání daní, poplatků a jiných obdobných peněžitých plnění ve světle jejich ústavních aspektů' ('Perception of Taxes, Fees and Other Similar Monetary Benefits in the Light of Their Constitutional Aspects'), *Bulletin komory daňových poradců České republiky,* 3(2), pp. 36–39.

Bohadlo, D., Harazímová, R., Mlsna, P., Vavera, F, Váňa, L. (eds.) (2011) *Legislativní process (teorie a praxe) [Legislative Process (Theory and Practice)].* Prague: Ministertvo vnitra.

Brad, I. (2022) 'Regulation of Public Finances in Romania in Light of Financial Constitutionality' in Nagy, Z. (ed.) *Regulation of Public Finances in Light of Financial Constitutionality*. Miskolc-Budapest: CEA Publishing, pp. 129–150; https://doi.org/10.54171/2022.zn.ropfatilofc_7.

Brzeziński, B. (1996) 'Zasady tworzenia prawa finansowego (próba sformulowania)' ['Principles of Financial Law-making (Attempt at Formulation)'], *Państwo i Prawo,* 41(5), pp. 66–76.

Brzeziński, B. (2008) *Wprowadzenie do prawa podatkowego (Introduction to Tax Law)*. Toruń: TNOiK.

Charkiewicz, M., Popławski, M. (2022) 'Regulation of Public Finances in Poland in Light of Financial Constitutionality' in Nagy, Z. (ed.) *Regulation of Public Finances in Light of Financial Constitutionality*. Miskolc-Budapest: CEA Publishing, pp. 107–127; https://doi.org/10.54171/2022.zn.ropfatilofc_6.

Etel, L. (2002) *System podatkowy (zarys wykładu) [Tax System (Lecture Outline)]*. Siedlce: WSFiZ.

Etel, L. (ed.) (2010) *System prawa finansowego - Prawo daninowe (System of Financial Law - Tax Law)*. Warsaw: Wolters Kluwer.

Gerloch, A., Kysela, J. (eds.) (2007) *Tvorba práva v České republice po vstupu do Evropské unie (Law-making in the Czech Republic after Accession to the European Union).* Prague: ASPI.

Gomułowicz, A., Małecki, J. (2010) *Podatki i prawo podatkowe (Taxes and Tax Law)*. Warsaw: LexisNexis.

Gribnau, H., Dusarduijn, S. (2021) 'Principles-Based Tax Drafting and Friends: On Rules, Standards, Fictions and Legal Principles' in Sawyer, A., Massey, D., Oats, L. (eds.) *Contemporary Issues in Taxation Research. Volume 4*. Birmingham: Fiscal Publications, pp. 165–206.

Hlaváček, M., Pavel, J. (2020) 'Fiskální náklady pandemie COVID-19 v České republice' ('Fiscal Costs of the COVID-19 Pandemic in the Czech Republic') [Online]. Available at: https://web.archive.org/web/20210930085607/https://unrr.cz/wp-content/uploads/2020/04/Informa%C4%8Dn%C3%AD-studie-Fisk%C3%A1ln%C3%AD-n%C3%A1klady-pandemie-Covid-19-v-%C4%8Cesk%C3%A9-republice.pdf (Accessed: 20 March 2023).

Kněžínek, J., Mlsna, P., Vedral, J. (2010) *Příprava návrhů právních předpisů - praktická pomůcka pro legislativce (Drafting Legislation - a practical Guide for Legislators).* Prague: Úřad vlády.

Kysela, J. (2007) 'Uvedení do teorie legislativní tvorby práva aneb pokus o „právní politologii"?' ('An Introduction to the Theory of Legislative Law-making or an Attempt at "Legal Political Science"?'), *Právník,* 146(12), pp. 1257–1288.

Mastalski, R. (1995) *Wprowadzenie do prawa podatkowego (Introduction to Tax Law).* Warsaw: C. H. Beck.

Mastalski, R. (2016) *Tworzenie prawa podatkowego a jego stosowanie (Creation of Tax Law and its Application).* Warsaw: Wolters Kluwer.

Milošević, G. (2022) 'Regulation of Public Finances in Serbia in Light of Financial Constitutionality' in Nagy, Z. (ed.) *Regulation of Public Finances in Light of Financial Constitutionality.* Miskolc-Budapest: CEA Publishing, pp. 151–180; https://doi.org/10.54171/2022.zn.ropfatilofc_8.

Morawski, W., Boháč, R. (2023) 'In Dubio Pro Tributario/In Dubio Mitius as a Rule of Reasoning in Tax Law Interpretation', *Intertax,* 51(6-7), pp. 506–518; https://doi.org/10.54648/TAXI2023041.

Morse, G., Williams, D. (2008) Davies: Principles of Tax Law. 6th edn. London: Thomson Reuters (Legal) Limited.

Mrkývka, P. (2012) *Determinace a diverzifikace finančního* práva (Determination and Diversification of Financial Law). Brno: Masaryk.

Nykiel, W., Sęk, M. (2015) 'Trends and Challenges of National Tax Legislation' in Nykiel, W., Sęk, M. (eds.) *Tax Legislation.Standards, Trends and Challenges.* Warsaw: Wolters Kluwer, pp. 191–206.

Radvan, M. (2009) 'Energy Taxes' in Knez, R., Rozehnalová, N., Týč, V. et al. *Five Years of EU Membership Case of Czech Republic and Slovenian Law.* Maribor: University of Maribor, pp. 108–123.

Radvan, M. (2020) *Czech Tax Law.* 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., Neckář, J. (2016) 'Taxation of Professional Team Sport Athletes in the Czech Republic', *Public Governance, Administration and Finances Law Review,* 1(1), pp. 40–46; https://doi.org/10.53116/pgaflr.2016.1.4.

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

Rogić Lugarić, T., Klemenčić, I. (2022) 'Regulation of Public Finances in in Croatia Light of Financial Constitutionality' in Nagy, Z. (ed.) *Regulation of Public Finances in Light of Financial Constitutionality.* Miskolc-Budapest: CEA Publishing, pp. 35–55; https://doi.org/10.54171/2022.zn.ropfatilofc_3.

Šín, Z. (2009) *Tvorba práva – pravidla, metodika, technika (2. vyd.) [Law-making - Rules, Methodology, Technique (2nd ed.)].* Prague: C. H. Beck.

Škop, M., Malaník, M., Smejkalová, T., Štěpáníková, M., Vacková, B. (2019) *Tvorba práva - empirické studie (Law-making - Empirical Studies).* Brno: Masaryk University.

Štrkolec, M. (2022) 'Regulation of Public Finances in Slovakia in Light of Financial Constitutionality' in Nagy, Z. (ed.) *Regulation of Public Finances in Light of Financial Constitutionality.* Miskolc-Budapest: CEA Publishing, pp. 181–203; https://doi.org/10.54171/2022.zn.ropfatilofc_9.

Thornton, G. C. (1996) *Legislative Drafting.* 4th ed. Haywards Heath: Tottel Publishing.

Thuronyi. V. T. (1996) *Tax Law Design and Drafting - Volume 1.* New York: International Monetary Fund; https://doi.org/10.5089/9781557755872.071.

Thuronyi, V. T. (2003) *Comparative Tax Law.* Hague: Kluwer Law International.

Žurovec, M. (2020) *Daňová revoluce se blíží. Poslanci schválili daňový balíček (The Tax Revolution Is Coming. MPs Approved Tax Package)* [Online]. Available at: https://www.mfcr.cz/cs/aktualne/tiskovezpravy/2020/danova-revoluce-se-blizi-40169 (Accessed: 20 March 2023).