

REGULATION OF PUBLIC FINANCES
IN LIGHT OF FINANCIAL
CONSTITUTIONALITY

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REGULATION OF PUBLIC FINANCES IN LIGHT OF FINANCIAL CONSTITUTIONALITY

*Analysis on Certain Central and
Eastern European Countries*

Edited by
Zoltán NAGY



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| INTRODUCTION |

Zoltán NAGY

Public finance law is one of the most dynamically developing areas of law in recent decades, covering a wide range of knowledge through its diverse regulatory areas. The complexity of social life creates major challenges for public finance law. The economic crises of recent years have significantly highlighted the importance of regulation and the role of the state in public finance matters. Public finance regulation is becoming an increasingly important part of the economy, and permeates an ever-widening range of economic and social activities. Without a knowledge of finance, it is no longer possible to have a complete picture of the various areas of law, and the study of law cannot be complete without such knowledge.

This book is the first in a series that covers the public finance law of Central Europe, broken down into its various sub-areas. The book forms the teaching material for the public finance law modules of the Central European Academic (CEA) Scholarship PhD programme, which provides a comprehensive overview of the national regulation and comparative legal presentation of each Central European country. The book can help financial law practitioners familiarise themselves with financial legislation in Central Europe, and provides useful insights for researchers in the field. Central European countries have undergone similar economic transformations in recent decades, which have created similar problems in their respective societies, and it is useful to review the legal solutions that have been successful—or less successful—in addressing these issues. Legislation in these countries can also provide important lessons for the future by learning from each other's regulatory peculiarities. CEA Scholarship PhD students will already have this knowledge after successfully completing the public finance law courses, which is true even though public finance law is the fastest-changing area of law.

The first chapter of the book deals with the theoretical issues of public finance, presenting the basic features of the legal institutions used in the regulation, and their integration into the economic and legal system. Without an understanding of the basic economic phenomena, it is impossible to interpret the legal institutions and concepts correctly. The economic role of the state—the concept and importance of money—will guide the reader towards an understanding of the public finance regulatory system.

The second part of the book covers national regulatory models in each of the Central European countries. The national models illustrate the development and system of public finance regulation in each country. The main idea behind the

book was to provide a comprehensive overview of public finance law by presenting the constitutional rules on public finance. The authors present each area of public finance with a different emphasis based on national constitutional arrangements. This illustrates the different levels of constitutional regulation.

The third part of the book presents a comparative analysis of national regulations, analysing the different national solutions, pointing out similar and different regulatory models. This part of the book is also a summary chapter.

The authors hope to have produced a useful book in the field of public finance law, which will enhance the knowledge and understanding of finance for PhD students and practitioners in other areas of law.

The Theoretical Foundations of Regulation on Public Finances

Zoltán NAGY

ABSTRACT

Financial policy—which is based on macroeconomic policy—can be divided into two parts: fiscal (budgetary) policy, and monetary policy. Fiscal policy essentially covers the area of public revenues and public expenditures, i.e., it deals with public burdens through the obligation of burden-sharing, taxation, and public expenditures, from which public services are financed. The fiscal policy of the modern state is a complex and difficult system in which the individual elements are closely related to each other. Budgetary policy manifests in the regulation of public finances and public charges (taxes).

Monetary policy is the other element of financial policy that primarily regulates financial processes indirectly. An important task of the monetary sphere is to ensure the money supply and smooth cash flow of the economy, i.e., to have enough money available for economic processes. Besides the central bank, financial intermediaries participate in the processes at micro level, the regulation of which is also one of the tasks of the central bank as well as the state. The two branches of monetary policy are closely related with each other. They are defined by different sub-goals, but the main goal of fiscal policy is to ensure economic and social stability and development.

The regulation of public finances has two tasks: to regulate the public finance system and related issues, and to regulate the monetary system itself. To make the regulation of the financial system comprehensible, it is necessary to learn about the role and function of the state in public finances, the essential characteristics of money, and the principles of the functioning of the monetary system. This theoretical chapter deals analyses these issues.

KEYWORDS

Public services, public finances, fiscal policy, monetary policy, financial system.

1. The role of the state in public finances

The economy of today's modern states is a mixed one, which means that market mechanisms prevail. There is a market economy, but the state influences and regulates the market conditions. Economic theories approach the role of the state from different sides.

In modern states, therefore, market mechanisms prevail, i.e., there is no person or organization that would be exclusively responsible for solving economic problems; economic activities are coordinated by the market without any central control. The

market solves the problems of production and distribution, that is called the invisible hand by Adam Smith in his book *'The Wealth of Nations,'* published in 1776. Buyers and sellers, supply and demand, get in contact through the market. During the exchange of goods and services, the market price is determined, which expresses the exchange rate of the goods and the services, and coordinates the decisions of consumers and producers. The equilibrium price is achieved at the market, which realizes the market balance of supply and demand, which means that buyers would buy exactly as much as sellers intend to merchandise. Smith pointed out the balance between the private and the public interest, i.e., private interest leads to public interest through the market mechanism. However, he did not recognize market failures and stated that the government did not have to interfere in the market mechanism.¹ On the other hand, modern economics considers market failures to be the most important reason for state intervention, i.e., market mechanisms do not work perfectly and the state tries to correct these mistakes. This was first pointed out to a significant extent by the economic crisis of 1929. Production fell, unemployment rose, and the banking system broke down. The imperfect functioning of the market has caused serious economic and social problems, and without state intervention, it can cause such problems even nowadays. A good example of this could be the economic crisis of 2008 and the current one related to the pandemic.

What do market failures mean? Economics points out that the market could work effectively only under certain conditions, but there are some conditions that hinder the effective functioning. Such conditions include:² the failure of competition; external economic effects; incomplete markets; failures of information; unemployment, inflation, lack of balance; common goods.

The failure of competition means that there is no strong competition in the given segment of the market. Only a few market players dominate the market—in extreme cases, it could be only one market player—so one company might have monopoly in the given sector. These monopolies could be natural ones, created in the frame of market processes—for instance, because of returns to scale when a larger enterprise could produce certain products and services more cost-effectively. The other case is when the state artificially creates monopolies through legislation—for example, in the case of utility services (e.g., electrical and water networks) due either to concession or to ensuring patent rights. With the latter case, the developer is given exclusive rights for the product or the process. In the case of monopolies created through state regulation, strong financial regulation often prevails for the company in a monopoly position, as the state also intervenes in market conditions through price regulation and subsidies.

With external economic effects (externalities), one activity influences the others who do not take part in the economic activities. This effect can be negative, i.e., it imposes costs on the concerned actors (negative externality) and it can be positive

1 Samuelson-Nordhaus, 2012, pp. 23-27.

2 Stiglitz, 2000, pp. 78-140.

(positive externality), when the subjects might receive an unintended advantage from the economic activities of others. The market, however, cannot deal with these effects, nor does it provide compensation, so state intervention and regulation must deal with market failures. The issue of environmental pollution is a particularly significant factor among the negative externalities. In this case, state regulation uses several means to avoid the effects, and direct and indirect tools are applied. In the framework of direct regulation, a pollution limit is set out, and the activity might be subject to permission or prohibition. With indirect tools, economic regulators prevail, such as negative and positive incentives and special economic instruments. Negative incentives (environmental taxes, charges, fines) and positive incentives (both direct and indirect subsidies) are included in financial regulation and fiscal policy.³

The issue of incomplete markets also points to the need of government intervention, as there are goods and services whose market supply falls below the required extent. The insurance market and the capital market are considered as such by the economic literature. In the insurance market, certain insurance programs are carried out by state constructions, or by forcing the operation of the private market in certain insurance areas. In the capital market, market constructions prevail even more strongly, providing resources to certain segments of the society. Besides the two examples, the lack of complementary markets is highlighted. Here, it is mainly government coordination that solves the deficiencies of the market, such as with settlement development. In these cases, actors of the private market are not involved in these transactions for various reasons. The state can therefore trigger market failures through financial regulatory means.

In the event of information failures, consumers may be harmed, and private markets alone may not seek to provide detailed information to market players. As a result, the consumer cannot make a reliable decision, nor choose the best alternative. Economic theory approaches the issue from two sides: on one side, consumer protection; on the other side, a concern for the common good. A good example of the information failure is the field of financial markets. The importance of financial consumer protection has significantly increased in recent decades.⁴ After the regime change, the market for financial products expanded rapidly.⁵ The inadequate disclosure of information for consumers as well as the irresponsible consumer behaviour and the formation of complex financial constructions caused more and more problems.⁶ The financial consumer became extremely vulnerable.⁷ Consumer protection, the smooth operation of the financial system, the reduction of the asymmetry of information, and ensuring fair conditions of competition have together become the reason for the regulation of the financial markets.⁸ The economic crisis pointed out that financial

3 Nagy, 2013, pp. 33-34.

4 Lentner, Szigeti, and Borzán, 2011, pp. 29-48.

5 Nagy, 2017, pp. 391-401.

6 Lentner, 2016, pp. 45-84.

7 Hajnal, 2009, pp. 1-10.

8 Simon, 2007, pp. 292-293.

consumer protection must be treated as a separate area of law and given priority, since the regulatory gap might be the source of significant economic and social damages.⁹ Financial consumer protection therefore became an independent regulatory area, within which public financial consumer protection gained more significance, which has become a separate area of law within the regulation of public law.¹⁰ Scientific literature, however, considers information to be a common good. Disclosure of information does not reduce access to information that is available to others. Economic efficiency requires that access to information is provided expansively to the society.

The issue of unemployment, inflation and lack of balance is also an important area of market failures and they cause serious macroeconomic problems. The two market failures, however, touch upon different issues of the regulation of public finances. To handle unemployment, the state grants direct or indirect subsidies to undertakings. A significant amount of direct subsidies are realized through job-creating subsidies, or, with indirect subsidies, the state grants subsidies through tax allowances and exemptions. Besides these, the state supports unemployed people with various supplies: on the one hand, the state grants direct payments to compensate for the loss of earnings and it helps the possibility of finding a job with other services (such as trainings, education, and job searches, etc.). Unemployment is both an economic and a social loss, as those who are unable to work do not contribute to the increase of output, producing neither products nor services. However, their work could increase output and they would also bear public burdens of public services. Controlling inflation is already the main goal of monetary policy; however, fiscal policy must also consider the inflation purpose. Central banks try to keep inflation at a low level with a wide range of monetary policy instruments. Price increase, especially if it has an intense harmful effect on market conditions, confuses market players in terms of market price and devalues nominal wages and assets.

The problem of public goods means that without the state, the market would not be able to produce these goods—or at least not in sufficient quantities. Public goods are goods that serve community consumption and whose consumption does not mean that others may not consume from them. Public goods, therefore, are products that everyone can use, and no one can be excluded from their use.¹¹ 'Pure' public goods and 'impure' public goods may be distinguished. Pure public goods include those within which the use of the service is possible at no cost for all other users, and it is difficult or impossible to exclude the consumer from the use of it. With impure public goods, these characteristics occur either partly or not at all.¹² Public goods, therefore, are consumed by each individual and the consumed amount is the same for all consumers (e.g., national defence). The consumption of public goods is not competitive, i.e., the consumption of one person does not reduce the benefit of all the

9 Nagy, 2010, pp. 229-243.

10 Nagy, 2020, pp. 90-91.

11 Samuelson-Nordhaus, 2012, pp. 32-34.

12 Stiglitz, 2000, p. 92. and 150.

other individuals.¹³ Thus, everyone enjoys the benefit of public goods, even if they do not contribute to the costs personally, therefore, consumers do not feel the need to pay voluntarily for the service. This situation is characterized as the ‘free rider’ problem, that is, non-payers also enjoy the benefits of the service. That is why the state enforces the contribution through the obligation of public burden-sharing. The state therefore imposes public burdens and taxes to collect the price of public goods and services. Thus, it is everyone’s interest to contribute to the financing of public goods through the obligation to pay taxes.¹⁴

In addition to market failures, scientific literature operates with the notion of government failure, i.e., those cases when the purposes cannot be fulfilled through state intervention. The competence of the state to influence the market is, in some cases, limited. According to the literature, there are four main reasons for this:¹⁵ limited pieces of information; limited control over the responses of the private market; control restrictions over specialized apparatus; and limits arising from political processes.

Intervention in market conditions requires extensive information and analysis, and even in such cases, the mode of action and consequences could not be seen. The complex system of the economy does not provide full information for decision-making and the proper assessment of the consequences; therefore, it is possible that a government decision in one market segment causes disadvantages for other market segments or players. As a result, the control of the responses of the private market is limited for the government.

The preparation and implementation of legislation are the responsibilities of the specialized apparatus within the government. The implementation and the enforcement of the objectives of the legislation depend heavily on the prudent and efficient work of the specialized apparatus. Consequently, the intention and the purpose of the legislation may not be sufficiently realized. The effectiveness of the rules of public finances serving economic intervention may therefore decrease, i.e., a good legislative concept can become a bad measure due to the work of the specialized apparatus.

Government failures may stem from political processes as well. The main characteristic of political decisions is that the decision is made by a small group of people but its impact occurs in the whole society or in a large group of people. Decision-makers must consider and coordinate the preferences of the voters and choose the most appropriate among them. In many cases, this might fail or it might happen that their decision is in favour of special interest groups. Thus, mistakes arising from the decision result in government failure.

The strengthening of the economic role of the state is related to the welfare state and the development of the mixed economy. Markets control everyday economic life, while the state regulates social and economic conditions. Regarding the economic role

13 Cullis-Jones, 1998, pp. 70-75.

14 Stiglitz, 2000, pp. 143-162.

15 Ibid., pp. 28-45.

of the state, several theoretical economic positions have evolved, some of which agree with such a state role, while other views suggest minimizing the economic role of the state, and according to them, the state itself is the problem and not the solution.¹⁶

The 21st century brought the strengthening of the welfare state. The role of the state particularly strengthened after the crisis of 2008, as this economic crisis was like the one in 1929, but the consequences were far less devastating, clearly due to effective fiscal and monetary policies. Today, therefore, the role of the state is greater than anytime in economic history. The state deduces one-third to one-half of the national income from the economy, because of which its economic weight is unique compared to the other economic players. The welfare state is based on fundamental rights that are related to basic public services. These public expenditures require a wide range of revenues, as the state can finance its extensive system of public services from these. This can induce another tax increase and a larger tax deduction from the national income. However, according to the literature, its growth stopped and stabilized at the current level in several states.¹⁷ A great challenge of the future is whether the economic growth ensures sufficient additional resources for the ever-higher levels of the operation of public services. If this does not happen, either the quality of the performance of public tasks will deteriorate, or the amount of taxes and the deduction from revenues must be increased for the provision of public services.

2. The provision of public services in the modern state

The provision of public services in the modern state is versatile and complex. Throughout history, the state has undertaken more and more tasks, for which public revenues had to be provided and the obligation of burden-sharing had to be extended. The extent of state involvement is determined by the ratio of state revenues or expenditures to the gross domestic product (GDP). This is the centralization ratio for revenues and the redistribution ratio for expenditures.¹⁸

The functions of the modern state are characterized based on three aspects in the scientific literature, which shows the complexity of public responsibilities.

Table 1. Classification of public functions¹⁹

Functional	Nature of the activity	Economic
Public authority; welfare	Economic; regulatory; financing	Allocation; redistribution; stabilization

16 Samuelson-Nordhaus, 2012, pp. 37-38.

17 Piketty, 2013, pp. 493-515.

18 Zsugyel, 2009, p. 39.

19 Ibid., p. 40.

By the functions of public authority, the literature covers tasks of defence, state organization, social organization, and jurisdiction. The purpose of welfare functions is to reproduce and preserve human capital. Depending on economic development and economic policy, welfare states provide welfare services at a different level and extent. The state plays a role in shaping economic policy in several areas. The state has a key role, for instance, in economic development, investment promotion, job creation, or issues arising from handling the economic crisis.

The performance of public tasks requires regulatory, legislative as well as financing activities. The law determines public tasks and the conditions of their provision, and the conditions for the performance of public tasks are created through budgetary management.

The state withdraws resources from the private sector in the framework of its economic functions (allocation), and then reallocates these resources (redistribution). It influences market economy with fiscal and monetary tools and ensures economic equilibrium (stabilization).²⁰ Public needs are satisfied through performing public tasks.

Public taxes have a conceptually broader meaning than the tasks of the state, since the concept of public tasks covers the tasks of municipalities and public bodies, and tasks aiming at satisfying public needs. A public task is one that is classified as such by a legal act—i.e., the state or the municipality decides which products, goods, or services they want to provide. In the legal sense, public tasks are divided into four groups in the literature:²¹ needs that could not be covered otherwise; the range of users of the service could not be defined; constitutional fundamental rights; and economic state intervention.

The state withdraws resources from the private sector in the framework of its economic functions (allocation), and then reallocates these resources (redistribution). It influences market economy with fiscal and monetary tools and ensures economic equilibrium (stabilization).²² Public needs are satisfied through performing public tasks. Needs that could not be covered otherwise include those that are primarily basic state functions that could only be performed by the state. These include defence functions (national defence, law enforcement) as well as administrative tasks. There are certain public tasks of which the users and the beneficiaries could not be defined precisely. Such areas include environmental protection and flood protection. Most of the public tasks are formulated as constitutional fundamental rights; i.e., its obligatory performance is set out by a law at the highest level, such as healthcare and public education. The role of economic state intervention is significant in modern societies, but it has particularly come to the fore since the economic crisis. Economic intervention may target several areas, but from the point of view of the performance of public tasks, public financial support is of particular importance.

20 Ibid., pp. 39-41.

21 Simon, 2007, pp. 28-29.

22 Ibid., pp. 39-41.

Public tasks can be performed in several forms. The most typical is through budgeting bodies in the framework of public finances. The budgeting bodies carry out public tasks as their core activity, in the framework of public finances.

The performance of public tasks may also be carried out in such a way that the central budget provides financial coverage; that is, public tasks are performed by privately owned enterprises in exchange for compensation from the budget. These include companies providing passenger and public transport. These companies may be completely or partially privately owned, or they can be owned by the state or the municipality. There may also be non-governmental bodies (churches, social organizations, foundations, etc.) that provide public education, social, and child welfare tasks in the framework of the performance of public tasks.

It is clear, therefore, that the performance of public tasks has a complex institutional system. The literature divided the actors of the institutional system in two groups, categorizing them based on their economic function and public policy sector (their area of activity).²³

Public tasks can be financed from both public and private sources. Private financing can be realized through fee financing, as well as borrowing and raising capital. With fee financing, the ‘user pays’ principle applies, since the users of public services contribute to the maintenance of the service through access to the service. There are two types of user charges: charges related to actual use, and charges proportionate to use. With user charges, various public policy preferences might be enforced in the form of discounts.

The possibility of borrowing fills the liquidity shortage resulting from the cyclicity of public revenues, and helps to finance developments. Borrowing, however, is limited in several cases to comply with the budget deficit and the government debt rule. Raising capital is a different contractual relationship in which private capital is raised to implement investments in the public sector (concession).

The other sources of financing, which is dominant in the public sector, are the revenues of the public power, which are collected by the state based on public burden-sharing.²⁴

3. Financial theory issues

To understand finances, it is necessary to examine general theoretical issues concerning money, such as the question of what is considered ‘money’ and how new, innovative products fit into this conceptual system. Economic theories approach the concept of money in a unique way. There is a position that defines it as a historical category, because the notion of money must be redefined due to economic and historical changes. The literature points out that before capitalism, a type of ‘money’ that

23 Zsugyel, 2009, pp. 44-45.

24 Sivák and Vígvári, 2012, pp. 86-90.

included all monetary functions did not exist.²⁵ The different money constructions have changed during the economic development, they oftentimes evolved simultaneously and they came into the front in accordance with social and economic needs. It can be concluded that these forms are primarily important from the aspect of their functions.²⁶

Another scientific point of view approaches the concept of money from the side of its exchange function and points out that money could be anything that serves as a generally accepted mean of exchange. By the 18th century, this was basically gold and silver due to their inner value, and the value stability of money was not ensured by the state but by its inherent value.²⁷

According to another scientific point of view, money is considered an innovation that facilitates the reduction of transaction costs. According to this viewpoint, state involvement is not required for something to be approved as a valid currency, but without the approval of the state it cannot become a usual mean of payment.²⁸ Money could play its full role as commodity money when the state and the society accepted it as a general measure of value and a common currency.²⁹

It is clear, therefore, that there are several different concepts in economics related to the notion of money, and there is no such generally accepted notion. The functional approach to money usually prevails, and the general currency nature is separated from the definition of money, thus state recognition is not required for becoming a currency. This economic viewpoint has a broad interpretation of the concept of money.

Theoretical works on money distinguish three basic functions of money: exchange, accounting, and value keeping.³⁰ Money conveys the exchange of goods as a general exchange tool, thereby facilitating the trade of goods. As a tool of accounting, the value of the things can be measured in monetary units, and their price can thus be expressed. As a value-keeper, the risks of money-keeping are low, and the exchange of goods can be provided even during certain periods. The literature also discusses other monetary functions, such as world money—a tool of asset-keeping and credit functions. In the function of world money, money plays an important role in the field of international finances. Due to the function of asset-keeping, money facilitates the accumulation of wealth, although its extent might differ in historical periods due to the change in the economic situation, and it prevails less in the modern economy, as

25 Botos, 1983, pp. 15-22. The author points out that a peculiar historical evolution took place when different monetary functions were performed by different kinds of money. These primarily served a payment function, and their function was not particularly important in the exchange process. Due to the development of commodity production, the role of money in the exchange increased, and 'commodity money' appeared. With the growth of external trade, commodity money was replaced by 'credit money,' which leads to the formation of modern money.

26 Nagy, 2019, pp. 1-10.

27 Samuelson-Nordhaus, 2012, pp. 414-415.

28 Ábel, Lehmann, and Tapaszt, 2016, pp. 33-38.

29 Gárdos, 2016, p. 19.

30 Samuelson-Nordhaus, 2012, p. 416.

other financial instruments are more suitable for asset holding. The credit function of the money is related to the creation of money—that is to say, the issuer of the money obliges itself to accept the given form of money to repay debt.³¹

The essence of modern money is well illustrated by its appearance. Modern money is transaction money, which consists of two components, cash (currency and coins) and bank account money, that means the positive balance recorded in the account.³² The latter form does not appear physically, but only as an electronically recorded claim.³³

In the modern economy, the role of credit money is determinative, and it is created by banks. Moreover, it can perform all the functions of trade, payment, and accumulation. Consequently, a significant part of modern money is passive bank debt.³⁴ Money-making has several theoretical approaches, of which credit money and endogenous money theory points out the connection of the role of the money and bank system and the central bank. According to this theory, banks can create money independently from the central bank through lending, but the central bank can influence this process through the determination of the conditions of crediting; this does not fall outside the scope of monetary policy. The constraint to money creation is the demand for credit, which is affected by economic processes, state decisions, as well as the regulation of the central bank.³⁵

These theories point out that state involvement is not necessary for the creation of modern money in all cases, but regulation of the process is required, i.e., there is fiscal and monetary policy regulation behind economic processes. Therefore, we also need to examine what is meant by ‘money’ in legal terms. In the creation of money, economic processes and its generally accepted that nature played an important role throughout history; however, it was the regulation that designated money to be the currency of a given state—that is how it became the official currency which is basically

31 Mester and Tóth, 2018, pp. 72-77.

32 Samuelson-Nordhaus, 2012, p. 415.

33 Gárdos, 2016, p. 22. The author points out that payments in modern market economy are processed between bank accounts. The positive balance that appears on the bank account is the debt of the bank towards the client, which allows payments between bank accounts or even the payment of the balance in cash. This bank money does not appear in physical form; rather, the settlement of payments is carried out electronically.

34 Száz, 1991, pp. 14-33. Starting from the point of view of the credit money system, the author highlights that the bank account money means bank deposit for the owner, but several forms of bank deposits have evolved, and not all of them can be considered money but rather ‘quasi money,’ a claim for money. The author includes in this classification deposit accounts, in which no payment transaction is processed, and which serve only as a tool of accumulation.

35 Ábel, Lehmann, and Tapasztai, 2016, pp. 38-46. The study analyses several money-creating theories, including the financial intermediation and financial multiplier theories. The authors point out that the endogenous money theory became popular and more acknowledged after the crisis, even though the curriculum of macroeconomic textbooks typically covers the money multiplier theory. This latter theory does not dispute the creation of money by banks, but central bank reserving is an important element of the process.

realized as a public act—therefore, public regulation prevails, without disputing the role of money in private law.³⁶

In the Hungarian regulation, for instance, the official currency is established in the Fundamental Law and the Act on the Hungarian National Bank (Magyar Nemzeti Bank, or MNB).³⁷ The Fundamental Law provides that the official Hungarian currency is the forint, but this certainly does not exclude the official currency nature of foreign currencies. All official currencies must be protected; however, with the national currency, a special national legal protection prevails. The MNB is entitled to issue banknotes and coins in the official currency, i.e., to issue and put forints into circulation. Forints issued by the MNB is therefore the official currency of Hungary, which must be accepted at its nominal value. For the other form of modern money, private law acts are also involved. The creation of account money is realized through a private law act, as the contractual relationship is concluded between two actors under private law.³⁸ Banks, however, are under strict monetary regulation through public law and are due to the central bank. State regulation and supervision prevails, as it does with cash.³⁹ It is important to highlight, however, that bank account money is primarily only a form of the manifestation of money; its value lies in its convertibility to cash at any time. Thus, bank account money is rooted in cash, which was created in the sphere of public law. It is worth noting that bank account money created the possibility of excessive money creation and the spread of credit money. Banks have this possibility in the form of association under private law, but public law and monetary regulation strongly prevail.

Crypto instruments belong to digital financial means, which consist not only of cryptocurrencies but also other financial instruments, which operate as decentralized services based on digital technologies. Some crypto instruments have the function of money (e.g., Bitcoin), while others belong to the category of infrastructure-securing instruments (e.g., Ethereum), and a third group are instruments of service provision (e.g., Augur).⁴⁰

Digital technologies are carried out through blockchain technology. Blockchain is a database where data can be stored and moved, but a network is needed for their placement, i.e., the Internet. This technology uses a divided network, which means that there is no hierarchy in this system, and that certain junctions (computers) are

36 Erdős, 2004, p. 10. For the legal definition, see for example: Act XCIII of 1990 on charges. Interpretative provisions: Article 102 (1)(c): *movable property*: currency, securities, deposits in the undertaking as well as everything that does not fall under the scope of immovable property. The author points out that, regarding the notion of money, in legal terms it is movable property, which has the above-listed economic substantive parts (official currency of a country, tool of accumulation, tool of exchange.) Account money is without movable content. Cash does not appear in the legislation as money, but it is defined as a movable thing.

37 Article K) of the Fundamental Law of Hungary: The official currency of Hungary shall be the forint. Article 4 (2) and Article 23 (2) of Act CXXXIX of 2013 on the Hungarian National Bank provides the designation of the official currency in addition to the Fundamental Law.

38 Gárdos, 2016, pp. 29-31.

39 Zeman, Kalmár, and Lentner, 2018, pp. 130-140.

40 Gábor and Kiss, 2018, pp. 31-32.

connected to each other. This differs from the decentralized network in the sense that there we connect others through a service provider. The technology itself serves not only for moving cryptocurrencies.⁴¹ Cryptographic procedures are also required for the functioning of crypto instruments. The gist of the procedure is that the device must be adequately protected with encoding and it should be accessible to those for whom it was intended. Due to the cryptographic procedure, the concluded transactions can be credibly confirmed without an intermediary body.⁴²

Digital technology includes the possibility of decentralization, i.e., transactions can be carried out without financial intermediaries due to the direct connection between customers. This is an advantage from the perspective of costs, but it is also a disadvantage, as the system falls outside the scope of state control, which raises issues such as monetary regulation, money laundering, financial consumer protection, and taxation.

The group of crypto instruments covers the category of cryptocurrencies, which include several currencies. Several views have emerged in relation with the concept and characteristics of cryptocurrencies. Regarding the name, the literature mostly uses the term ‘cryptocurrencies’ but the more accurate name would be ‘crypto money.’⁴³ In a broad interpretation, the concept of cryptocurrency is considered a digital financial instrument that functions as a general value measure, an exchange tool, and an electronic means of payment.⁴⁴ In addition, according to one view, crypto money is a decentralized, generally accepted and used money that cannot be considered an official currency, in that it is not issued by the central bank but by a development team and that uses cryptography.⁴⁵

41 Gyórfi et al., 2019, pp. 57-64. The authors point out that blockchain technology is based on the Internet. Three basic types of networks could be distinguished: centralized, decentralized, and the divided network. All three types of networks connect junctions that are physical computers. As part of a divided network, the junctions store, update, and share the list of transactions of the system—the blockchain—among themselves to increase security.

42 Glavanits and Király, 2018, pp. 174-176. The authors clarify the conceptual framework of the issue in their study. According to them, the blockchain is a shared book or a decentralized database that is public and due to cryptographic procedures, it credibly and unalterably proves the data recorded without any intermediary body or person. Cryptography was originally equivalent to encryption, but today it is an independent mathematical-information technology science that helps information to be transformed and sent so that the message can be accessed by those for whom it was originally intended.

43 Gyórfi et al., 2019, p. 37. In accordance with the literature, the name ‘crypto money’ is more accurate than ‘cryptocurrency,’ since—as the literature points out—this is not tangible, it has no physical form, and it does not appear in paper form.

44 Gyórfi et al., 2019, 37. Varga and Sárdi, 2017, p. 109.

45 Glavanits and Király, 2018, pp. 178-179. According to the authors, cryptocurrencies are decentralized digital currencies that cannot be classified as official currencies, but they are generally accepted and used as means of exchange or payment and they are not issued by a central bank or state authority, but by a development team, which regulates, controls the cryptocurrencies, and uses cryptography for issuing and storing units of cryptocurrencies and for recording transactions. Cryptocurrency is thus considered a digital currency and a virtual currency. According to them, digital currency is a currency that only exists in digital form, it is stored, exchanged, and transferred digitally, but it does not appear physically, in the form of cash.

These definitions are typically not legal concepts, but rather approach the notion from an economic point of view, so the legal concept is still not developed. The reason for this is that in several countries, including Hungary, cryptocurrencies are not acknowledged as official currencies; moreover, the central bank considers them to be alarming from a financial point of view.⁴⁶ According to the MNB, cryptocurrencies are much riskier than traditional economic financial solutions, since their issuer is not subject to the supervision of the central bank as there are no appropriate liability, warranty, or indemnity rules. According to MNB analysts, problems might occur when buying these types of financial instruments, as they are obtained directly from the user and may be out of stock, within which case there is no guarantee of availability. Another problem is the digital data storage of money, where money can be stolen by hacking the underlying code. Transactions in the system are not ensured by consumer protection, so there is no authority to turn to when one's rights are infringed. There are no liability or compensation rules behind this money, so there is no possibility of institutional damages; the individual consumer bears all the damage resulting from the transaction. According to the MNB, the risks are further increased by the fact that the exchange rate of cryptocurrencies is extremely variable.

All these counter-arguments touch upon real problems, but it is important to emphasize that a major part of these risks appear in regulated markets as well with financial instruments. Of course, it is a different matter to compare cryptocurrencies to official currencies. From this perspective, MNB's warning is completely relevant; on the other hand, if we consider these monies as financial instruments, then the propositions are partially true. It is a fact that the digital background and the public trust constitute the basis of the functioning of cryptocurrencies, and consensus elevates them into the scope of financial instruments.⁴⁷ Investors must be aware that the cryptocurrency market is not regulated, so all law enforcement, consumer protection, and supervisory options that appear with regulated markets, do not provide protection for customers here.

4. The role and regulatory issues of the monetary system

The balanced functioning of today's economy is unimaginable without the instrumental system of monetary policy, where it is regulated by both the state and the central bank. Monetary policy influences the financial system through direct and indirect financial regulators, and is expected to facilitate the implementation of the main goals of fiscal policy in line with budgetary policy, but with an autonomy that is independent from it. The independence of monetary policy is enforced by regulation

46 https://www.mnb.hu/archivum/Felugyelet/root/fooldal/topmenu/sajto/sajtokozlemenyek/bitcoin_kozl

47 Györfi et al., 2019, p. 27.

through independence from the central bank; the central bank is independent from the government and its organs, and it is accountable to the state's law-making body.

The flexible measures of monetary policy that affect certain economic sectors selectively imply either monetary expansion or monetary restriction. Monetary expansion means a general expansion of money supply and credit, which results in greater output, increase of demand, and growth of employment. Monetary expansion means a general tightening of money supply and credit, which holds back the economic growth.⁴⁸

Monetary policy can influence financial processes and the economy in the short- or medium-term; however, it depends on the tools of monetary policy. These tools can be divided into six groups:⁴⁹ reserve rules; refinancing; interest rate regulation; securities operations; exchange rate policy; and other central bank assets.

The financial system maintains the circulatory system of the economy because financial resources flow from savers to investors. Financial intermediaries connect financial resources to their users in national and international markets. Financial operations are thus carried out through the institutions of the financial system. The financial system includes the financial market, the capital market, and the insurance market. These markets are closely connected with each other through financial intermediaries. Financial intermediaries are institutions that provide financial products and services.⁵⁰ Each sub-market has its own financial intermediary institutions, so financial institutions operate in financial markets, stocks and investment firms operate in capital markets, and insurers operate in the insurance market. The close relationship between different markets within the financial system is indicated by the fact that large financial intermediaries typically operate as financial conglomerates: a financial intermediary operates on all markets, which poses challenges to legislation and financial supervision. The financial system is regulated by both public law and private law. Public law regulation plays an important role in the regulation of the institutionalization, control, supervision, establishment, termination, and operation of the financial system.

The modern financial system has several functions:⁵¹ reallocation of resources, risk management, fundraising and its distribution, and clearinghouse function.

Over time, resources can be reallocated through sectors and regions as well. Due to the flow of money, the market provides the resources for investments and loans where they can be the best utilized. The international flow of financial resources is provided through the international financial system.

Through risk management, individual risks can be reduced and can be spread among other risk bearers. Through insurance, we can get rid of the significant one-time risk of return of payment, spreading the risk of damage over a wide range

48 Huszti, 2001–2002, pp. 50–52.

49 Ibid., pp. 53–54.

50 Samuelson-Nordhaus, 2012, pp. 410–411.

51 Ibid., p. 412.

of risk-bearers. The significant risk becomes tolerable if it is borne in small parts by many.

The financial system allows funds to be concentrated to huge and risky investments, thus allowing small investors to participate in investments with less risk. Investment funds collect the funds of small investors for a larger investment, dividing the investment opportunity into smaller parts and spreading them among several differentiated investment, offering less risk for the investor.

Under the clearinghouse function, the financial system ensures the money flow through the fast handling of transactions. During the transactions, the bank will debit the account of the one who transferred the money, then the bank indicates the transfer on the account of the one who accepts it. Due to digitalization, these transactions have been significantly shortened and become cheaper on the financial markets.

The financial system deals with a wide range of financial tools. The literature considers the following to be financial tools:⁵² money, bank deposits, credit market instruments (government annuities, corporate annuities), shares, units of the financial market and investment funds, pension contributions and the funds managing them, financial derivatives (derivative tools that are based on the value of other assets, that could be derived from these assets, e.g., stock option).

The central institution of the monetary system is the central bank. However, the independence of the monetary policy of the eurozone ceased to exist. The monetary policy of the eurozone countries is conducted by the European System of Central Banks and its central institution, the European Central Bank.⁵³

Even though the monetary policy of the central banks supports the fiscal policy, it is independent in terms of the formulation of monetary policy, of which four elements are defined in the literature:⁵⁴ operational independence, institutional independence, personal independence, and financial independence.

Operational independence means independence from the government, which is essentially important only with central banks that have joined the eurozone.

Institutional independence is embodied in the formulation of an independent monetary policy. For this end, the central bank may not be instructed by the government or its organs, moreover, the central bank might not ask or accept any instructions from the institutions of the government sphere.

Personal independence means that the decision-making bodies of the central bank might not take instructions during the performance of their duties from EU institutions or organs, nor from the state and the governments of the Member States and their organs.

Financial independence is a separate criterion that indicates that the central bank has the financial resources to carry out its tasks. This is guaranteed by the significant amount of funds, and the fact that it develops and defines its own management.

52 Ibid., p. 413.

53 Kolozsi-Lentner, 2006, pp. 53-55.

54 Ibid, pp. 42-46.

Besides independence, an important feature of central banks is the system of monetary policy objectives that they pursue. In this regard, the literature distinguishes three different forms of central banks:⁵⁵ complex system of objectives, inflation target-tracking, and exchange rate target-tracking.

With the complex target system, the central bank is guided by comprehensive objectives, such as maintaining economic stability, which includes several sub-goals (economic growth, low inflation, low unemployment rate, etc.).

Regarding inflation target-tracking, the central bank seeks to maintain low but positive inflation and uses the tools of monetary policy to do so.

If a given country maintains a fixed exchange rate, the central bank must subordinate its monetary policy to achieve the exchange rate target. The fixed exchange rate means that the government determines the conversion rate of its own currency to another currency.

The central bank is a central institution of the banking system, which can be described by several criteria. The central bank is the bank of the state, the bank of the banks,⁵⁶ and a body that performs macroprudential functions and, optionally, microprudential functions.

The central bank has the monopoly over issuing coins, i.e., the right to issue the official currency; moreover, it collects foreign currency and gold reserves. The state has full, partial, but in any case majority, stake in the central bank. The central bank, as the bank of the state, supports the economic policy of the government without threatening its primary goal. This regulation does not affect the independent economic policy of the central bank, but it shows that consistency in fiscal and monetary policy is an important condition of financial policy. As the bank of the state, in the framework of expert tasks, it assists the state in borrowing; moreover, it maintains the accounts of state organs and the unified budgetary account, if required by law. In the role of the central bank, the bank of the banks maintains the accounts of credit institutions, influences the lending and liquidity of the banking system, regulates the operation of the banking system, and, as the ultimate lender, it provides exceptional credit to banks struggling with liquidity problems.

Macroprudential supervision became widespread among central banks after the economic crisis of 2008. Within this framework, the central bank explores the risks threatening the financial intermediary system, and reduces or eliminates the emergence and spread of risks.

Besides macroprudential supervision, microprudential supervision is an option. Microprudential supervision is performed either by the central bank or by a separate supervisory body. This type of supervision and control targets specific members of the financial intermediary system and individual organizations.

A good example of the efficient operation of monetary policy is the economic crisis that resulted from the recent pandemic, where the central banks applied specific

55 Samuelson-Nordhaus, 2012, pp. 431-432.

56 Huszti, 2001-2002, pp. 54-58.

instruments.⁵⁷ To implement monetary policy, the central bank has a wide range of tools at its disposal, through which it can influence the supply of money and credit as well as the demand for money and credit.⁵⁸ These instruments could be regarded as traditional central bank instruments. However, the previous economic crisis⁵⁹ has already brought new trends in the monetary policy of the world's leading central banks. The literature points out that new elements have been added to the toolkit of central banks and their role in managing the economic crisis has significantly increased. The reduction of interest rates, which is a conventional instrument, has no longer had a sufficient effect below zero interest rate. Thus, some central banks have announced purchase programs of securities, thereby increasing financial market liquidity.⁶⁰ The European Central Bank applied a new tool with the acceptance of corporate credit claims as coverage in the economic crisis of 2008, which became an important tool in the monetary policy in the eurozone even after the crisis.⁶¹

The central bank toolkit related to the current crisis has further expanded, and not only in volume. The Federal Reserve System—the central bank of the United States, often referred to as simply ‘the Fed’—acted quickly in the economic crisis, announcing the reduction of the interest rate as well as quantitative easing without financial envelope. The Fed has purchased government annuities, real estate-based mortgages, and corporate annuities.⁶² The MNB has also changed its monetary policy toolkit to mitigate the effects of the economic crisis. In its summary related to the COVID-19 crisis, the MNB determined the objectives of monetary policy in detail, and the instruments allocated to it.⁶³

The Hungarian National Bank divides the tools into three areas based on objectives: ensuring liquidity, more flexible shaping of short-term yields, and assets influencing long-term yields.

To increase liquidity, the central bank applies new tools. The MNB expanded the scope of eligible collaterals with corporate loans, that is, claims against large corporations. As a result, capital debts under the Hungarian regulation of more than one billion forints could be included in the collateral of the central bank. In addition, the

57 Nagy, 2021, pp. 174-193.

58 The instruments of monetary policy include the acceptance of deposits and the granting of credit, open market operations and repurchase agreements, the issue of own securities, the determination of exchange rates and interest, the regulation of securities discounting and rediscounting, and the regulation of obligatory reserves.

59 Nagy, 2020, pp. 85-88.

60 Lentner, 2019, pp. 184-185.

61 The monetary policy toolkit of the Hungarian National Bank during the COVID-19 pandemic: <https://www.mnb.hu/letoltes/jegybanki-eszkozta-2020-covid19-en.pdf> (Accessed: 15.12.2020.)

62 Gazdasági válság 2020: A modern monetáris elmélet lesz a megoldás? Elemzőközpont, <https://elemzeskozpont.hu/gazdasagi-valsag-2021-modern-monetaris-elmélet-lesz-megoldas> (Accessed: 15.12.2020.)

63 The monetary policy toolkit of the Hungarian National Bank in the time of the COVID-19 pandemic: <https://www.mnb.hu/letoltes/jegybanki-eszkozta-2020-covid19-en.pdf> (Accessed: 15.12.2020.) The monetary toolkit will be presented primarily according to this in the following section.

resources of the central bank have become available to investment funds, allowing them to borrow from the central bank with the coverage of units (units of denominated securities and real estate funds). A long-term central bank loan facility has also been introduced to reduce tensions of the financial market. Thus, the stability of the financial market must be ensured by a fixed-term, secured loan provided by the MNB, with a maximum validity of five years based on the base rate of the central bank. The provision on the reserve requirements also increased liquidity. The central bank has suspended the obligation of reserves, so legal sanctions are not applied in the case of non-compliance with the regulations.⁶⁴

To ensure the flexibility of short-term yields, the central bank reintroduced the tool of the one-week deposit, and it made the interest rate corridor symmetrical. The middle of the interest rate corridor became the base rate of the central bank, while the two edges of it became the one-day deposit interest rate and the interest rate of the one-day or one-week secured loan interest. This provides the flexibility for monetary transmission.

The introduction of instruments affecting long-term yields also serves the increase of liquidity. The central bank, on one hand, restructured the Funding for Growth Scheme; on the other hand, it launched a new program, Funding for Growth Scheme Go!, with which the domestic business financing can further expand. This can be perceived as advantageous financing, but it is not certain that it will bring a completely new liquidity, as companies can use them to replace their previous loans.⁶⁵ With the modification of the Funding for Growth Scheme,⁶⁶ the central bank relieved the conditions, thus the exposure to a company group increased to 50 million forints, and the validity of the bonds changed to 20 years. These include the introduction of the abovementioned long-term credit instruments and the asset purchase program. In the framework of the latter, the central bank decided on the purchase of government annuities and mortgage bonds. The frame for the purchase of government annuities is not defined, so the central bank will continue it as long as the economic crisis justifies it. Within the framework of the mortgage bond purchase program, launched in 2018 and re-launched in 2020, the MNB purchases fixed-rate mortgage bonds issued in forints in the primary and secondary market, which have a minimum remaining validity of one year and are publicly traded on the Budapest Stock Exchange. Thus, in addition to traditional monetary policy instruments, the central bank uses other instruments to increase liquidity that are also used by major central banks, and therefore play a key role in the financial market.

64 Act CXXXIX of 2013 on the Hungarian National Bank, Articles 19–20. In a decree, the governor of the MNB may require financial institutions and investment firms to place reserves with the MNB, in proportion to their assets and off-balance sheet items.

65 Palócz and Matheika, 2020, p. 586.

66 The Funding for Growth Scheme was launched in 2019 for the increase of the liquidity of the corporate bond market. In the framework of the program, the MNB purchased bonds issued by non-financial corporations in an allocated budget of 1150 billion forints. <https://www.mnb.hu/monetaris-politika/novekedesi-kotvenyprogram-nkp> (Accessed: 20.12.2020.)

The crisis does not leave the operation of the banking system intact, as the risk of financial institutions increases with the crisis. The literature emphasizes that the banking system was more prepared for the current crisis, because the 2008 crisis was followed by strong regulation.⁶⁷ Risks, however, can occur at both individual institutional and the systemic levels. The operational risk of banks has changed, and new risk factors are emerging due to the pandemic. Ensuring that no (or only small) losses arise from risks is an important task of credit institutions. The scientific analysis points out the risks that became determining due to the pandemic and highlights their importance as follows.⁶⁸

The importance of geopolitical risk has increased; the economic crisis arising from the pandemic has spread throughout the world economy. Resilience is a significant risk element, i.e., the capacity of the enterprise to restore its operation after a possible crisis. In connection with the activity, the risk of outsourcing—whether an external partner can maintain its operation in the event of loss of staff and office conditions—must be highlighted. As a result of the virus, working from home remotely has increased, which carries further risks due to a reduction of discipline and rapid transition. As a result, the number of internal and external frauds and cyber-attacks is increasing. In the latter case, data loss, data theft, or system stoppage might also occur. These risks are closely related to the individual risk of employees and the related institutional risk. These have also increased because of remote work.

The operation of banks is also influenced by the loan repayment moratorium that was ordered by the state, which allows companies and households to prolong their loans, which also increases liquidity and helps the operation of companies. Besides this, the economy of households is also affected by the maximization of the total cost of the credit ratio for consumer loans.⁶⁹

All these risks provide an opportunity for the legislator to re-regulate certain areas based on experience, as this might not be the last pandemic emergency. Drawing the conclusion from the experience provides an excellent opportunity to pursue further scientific research.

67 Terták and Kovács, 2020, pp. 372-373.

68 Tamásné Völneki, 2020, pp. 325-327.

69 The convergence program of Hungary 2020–2024: https://ec.europa.eu/info/sites/default/files/2020-european-semester-convergence-programme-hungary_en.pdf (Accessed: 15.12.2020.)

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Regulation of Public Finances in Croatia in Light of Financial Constitutionality

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ABSTRACT

This chapter describes the basic features of financial law and financial regulation in the Republic of Croatia. With the aim of defining financial law in Croatia, the authors provide the setting thereof in the Croatian legal system and address the main areas which it encompasses. The introductory part describes the development of Croatian financial law and sets the boundaries by identifying the areas it includes. Beginning in the early 1990s, marked by the transition to market economy, the introduction of new tax forms as well as the development of tax procedure and tax administration are explained. Simultaneously, budgetary law, social contributions law, law on financing local and regional units, fees law and customs law were created to eventually assume their present form. Starting from the constitutional provisions, this chapter sets all those areas in the framework of financial law regulation and provides basic information for each of them. The descriptions include the concepts and instruments of financial law in Croatia, starting with the budget law of the state and of local self-government, followed by tax and fee law, customs law, and social insurance law. The overview is supplemented by the most important aspects of tax procedure and tax administration. The conclusion reflects on the present state of Croatian financial law, the challenges that influenced its development, and the prospects for the future.

KEYWORDS

Financial law, budget, tax, customs, social security contributions, Croatia.

1. Financial law in Croatia

Unlike in Western European countries, but similar to the other Central and Eastern European countries, financial law in Croatia is viewed conceptually and researched very broadly, trying to comprise a ‘complete’ financial dimension of the public sector. However, over time, certain areas are no longer considered as a part of financial law (e.g., financial markets, banks). Due to the Socialist system in use until 1990, it is a relatively new area of law, especially tax law as one of its main and the most important subdisciplines (but still a subdiscipline). The creation of the new, modern tax system began in 1994 when the first tax laws were adopted, e.g., the Personal Income Tax Act and the Corporate Income Tax Act. A new system of local and regional taxes was also

established. The main aim of the reform¹ was to establish a tax system suitable for the needs of the market economy. Moreover, the reform envisaged a tax system oriented almost exclusively toward taxing consumption,² which was a unique example in the world at that time.³ However, tax procedure and tax administration⁴ were overlooked until the year 2000 when the General Tax Act was adopted. It is a systemic regulation that regulates the fundamental concepts and rules of a variety of processes in the implementation of taxation for all types of taxes, and by its nature had an exceptionally important influence on the relationship between the tax authorities and taxpayers. It might be concluded that the other subareas of financial law in Croatia (e.g., budgetary law, social contributions law, law on financing local and regional units, etc.) followed a resembling ‘phasing –pattern’—since 1990s several of them saw substantial changes and reforms within the framework of modernization.

Financial law in Croatia is perceived as a branch of law but also as a branch of science. The main difference lies in its scope and role—the scope and role of financial law as a science is considerably wider. While the term ‘financial law’ primarily indicates legal norms that regulate a variety of financial relationships, financial law as a science examines socioeconomic relationships that stem from state’s financial activity; explains legal justification of the financial relationships; determines the main principles on which legal regulation of the financial relationships is based; examines the process of implementation of financial laws; systematizes substance that is subject of financial law regulation, etc. However, it should be noted that the course taught at Croatian universities⁵ is called ‘financial law and financial science’ mainly to emphasise this broad and dual character of the discipline.

2. Theoretical issues of financial law

Financial law may be defined as a set of legal rules that regulate the financial relationships arising with the collection, management, distribution, and use of public funds designated for financing public expenditures.⁶

However, despite this comprehensive approach taken, the general and special parts of financial law are distinguished. This classification is of theoretical as well as of practical significance. The general part of financial law encompasses legal norms whose aim is to ensure the unity of the financial system, i.e., general principles on which financial relationships are essentially based. The special part of financial

1 The leading role in the design of tax reform was conferred to Prof. Manfred Rose and his assistants.

2 Known as KNS—*Konsumorientierte Neuordnung des Steuersystems*.

3 Gadzo, 2017, p. 178.

4 However, the Tax Administration, as an independent administrative organization within the Ministry of Finance, was also established in 1994.

5 In Croatia there are four faculties of law: in Zagreb, Rijeka, Split, and Osijek.

6 For an extensive description of financial law, see Jelčić et al., 2008.

law encompasses those norms whose main aim is to regulate a particular group of financial relationships. Therefore, tax law, budgetary law, and public debt law form the special part of financial law. The distinction is made to facilitate the research and study of particular financial relationships that arise in the course of applying certain financial instruments, and that contribute to better regulation in the field of public finances. In accordance with that, financial law is partly codified.

In previous paragraphs, the term ‘financial relationship’ is a rather generic term covering all socioeconomic relations that occur in the area of the state’s financial activity, and are regulated by the provisions of competent authorities. The main subject of a financial relationship is monetary obligation, whereas the state as well as natural and legal entities are the main parties in that relationship. However, the parties have very different and unequal positions because financial relationships are primarily incurred by the will and power of the state, and that state position is privileged compared to the other subject of the relationship. This feature attracts attention especially in the tax-law relationship. For example, recent studies show that it is seen as an authoritarian relationship dominated by a marked division between the superior (tax authority) and the subordinate (taxpayer).

Traditionally, in Croatia, financial law is a branch of law that could be classified as public law. The main reasons for that are twofold. First, it regulates all legal relationships between the state (and other public authorities), on the one side, and natural and legal entities, on the other.. The second reason relates to the mandatory nature of the provisions. It is also recognized as an independent, separate branch of law. The recognition of its autonomous status is especially important in relation to the administrative law.⁷ Tax administration and procedure, for instance, leans heavily on general administrative law.⁸ This reflects a shadow of the ‘old Austrian tradition, i.e., the ideas of classical, Weberian public administration’.⁹

Beside strong interference with administrative law, it is common knowledge that financial law interferes with many other branches of law, especially constitutional, European, international, civil, employment, criminal, and commercial law. When it comes to the constitution, as the highest legal source in Croatia, it encompasses only a few provisions regarding public finances: provisions that refer to the state budget and its legal nature; those proclaiming the principles of legality, equality, and equity as a basis of the tax system; those that position the State Audit Office as the highest, independent audit institution in Croatia; and provisions that guarantee social security to Croatian citizens. The constitution also regulates the status and legal force of international treaties—it stipulates a monistic approach, and international treaties constitute part of Croatian internal legal order, whereas its legal force is below the constitution but above the laws. The European law primarily tackles field of indirect

7 Historically, financial law was perceived as a branch of administrative law.

8 Arbutina and Bogovac, 2014, pp. 481-503.

9 This is partly due to historical reasons—primarily the fact that that largest part of present-day Croatia has been part of the Austrian empire for several centuries. See Gadzo, 2017, p. 180.

taxation and budgetary system. As for the international law, double taxation treaties must be mentioned. Croatia has so far concluded, as an independent state or assumed from the former Socialist Federal Republic of Yugoslavia (SFRY), over sixty double taxation agreements (DTA). When negotiating DTAs, Croatia has been sticking to the OECD model with a few exceptions.¹⁰

3. Croatian financial regulation

As we see from the previous section, Croatian financial law¹¹ is a very broad and complex branch of law. The highest legal source is the constitution, but the relevant financial provisions are rather scattered throughout the document. When it comes to the financial law, the constitution offers basic principles (as in the case of the principle of equality) or guarantees (as in the case of social security).

For clear organization of this chapter, the following basic areas will be considered as the subject of financial regulation: budget law of the state and of local self-government, tax and fee law, customs law, and social security law.

3.1. Budget law

When it comes to the state budget, the constitution is not voluminous. The main article is Article 91(2) proclaiming the legal nature of the state budget is an organic law, as it should be voted by the majority of all representatives of the Croatian Parliament (*Sabor*). It is *sui generis* law—'law in numbers'. It also declares that the state's revenues and expenditures are laid down by the budget. The last part of Article 91 tackles sound financial management—if the implementation of the particular law needs additional financial means, its sources should be provided. However, the exact meaning of the provision is not quite clear, especially in terms of its further development in the relevant laws. Among the constitutional bases of budgetary law, we must also mention Article 54, inaugurating the State Audit Office as the highest audit institution, especially emphasising its independency and autonomy. This feature is underlined with provision regulating the accountability—the State Audit Office is governed by the main state auditor whose obligation is to regularly report to Croatian Parliament.

As to the budget of local and regional self-government, the constitution is almost silent. It could be concluded that the constitutional foundation in question could be best described as indirect, and expressed through the financial autonomy concept.¹² The starting point of financial autonomy of sub-national units is the citizens' right to local and regional self-government (Article 128). Financial autonomy itself is referred

10 Arbutina and Bogovac, 2014, p. 482.

11 The most comprehensive of the Croatian financial law is provided by Šimović et al., 2010.

12 Constitutional provisions on the citizens' right to the local and regional self-government and the financial autonomy concept are introduced as a part of legislative changes caused by the process of decentralization which started in 2001.

to in Article 131. It emphasizes the right of subnational units to its own revenues over whom they freely dispose. The revenues should be proportionate to the competencies transferred and prescribed by the relevant laws (i.e., to the expenditures). Finally, there is an obligation of the central state to support financially weaker local and regional units.

The constitutional regulation of the budget is further developed in several laws which could be divided in subjective and objective budgetary law. The most important provision of subjective budgetary law (which is absolute subjective budgetary law in Croatia) is the Act on Budget¹³ (also called systemic regulation). The Act on Executing the Budget¹⁴ (which is a one-year law, adopted annually together with the budget) is the provision of objective budgetary law. Then there is the state budget ('law in numbers'). *Largo sensu*, the Act on Budgetary Responsibility,¹⁵ the Act on Financing of Local and Regional Self-Government,¹⁶ and the State Audit Office Act¹⁷ must also be mentioned.

The central instrument of the budgetary system is the budget of the general state, consolidated statistical statement of the planning data on revenues and expenditures, receipts and outlays¹⁸ of all subjects included in the general state, i.e., the central state, the local state, and social security funds.

The state budget and financial plans of extrabudgetary users are included in the so-called central state budget. Extrabudgetary users function as a special fund budget funded by specific mostly earmarked revenues.

According to the law, the state budget is defined as an act estimating revenues/receipts and determining expenditures/outlays, enacted by the Croatian Parliament. Although the principle of annuality is a rule, it is supplemented by the principle of multi-year planning. In that framework, the budget and financial plans are enacted for a three-year period, that is, a plan for the budget year and projections for the next two years (n+2 system). The projections are not binding except in the case of the budgetary deficit/surplus limitations. The main functions of the budget are following: it has important strategical and management role in the public finance policy domain;¹⁹ it serves as the main instrument of state intervention;²⁰ it is the most important financial instrument.²¹ Budgeting is geared to a cycle consisting of four usual phases: (1) preparation and design; (2) adoption and approval; (3) execution; (4) evaluation. The average duration of the cycle is 27 months. For the first and third phases, executive

13 The Act on Budget, OG 144/21.

14 The Act on Executing the Budget, OG 140/21.

15 Act on Budgetary Responsibility, OG 111/18.

16 Act on Financing of Local and Regional Self-Government, OG 127/17, 138/20.

17 State Audit Office Act, OG 25/19.

18 The difference between the terms derives from the structure of the budget in Croatia, namely the existence of two accounts.

19 As it shows the most important country's aims in a fiscal year.

20 As an instrument with which the country influences its economic condition.

21 It serves as a control system of collecting and spending budget means.

authorities are responsible, while in the second and fourth phases, the government has the main role.

As stated above, the state budget is *sui generis* law, and it differs from ‘standard’ laws in formal and substantive aspects. In a formal aspect, first and foremost it is the law in numbers. The formal difference also tackles a special (legislative) procedure visible in, for instance, the existence of budgetary calendar (a concise schedule of activities, activity holders, and statutory deadlines for preparing and submitting the draft of state budget); the special meaning of the parliamentary debate and approval (the principle of prior approval); or the possibility of introduction of a temporary financing (in the case of non-approval of the budget). In the substantive aspect, budget norms are temporary limited (they are in force only during a budgetary year) and individualized (especially in the special part where the addressee of the norm is known).

Structurally, the state budget consists of two main parts: a general and a special part. In the general part, two accounts are differentiated: (i) the account of revenues and expenditures, and (ii) the account of receipts and outlays. The first account contains revenues and expenditures that are classified according to *economic* classification. The second one contains all transactions (receipts and outlays) related to the financial assets and borrowing. A special part is a plan of expenditures and outlays of the state budget and its budgetary users, presented according to *organizational* classification.²² Budgetary revenues/recipes and expenditures/outlays in all budgetary documents are presented pursuant to *budgetary* classifications. There are six of them: economic (being the most common and important), organizational, functional, programming, locational, and source of financing classification. Revenues should be classified following economic and source of financing classification, whereas expenditures should be classified under all mentioned classifications.

The state budget revenues and receipts include taxes, social contributions, revenues from assets, revenues from administrative fees, charges, fines, other revenues, and revenues from financial assets. According to the latest data, the total state budget revenues for 2020 amount to EUR 17.474 billion. The tax revenues amount to EUR 9.715 billion, i.e., about 55% of the total state budget revenues, which include value added tax in the amount of EUR 6.270 billion (36%), and excise duties in the amount of EUR 1.931 billion (11%), corporate income tax in the amount 1.236 EUR billion (7%). The social contributions amount to EUR 3.023 (17%).

The total state budget expenditures for 2020 amount to EUR 20.390 billion, which brought the state budget in a deficit of EUR 2.919 billion. Two disasters had a significant impact on the financial result in question—the COVID-19 pandemic, and two earthquakes that heavily hit Zagreb and the central part of Croatia. For illustration, the costs of the measures and activities related to the pandemic were EUR 2.124 billion (including health costs), while the earthquake resolution actions cost the state budget

22 One of the budgetary classifications, primarily based on a link between budgetary data and budgetary users.

EUR 30 million. The most important expenditures are operational expenditures, which include expenditures for employees, material and financial expenditures, subventions, social expenditures, etc.

The budget of local and regional units is defined in a similar way as described above—as an act enacted by the representative body of local and regional self-government unit that entails a plan for a budgetary year and projections for next two years estimating revenues/receipts and expenditures/outlays of local and regional units and its budgetary users. However, the Act on Local and Regional Self-Government²³ defines it as the basic and most important financial act. The act also emphasizes the constitutional principles (mentioned above) on which financial autonomy of sub-national units is established. The revenues of the budgets of sub-national units include their own taxes, shares in the personal income tax,²⁴ grants, and non-tax and assigned revenues in accordance with special provisions. Own taxes are regulated by a special Local Taxes Act.²⁵ Local taxes are defined as taxes whose revenues belongs to the sub-national units²⁶ and could be further labelled as county or municipal taxes. Hence, inheritance and gift tax, tax on road motor vehicles, tax on vessels, and tax on gambling machines are county taxes. Surtax (on the personal PIT), and tax on local consumption, holiday houses, the use of public surfaces, and real estate transfers are municipal taxes. PIT is a shared tax. Non-tax revenues include a variety of revenues, among which the most significant (financially) are the communal fee²⁷ and communal contribution.²⁸ Despite the decentralization process in force for the last twenty years (since 2001), the importance of ‘local state’ (measured by share of local expenditures in GDP) is growing very slowly—it remains mainly stable comprising around 15%.

In 2011, Croatia adopted the Act on Fiscal Responsibility. This act was adopted to achieve and maintain fiscal responsibility, as well as to promote and strengthen the transparency and medium-term and long-term sustainability of public finances. In that context, the Act introduced the fiscal rules concept—two groups of them. The first one tackles certain fiscal goals and limits in relation to the structural balance, the annual growth of budgetary expenditures, and the public debt level. The second one deals with the concept of fiscal responsibility of the head of the budgetary (and extrabudgetary) users of the state budget and of the budgets of local and regional self-government. The crucial instrument is a statement on fiscal responsibility by which the head confirms that they have ensured the legal, earmarked, and purposeful use

23 Act on Local and Regional Self-Government, OG 33/01, 60/01, 129/05, 109/07, 125/08, 36/09, 36/09, 150/11, 144/12, 19/13, 137/15, 123/17, 98/19, 144/20.

24 According to the current legal situation, personal income tax revenues are divided between municipalities and counties in the proportion of 74% (municipalities) to 20% (counties). The remaining 6% is for decentralized functions (those units who finance decentralized functions have an additional share in PIT).

25 Local Taxes Act, OG 115/16, 101/17.

26 Although it is not precisely defined, it could be concluded that tax autonomy is assessed through its formal and material dimension.

27 For more details on communal fee, see Žunić Kovačević and Gadžo, 2014.

28 S. Act on Communal Management, OG 68/18, 110/18, 32/20.

of funds; the efficient and effective functioning of the internal control system within the framework of the funds determined in the budget; and the financial plan, respectively. The obligation also includes companies owned by the Republic of Croatia or local and regional units as well as legal entities founded by the Republic of Croatia or subnational units. The act also provides for the establishment and competences of the Fiscal Policy Commission. The commission is an independent expert body established to envisage and evaluate the implementation of the fiscal rules. During the performance of its tasks, the commission takes the ‘positions’ that are posted on the website of the commission. A special procedure is prescribed in the case of serious fiscal risks. If the commission assess that there is such a risk, it prepares a special report for the government, which must give an opinion within 45 days, or as necessary to undertake additional measures.

As previously mentioned, the State Audit Office is essentially the supreme audit institution in Croatia. The entities subject to audit are numerous: state sector units; subnational units (including the Croatian National Bank); legal entities financed from the state budget; legal entities financed from the state budget; legal entities founded by the Republic of Croatia or local and regional self-government units and legal entities owned by the Republic of Croatia or local and regional self-government units; companies and other legal entities in which the Republic of Croatia or local and regional self-government units hold a majority block of shares or stakes and/or exercise a decisive influence on management; legal entities (subsidiaries) established by legal entities of which the founder is the Republic of Croatia or local and regional self-government units; legal entities which secure their operating funds from mandatory contributions, membership fees or other revenues regulated by law; political parties, independent members of the parliament and members of the representative bodies of local and regional self-government units as stipulated by legislation governing the financing of political activities and election campaign promotion; legal entities in the Republic of Croatia that utilize funds from the European Union, international financial mechanisms, and other international organizations or institutions to finance public needs.

The object of the audit are revenues and expenditures, assets and liabilities, financial statements, transactions and the programmes, projects, and activities of the audited entities. The audits are conducted in accordance to the Annual Programme and Plan of Work. The Croatian Parliament may also request the audit. The audit of the Execution of the State Budget is conducted every year.

3.2. Tax and fee law

The Croatian tax system is the most important source of public revenues, accounting to 55.6% of budget revenues in 2020.²⁹ In Croatia, taxes are introduced by the state parliament and mostly regulated at the state level. In some cases, the local units are

29 More information may be found on the website of the Ministry of Finance, available at <https://mfin.gov.hr/proracun-86/drzavni-proracun-2020-godina/2981>.

entitled to regulate tax rates within the set framework, while all other elements are set out in tax acts. The tax revenues may be allocated to the central government level, local, or regional governments or they may be joint revenues of the central and local budgets.

The universal obligation to pay taxes stems from the Croatian Constitution,³⁰ which prescribes that everyone should participate in the defrayment of public expenses, in accordance with their economic capacity, and hence introduces the ability to pay principle in Croatian tax system. The constitution also sets out that the tax system must be based on the principles of equality and equity, without elaborating the notions in more details.

The normative framework of taxation includes the General Tax Act,³¹ the *lex generalis* to all other tax acts, which sets out provisions on tax procedure applicable to all taxes. The general Tax Act, as stated in Article 1, ‘regulates the relationship between taxpayers and tax authorities applying the regulations on taxation and other public dues, if not regulated otherwise by special acts on certain types of taxes and other public charges, and represents the joint tax system basis.’ Besides this so-called ‘systemic regulation’, there are numerous acts which regulate specific taxes, i.e., *leges speciales*. All the tax acts are accompanied by one or more ordinances.

The General Tax Act, as set out in Article 2, relates to ‘taxes and other public dues’, whereas taxes are financial dues and are a budget revenue used for settling public expenditures determined in the budget. Excise duties are considered taxes, while ‘other public dues are customs duties, fees, contributions, concession fees, monetary fines for tax violations and all dues the establishment and/or payment and/or audit of which is made according to special regulations within the competence of a tax authority’.

A general overview of special acts on certain types of taxes and other public charges includes: (a) income taxes: Personal Income Tax Act, Corporate Income Tax Act; (b) property taxes: Local Taxes Act; (c) consumption taxes: Value Added Tax Act, Real Estate Transfer Tax Act, Excise Duties Act, special excise duties acts (Special Tax on Motor Vehicles Act, Special Tax on Coffee and Non-alcoholic Beverages Act and Tax on Liability and Comprehensive Road Vehicle Insurance Premiums Act)

Another possible approach of presenting the Croatian tax system is according to the attribution of tax revenues: (a) state taxes are value added tax, profit tax (corporate income tax) and special taxes and excise duties; (b) county taxes are inheritance and gifts tax, road motor vehicles tax, vessels tax and tax on slot machine games; (c) municipal taxes are surtax on income tax, the consumption tax, tax on holiday homes, tax on the use of public land and real estate transfer tax; (d) joint state and local units’ tax is personal income tax.

30 The Constitution of the Republic of Croatia, Consolidated text, OG 56/90, 135/97, 113/00, 28/01, 76/10, 5/14. English translation available at https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf.

31 General Tax Act, OG 115/16, 106/18, 121/19, 32/20, 42/20.

Finally, the tax system may be analysed from the viewpoint of direct taxation (personal income tax, corporate income tax, some local taxes such as surtax on personal income tax or inheritance and gifts tax) and indirect taxation (VAT, excise duties, and some local taxes such as real estate transfer tax and the consumption tax).

3.2.1. *Income tax*

In the Croatian tax system, the income tax is applied to natural persons (personal income tax) and legal entities (corporate income tax).

Personal income tax is regulated by the Personal Income Tax Act.³² Personal income tax was introduced in Croatian legislation in 1994³³ and has experienced many amendments since. The taxpayer is a natural person who generates an income. If several natural persons generate an income together, the taxpayer is each natural person separately (whereby the Croatian legislature chose to adhere to transparent approach to partnerships). Resident taxpayers have unlimited tax liability, i.e., they are liable to pay personal income tax in Croatia in accordance with the worldwide principle, while non-residents have limited tax liability, i.e., in Croatia they are only liable for taxes on income earned in Croatia (the source principle). Croatia has a network of 66 international bilateral tax treaties, and their provisions should be considered when determining international tax liability.

Natural persons are subject to personal income tax from five taxable sources of income: income from employment, income from self-employment, income from property and property rights, income from capital and/or other income.

Personal income tax liability is increased by surtax on personal income tax, introduced by the local self-government units (see Section 3.2.3, subsection 'Local taxes'). Personal income tax is determined and paid for the taxation period of one calendar year.

Personal income is defined by Article 12 of the Personal Income Tax Act as the difference between receipts inflowing in the taxation period and expenses arising over the same period. The receipts represent all goods (money, things, substantive rights, services, and other) that a taxpayer has acquired within a taxation period, and the expenses are all the outflows of goods with a monetary value made for the purpose of realizing or ensuring the receipts. Personal income may be determined as annual income or as final income.

Annual personal income comprises total income from employment, income from self-employment, and other income which is not deemed final, received over the taxation period. It is determined and calculated based on the annual tax return. The taxpayers are entitled to a personal allowance, parts of personal allowance for supported members of immediate family and children as well as for disability or physical handicap. The annual personal income tax base is the total amount of income from employment, self-employment activity and other income which is not deemed final,

32 Personal Income Tax Act, OG 115/16, 106/18, 121/19, 32/20, 138/20.

33 Šimović, 2012.

reduced by personal allowance. The annual personal income tax is paid at a rate of 20% on a tax base of up to HRK 360,000 (EUR 48,000) and at the rate of 30% on a part of the tax base exceeding the amount of HRK 360,000, which represents the use of a slice system of progression.

Personal income from employment represents the difference between (1) the receipts realized over the taxation period and (2) the expenses incurred over the same period. Receipts arising from employment (salaries) are all receipts, which the employer pays out in cash or in kind or gives to the worker based on employment, entrepreneurial salary, receipts (salary) of natural persons posted to work in the Republic of Croatia upon the order of a foreign employer to domestic companies to work in those companies, receipts (salary) of the members of representative and executive bodies of the government and local and regional self-government units for work in those bodies and units and/or salary compensations to persons providing care and assistance to Croatian military disabled persons of the Homeland War. Expenses, which are deducted from the receipts, are paid contributions for compulsory insurances from receipts or contributions for pension insurances.

Personal income from self-employment is income from trade crafts, from professions (self-employed health workers, veterinarians, attorneys, notary publics, auditors, engineers, architects, tax advisors, interpreters, translators, tourist workers, self-employed scientists, writers, inventors, self-employment lecturing activity, self-employed journalists, artists and sportsmen), and from agriculture and forestry. Income from a self-employment activity is that the difference between business receipts and business expenses that occurred over a taxation period. Taxpayers performing a self-employment activity must be included in the register of income taxpayers, and must determine their income based on the information from financial records and registries.

Other income that is not deemed final is the difference between receipts and expenses, though the receipts relate to activities of the members of assemblies and supervisory committees of companies and management boards, royalties, receipts of athletes, travelling salespersons, agents, sports referees, interpreters, translators, tourist workers, and consultants. It also includes receipts in kind (use of buildings, means of transport, favourable interest, and other benefits) that are provided to natural persons who are not employed by payers, awards to pupils during work practice and apprenticeships, receipts of pupils and students for work via pupil and student associations, scholarships, awards for sports achievements, and other receipts not specifically stated that are paid or given to natural persons by legal and natural persons (payers of profit tax and payers of income tax performing self-employment activities). The expenses deductible in determining other income consists of contributions paid for compulsory insurance from receipts. Exceptionally, in determining other income, the expenses are deductible at a flat rate of 30% of realized receipts for royalties, the professional activities of journalists, artists, and athletes and receipts of non-residents for the performance of art, artistic, entertainment, sports, literary, or visual arts activities and activities in connection with the press, radio, and television and entertainment shows.

The final personal income consists of income from property and property rights, income from capital and final other income. Taxpayers are not allowed to submit tax returns for those categories of income and no personal allowance is applied.

Income from property and property rights is the difference between (1) receipts accruing from leases, rentals, renting of flats, rooms, and beds to travellers and tourists and organizing camps, (2) receipts from a temporally limited cession of copyright, industrial property rights, and other property rights, (3) receipts from alienation real estate and property rights, and the expenses that the taxpayer has incurred in a taxation period in connection with these receipts. When calculating the income from property based on the rental or lease of movable and immovable property, the taxpayers are allowed to deduct expenses at the flat rate of 30% of the realized rental or lease. The taxpayer who earns income from renting of flats, rooms, and beds to travellers and tourists and organizing camps pays tax on income (lump sum set out by the local unit). In earning income from property rights, expenses are actually incurred expenditures, for which the taxpayer provides authentic documents. With income from property realized from rentals and leases, the income tax is paid monthly at a rate of 10%. Tax on income from property rights must be calculated, withheld, and paid by payers of receipts as withholding tax, simultaneously when paying the receipt from the total remuneration, by applying a rate of 20%. Tax on income from the alienation of real estate and property rights is paid by taxpayers on a one-time basis at the rate of 20%. Tax on income from the alienation of more than three pieces of real estate of the same type, or more than three property rights of the same type, over a period of five years from the day of acquiring them, is paid on a one-time basis after the alienation of the fourth piece of real estate of the same type, or the fourth property right of the same type, at the rate of 20%.

Income from capital represents the receipts based on interest, withdrawals of assets and the utilization of services at the expense of current-period profits, capital gains, shares in profits realized by award of or optional purchase of own shares, dividends, and shares in profit according to the share of the capital, which were realized in a taxation period. No expenses are considered when determining the tax base. Tax rates for this category of personal income vary between 10% and 30% and are paid in the form of withholding tax upon payments of the income.

Final other income includes other income based on the reimbursement of contributions (paid at a rate of 30%), other income, based on the difference between the value of the assets and the amount of funding with which they were acquired (paid at a rate of 30% and increased by 100%), and other income based on temporary or occasional jobs in agriculture (paid at a rate of 10%).

Corporate income tax, as set out by the Corporate Income Tax Act,³⁴ is paid by a company or another legal or natural person, a resident of the Republic of Croatia, performing its economic activity independently, permanently, and with the purpose

34 Corporate Income Tax Act, OG 177/04, 90/05, 57/06, 146/08, 80/10, 22/12, 148/13, 143/14, 50/16, 115/16, 106/18, 121/19, 32/20, 138/20.

of achieving profit. The taxpayer is also a domestic permanent establishment of a foreign entrepreneur (non-resident). Self-employed natural persons who declare that they will pay corporate income tax instead of income tax are categorized voluntary taxpayers, while natural persons are obligatory taxpayers if they generated a total receipt greater than HRK 7,500,000 (EUR 1,000,000) in the previous taxation period. State administration bodies, regional and local self-government authorities, and the Croatian National Bank are not corporate income tax payers. A list of non-taxpayers also includes state institutions, institutions of units of regional self-government, institutions of units of local self-government, state institutes, religious communities, political parties, trade unions, chambers, associations, artistic associations, voluntary firefighters' associations, tourist boards, sports clubs, societies and associations, trust funds and foundations. However, if the exempt persons perform a certain economic activity whose non-taxation would result in unjustified privileges on the market, they are required to determine the corporate income tax liabilities for those activities.

The tax base is the corporate income, i.e., the difference between revenue and expenditures before the corporate income tax calculation, increased and reduced under the Corporate Income Tax Act. The tax base of a resident taxpayer consists of corporate income generated domestically and abroad (universal tax liability), while the tax base of a non-resident consists only of corporate income generated domestically (limited tax liability). The corporate income tax base is set out at a tax rate of 10% if, during the taxation period, the revenue amounts to up to HRK 7,500,000 (EUR 1,000,000) or 18% if, during the taxation period, revenue has been generated equal or higher than HRK 7,500,000 (which represents an uncommon case of slab system of progression). For the corporate income generated by a non-resident in the Republic of Croatia, withholding tax is applied and paid at a rate of 15% except for dividends and shares in profit for which the withholding tax is paid at a rate of 10%. The Corporate Income Tax Act contains some provisions directed to prevent tax avoidance, such as transfer pricing rules and thin capitalization³⁵ rules. The corporate income tax legislation has been amended under the influence of EU legislation over the past decade, particularly on taxation of interest and royalty payments made between associated companies of different Member States, on taxation of mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States, on taxation of parent companies and subsidiaries of different Member States, as well as on rules against tax avoidance practices, encouraged by the OECD's BEPS (controlled foreign company (CFC) rule, exit taxation,³⁶ interest limitation, General anti-abuse rule (GAAR)³⁷ and the rule on hybrid mismatches).

35 More details on thin capitalization in Arbutina, 2011.

36 For a detailed overview on exit taxation, see Klemenčić, 2016.

37 Analysis of GAAR in the Croatian tax law in Gadžo and Klemenčić, 2014.

3.2.2. *Consumption taxes*

Value added tax (VAT) was introduced in Croatian tax system in 1998. The Croatian VAT legislation was amended significantly during the Croatian accession to the EU and is now regulated by the Value Added Tax Act,³⁸ As the field of indirect taxation is highly harmonized at the EU level, Croatia incorporated the EU legislation into its tax system. VAT is the most important source of tax revenues in Croatia. In 2020, it accounted for 36% of total tax revenues.

Under the VAT directive, the following transactions are subject to VAT: (a) the supply of goods for consideration within the Croatian territory by a taxable person acting as such, (b) the intra-community acquisition of goods for consideration within the Croatian territory, (c) the supply of services for consideration within the Croatian territory by a taxable person acting as such, and (d) the importation of goods.

The VAT legislation defines the taxable person as a person who independently performs any economic activity, regardless of the purpose or result of that activity performance. The taxable person is also any person who occasionally supplies a new means of transport. Taxable persons are not state government bodies,³⁹ the bodies and units of local and regional self-government, chambers and other bodies governed by public law or when they collect charges, fees or other payments within their scope or authority. If their status of non-taxable persons would cause considerable detriment to the market competition principle, those bodies are taxable persons in relation to those activities or transactions.

Each person must report the start of their activity as taxable person to the Tax Administration, i.e., they must register in the VAT taxable person registry if the value of their supply exceeded the amount HRK 300,000 (EUR 40,000) in the previous year. Upon registration, the taxable person is issued a VAT ID number. Each taxable person must issue an invoice for the supply of goods and services performed for another taxable person or non-taxable legal person.

The taxable amount for the supply of goods and services refers to the full amount the supplier receives from the buyer or another person for those supplies, including the amount of subsidies directly related to the price of supplied goods or services. The taxable amount includes the amounts of taxes, customs duties, fees and similar charges, except for VAT, and ancillary costs such as commissions, the costs of packaging, transport and insurance which the goods or services supplier charges to the buyer or recipient. The taxable amount does not include price reductions or rebates granted to the customer at the time of supply, nor the amounts which the taxable person charges to or receives from the buyer as a refund for the expenses paid on their behalf and for their account and which are entered into the records as transitory items.

38 Value Added Tax Act, OG 73/13, 99/13, 148/13, 153/13, 143/14, 115/16, 106/18, 121/19, 138/20.

39 For more information on the tax regime of public law bodies in the Croatian system of value added tax, see Gadžo, 2015.

VAT is calculated and paid at the standard rate of 25%. In Croatia, two reduced VAT rates are applied. The reduced rate of 5% is charged on the supply of bread, milk, books, medicines, medical equipment, daily newspapers, and cinema tickets. The reduced VAT rate of 13% is charged on the supply of accommodation services, newspaper journals, edible oils and fats of plant and animal origin, child car seats, baby diapers, baby food, supply of water (other than water in bottles) through public water supply and public drainage, concert tickets, supply of electricity to another supplier or end user, public service of collection of mixed municipal waste, etc. Before joining the EU, Croatia also had a 0% tax rate in the VAT system. However, that rate is not envisaged by the VAT directive.

VAT exemptions relate to certain activities of public interest, some cases of goods supply within the European Union, goods acquisition within the European Union, certain transport services, importation, exportation, the supply of services on movable property, international transport, certain supplies equated to export, mediation services and transactions relating to international trade.

The taxable person may deduct from VAT the amount of VAT (input tax) that he paid on the home territory for the supply of goods or services performed by other taxable person for their taxable transactions. The taxation period spans from the first to the last day of the month. A taxable person must pay calculated and reported VAT for a taxation period until the last day of the month following the end of the taxation period.

Excise duties in Croatia are partly regulated by the Excise duties Act,⁴⁰ which encompasses excise duties harmonized on the EU level: excise duties on alcohol, alcoholic beverages, tobacco products, energy products and electricity. There are additional special taxes on coffee and non-alcoholic beverages,⁴¹ special taxes on motor vehicles⁴² and the tax on liability and comprehensive road vehicle insurance premiums.⁴³

3.2.3. *Other taxes*

Local taxes. The government in Croatia operates on three levels. Besides the central government on the state level, there is a regional self-government which includes 20 counties and the capital city of Zagreb. The local self-government is at the lowest level, and it comprises cities and municipalities, counting 555 local units in total. A part of lower government levels revenues comes from the personal income tax. Another important source of revenues are regional and local taxes. Local taxes are introduced and regulated on the state level, while some elements (e.g., tax rates) are left to the local units to prescribe, within the boundaries set out by the state level act. Introducing some taxes on a local level is optional, and the local units may decide on

40 Excise Duties Act, OG 106/18, 121/19, 144/21.

41 Special Tax on Coffee and Non-alcoholic Beverages Act, OG 72/13, 121/19, 22/20.

42 Special Tax on Motor Vehicles Act, OG 15/13, 108/13, 115/16, 127/17, 121/19.

43 Tax on Liability and Comprehensive Road Vehicle Insurance Premiums Act, OG 150/02.

it. Under the Local Taxes Act,⁴⁴ local taxes are divided between regional government taxes and local government taxes, whose revenues are allocated to counties or cities and municipalities, respectively. Regional self-government taxes are inheritance and gifts tax, road motor vehicles tax, vessels tax and the tax on coin-operated machines for games for amusement. Local self-government taxes are surtax on income tax, consumption tax, tax on holiday homes and tax on the use of public land. Additionally, real estate transfer tax is a tax allocated to local units of the place where the real state is located, as set out by the special Real Estate Transfer Tax Act.⁴⁵

Other taxes in Croatia include taxes on winnings from games of chance and fees for organising games of chance, as set out by the Games of Chance Act.⁴⁶ Per the act, games of chance may be organized as lottery games, casino games, betting games and slot machines games. Taxes are applied for the winnings in lottery games and betting games at progressive tax rates of 10%, 15%, 20% and 30% applied on winnings in four tax brackets. Taxpayer of the tax on winnings in lottery games is a natural person who won the lottery game, while for betting game the taxpayer is a natural person who won the betting game. Besides taxes, the Games of Chance Act also prescribes the obligation for the games of chance organizers to pay monthly and annual fees.

Another type of public dues, as set out by the General Tax Act, are fees, i.e., monetary dues paid for a certain performance or use of a certain public good. In theory, fees may be divided into three groups: administrative fees, court fees and notary public fees.

Administrative fees are paid for filing written requests or requesting actions performed by state administration, diplomatic missions, consular offices, local and regional units' bodies and bodies with public authorities, under the Administrative Fees Act⁴⁷ and accompanying tariff. The person liable to pay a fee is the person who filed a request for proceedings or administrative action. Court fees are paid for court proceedings, under the tariff, which is a part of the Court Fees Act.⁴⁸ The fee is paid by the party upon whose request or in whose interest the action is undertaken. Notary public fees are paid for issued documents and actions performed by the notary public. Tariff on notary public fees is contained in the annex to the Notary Public Fees Act.⁴⁹ The person liable to pay fees is the persons upon whose request or in whose interest the notary public actions are performed.

3.2.4. *Customs law*

Customs law is an important part of Croatian financial law. As set out in Article 2 of the General Tax Act (a systemic regulation for the entire field of public dues), customs

44 Local Taxes Act, OG 115/16, 101/17.

45 Real Estate Transfer Tax Act, OG 115/16, 106/18.

46 Games of Chance Act, OG 87/09, 35/13, 158/13, 41/14, 143/14.

47 Administrative Fees Act, OG 115/16.

48 Court Fees Act, OG 118/18.

49 Notary Public Fees Act, OG 72/94, 74/95, 87/96, 112/12, 110/15.

duties are a form of ‘other public dues’, besides taxes, excise duties and other dues. Customs duties are monetary dues paid on import or export.

As a part of Croatian accession to the European Union in 2013, Croatia became a part of the EU customs union and has therefore incorporated the Union Customs code and accompanying EU legislation in its legal system. The Union Customs code⁵⁰ is the central source of EU customs law, which provides a comprehensive framework for customs rules and procedures in the EU customs territory. It was enacted as a regulation and is therefore directly applicable in the EU Member States. It covers missions of customs, rights, and obligations of persons regarding the customs legislation, application of import and export duties, customs debt, goods brought into the EU customs territory, rules on customs status, customs procedure. It is supplemented by Croatian legislation—the Act on Implementation of the EU Customs Legislation⁵¹ and corresponding national bylaws, which determine the implementation of the EU legislation in Croatia. The Act on Customs Services⁵² provides for an organizational framework of Croatian customs authorities, their structure, authorities, competencies, and supervisory provisions.

3.2.5. Social security contributions

The General Tax Act classifies contributions as ‘other public dues’⁵³ and defines contributions as ‘monetary dues paid for using certain services or exercising rights’, i.e., they are earmarked revenues. The Croatian system of social security contributions covers pension and health insurance. Certain family benefits and social aid programs complement the system. Unlike in some other systems, there are no special rules for public servants. Generally, it covers main social risks—old age, decease and invalidity, risk of temporary incapacity of work because of sickness and maternity. In Croatia, contributions represent an important budget revenue, accounting for 17.3% of total budget revenues in 2020, which makes it the second largest group of public revenues. Tax authorities within tax collection system collect social contributions as well.

Under the Contributions Act,⁵⁴ there are three types of compulsory insurance systems: compulsory pension insurance based on inter-generational solidarity (first pillar), compulsory pension insurance based on individual capitalised savings (second pillar) and mandatory health insurance contribution. For each of the insurance systems, the Contributions Act sets out the obligation to pay contributions: (a)

50 Regulation (EU) no 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269 10.10.2013, p. 1) Amended by: Regulation (EU) 2016/2339 of the European Parliament and of the Council of 14 December 2016, OJ L 354 of 23.12.2016 p. 32, Regulation (EU) 2019/474 of the European Parliament and of the Council of 19 March 2019, OJ L 83 of 25.3.2019, p. 38 and Regulation (EU) 2019/632 of the European Parliament and of the Council of 17 April 2019, OJ L 111 of 25.4.2019, p. 54.

51 Act on Implementation of EU Customs Legislation, OG NN 40/16.

52 Customs Service Act, OG 68/13, 30/14, 115/16, 39/19, 98/19.

53 General Tax Act, Article 2, paragraph 3, OG 115/16, 106/18, 121/19, 32/20, 42/20.

54 Contributions Act, OG 84/08, 152/08, 94/09, 18/11, 22/12, 144/12, 148/13, 41/14, 143/14, 115/16, 106/18.

compulsory pension contribution based on inter-generational solidarity (15%), (b) compulsory pension insurance based on individual capitalised savings (5%), and (c) compulsory health insurance and health insurance for work injury and occupational disease (16.5%).

Compulsory pension contributions are contributions ‘*from the basis*’ (meaning due by the insurer or employee) and compulsory health contributions are contributions ‘*on the basis*’ (due by the insurer or employer).

All insured persons have so-called insurance base determining their ‘status’—rights, contributions they are subject to, and rates. There are three insurance bases: work/social status; special and particular circumstances; health protection of the foreigners. ‘Insurance holders’ (i.e., the Croatian Pension Insurance Fund and Croatian Health Insurance Fund) determine the insurance base.

The basis of the social contributions is (taxable) income, or it is calculated by the formula (for self-employed insured persons). Besides the standard base, there is also a minimum and a maximum base.

3.2.6. *Tax procedure and tax administration*

Tax procedure in Croatia⁵⁵ is regulated by the General Tax Act,⁵⁶ which is in fact a tax procedure act. The act is *lex generalis* in relation to specific tax legislation; however, it is also a *lex specialis* in relation to General Administrative Procedure Act,⁵⁷ which is applied in case when some issues have not been regulated by the General Tax Act. Under the *lex specialis derogat legi generali* principle, the General Tax Act has the advantage in application.

As set out in Article 1 of the General Tax Act, it ‘regulates the relationship between taxpayers and tax authorities applying the regulations on taxation and other public dues, if not regulated otherwise by special acts on certain types of taxes and other public charges, and represents the joint tax system basis.’ Therefore, it is often concluded that the General Tax Act is a systemic act, regulating the field of taxation, and applied to all public dues, along with the special tax acts.

The General Tax Act introduces the concepts of taxes and other public dues (as explained previously in this chapter) as well as the tax authority, as ‘a body of the state administration, an administrative body of a regional self-government unit or an administrative body of a local self-government unit the competences of which encompass the tasks of assessing and/or auditing and/or collecting taxes’. The act continues with the elaboration of basic principles of tax procedure (such as the principles of non-retroactivity, legality, material truth, certainty, and language), the right to be heard; the principles of tax secrecy and good faith, the economic approach principle and the anti-abuse principle regarding fraud). The act sets out provision on taxpayers’ rights, competencies, representations, and obligations. The procedural

55 For a detailed description of tax procedure in Croatia, see Arbutina and Rogić Lugarić, 2017.

56 General Tax Act, OG 115/16, 106/18, 121/19, 32/20, 42/20.

57 General Administrative Procedure Act, OG 47/09, 110/21.

provisions provide rules on jurisdiction, documents used and filed in tax procedure, the establishing of facts essential for taxation, filing tax returns, and tax assessment. The act continues with the rules of tax supervision and enforcement procedure. The final part of the Act addresses legal remedies and provides rules on tax violations.

The Tax Administration⁵⁸ is an administrative body of the Ministry of Finance.⁵⁹ Its organizational structure reflects the administrative organization of the state—it consists of the Central Office in Zagreb, branch offices operating in counties and local branch offices set up in cities and municipalities. Their main competence is to implement tax regulations and regulations concerning the payment of obligatory contributions. The main duties of the Tax Administration are normative activities, keeping the tax registers and issuing documents, exchange of information with other public authorities and international information exchange, assessment and collection of taxes and obligatory contributions, tax audit, enforced collection of taxes and contributions, taxpayers' services, and misdemeanour procedure. The competencies and the organization of the Tax Administration are stipulated by the Tax Administration Act.⁶⁰

3.3. Summary and current regulatory challenges

As a relatively new legal discipline, financial law in Croatia has seen substantial changes and reforms. One could observe two main periods. The first period, 1990–2000, could be called the formative period in which the modern tax and budgetary system is established and the main taxes are introduced. The second period has been a period of 'upgrading' with an emphasis on (tax) procedure, improving the relationship between tax authorities and taxpayers, improving budgetary principles and procedures, including control of the use of public funds, etc. These efforts are especially visible in the second part of the period (after the economic and financial crisis). Under the different nature of the periods, two main influences could be identified. While German legal tradition was dominant in the formative period, accession to the EU and the need for the harmonization of tax law (and public finances regulations) profoundly affected the 'upgrading period', which is still ongoing.

As previously mentioned, Croatia has taken a comprehensive approach to the financial law. In that context, the importance of the constitutional foundation of financial law lies mainly in the constitutional principles and guarantees. However, it is well illustrated that the result is a very broad and dynamic area and the division on the sub-disciplines, theoretically, practically, and regulatory, is eminent. Nevertheless, integral parts are closely linked and interrelated. This interrelation is increasingly acknowledged in financial management and during times of crisis. For instance, the entire public finance system is faced with two recent 'disasters'—an

58 More information on Croatian Tax Administration is available at https://www.porezna-uprava.hr/en/EN_o_nama/Pages/default.aspx

59 For more information on the challenges of adjusting the Croatian Tax Administration to the EU requirements, see Žunić Kovačević, 2020.

60 Tax Administration Act, OG 115/16, 98/19.

earthquake and the pandemic—and their final consequences are yet to be seen. One of them, accidentally or not, might be raised awareness of the importance of the financial management. It is interesting that recent regulatory changes in budgetary law concern predominantly financial management, and likewise indicate future tendencies.

As to the future regulatory challenges, three might be emphasised. The first challenge is tax law, especially the improvement of tax procedure and the (continuation of) modernization of the relationship between tax authorities and tax administration. Undoubtedly, the time has come for a new strategy and vision of the relationship between the main parties and changes in the current, mostly traditional approach to forming that relationship. As to the new taxes, one of the crucial questions relates to the introduction of real estate tax and digital taxes.

The second challenge is related to the (continuation of) the consolidation of public finances. Croatia experienced a period of stable economic growth and even realised a budgetary surplus and consequently reduced public debt. Unfortunately, the pandemic disrupted and postponed positive trends.

The third challenge is the process of decentralization, which has been progressing for the last twenty years. The importance of local state is, despite the effort, growing very slowly. However, the process will depend on taxation reforms and presumably wait for better times.

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Regulation of Public Finances in the Czech Republic in Light of Financial Constitutionality

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ABSTRACT

This chapter deals with the basic features of financial law in the Czech Republic. The authors present Czech financial law using the branch-creating criteria: a specific object of legal regulation, a specific method of regulation, a system coherence of financial law norms, and a social acceptance. As the legal relationships regulated by the financial law are very diverse, the Brno legal school uses two groups of these relationships. The fiscal part of financial law deals with the legal relationships created, implemented, and expired in the process of creating, distribution, and use of public monetary funds. It covers tax law, budgetary law, and public subsidies law. The non-fiscal part of financial law deals with the legal relationships created, implemented, and expired in connection with ensuring the functioning of the monetary and financial system. The non-fiscal part covers monetary and foreign exchange law, financial markets law, gaming law, hallmark law, and public procurement law.

KEYWORDS

Financial law, tax law, budget, tax, Czech Republic.

1. Introduction

In Western Europe and most developed countries, the term ‘financial law’ is rarely used. Law schools and legal science prefer more narrowly focused courses and scientific disciplines, such as tax law, fiscal law, budgetary law, banking law, capital markets law, etc. In Central and Eastern European countries, financial law covers not only these disciplines. It is one of the most structured and complicated branches of law, moreover, it is greatly influenced by economic development and political intents. Financial law is an area of law that is continually evolving, with new laws being passed or existing laws being amended. This hyperactivity stems not just from rapid economic development, to which the law sometimes reacts quickly, and sometimes slowly and with more difficulty, but also from European Union law, which forces EU Member States to incorporate hundreds of EU directives into national legislation.¹

| 1 Radvan, 2020, p. 9. |

In the Czech Republic, financial law is defined as a system of legal norms regulating public finances. It is not possible to state that finance and money are synonyms. Finances are legal relations where money is the object of these relations. Financial law then regulates legal relationships created, implemented, and expired in public financial activities. These financial activities are realized by the state, local self-government units, and the public sector in general. The actions and relations within the financial activities have different characteristics, and the models of the subjects' behaviour are diverse. That is why individual categories of financial activities need a specific legal regulation, as well as harmonized regulation with the other types of financial activities to secure the proper functioning of public finances and the state.²

As the legal relationships regulated by the financial law are very diverse, the Brno legal school uses two groups of these relationships: (a) the fiscal part of financial law deals with the legal relationships created, implemented, and expired in the process of creating, distribution, and use of public monetary funds; (b) the non-fiscal part of financial law deals with the legal relationships created, implemented, and expired in connection with ensuring the functioning of the monetary and financial system.³

Both fiscal and non-fiscal relationships are of an economic nature. The content, creation, interpretation, and application of legal norms are also influenced by the type of economy in the given country and the economic model resulting from the government's economic policies. Financial law relationships are monetary relationships *sui generis*, mostly under public law, although pursuant to the law, certain relationships from the category of private finances can represent financial facts establishing the creation, change, or expiration of a monetary relationship falling under the category of financial law relationships. A financial law relationship must be considered a relationship with no equivalent and no direct counter-performance by the public monetary fund to the entity fulfilling its financial law obligation. They are also irrecoverable. Financial law regulation reflects the priorities of the public interest in the given area. All these characteristics make it clear that the relationships in question are power relationships: one of the participants is endowed by law with superior power, namely with the power to force performance of obligations using the threat of sanction or by actually enforcing the sanction from and within the confines of the law, and the other participant is obliged by law to fulfil the obligation stipulated by law, permit verification of the performance of the participant's obligation, and submit to potential sanctions, all insofar as the superior entity is proceeding within the confines of the authorizations, resources, and procedures stipulated by law. Unlike the object of branches of law classified under private law, where these social relationships can be classified as horizontal ("peer-to-peer") relationships, relationships regulated by financial law belong to the category of public law relationships,

2 Mrkývka, 2012, p. 50; Boháč, 2017, pp. 43-46.

3 Mrkývka, 2012, p. 49.

i.e., relationships between entities on an unequal footing, that is, vertical relationships, and considering the method of regulation, they are also potentially diagonal relationships.⁴

2. Method of regulation

The method applied in financial law is essentially a modified version of the administrative law method. The administrative law regulation method is based on the effect of public authorities on the recipients of public authority, especially by means of the norms that are enforceable by public authorities and contained in normative administrative acts—the bylaws and ordinances issued by public authorities, authorized in and for the implementation of the law and within the limits stipulated by law (sub-statutory regulations), as well as by means of individual administrative acts—decisions of the public authorities authorized by law to make such decisions in the specific administrative matter. The modification might be demonstrated, e.g., by a lower level of applying sub-statutory regulations in financial law and specifically in tax law regulation. Public administration authorities apply economic instruments to a greater extent in this area to affect recipients (the Czech National Bank’s interest rates, tax credits, as well as other corrective elements, tax holidays, etc.). Certain private law elements also modify the administrative law method, such as agreeing on the conditions for using grant funds, applying the principle of competition in using public funds in public procurement, options of negotiating taxes, postponing taxes, payment calendars, etc. Certain administrative activities are also delegated to private law entities, especially in tax law. For example, in a labour 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 such conduct. The authority to withhold tax is thus delegated from the state to a private law entity. Similarly, a bank withholds tax on the interest accrued, a joint-stock company withholds tax on dividends, a seller collects VAT from a buyer along with the sale price, etc.⁵

Especially in tax law, a principle of self-application is applied. The taxpayer applies tax law norms to itself by determining the tax base using its knowledge, uses the relevant tax rate for itself, and applies the corrective elements. The taxpayer then delivers the completed tax return to the tax administrator, which assesses the tax tacitly, i.e., implicitly, provided that it has no reservations regarding the correctness and completeness of the return. In most cases, therefore, there is no interaction at all between the tax administrator and the taxpayer.

4 Radvan, 2014, pp. 815-816; Radvan, 2020, pp. 9-11.

5 Radvan, 2014, pp. 816-818; Radvan, 2020, pp. 11-13.

The mandatory nature of financial law relationships might be in certain instances moderated with an element of choice, especially in tax law (voluntary VAT payer, method of depreciation, lump-sum expenditures for income taxes, etc.).⁶

3. System coherence of financial law norms

The system coherence of financial law norms can be divided into external system coherence, expressing the relationship to other branches of legislation, and internal system coherence, i.e., within the system of financial law.

No branch of law is completely independent, and one branch's norms have a certain relationship to the norms in another branch. The primary consideration should be given to constitutional law, as constitutions generally fundamentally regulate certain institutions, institutes, and policies relating exclusively to financial law, as well as general policies and principles that apply to all legislation. More detailed information follows in the chapter on financial constitutionality. Financial law, like the entire legal system in the Czech Republic, is influenced by international law. In some cases, international law norms regulate the social relationships of the object of financial law, e.g., with the application of double tax avoidance agreements. A significant element is the adoption of European standards and, in some respects, references to European law norms. This fact is visible mainly in capital markets law and indirect taxation. Concerning public law, administrative law is the closest to financial law. Both branches use a similar method of legal regulation. Financial proceedings are a type of administrative proceedings, subject to administrative procedural law's general policies and principles. Except for tax proceedings, the Administrative Procedural Code is used in the alternative to financial procedural law. Administrative charges are taxes *sensu lato*, administrative penalties are public monetary fund revenues, etc. Criminal law contains the constituent elements of criminal offences related to breach of financial law norms. Environmental law is related to financial law, mainly through the sanctions, fees, contributions, and payments related to the environment, which are public fund revenue. The link to private law is seemingly less close. However, financial law norms use some institutions and institutes regulated by the norms of civil law, commercial law, family law, or labour law, including the definitions regulated therein. At a certain moment stipulated by financial law, some relationships governed by the norms of civil law, commercial law, or labour law become a fact establishing the creation, change, or expiration of a tax law relationship. Regarding procedural law norms, civil procedural law is bound to financial law on the one hand by court fees (taxes *sensu lato*) and on the other by administrative justice, i.e., reviewing financial law decisions by the court as one of the means of monitoring legality in public administration.⁷

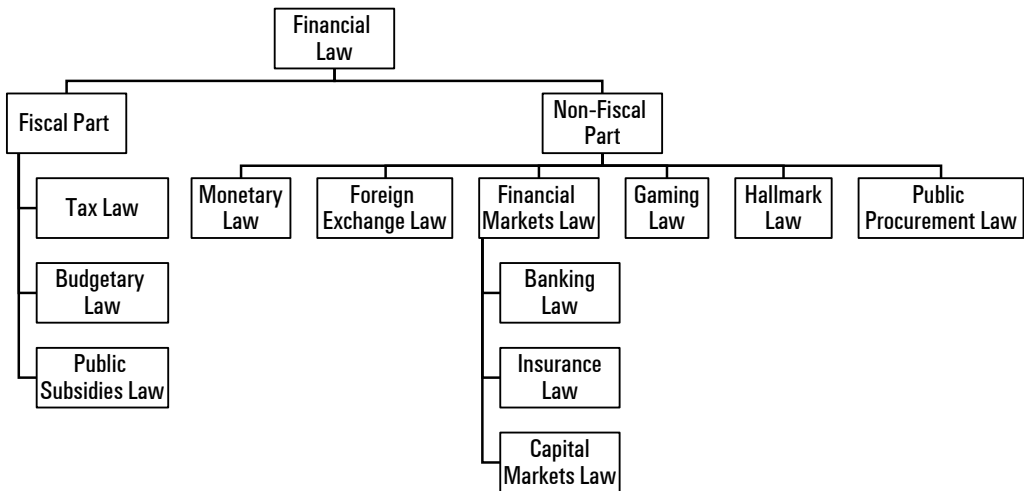
6 Radvan, 2014, pp. 818; Radvan, 2020, pp. 13-14.

7 Radvan, 2014, pp. 818-821; Radvan, 2020, pp. 14-17.

Internal system coherence is expressed in the system configuration of financial law. Like other branches of law, financial law can be divided into a general and specific section. The general section is made up of general information regarding financial law and its object, norms, and relationships. A review of financial law can gradually lead to the conclusion that although the general section of financial law is not codified, it does contain certain institutes of a general nature that are completed in the individual sections of financial law, as well as certain general principles applying to the financial law, which serve to create, implement, and interpret it.⁸

The specific section contains the legislation regarding individual financial law relationships. It has its substantive and procedural parts. The financial procedural law is included primarily in financial law acts, or in the Administrative Procedural Code, reps. in Tax (Procedural) Code for tax law. Besides substantive and procedural parts, there are judicial financial law (regulating the decision-making processes in matters of substantive financial law in court, particularly in administrative justice and the judicial enforcement of financial administration decisions), administrative (organizational) financial law (regulating the organization and legal position of financial administration authorities), and criminal financial law (defining the foundations and consequences of liability for breach of tax law norms).⁹

Chart 1: System of Czech financial law



4. Financial constitutionality

To deal with financial constitutionality in the Czech Republic, it is necessary to consider the Constitution of the Czech Republic and the Charter of Fundamental Rights

8 Radvan, 2014, pp. 821-824; Radvan, 2020, pp. 18-20.

9 Radvan, 2014, pp. 818-821; Radvan, 2020, pp. 18-20.

and Freedoms, which is part of the Czech constitution *sensu lato* (the constitutional order), together with the constitution *sensu stricto*.¹⁰ Public finances are not regulated in the Czech constitutional order in detail; there is no specific part concerning public finances, as the division of powers seems to be the criterion for the structure of the constitution. However, there are specific parts of the constitution for the Czech National Bank and the Supreme Audit Office. That is why we may talk about the control power and the bank power as the fourth and the fifth power in the state. The bank power could then be easily transferred to the financial power, with the other financial institutes named in the constitution.

The current constitutional regulation is limited only to several financial institutes. The first area is the budget law: the constitution states that the state budget is the act. The government has a monopoly on drafting of the state budget and the final state account. The Chamber of Deputies of the Parliament of the Czech Republic has a monopoly on discussing these proposals; there are no rights for the Senate in this field. The Supreme Audit Office controls the management of state property and the implementation of the state budget. The constitution guarantees the budget autonomy of local self-government units. However, fiscal federalism is not guaranteed at the constitutional level.¹¹

The tax law's constitutional regulation is limited to one sentence in the Charter of Fundamental Rights and Freedoms, which states that taxes and fees can be imposed only by acts. It means not only taxes, but also all fees (charges) and other taxes *sensu lato* must be imposed by acts, not just by municipal generally binding ordinances, governmental decrees, or by ordinances issued by ministries. The interesting fact is that this principle is set in the article dealing with the protection of ownership rights, and taxes are then limiting ownership rights. The missing constitutional principles must be supplemented by the decision-making activity of the Constitutional Court. The court considers mainly the aspects of extreme disproportionality (the so-called choking effect), and non-accessory and accessory equality.¹²

From the area of public subsidies law, the Charter of Fundamental Rights and Freedoms guarantees the free provision of public goods in the field of education. It also establishes the existence of public health insurance, i.e., the creation of specific public monetary funds, and the right to free provision of healthcare as a public good.

The last financial law area regulated at the constitutional level is the banking law. The constitution states that the Czech National Bank is the central bank of the state and defines the main objective of banks' activities: to ensure price stability. The activities of the Czech National Bank may be interfered with only based on law.

10 Radvan, 2016a, p. 517.

11 Radvan, Mrkývka and Schweigl, 2018, pp. 895-906; Radvan, Mrkývka and Schweigl, 2021, pp. 89-120.

12 Constitutional Court, Pl. ÚS 29/08.

5. The fiscal part of financial law

The fiscal part of financial law deals with the legal relationships created, implemented, and expired in the process of creating, distribution, and use of public monetary funds. The fiscal part of financial law includes the tax law (public budget revenues),¹³ the budgetary law, and the public subsidies law (public budget expenditures). It would be possible to include the accounting law as a sub-branch of financial law, too, as one of the accounting functions is a tax function (to get the income tax base).

5.1. Tax law¹⁴

While in the US and Western Europe, tax law science has a longstanding tradition and tax law is considered an independent branch of law; according to Central and Eastern European legal sciences, tax law is a sub-branch of financial law.

Tax law is a system of legal norms regulating social relationships created, implemented, and expired in the process of creating public monetary funds. These social relationships are called taxes in the broader sense (*taxes sensu lato*). *Taxes sensu lato*, in addition to *taxes sensu stricto*, also include charges, customs duties, and similar levies, provided that they are paid into public funds (the state budget, local self-government budgets, state funds, etc.). Most of what was stated above for the object of financial law is valid for tax law: tax law relationships are power relationships of an economic nature, monetary, irrecoverable, with no equivalent and no direct counter-performance by the public monetary fund or fund administrator to the entity fulfilling its tax law obligation (e.g., paying taxes).

The method applied in tax law is the same as for financial law: a modified version of the administrative law method. Modifications, as mentioned above, are valid primarily for the tax law (a lessened application of sub-statutory regulations, economic instruments to affect taxpayers' behaviour, private law elements in public law regulation, the delegation of certain administrative activities to private law entities, mandates frequently moderated with an element of choice, etc.). The most important modification is self-application. According to this principle, the taxpayer applies tax law norms to itself. The taxpayer's knowledge must be detailed enough to determine the tax base, use the relevant tax rate, apply all possible corrective elements, deliver the completed tax return to the tax administrator on time, etc. If there are no doubts about the correctness of the tax return, there is no interaction at all between the tax administrator and the taxpayer.

The tax law has its general and specific parts. The general part is made up of general information regarding tax law and its object, norms, and relationships. It contains certain institutes of a general nature and general principles applying to the tax law as a whole. The general part is not codified; however, these general issues

13 Boháč, 2006, pp. 6–10.

14 For this chapter, several parts from Radvan (2020) are used.

could appear, e.g., in existing regulations of a more procedural nature (Tax Code) as well as entirely new legislation, e.g., the Public Finance Act.¹⁵

The specific part contains the legislation regarding individual tax law relationships. Their regulation is split between many different legal regulations. However, it is possible to define two sub-branches of tax law: (a) tax law (in the narrow sense; *sensu stricto*)—regulating public revenues from taxes (i.e., taxes *sensu stricto*); (b) charge law—regulating public budget revenues from charges/fees.

Sometimes customs law creates a specific part of financial law or tax law. On the other hand, customs law is in many ways similar to the tax law *sensu lato*, resp. charge law, as it regulates the essential accessorial public revenue: a customs duty. Customs duties have characteristics of charges. As social security (and sometimes even health) contributions are considered taxes, they should be included, too. Based on their characteristics, they might belong to tax law. However, in the Czech Republic, they create a part of social security law.

Both tax law *sensu stricto* and charge law have the substantive part (substantive tax law) and procedural part (procedural tax law). The norms of the substantive part determine the structural elements of the tax: persons burdened with tax liability (taxpayers and payors/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 regulating the position of entities in proceedings on the rights, legally protected interests, and obligations resulting for participants from the substantive tax law. The procedural part also deals with procedural law practices in decision-making processes before tax administration authorities and legal and natural persons, if they were entrusted, by law or based on the law, with making decisions on the rights, legally protected interests, and obligations of other entities resulting from substantive tax law norms. The procedural part also covers the practices of subordinate entities when implementing substantive tax law, which does not involve proceedings before public authorities, but includes procedures that the subject (the subject of taxation, e.g., taxpayer, payor) applies to him, or the payor sets a legal obligation for the taxpayer based on substantive tax law (e.g., tax liability) using the prescribed technique (tax technique), declares such fact in the prescribed manner to the superior entity (authority), with this declaration having the same legal effect as a judgment in legal proceedings, and carries out the declared obligation, again in the prescribed manner. Finally, the legislative process in creating, passing, and monitoring fulfilment of public budgets pursuant to the financial (tax) documents is a part of the procedural part.¹⁶

Besides the substantive and the procedural parts, there are other parts of the financial law system. The judicial tax law regulates the decision-making processes in matters of substantive tax law in court, particularly in administrative justice and judicial enforcement of tax administration decisions. The administrative (organizational)

15 Radvan, 2020, p. 18; Radvan, 2014, p. 822.

16 Radvan, 2020, p. 19; Radvan, 2014, pp. 822-823.

tax law deals with tax administration (and customs) authorities in public revenues from taxes, charges, and customs. The criminal tax law defines the foundations and consequences of liability for breach of tax law norms. The legal regulation is contained in the Tax Code and Criminal Code and, to a lesser extent, in the individual, predominantly substantive, tax regulations (e.g., in the Act on Local Charges).¹⁷

The term of tax is not defined in the Czech legal regulation. According to the Brno legal school, a tax (*sensu stricto*) is an obligatory amount defined by an act with a laid down rate, which is more-or-less regularly collected from the incomes of economic subjects to the public budgets on the irrecoverable principle. A charge (a fee) is an obligatory irrecoverable amount defined by an act and collected by the state or other public corporations for certain legal acts. In contrast to tax, this amount is irregular (*ad hoc*) and the fee payor is eligible to ask for some consideration. All public payments (taxes *sensu lato*) have either tax or fee characteristics, no matter the legislators often tend to find different titles for taxes *sensu largo* (contributions, insurance, toll, levy, tariff, and lots of other varieties in national languages). Moreover, the difference between 'tax' and 'fee/charge' is more theoretical than practical. As stated above, the condition *sine qua non* for every tax *sensu lato* is the act imposing a tax.

From a purely legal perspective, it is possible to define tax as a legal relationship with typical structural components for any legal relationship: subject, object, and content. The subjects are usually the taxpayer and the tax administrator. The object of the tax relationship might be defined as a tax in the economic sense, as stated above. Both subjects have rights and obligations; this is the content of the tax relationship. However, tax relationships have more common components: all Czech legal acts dealing with taxes and fees have a very similar structure according to the basic structural components (object of taxation, tax subject, tax base, tax rate, correction components, payment conditions, tax administrator, budget destination).¹⁸

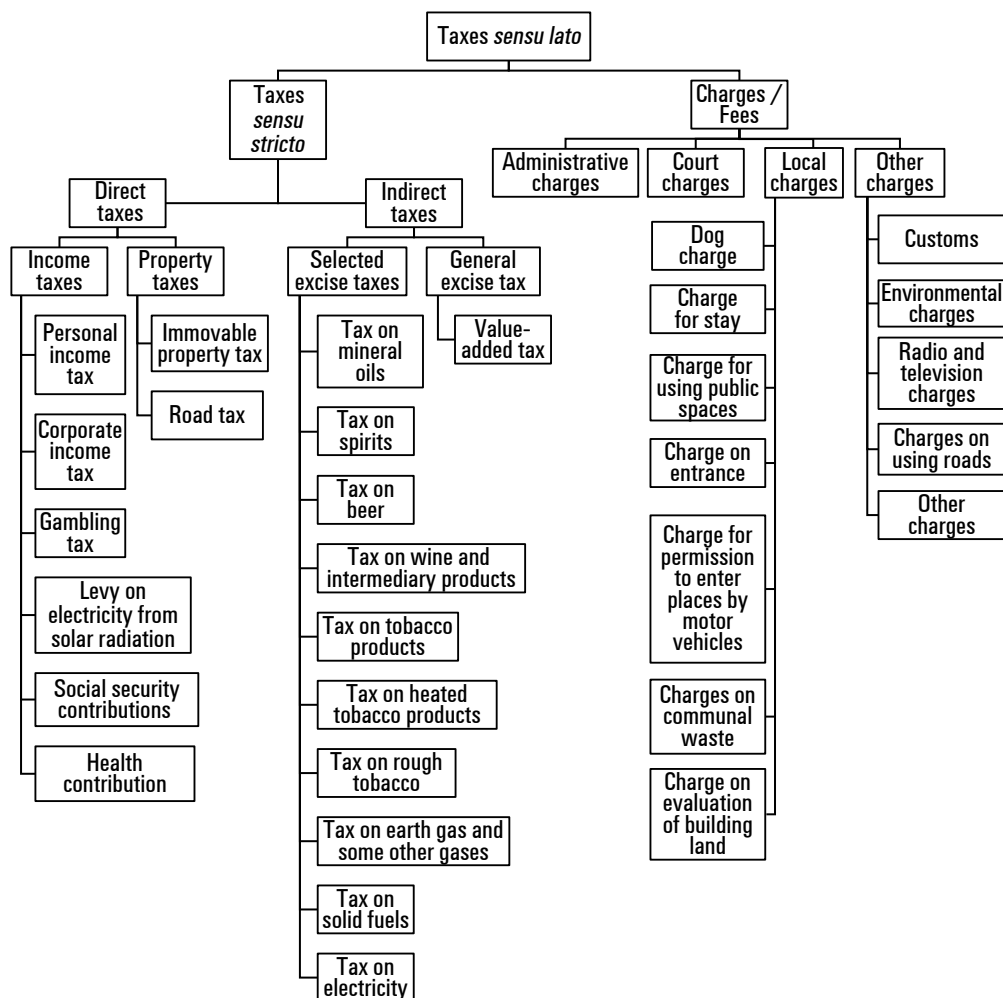
5.1.1. System of taxes

In the following chart, taxes *sensu lato* are divided into two main groups: taxes *sensu stricto* and charges (fees). Individual taxes *sensu stricto* are grouped according to the official titles; however, according to their characteristics, they might be transferred from charges to taxes *sensu stricto*, e.g., a dog charge is more a tax than a charge. The same applies to radio and television charges.

The most common classification of taxes *sensu stricto* is the classification according to the impact. Direct taxes are assessed to the taxpayer according to the income or property, while indirect taxes are paid and collected in the prices of goods and services, not respecting the personal situation of the taxpayer.

17 Radvan, 2020, p. 20; Radvan, 2014, pp. 823-824; Moravec and Radvan, 2016, pp. 259-282.

18 Radvan, 2020, pp. 25-27.

Chart 2: System of Czech taxes

As is obvious from the chart, social security contributions (pension insurance premiums, contribution to the state employment policy, sickness insurance premiums) and health contribution are included even if they create a part of social security law in the Czech legal science. This science as well states that customs law creates a specific part of financial law; however, the characteristics of customs are the same as of any other charge.

Compared to the other European tax systems, the Czech one is missing traditional property transfer taxes. Inheritance and gift taxes were officially abolished in 2014. However, in practice, inheritances and gifts are taxed by income taxes. The tax on acquisition of immovable property was cancelled in 2020 retroactively for all property transferred in the cadastre since 1 December 2019.

5.1.2. Income taxes

Both personal and corporate income taxes are regulated in one act, as the revenue from both taxes is generally distributed between the municipal budget, the regional budget, and the state budget. The personal income tax is paid by natural persons, while the corporate income tax is paid by all other entities, so that all legal subjects are liable to one income tax.

The personal income tax¹⁹ includes five possible objects of taxation, regardless of whether it is monetary or a non-monetary income, or whether the income was acquired by exchange: income from dependent activity (employment), from independent (business) activity, capital property income, rental (lease) income, and other income. For each of these incomes, it is necessary to calculate the so-called partial tax base. The sum of partial tax bases creates the tax base. Generally, the taxation of employees is higher than entrepreneurs: it is not possible to deduct any expenses from incomes to get the partial tax base. Some taxpayers are trying to become entrepreneurs, even if they must obey someone else's commands in the course of execution of work. This practice is called the Svarcsystem, and it is popular for the taxation of professional team sport athletes, too.²⁰ The Svarcsystem offers benefits not only for 'employees'; the 'employer' has no duty to pay social security and health contributions for 'employees'.

The other benefit for the businesspeople is the possibility to deduct lump-sum expenses except for real expenses to get the partial tax base. Compared to other countries, the lump-sum expenses are very high (e.g., 80% of the income from agricultural production or handicraft industry, 60% from other industry and trades, 40 % from other business as lawyers, doctors, etc., 30% from business rents), even if they are limited (in practice income of CZK 2,000,000).

The formula of assessing personal income tax is as follows:

Partial tax base § 6 (gross wages²¹)
 + Partial tax base § 7 (income—real/lump-sum expenses)
 + Partial tax base § 8 (income—expenses)
 + Partial tax base § 9 (income—real/lump-sum expenses)
 + Partial tax base § 10 (income—expenses)
 Tax base
 – Tax allowances and items deductible from the tax base
 Modified tax base (rounded down to whole hundreds)
 Tax *brutto* I (15%–23% of the tax base)
 – Tax reliefs
 Tax *brutto* II ≥ 0
 – Tax preferences for children
 Tax *netto* / Tax bonus

19 Radvan, 2020, pp. 31-42.

20 Radvan, 2013, pp. 301-313; Radvan and Neckář, 2016, pp. 40-46.

21 Until the end of 2020, the partial tax base was the super-gross wage, i.e., the gross wage increased by sums of social security and health contributions paid by the employer (33.8% of the gross income).

Many incomes are not liable to tax or are exempted from taxation. Exempted incomes with a value higher than CZK 5,000,000 must be reported to the tax office. The most common tax allowances are charitable gifts, pension insurance and life insurance payments, and interest on housing loans. The most essential items deductible from the tax base are a tax loss in five previous taxable periods and costs for research and development. The tax rate is a percentual progressive of 15%, resp. 23% for incomes higher than average wage multiplied by 48. The withholding tax rate is 15%. It is used mainly for capital property incomes or employment agreement if the gross wage does not exceed CZK 10,000 in one month. The basic tax relief of CZK 27,840 replaces the non-taxable minimum. Other tax reliefs reflect the social status of the taxpayer (spouse with limited incomes, disability, student, child in kindergarten) or have stimulation effects in business (disabled employees, electronic revenue registry). Tax preferences for children differ according to the number of children. If the tax after this reduction would be in minus, the tax preference is divided into two parts: tax relief up to zero tax and tax bonus. If the taxpayer is economically active, the tax bonus (up to CZK 60,300) should be paid back to the taxpayer.

The corporate income tax²² is paid by entities such as companies (limited –partnerships–limited partners’ shares in profits; limited liability companies, joint-stock companies, and cooperatives), civil corporations, political parties, state corporations, banks, insurance companies, investment corporations, state funds, pension funds, churches, etc. The tax base is generally the economic income from bookkeeping, i.e., income from all activities and management of all types of property reduced by the expenses incurred to generate, assure, and maintain income. The most important items deductible from the tax base are a tax loss in five previous taxable periods and costs for research and development. The tax rate is a percentual linear of 19%. The taxpayer can use tax reliefs for disabled employees.

While personal income tax is relatively low in the Czech Republic, social security and health contributions²³ are very high (13.5% for health contributions and 31.3% for social security contributions). The maximum annual cap for the social security contributions base is 48 times the average monthly wage per year, which copies the second level of the personal income tax rate. There is no such cap for health contributions.

The gambling tax²⁴ is a kind of surcharge to the income tax paid by the gambling operators. The tax base may consist of up to eight partial tax bases for individual types of gambling: lotteries, odds betting, totalizator games, bingo, technical games (gambling machines), live games, raffles, and small-sized tournaments. Partial tax bases are the amounts by which the sums of received deposits exceed the sums of total winnings paid and returned deposits. The tax rate is higher for the partial tax base on lotteries and technical games (35%), lower for other partial tax bases (23%). The

22 Radvan, 2020, pp. 45-48.

23 Ibid., pp. 43-44.

24 Ibid., 2020, pp. 65-66; Boháč and Krasulová, 2017; Radvan, 2017, pp. 529-570.

minimal fixed tax for each technical game device is set. The revenue is distributed between the central budget and the municipal budget.

The levy on electricity from solar radiation²⁵ is a special tax (surcharge) on profit. The object of the levy is the electricity made from solar energy from 1 January 2014 in the power plants using solar radiation, and placed in service between 1 January 2010 and 31 December 2010, as long as the right to the support of electricity generation from renewable resources continues. The taxpayer is a producer of electricity made from solar energy, and the tax payor is an electricity supplier to the final consumer. The tax rate is 10% (11% if there is a green bonus) from the amount without VAT paid from electricity supplier to electricity producer for electricity made from solar energy.

5.1.3. Property taxes

The immovable property tax²⁶ in the Czech Republic is one of the lowest recurrent property taxes worldwide. There are officially two parts of immovable property tax: land tax and building tax. However, the building tax deals with two other types of property, creating specific flats and non-residential premises (space) tax. All property taxes are generally paid by the owners to the tax office, and the revenue belongs to municipalities. It is very easy to identify the property and its owner, as the cadastre is used. If some information is not included in the cadastre (a built-up area of houses, number of floors, running a business in the property, etc.), it is possible to use Internet tools such as online maps or Google Street View. The reason the property tax revenue is so low is that the unit-based system prevails in the construction of the tax base and the high number of unjustified exemptions,²⁷ e.g., those used for business (water conduits and sewerages, energy distribution structures, public transport structures as roads, highways, railways, airports, ports, etc.).

The property tax base is always connected with the area (land) or built-up area (building) of property. In the case of agricultural land, forests, and ponds, the price is used; however, for agricultural land specifically, it remains the area multiplied by an average price per square metre, laid down in a decree. For forests and ponds, the price may be assessed by an expert; however, most taxpayers prefer to multiply the area by a fixed amount of CZK 3.80 per square metre. The value tax base is then too far from the actual market value. If the tax base is the value, the tax rate is a percentual linear of 0.75% or even 0.25%. For the area tax base, the basic tax rate is fixed between CZK 0.20 and CZK 10 per square metre depending on the type of the property and the way it is used. There are several multiplying coefficients for additional ground floors, for bigger cities, etc. Some possibilities to increase the tax are at the disposal of municipalities. The most important is the local coefficient multiplying the final tax between 1.1 and 5.

25 Radvan, 2020, p. 67.

26 Ibid., 2020, pp. 49-58.

27 Radvan, 2019a, pp. 13-31.

The road tax is a tax on motor vehicles.²⁸ The objects of the road tax are all motor vehicles registered and operated in the Czech Republic. Vehicles of a total weight below 3.5 tons are liable to tax only if used to run a business. The taxpayer is generally the operator of the vehicle. The tax exemption is usually motivated by a public utility and ecological aspects. The tax base differs from the type of vehicle:²⁹ for motor cars, it is the engine capacity in cm³; for the other vehicles, it is the sum of the highest admissible weights on axles in tons and the number of axles. The tax rate is fixed for every vehicle per year between CZK 1,200 and CZK 37,800. When an employer sends an employee on a business trip and the employee uses his or her own vehicle, the employer is obliged to pay road tax, and he has the possibility to pay a special tax rate of CZK 25 per day. There are discounts for new vehicles, presuming that they meet ecological standards. If using combined transport (transport of cargo on roads combined with transport on railroads or water roads), the taxpayer can set up a claim to tax relief up to 100%. The entire revenue is the income of the State Fund of Transport Infrastructure.

5.1.4. Indirect taxes

Value-added tax (VAT) is the general indirect tax.³⁰ The national regulation follows the EU directives. Taxable persons (payors) are individuals and legal entities that carry out economic activities such as trading, manufacturing activities, and the provision of services in the Czech Republic. The taxable person is usually the one whose turnover exceeds CZK 1,000,000 in the past twelve months. Some persons use the possibility given by the VAT Act to be registered voluntarily. The tax base is a monetary amount that was received or is to be received as a consideration by a VAT payor from a person to whom the VAT payor realized a taxable supply. The tax base also comprises customs, charges (fees), selective excise taxes, etc. There are three VAT rates: the basic tax rate of 21% and two reduced tax rates of 15% and 10%. The lists of goods and services liable to reduced VAT rates create the annexes to the VAT Act. The VAT period is a month (VAT payor whose turnover in the previous calendar year was more than CZK 10,000,000) or a calendar quarter (turnover lower than CZK 10,000,000; however, this payor may use a calendar month, too). The VAT revenue is distributed between municipal budget, region budget, and the state budget.

Selected excise taxes are indirect taxes³¹ on specific products that are not healthy (alcohol, tobacco) or are dangerous for nature (petroleum oils). In the Czech Republic, there are eight excise taxes fully harmonized with EU directives (on petroleum oils, spirits, beer, wine and semi-products, tobacco products, earth gas and other gases, solid fuels, and electricity³²) and two additional excise taxes on rough tobacco and on heated tobacco products. The tax rates are fixed, with the partial exception in the case

28 Radvan, 2020, pp. 43-45.

29 David, 2012, pp. 483-491.

30 Radvan, 2020, pp. 49-50.

31 Radvan, 2020, pp. 51-54.

32 Radvan, 2009, pp. 108-123.

of a tax on cigarettes. Generally, the tax rates follow the minimal possible tax rates according to the EU directives. In the case of a tax on beer, there are lower rates for small independent breweries. The tax rate for non-sparkling wine is zero. The taxable period for excise taxes is one month. The tax administrator is the customs office. The entire revenue from selected excise taxes is the income of the state budget except the revenue from petroleum oils excise tax, where the revenue is divided between the State Fund of Transport Infrastructure and the state budget.

5.1.5. Charges

The aim of the administrative charges³³ is to contribute by the applicant (taxpayer) to the administration of the state or local government administrative body because this activity is done in their own interest, and it would not be fair if everybody should pay for these activities. The second aim is to protect administrative bodies against useless administrative actions. The object of the charges is the administrative proceedings and other activities of the administrative office related to state administration. The concrete activities liable to charges and their rates are in the appendix of the Administrative Charges Act. The list of exemptions is very extensive; some exemptions concern taxpayers, some concern activities. The tax rates are fixed or percentual. If the charge is not paid, the charged operation will not be done.

There are two types of court charges: charges for proceedings and charges for activities.³⁴ In the appendix of the Court Charges Act, there is a list of charges with the rates. There are many exemptions because of economic reasons and state interest in injustice. The taxpayer is usually the plaintiff. The tax base is the price of the object of proceedings in CZK; the rate is usually percentual. If the charge is not paid, the proceedings usually cannot start.

Every municipality in the Czech Republic has a possibility to levy local charges (local fees, local taxes): the town council has an opportunity to decide whether the municipality will levy the local charge, and it can define the amount of this charge. The ordinance may not exceed the conditions defined by the Local Charges Act (e.g., the absolute charge rate or varieties of charges).³⁵ Czech municipalities in the Czech Republic have an opportunity to levy 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 waste³⁶ (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. Most of these charges are having fixed rates. They are administered by municipal offices.

33 Radvan, 2020, p. 59.

34 Ibid.

35 Ibid., pp. 55-58; Radvan, 2016b, pp. 69-82; Radvan, Mrkývka and Schweigl, 2018, pp. 895-906; Radvan, Mrkývka and Schweigl, 2021, pp. 89-120; Románová, Radvan and Schweigl, 2019, pp. 591-616.

36 Moravec and Radvan, 2016, pp. 259-282; Radvan, 2019b, pp. 1-19.

In the group of other charges, we should especially mention customs, television and radio charges, charges on using roads (time charge – vignette, electronic road toll), many types of ecological charges (on wastewater disposal, the discharge of pollutants into the air, waste, etc.).³⁷

5.1.6. *Tax procedure*

The Tax Code is a general act dealing with tax administration. It is used in situations when there is no special regulation in a special tax act. It defines the most important terms, the principles of tax administration, the delivery of tax decrees, and tax administration procedures such as how to assess the tax, how to pay it, legal remedies, tax execution, etc.³⁸ Czech tax law theory deals with several terms concerning tax procedures. Tax proceedings is the narrowest term covering the proceedings between the individual taxpayer and the tax administrator concerning individual tax in one taxable period. Tax administration includes all relationships between taxpayers and tax administrators. The tax process covers all approaches of all subjects in tax relationships, i.e., not only approaches within relationships between taxpayers and tax administrators but also between taxpayers (taxpayers and payors) themselves.³⁹

The tax proceedings generally start when the tax return is submitted. The principle of self-application is used: taxpayers must themselves calculate the tax in their tax return, including specifying exemptions, advantages, allowances, and deductions. Mostly the tax becomes due at the same time as the tax report. If the assessed tax does not differ from the tax stated in the tax return, the tax administrator is not obliged to inform the taxpayer about the result of the assessment. This approach is called the implied tax assessment. If there are doubts about the correctness, truthfulness, substantiation, or completeness of the tax return, the tax administrator starts the reproach proceedings: it informs taxpayers about these doubts and calls upon them to give their views or complete the incomplete data, etc. The tax administrator can also exercise a tax control or local tax examination, hear the witnesses, go through the paper proofs, etc. At the end of these proceedings, the tax administrator sets the tax base and prescribes the amount of tax and notifies the taxpayer by the reasoned tax assessment. If the tax return was not filed at all, or if the irregularities were not rectified within the time limit, the tax administrator may determine the tax base and assess the tax using ‘other tools’ (according to whatever materials and information without cooperation with the taxpayer). The tax administrator notifies the taxpayer by the tax assessment. The tax may not be assessed after the lapse of three years from the end of the time limit to file the tax return.⁴⁰ The right to collect and exact tax arrears ends six years after the arrears became payable.

37 Boháč, 2013.

38 Radvan, 2020, pp. 87-103; Radvan, Boháč and Brychta, 2020, pp. 393-434; Mrkývka and Neckář, 2007, pp. 203-212.

39 Radvan, 2020, pp. 87-88.

40 Ibid., pp. 92-94.

There are two types of remedial instruments. Ordinary remedial instruments (typically an appeal) can be used if the decision is not yet final. Extraordinary remedial instruments (re-opening of tax proceedings and review proceedings) are used for final decisions. With judicial appeals, the most frequent is the action against a decision of administrative authority and the cassation complaint as an extraordinary remedy. The constitutional complaint might be used against a decision that has gone into legal effect or other intervention by a public authority that interferes with constitutionally guaranteed rights and freedoms.⁴¹

5.2. Budgetary law

Budgetary law is a set of legal norms that regulate the system of public budgets, the content of public budgets, fund management, the budgetary process, and the relationships arising in the creation, distribution, and use of the financial assets in these public budgets. Budgetary law refers to the fact that through budgets, there is a redistribution of resources from resource-creating entities to those who do not create resources but who are an integral part of society. Budgetary law is commonly classified into three main parts: general (which defines general terms of budgeting, the various types of public budgets, budgetary principles and budget's functions), special (dealing with the special rules on individual public budgets types such as state budget, budgets of state funds, and budgets of local governmental units), procedural (containing the procedural rules of budget's creation, time limits and sanctions).⁴² The system of public budgets, their content, financial management, the budget process, and the related relations that arise in the distribution and use of funds, are all regulated by budgetary law.⁴³

All public budgets display several common basic features that are referred to as budgetary principles. These are the common characteristics underlying the preparation, adoption, management, and control of public budgets, derived from knowledge of budgetary practice. The most relevant of these principles are: a) the annual preparation and approval of public budgets (limiting the temporal validity of public budgets for one year, the carryover of funds to the following year is possible only to a limited extent); b) the timeliness of public budgets (the need for public budgets to be approved and published before the beginning of the financial year); c) time-limited use of funds (only revenue actually received and expenditures allocated during the actual calendar year are included in the budget, e.g., budgetary units need to spend their allocated funds by the end of the financial year); d) the reality and veracity of public budgets (public budgeting should be based on an analysis of economic processes and real numbers); e) the completeness of public budgets (a public budget should provide a complex coverage of all revenues and expenditures over a given territory); f) the unity of public budgets (which requires a uniform qualification and

41 Ibid., 2020, pp. 97-103.

42 Bakeš, 2012, p. 83.

43 Marková and Boháč, 2007, pp. 41-42.

classification of revenue and expenditure in public budgets); g) the clarity of public budgets (the budgetary structure should be clear, simple and comprehensible); h) the non-earmarking of revenue and earmarking of expenditure (budget revenue should not be earmarked for predetermined purposes, but, on the contrary, expenditure should be used only for a predetermined purpose; also: does not fully apply to fees, since these compulsory payments are usually paid in return for some public service); i) the long-term balance of public budgets (budgets are normally drawn up as a balanced); j) the publicity of public budgets (public budgets are made publicly available in an appropriate manner—this includes the possibility for citizens to comment on the published draft budget); k) the gross budgets (meaning drawing up public budgets containing total revenue and total expenditure); l) the efficiency and economy of public budgets (public funds should not be wasted); m) expenditure over revenue (expenditure should serve economic growth for which adequate resources should be provided: it is necessary to have objectives for which expenditure is needed and to provide the necessary revenue for this) and n) the identification of the budgetary implications of legislation (which should include quantifying the expected impact of new legislation on public budgets).

According to the legal sources, the system of public budgets includes the state budget, state funds budgets, and budgets of local governmental units. Among these, the state budget has an increased relevance: it is approved each year in the form of a law, which goes through the normal legislative process. The purpose of the state budget is to create a financial plan to reallocate the state's funds to certain state tasks in the following year. The state budget is a monetary fund that collects the state's revenues so that these can be further used to cover the state's expenditures and functions. This type of budget is characterized by its irreversibility, non-voluntariness and non-equivalence, whereby revenues and expenditures are used for the needs of the state.⁴⁴

5.3. Public subsidies law

Public subsidies law is a set of legal rules that governs the conditions for providing of public funds in the form of subsidies. Subsidies law is closely related to the law of budgetary law, however according to theoretical approaches, budget law can be conceived in a narrower sense, as essential components of public budget revenues and expenditures are regulated by separate special regulation, like public subsidy law, social security law etc.⁴⁵

The term subsidy (or grant) lacks legal definition in the Czech legal system, but as such a financial contribution from public sources or any other direct or indirect financial support or subsidy from such sources can be defined. Furthermore, relief from a tax or other public obligation which confers a benefit on the recipient can be

44 Ibid., p. 3.

45 Karfíková et al., 2018, pp. 172-173.

considered as a subsidy also.⁴⁶ Subsidies are the means of transferring funds within or outside the budgetary system, so the beneficiaries can be other state organs too.

The granting of subsidies is decided by the public body according to its own discretion under certain predefined conditions. The legal rules should ensure that in the field of subsidies equal opportunities are ensured between applicants, to eliminate the creation of illegal conduct or other negative consequences. Essential features of subsidies is their non-repayability (the beneficiary is not obliged to return the received grant if it fulfils all the conditions set out in for the grant) and frequent earmarking (the recipient of the grant is obliged to use the grant for a predetermined purpose).

6. The non-fiscal part of financial law

A component of the traditionally conceived financial law—besides its fiscal part—is a set of legal norms, the purpose of which is not to secure the material basis for the existence of the state and the public sector in general, as well as the production of public goods, but to create a secure functioning of the monetary system, including the financial market. The non-fiscal nature of the financial activity of the state in this area requires somewhat different approaches to the legal regulation of the behaviour of subjects in social relationships related to this activity.⁴⁷ Thus, the non-fiscal part of financial law deals with the legal relationships created, implemented, and expired in connection with ensuring the functioning of the monetary and financial system.

6.1. Monetary and foreign exchange law

Monetary law can be defined as a set of legal rules dealing with the money mass and money, especially in its legally specified form, called currency. Monetary law includes in particular the legal regulation of institutes such as: currency and money; the monetary unit; the issue of money; issuing institutions (usually central banks) and the issuing monopoly; legal money and its forced circulation; cash money circulation and payment; electronic money and its issue; payment systems and payment services and the link between currency and other values.⁴⁸ Monetary law then essentially expresses the monetary monopoly of the state, which can be weakened by the delegation of part of the monetary sovereignty to some supranational institutions. Monetary law consists of primary normative acts and secondary acts of the central bank as sources of national law.⁴⁹

Foreign exchange law is closely related to financial law, since the subject of foreign exchange law is also monetary funds, namely the foreign monetary funds that form the foreign monetary mass. Thus, foreign exchange law is a set of legal

46 Mrkývka, 2016.

47 Mrkývka, 2012, p. 183.

48 Karfíková et al., 2018, pp. 183-186.

49 Mrkývka, 2012, pp. 188-189.

rules governing the ownership and disposal of foreign funds and certain other values convertible into such funds (e.g., claims and liabilities to foreign countries, foreign securities, and other investment instruments, etc.).⁵⁰ Current foreign exchange law (and even monetary law) in the Czech Republic does not regulate relations with precious metals, which are considered to be specific goods and their disposal is regulated with regard to consumer protection.⁵¹ Foreign exchange law, by its nature, lies on the borderline between monetary law and financial market law. For the financial system, it provides mechanisms for the supervision of business handling of foreign exchange, protection of the state's foreign exchange interests, and consumer protection.⁵²

The basic principles of monetary law include the principle of the central bank's issuing monopoly. The monopoly of issue thus represents the exclusive right of the top monetary institution (the central bank) to issue cash money. The issuing monopoly is a tool to protect the currency from being damaged and devalued, and to promote public confidence in its own currency. A common principle of monetary and foreign exchange law is the principle of the exclusivity of the domestic currency, according to which only domestic funds are to be used for monetary functions within the territory of a state, and the use of foreign currencies is not encouraged. One of the manifestations of this principle is the inability of national courts to adjudicate domestic disputes in foreign currency. Another of the common principles is the principle of liberalization, more precisely the principle of liberalization in monetary and foreign exchange relations. This principle entails the removal of obstacles to the use of both domestic and foreign currencies for payments at home and abroad, as well as other restrictions on foreign exchange. The principle of liberalization has been gradually applied in the Czech Republic since the first half of the 1990s, culminating in the complete abolition of the Foreign Exchange Act in 2016.

6.2. Financial markets law

The financial market is a part of the economy operating on market principles, which can be defined as a system of relationships, instruments, entities, and institutions that enable the collection, concentration, distribution, and redistribution of temporarily free money based on supply and demand.⁵³ In financial markets, the state acts as its regulator and provides the legislative framework. It creates supervisory institutions, determines their remit and the scope of their rights and obligations.⁵⁴ Financial market law is a set of legal rules regulating the financial market, its supervision, and the instruments that can be used to achieve stability, as well as the entities as elements in the financial market, and the legal relationships that arise within financial

50 Karfíková et al., 2018, pp. 183-186.

51 Mrkývka, 2012, pp. 194-195.

52 Ibid., 2012, p. 196.

53 Kotáb, 2009, p. 100.

54 Mrkývka, 2012, p. 187.

markets. Financial market law can be divided mainly into three sub-areas, namely banking law, insurance law and capital market law.⁵⁵

Banking law can be referred to as a purposeful grouping of legal rules, both public and private, that regulate the existence and activities of banks and credit institutions, their services and relations to their clients (both existing and potential), as well as the existence and functioning of the central bank, and that is part of the supervision of the financial market. In banking law, financial law theory takes greater account of the public law aspects of regulation—as a framework for the activities of business entities in this sector of the national economy, even though the actual activities of these institutions are essentially based on civil or commercial contract law. Under the current regulation, a bank is characterized by four basic features: a) it is a legal entity in the form of a joint stock company, with its registered office in the Czech Republic; b) it accepts deposits from the public; c) it provides loans; d) it has a banking licence issued by the central bank to carry out these activities.

Insurance law has a significant interdisciplinary character. It is a set of norms that relate to a specific area of financial markets concerning insurance. The norms of insurance law are of a diverse nature: on the one hand, they are norms regulating the status and activities of insurance companies, as well as other persons appearing on the insurance market; on the other hand, they are norms regulating purely contractual relations between individual participants of this market. For this reason, insurance law contains both elements of public/financial law (regulatory norms, regulation of conditions and permits for insurance activities, supervision, sanction norms, etc.) and elements of private law (e.g., regulation of insurance contracts as private legal acts, content of such contracts). Insurance activities in the Czech Republic may be carried out by joint stock companies or cooperatives authorised by the central bank. Insurance companies from EU Member States may carry on business in the Czech Republic through the establishment of a branch or based on the freedom of temporary (*ad hoc*) provision of services.

A capital market may be understood as a market for financial investment instruments on which equity securities or instruments with a maturity of more than one year are traded. Such financial instruments include in particular shares, bonds, mortgage bonds, etc. The term ‘capital market law’ can be regarded as a designation of a set of legal rules governing legal relations relating to capital market activities: at its core, it is based on private law relations (primarily purchase or credit agreements), but superimposed on public law relations. In addition to investors, borrowers, and issuers, several private institutions providing services (whose activities must be regulated by the norms of financial law), as well as public authorities (in particular, supervisory authorities) act in legal relations on the capital market. Capital market law exhibits the greatest intermingling of private and public law norms of all the subsectors of financial market law, and for this reason it cannot be simply classified as either private or public law.

55 Karfíková et al., 2018, pp. 208-209.

6.3. Gaming law

Gaming law can be seen as a set of legal norms that regulate the status of the individual parties (gaming operator and player), the conditions for the performance of the activities of gaming operators, the conditions for the participation of those interested in gaming, the rules for the activities of gaming operators, the contractual relationship between the two parties, the penalties for violation of the legislation, the potential tax implications for both parties and other related aspects. This is a cross-cutting regulatory area, which is based on a combination of several legal sectors and norms, including financial law.⁵⁶

6.4. Hallmark law

Hallmark law is referred to as a superstructure to monetary and foreign exchange law. As far as legal norms are concerned, assay law is dominated by norms of an administrative nature regulating the handling and market in precious metals such as gold, silver, palladium, platinum, iridium, rhodium, and osmium. The different segments of hallmarking law include: a) hallmarking; b) testing of precious metals; c) conditions for the manufacture, sale and other marketing of precious metal products; and d) hallmarking administration.⁵⁷

6.5. Public procurement law

A public contract can be defined as a contract (i.e., the procurement of goods and services) which is carried out by a public authority. Public procurement is usually seen as a procedure leading to a private law contract between the public authority (the procuring entity) and a private law person (as the contractor). The legal rules governing public contracts and their award by public authorities are referred to as public procurement law.

Public procurement law has its private law aspects, as it is, after all, a process that results in the conclusion of a private law contract. For this reason, public procurement can also be conceived of as a special legal regime for commercial contracting, which is justified by the fact that public procurement involves the expenditure of public funds. The public procurement process itself can also be seen as a special type of commercial tender, but the applicability of commercial law is only minimally applicable, given the detailed and mandatory nature of public procurement legislation.⁵⁸ In summary: public procurement legislation implies public law restrictions on the contractual freedom of the parties to commercial relations, and due to its unique character is regulated by special public law norms. The most important principles of public procurement law are transparency, proportionality, and non-discrimination.

Public contracts can be divided according to their subject matter into public contracts for the supply of goods, and public contracts for the supply of services. Within

56 Karfíková et al., 2018, pp. 316-317.

57 Mrkývka, 2014, p. 59.

58 Karfíková, et al., 2018, pp. 309-310.

the supply of services, public works contracts have a specific place, as different rules are laid down for them. According to their estimated value, public contracts are divided into above-limit public contracts (above threshold procurement), below-limit public contracts (below threshold procurement), and small-scale public contracts (or low-value contracts). The most stringent rules for contracting authorities apply to the award of above-limit contracts, while a simplified regime applies to the award of below-limit contracts. In the case of small-scale contracts, the contracting authority is not obliged to award in a public procurement procedure but is obliged to comply with the general principles of public procurement law.

The supervision of public procurement is carried out by a special public authority, which is empowered to control the procedural process of public procurement and to determine sanctions for infringements. As part of this process, the legality of procurement procedures is examined. In addition to this supervision of legality, the sector is subject to financial control (which examines the economy, efficiency, and effectiveness of the contract), which is exercised by a superior public authority.

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Regulation of Public Finances in Hungary in Light of Financial Constitutionality

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ABSTRACT

The first section of this chapter presents the historical development and theoretical division of financial law. The fundamental legal institutions of modern financial law are widely regulated in the Hungarian Fundamental Law. Public finance constitutionality is an important area of financial jurisprudence. Based on the fundamental law regulations, certain areas of financial jurisprudence are presented in each section: public finances, financial and asset management, the system of public burden bearing and public burdens, public asset management, and the monetary system. The presentation of the basic legal institutions of the constitutionality of public finances allows the reader to get an overview of the Hungarian system of financial law.

KEYWORDS

Constitutionality of public finances, constitutional law of finance, public finances, budget, financial law, asset management, public burdens, taxation.

1. The system of the Hungarian financial law

The Hungarian financial law—similarly to that of the other countries—has undergone a tremendous development. The importance of regulating financial law was acknowledged by scholars as early as in the 1800s, and it was primarily examined from an administrative point of view, focusing on financial management. Financial law was interpreted as a part of administrative law. Financial law, therefore, as financial management, serves for raising the resources for the functioning of the state as part of administrative law and is an activity that falls within the general scope of economy. The scientific literature of that time points out, however, that administrative law was underdeveloped until 1848, thus neither the development of financial law was significant until then.¹ Nevertheless, there is a scientific point of view of the time which already talked about financial law that encompasses the system of rules of financial

1 Lechner, 1892, pp. 1-10. According to the author, the reason for the lack of legal development is the underdevelopment of economic and social life. As these began to evolve, so did the development of law in the field of administrative law.

management and that aimed to generate state revenues, satisfy the demands of the government, and perform public tasks. It is clear, therefore, that financial law in this period meant a set of rules for public finances, including the right to receive state revenue, the right to tax and the system of financial management.² Public finances, state economic sciences³ were identified as financial studies, of which the set of rules and regulating financial management constituted financial law. Around this time, the concept of an independent financial law appeared in scientific literature.⁴ Although certain authors of this time still perceived financial law as a part of administrative law, highlighting that this is the law of financial administration—an administrative activity that seeks to manage state revenues, public expenditures, and related public affairs.⁵

The independence of financial law as a branch of law is not questioned nowadays from the perspective of whether it would be a part of administrative law, instead, we face the problem that financial regulation has become vastly diversified and it covers a wide range of regulatory areas and even this legislation is expanding rapidly in the 21st century. The importance of financial law already exceeds the ideas outlined in theoretical viewpoints of the previous historical periods. As economic and social conditions are evolving, it is the task of the legislature to keep up with these changes. Thus, following the historical antecedents, it is worth examining the contemporary financial legal theories on the place and role of financial law in Hungarian legal regulation.

The socialist regulation of public finances brought a rupture in the development of financial law. The field of public finances initially seemed to be less important in the period of socialism. However, after the economic reform of 1968, the importance of these increased, and fields such as tax law and budget law, which are important areas of financial law even nowadays, gained strength. Considering the above, the notion and the subject of financial law may seem narrower compared to the contemporary financial law, but as early as in the 1970s, the jurisprudence developed a complex system of financial law. Financial law—according to the definition of that time—regulates the finances of the state: the legal relations, legal institutions, procedures, and financial control established by the financial activities of the state. The definition points out that not all financial relations constitute a subject of financial law, only those which are related to public finances, thus, one of the parties in financial regulation must always be the state. However, the seemingly narrower scope of the socialist financial regulation and theory already highlights the significance of regulating financial law which is justified by the regulatory areas of financial law.⁶

2 Szigethy, 1893, pp. 5-7.

3 Surányi-Unger, 1936, pp. 1-6.

4 Mariska, 1900, pp. 1-4.

5 Tomcsányi, 1933, pp. 379-381, Szontagh, 1937, pp. 56-64.

6 Meznerics, 1977, pp. 17-35. The division of financial law according to the author: corporate and cooperative finances, tax law, banking and credit system, investment financing system, insurance financing system, financial control system, financial law of international relations.

Following the end of socialism in Hungary, the development of financial law has accelerated since the 1990s. The rapid changes in the economic conditions and the accelerated financial legislation created such legal institutions that previously were not present in financial regulation nor did they constitute its subject matter. Accordingly, the concept of financial law expanded in the 1990s.⁷ The literature points out that those relations of public finances belong to financial law, which are necessary for providing the financial means and conditions necessary to perform the functions of the market economy and the state. The concept of public finances, however, is interpreted in a broad sense by this viewpoint. Financial relations that fall into this category constitute binding rules and they are established within the financial system. Public finances, therefore, cover not only public funds but also legal relations that the state intends to control, supervise, and regulate. As a result, financial jurisprudence of the early 1990s interpreted the fields of financial law in a broad sense, thus financial law included—apart from the system of public finances—certain finances of enterprises and natural persons, finances of banks and insurance systems, as well as international and integration finances.⁸ These tendencies raise the question of whether the diversified and broad legislation could be classified as a single branch of law, and whether it is necessary to define legal structures because of the complexity of the legal relationship. In many cases, several branches of law regulate the modern financial relations. To seize the features of the regulation and unify them, in my opinion, the delimitation of financial law is crucial. The contemporary Hungarian financial jurisprudence opts for the independent nature of financial law and it defines financial law as an independent branch of law.

The current theories of financial law provide an answer to the legal development trends of financial law and its definitions. Even though the approaches are diverse, the definition of the fields of financial law shows similarities. There is a viewpoint that approaches the issue from the side of the economic policy. Financial law, therefore, regulates the centralization and the distribution of a specific part of the GDP, the financial management of commercial entities, fields of monetary policy and financial obligations of certain legal entities through a public financial base system.⁹

The other viewpoint considers the internal division of the law to be systematized by subjects. It divides financial law to the law of public finances, enterprises, individuals, organizations operating as associations and international financial law, including financial law of the European Union.¹⁰

The third opinion represents the most acknowledged theoretical point of view, which, in my opinion, explains the system of financial law in the most comprehensive way. It approaches from the side of the financial system financial law is the set of norms of public law that regulates the financial system. The financial system covers

7 Deák, 1993, pp. 456-460.

8 Nagy, 1992, pp. 4-10.

9 Földes, 2003, pp. 22-24.

10 Erdős, 2004, pp. 222-224.

three areas according to scientific literature. The system of public finances, which incorporates the management of public finances (central, state, and municipal management), i.e., the system of public revenues (taxation) and public expenditures. The monetary system includes the central bank, while the financial market covers the financial intermediaries that are credit institutions, insurers as well as investment companies, the stock market and other organizations operating on the market. Based on the definition, the literature divides the financial law into six parts:¹¹ accountancy law; public finances law; law of public revenues; law of the monetary system; public law of the financial market; international and European financial law.

The rules of accountancy law provide information on the financial position of economic entities which facilitates the control and preparing decision-making. Public finances law encompasses the rules of budget, asset management, public debt, and budgetary bodies. Substantive and procedural rules of tax law, duties and other public charges are a part of law of public revenues. The law of the monetary system consists of rules regarding the central bank. Public law of the financial market includes regulation concerning financial intermediaries (financial institutions, insurers, investment companies and the stock market) and their supervision. International and European financial law encompasses international agreements and European legislative measures related to financial law.

To sum up, it can be concluded that financial law can be divided into national and international financial law. Under the previously mentioned, five areas of domestic financial law can be distinguished, of which the public law regulation belongs to financial law. International financial law incorporates international agreements and treaties, of which the subjects are states, international organizations, and integrations. Besides financial transfers between states, financial law separates the areas of financial sovereignty, as international financial law precedes national financial law.¹²

International financial law, therefore, can be divided into several parts based on the subject of the regulation:¹³ international budget law (international agreements, investment financing); customs law; law of the international monetary system and payments; international and supranational tax law; budget systems of intergovernmental organizations (e.g., the United Nations); international financial control and the financial control of international organizations; financial law of integrations, financial law of the European Union.

Being one of the most important sets of rules of modern society, financial law is changing together with the economic life, competing with changing financial constructions. The continuous challenges and the legislative responses to them created a rapidly changing regulatory system which faces increased challenges. These challenges could be illustrated well by highlighting certain areas. One of these challenges

11 Simon, 2019a, pp. 27-28.

12 Nagy, 2003a, pp. 187-188.

13 Ibid., pp. 191-206.

for financial regulation is the development of modern technologies.¹⁴ Problems related to digitalization arise both in taxation and in regulating the financial market. Tax evasion of multinational technology companies and the circumvention of the rules are significant for the lack of revenue in taxation.¹⁵ A unified international regulatory practice and introducing a global minimum corporate tax have already emerged. However, introducing a robot tax is also an important issue in connection with the development of artificial intelligence.¹⁶ Financial developments are equally important for regulating the financial and the monetary market, which mainly appeared in the technological sector but were achieved by the economy of the Community. Fintech companies demand participation in the financial market and generate competition with traditional credit institutions and investment companies. Technology innovations are beneficial for consumers but because of the balance of market competition and consumer protection, the extension of strict rules are required in this market sector as well.¹⁷ With cryptocurrencies coming from Community economy, the legislature also faces a similar problem.¹⁸ These funds are involved with a specific technological background in the financial market processes but also, depending on their prevalence, they can cause a regulatory constraint or prohibition. Concerning cryptocurrencies, another problematic issue is the monetary regulation of the central bank, since this role and therefore the effectiveness of the economic policy might be hampered by a currency that was not issued by the central bank.¹⁹

Constantly recurring economic crises and their solution might be challenging for the economic policy. These crises break out for various reasons, therefore, different solutions must be found that consider the experiences from the history of economy. The solutions have an impact on the management of public finances, so they might lead to the possible reconsideration of budget expenditures and revenues and regulating public burdens. The economic crisis of 2008 started in the banking sector of the United States and evolved into a global economic crisis which raised the need for a stricter regulation of financial markets instead of the previous deregulation of it. The economic role of the state rises also in connection with the covid pandemic crisis. Crisis management requires stronger state intervention, which, however, limits the development of a free market and has a strong influence on it through subvention policies. Economic and social problems require legislative solutions, which belong to financial law.

Actual issues of financial law also include the question of environmental financial affairs. The management of economic and social problems arising from heavy pollution might also belong to fiscal policy, including financial regulation. In environmental finances, environmental taxation and environmental aids are particularly

14 Nagy, 2020, pp. 32-40.

15 Erdős, Nagy and Varga, 2012, pp. 13-24.

16 Kovacev, 2020, pp. 183-218.

17 Nagy and Csiszár, 2016, pp. 977-1001.

18 Nagy and Nyilasi, 2018, pp. 69-79.

19 Nagy, 2019, pp. 5-14; Nagy, 2020, pp. 32-40.

important.²⁰ The European Union has a great impact on national regulations; however, certain countries might use different solutions.²¹ There is an increasing emphasis in the literature on indirect economic regulation,²² through which the importance of environmental taxes will increase with other budgetary and economic incentives.²³

A significant area for the further development of financial law is international and integration financial law, among which the regulations of the EU must be highlighted.²⁴ Because of globalization, national laws of certain countries face difficulties with regulating global companies, therefore, international regulation will become increasingly important.²⁵ In financial law, however, this raises important sovereignty issues, since fiscal and monetary policies are the responsibilities of the state.²⁶ Taxation, for example, plays a key role in public finances, performing public tasks can thus be ensured.²⁷ The government is always responsible for performing public tasks, which must not be threatened when the government transfers part of the right to taxation or grants aid to the operation of international and integration organizations. Several other areas could be listed where the financial regulation faces challenges. The highlighted areas rather illustrate the diversity of financial jurisprudence.

2. Constitutional law of public finances

2.1. Constitutional regulatory issues of financial law

The constitutional foundations of financial law are not a new field in jurisprudence, the level of regulation differs from era to era. The new Fundamental Law of 2011 opened a new path in the Hungarian regulation by the extension of the constitutional rules related to financial law.²⁸

The constitutional regulation of public finances, the constitution of public finances form part of a larger economic constitution. The economic constitution is part of the constitutional regulation where the fundamental economic rights and principles, the provisions regarding market economy, economic provisions on the tasks and powers of certain public bodies and restrictions of these can be found. The constitution of public finances is within the economic constitution interpreted in a broad sense, which rules primarily concern monetary and fiscal policy. The literature also highlights that state power and public finances cannot be interpreted without each other, public finances are the conditions and the measures of state power,

20 Nagy, 2013, pp. 73-84.

21 *Ibid.*, pp. 515-528.

22 Nagy, 2014, pp. 77-88.

23 Nagy, 2015, pp. 128-148.

24 Csűrös, 2015, pp. 14-50.

25 Pardavi, 2015, pp. 75-105.

26 Horváth M., 2005, pp. 10-75.

27 Horváth M., 1999, pp. 112-143.

28 The Fundamental Law of Hungary.

therefore, provisions regarding this matter require constitutional regulation.²⁹ The constitutions provide rules on which financial relations must be regulated by law, thus norms that oblige the legislature to enact public finance laws can be found in the constitutions. However, these norms have changed throughout history and nowadays they set out not only legislative matters but they expanded into chapters about public finances that prescribe detailed rules. This process took place also in the Hungarian constitutional regulation and the current Fundamental Law encompasses detailed financial rules, so today's constitutional rules of public finances can be called the constitutional law of public finances.³⁰ Provisions regarding public finances determine the legal institutions of public finances and the essential rules of money and asset management and public charges. The constitutional regulation, however, is not exhaustive, the detailed constitutional rules are set out in cardinal laws which require the 2/3 of the votes in the parliament. Consequently, the Hungarian constitutional law of public finances is two-tiered, as cardinal laws also provide fundamental constitutional rules concerning public finances.³¹ There are several laws of this kind (Act on the Hungarian National Bank, Act on the State Audit Office, etc.) but the Stability Act is particularly important as a comprehensive regulation of several legislature areas.³²

The regulatory method of public funds of the Fundamental Law is twofold: on the one hand, it sets out principles, on the other, it provides concrete cases. It sets out norms that are related to budget management, by creating the principle of a balanced, transparent, and sustainable budget management. In connection with budget management, to reduce state debt, the Fundamental Law provides prohibitive standards.³³

If the constitutional rules of financial law are examined structurally, a significant part of the rules could be found in a separate chapter on public funds. Some rules on public funds are set out in different chapters as well.

The chapter on public funds includes:³⁴ legislative obligation on the central budget and its implementation, authorization of the government on annual budget management, the principles of budget management, determination of the optimal (50% of the GPD) government debt ratio and related budget management, budget management during a special legal order, limitation of the powers of the Constitutional Court, rules on the property of the state and of local governments as national assets, the notion of public funds and the principles on managing public funds, the Hungarian National Bank, the State Audit Office, the Fiscal Council.

Besides the chapter on public funds, several other rules on public funds could be found in the Fundamental Law. In the chapter 'Foundation', which contains the

29 Drinóczi, 2012, pp. 6-7.

30 Nagy, 2003b, pp. 35-38.

31 Simon, 2019b, pp. 2-11.

32 Act CXCIV of 2011 on the economic stability of Hungary, Act CXXXIX of 2013 on the Hungarian National Bank, Act LXVI of 2011 on the State Audit Office.

33 Simon, 2019a, pp. 36-39.

34 Fundamental Law, Articles 36-44.

theoretical and basic provisions of the law, the principle of a balanced, transparent, sustainable budget, the declaration of the forint as the official currency, the obligation to preserve public and national property are set out. The obligation to bear the public burden and detailed rules on asset management could be found in a different chapter in the Fundamental Law. Regarding public burdens, the legislature states that everyone must be responsible for him- or herself and must be obliged to contribute to performing state and community tasks according to his or her abilities and possibilities.³⁵ It further points out that natural resources and cultural values form the common heritage of the nation, and it must be the obligation of the state and everyone to protect and maintain them.³⁶

In the chapter ‘Freedom and Responsibility’ where fundamental rights and obligations, public liability, social security, the pension system, and the principle of the finances of the healthcare system are set out.³⁷

A section on public funds has been added to the chapter ‘The state’, in which several financial law institutions are defined in line with the above. In addition, this chapter contains several provisions about finances. Such provisions are about the budgetary powers of the National Assembly, the powers of the President of the Republic related to the budget, a ban on holding a national referendum on certain financial matters and the principles of the economy of local governments.³⁸

To sum up the constitutional law of public funds, the Fundamental Law regulates the following: public funds and asset management, government debt; public charges; money and monetary system.

The main organ for protecting the Fundamental Law is the Constitutional Court. It examines the consistency of the jurisprudence of the courts with the Fundamental Law and international law. It has a right to the annulment of laws, court decisions that are contrary to the Fundamental Law or international law. However, the power of the Constitutional Court is limited in financial matters, which can be regarded as a special limitation of the powers with certain exceptions.³⁹ The limitation of powers is related to the rules on government debt. If the government debt exceeds half of the gross domestic product, the Constitutional Court cannot annul laws on the central budget and its implementation, on central and local taxes, charges and customs, nor the provisions of these laws, according to the general rule.⁴⁰ An exception to this rule is when the Constitutional Court overrides these laws in relation with the right to life and human dignity, the right to personal data, the right to freedom of conscience, religion and thought or the right to the Hungarian citizenship. The case when procedural

35 Szilovics, 2020, pp. 33-35.

36 Fundamental Law, Foundation, Articles K-P.

37 Fundamental Law, Freedom and Responsibility, Articles XIX-XXX.

38 Fundamental Law, state, Articles 1-34.

39 Kecő, 2020, pp. 473-474.

40 Kecő, 2012, pp. 418-423.

requirements of legislation and the publication of these laws are not met; then the Constitutional Court has right to annul without limitations.⁴¹

2.2. Public funds and asset management, and public debt

The constitutional regulatory system of public funds is not new in the domestic regulation, but the provisions of the previous constitution were not as detailed as in the current one. However, the re-regulation of public funds was forced by the financial-economic crisis of 2008. The new Fundamental Law lays down the essential provisions of rule-based fiscal policy.

According to the literature, the rule-based fiscal policy is defined by the following:⁴² budget policy rules, planning requirements; procedural rules; transparency standards, reporting system; and institutional guarantees for compliance with the rules.

One of the most important tasks of the state is performing public services. To guarantee public services, budgetary resources are needed which are secured by the annually adopted budget law. While the act on public finances sets out general, framework rules of the central budget, including procedural rules, specific budget laws set the financial framework for a given economic year and provide rules for that certain year. The creation of the regulatory system of the budget law is therefore a recurring activity, with yearly recurring tasks and rules on power and procedures. That is why this procedural order is called the budget cycle.⁴³ The particularity of the budgetary cycle is that on one hand, it is a document that determines the rules of the central budget—which requires special planning and approval—on the other, it is an act, therefore the set of rules of legislation also applies for it.

The budgetary procedure, the budget cycle means the order of planning, implementation and control of the budget and it covers all phases of the procedure.⁴⁴

The relationship between the executive and the legislative power is particularly important in the budgetary procedure. The balanced relation of the two branches and the division of power between them is crucial. In the Hungarian regulation, the Fundamental Law and the framework rules of the Act on Public Funds provide the necessary legal framework, thus the fundamental decisions originating from state sovereignty are taken by the parliament.⁴⁵

The role of the Fiscal Council is determining so that the National Assembly can take a well-founded decision about the approval of the budget and therefore, to ensure its adoption, the opinion of a professional body that is independent from the executive branch is necessary. The contribution of the council is essential in the budget approval process to comply with the government debt rule.

41 Fundamental Law, Public Funds, Article 37.

42 Kovács, 2016, p. 321.

43 Bán and Simon, 2007, pp. 129-131.

44 Ibid., p. 129.

45 Sivák and Vígvári, 2012, p. 108.

The Fiscal Council is a body that supports the legislative activity of the National Assembly, which examines the grounds of the central budget. The council is involved in the drafting of the law on the central budget and its preliminary approval is required for the adoption of the law. Because of these rights, the council has a significant effect on the compliance of the budget to the Fundamental Law, and it specifically monitors the compliance of the rules on government debt ratios. The president of the Fiscal Council, the president of the Hungarian National Bank and the president of the state Audit Office are the members of the council. The President of the Republic appoints the president of the council for six years. The organization and the operation of the council are regulated thoroughly in the Act on the Economic Stability of Hungary.⁴⁶

The duties and the powers of the Fiscal Council are the following: expression of opinion regarding the central budget; decision on the preliminary approval; examination of the ratio of government debt.

The expression of opinion extends to several phases of the budgetary procedure. The expression of opinion of the council is not only limited to a mere right to advice or comment, but in several cases, the legislature also prescribes certain consequences that affect the order of the procedure. (Such a case, *inter alia*, is an opinion on the draft sent to the government, in which the council may indicate its disagreement. The government, therefore, must re-negotiate the draft.)

The decision on preliminary consent is also a strict quasi-veto power. The council is empowered by the Fundamental Law, stating that the consent of the council is required for the approval of the law on the central budget, to comply with the government debt rule.

The most important task of the council is to monitor compliance with the government debt rule. The provisions on the government debt rule are laid down in the Fundamental Law.⁴⁷ The essence of this rule is that the National Assembly must adopt such a budget law—to ensure sustainable public finances and responsibilities for the future generations—according to which the government debt must not exceed the half of the gross domestic product, that is the optimal ratio of government debt set out by the Fundamental Law. Currently, however, the government debt significantly exceeds this level, therefore, the parliament must adopt such a budget law that intends to reduce this debt until the optimal ratio is reached. Obviously, the Fundamental Law allows derogation from the general rules in certain cases when serious, unavoidable problems arise in matters that affect public finances. Such an exceptional situation arose during the economic crisis in connection with the covid pandemic.

The first phase of the budgetary procedure is budget planning. The aim of budget planning is to approve the planned revenues to be economically justified, and the planned expenditures to be necessary for the proper performance of public tasks. Preferences of budget planning are the most important factor in the budget planning mechanism. Expenditure should be used for the budgetary target system, and

46 Act CXIV of 2011 on the economic stability of Hungary, Articles 15–27.

47 Fundamental Law, Article 36 (4)–(5).

revenues should be grouped here to perform the public task. Obviously, the multiplicity of public tasks and goals and the scarcity of the available resources are sources of conflicts, therefore, coordination and harmonization between decision-makers and the establishment of budget preference systems are of crucial importance.⁴⁸

Budget planning is typically a short-term activity that focuses on financial matters, however, demographic, economic conditions, and trends, as well as long-term goals and financial sustainability must also be considered. That is why the coordination of financial and realistic processes is important according to the literature, which could be realized with a complex strategic planning.⁴⁹ Under the current regulations, the government also carries out medium-term planning, since it also plans budget appropriations for the following three years.

Planning is facilitated by the principles that must be taken into consideration during the process. These principles ensure the efficiently and transparently operating economy and a system of legal guarantees.⁵⁰ The principles are divided into two groups: general and other principles (such as authenticity, completeness, etc.) can be distinguished.

The general principle is set out in the Fundamental Law.⁵¹ The principle can be considered general because—according to the explanatory memorandum—the exercise of fundamental rights and the efficient operation of the state can only be guaranteed if the social and economic balance of the country is not threatened by problems of public finances. Therefore, the basic principle of budget management and budget planning is that Hungary implements the principle of a balanced, transparent, and sustainable budget management, which must be respected by all bodies operating in both sub-systems of public finances. Balance serves the predictable functioning of the state, transparency serves the democratic life operating with well-informed and responsible citizens and sustainability serves the responsibility for future generations. Sustainable public finance management encompasses several financial principles, but the previously mentioned government debt rule has particular importance. The Fundamental Law delegates the task and responsibility of planning to the government, and the government submits the bill on the central budget to the parliament. It is the parliament's right to decide on all public revenues and expenditures, which also determines the leeway of the executive power, the government. With the adoption of the budget law, the parliament determines its own leeway for public finances. This is defined by the Fundamental Law as the main task and power of the parliament.⁵²

The Hungarian law does not set a deadline for the adoption of the budget, but the optimal case is when the budget is adopted by the end of the year preceding the year in question. However, it may occur that the adoption is delayed and the final

48 Bathó, 2009, p. 313.

49 Sivák, Szemlér and Vígvári, 2013, p. 102.

50 Bathó, 2009, p. 328.

51 Fundamental Law, Article N.

52 Fundamental Law, Article 1 (c). The National Assembly must adopt the central budget and approve its implementation.

vote will take place in the target year of the budget. Here, the ex-lex situation may arise in which the government does not have the power to continue budget management. According to the Budget Act, the government may implement the budget for one year, therefore a bridging rule is needed, under which the government may continue budget management. Such a rule was previously set out by the Public Funds Act, in today's regulation it is the Fundamental Law that provides regulation on the issue.⁵³ The Fundamental Law states that if the parliament fails to adopt the budget by the beginning of the calendar year, the government must be authorised to collect the revenues determined in laws, and, within the framework of the appropriations determined in the Act on the central budget for the previous year, disburse expenditures on a *pro rata temporis* basis.

It may happen during the final vote that the parliament does not vote or does not accept the budget law or its adoption is in delay. Here, to not threaten public finances and not to last for an indefinite time, the Fundamental Law provides a solution.⁵⁴ The President of the Republic, while simultaneously setting a date for new elections, may dissolve the National Assembly when it fails to adopt the central budget for the year in question by 31 March.

If the budget is approved, the parliament authorizes the government to collect revenues and to implement expenditures (appropriation).⁵⁵ The principle of responsible budget management must obviously apply to the government.

Public funds used in the management of public finances must be accounted for, and after the financial year, the government is required to report on implementing the budget. Budget reporting is a technical and legal act, the conditions of which are set out in different acts apart from the Fundamental Law.⁵⁶ The government must implement the central budget lawfully and expediently through the efficient management of public funds and transparency, and it must report this to the National Assembly. The report and implementing the budget is approved by the parliament, by controlling its execution at the same time. The government implements the budget. Therefore, with the approval of the National Assembly, it discharges the government from liability.

The reporting system also allows the control of the implementation of the budget, but besides this, it is also necessary to set up the control system for public finances as well. The purpose of the control of public finances is to use public funds and national assets to ensure a lawful, economic, efficient, and effective management and the proper and lawful fulfilment of reporting and information obligations. The control system of public finances involves both sub-systems, which are divided by scholars to external audit and internal financial control.⁵⁷

53 Fundamental Law, Article 36 (7).

54 Fundamental Law, Article 3 (3) b.

55 Fundamental Law, Article 36 (3).

56 Gyórfi, 2009, p. 639.

57 Sívák, Szemlér and Vígvári, 2013, p. 152.

The Public Finance Act, however, divides the control system of public finances into three areas: external audit of public finances; government control of public finances; the internal control system of public finances.

The tasks related to the external audit of public finances are executed by the state Audit Office.⁵⁸ The state Audit Office is the supreme financial and economic audit organ of the National Assembly which is independent from any other bodies in its activities. It has general competence for the management of public funds and local governmental properties. The explanatory memorandum of the regulation also points out that the legislature opted for the office-type audit among the court-type, authority-type and office-type audit models. Thus, the state Audit Office does not have direct sanctioning powers; therefore, its suggestions and findings are implemented through the activities of other organizations.

Besides public finance management, public asset management is also a constitutional area of high priority. Assets available for public finances are part of public finance management and assets that are not part of asset management, but they play an important role in performing public tasks and they constitute revenues for public finances. From this theoretical aspect, the asset can be divided into public finance assets and assets that do not belong to public finances, however, the legislation does not follow this division.⁵⁹ Assets that are available to the state and to the local governments thus form the basis for performing public tasks, and serve as a source of revenue for performing public tasks. The Fundamental Law also emphasizes performing public tasks.⁶⁰ The constitutional regulation points out that the purpose of national property is to serve public interest and to meet public needs, of which the detailed regulation is set out in a cardinal law, the Act on National Assets.⁶¹ As a result, national property enjoys high protection.⁶²

The law divides assets both horizontally and vertically. Horizontally, the national asset can be divided to two equal parts, property of the state and that of the local governments. The explanatory memorandum of the law points out that the principle of lawful division prevails in the division of the assets of the state and of local governments, thus the assets are linked with performing tasks. This reflects the basic principle that the primary purpose of national assets is performing public tasks. This division applies in the regulation as well. The general rules on national assets cover both types, however, the property of the state and the property of local governments are regulated specifically and separately in the acts on state property and in the Local Government Act.

58 Act LXVI of 2011 on the state Audit Office.

59 Bán and Simon, 2007, pp. 164-169.

60 Fundamental Law, Articles 38-39.

61 Act CXCVI of 2011 on national assets.

62 Téglási, 2013, pp. 86-87.

Under the unified regulation, the National Property Act defines national property as a whole entity, considering both the property of the state and the property of local governments.⁶³

Vertically, national assets can be divided into four categories, primarily from the perspective of the severity of regulating asset management and the protection of the assets. The categories of assets are defined according to the gravity of public interest in the protection and preservation of national property, thereby defining stricter or more permissive rules. The four categories apply to the entirety of the assets; thus, these categories appear in the division of both state and municipal assets.

The four categories of national assets: (a) exclusive property of the state and of local governments, (b) national assets of outstanding importance for the national economy, (c) national assets with limited marketability, and (d) business assets.

Exclusive property of the state and of local governments are completely illiquid. It means that, as a rule, the property cannot be alienated, right of use, right of installation of masts, for example, cannot be established, it cannot be mortgaged, and shared property cannot be established on it. An exception from this rule is the establishment of the right to use or the right of way for the benefit of entities authorized for public interest in a separate legal act.⁶⁴

National assets of outstanding importance for the national economy are those which do not belong to the category of exclusive properties but of which the preservation by the state or local governments are justified overall and which is an outstanding purpose of asset management. Generally, these assets are also subject to restraint on alienation and encumbrance, except for the right to use and right of way established by law.⁶⁵

Assets with limited marketability are national assets that do not belong exclusively to the state nor to the local governments and that are not considered as national assets of outstanding importance. The property can be managed under the conditions specified by law or local governmental decree, so the management of these assets are limited and fixed.⁶⁶

Business assets are the part of national assets that do not belong to the state treasury or to local governmental assets. Elements of business assets do not fall into particularly protected assets, the right to manage them is not limited by law. These assets are not subject to the prohibition of alienation and encumbrance, they can be managed freely by the state and local governments, within the limits of the general rules of asset management. This property can be alienated, encumbered and rights representing assets can be registered to them. The purpose of business assets is to provide revenues, enforce strategic economic interests and perform certain public tasks in a marked-based way in return for payment.⁶⁷

63 Act CXCVI of 2011 on national assets, Article 1.

64 Act CXCVI of 2011 on national assets, Article 3 (1) 3.

65 Act CXCVI of 2011 on national assets, Article 3 (1) 12.

66 Act CXCVI of 2011 on national assets, Article 3 (1) 6.

67 Act CXCVI of 2011 on national assets, Article 3 (1) 18.

National assets belonging to the state—considering asset categories set out above—could be divided into two categories: treasury assets and business assets. The treasury assets encompass exclusive state assets, national assets of outstanding importance for the national economy, as well as state assets with limited marketability. Business assets cover marketable elements which do not belong to the treasury assets.

The assets of the local government can be either fixed assets or business assets. Fixed assets are divided into two categories by the law: illiquid assets and assets with limited marketability. Non-marketable fixed assets are the exclusive property of the local government and the national assets of outstanding importance for the national economy. Non-marketable elements are local roads, squares, parks, water utilities and assets that are classified as such by law or local governmental decree. The classification of property with limited marketability lasts until the asset directly serves performing public tasks or the exercise of public power. These include utilities, the building of the institution performing a public task and a share in a company performing a public task. Municipal business assets include those marketable elements that do not belong to fixed assets.

The right to manage national assets is divided, the ownership, the exercise of the rights, the utilization and the management of the property are typically separated from each other. The ownership of national property belongs to the state and the municipality, which merely represents the owner status, because the beneficial of the right to utilization exercises the right of management over the property.

The beneficial of the ownership rights over national assets is entitled to exercise all rights and obligations of the state or of the local government.⁶⁸ This means that the rights holder has the right to operate, and thus the right to the possession, use, collection of its fruits, maintenance, renovation, development, but also to grant these rights further. Besides the rights, the rights holder bears the obligations of the ownership which is regulated by civil law as a general obligation in addition to the obligations specified in property acts.⁶⁹

With a local government, the rights holder is the local representative body, while with the state, the law defines the personal scope broadly. The rights holder of the state-owned national assets are⁷⁰ the minister, central budgetary institution, enterprises owned 100% by the state, companies owned 100% by an enterprise owned 100% by the state, person specified in an individual governmental decree.

The law narrows the personal scope with national assets of outstanding importance for the national economy, as in this case, only the minister, central budgetary institution and enterprises owned 100% by the state could be the holder of the rights.

The rights of the asset manager are limited and not exhaustive, the legislature even determines which asset elements can be managed by whom. There are trustees who can exercise the rights over the whole national asset: budgetary bodies; national

68 Act CXCVI of 2011 on national assets, Article 3 (1) 17.

69 Bende and Szabó, 2014, p. 14.

70 Act CXCVI of 2011 on national assets, Article 7/A.

self-governments and their associations, as well as institutions under their maintenance and management; public bodies.

Another group of persons can only be trustees specifically with state or municipal property. With state-owned national assets, the rights holder can also be the local government and institutions under their maintenance and management, enterprises owned 100% by the state or companies owned 100% by an enterprise that is owned 100% by the state (excluding public bodies), and legal entities individually specified in law.

With national assets owned by the local government, in addition to the above-listed entities, the state, the local government, national self-governments, association of self-governments and institutions under their maintenance or management and enterprises owned jointly or separately by these, as well as entities owned by these enterprises. With assets of the local government, ecclesiastical legal entities can also be rights holders to carry out their activities.⁷¹

2.3. The rules of public burden-sharing

The performance of public tasks requires regulatory, legislative, as well as financing activities. Legal acts determine the public tasks and conditions of their performance and because of budget management, the conditions for the financing of performing public tasks are set up.

The state withdraws resources from the private sector (allocation) within the framework of its economic function and then divides these resources again (redistribution), and it influences the market economy with fiscal and monetary tools (stabilization).⁷² The public needs are met through performing public tasks. The performance of public tasks can be carried out in several forms. The most typical is to carry out the tasks through budgetary bodies in the framework of public finances. The budgetary bodies carry out public tasks as a core activity as part of public finances, as a unit of public finances.

Public tasks can be financed from both public and private sources. Private financing can be realized through fee financing or by borrowing and raising capital. With fee financing, the principle of ‘the user pays’ applies, as users of public services contribute to the maintenance of the services. Two types of usage fees can be distinguished, fees related to the fact of usage, or fees proportionate to usage. With usage fees, various public policy preferences can be enforced in the form of reduced fares.

The other source of funding that is dominant in the public sector, are public revenues that are collected by the state as a payment obligation based on the obligation of public burden-sharing.⁷³

Public burden-sharing is set out in the Fundamental Law, which—in accordance with the principle of social justice—applies generally to all persons and

71 Act CXCVI of 2011 on national assets, Article 3 (1) 19.

72 Vígvári, 2009, p. 39-41.

73 Sivák and Vígvári, 2012, pp. 86-90.

organizations.⁷⁴ To ensure financial resources necessary for the financing of public tasks, everyone is obliged to contribute to cover the requirements of common needs, according to their financial capacity and their participation in the economy. With natural persons, the Fundamental Law takes into consideration the burdens related to child-rearing.⁷⁵ This is enforced by the legislature in personal income taxation in the form of tax base reduction. The detailed rules of public burden-sharing are set out in a cardinal law, namely in the Stability Act.⁷⁶ Thus, based on public burden-sharing, all natural persons, legal entities and other legal entities contribute to the cover of common needs in Hungary.

According to both the Fundamental Law and the Stability Act, the obligation to pay public charges is derived from the principle of public burden-sharing, i.e., in Hungary, all natural persons, legal entities and other legal entities contribute to the cover of common needs, thus, to the financing of public tasks through the fulfilment of payment obligations.⁷⁷ The law distinguishes between public burdens and fines. The latter are not regarded as public burdens, since fines are imposed as a legal consequence in connection with an unlawful behaviour, which is set out by law.

Types of public burdens

Regular or exceptional public burdens without remuneration	Public burdens in exchange for public services
taxes	supervision fee
duties	procedural fee
contributions	administrative service fee
capital transfer tax	surcharges
allowances, others	

The Stability Act defines the scope of public revenues. The basis of the categorization is the fact whether the rights holder of public services (that is the subject of the payment obligations) provides direct counter-services or not. Typically, with procedural fees and charges, counter-service is attached.

The regulation of public burdens also determines the hierarchy of laws imposing obligations.⁷⁸ As a general rule, imposition of public burdens, the scope of obliged persons, allowances, exemptions may only be set out by law or by local governmental decree, and only binding regulation of the European Union or international

74 Deák, 2016, pp. 46-52.

75 Fundamental Law, Article XXX (40).

76 Act CXCIV of 2011 on the economic stability of Hungary, art. 28-29.

77 Act CXCIV of 2011 on the economic stability of Hungary, art. 28.

78 Bordás, 2018, p. 5.

agreements could be contrary to them. With certain public burdens, exceptional rules may apply with an extraordinary event or natural disasters.

The amount of allowance can be set out by governmental decree; however, service charges and surcharges may only be issued with the approval of the minister responsible for tax policy in a ministerial decree. In the latter case, authorization of a law or a governmental decree is required. Administrative service fees and surcharges may also be established by the president of the Hungarian National Bank, the president of the National Media and Infocommunications Authority, and the president of the Hungarian Energy and Public Utility Regulatory Authority.

With an extraordinary event that affects a wide range of persons, the minister responsible for tax policy may issue a decree on omitting the charges. The law also sets out certain limits regarding public burdens:⁷⁹ prohibition of retrospective effect, time limits, economicity, regulation technology, child-rearing.

The prohibition of retrospective effect means that public burdens may not be increased, expanded, abolished, and allowances or exemptions may not be limited for the period that precedes the entry into force of the law. Payment reduction or exemption may not be introduced either retrospectively, which reduces the total payment obligation. An exception to this rule can be an EU regulation, international agreement, or the case when the benefit or the exemption affects all legal entities without distinction.

Under the time-limitation rule, minimum 30 days must pass between the promulgation and the entry into force of the law that establishes the obligation to pay, the scope of persons, the increase of payment obligation, or terminating the allowance or exemption.

Concerning the regulation that established the obligation to pay, it is an important issue that the expected costs must not exceed the expected revenues. In determining the obligation to pay, it must be taken into consideration that administrative costs (levying, collection, registration, etc.) must not be disproportionately high compared to revenues, nor can exceed them.

The establishment, amendment and repeal of public burdens can only be set out by law that regulates the same or similar living conditions. With this provision, the legislature aims to facilitate the transparency of the regulation, since the obligation to pay laid down in other legal acts hinders the recognition of these rules.

The consideration of the burdens of child-rearing is also set out in the Fundamental Law, which is incorporated into the rules on public revenues by the Stability Act as well. The law states that the costs of child-rearing must be considered during the calculation of work-income. This rule applies in personal income taxation in the form of allowances. The rules of public burdens are strict and binding, but in certain cases, the Stability Act allows the application of different rules as well. Therefore, time-limitation rules and economic issues must not be taken into consideration with the application of a binding EU rule or an exceptional payment obligation. EU regulation

79 Act CXCIV of 2011 on the economic stability of Hungary, Articles 29–38.

may override domestic rules, so because of binding legal acts, the rules on payment obligation might differ from how they are set out in the Stability Act.

2.4. Money and the monetary system

The Fundamental Law regulates two areas regarding money and monetary system: the official national currency and the legal status of the Hungarian Central Bank.

The declaration of the official national currency appears in the Fundamental Law and in the Act on the Hungarian National Bank.⁸⁰ The Fundamental Law states that the official currency is the forint, however, it does not exclude the official currency nature of foreign currencies. All official currencies are protected by law, although with a national currency, it means a special legal protection. The Hungarian National Bank is entitled to issue banknotes and coins in the national currency, i.e., in forint. Banknotes and coins issued by the Hungarian National Bank are the official money of exchange in Hungary, which must be accepted in every payment in the nominal value.⁸¹

The declaration of the forint as the national currency did not appear in the constitutional regulation before, only in the Act on the National Bank. The Fundamental Law, however, incorporated this rule among the constitutional rules, which, on one hand, has a symbolic meaning; on the other, it is significant with the change of currency, since the modification of the Fundamental Law is needed, which is of particular importance with the introduction of the euro.⁸²

The legal status of the Hungarian National Bank is set out by the Fundamental Law, declaring that the central bank of Hungary handles monetary policy and supervises the financial intermediary system. This also means that the two-level bank system is declared at a constitutional level and that fiscal and monetary policy are divided.⁸³

Responsibility for monetary policy means that the central bank has influence in macroeconomical processes through indirect economic mechanisms.⁸⁴ The primary purpose of monetary policy is defined by the Act on the National Bank which states that the primary aim of the Hungarian National Bank is to reach and maintain price stability which is the most important economic function of the central bank. Maintaining price stability practically means keeping the inflation rate at a low level.⁸⁵ This is an important goal for every central bank because the high and variable price level causes damages in the economy, increases the costs of transactions and pricing and it has other distorting effects in economic life, such as high costs of interest.⁸⁶ Besides

80 Fundamental Law, Article K: The official currency of Hungary must be the forint. See also: Act CXXXIX of 2013 on the Hungarian National Bank, Article 4 (2) and Article 23 (2).

81 Nagy, 2019, pp. 5-10.

82 Simon, 2019b, pp. 20-21.

83 Vértesy, 2019, pp. 55-56.

84 Lentner, 2013a, pp. 36-38.

85 Simon, 2019a, pp. 243-246.

86 Lentner, 2013b, pp. 200-201.

the primary goal, the support the stability of the monetary intermediary system. This means that the monetary intermediary system must be resistant to crises and it must help economic development with financial resources. The balance of monetary and fiscal policy ensures the balance of economic policy as well, that is why the Act on the National Bank prescribes that the central bank must support the economic policy of the government without threatening price stability.⁸⁷

The amendment of the constitutional regulation orders the central bank to supervise the financial system, that is implemented in Hungary since 2013. Previously, a separate supervisory body performed the task, which was dissolved and the central bank took over the supervision activity.

Three levels of the surveillance system can be distinguished:⁸⁸ (a) financial supervision of certain countries, (b) regional, international supervision (e.g., the European Union), (c) global international supervision.

The Hungarian central bank supervision encompasses microprudential and macroprudential supervision. Microprudential supervision is the institutional and operational supervision of individual financial intermediaries. Macroprudential supervision means the comprehensive supervision of the entire financial intermediary system, in the framework in which the central bank explores the business and economic risks threatening the financial intermediary system, and it promotes the prevention of systemic risks and seeks to reduce and eliminate them.

The Fundamental Law also guarantees rules that ensure the independence of monetary policy: regulating the organization and operation of the Hungarian National Bank in a cardinal law, the appointment of managers, obligation to report to the National Assembly, power to legislate.

Constitutional rules and the Act on the National Bank as a cardinal law guarantee the full operational, institutional, personal, and financial independence of the central bank: neither the institution nor the decision-making bodies can be influenced in performing their tasks. This is reinforced by the provision that the President of the Hungarian National Bank is only responsible for the activities of the central bank in front of the parliament, but this does not mean subordination and it has no legal consequences. Independence is ensured through the appointment of leaders across election cycles, i.e., the president of the republic appoints the president and the vice presidents of the Hungarian National Bank for six years. The power to legislate ensures regulatory independence to the central bank, as it is the President of the national bank that is entitled to issue a decree, which has a high position in the hierarchy of laws, as it cannot conflict with the acts of the parliament only and it obligates the bodies, enterprises and natural persons that are subject to its legislation.

87 Simon, 2019a, pp. 245-246.

88 Glavanits, 2015, pp. 93-95.

3. Summary

The development and the evolvement of the Hungarian financial law to become an independent field is the result of an integral legal development. During its historical development, it had been part of administrative law and even nowadays several similarities can be found between the two fields. This resemblance prevails in general administrative rules, which can be mentioned primarily as background rules. The system of finite rules of financial law has developed and special rules of financial law also prevail in substantive and procedural rules of other fields of law.

Regarding the independent legal nature of financial law, the only aspect that still leaves room for doubts is that whether the extensive regulation that evolved rapidly can be synthesize within only one branch of law—whether the voluminous legislation leads to the fragmentation of financial law and thus to the separation of certain areas from financial law? (With several Western European countries, for example, tax law is already considered a separate branch of law.)

Because of the strengthening economic role of the state, constitutional issues of public finances arose. The new Hungarian constitutional regulation treats public finances as a particularly important area, defining the basic legal institutions of fiscal and monetary policy. Concerning the Hungarian regulation, we can speak not only about the constitutionality of public finances, but about a detailed constitutional regulation of public finances, that is well reflected by the independent chapter about public finances inserted in the Fundamental Law. However, it is important to emphasize that the Hungarian constitutional law of public finances is two-tiered: besides the Fundamental Law, cardinal laws also regulate related issues. The most significant of them which contains general rules is the Stability Act.

The public debt rule became a fundamental legal institution of the constitutional law of public finances; therefore, it serves as a reference point for financial budget management. Apart from setting the optimal public debt rule, all areas of budget management are subordinated to the reduction of public debt, except those exceptional circumstances which justify the suspension of this rule. (Such a case was, for instance, the economic crisis caused by the pandemic.)

To conclude, we can state that since the change of regime we have been experiencing the renaissance of financial law in Hungary, moreover, because of the development of economic life, financial regulatory needs arise that have been less significant or even unknown two or three decades ago. One of the important factors of social welfare is public finance relations, which, however, require mature and balanced financial regulation. That is why jurisprudence has a very important role to play in finding appropriate solutions to regulatory challenges.

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Regulation of Public Finances in Poland in Light of Financial Constitutionality

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ABSTRACT

This chapter deals with the notion, scope of public finance, and legal sources regulating this field. There are many difficulties in formulating a definition of finance law, which result from the diversity of the matter regulated by public finance. Financial law comprises many acts of law and accompanying executive acts. All these regulations define the rules of collecting and spending money for public purposes. The norms of financial law serve the purpose of realization of social and economic tasks of the state. The basis of this field of law is the Polish constitution. The aim of this article is to present areas of regulation, current problems, and challenges of the financial law, as well as to bring closer the constitutional regulations and principles relating to finance. General principles concerning economy in public finance constitute an important element of the socioeconomic system of a country. Hence, they should be, and are, properly regulated in the basic law. In the Polish Basic Law, public finance is directly addressed, first, in Chapter X, entitled 'Public Finance'. However, it is also dealt with in other articles scattered in the remaining chapters. The issues of the state's financial system are further regulated in Chapter VII—'Local government' (art. 167, art. 171 par. 2, et al.); in Chapter VI—'The Council of Ministers and government Administration' (Article 146, paragraph 2, items 5 and 6). In many places, the constitution also refers to concepts from the financial system, such as 'financial outlays, not provided for in the Budget Act (art. 190 par. 3), or 'financing of political parties, which is to be public' (art. 11 par. 2).

KEYWORDS

Financial law, tax law, budgetary law, customs law, public banking law, foreign exchange law, monetary law, social security system, constitution, financial principles, legal institutions.

1. Financial law theory: Areas of regulation, and current problems and challenges of financial law

1.1. *The concept of finance and financial law*

Finance is inseparably connected with money, because it is most often understood as the process of collecting and spending money. For finance, also called financial phenomena, movement of money is proper, which usually takes the form of streams flowing between the participants of financial relations.¹ Money serves to satisfy

| 1 Ostaszewski, 2007, p. 15. |

various needs; it is an economic category. The economic literature mentions several functions of money as a measure of value, a means of payment, a means of exchange and a means of accumulation.²

Public finance should be understood as the processes of collecting and spending money to satisfy public needs. The essence of public finance is therefore both the accumulation and spending of money strictly related to the existence of public needs.³ Public needs are characterized because they always occur in relation to a certain collective, such as society, communal or regional community. Satisfying such needs therefore requires the accumulation of certain monies, primarily as taxes, fees, and duties.

The role of public finance in satisfying public needs varies and changes over time. Public finance and implementing functions ascribed to it, in particular redistributive and stimulatory functions, contribute to this. Public finance should be linked to the type of state.⁴ A socialist type of state will be characterized by a greater scope of public finance, since it is involved in the sphere of economic, social and administrative activities. On the other hand, the capitalist type of state bases its activity on private property and rarely engages in the economic sphere.⁵

Just like any other important sphere of public life, the field of public finance is regulated by the law in force, and all legal regulations covering public finance are called the financial law. In the financial law literature, one can find a different understanding of this field of law. In a large sense, financial law is treated as a separate branch of law covering such areas as budget law, tax law, customs law, public banking law, foreign exchange law and social security law. The binding force of these areas is their monetary character—i.e., the collection of money and its allocation for public purposes. However, in a strict sense, only those legal norms should be included in this field of law, which cover state finances and finances of local government units, and it only concerns the processes of collecting and spending money in relation to state bodies, although this approach seems to be too narrow.⁶

In the light of the Public Finance Act, public finance includes processes related to accumulation of public funds and their allocation, in particular: accumulation of public revenues and income; disbursement of public funds; financing of borrowing needs of the state budget; assumption of liabilities involving public funds; management of public funds; management of public debt and settlements with the European Union budget. It should be emphasised that the most frequent processes of collecting and spending money for public purposes have been indicated based on this act, and it is not a closed catalogue. The legislature expresses it unequivocally by using the term ‘in particular’.

2 Bednarski and Wilkin, 2005, p. 329.

3 Drwiłło, 2018, p. 30.

4 Kosikowski, 2001, p. 11.

5 Drwiłło, 2018, p. 34.

6 *Ibid.*, p. 39.

The norms of financial law serve the social and economic tasks of the state. They describe the powers and duties of financial law subjects. Most often, they have an imperative character, but there are also technical norms. They are also characterized by an objective character, i.e., the objective character of both the premises of the obligation to observe the financial law, and the application of the norms of this law by the courts and public administration bodies.⁷

The place of financial law in the Polish legal system is determined primarily by the sources of this field. The sources of law should be understood as formalised acts of state authority containing legal regulations, which appear in an appropriate form and are issued in the required procedure.

In presenting the sources of financial law, reference should be made first to the Constitution of the Republic of Poland. The constitution regulates the basic principles of public finance such as, i.e., collection and disbursement of funds for public purposes in the form of a law, adoption of the state budget and introduction of changes to the budget law or the law on provisional budget, imposition of taxes and other public charges, or determination of the principles of self-government finance. Among the internal sources of financial law a large role should be attributed to the Public Finance Act, which in the literature on the subject is treated as an act codifying financial law.⁸ It regulates such issues as: management of public finance rules, state public debt, budget resolutions of local government units. In turn, the financial activity of local government units is regulated by the Act on Communal Self-government,⁹ the Act on Poviats (county) Self-Government¹⁰ and the Act on Voivodship¹¹ (regional) Self-Government. Separate legal acts of statutory rank are regulated taxes in the Act of 29/08/1997—Tax Ordinance. Individual taxes are also regulated by statutory provisions. Sometimes one tax is regulated by one act of law, and sometimes one tax act regulates several taxes. However, the statutory form is always used for introducing this type of financial benefit. The basic legal acts regulating certain segments of public finance also include the Act of 29/08/1997 on the National Bank of Poland, the Act of 29/08/1997—Banking Law, and the Act of 19/03/2004—Customs Law. International agreements as a source of law refer mainly to tax and customs law.

Regulations also occupy a specific position among the sources of financial law. Their application is required because laws are not legal acts, which should regulate detailed or frequently changing issues. They regulate only those issues that have been specified in the provisions of laws.¹²

The sources of financial law also include acts of local law.¹³ Their application is territorially limited. They are a manifestation of the activities of local government

7 Ibid. p. 39.

8 Ibid., p. 45.

9 Act of 8.03.1990 Journal of Laws of 2021, item 1038 as amended.

10 Act of 5.06.1998 Journal of Laws of 2020, item 920 as amended.

11 Act of 5.06.1998 Journal of Laws 2021, item 1038 as amended.

12 Drwillo, 2018, p. 45.

13 Siuda, 2003, p. 33.

units at a certain level. The provisions of local law are issued by local government bodies and local government administration bodies on the basis and within the limits of statutory authorizations. Local self-government bodies are empowered to make laws universally binding in their activity. The powers of local self-government bodies to enact a local law in the sphere of finance relate mainly to taxes, fees and property management.¹⁴

1.2. Financial law versus tax law, budgetary law, customs law, public banking law, foreign exchange law, currency law and the social security system

Tax is one of the basic financial institutions—it combines legal and economic elements. Next to fees, surcharges, and duties, taxes are one form of public levy, simultaneously constituting the basic source of budget revenues. It is defined as a compulsory public law money consideration, free of charge, non-returnable, for the benefit of the state or a local government unit, resulting from an act of law.¹⁵ The public-law nature of a tax means that only public authorities may unilaterally establish such an obligation. The authority entitled to receive the tax may, using the coercive measures provided for by law, enforce the payment due or secure its future realization, which makes it a coercive payment. The monetary character, in turn, distinguishes a tax from other contributions in kind. It is also gratuitous in that there is no direct counterpart by the public law body in return for the tax. On the other hand, its non-refundable character implies a definitive assumption of the tax liability by the relevant public law body.¹⁶

Budget law is a branch of financial law that systematises the functioning of the state budget. Budget law, in a strict sense, norms the framework of the state budget, its structure and the rules of its preparation, passing and execution. Apart from the state budget, there are also budgets of local government units—communes, districts and voivodships. They are annual local government financial plans, approved as a budget resolution of the local government unit, and executed by their executive bodies.

Customs law is a separate field of law defined primarily by the subject it covers.¹⁷ Customs law comprises all the legal provisions regulating the principles of foreign trade in goods, including in particular the collection of customs duties and charges, the rights and obligations of persons exporting and importing goods from abroad, the powers of customs authorities and the control of customs trade. Customs law, as a branch of public law, is based on authority. The object of its protection is the broadly understood public good closely connected with the exchange of goods in relations with other states. As A. Drwiłło writes, it is difficult to include contemporary customs law indiscriminately in any branch of law. According to him, it should be treated as

14 Drwiłło, 2018, p. 47.

15 Ofiarski, 2013, p. 22.

16 Kosikowski and Ruśkowski, 2008, p. 465.

17 Drwiłło, 1998, p. 11.

a separate branch of law, connected especially with financial, administrative, and criminal law.¹⁸

Banking law may be understood as the totality of legal norms regulating the structure, organization and activities of banks. Such an understanding of banking law does not, however, allow for its recognition as a uniform field of law.¹⁹ It includes regulations of both public law (concerning, among others, the principles of creation and organization of banks) and private law (e.g., regulation of obligatory relations arising during performance of banking activities). However, banking law shows many connections with different branches of law. The public law part of banking law is strongly connected with financial law. An element of public financial activity is, for example, the activity of the central bank and goals it performs, such as issuing money or conducting monetary policy.

Foreign exchange law is also an integral part of financial law. It is a set of regulations governing the possession of foreign currencies and other values regarded as foreign exchange and their use in trading. Legal regulations included in the foreign exchange law should be connected with their subject, i.e., foreign currencies. Under the notion of foreign exchange, there are titles entitling to receive or dispose of foreign funds, i.e., credit and settlement documents, such as bills of exchange, cheques, money orders, letters of credit expressed in foreign currency. Receivables on bank accounts denominated in foreign currency are also accepted as a form of foreign exchange in the broader sense.²⁰

The currency law, in a broad sense, is the totality of legal regulations which establish a given type of money. This law includes in its scope the legal regulations establishing the principles of the monetary system of the state and the problems of monetary circulation. The literature on the subject shows that the currency law plays an important role as it affects important aspects of economic, social and political life.²¹

Social insurance is the most common form of state care for citizens. Insurance implies a form of financial commitment by citizens who, in return for their contributions, are to receive a benefit based on the type, nature, size and duration of the contribution. In the literature, social insurance finance is rightly seen as part of public finance, or as related to the system of public finance.²² Social insurance finance includes processes related to the accumulation of financial resources on the one hand and their disbursement on the other. Social insurance revenues have been and continue to be a source of constant problems because social insurance contributions, the main income of public insurance funds, do not cover expenditure on insurance benefits such as pensions and disability benefits.

18 Drwiłło, 2018, p. 366.

19 Wójtowicz, 2017, p. 437.

20 Drwiłło, 2009, pp. 70-71.

21 Drwiłło, 2018, p. 341.

22 Brzeziński, 2010, p. 151.

1.3. State budget and budgets of local self-government units—current problems and challenges

The budget and budgetary management based on it are of crucial importance for the proper condition of public finance, and thus for the proper performance of financial management in the state. The very notion of a budget is multifaceted, as a budget can be considered as a financial plan, a stock of public funds, streams of financial flows, a legal act producing legal effects, and an act of political choice. The feature that distinguishes the public budget from other financial plans is its political and legal status. It finds its expression in the political and legal acceptance of the budget by the representative bodies (in the case of the state budget—the parliament, and with local government budgets—by the bodies that constitute local government units).²³ The budget can thus be defined as an annual plan of income and expenditure, as well as revenues and expenditures of state authorities, bodies of control and protection of the law, courts and tribunals, and government administration, being an annex to the budgetary act adopted for the period of the calendar year called the budgetary year. In the same way, it serves to fulfil the tasks of local government units, for which it is an annual plan of revenues and expenditures, as well as revenues and expenditures.

The dynamic environment makes the developing market economy face ever new challenges to economics and management. One of the fundamental issues that has a key impact on the functioning of market mechanisms is risk. Because of its interdisciplinary nature, the term ‘risk’ can be interpreted in different ways depending on the conditions in which it is analysed. Risk is crucial to the functioning of the public finance sector. The government’s budgetary policy is based on many assumptions and forecasts. ‘Assessing the functioning of the budget, one may conclude that it is a device similar to a suction and pump, i.e., it receives streams of income from some entities and transfers them to others’.²⁴ The most acute problem in this area of public life is public debt. Public debt can be defined as the aggregate of budget deficits incurred in previous periods.²⁵ An unbalanced budget causes a constantly indebted state. This problem is noticeable in many countries of the European Union, especially in the eurozone. Disproportionate expenses in relation to limited income make it necessary to issue treasury securities. Their interest rate is determined crucially by the credibility of a country in the international arena, the ratings of rating agencies and the general situation in financial markets. A very worrying phenomenon is the high cost of servicing public debt. In 2010, domestic debt servicing rose to PLN 27bn, and foreign debt servicing to PLN 8bn, while two years earlier it stood at PLN 22bn and PLN 6bn respectively.²⁶ An effective fiscal policy should consider long-term consequences of actions taken today in public finance. Implementation of the necessary reforms of public finance, which arouses social protests, will ensure a stable

23 Bitner et al., 2011, p. 80.

24 Kocurek, 2012, p. 99.

25 Owsiak, Kosek-Wojnar and Surówka, 1993, pp. 58-70

26 Kocurek, 2012, p. 100.

economic growth by limiting the risk of budget imbalance and reducing the level of public debt in relation to GDP.²⁷

Sovereign public debt has a significant impact on the economy. A persistent budget deficit can also directly affect the rate of economic growth, understood as an increase in the country's ability to produce goods and services to meet the specific needs of society.

1.4. Taxes and the tax system—current issues and challenges

Polish tax system is plagued by difficulties—such as a lack of a clearly defined function and coherence; a high tax burden; and the complex, unfriendly and volatile nature of the tax system. The combination of these three problems unfortunately leads directly to many companies and individuals opting for the grey economy and avoiding paying taxes, and the Polish tax system in such a situation becomes ineffective. The functions of the Polish tax system have not been defined anywhere. As a result, the tax system currently in force should not be referred to as such, as it fails to meet the criterion of purposefulness, internal logic and transparency. The lack of a clear vision of the tax system has fostered and continues to foster constant changes and amendments. Thus, on the one hand, the fiscal pressure on the budget leads to a continuous expansion of the tax base without the necessary balancing of fiscal effects with the social costs of their collection from the point of view of development goals and minimization of distortions in the functioning of the price mechanism, while ‘the Polish tax system is characterized by a significant expansion of non-fiscal functions and variability of privileges made available over time’.²⁸ Diversified tax rates, various tax preferences and conditions allowing for their use, as well as the frequency of their changes contribute to the complexity and instability of the Polish tax system, and thus to higher costs related to tax payment and collection.²⁹

The principle of certainty is the foundation which should characterise any rational tax system.³⁰ However, Polish ‘legislative practice leads to the conclusion that the creation of tax law is largely a chaotic process’.³¹ The Polish tax system is not only one of the least stable but also the most complicated among all OECD countries.³² Many provisions are unclear to taxpayers, tax authorities and even judges adjudicating in tax cases.³³ This leads to contradictory rules, uncertainty for taxpayers about whether and how much tax they should pay, and poor efficiency in tax administration. In other words, the frequent changes and complexity are the clearest evidence that the Polish tax system needs radical reform.

27 Ibid., pp. 93-102.

28 Zbroińska, 2009, p. 100.

29 Zbroińska, 2008, pp. 91-110.

30 Sosnowski, 2012, pp. 59-72

31 Mączyński and Sowiński, 2005, pp. 35–45.

32 Sustainable Governance Indicators 2011: http://www.sgi-network.org/pdf/SGI11_Scores_Values.xls (accessed on 16.06.2021).

33 Oniszczyk, 2011, pp. 95-100.

1.5. Banks and banking law—current issues and challenges

The volatility of the environment is a fundamental challenge for modern banking. The most important is certainly the changeability of the business environment. It forces the banks to constantly search for new banking products, better satisfying customer needs and allowing to better face the competition. However, the most troublesome for banks seems to be the changeability of the ‘regulatory’ environment—a network of legal regulations and many other norms restricting the banks’ activities.³⁴ Act of 29 August 1997.—Banking Law (consolidated text: Journal of Laws of 2012, item 1376, as amended) is one of the most frequently amended Polish laws. This is mainly because of the changeability of the European law, which the act must consider, and in the scope of directives—implement their provisions to the Polish legal order. Because of this changeability, the act has already lost the cohesion of its structure. The Banking Law is not the only law which sets the framework for the activities of Polish banks, but other laws relevant to this field have not remained stable either. Banking services are characterized by a clearly increased (compared to other) economic risk and a threat of infringement of the interests of customers who are non-professional market participants. This is linked to the characteristics of these services, such as their high degree of difficulty and complexity, often because of their packaged nature, and the lack of information and transparency. The practice also shows that the behaviour of entities (banks) offering financial services, despite the introduced information obligations, prohibition on misleading and issuance of unfair commercials, is far from balance, honesty, reliability, professionalism and respect for the legitimate interest of the client—which is so desirable to build the trust of non-professional market participants in banking institutions.³⁵ One might get the impression that the inadequacies and even shortcomings of national legal regulations result mainly from hasty and ill-considered implementation of directives. A high level of consumer protection, also in the financial services market, can be achieved by eliminating discrepancies in mandatory national provisions.³⁶ The prerequisite for effective protection of non-professional financial market participants, especially consumers, is also cooperation between the various protection bodies, rather than competition between them, as is sometimes apparent in the practical operation of the financial market. Such cooperation should encompass all authorities and institutions whose purpose is to eliminate abusive practices by traders towards their clients, in particular consumers.³⁷

34 Góralczyk, 2014.

35 Rutkowska-Tomaszewska, 2013, p. 30.

36 Góralczyk, 2014.

37 Ibid.

2. Constitutional regulations and financial principles: Legal institutions, areas of regulation, and current regulatory issues

2.1. *The Polish constitution as a source of financial and tax law*

The constitutional catalogue of sources of law in Poland includes: constitution, acts, ratified international agreements, regulations, acts of local law (in the activity of the bodies that established them).

The fundamental source of financial law is the Constitution of the Republic of Poland, ratified 2 April 1997. (Journal of Laws No. 78, item 483). Next in line are international agreements ratified with the consent of the act, which take precedence over the act in the situation when they conflict with the act (article 91 of the constitution). Next are regulations issued based on specific authorizations in a statute (art. 93 of the constitution). The constitution is a normative act universally binding on the territory of the country or in the sector of activity of the body. In the Constitution of the Republic of Poland, Chapter X is devoted to public finance. It contains information defining the process of collecting and disbursing public financial resources (article 216 paragraph 1) as well as the role of the state in this respect. Adopting the state budget, as well as its changes or preliminary budget, is also presented (articles 219-225). The provisions of the constitution have the character of general principles that must be respected when creating the tax law. In the constitution, there are regulations concerning the tax system. They define the tax base (art. 84); the definition of the essential elements of the construction of taxes (art. 217); introducing a specific procedure for the enactment of tax laws (art. 213) and the competence of self-governing bodies to create tax laws (art. 168). The constitution stipulates that imposing taxes is only possible by law (by parliament). The most important elements of a tax must be specified in the law. The constitution also does not allow for tax laws to be treated in an accelerated manner (they cannot be introduced in an extraordinary manner). Local government bodies (municipal councils) have the authority to set the amount of taxes and local government fees.^{38,39,40}

2.2. *Constitutional and public finance rules (Articles 216–227)*

The general principles that concern the economy in public finance are an important element of the social and economic system of the country. For this reason, they must be reflected in the Basic Law. Having interpreted the contents of the Constitution of the Republic of Poland, it is possible to identify four general principles of public finance in the Polish law. The first principle provides for statutory regulation of public financial management. The second principle is to guarantee protection of the state's financial interests. The third principle concerns the assurance of adequate financial

38 Act of 2 April 1997, Constitution of the Republic of Poland (Journal of Laws No. 78, item 483).

39 Borodo, 2000, pp. 27-29.

40 <https://www.biuro24h.pl/zrodla-prawa-podatkowego/> (accessed on 14.06.2021).

basis for the activities of local government units. The catalogue closes with the principle of guaranteeing protection of fundamental rights and financial interests of citizens.

The principles of public finance are (a) the principle of publicity (this principle states that the management of public resources is public, i.e., the citizen has the right to know and to supervise the state budget); (b) the planning principle (financial activities of public law entities and entities in the public finance sector are planned); (c) accounting principle (the economic entity is obliged to keep accounts and to draw up reliable financial statements, which makes it possible to analyse and control financial processes), (d) the principle of considering the financial consequences of legal acts and financial law (when proposing a bill, proposers must present the financial consequences of its implementation).

Chapter X places emphasis on social control relating to public finance management. This is confirmed by the fact that only by means of law can regulations relating to the collection and distribution of public finances be established (art. 216). Another important principle established in (art. 217) is the possibility of introducing taxes and other levies only by statute, which also increases the role of social control in the state. Article 218 of the Polish constitution establishes the obligation to regulate by law the organization of the State Treasury and the manner of management of state assets by the State Treasury. At the same time, together with other provisions of the Constitution of the Republic of Poland, it forms the basis for the view that the State Treasury is a legal entity of a special nature, deriving its legal personality directly from the Constitution of the Republic of Poland and the Civil Code. In article 219, the constitution empowers the Sejm to enact the state budget. The budget is enacted in the ‘Budget Act’. The constitution in Article 227 gives the National Bank of Poland the status of a central bank, with the exclusive right to issue money, as well as to determine and implement monetary policy.^{41 42 43}

2.3. The constitution and basic concepts of public finance institutions

Provisions defining the essence of a financial institution will be detailed norms when they indicate the basis of the institution in the procedure, which implies that it cannot be regulated in the ordinary law, and thus sufficiently define the essence of the institution—sufficiently characterise the essential features (detailed definition). If the provision insufficiently specified the essence of the institution, i.e., partially characterized the essential features, or did not do so at all. If the legislator has used the notion of a given institution as a notion that has an established meaning, then we are dealing with a general constitutional norm. The legislature leaves this essence to be regulated, supplemented also by an ordinary law.

41 Act of 2 April 1997 Constitution of the Republic of Poland (Journal of Laws No. 78, item 483).

42 Kosikowski and Ruśkowski, 2003 pp. 260-264.

43 <https://zim.pcz.pl/znwz/files/Finanse-publiczne-w--wietle-Konstytucji-RP.pdf> p. 152 (Accessed on 14 June 2021).

If a provision has insufficiently defined the basis of a given institution, the assessment must be made with reference to the regulation of the ordinary law. To check whether a provision has sufficiently defined the basis of a given institution, the assessment must be made in the context of the possible scope of control of the constitutionality of the institution in question. In defining a financial institution there may arise the problem of the concepts of other financial institutions used to define it. A problem which, if it indeed arises, may negate or weaken the relevance of constitutionalization for the existence and functioning of a given financial institution.

The detailed definition of financial institutions and the introduction of financial restrictions into the constitution was introduced to realise the objectives of constitutionalization and to increase the scope of control over the creation of financial legislation.⁴⁴

2.4. The constitution and the concepts of taxes and public burdens and benefits

A tax is a statutorily defined benefit. Only a statute, pursuant to articles 84 and 217 of the Constitution of the Republic of Poland, is an act which may introduce the obligation to pay taxes. The act should also define the essential elements of this benefit. There is no formal-legal definition of a tax in the constitution. Features of a tax: a cash benefit, compulsory, non-refundable, free of charge, incurred to public law bodies.

The constitution includes taxes among public benefits that can only be imposed by law (Article 84). The law must specify: subject and object of taxation, tax rate, principle of concessions and write-offs, a catalogue of tax-exempt entities.

Taxes are tributes which constitute the largest revenue for the state budget. The Tax Act is an expression of the fact that in a democratic state under the rule of law, interference in the rights of a citizen must have constitutional legitimacy and the form of a law. Article 217 of the Constitution of the Republic of Poland reads: ‘the levying of *taxes, other public levies, determining the subjects, objects of taxation and rates of taxation, as well as the principles for granting reliefs and remissions and categories of entities exempt from taxes shall be effected by way of law*’. Thus, the principle of imposing taxes by way of a law was included here, and this on an exclusive basis. Moreover, Article 123 par. 1 of the constitution of the Republic of Poland refers explicitly to ‘*draft tax laws*’. Article 84 is placed among the provisions of the Constitution of the Republic of Poland defining other duties of a man and a citizen.⁴⁵

The public burdens and benefits referred to in Article 84 of the Constitution of the Republic of Poland are of an alimony nature, in that they serve to feed the state, and are not of a repressive nature. This makes it possible to consistently separate these burdens and benefits from sanctions of a repressive nature, including penalties

44 https://repozytorium.uwb.edu.pl/jspui/bitstream/11320/6127/1/Konstytucyjne_uwarunkowania_tworzenia_i_stosowania_prawa_finansowego_i_podatkowego.pdf pp. 35-44. (Accessed on 14 June 2021).

45 Etel et al., 2005, pp. 21-27.

imposed by the authorities administering the justice system, but also from administrative sanctions, in particular tax sanctions.

Regardless of whether these benefits are monetary, in-kind or strictly personal, including those restricting individual freedom, their purpose is always to provide some benefit to the state. These benefits do not have to be exclusively of a pecuniary nature, but they always increase the revenues of the state or reduce its expenditures by directly satisfying public needs without financial outlays on the part of the state or local government. Their essence always lies in the fact that they serve to fulfil certain public tasks, which are statutorily assigned to the state. The Constitution of the Republic of Poland in Article 84 itself does not introduce political boundaries for imposing various categories of burdens and benefits by way of law.⁴⁶⁴⁷

2.5. The constitution and the creation and application of tax law (Article 2, Article 78, Article 87, Article 217)

In the creation of the taxation system and the creation of individual taxes, tax principles are used, which are not homogeneous and, in addition, are subject to modification all the time. The quality of tax law is related to the quality of legislation. We can indicate principles of a normative nature (indicated in the provisions of the tax law), as well as those that are more recommendations or proposals for the legislator. In the second group we can distinguish such principles as: the creation of tax law by qualified personnel, the assessment of the economic effects of a given tax regulation, the rational activities of the tax legislator, consistency and stability of tax law.

An important role in the creation of tax law is played by the principles published in the Constitution of the Republic of Poland. Article 2 of the Constitution of the *Republic of Poland* (*The Republic of Poland is a democratic state under the rule of law, realizing the principles of social justice.*), concerning democratic principles of the state under the rule of law, is significantly applicable.

In the Constitution of the Republic of Poland, Articles 84 and 217, regulate the universality of the obligation to bear a tax burden, but on condition that it is introduced by a law, the features (elements) of which are precisely defined by the basic law. The political freedom to impose public levies may not be unlimited, and their introduction may not harm the fundamental rights and freedoms of citizens and the democratic nature of the state. Tax law norms are extremely important for the creation of tax laws and their control in terms of compliance with the constitution. We may additionally enumerate such normative principles as: the principle of exclusiveness of the legislative power in shaping taxes (art. 84 and 217 of the constitution), the principle of statutory determination of all the elements of the tax construction (art. 217 of the constitution), the principle of legality of the basic acts of the tax law (art. 94 of the constitution), the principle of non-retroactivity of the law (*lex retro non agit*), the principle of protection of the rightfully acquired rights, the prohibition to introduce

46 Safjan and Bosek, 2016, pp. 1882–1897.

47 Act of 2 April 1997 Constitution of the Republic of Poland (Journal of Laws No. 78, item 483).

changes in the tax law during the tax year, the principle of openness (art. 88 of the constitution), the principle of certainty of the law, the principle of determination of the provisions of the tax law. Tax laws are currently referred to as laws regulating tax structures, the content of which is set out in constitutional provisions. Drafts of such laws require an opinion from the minister of Finance to determine the financial consequences of their enactment and may not be of an urgent nature, and any amendments to such laws made during the year should take effect only from the beginning of the new fiscal year, unless they are beneficial to taxpayers.^{48 49}

In accordance with Article 87 of the constitution, sources of universally binding law also include acts of local law, enacted within the area of their activity by local government bodies and local government administration bodies, on the basis and within the limits of authorizations contained in the Act in accordance with rational law-making standards. The legislative process is multi-stage and requires specific actions and organization, viz: pre-legislative work, design work, arrangements, to provide opinions and consultations on drafts or normative acts, enactment of the law, signing and announcing it, to issue implementing acts, examination of the compatibility of a normative act with the constitution.⁵⁰

2.6. The constitution and public debt in times of crisis (Article 216(5))

Tax is the main source of public revenue. It is a non-refundable acquisition of cash resources from taxpayers. Public borrowing is an additional source of creating monetary resources. Its feature is repayability. Public loans are repayable, although they are not always returned. They play an important role when budget expenditures are higher than budget revenues. A significant problem of Polish public finance is public debt. In economic terms public debt means the total amount of liabilities of public sector entities towards entities not belonging to this sector. The source of repayment of these liabilities are public funds. The reason for public debt is public borrowing, as it is of repayable nature and additionally causes costs connected with its incurring and repayment. Public debt is the subject of regulation of the Act of 2 April 1997, the Constitution of the Republic of Poland. Legislator uses two terms 'state public debt' and 'public debt'. The first term denotes the determination of the debt ceiling in a given year and the second one is related to the exclusivity of the legislative initiative of the Council of Ministers concerning the act on incurring public debt. However, the constitution does not indicate a legal definition of these terms. In the provisions of the constitution, we find a principle that indicates to us the amount of the national debt. This principle prohibits borrowing or granting financial guarantees and sureties, the consequence of which is that the state public debt will exceed 3/5 of the value of the annual gross domestic product. The constitutional provisions not only determine the amount of the state public debt, but also determine the rank of the legal act through

48 Act of 2 April 1997 Constitution of the Republic of Poland (Journal of Laws No. 78, item 483).

49 Etel et al., 2005, pp. 78-84.

50 Safjan and Bosek, 2016, pp. 51-61.

which loans may be contracted and financial guarantees and sureties granted. In the light of the constitutional provisions, the principles and procedure of taking out loans and granting financial guarantees and sureties may be determined by law.⁵¹ Annual GDP and national public debt should also be calculated by law. Debt management of the public finance sector in 2009–2011 did not consider the global financial crisis that began in late 2008. The effects of this crisis are also being felt in Poland. As a result, public expenditures were reduced by about PLN 20 billion in 2009. This also results in a change of the public finance sector debt management strategy in the nearest future. The most important difficulty depending on public debt is a change of debt management strategy, i.e., adaptation of this method to a completely different situation of public finances in the world. The global crisis affects the state of public debt finances of the Polish state. It is important that the debt management strategy of public finance should work to maintain the required by law ratio of the State Treasury debt to GDP. The basic manifestation of the impact of the global financial crisis is an increase in the foreign currency exchange rate, which causes an increase in the level of Polish debt in foreign currencies. The increase of the foreign currency exchange rate also influences the increase of its servicing costs.⁵²

2.7. Constitutional guarantees and limitations of the financial independence of territorial government units

For municipalities to be able to carry out their activities, they should be equipped with financial resources, which is why their share in public revenues must be ensured. The financial system of local government and the transparent distribution of revenue sources should be standardized in the constitution, which will guarantee the financial basis of local government and safeguard the stability of its operations. The independence of municipalities depends on political freedom and the provisions of the law on municipal self-government. Important aspects that influence the independence of municipalities are the systems of financial support and the manner of redistribution of tasks and responsibilities among different segments of public authority. Of course, self-governance does not mean financial self-sufficiency.

Therefore, sources of revenue are divided into own and foreign, or internal and external sources of supply. The financial independence of municipalities is a result of the decentralization of public finance, and this is due to the possibility of sharing some of the attributes of financial power with the state. It means that they are granted the right to independently carry out financial management within the framework defined by the constitution and laws in the following spheres: collecting revenue, obtaining returnable income, making expenditures, creating and executing the budget.

51 Ibid., pp. 51-61.

52 https://repozytorium.uwb.edu.pl/jspui/bitstream/11320/6127/1/Konstytucyjne_uwarunkowania_tworzenia_i_stosowania_prawa_finansowego_i_podatkowego.pdf pp. 248-253. (Accessed on 14.06.2021).

Elements of self-reliance include: the statutory transfer of the corresponding own revenue, the power to make and apply financial regulations, the right to borrow, loans and bond issues, the right to decide independently on the direction of expenditure and the choice of the mode of procurement, the power to adopt the budgetary procedure, the budget (provisional budget) and amendments thereto, the power to carry over and block expenditure, the creation and disposal of reserves, the right to implement the budget itself and to evaluate the executive body by means of the institution of vote of approval.

Restrictions on the activity of municipalities in the performance of public tasks may be created only in the form of statutes. This does not give complete freedom to the legislator, as the constitutional principles of self-governance of municipalities bind the state authorities. Autonomy is also subject to limitations by statute, but only if they are justified by constitutionally defined objectives and constitutionally protected values. The Constitutional Tribunal recognizes as unconstitutional those restrictions that meet the requirements of the constitution in formal and procedural terms, as well as in substantive terms. Legislative interference with the rights vested in communes is therefore possible. However, it may not be excessive, and the legislator may not introduce restrictions that exceed a certain degree of inconvenience. The right to manage, settle and resolve matters of a local nature under one's own responsibility must stem from a legal norm, and the exclusive source of public authority for local government is the law enacted by the state. The limits of the self-government's autonomy are set out in the provisions regulating the collection of revenue from specific sources and in the provisions specifying the principles and forms of expenditure. The doctrine and the judicature have never doubted that the independence of the municipality's expenditure-making must be exercised within the statutory limits, which imply, among other things, the priority of expenditure on obligatory own tasks. Municipalities may have various new tasks and financial burdens within their competence, and there is no absolute prohibition in the constitution to make certain expenditures obligatory. This means that the form of a law is necessary not only for the general establishment of the obligation to incur certain expenditures for specific purposes, but also for the establishment of the amount of these expenditures. The general level of financial obligations must be possible to establish already based on the statutory regulation, which should maintain an appropriate degree of precision and detail, and cannot be limited to blanket references to executive regulations. On the other hand, the norm contained in article 167, paragraph 4 of the constitution imposes an obligation to introduce appropriate changes in the division of public incomes between the state and the local government, if such changes are made within the scope of the latter's tasks and competences. Thus, assigning new tasks without ensuring new sources of public revenue or increasing the efficiency of the existing ones, will constitute a violation of the constitutionally determined scope of the revenue authority, which is one of the guarantees of its financial independence.⁵³

53 Safjan and Bosek, 2016, pp. 953-977.

3. Summary

The fundamental source of financial law is the Constitution of the Republic of Poland. Next in order are international agreements ratified with the consent of the Act, which have precedence over the Act in the situation where they conflict with the act. Next are regulations issued based on specific authorizations included in a statute. The constitution is a normative act universally binding on the territory of the country or in the sector of an authority's activity. In the Constitution of the Republic of Poland, Chapter X is devoted to the issue of public finance. It contains information defining the process of collecting and spending public financial resources as well as the role of the state in this respect. The issue of adopting the state budget, as well as its changes or budgetary provisions is also presented. The provisions of the constitution have the character of general principles that must be respected while creating the tax law. In the constitution there are regulations concerning the tax system. They define: the basis of taxation; the determination of the essential elements of the construction of taxes; the introduction of a specific procedure for the enactment of tax laws and the competence of local bodies to create tax laws. The constitution stipulates that the imposition of taxes is only possible by law (by the parliament). The most important elements of a tax must be specified in the law. The constitution also does not allow for tax laws to be treated in an accelerated manner (they cannot be introduced in an extraordinary manner). Local government bodies (municipal councils) have the authority to set the amount of local government taxes and fees.

Thus, in presenting the sources of financial law, reference should be made first to the Constitution of the Republic of Poland. The constitution regulates the basic principles of public finance, such as, inter alia: collection and disbursement of funds for public purposes in the form of a statute, passing the state budget and introducing changes in the budget act or in the act on a provisional budget, levying taxes and other public charges, or defining the principles of self-government finance. Among the internal sources of financial law a large role should be attributed to the Public Finance Act, which in the literature on the subject is treated as an act codifying the provisions of financial law. It regulates such issues as: management of public finance rules, state public debt, budget resolutions of local government units. In turn, the financial activity of local government units is regulated by the Act on communal self-government, the Act on Poviats Self-Government and the Act on Voivodship Self-Government. Separate legal acts of statutory rank are regulated taxes in the Tax Ordinance Act. Individual taxes are also regulated by statutory provisions. Sometimes one tax is regulated by one act of law, and sometimes one tax act regulates several taxes. However, the statutory form is always used for the introduction of this type of financial benefit. The basic legal acts regulating certain segments of public finance also include the Act on the National Bank of Poland, the Banking Law and the Customs Law. In turn, international agreements as a source of law refer mainly to the tax and customs law.

Regulations also occupy a specific position among the sources of financial law. Their application is required because laws are not legal acts, which should regulate detailed or frequently changing issues. They regulate only those issues that have been specified in the provisions of laws.

Among the sources of financial law, it is also necessary to mention local acts of law. Their application is territorially limited. They are a manifestation of the activities of local government units of a certain level. The provisions of local law are issued by local government bodies and local government administration bodies on the basis and within the limits of statutory authorizations. Local self-government bodies are empowered to make laws universally binding in the area of their activity. The powers of local self-government bodies to enact local law in the sphere of finance relate mainly to taxes, fees and property management.

The sphere of public finance, due to its complexity, faces many challenges and problems. One of the problems in this area of public life is public debt. Public debt can be defined as an aggregate of budget deficits incurred in previous periods. An unbalanced budget is the cause of a constantly indebted state.

Moreover, the Polish 'legislative practice leads to the conclusion that the creation of tax law is largely a chaotic process.⁵⁴ Polish tax system is not only one of the least stable. Many provisions are unclear, both for taxpayers and for tax authorities and even judges adjudicating in tax cases. This leads to contradictory regulations, a lack of certainty for taxpayers as to whether and how much tax they should pay, and poor efficiency in tax administration.

Another problematic element of the financial law system is the volatility of the 'regulatory' environment—a network of legal regulations and numerous other norms restricting the activities of banks. Practice also shows that the behaviour of entities (banks) offering financial services, despite the introduction of information obligations, prohibition on misleading and issuance of unfair advertising, is far from balance, honesty, reliability, professionalism, and respect for the legitimate interests of the client—so desirable for building the trust of non-professional market participants in banking institutions.

Table 1. Financial constitutionality in context

Article 2 of the Polish Constitution	The Republic of Poland is a democratic state governed by the rule of law, implementing the principles of social justice.
Article 78 of the Polish Constitution	Each party shall have the right to appeal against judgments and decisions rendered at first instance. Exceptions to this rule and the procedure for appealing shall be laid down by law.

⁵⁴ Mączyński and Sowiński, 2005, pp. 35–45.

Article 84 of the Polish Constitution	Everyone is obliged to pay public burdens and benefits, including taxes, as defined by law.
Article 87 of the Polish Constitution	The sources of universally binding law of the Republic of Poland are: constitution, laws, ratified international agreements and regulations. The sources of universally binding law of the Republic of Poland are, in the area of activity of the authorities which established them, acts of local law.
Article 216(5) of the Polish Constitution	No loans may be contracted or financial guarantees and sureties provided, as a result of which the state public debt exceeds 3/5 of the value of the annual gross domestic product. The method of calculation of the value of the annual gross domestic product and the state public debt shall be laid down by law.
Article 168 of the Polish Constitution	Local government units have the right to set the amount of local taxes and charges to the extent specified by law.
Article 216 of the Polish Constitution	Funds for public purposes shall be collected and spent in the manner prescribed by law.
Article 217 of the Polish Constitution	The levying of taxes, other public tributes, determination of entities, subjects of taxation and tax rates, as well as the principles of granting reliefs and remissions and categories of entities exempted from taxes shall be made by law.
Article 218 of the Polish Constitution	The organization of the State Treasury and the way the State Treasury's assets are managed are defined by law.
Article 219 of the Polish Constitution	<p>(1) The Sejm passes the state budget for the financial year in the form of a budget law.</p> <p>(2) The principles and procedure for the preparation of the draft state budget, the degree of its detail and the requirements to which the draft budgetary law should conform, as well as the principles and procedure for the implementation of the budgetary law shall be determined by law.</p> <p>(3) In exceptional cases, state revenues and expenditures in a period of less than one year may be determined by a law on a preliminary budget. The provisions concerning the draft budgetary law shall apply accordingly to the draft law on budgetary provision.</p> <p>(4) If the Budget Act or the Budget Provisional Act has not entered into force on the date of the beginning of the financial year, the Council of Ministers shall conduct financial management based on the bill submitted.</p>

Article 220 of the Polish Constitution	An increase in expenditure or a reduction in revenue planned by the Council of Ministers may not cause the Sejm to establish a budget deficit greater than that provided for in the draft budget law.
Article 221 of the Polish Constitution	Only the Council of Ministers may initiate legislation on the Budget Act, the Budget Provisional Act, amendments to the Budget Act, the Act on the incurrence of public debt and the Act on the provision of financial guarantees by the state.
Article 222 of the Polish Constitution	The Council of Ministers shall submit to the Sejm, at the latest three months before the beginning of the financial year, a draft budgetary law for the following year. In exceptional cases, a later submission of the draft is possible.
Article 223 of the Polish Constitution	The Senate may pass amendments to the Budget Act within 20 days of the day on which it is referred to the Senate.
Article 224 of the Polish Constitution	The president of the Republic shall within 7 days sign the Budget Act or the Budget Provision Act presented by the speaker of the Sejm.
Article 225 of the Polish Constitution	If, within four months of the submission of the draft budget act to the Sejm, it has not been submitted to the president of the Republic for signature, the president of the Republic may, within 14 days, order that the term of the Sejm be shortened.
Article 226 of the Polish Constitution	The Council of Ministers shall, within five months of the end of the financial year, submit to the Sejm a report on implementing the Budget Act together with information on the state debt position.
Article 227 of the Polish Constitution	National Bank of Poland

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Regulation of Public Finances in Romania in Light of Financial Constitutionality

Ion BRAD

ABSTRACT

Modern constitutions try to achieve a balance between establishing and restraining power. These two opposite tendencies also dominate the entire matter of public money. Consequently, our present study will be divided in two parts. In the first one we will highlight all the means provided by the Romanian Constitution so that the public authorities can have at their disposal the finance they need. In the second part we will focus on the counterpart provisions, those that try to establish a severe system of limitation and control on the whole financial activity of the state. Besides the constitutional texts, we will explore the vast jurisprudence of the Constitutional Court, which in time has provided useful explanations and clarifications upon these texts. Having this constitutional exposition as our focus and essential framework, we will extend our study to the relevant financial legislation. The constitutional norms are in this matter, as in many others, only the basic structure upon which the subsequent legislation is developed. The result will be, hopefully, a substantial presentation of the Romanian financial law centred on its constitutional regulation.

KEYWORDS

Public finance, Taxation system, Fair distribution of the tax burden, Budget law, Court of Audit.

1. Introduction

The constitution is all about power—a true handbook of public power. The fundamental act which institutes, legitimates and structures the most powerful of all powers in a society, namely the governing authority. But according to the well-known precepts of constitutionalism,¹ the true purpose of any constitution should be the limitation of power.² It is not sufficient for a constitution to be only operational, but it must also

1 There are two essential components that define constitutionalism. The first is an emphasis on the constitution, a preoccupation with attaching value to the constitutions as juridical and political documents. The second and essential ingredient of constitutionalism is represented by the objective it establishes, namely the limitation of power. That is why constitutionalism is the concept that aims at limiting the power of the governing authority by means of the constitutions. For the meaning, purpose, exigencies, and present challenges of constitutionalism, see Brad, 2012a, pp. 34-40; Brad, 2012b, pp. 135-144.

2 Sartori, 1962, pp. 853-855; Heringa and Kiiver, 2009, p. 5.

constrain the political power. A constitutional edifice that only organizes political power without restraining it, establishing a system of unlimited and uncontrolled power, is a constitutional failure, the very danger that the constitutionalist movement tries to prevent.

That is why the main theme of the modern constitutions is the balance they try to achieve between establishing and restraining power. This tension can be found in the regulation of the fundamental principles and institutions, but it also permeates every detail of a constitution. It seems that every article has a role in this confrontation, and it is carefully designed to bring the proper amount of support to one side or the other. So even if the various national constitutional systems have their own particularities and propose different solutions to the great problems of state and government, they all share the same profound preoccupation for properly managing the public power.

The Romanian Constitution³ is not an exception from this endeavour. The antagonism is deeply embedded in its structure. Some of its provisions are concerned with establishing the main characteristics of the state and to endow its different public bodies with competences and authority.⁴ Another significant number of its articles implement an elaborate system intended to restrain the public authorities. This reality is obvious and well expressed even from the first article of the constitution. The first two paragraphs set up the main features of the Romanian State: a sovereign, independent, unitary, and indivisible national state, the republic being its form of government. But the other three paragraphs consecrate some of the most important and effective principles in limiting the state's power: the rule of law, the protection of the citizens' rights and freedoms,⁵ political pluralism and the separation of powers.⁶

The constitutional regulations of the financial aspects⁷ seem to follow a simple pattern, as expressed by Art. 137: formation, administration, use, and control of the financial resources of the state. It is in fact the obvious circuit of money into the public system. Everything begins with the formation of the financial resources, through different forms of public revenues. Money enters thus into the public system. These resources must be properly managed, so important provisions must be put into place for this purpose. The budget plays a key role. As the financial plan

3 The Romanian Constitution came into force on the 8 December 1991, replacing the communist constitution from 21 August 1965. It was modified only once in 2003, through the Law of revision no. 429/2003.

4 It is interesting to notice one aspect of constitutional terminology. Throughout the constitution, the different bodies of the state are named 'public authorities', as an expression of the public power that they exercise.

5 The human rights are nothing else than limits of the public power, those barriers which the public power is not allowed to cross. See Aranjó, 2006, p. 1546–1548.

6 The different solutions of constitutional engineering can be more or less successful, and therefore questionable, but the principle itself remains valid and actual in its essence. There is not any democracy today which is not based on a clear allocation of powers among different institutions of the state. See Feldman 2010, pp. 483–496.

7 Art. 137–140 of the constitution. They are part of Title IV—Economy and public finance.

of the state, it represents the main instrument for a good administration of public money. The next stage is the actual use of the money for different public expenditures. Finally, all this process must be thoroughly controlled so that no public money is lost or misused.

It was tempting to use the same structure for our presentation. But we deemed it superficial and less revealing. Instead, we intend to analyse the constitutional provisions regarding public finance from that perspective which we argued that is the most profound and important subtext of the constitution. The two opposite tendencies that we already highlighted also dominate the entire matter of public money. On one hand, the state must have financial resources to fulfil its multiple attributions and responsibilities. The constitution must sanction and support this necessity by providing the means through which the public authorities can procure money. But all this process must be carefully supervised and restricted. The potential for abuse is immense. That is why the constitutional norms reveal an intense preoccupation for implementing that system, or at least its foundations, which would assure the rightful handling of public money.

Consequently, our present study will be divided in two parts. In the first one we will focus upon the constitutional provisions favourable to the government, emphasizing all the means provided by the constitution in order that the public authorities can have at their disposal the finance they need. In the second part we will focus on the counterpart provisions, those that try to establish a severe system of limitation and control on the whole financial activity of the state. Besides the constitutional texts, we will explore the vast jurisprudence of the Constitutional Court, which in time has provided useful explanations and clarifications upon these texts.⁸ Having this constitutional exposition as our primary focus and essential framework, we will extend our study to the relevant financial legislation. The constitutional norms are in this matter, as in many others, only the basic structure upon which the subsequent legislation is developed. The result will be, hopefully, a substantial presentation of the Romanian financial law centred on its constitutional regulation.

2. The allocation of financial resources

The public authorities require three different kinds of resources to function properly and to fulfil their responsibilities: human resources, assets, and money, each of them being equally indispensable. Human resources are vital. The state, as an abstract

8 According to art. 147 para. 4 of the constitution, the decisions of the Constitutional Court are generally binding from the moment of their publication in the Official Gazette of Romania. Any provisions of the laws which are found to be unconstitutional immediately cease their legal effects. The decisions of the Constitutional Court cannot be appealed or censored in any way and are used as important landmarks for the subsequent solutions. For all these reasons, the jurisprudence of the Constitutional Court has in fact equal juridical relevance as the constitutional text itself.

entity, an emanation of the human spirit, a social convention, cannot act except through its human agents. The measure of its activity and efficiency is in fact the total sum of the work and quality of the people enrolled within its structures. But the public institutions must be materially equipped, from the building in which they function to the computers on which their agents work.⁹ The range of necessary assets is enormous, and the lack thereof constitutes a major hindrance to the public action. Finally, the public system needs financial resources, both for the internal costs and for public expenditure. The level of the public financial effort is ever-increasing, in accordance with the demands and expectations of the population and with the central role in the economy that the state had assumed.

The constitution is the first to recognize the legitimacy and utility of all these requirements, setting the basic concepts of the complex legislative system through which all these resources become available to the government entities.

Regarding the allocation of financial resources, the constitutional regulation is not at all abundant. Only a few concise statements, which delineate the main aspects of this process. It can be argued that they are simple and obvious, but our perspective is nevertheless different. In our opinion they are of great importance and relevance, real corner stones of the whole national financial structure. Thus, the constitution consecrates in essence two important elements: an indubitable right of the public authorities to benefitiate of financial resources and then the basic features of the taxation system, the system through which these resources can be absorbed into the public sphere.

2.1. The right to financial resources

Art. 137 of the constitution, entitled ‘Financial System’, states in the first paragraph that ‘Formation, administration, use and control of the financial resources of the state, of territorial-administrative units and public institutions shall be regulated by law’. Apparently, a vapid text which does not bring much constitutional contribution, only transferring the responsibility of regulation to the legislative level. But there are several relevant regulatory aspects which must not be overlooked. We will try to point them out throughout this chapter.

The most important one is that this text consecrates the right of the public authorities to financial resources.¹⁰ It clearly infers that they are entitled to have and manage money. This reality is not automatic or self-evident, but it had to be ratified by the nation’s fundamental act. The public finance impacts and defines in such a measure

9 The constitution delineates between private and public property. Only the state and the territorial-administrative units can have public property. The totality of their possessions subjected to this juridical regime constitute the public domain. See Podaru, 2019, pp. 1-12.

10 In the constitutional sense, financial resources mean money. They infer not the sense of sources from which the state may obtain the funds it needs, as for example financial institutions, capital market or population.

the entire activity of the state¹¹ that it had to be recognized and established at the constitutional level.¹²

Two further aspects must be emphasised regarding this right. First, its rightful holder. Who precisely has the right to receive, detain and spend public money? Interestingly, the constitutional text does not remain in the realm of generic terminology but offers some distinctions on this matter. Secondly, is there a corresponding obligation to this right? If the public authorities have the right to obtain money, who has the obligation to provide it?

2.1.1. A distinction regarding the right-holder

In common language, a general designation is usually employed regarding the holder or owner of the public finance: it is the state, the government, the administration, the public system, or the public authorities. But art. 137 para. 1 offers in fact an important specification on this issue, by mentioning that de financial resources belong to the state, to territorial-administrative units and to public institutions. The reference to the state is natural and not surprising, but the inclusions of the other two entities has a manifold meaning.

The territory of Romania is administratively organized into certain units, called territorial-administrative units.¹³ These units are public law legal entities, with full juridical capacity and their own patrimony. After the strict centralization of the communist era, the present democratic constitution envisioned a large decentralization of these entities. Thus, they benefit from a large administrative autonomy,¹⁴ that is the right and capacity to manage and solve the public affairs of the local community that they represent. The constitutional recognition of a right to financial resources is in fact a strong affirmation of the principle of local autonomy. Territorial-administrative units have a right to their own financial resources, which the local Administration authorities can determine, manage, and utilize to adequately perform their

11 It should not be nevertheless its only, obsessive focus. The state should not become a state dominated by its fiscal policy, one in which the preoccupation to gather financial resources is its central focus and it exhausts all its energy. See Put, 2015, pp. 23-39.

12 This is also the expression of a constitutional balance, given that the constitution stipulates a great number of the state's obligations and responsibilities. For example, art. 1 para. 3—which defines Romania as a social state; art. 47 para. 1—*The state shall be bound to take measures of economic development and social protection, of a nature to ensure a decent living standard for its citizens*; art. 135 para. 2—*The state must secure: ... c) stimulation of national scientific and technological research, arts, and protection of copyright; d) exploitation of natural resources, in conformity with national interests; e) environmental protection and recovery, as well as preservation of the ecological balance; f) creation of all necessary conditions so as to increase the quality of life*. For further analysis of the constitutional texts regarding the social and economic prerogatives of the state, see Deleanu, 2006, pp. 393-396, 514-516.

13 According to art. 3 para. 3 these units are the communes, towns, and counties.

14 These principles have received a constitutional recognition in art. 120 para. 1: *The public administration in territorial-administrative units shall be based on the principles of decentralization, local autonomy, and deconcentration of public services*.

attributions. Without this financial autonomy, the concepts of decentralization and local autonomy remain only an illusion.

In support of this right, other constitutional provisions consecrate the right of the local authorities to establish and collect local taxes (art. 139 para. 2) and the right to draft, approve and execute local budgets (art. 138 para. 4). The financial autonomy is thus strengthened, the territorial-administrative units being able to manage both the level of their revenues and the distribution plan of their resources.

The reference to the public institutions is somewhat superfluous. Public institution is a generic designation which includes all the public authorities and bodies. They are all in fact distinct entities in the massive organizational structure mainly of the state, but also of the territorial-administrative units. That is why their distinct mention in the constitutional text seems repetitive. But there is a purpose in that. It consecrates a right of all public institutions to financial resources. Their status is quite different: some of them have juridical personality, some do not; some have a high degree of independence, some are integrated in strict hierarchical structures. But all have their own part in the functioning of the public mechanism. All have been assigned a set of attributions that they must exercise. That is why they have the right to financial resources. Having no possibility to establish their own sources of financing, being dependent upon the public allocation of resources, this right implies a constitutional obligation of the state and the territorial-administrative units to provide each of them with the sufficient resources for their proper functioning.

The sense of the constitutional text becomes thus obvious. The distinct mentioning of the territorial-administrative units and the public institutions has a restraining purpose. It confers them their own right to financial resources, a right that can be interposed to the state. It is thereby a direct attempt to break the monopoly of the state upon the public financial resources, recognizing the importance of their activity and warranting them the allocation of necessary funds.

2.1.2. *A corresponding obligation*

After a consistent chapter devoted to fundamental rights and freedoms, the Romanian Constitution imposes three fundamental duties to its citizens: faithfulness towards the country, defence of the country and financial contributions. Thus, art. 56 para. 1 states that '*Citizens are under the obligation to contribute to public expenditure, by taxes and duties*'. It is obviously the counterpart provision to the right of the state to have financial resources. If public revenues can be procured from a lot of different sources.¹⁵ However, the main source remains the funds collected from the population.

The text is not to receive a strict interpretation, but an extensive one. First, not only the citizens have this obligation, but also the legal entities or other collective entities that obtain revenues or undertake activities subjected to the taxation system.¹⁶ Even the non-citizens who are in a certain relation with the Romanian State may be

15 About a general analysis of the public revenues system, see Costaş, 2021b, pp. 95-105.

16 Selejan-Guţan, 2020, p. 299.

subjected to its fiscality. Secondly, the actual means of contributing are not to be reduced only to taxes and duties but can include other forms of contributions.

A principle of solidarity is the underlying fundament of this obligation. The state does not impose its financial claims abusively, using its force and constraining power, but because it represents the nation's general interest. As the text makes evident, the collected resources are for the purpose of making possible the payment of public expenditure. Thus, when the citizens make the pecuniary sacrifice required by the fulfilment of this obligation, they should be motivated by the perspective of supporting and advancing both their own and the general good.

2.2. The taxation system

On the part of supporting the state, the constitution, beside the regulation of a right to have and manage financial resources, also regulates the basic elements of its taxation system. Art. 139, entitled '*Taxes, duties, and other contributions*', is the key text on this matter. The constitutional approach is to leave a large degree of freedom to public authorities in shaping the taxation system, both in the regard to its specific means and to the amplitude of its claims. In other words, the government has the liberty to decide the level of its revenues and the concrete methods to obtain them.

2.2.1. A variety of means

The constitutional norms mention three types of public revenues: taxes, duties and contributions, but the list is certainly not exhaustive, the competent authorities having the possibility to devise and implement other methods of procuring financial resources. They represent general categories that include a multitude of specific forms, together constituting the quasi totality of the national taxation system. All three have in common the fact that they are perceived from the population, but each of them has a different profile, clearly individualizing themselves from all the others.

Taxes are defined as compulsory contributions, without consideration and non-refundable, levied by the public Administration for the satisfaction of general necessities.¹⁷ Natural and legal entities pay taxes for their income, profit, property, services, or consumption. The most important ones are the corporate income tax,¹⁸ micro-enterprises income tax,¹⁹ personal income tax,²⁰ value added tax,²¹ excise

17 Art. 2, para.1, no. 29 of Law no. 500/2002 regarding the public finance. For details, see Şaguna, 2017, pp. 122-124; Niculeasa, 2014, pp. 577-587; Gliga, 1996, pp. 101-104.

18 Art. 13-46 of Law no. 227/2015—The Fiscal Code. The standard corporate income tax rate is 16%.

19 Art. 47-57 of the Fiscal Code. The tax rates used for micro-enterprises income tax are 1% for micro-enterprises with one or more employees and 3% for micro-enterprises with no employees.

20 Art. 58-134 of the Fiscal Code. The standard personal income tax rate is 10% (with a few variations).

21 Art. 265-334 of the Fiscal Code. The standard VAT rate in Romania is 19%.

duties,²² local taxes (tax on buildings, tax on land, tax on transportation means),²³ and customs duties.²⁴

Duties are sums of money paid by the natural/legal entities for certain services rendered to them, at their request and in their benefit, by public institutions or services.²⁵ They do not have a continuous or compulsory character, being owed and paid only by the persons who request a certain service to public authorities.²⁶ They are not an equivalent payment for the rendered services, their amount could be higher or lower than the actual value of the services provided.²⁷ For instance, stamp duties,²⁸ parafiscal levies,²⁹ and environmental duties³⁰ are included in this category.

Contributions are compulsory levies owed by natural or legal entities, representing a part of their income, with or without a consideration.³¹ The most notorious ones are the social contributions:³² social insurance contribution,³³ health insurance con-

22 Art. 335-452 of the Fiscal Code. The legal regime of most excise duties has been harmonized with the European regulations.

23 Art. 453-472 of the Fiscal Code. As an expression of local financial autonomy, the public authorities from the territorial-administrative units have the right to collect these taxes and, in a certain measure, to determine their amount (they have the option to increase their rate with maximum 50% above the general level established by the Fiscal Code).

24 Law no. 96/2006—The Customs Code.

25 Art. 2, para 1, no. 40 of Law no. 500/2002 regarding the public finance. See Şaguna, 2017, pp. 124-125; Niculeasa, 2014, pp. 565-577.

26 The Constitutional Court has decided for example that a legal obligation imposed to private universities to pay a 10% duty from all the revenues received from the students to the state budget is unconstitutional, being instituted without any corresponding service from the part of a public authority. See Decision no. 176/2003.

27 See Costaş, 2021b, pp. 118-121.

28 The most known are the judicial stamp duties, due for the public service of justice. They are collected for most of the legal actions and requests. Over the years, Romania has been repeatedly condemned by the European Court of Human Rights for the excessive amount of these duties, which was considered a violation of the fundamental right to a fair trial consecrated by art. 6 para. 1 ECHR. See for example *Weissman and others v. Romania* (2006), *Nemeti v. Romania* (2008), *Iordache v. Romania* (2008), *Adam v. Romania* (2009).

29 The complete list has been synthesized and is available on the Ministry Finance's web page: <https://mfinante.gov.ro/registrul-taxelor-si-tarifelor-nefiscale> (Accessed: 7 July 2021).

30 Regulated by government Emergency Ordinance no. 196/2005 on the Environment Fund, approved with amendments and completions by Law no. 105/2006, as subsequently amended and supplemented. Environmental duties are paid for air emissions, packaging, batteries and accumulators, electric and electronic equipment, shopping bags, tires, industrial oils. The most problematic one was the duty perceived on the occasions of the first registration of a vehicle in Romania. Even though the government continually tried to change its form, the European Court of Justice declared all these attempts as incompatible with the Union law. For further details, see Costaş, 2021b, p. 605-651.

31 Art. 2, para 1, no. 19 of Law no. 500/2002 regarding the public finance. See Niculeasa, 2014, pp. 587-592.

32 Art. 135-220 of the Fiscal Code.

33 It is an employee contribution; the standard rate is 25%.

tribution³⁴ and labour insurance contribution.³⁵ The purpose of these contributions is to offer protection against certain social risks. In return, the payers receive some rights and social benefits (e.g., sickness benefits; maternity benefits; unemployment benefits; family benefits—child allowances, child-rearing allowances; disability benefits; accidents at work and occupational diseases; and pensions).

From a constitutional standpoint, no other tax or contribution has been so contested over the years as the health insurance contribution. The obligation itself to pay this contribution and various other aspects regarding its regulation were intensely scrutinized before the Constitutional Court. The national system of health insurance is the main system put in place for ensuring the population's health and it is financially supported through a contribution paid by the insured to the Unique National Fund of Health Insurances. All the natural persons with the residence in Romania are obligated to pay this contribution in proportion with their derived income. The insured gain the right, without any distinction, to a basic services package that includes medical services, drugs, medical devices, sanitary materials, medical care.

The mandatory character of this contribution was deemed to be unconstitutional for several different reasons: it restricts the citizens' freedom to choose the more convenient health system and also the medical services provider;³⁶ it institutes a state monopoly in the domain of health insurance, which is against the constitutional principles regarding economy;³⁷ the access to medical services is conditioned by the quality of being insured, which represents a violation both of the right to the protection of health (art. 34) and to the right to benefit from social assistance measures (art. 47 para. 2);³⁸ the contribution itself as a legal concept cannot be assimilated with either the notion of tax or that of duty, and therefore it is not included in the citizens' constitutional obligation to pay it.³⁹

34 It is an employee contribution; the standard rate is 10%.

35 It is an employer contribution; the standard rate is 2.25%. The computation system is the same in all three cases: the monthly assessment base is the gross salary income derived by individuals; employers compute and withhold the social contributions when paying salaries.

36 The inference is that the health insurance cannot be included among the exceptional cases mentioned by art. 53 para. 1 that allow restrictions on the exercise of certain rights or freedoms. See for instance Decision no. 934/2006; Decision no. 1011/2009; Decision no. 128/2012.

37 Mentioned in art. 135 para. —1—'*Romania's economy is a free market economy, based on free enterprise and competition*'. See Decision 775/2009.

38 Art. 34 of the —constitution—The right to protection of health: '(1) *The right to the protection of health is guaranteed.* (2) *The state shall be bound to take measures to ensure public hygiene and health.*

3) *The organization of the medical care and social security system with sickness, accidents, maternity and recovery, the control over the exercise of medical professions and paramedical activities, as well as other measures to protect physical and mental health of a person shall be established according to the law*'. Art. 47 para. 2—'*Citizens have the right to pensions, paid parental leave, medical care in public health centres, unemployment benefits, and other forms of public or private social securities, as stipulated by the law. Citizens have the right to social assistance, according to the law*'. See Decision no. 705/2007.

39 Decision no. 504/2015.

The Constitutional Court has constantly rejected these objections, ruling that the obligation to contribute to the health insurance public fund does not represent a constitutional infringement. On the contrary, the system of health insurance implemented by the state is an expression of the constitutional provisions regarding the state's obligation to ensure the protection of health (art. 34) and social protection (art. 47 para. 2) for its citizens.⁴⁰ But, in accordance with the principles of solidarity and subsidiarity, the entire society must participate in the effort to protect the population's health.⁴¹ The social health system cannot achieve its purpose, which is a minimum of medical assistance for every person, without the general contribution of the population. That is why this contribution is also an expression of the citizen's constitutional obligation to participate to public expenditure, mentioned by art. 56 para. 1.⁴² Thus, the contribution to the health insurance system has been deeply anchored in the constitutional texts.

2.2.2. *An unlimited potential and a privileged status*

Using the abovementioned means, the government can collect from the population the much-needed financial resources. It is worth noticing that the constitution does not impose any limit in this respect, leaving to the public authorities the possibility to establish the actual level of public revenues. The state's appetite for money is therefore not limited by constitutional norms and will be restricted either by the rationality of the government, who will implement a balanced fiscal policy, or by the resistance of the population, unwilling to sustain an impoverishing taxation system.

In the jurisprudence of the Constitutional Court, an interesting issue was that of the privileges that public institutions have in enforcing the tax debts. A series of legal texts consecrate special rules in this matter, different from the common procedures of enforcing debts, evidently more favourable to the public authorities. For example, they have a right of preference in collecting budget debts that favours them before other private creditors in the forced execution proceedings. Likewise, the limitation period of the tax debts, which is considerably longer than the general limitation period (five years instead of three years). Or the fact that the enforcement of tax debts never gets out of date.⁴³ The constitutionality of these privileges was repeatedly contested, being considered a discrimination that violates multiple constitutional articles, but especially art. 16, which places the principle of equality above the law.

40 Decision no. 705/2007; 1011/2009; Decision no. 903/2015; Decision no. 280/2016.

41 Decision no. 775/2009; Decision no. 166/2016; Decision no. 634/2018.

42 Decision no. 335/2011; Decision no. 343/2011; Decision no. 504/2015.

43 The common rule is that a forced execution becomes out of date if the creditor does not accomplish any act or action, necessary for the execution and required by the tax executor, for a period of six months. The effect of this sanction is an annulment of all the enforcement acts issued during that procedure (art. 697–699 of the Civil Procedure Code). It is in fact a protective measure against passive creditors, not allowing them to keep the debtor in a perpetual state of danger and uncertainty regarding his material condition.

This opinion was not shared by the Constitutional Court, which offered a solid constitutional justification for this special protection regime granted to the tax claims.⁴⁴ In the legal relationship established between the state as the creditor and the taxpayer as the debtor the two parties do not find themselves on equal positions. There is a relationship of subordination between them in the favour of the state, on the grounds that the state represents the general interest. The taxes must be collected from the population in a constant, prompt, and precise manner, being the main source of public revenues. Only with these resources at its disposal the state can perform its multiple obligations towards the citizens. The correlation between an efficient execution procedure of the tax debts and the safeguarding of the general interest is thus obvious. Therefore, the privileged legal regime that accompanies the realization of public debts has been considered entirely compatible with the constitutional provisions.

3. The control of financial activity

We will devote the second part of our study to the presentation of all the constitutional constraints imposed upon the public financial activity. The concern is evident. Certain tendencies toward abuse in this area are predictable, and represent a great normative challenge. The constitution must implement the basis of a protection system that can be efficient in keeping the public authorities on the right track, preventing them from mishandling public money. A failure in this respect is an ample disaster. The true purpose of the state, which is to serve the general interest, is thus compromised. Its existence and activity deeply discredited.

That is why the constitutional regulation is evidently more abundant in this regard. Several methods of limitation and restraint can be distinguished. First, there are some fundamental principles that must guide the whole financial activity of the public authorities. Then, there are significant procedures that are meant to bring order and rigor into the public finance. Finally, there are institutions that must closely supervise this entire activity. Therefore, we will study hereinafter the principled, the procedural and the institutional restrictions.

3.1. Fundamental principles

There are two fundamental principles consecrated by the constitutional texts regarding the financial activity of the state: the principle of legality and the principle of fair distribution of the tax burden. Their obvious purpose is to discipline the action of the public authorities in financial matters. Some other constitutional principles may

44 Decision no. 158/1998; Decision no. 202/2007; Decision no. 705/2007; Decision no. 513/2008; Decision no. 9/2014; Decision no. 20/2019.

have relevance upon the financial activity of the state but are not mentioned in direct correlation with it.⁴⁵

3.1.1. *The principle of legality*

This principle is generally stated in art. 137 para. 1: ‘Formation, administration, use and control of the financial resources of the state, of territorial-administrative units and public institutions shall be regulated by law’. It also receives specific applications in art. 138 regarding the budgetary procedures (para. 2-3 implying that the state budget and the state social security budget can be adopted only by law, para. 4 clearly mentioning that ‘Local budgets shall be drafted, approved and executed in accordance with the law’) and in art. 139 para. 1 regarding the taxation system: ‘Taxes, duties, and any other revenue of the state budget and state social security budget shall be established only by law’. A single exception is admitted, leaving a certain amount of freedom to the local authorities in this matter: ‘Local taxes and duties shall be established by the local or county councils, within the limits and under the terms of the law’ (art. 139 para. 2).

As it can be clearly seen, the references to the law are quite numerous. Their significance should not be underestimated. There is an evident constitutional preoccupation to impose a strict legal regulation on every aspect of the public action in financial matters. Legality is to dominate the entire financial activity of the public system. We would like to make a few observations about the content and implications of this principle:

The phrase ‘by law’ must receive both an extensive and a restrictive interpretation. On the one hand, it includes the laws as such, but also the ordinances of the government. As an expression of the legislative delegation regulated by art. 115, the government can issue ordinances—acts that have the same juridical force as the laws.⁴⁶ On the other hand, these acts cannot transfer the regulation prerogative to other authorities. If a disposition from a law or an ordinance would try to empower other public agencies to regulate financial issues, such a disposition would be unconstitutional.

The central dimension of this principle is the normative one. The constitutional accent is on the regulatory aspect: ‘shall be regulated by law’ (art. 137 para. 1), ‘shall be established by law’ (art. 139 para. 1). The meaning is that all these financial aspects must receive a legislative regulation. The executional sense, which imposes a strict observance of the law in all the activity of the state, is only subsidiary.⁴⁷

45 For example: the precedence of the European law over the national law (art. 148 para. 2), equality before the law (art. 16 para. 1), the interdiction for the law to have retroactive effect (art. 15 para. 2), protection of the fundamental rights of the citizens. For further details, see Costaş, 2021b, pp. 24-88.

46 There are two forms of ordinances: simple ordinances, issued by the government based on an enabling law, and emergency ordinances, adopted by the government in exceptional cases. For details, see Şova, 2013, pp. 537-540; Şaguna, 2017, p. 3.

47 This aspect is in fact covered by another essential constitutional principle, the rule of law, whose meaning is obviously stated in art. 1 para. 5—‘*In Romania, the observance of the Constitution, its supremacy and the laws shall be mandatory*’.

The restricting factor of this principle is apparent. No other authority except the parliament⁴⁸ can regulate the sensitive domain of public finance.⁴⁹ All the secondary legislation, issued by different institutions of the public administration, can explain, apply, or detail the law, but never contradict it or add to it.⁵⁰ For example, it is not possible to establish taxes, duties or contributions by decisions of the government⁵¹ or orders of the ministers.⁵² Likewise, it is a violation of this principle to impose through methodological norms other conditions of the application of a certain law other than those stipulated by it.

The reasons for such a limitation are manifold. First, it prevents disorder. If other public institutions would be able to issue their own regulation, the entire financial activity would be chaotic. Secondly, it hinders abuse. The financial regulations are adopted by the most representative and responsible public authorities. Thus, a regulatory capacity restricted mainly to the parliament is a premise for coherence, competence, and fairness in the public financial operations.

3.1.2. *The principle of fair distribution of the tax burden*

After imposing ‘a tax burden’ in art. 56 para. 1 for all citizens, who must pay taxes and duties, the constitution seeks to balance the relationship between the state and the citizens by imposing in para. 2 a principle of fairness: ‘*The legal taxation system must ensure a fair distribution of the tax burden*’. It is an application of the general principle of equality of rights consecrated by art. 16 para. 1: ‘*Citizens are equal before the law and public authorities, without any privilege or discrimination*’. If the state has the right to obtain financial resources from the population, it must do it in a fair and just way. It is a restriction that prevents any form of financial abuse through partiality in taxation.

The range of the principle is quite wide, allowing the Fiscal Code to offer some nuances (apparently based on the legal or natural character of a person). Thus, art. 3 para. 1, let. a) imposes the neutrality of the fiscal measures as regards the various categories of investors and capital, or the form of ownership, ensuring that the taxation system offers equal conditions for all of them. As to the natural persons, art. 3 para. 1, let. c) institutes the principle of fiscal equity, according to which the tax burden

48 The government as well, only through the ordinances as stated above, but under the strict supervision of the parliament. The simple ordinances can be issued only if the parliament allows it, by passing the enabling law, a law that must establish the field and the date up to which ordinances may be issued. The emergency ordinances must be always, in the shortest time possible, subjected to the approval of the parliament.

49 As an additional proof of this exclusive character, the constitution prohibits people’s legislative initiative in taxation matters. Art. 74 para. 2—‘*A legislative initiative of the citizens may not touch on matters concerning taxation, international affairs, amnesty or pardon*’.

50 Bufan and Minea, 2008, p. 17.

51 The government has the constitutional prerogative to act through decisions or ordinances. According to art. 108 para. 2, the decisions of the government are issued to organize the execution of laws, having thus a lesser juridical force.

52 There have been many violations of this principle. For example, the VAT rate for certain taxpayers was established by an order of the minister of Finance.

of every taxpayer should be determined in proportion with his contributive power. Therefore, fairness means not a strict amount equality, but a different level of taxation depending on the actual size of a person's revenues or properties.

Again, the health insurance contribution was intensely contested before the Constitutional Court on its apparent lack of fairness. Suspicions of unconstitutionality were raised not only by its mandatory character, as discussed above, but also by the mechanism of its determination. Being calculated as a single rate applied to all the income of a person, it was considered profoundly discriminatory: even if people pay a different contribution, they all receive access the same medical services. This leads to an obvious disparity—persons with lower income being favoured, and persons with a higher income being disadvantaged.⁵³

The Constitutional Court has adopted an interesting line of argumentation, deciding that it is natural for the contribution to differ from person to person. This difference is reasonable and has a triple justification.⁵⁴ The situation of taxpayers with higher income compared to those with lower ones. (a) The value difference of the contribution is determined by the different level of the income.⁵⁵ (b) The principle of solidarity and subsidiarity in collecting and using the funds: social solidarity entails that all insured individuals are to benefit, if needed, from identical conditions of assistance for health protection and restoration, even if their material possibilities, determined by the level of their realized income, have allowed them a smaller contribution to the health insurance fund. In fact, under no circumstances can it be estimated in advance who, when and what medical services or other health protection measures will be needed. It is being reasonable that individuals that benefit from the services of this system contribute to their funding, and, at the same time, take part in the expenses that provide access to these medical services for other social categories that cannot objectively contribute to it.⁵⁶ (c) The principle of fair distribution of the tax burden: given the fact that the contribution has a fixed rate, not a progressive one, this principle practically imposes a differentiation between taxpayers by the level of their income.⁵⁷ Equality does not mean identical legal treatment in implementing certain measures.⁵⁸

In addition, the discriminatory aspect was invoked not only in regard with the method of determination, but also in regard with several differences that appeared in the legal regulation of the contribution. For instance, some categories of persons were *de jure* considered as insured and could fully benefit from this status without paying any contribution; for some types of income the calculation base was limited,

53 See Decision no. 412/2005; Decision no. 647/2005; Decision no. 335/2011; Decision no. 351/2014; Decision no. 599/2017.

54 Decision no. 647/2005; Decision no. 56/2006; Decision no. 539/2006; Decision 934/2006; Decision no. 1011/2009.

55 Decision no. 599/2017.

56 Decision no. 412/2005; Decision no. 452/2005; Decision no. 325/2013.

57 Decision no. 351/2004.

58 Decision no. 280/2016.

for others it was unlimited. As a general pattern, the Constitutional Court has decided that the legislator has a high degree of freedom in establishing the amount of the contributions owed by the citizens, as well as to institute exceptions from the general regime, usually more favourable, taking into consideration the special character of some situations.⁵⁹ But these variations must be nevertheless reasonable, fair, and proportionate. They must not differentiate between persons who are in similar situations or applied only to certain groups/categories of citizens. They must not create a disproportionate burden in proportion with the income of a person⁶⁰ or differentiate based on the nature of the income.⁶¹ In other words, the assessment power of the legislator in this matter is extensive, but not absolute or exclusive. It must have a rational justification that can be censored and sanctioned by the Constitutional Court.⁶²

3.2. Budgetary procedures

Another efficient method of restricting the state in its financial activity is the obligation to operate within a budgetary framework. Art. 138 of the constitution sets the basic features of this procedure. It is important to differentiate between the financial and legal aspects of the budget, that is between the budget as a financial *modus operandi* and the law through which the budget is established.⁶³ The constitutional text addresses both dimensions.

3.2.1. Financial technique

The references contained in the constitution to the national public budget are a clear evidence of its firm implementation and mandatory character. Art. 138 is entitled, 'National Public Budget', and para. 1 regulates its basic structure as a collection of autonomous, distinct budgets. Thus, the employment of a budget is not a mere recommendation or a vague political objective, but a constitutional obligation.

The state operating through a budget seems so ordinary that we can miss the true purpose of it, which is to discipline the entire public financial activity. As the

59 As an expression of the social character of the state, stipulated in art. 1 para. 5 from the constitution. For example, the exemption of the military personnel was deemed justified by the nature of their activity, which exposes them to high risks of injuries or even death. See Decision no. 128/2012.

60 Referring to the jurisprudence of the European Court of Human Rights, especially *Wasa Liv v. Sweden* (1988), the Court has repeatedly stated that the taxpayers cannot be forced to endure an unbearable tax burden. See Decision no. 224/2012; Decision no. 599/2017.

61 In the Decision no. 164/2013, the court has decided that a different regime for the pensioners who have paid the contribution related to their pensions does not have an objective and reasonable justification and represents a violation of art. 16 para.1 and art. 56 para. 2. The court has also decided that there is no objective justification for a legal disposition to impose only for certain forms of income a contribution which is actually higher than the income itself. See Decision no. 1394/2010.

62 Decision no. 6/1993; Decision no. 1/1994; Decision no. 325/2013; Decision no. 369/2014; Decision no. 166/2016; Decision no. 280/2016.

63 For the discussions regarding the juridical nature of the budget see Costaş, 2021, pp. 90-93; Fanu-Moca and Popa, 2013, pp. 24-26; Şaguna, 2017, pp. 78-79.

financial document that determines public revenues and expenses for an entire year, the national public budget is mainly a restrictive instrument. This restricting nature manifests itself at least in the following ways: (a) By ordering: All the public financial effort is envisioned and planned beforehand. The public action in this area is not chaotic and improvised, but is ordered, rationalized, disciplined by the budget's guidelines. The possibility for the public authority to act erratically, randomly, unpredictably in financial matters would generate all kinds of abuse. (b) By provision: Through the budget, the state anticipates a level of revenues that is rationally needed and can be realistically obtained. This level is assumed, formally settled, and is given a certain stability, for it is not easy for the public authority to surpass this limit. The citizens receive thus the guarantee that the state will not extend indefinitely its financial claims. This aspect is also applicable to the public expenditures, specifically regulated by the budget, which generates important limitations for the public authorities, both in the level and the specific purpose for which they are allowed to use financial resources. (c) By correlation: The vital purpose of any budget is to make an essential correlation between the level of the expenses and of the revenues. This operates also as a restriction for the state, which is hindered to spend irresponsibly and is bound to be balanced in all its financial activity.

Besides consecrating the budget *per se*, the constitution also sets an important aspect of its structure. Art. 138 para. 1 states that '*The national public budget shall comprise the state budget, the state social security budget and the local budgets of communes, towns, and counties*'. The national public budget is therefore an ensemble of budgets,⁶⁴ distinctly drafted, approved and carried out, but inserted and harmonized into a single document that can accurately display the true dimension of the public financial effort and also the balanced or imbalanced character thereof.

3.2.2. Legislative procedure

As regards the most important budgets, the state budget, and the social security budget, the constitution demands that they take the form of a law, adopted by the parliament. They must become legal documents, endowed with the juridical force of a law. Such a significant legal status attests the importance given to the financial aspects that they regulate. At the same time, the exclusive legislative competence of the parliament in this matter guarantees, as previously argued, their fair, stable and competent character. As to the legislative procedure itself, art. 138 para. 2, 3, and 5 mention several specific elements. They concern the drafting phase and the approval phase of this procedure.

64 The enumeration is not comprehensive. Art. 1 para. 2 of the Law no. 500/2002 regarding the public finance lays out all the budgets included in the national public budgets, for example the budgets of the special funds, of the autonomous public institutions, of the external non-repayable funds. All this uniform system of budgets is entitled 'Budgetary System', which is a synonym for 'National Public Budget'. See Şaguna, 2017, pp. 70-73.

3.2.3. Drafting phase

Art. 138 para. 2 restricts to the government the possibility of legislative initiative⁶⁵: ‘The government shall annually draft the state budget and the state social security budget, which shall be submitted separately to parliament for approval’. The solution is normal, given the fact that the government has the responsibility to exercise the general management of the entire executive activity and to ensure the implementation of all domestic and foreign policies of the country. In addition, the government has in subordination the immense institutional structure able to proficiently draft these budgets. It is worth noticing that this text also consecrates the principle of annuality⁶⁶ and imposes a separate submission of the drafts to the approval of the parliament.⁶⁷

Intricately connected with this provision is the final phrase of the art. 111 para. 1: ‘The government and the other bodies of public administration shall be obliged, within the parliamentary control over their activity, to present the information and documents requested by the Chamber of Deputies, the Senate, or parliamentary committees, through their respective presidents. In case a legislative initiative involves the amendment of the provisions of the state budget, or of the state social security budget, the request for information shall be compulsory’. Essentially, this text constrains the parliament to request the opinion of the government on every legislative initiative—coming from the deputies, senators, or citizens—that involves any modification of the budgetary laws. Thus, the government cannot be excluded from the legislative process, but has its essential role confirmed.⁶⁸ The Constitutional Court has unravelled some of the more subtle implications of this text.

The participation of the government’s representative at the parliamentary debate and his or her agreement with the proposed amendments is enough to fulfil this obligation.⁶⁹ But the participation of some representatives of the Ministry of Finance

65 The legislative initiative generally pertains to the government, deputies, senators, or several at least 100,000 citizens entitled to vote. The Constitutional Court has sanctioned any violation of the government’s exclusivity in budgetary legislative initiative. For instance, a law that established in advance a budgetary expenditure (minimum 1% of GDP per year for financing research and development activities) has been declared unconstitutional because it hinders the competence of the government to elaborate the state budget. See Decision no. 36/1996.

66 The two main public budgets must be approved every year by the parliament. There are financial reasons for this periodicity, but also the parliament has the possibility to exercise a stricter control over the financial activity of the government. For details, see Gliga, 1996, pp. 43-45; Saguna, 2017, pp. 95-97; Babalau, 2015, pp. 64-65. A budgetary allocation with a permanent character violates this principle and is unconstitutional.

67 As a guarantee of a thorough, individual examination of these drafts in parliament.

68 The Constitutional court has explained this provision as an expression of the principle of loyal collaboration between the parliament and the government concerning budgetary issues. This principle must manifest itself in the initial shaping of the national public budget as well as in its subsequent alterations. Only in this way the reason for which such a budget exists is preserved: to offer a bigger picture, on a macroeconomic level, of public revenues and expenditures. See Decision no. 331/2019 para. 54.

69 Decision no. 515/2004; Decision no. 22/2016; Decision no. 593/2016.

at the sessions of the standing committees that have inserted the amendments does not satisfy the constitutional requirements.⁷⁰

The government has the correlative obligation to present the financial impact of the proposal on the general budget. For this purpose, the government has 45 days to transmit the financial statement to the parliament.⁷¹

The fact that the government does not support the amendments or refuses to communicate the financial statement cannot block the legislative process and is not a reason for unconstitutionality.⁷² The information must be requested, but the opinion of the government is not mandatory for the parliament, who remains the sole legislative authority.

3.2.4. Approval phase

The fate of the budget laws is decided in the parliament, in a joint sitting of the two Chambers. Being considered ordinary laws,⁷³ they must be passed with the simple majority of the present deputies and senators. If for some reason the parliament fails to adopt them, the constitution provides as an emergency solution the prolongation of the applicability of the previous budgets: *'If the law on the state budget and the law on the state social security budget fail to be passed by at least three days before the expiry of the budgetary year, the previous year's state budget and the state social security budget shall continue to be applied until the adoption of the new budgets'* (art. 138 para. 3). The solution is financially and technically questionable, its obvious purpose being to place a severe constraint on the parliament to pass the budget laws on time, before the beginning of the year in which they must be executed. However, if the parliament does not comply, the solution must be implemented. The state just cannot operate its financial activities without a budget.

We must underline the freedom that the parliament has in adjusting the draft presented by the government, in establishing the final form of the budgetary laws and in adopting subsequent modifications. There is only one constitutional restriction in this respect,⁷⁴ stipulated by art. 138 para. 5: *'No budget expenditure shall be approved unless its financing source has been established'*. This succinct provision has elicited an intense constitutional debate. What exactly does it mean to establish the financing source? The Constitutional Court was called to bring clarifications:

70 Decision no. 764/2016; Decision no. 331/2019.

71 Decision no. 22/2016. Art. 15 para. 1 from Law no. 500/2002 establishes the draft method of this statement.

72 Decision no. 1092/2008; Decision no. 1093/2008; Decision no. 22/2016 para. 54.

73 The constitution differentiate between ordinary laws and organic laws (art. 73 para. 1). The latter have a superior status and can be passed only with absolute majority—the majority vote of the members of a Chamber(s) (art. 76 para. 1).

74 It is true that several other restrictions have been imposed by the legislation, especially Law no. 500/2002, for instance: the parliament must adopt these laws (and any subsequent modifications) in the context of the macroeconomic strategy assumed by the government (art. 17 para. 1); during the debates, the parliament cannot approve amendments that will increase the budgetary deficit (art. 17 para. 3).

The financing source is the necessary revenue to incur the expenditure. The purpose of the constitutional restriction is to prevent the extremely negative social and economic consequences of establishing budgetary expenses without coverage.⁷⁵

The budget allocation (that is the expenditure) and the financing source must be established simultaneously. The financing source cannot be subsequently established (for instance, at the time the next budget is drafted).⁷⁶

It is not necessary to expressly indicate the financing source in the text of the law itself. The constitution requires the establishment of the financing source before the approval of an expenditure and not the explicit indication of that source in the content of the law.⁷⁷ A recurrent and notorious phrase used by the court is that ‘the absence of an explicit specification of the financing source does not automatically imply the non-existence of the financing source.’⁷⁸

The establishment of the financing source and the sufficiency of the financial resources from the established source are two different aspects. The first is a constitutional imperative, while the second is entirely a problem of political opportunity that concerns in essence the relations between the parliament and the government. If the government does not have sufficient financial resources, it can propose the necessary legislative modifications to secure them.⁷⁹ In other words, the court is not competent to rule about the sufficient character of the established financial resources.

The financing source must nevertheless have an objective and effective character. It must be realistically able to cover the expenditure, in the context of the annual budgetary law. A mere formal or general indication is unconstitutional.⁸⁰

3.3. Institutional control

It is a constitutional paradigm to create ‘watchdog’ institutions, true guardians and guarantors for certain important principles. For example, the Advocate of the People defends the natural persons’ rights and freedoms (art. 58 para. 1), the Superior Council of Magistracy guarantees the independence of justice (art. 133 para. 1), the Constitutional Court is the guarantor for the supremacy of the constitution (art. 142 para. 1). For the control of the entire financial activity of the state, art. 140 has created the Court of Audit: ‘*The Court of Audit shall exercise control over the formation, administration, and use of the financial resources of the state and public sector*’ (para. 1).

The Court of Audit is an autonomous administrative authority⁸¹ who is not subordinate to the government or any other administrative authority. Its single purpose is to supervise the entire financial activity of all public institutions. It represents the

75 Decision no. 36/1996; Decision no. 22/2016.

76 Decision no. 36/1996; Decision no. 593/2016.

77 Decision no. 173/2002; Decision no. 320/2013; Decision no. 105/2014.

78 Decision no. 1056/2007; Decision no. 1092/2008; Decision no. 1093/2008; Decision no. 593/2016.

79 Decision no. 47/1993; Decision no. 1092/2008; Decision no. 1358/2010; Decision no. 593/2016; Decision no. 22/2016.

80 Decision no. 22/2016 para. 58-60.

81 Regarding the juridical nature of this institution see Cochinescu, 1995, pp. 48-55.

institutional mechanism established to inhibit the abusive conduct of the state in money management. Therefore, a real autonomy is vital for this institution, if it is to exercise an efficient control over other public bodies. That is why the constitution tries to enforce this autonomy, both in the organization and in the activity of the Court.

As to its composition, the Court of Audit has 18 members, called audit advisors, who are appointed by the parliament for a term of office of nine years, which cannot be extended or renewed. Members of the Court of Audit are independent in exercising their term of office and irremovable throughout its duration (para. 4). The Court of Audit is renewed with one-third of its members every three years (para. 5). Only the parliament is entitled to revoke the members of the Court of Audit, in the instances and under the terms stipulated by the law (para. 6).

Regarding its activity, the constitution sets the premise of a collaboration between the Court of Audit and the parliament. Thus, the court must present every year to the parliament a report on the accounts of the national public budget administration, including cases of mismanagement (para. 2). Such a report gives the parliament the possibility to consequently sanction or legislate, thus enforcing and supporting the activity of the court. Also, the chambers of the parliament can ask the Court of Audit to check the management of the public resources and report on its findings (para. 3). It is not so much an interference in its activity, but an instrument of institutional cooperation, the specific competence of the Court of Audit to control public finance being thus confirmed even in relation to the parliament.

The relevant legislation and the jurisprudence of the Constitutional Court have consecrated or nuanced other elements related to the institution's activity: (a) The Court of Audit autonomously decides its activity program. No other authority except the parliament can ask or compel the court to carry out inspections.⁸² (b) The Court of Audit has unrestricted access to any acts, documents or information that are necessary in its activity. Art. 5 of the Law no. 94/1992 consecrates the correlative obligations of all audited entities to fully support the activity of the court. (c) The audit activity of the court includes the financial audit (the financial situations are controlled to be complete, real, and according to the law) and the performance audit (an evaluation of the economy, efficiency, and effectiveness—the criteria of a sound financial management—of certain entities, programs or activities). (d) The inspections of the Court of Audit cannot aim at persons that are not in the sphere of the public sector.⁸³ The court is prohibited, for instance, from verifying the way in which private taxpayers execute their financial obligations towards the state. The Constitutional Court has declared the legal provisions that allowed such inspections as unconstitutional, even if representatives of the public institutions competent to exert control in that domain accompanied the auditors.

82 Art. 3 from the Law no. 94/1002 regarding the Court of Audit. The checks are initiated *ex officio* and can be stopped only by the parliament and only if the court exceeds its power.

83 Decision no. 28/1999; Decision no. 463/2003.

In conclusion, the financial activity of the state receives, as expected, a consistent constitutional regulation. The foundation of the entire public financial system is thus set out. Even if the acquirement of financial resources is legitimized and supported, the emphasis is undoubtedly placed on the restrictive dimension. Multiple safeguarding mechanisms are employed to ensure the rightful management of public money. It remains only that the state's agents will act in accordance with the letter and the spirit of this constitutional design.

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Regulation of Public Finances in Serbia in Light of Financial Constitutionality

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ABSTRACT

A country has always been an important factor in the economic processes of a county. With its activity, mechanisms for provision of services, consumption and investment system, its role in the allocation and distribution process of income and wealth, a country directly or indirectly establishes certain relations in the social reproduction process. Because of that it can be said that the country activity reflects on the public, but also on the private sector of a social community. No government, no county, can afford the ease of economic and any other activity taking place past it. A country must take on a lot of tasks, to establish the necessary harmony in all spheres of social activities in a social community. For realization of numerous tasks that are entrusted to one country, it needs certain funds that it collects either with the monopoly of its sovereign authority or in some other way. With the change and development of the county the tax system which is necessary to fulfil its role also changed and developed. In the field of taxation, the Republic of Serbia has no limitations on the scope of its tax jurisdiction. The constitution regulates the subjective financial law of the country, i.e., the right to introduce and collect taxes and prescribe the duty of natural and legal entities to act in accordance with tax regulations. Modern constitutions have established the principle of legality of taxes, which can be expressed by the maxim 'nullum tributum sine lege' ('there is no tax without law'). Thus, Article 91, paragraph 1 of the Constitution of Serbia prescribes that the funds from which the jurisdiction of the Republic of Serbia, autonomous provinces and local self-government units are financed, are provided from taxes and other revenues determined by law. Paragraph 2 of the same article proclaims the rule that the obligation to pay taxes and other duties is general and is based on the economic power of the taxpayer. Therefore, the basic postulates on which the financial right is built are contained in the constitution. It follows that financial law cannot exist without constitutional norms. On the other hand, through tax law, the constitution gained its concretization and realization. The science of financial law is exhibited in numerous monographs, textbooks, studies, discussions, articles, and other publications. Several authors have made a great contribution to the development of this scientific discipline in Serbia, among which the most important are Milan Todorović, Jovan Lovčević, Aleksandar Perić, Miodrag Jovanović, Miroslav Petrović, Dejan Popović, Božidar Raičević, and others.

KEYWORDS

Constitution, law, tax system, tax jurisdiction, fiscal rules, public revenues, taxes, contributions, fees, excise duties, customs, tax procedure, tax determination, tax collection, tax control.

Legal theory of finance: Areas of regulation, current issues, and challenges in financial law

1. Historic development of Serbian fiscal legislation

Serbian history in a political-historical sense includes the period from the immigration of Serbs to the Balkans in the 7th century until today, and in the geographical-historical sense it includes the entire history of the territory of today's Serbia before the immigration of Serbs. In terms of building a fiscal system, Serbia has come a long historical way. In the pursuit of independence, Serbia and Serbian society (as well as any independent county), created its own tax and budget system based on the example of developed countries in the region, starting from its own interest and real possibilities. The first records of the Serbian fiscal system can be found in Dušan's Code from the years 1349 and 1354.¹

In the times to come, the Serbian country strived to create a fiscal system that had to be flexible, clearly made, generous and 'sufficiently' acceptable from the aspect of time. Observed throughout history, the Serbian fiscal system has changed and developed in accordance with the degree of social-economic development of the country and the domestic and international environment. With the growth and the development of the Serbian country the systems of social value in Serbia developed, as well as the system of fiscal value. Hence, we can say that the Serbian fiscal system from a time aspect maintains the level of social development of the country. In the continuation of the lecture, we will refer to the period of construction of the Serbian fiscal system in the twentieth and in the beginning of the twenty-first century.

1.1. Serbian fiscal system and tax administration until the Second World War

The system of determining and collecting of public revenues at the beginning of the twentieth century reflected that era and the level of social development in Serbia. To control and monitor the budget and public incomes, as well as to strengthen the control of taxpayers and the tax authorities themselves, in 1909, Serbia introduced the institution of a country representative in every financial administration. Country representatives were chosen from the ranks of former tax collectors and had the task: (a) to attend the meetings of the tax board and to give the necessary guidelines to the

1 The Code of Emperor Dušan (in old transcripts it is called the *Law of the Pious Emperor Stefan*) is the most important law of medieval Serbia. It was established at the council of rulers and church dignitaries, held on the Ascension of the Lord, on 21 May 1349 in Skopje, and was supplemented at the council held on 31 August 1354 in Serres. The law was adopted with the aim of regulating the Serbian country with regulations that would apply to the entire empire and equally to all subjects.

members of the board; (b) to file complaints against owed taxes by the board, and (c) to check whether all taxpayers entered the actual amount of yield in the tax return.

The assessment of the size of individual taxpayers' income was performed by the tax boards. Those were commissions composed of several members (five, ten or fifteen members), and each township had its own tax board. The number of members of the tax board depended on the place for which he would be elected, that is, from the number of inhabitants of a certain place.² In this period, to strengthen and maintain public finances, Serbia introduces a system of assembly oversight over budget items of revenues and expenditures.³

After the end of the First World War, in 1918, the State of Slovenes, Croats and Serbs was formed. With the creation of a new country union, it was necessary to adopt a unified tax system and enact unique regulations in that area. In that period, on the surface of the new country, five tax systems were applied simultaneously: Serbian, Montenegrin, Austrian, Hungarian and Turkish, which lasted until 1928, when the tax system of the former Yugoslavia was unified.

On the territory of Serbia, until the unification of the tax system, the tax authorities applied the following tax obligations: land tax, building tax, capital income tax, activities and occupations income tax, individual income tax, personal tax, and turnover tax.⁴ The Law of direct tax from 1884, which was applied in Serbia, Macedonia, as well as in one part of Montenegro, had a special meaning in the realization of fiscal revenues.

The Montenegrin tax system can be assessed as the simplest tax system inherited by the old Yugoslavia.⁵ The Montenegrin tax system included two types of direct taxes: tributes and capital and labour income tax. Tributes were charged semi-annually on 1 July and the 6th of October. The responsible tax board had the task of checking the accuracy of reported facilities on which the tribute was paid. The tax board functioned in each town.

The Austrian tax system was applied in Slovenia and Dalmatia. The county authorities in Slovenia and Dalmatia oversaw tax assessment at the seat of each county. Tax collection was performed by tax offices that were formed for each court county. The assessment of income tax and the general flow was performed by special tax committees, namely the committee for assessment of income tax and the committee for assessment of income flow.⁶

The Hungarian tax system was applied in one part of Vojvodina and in Croatia. Within this tax system, the primary tax authorities were the so-called financial directorate. As auxiliary bodies to the financial directorates, there were country tax offices, city tax offices, township offices and various tax boards. Tax offices took care

2 Milojević, 1925, p. 32.

3 Milošević and Kulić, 2016, p. 64.

4 Ibid., 2016, pp. 63-64.

5 Jelčić, 1983, p. 273.

6 Milojević, 1925, p. 132.

of book entry and tax collection. Township offices and various tax boards did book entries and collected only those taxes for which they were in charge by the country.

The Turkish tax system was applied in Bosnia and Herzegovina. The tax offices oversaw the assessment and collection of taxes as the first instance tax authorities. The tax boards performed the assessment of the size of the yield of a certain taxpayer.

In the legislative area, the first legal regulation of the Kingdom of Yugoslavia that regulates the matter of turnover taxation. In addition, in 1922 the Law of Business Turnover Tax was passed, in 1928 the Law on Direct Taxes was passed, and in 1932 the Decree on Luxury Tax was adopted. The Law on Direct Taxes introduces the obligation of paying taxes on the following income: from land, from buildings, from companies, shops, and independent occupations, from rents, from companies obliged to public billing (social tax) and from non-independent work and occupation (clerical tax). There was also an obligation to pay a bachelors' tax. Lower territorial units were entitled to surtax and excise revenues. Certain types of public revenues were paid according to special regulations. The newly created county, in terms of application of customs, took over the Customs Law of Serbia from 1899, which was applied to the territories of Yugoslavia until the beginning of the Second World War.⁷

1.2. Fiscal system of the Republic of Serbia from the Second World War until 2000

After the end of the Second World War, the new 'people's government' revoked many regulations from the old tax system. The tax system of the former Yugoslavia went through several stages of development in accordance with the changes in the structural and the ownership relations in the economy. The tax system was consisted of two parts: the part based on which the obligations of county-owned companies were determined and the part based on which the obligations of citizens and cooperatives were determined.

The tax system was also regulated in accordance with the Constitutional Decisions on Territorial Organization. In practice, there were nine tax systems, because in addition to the Federation, each of the six republics and two autonomous provinces pursued its own tax policy. In that period, there was no single tax administration that would deal with the collection of public revenues. The Social Accounting Service and the Republic and Township Administration of Social Revenues dealt with the tasks of determining, collecting, and controlling public revenues.

From the historical aspect, the system of public finances until 1988 mainly performed fiscal, but not economic and social functions, which is the result of the concept of contractual economy. By abandoning the contract economy and the country's orientation towards building a market economy, it conditioned the construction of a tax system and a tax policy that would be unique in the entire territory. In accordance with the set goals, the National Assembly of the Republic of Serbia in December 1991

7 The Customs Law of Serbia from 1899, with the changes from 1904, in the former Yugoslavia, was supplemented and amended by the Law on Amendments to the Customs Law from 1934.

adopted a tax package expressed in six legal regulations, which introduced a new tax system starting in 1992. The tax package included the following legal regulations: the Law on Public Revenues and Public Expenditures, the Law on Personal Income Tax, the Law on Social Insurance Contributions, the Law on Property Tax, the Law on Corporate Income Tax, and the Law on control, determination, and collection of public revenues.⁸ The new legal solutions defined the Republic Administration of Public Revenues as a single central tax authority.

Despite all the efforts of economic policy makers, the new system of public finances, however, did not achieve the set goals and tasks. This did not happen for known reasons (disintegration of the country, economic sanctions, inflation, etc.). After the year 2000, a great, in many ways historical, process of the disappearance of the old and the birth of the new system began. The Republic of Serbia has passed many important laws from various areas of social life. Within these and such events, the tax legislation has also undergone major changes.

2. Fiscal sovereignty of the Republic of Serbia

When it comes to the limit of application of tax law regarding the territory and to persons, it should be said that from the territorial sovereignty derives the right of the country to be able to tax natural and legal entities under its tax jurisdiction. International public law does not limit the sovereignty of countries; however, the tax jurisdiction of the county is still limited by the condition that there must be a certain connection between the country and the tax debtor (decisive fact). This connection can be of a personal or economic nature.

The Republic of Serbia is a sovereign country consisting of two autonomous provinces: Vojvodina and Kosovo and Metohija. Serbia borders Hungary to the north, Romania to the northeast, Bulgaria to the east, northern Macedonia to the south, Albania, and Montenegro to the southwest, and Croatia and Bosnia and Herzegovina (Republika Srpska entity) to the west. The Republic of Serbia is a country of Serbian people and all citizens living in it, based on the rule of law and social justice, the principles of civil democracy, human and minority rights and freedoms and belonging to European principles and values.⁹

From the mentioned aspect, in the tax area, the Republic of Serbia has no restrictions in the scope of its tax authority. The territory of the Republic of Serbia is unique and indivisible and the application of tax authority is carried out in accordance with the principles of its tax jurisdiction.

8 These laws were published in the Official Gazette of the Republic of Serbia, No. 76 and 79 from 1991. In addition to these laws, the National Assembly of the Republic of Serbia adopted two other laws that are important for the tax system: the Law on Sales Tax on Products and Services, the Official Gazette of the Republic of Serbia No. 89/91 and the Law on the Payment and Financial Supervision Service, Official Gazette of the Republic of Serbia No. 76/91.

9 Article 1 of the Constitution of the Republic of Serbia

3. Financial constitutionality of the Republic of Serbia

When considering financial constitutionality, one should start from the fact that the constitution is the highest legal act in a country and that all positive rights have their source in the constitution, which is why they must be harmonized with the constitution. Since financial law is a branch of a positive legal system, its source is in the constitution. It is built on the principles contained in the constitution, that is, its legal solutions must be in accordance with the constitution. Tax laws must derive from the constitution, that is, they must be built on the principles proclaimed in the constitution. Therefore, the basic requirements on which the financial right is built are contained in the constitution. The constitution contains mostly declaratory norms whose obligation is achieved by norms of other branches of law (even financial), while financial law contains imperative norms whose obligation is secured by the application of sanctions.¹⁰ It follows that financial law cannot exist without constitutional norms. On the other hand, through tax law, the constitution gains its concretization and realization.

We find legal institutes of financial law in the provisions of the 2006 constitution on the economic organization of the Republic of Serbia. According to the Constitution of the Republic of Serbia, the economic system in the Republic of Serbia is based on a market economy, open and free market, freedom of entrepreneurship, independence of economic entities and equality of private and other forms of ownership.¹¹

According to the constitutional provisions, the element of economic regulation is also public finances, which in the constitution means the acquisition and distribution of funds for financing public needs.¹² The constitution regulates the subjective financial law of the county, that is, the right to introduce and collect taxes and prescribe the duty of individual and legal entities to act in accordance with tax regulations.¹³ Modern constitutions have established the principle of legality of taxes, which can be expressed by the maxim *'nullum tributum sine lege'* ('there is no tax without law'). Thus, article 91, paragraph 1 of the Constitution of Serbia prescribes that the funds from which the competencies of the Republic of Serbia, autonomous provinces and local self-government units are financed are provided from taxes and other revenues determined by law. Paragraph 2 of the same article proclaims the rule that the obligation to pay taxes and other duties is general and is based on the economic power of the taxpayer. This constitutional principle is further elaborated in tax regulations.

The constitution stipulates that the Republic of Serbia, autonomous provinces, and local self-government units have budgets in which all revenues and expenditures that finance their jurisdictions must be presented. In terms of deadlines, the

10 Milosevićm Kulić and Cvjetković-Ivetić, 2021, pp. 21-22.

11 Article 82. paragraph 1 of the Constitution of the Republic of Serbia

12 Marković, 2018, p. 503.

13 Milosević, Kulić and Cvjetković-Ivetić, 2021, p. 22.

constitution stipulates that the law determines the deadlines within which the budget must be adopted and the manner of temporary financing in case the new budget is not adopted, and the validity of the previous one has expired.¹⁴

The execution control over all the budgets is performed by the Country Audit Institution. The Country Audit Institution is the highest country body for the audits of public funds in the Republic of Serbia, it is independent and subjected to the supervision of the National Assembly, to which it suits.¹⁵ The National Assembly is considering the proposal of the final budget account based on the obtained opinion of the Country Audit Institution.

The constitutional category in the field of public finances is also public debt, i.e., debt of the country and public bodies. The constitution provides for the possibility of borrowing by the Republic of Serbia, the autonomous province and local self-government units in accordance with the law.

The Constitution of Serbia contains certain provisions that also refer to the matter of application of tax law. The realization of the norms of tax law encroaches on the freedom and rights of tax debtors guaranteed by the constitution. However, this restriction of freedoms and rights is provided for in the constitution itself, i.e., situations that may cause this restriction are provided. Thus, the provision of Article 40, paragraph 1 of the Constitution of Serbia proclaimed that the apartment was invulnerable. However, based on paragraph 2 of the same article, another's apartment or other premises may be entered against the will of their occupant based on a written court decision. In that sense, the provision of Article 125, paragraph 5 of the Law on Tax Procedure and Tax Administration¹⁶ stipulates that the tax inspector has the right to enter the taxpayer's apartment with the approval of the court, to perform control.

The provisions of the constitution that refer to the position of the country administration are also important. Based on these constitutional provisions, the organization of the Tax Administration, which appears as a tax authority as a participant in the tax procedure, is considered.

4. Sources of Serbian financial law

Under the sources of Serbian financial law general legal acts—legal regulations are implied, which serve as a basis for performing tax transactions, i.e., for tax administrative acts issued by tax authorities, for undertaking tax administrative measures and performing tax administrative actions. Its formal sources may be: laws, authentic interpretations, other acts of country bodies (bylaws), international treaties, case law

14 Marković, 2018, p. 503.

15 Article 96, paragraph 1 of the Constitution of the Republic of Serbia.

16 Official Gazette of RS, no. 80/02, 84/02—corrected, 23/03—corrected, 70/03, 55/04, 61/05, 85/05—another law, 62/06—another law, 63/06—corr. ano. of Law, 61/07, 20/09, 72/09—ano. law, 53/10, 101/11, 2/12—correction, 93/12, 47/13, 108/13, 68/14, 105/14. 91/2015—authentic interpretation, 112/2015, 15/2016, 108/2016, 30/2018, 95/2018, 86/2019 and 144/2020.

and legal science. In Serbia, a series of laws is applied that regulate certain issues in the field of public revenues and public expenditures, such as: the budget system law,¹⁷ tax procedure and tax administration law, individual income tax law,¹⁸ legal entities income tax law,¹⁹ property tax law,²⁰ value-added tax law,²¹ law on excise duties,²² law on tax on non-life insurance premiums,²³ law on taxes on the use, possession and carrying of goods,²⁴ law on one-time tax on extra income and extra property acquired by taking advantage of special benefits,²⁵ law on determining the origin of property and special tax,²⁶ the customs law,²⁷ customs tariff law,²⁸ law on contributions for mandatory social insurance,²⁹ law on republic administrative fees,³⁰ the court fees law,³¹ law on local self-government financing³² and others. In this way, the matter of

17 Official Gazette of RS, no. 54/09, 73/10, 101/10 101/11, 93/12, 62/13, 63/13—corr., 108/13, 142/14, 68/2015—ano. law, 103/2015, 99/2016, 113/2017, 95/2018, 31/2019, 72/2019 and 149/20.

18 Official Gazette of RS, no. 24/01, 80/02, 80/02—ano. law, 135/04, 62/06, 65/06—corr. 31/09, 44/09, 18/10 50/11, 91/11—US, 93/12, 114/12—US, 47 / 13, 48/13—correction, 108/13, 57/14, 68/14, 5/2015, 112/2015, 5/2016, 7/2017, 113/2017, 7/2018, 95/2018, 4 / 2019, 86/2019, 5/2020—adjusted dinar amount, 153/20 and 156/20 adjusted dinar amount.

19 Official Gazette of RS, no. 25/01, 80/02, 80/02—ano. law, 43/03, 84/04, 18/10, 101/11, 119/12, 47/13, 108/13, 68/14—ano. law, 142/14. 91/2015—authentic interpretation, 112/2015, 113/2017, 95/2018 and 86/2019 and 153/20

20 Official Gazette of RS, no. 26/01, 'Official Gazette of the FRY', No. 42/02—decision of the SUS and 'Official Gazette of the RS', No. 80/02, 80/02—ano. law, 135/04, 61/07, 5/09, 101/10, 24/11, 78/11, 57/12—US, 47/13, 68/14, 95/2018, 99/2018—US, 86/2019 and 144/20.

21 Official Gazette of RS, no. 84/04, 86/04—corrected, 61/05, 61/07 93/12, 108/13, 6/14, 68/14, 142/14, 5/2015, 83/2015, 5/2016, 108/2016, 7/2017, 113/2017, 13/2018, 30/2018, 4/2019, 72/2019, 8/2020.—harmonized dinar amount and 153 / 2.0

22 Official Gazette of RS, 22/01, 73/01, 80/02, 43/03, 72/03, 43/04, 55/04, 135/04, 46/05, 101/05—ano. law, 61/07, 5/09, 31/09, 101/10, 43/11, 101/11, 93/12, 119/12, 47/13, 68/14, 142/14, 4/2015, 5/2015, 55/2015, 103/2015, 5/2016, 108/2016, 7/2017, 18/2018, 30/2018, 4/2019, 5/2020, 7/2020, 78/2020 and 153 / 20.

23 Official Gazette of RS, no. 135/04, 68/14—ano. law.

24 Official Gazette of RS, no. 26/01, 80/02, 43/04, 31/09, 101/10, 24/11, 100/11—ano. regulation, 120/12—ano. regulation, 113/13—ano. regulation, 68/14—ano. law, 140/2014, 109/2015, 112/2015, 105/2016, 119/2017, 104/2018, 86/2019, 90/2019 and 156/20

25 Official Gazette of RS, no. 36/01 and 'Official Gazette of the FRY', No. 17/02—SUS decision.

26 Official Gazette of RS, no. 18/2020 and 18/21.

27 Official Gazette of RS, no. 95/2018, 91/2019 and 144/2020.

28 Official Gazette of RS, no. 62/05, 61/07 and 5/09, 95/2018 and 91/2019

29 Official Gazette of RS, no. 84/04, 61/05, 62/06, 5/09, 52/11, 101/11, 47/13, 108/13, 57/14, 68/14—ano. law, 5/2015, 112/2015, 5/2016, 7/2017, 113/2017, 7/2018, 95/2018, 4/2019, 86/2019, 5/2020 and 153/20.

30 Official Gazette of RS, no. 43/03, 51/03—corrected, 61/05, 101/05—ano. law, 5/09, 54/09, 35/10—ano. regulation, 50/11, 70/11—ano. regulation, 55/12—ano. regulation, 93/12, 47/13—ano. regulation, 65/13—ano. regulation, 57/14, 45/2015, 83/2015, 112/2015, 50/2016, 61/2017, 113/2017, 3/2018, 50/2018, 95/2018, 38/2019, 86/2019, 90/2019, 98/2020 and 144/2020.

31 Official Gazette of RS, no. 28/94, 53/95, 16/97, 34/01—ano. law, 9/02, 29/04, 61/05, 116/08, 31/09, 101/11, 93/12 and 93/14, 106/2015 and 95/2018.

32 Official Gazette of RS, no. 62/06, 47/11, 93/12, 99/13 and 125/14, 95/2015, 83/2016, 91/2016, 104/2016, 96/2017, 89/2018, 95/2018, 86 / 2019 and 126/2020.

financial law is largely regulated by law, although no codification of this branch of law has been performed.

Authentic interpretations of tax laws, given by the National Assembly of the Republic of Serbia, are a source of tax law. These interpretations are mandatory, which means that the tax authorities and other persons who apply a certain tax regulation for which an authentic interpretation has been given, must apply it in the sense in which the interpretation has been given.

The source of tax law can also be general acts of authorized county bodies. These acts are lower in rank than the law, so they are called bylaws. They must be in accordance with the law, because otherwise they could not be applied. The government issues: decrees, decisions, instructions, conclusions, and guidelines. Administrative bodies may pass a) external general legal acts and b) internal general acts. The general legal acts of administrative bodies include: rulebook, order, and instruction. Internal general acts appear in the form of instructions (professional instructions). It is often the case in practice that the ministry in charge of finance issues expert opinions on the application of tax regulations. To ensure a united implementation of regulations within the competence of the ministry responsible for finance, acts (explanations, opinions, instructions, instructions, etc.) on the application of these regulations issued by the minister responsible for finance, or a person authorized by him, are binding on the Tax Administration.³³

International treaties on the avoidance of double taxation, which can be bilateral or multilateral, also appear as sources of this right

5. Fiscal rules

Fiscal rules given in the Budget System Law³⁴ refer to the general level of the county and they can be: 1) general and 2) special. The General Fiscal Rules determine the target medium-term fiscal deficit, as well as the maximum debt to GDP ratio, to ensure the long-term sustainability of fiscal policy in the Republic.³⁵ The general fiscal rules are as follows: (a) the target annual fiscal deficit will amount to 1% of GDP in the medium term, and (b) general government debt, not including restitution obligations, must not exceed 45% of the GDP³⁶

Special fiscal rules determine the movement of salaries and pensions, as well as the manner of including public investments in the calculation of the fiscal deficit and public expenditures starting from 2011. Special fiscal rules ensure that the structure of public spending changes in the direction of reducing current expenditures and increasing public investment.³⁷ According to special fiscal rules, the participation of

33 See: Article 11 paragraph 3 of the Tax Procedure and Tax Administration Law.

34 See: Articles 27e, 27z and 27z of the Budget System Law.

35 Art. 27e, para. 1-2 of the Budget System Law.

36 Art. 27e, para. 4 of the Budget System Law.

37 Art. 27e, para. 3, 16-17 of the Budget System Law

general government salaries in GDP can be up to 7%, and the participation of pensions in GDP up to 11%. The increase of salaries and pensions can be done no more than twice a year, but so that the expected share of general government salaries, i.e., pensions in GDP after adjustment is not above the stated percentage.³⁸

The fiscal deficit of a local government can arise only because of public investments, provided that in a given year it cannot exceed 10% of its revenues in that year. If the local government exceeds the deficit limit in a certain year, without the approval of the Ministry, the minister suspends the transfer of transfer funds from the budget of the Republic of Serbia, i.e., the corresponding part of the salary tax and legal entities income tax in the next budget year.³⁹

It is not uncommon for legislation to provide that prescribed fiscal rules may be deviated from under certain circumstances. In Serbia, it is prescribed that the government can only exceptionally and temporarily deviate from the fiscal principles and rules established by law, in cases of natural disasters and external shocks that affect human health, national security and decline in economic activity.⁴⁰

Financial constitutionality:

Legal institutions, areas of regulation, and current regulatory issues

6. Serbia's modern tax system

6.1. Public revenues and income

According to the positive legislation of Serbia, public revenues are all revenues generated by mandatory payments of taxpayers, legal and natural persons who use a certain public good or public service, as well as all other revenues generated by users of budget funds and funds of mandatory social insurance organizations. Depending on whether they have an unchanged confirmation of the name, they can be purposeful and general.⁴¹

Public revenues and incomes in Serbia are introduced by law, i.e., by a decision of the local government assembly in accordance with the law.⁴² Their amount is determined by law, i.e., by an act of the amenable authority in accordance with the law. Serbia's public revenues include: (a) tax revenues, which include taxes and contributions for mandatory social insurance; (b) non-tax revenues—fees, charges,

38 Art. 27e, para. 28-29 of the Budget System Law

39 Art. 27z of the Budget System Law.

40 Ibid.

41 Article 2, paragraph 1, point 14 and 15 of the Budget System Law.

42 Article 13, paragraph 1 of the Budget System Law.

penalties, and revenues generated using public funds; (c) self-contribution; (d) donations, transfers, and financial assistance of the European Union.⁴³

The county collects tax revenues through mandatory payments of taxpayers without the obligation to perform a special service in return. Non-tax revenues are a type of public revenues charged to legal or natural persons for the use of public goods (fees), provision of certain public services (fees), due to violation of contractual or legal provisions (penalties), as well as revenues generated using public funds.⁴⁴

Transactions in the form of *transfers* are those transactions in which one unit provides another unit with goods, services, property, or work, without receiving any goods, services, property, or work in return. Taxes and contributions for mandatory social insurance are mandatory transfers, while subventions, donations, social assistance, etc. are voluntary transfers. A *donation* is a purposeful non-refundable income, which is realized based on a written contract between the donor and the recipient of the donation.

In Serbia, the law may introduce taxes on consumption, income, profit, property, and transfer of property of individuals and legal entities.⁴⁵

Country revenues are funds that the county generates by selling non-financial and financial assets⁴⁶ and by borrowing.⁴⁷

Incomes from the sale of *non-financial assets* are: 1) income from the sale of country-owned real estate and movable property; 2) income from the sale of real estate and movable property owned by the autonomous province and local self-government unit; 3) income from the sale of other fixed assets; 4) income from the sale of commodity reserves; 5) income from the sale of valuables; 6) income from the sale of natural assets and 7) other income determined by law. From *borrowing and sale of financial assets* incomes are: 1) income from borrowing on the domestic and foreign markets; 2) income from the sale of financial assets on the domestic and foreign markets; 3) other income determined by law.⁴⁸

6.2. Tax forms

6.2.1. Citizens' income tax

The citizens income tax in Serbia is regulated by the Citizens' Income Tax Law. This tax is paid, in accordance with the law, by individuals who earn income. The citizens income tax in the Republic of Serbia is paid on income from all sources, except those that are specifically exempted by law.

43 Article 14, paragraph 1 of the Budget System Law.

44 Article 2, paragraph 1, point 17 and 18 of the Budget System Law.

45 Article 15 of the Budget System Law.

46 Financial assets include cash, receivables, shares, and actions in the capital of legal entities, securities, and other investments in legal entities.

47 Article 2, paragraph 1, item 19 of the Budget System Law.

48 Article 20 and 21 of the Budget System Law.

Taxable income is the difference between the gross income earned by the taxpayer and the expenses incurred in their realization and preservation, in accordance with the law. *Income* is the sum of taxable income earned in a calendar year.⁴⁹

The taxpayer of citizens income tax is a **resident** of the Republic of Serbia, for income earned on the territory of Serbia and in another country. The taxpayer of the citizens income tax is also an individual who is a non-resident, for the income earned on the territory of Serbia.

Citizens' income tax is paid: after deduction from each individual income; based on the decision of the amendable tax authority and self-taxation. The following types of income are subject to this tax form: 1) salaries; 2) income from self-employment; 3) revenues from copyrights, rights related to copyright and industrial property rights; 4) income from capital; 5) real estate income; 6) capital gains and 7) other revenues. These revenues are taxed, whether they are generated in cash, in kind, by doing or otherwise.

6.2.1.1. Tax on wages

Wages are earned based on employment, defined by the law regulating employment, and other income of the employee (e.g., holiday pay). Wages are also considered agreed compensation and other income earned by performing temporary and occasional jobs, based on a contract concluded directly with the employer, as well as based on a contract concluded through a youth or student cooperative, except with a person under 26 years of age, in institutions of secondary and higher education. The taxpayer is an individual who earns a salary.⁵⁰ The basis of the wages tax is the paid, i.e., realized salary. Wages tax, for each taxpayer and for each individually paid income, the payer calculates, suspends, and pays into the prescribed accounts at the time of payment of income, in accordance with the regulations which are valid on the day of payment of income. The wages tax rate is 10%.⁵¹

6.2.1.2. Independent activity income tax

Independent activity income tax is taxed on income from economic activities, including activities from agriculture and forestry, by providing professional and other intellectual services (law, accounting, medical, auditing, etc.), as well as income from other activities, if he does not pay tax on that income on another basis.

Taxpayer of independent activity income tax is a natural person who earns income by performing the above activities.⁵²

The basis of the independent activity income tax is a taxable profit, and for a flat rate entrepreneur a lump sum determined income. *Taxable profit is determined in the tax balance by adjusting the profit stated in the profit and lost report, made in accordance*

49 Article 2 and 6 of the Citizens' Income Tax Law.

50 Article 15 of the Citizens' Income Tax Law.

51 Article 16 of the Citizens' Income Tax Law.

52 Article 32 of the Citizens' Income Tax Law.

with the regulations editing accounting for the taxpayer who is obliged to keep double-entry bookkeeping, or in accordance with the regulation of the minister of Finance, if the entrepreneur keeps simple bookkeeping. The tax rate on independent activity income is 10%.

6.2.1.3. Tax on copyright income, rights related to copyright and industrial property rights

Revenue from *copyright, rights related to copyright, industrial property rights* is considered to be the fee that the taxpayer achieves as an author, holder of related rights, or owner of industrial property rights.⁵³ The taxpayer of this tax is a natural person who, as an author, holder of related rights, i.e., owner of industrial property rights, achieves compensation based on copyright and related rights, i.e., industrial property rights. The taxpayer is also the heir of the property copyright and related rights and the rights of industrial property and any other natural person who achieves compensation on those bases.

The basis (taxable income) of this tax is the difference between gross income and expenses incurred by the taxpayer in the realization and preservation of income. These costs can be real and standardized. The tax rate on income from copyright and related rights and industrial property rights is 20%.⁵⁴

6.2.1.4. Capital gains tax

The subject of taxation of this tax is the income that an individual person realizes from capital. Capital income is considered to be: 1) interest based on loans, savings and other deposits (term or demand) and based on debt and similar securities; 2) dividend and profit sharing; 3) income from the investment unit of the open-end investment fund; 4) income based on ownership over the investment unit of the alternative investment fund, except for the transfer fee of that investment unit; 5) taking from the property and using the services of the company by the owners of the company for their private needs and personal consumption.

A taxpayer of capital income tax is a natural person who generates that income. The tax base on capital income is the monetary or non-monetary amount of realized income. If the income from capital is realized in non-monetary form, the value of those income is determined according to the market value of rights, goods, i.e., services on the day of realization of income.

The capital gains tax rate is 15%.

6.2.1.5. Real estate income tax

Real estate income is considered to be the income that the taxpayer realizes by leasing or subleasing real estate. Immovable property is: 1) land and 2) residential, business, and other buildings, apartments, business premises, garages and other (above-ground and underground) buildings, i.e., their parts. A taxpayer of real estate income tax is

53 Article 52 and 53 of the Citizens' Income Tax Law.

54 Article 55, 56, 57, and 58 of the Citizens' Income Tax Law.

a natural person who, by leasing or subleasing real estate, realizes income on that basis. An entrepreneur is not considered a taxpayer, except for a flat rate entrepreneur, who leases or subleases real estate within the scope of performing a registered independent activity.

Taxable income from real estate, including income from renting apartments and rooms for a period longer than 30 days, makes the gross income reduced by standard costs in the amount of 25%. Taxable income does not include income from the provision of accommodation services for a period of up to 30 days, which has tax treatment of income from the provision of catering services. The rate is 20%.⁵⁵

6.2.1.6. Capital gains tax

Capital gains tax is taxed on income earned by a natural person based on capital gains. Capital gain, according to the tax regulations of Serbia, is considered to be the difference between the sale price of rights, shares and securities and their purchase price, realized by sale or other transfer with monetary or non-monetary compensation: 1) real rights to real estate; 2) copyright, rights related to copyright and industrial property rights; 3) shares in the capital of legal entities, shares and other securities; 4) investment units, except for investment units of voluntary pension funds, purchased by an open-end investment fund, in accordance with the law governing open-end investment funds; 5) investment units of the alternative investment fund, in accordance with the law governing alternative investment funds; 6) digital assets.

The basis, i.e., the taxable income of this tax, constitutes a capital gain. For determining the capital gain, the *selling price* is the agreed price, i.e., the market price determined by the amendable tax authority if it assesses that the agreed price is lower than the market price. For the purpose of determining capital gain, the *purchase price* is considered to be the price at which the taxpayer acquired the right, share or security.

This tax also provides for tax exemption. Namely, taxpayers who invest the funds generated by the sale of real estate within *90 days* from the day of sale in resolving their housing issue and the housing issue of their family members, i.e., households, in the Republic, is exempt from capital gains tax. A taxpayer who does so within *12 months* from the day of the sale of the real estate, will be refunded the paid capital gains tax. The tax on capital gains is determined and paid according to the decision.

Capital gains tax is paid at a rate of 15%.⁵⁶

6.2.1.7. Tax on other income

Tax on other income is taxed: 1) income that the taxpayer earns by leasing equipment, means of transport and other movable property; 2) winnings from games of chance; 3) income from personal insurance; 4) income of athletes and sports experts; 5) revenues based on the provision of catering services; 6) other incomes, except those that are specifically exempt from taxation by the Citizens' Income Tax Law.

⁵⁵ Article 65a, 65b, 65v and 65g of the Citizens' Income Tax Law.

⁵⁶ Article 74, 75 and 77 of the Citizens' Income Tax Law.

6.2.1.8. Annual citizens income tax

The annual citizens income tax is taxed on a natural person who earned more than three times the average annual salary per employee paid in Serbia in a calendar year in the year for which the tax is determined, according to the data of the republic authority responsible for statistics, namely income residents realized on the territory of the Republic and in another country, and non-residents for income realized on the territory of the Republic.

Income taxed by this tax is the annual sum of: 1) earnings; 2) taxable income from self-employment; 3) taxable income from copyright and related rights and industrial property rights; 4) taxable income from real estate; 5) taxable income from leasing movable property; 6) taxable income of athletes and sports experts; 7) taxable income from the provision of catering services; 8) taxable other income; 9) income on previous bases, realized and taxed in another country—only for resident taxpayers.

Income earned and taxed in another country is reduced by the tax paid in another country.

The basis of the citizens income tax is taxable income, which is the difference between taxable income and *personal deductions* amounting to: 1) for the taxpayer—40% of the average annual salary per employee paid in Serbia in the year for which the tax is determined, according to data of the republic body responsible for statistics and 2) for a dependent family member—15% of the average annual salary per employee paid in Serbia in the year for which the tax is determined, according to the data of the republic body responsible for statistics, per family member.

The total amount of personal deductions cannot exceed 50% of taxable income. Annual personal income tax is paid at the following rates: up to six times the average annual salary—10%; for an amount higher than six times the average annual salary—10% for the amount up to six times the average annual salary—15% for the amount higher than six times the average annual salary.

The annual citizens income tax is paid according to the decision of the amenable tax authority within 15 days from the day of delivery of the decision on determining the tax.⁵⁷

6.2.2. Legal entities income tax

Legal entities income tax in Serbia is regulated by the Legal Entities Income Tax Law. The taxpayer of legal entities income tax according to the tax regulations of Serbia is a company, i.e., an enterprise, another legal entity established for the purpose of performing activities for the purpose of gaining profit. A taxpayer is also a cooperative⁵⁸ that generates income by selling products on the market or performing services

57 Article 87-89a, Article 92, Article 98, paragraph 1, item 3, Article 109, paragraph 13, Article 110 of the Citizens' Income Tax Law.

58 *Cooperatives* are a specific type of organization of natural persons, which by achieving the cooperative principles of voluntariness and solidarity, economic participation, equal right of management, independence, as well as cooperative organization achieve their economic, social and cultural goals.

for a fee. Another legal entity that is not established for the purpose of making a profit (nonprofit organization) if it generates income by selling products on the market or performing services for a fee is also designated as a taxpayer. A non-resident of Serbia is subject to taxation of the profit he makes by doing business through a permanent business unit located on the territory of Serbia.

The legal entities income tax base is the taxable profit determined in the tax balance.⁵⁹ The tax period for which income tax is calculated is the business year. The profit of legal entities in Serbia is taxed at a proportional and uniform rate, which is 15%. Corporate income taxpayers are provided with tax incentives to achieve economic policy goals. Tax incentives are given in the form of: 1) tax exemptions and 2) investment incentives.

6.2.3. Property taxes

Property taxes in Serbia are regulated by the Property Tax Law. Property taxes include: 1) property tax (in statics); 2) inheritance and gift tax and 3) tax on transfer of absolute rights.

6.2.3.1. Property tax (in statics)

Property tax is taxed on property in its static form. Property tax in statics in Serbia is paid on real estate located on the territory of the Republic of Serbia. The taxpayer of the property tax is a legal and natural person (who keeps or does not keep business books), an open-end investment fund, i.e., an alternative investment fund, which does not have the status of a legal entity and is entered in the appropriate register in accordance with the law real estate on the territory of the Republic of Serbia, the holder of rights that are subject to taxation, i.e., which is the user or holder of real estate, under the conditions prescribed by law.

The property tax base is determined differently, depending on whether or not the taxpayer keeps business books. The property tax base for real estate of a taxpayer *who does not keep business books* is the value of real estate determined by the body of the local self-government unit responsible for determining, collecting, and controlling the source revenues of the local self-government unit by applying the following elements: 1) usable area⁶⁰; 2) the average price per square metre of the corresponding real estate in the zone⁶¹ in which the real estate is located.

The property tax base for real estate of *a taxpayer who keeps business books* and whose value in the business books is stated according to the fair value method in

59 Article 6. Of the Entities Income Tax Law.

60 The usable area for the land is its total area, including the area under the building. Useful area for the building is the sum of floor areas between the inner sides of the perimeter walls of the building, and for a building that does not have a horizontal floor surface or perimeter walls, the useful surface is the area of its vertical projection on the ground.

61 Zones represent parts of the territory of a local self-government unit that the amendable body of a local self-government unit may determine separately for settlements according to the type of settlement.

accordance with International Accounting Standards (IAS), i.e., International Financial Reporting Standards (IFRS) and adopted accounting policies is stated at fair value. the day of the taxpayer's business year in the current year. The basis of the property tax of a taxpayer who does not state real estate in their business books according to the fair value method is the value of real estate, which is determined based on the same criteria as with taxpayers who do not keep business books.

Property tax rates are prescribed by the assembly of the local self-government unit, with the legislator limiting their maximum amounts. Property tax rates are as follows: (a) on the real estate of the taxpayer who keeps business books—up to 0.4%; (b) on land with a taxpayer who does not keep business book—up to 0.30%; (c) on the real estate of a taxpayer who does not keep business books, except on land:

On the tax base	Property tax rates
(1) Up to 10,000,000 dinars	Up to 0.40%
(2) From 10,000,000 to 25,000,000 dinars	Tax from sub-item (1) + up to 0.6% on the amount higher than 10.000.000 dinars
(3) From 25,000,000 to 50,000,000 dinars	Tax from sub-item (2) + up to 1.0% on the amount higher than 25.000.000 dinars
(4) Over 50,000,000 dinars	Tax from sub-item (3) + up to 2.0% on the amount higher than 50.000.000 dinars

In the event that the assembly of the local self-government unit does not determine the amount of the tax rate, or determines it over the maximum amount, the property tax will be determined by applying the highest legally prescribed rates.⁶²

6.2.3.2. Inheritance and gift tax

Property can be transferred between people free of charge (*inter vivos*), as well as with death (*mortis causa*). Among living people, property is transferred free of charge as a gift, while with death it is transferred by inheritance.

Inheritance and gift tax in Serbia is paid on: 1) rights to real estate that heirs inherit, i.e., gift recipients receive as a gift; 2) inherited, i.e., cash received as a gift, savings deposits, bank deposits, monetary claims, digital property, intellectual property rights, property rights on a used motor vehicle, used vessel, i.e., used aircraft⁶³ and other movables; 3) transfer without compensation of the property of a legal entity, which is subject to taxation with inheritance and gift tax.

62 Article 11 of the Property Tax Law.

63 A used motor vehicle, used vessel, or used aircraft is a motor vehicle that has been registered in the territory of the Republic of Serbia at least once, starting from its production or last import, i.e., vessel or aircraft that is in the territory of the Republic of Serbia at least once, starting from its production or the last import, was entered in the prescribed register, i.e., register or records in accordance with the regulations.

The taxpayer of inheritance and gift tax is a resident and non-resident of the Republic of Serbia, i.e., an open-end investment fund, i.e., an alternative investment fund, which does not have the status of a legal entity and is entered in the appropriate register in accordance with the law, who inherits or receives rights as a gift the rights to real estate located on the territory of the Republic of Serbia. A donor who has undertaken to pay a gift tax under a contract guarantees jointly and severally for the payment of that tax.⁶⁴

The inheritance tax base is the market value of the inherited property, reduced by the amount of debts, costs and other burdens that the taxpayer is obliged to pay or otherwise settle from the inherited property on the day the tax liability arises. The tax base for the gift is the market value of the property received as a gift on the day of the tax obligation, which is determined by the amendable tax authority.⁶⁵

Inheritance and gift tax rates are proportional. That is, the inheritance and gift tax is paid by taxpayers who, in relation to the testator, i.e., the donor, are in (a) the second hereditary order according to the legal order of inheritance—at the rate of 1.5%; (b) to the third and further hereditary order, i.e., taxpayers who are not related to the testator, i.e., the donor—at the rate of 2.5%⁶⁶

6.2.3.3. Absolute rights transfer tax

The tax on the transfer of absolute rights in Serbia is paid in the case of transfer with compensation: 1) property rights to real estate; 2) intellectual property rights; 3) ownership rights on the used motor vehicle—except for the moped, motor cultivator, tractor and working machine, ownership rights on the used vessel, i.e., ownership rights on the used self-propelled aircraft—except the country one; 4) rights to use construction land.

Taxpayers of absolute rights transfer tax are: 1) *the seller, i.e., the transferor* of property rights on real estate, intellectual property rights and property rights on the used motor vehicle, vessel and aircraft; 2) *a person to whom the land is given for use, i.e., lease*; 3) *provider of support*, when the absolute right is transferred based on a contract on lifetime support; 4) *a person to whom an absolute right is transferred*—in the case of: (1) earning of property rights and other stated rights based on a final court decision or other act of a country or amendable body with public authority; (2) the acquisition of property rights by maintenance; (3) transfer with compensation of the entire property of the legal entity; (4) sale of the bankruptcy debtor as a legal entity—if the buyer has not assumed the obligations of the legal entity he bought, or has assumed only a part of those obligations.

The tax base for the transfer of absolute rights is: 1) *the agreed price* at the time of the tax obligation, if it is not lower than the market value; 2) *the market value* of the rights being transferred.⁶⁷

64 Article 15, 22. and 42. of the Property Tax Law.

65 Article 16 of the Property Tax Law.

66 Article 18 of the Property Tax Law.

67 Article 27 of the Property Tax Law.

The absolute rights transfer tax is paid at the rate of 2.5%.⁶⁸

6.2.4. Value added tax

Value Added Tax is defined in the Law as a general consumption tax that is calculated and paid on the delivery of goods and provision of services, at all stages of production and trade of goods and services, as well as on imports of goods, unless otherwise provided by law. The *principle of destination* has been accepted, which implies taxation of trade in goods and services according to the place of consumption.

A taxpayer is a person, including a person who does not have a place or residence (foreign person) in the republic, who independently performs trade in goods and services, within the scope of performing activities.

The tax base for the supply of goods and services is the amount of compensation (in money, goods or services) that the taxpayer receives or should receive for delivered goods or services, from the recipient of goods or services or a third party, including subsidies and other income (subsidies),⁶⁹ which does not include VAT, unless otherwise provided by law.

There are two types of VAT rates: 1) *general* of 20%, and 2) *special* of 10%. The tax rate is applied to the base in which VAT is not included. The general rate is taxed on the supply of goods and services, as well as the import of goods in all cases in which the application of a lower tax rate is not envisaged or no tax exemption is predicted.

Bearing in mind that the 'standard' VAT taxation procedure is complex and expensive, special taxation procedures are prescribed.⁷⁰ A special taxation procedure is prescribed for: 1) small taxpayers; 2) farmers; 3) travel agencies and 4) second-hand goods, works of art, collectibles, and antiques.

Execution of the Value Added Tax Law on the Territory of the Autonomous Province of Kosovo and Metohija during the validity of UN Security Council Resolution 1244 was regulated by the Decree on Execution of the Value Added Tax Law on the Territorial Province of Kosovo and Metohija during the Council Resolution UN Security Council No. 1244.

6.2.5. Excise

In Serbia, the following products are taxed with excise: 1) oil derivatives; 2) biofuels and bioliquids; 3) tobacco products, including tobacco products that are heated but not burned during use; 4) alcoholic beverages; 5) coffee; 6) liquids for filling electronic cigarettes; 7) electricity for final consumption.

Excise duty arises when excise products are: manufactured in Serbia or imported into Serbia. Excise taxpayer is a person who calculates and pays excise duty prescribed

68 Article 30 of the Property Tax Law.

69 Subsidies are funds that make up the fee, i.e., part of the fee for the supply of goods or services, except for funds in the name of incentives in the function of achieving the objectives of a particular policy in accordance with the law.

70 Popović, 2010, p. 501.

by law. The excise taxpayer is the producer,⁷¹ i.e., importer⁷² of excise products, as well as:

- a legal entity authorized by the country body for the sale of confiscated excise products;
- buyer of excise products seized in the control procedure, i.e., in the procedure of forced collection, and sold by a country body;
- any person who sells excise products that have been acquired in accordance with the law and which are kept in the business books of that person;
- any person who places on the market in the Republic of Serbia excise products contrary to the provisions of the Law on Excise Duties.

The basis for the calculation of excise duty, as a rule, is a unit of measure. However, some excises in the Serbian tax system are *ad valorem*.

The excise taxpayer is obliged to calculate the excise tax as soon as the excise products are placed on the market. The obligation to calculate excise duty *on import* of excise products arises on the day the obligation to calculate import duties arises.

6.2.6. Tax on non-life insurance premiums

The tax on non-life insurance premiums is regulated by the Tax on Non-Life Insurance Premiums Law. This tax is used to tax insurance premiums earned by concluding and executing contracts on non-life insurance business in Serbia. The obligation to calculate the tax on insurance premiums arises at the time of concluding the insurance contract.

Taxpayer of insurance premium is an insurance company that concludes contracts on non-life insurance business and collects insurance premiums, directly or indirectly—through intermediaries or agents. The tax base for calculating the tax on insurance premiums is the amount of the total insurance premium determined by the insurance contract. This tax is paid at the rate of five%.

6.2.7. Taxes on the use, possession and carrying of goods

Taxes on the use, possession and carrying of goods are regulated by the Law on Taxes on the Use, Holding and Carrying of Goods. Taxes on the use, possession and carrying of goods are: 1) tax on the use of motor vehicles; 2) tax on the use of the vessel; 3) tax on the use of aircraft and 4) tax on registered weapons. This tax form belongs to the group of specific taxes, so the rates are expressed in absolute amounts.

Tax on the use of motor vehicles is paid when issuing a traffic license, i.e., registration sticker (hereinafter: registration), except for temporary registration for a period

71 The producer of excise products is a person who makes, processes, processes, finishes, etc. in the production plant, products subject to excise duty, including a person who performs processing, roasting, packaging, as well as other related activities performed for the purpose of coffee production.

72 An importer of excise products is a person who imports in their own name and for their own account, i.e., a person for whose account products on which excise duty is paid are imported.

of less than one year, for motor vehicles, which are performed in accordance with regulations which regulate traffic safety on the roads, namely: passenger vehicles, motorcycles, motorcycles with a side seat and heavy tricycles. The taxpayer of the tax on the use of motor vehicles is a legal or natural person in whose name the motor vehicle is registered, unless otherwise provided by law.

The tax base for the use of motor vehicles is the working volume of the motor vehicle engine. The tax on the use of motor vehicles belongs to the group of specific taxes, so the rates are expressed in absolute amounts.

Tax on the use of the vessel is paid on: 1) boats; 2) ships and yachts, motor-powered, as well as 3) floating facilities—catering facilities. The taxpayer of the tax on the use of a vessel is a legal and natural person in whose name the vessel is entered in the appropriate register, i.e., extends the validity of the ship's certificate, i.e., navigation license, or floating license in accordance with regulations, unless otherwise provided by law.

The tax base for the use of the vessel is: 1) for boats—the length of the vessel expressed in metres, engine power expressed in kW, as well as the fact whether the vessel has or does not have a cabin; 2) for ships and yachts—engine power expressed in kW; 3) for floating facilities—catering facilities—area expressed in square metres.

Tax on the use of aircraft is paid on civil motor aircraft, when they are used for their own transport, i.e., for sport and amateur flying. The taxpayer of the aircraft use tax is a legal and natural person in whose name the aircraft is entered in the register, i.e., to whom the validity of the airworthiness review certificate is extended, in accordance with the regulations governing air traffic, unless otherwise prescribed by law. The base for the tax on the use of aircraft is the number of aircraft seats.

The tax on registered weapons shall be paid for each calendar year on registered weapons, as follows: 1) automatic rifle; 2) semi-automatic rifle; 3) category B personal security weapons.

The taxpayer of the registered weapons tax is the person to whom the document for holding, i.e., the document for holding and carrying, i.e., the document for carrying a weapon reads. The tax base on registered weapons is a piece of weapon for which an approval is issued, i.e., a weapon certificate, i.e., a permit to hold, i.e., to hold and carry.

6.2.8. *Special tax on illegally acquired property*

To improve the efficiency of the tax system and prevent abuses, which result in the possession of property that cannot be justified by the legal income of individuals, or to enable property acquired through corrupt activities to be subject to a special tax regime, the Law on Determining the Origin of Property and a special tax was adopted.

The Tax Administration Unit initiates the control procedure, in the manner prescribed by the law governing the tax procedure and tax administration, if in the previous procedure it makes it probable that in a maximum of three consecutive calendar years, in which a natural person has an increase in assets, there is a difference

between persons in excess of 150,000 euros. The basis of the special tax is determined in the value of illegally acquired property, which is the sum of the revalued value of the determined illegally acquired property for each calendar year that was the subject of control.

The Tax Administration Unit determines a special tax for the entire control period, by applying a special tax rate of 75% to the tax base.⁷³

6.2.9. Customs

Customs duties are calculated and charged on goods imported into the customs territory of the Republic of Serbia. Goods can be brought into the customs area *through border crossings* at the time when they are open for traffic.

A customs debt is an obligation of a person to pay the amount of import or export duties on certain goods, in accordance with customs regulations, and a customs debtor is any person responsible for a customs debt.⁷⁴

The customs base consists of the customs value of goods. The customs value of goods is the transaction value, i.e., the price actually paid or the price to be paid for the goods when they are sold for export to the Republic of Serbia, adjusted, if necessary. Customs are calculated and charged on goods imported into the customs territory of the Republic of Serbia by applying the customs rate determined in column 4 of the Customs Tariff, on the customs value of goods (*ad valorem* method). The rates provided for in the Customs Tariff shall apply to goods originating in countries to which *the greatest privileged* clause applies or which apply that clause to goods originating in Serbia. Imports of goods originating from countries with which Serbia has concluded free trade agreements are subject to the duty rates provided for in those agreements. The rates provided for in the Customs Tariff, increased by 70%, are applied to goods from other countries.

6.2.10. Contributions

Mandatory social security contributions in Serbia are regulated by the Law on Mandatory Social Insurance Contributions. There are the following contributions in Serbia: (a) *for pension and disability insurance*, where they include: (1) contribution for mandatory pension and disability insurance; (2) an additional contribution for the length of insurance calculated with an increased duration in accordance with the law; (3) contribution with disability and bodily injury based on injury at work and occupational disease in cases determined by law; (b) *for health insurance*, where they include: (1) contribution for compulsory health insurance and (2) contribution with injury at work and occupational disease in cases determined by law; (c) *for unemployment insurance*—contribution for compulsory unemployment insurance.

73 Article 2, paragraph 1, item 4, Article 3, 10, 13, 14, 15 and 16 of the Law on Determining the Origin of Property and Special Tax.

74 Article 4, paragraph 1, items 18 and 19 of the Customs Law.

Contributions are paid: (1) from the base and (2) to the base. *The contribution from the base* is the amount of the contribution that is calculated, suspended and paid by the employer, i.e., another payer of income on behalf and for the benefit of the insured. *The contribution to the base* is the amount of the contribution calculated and paid by the employer, i.e., another payer of income in his own name, and in favour of the insured or the insured who pays the contribution for himself.⁷⁵

The basis of contributions, depending on the category of taxpayers, i.e., income, can be: for employees and employers is salary; for posted workers, the amount of salary that they would, in accordance with the law, general act and employment contract, earn in the Republic on the same or similar jobs⁷⁶; for persons performing temporary and occasional work, as well as for employers, compensation has been agreed on that basis⁷⁷; for elected, appointed and appointed persons who, in addition to the salary with the employer when they are employed, also realize the difference in salary, that difference is the salary, i.e., earnings⁷⁸; for payers of pensions and disability benefits is the amount of pension, i.e., benefits⁷⁹ and the like.

The rates at which contributions are calculated and paid are (a) for mandatory pension and disability insurance—25.5%; (b) for compulsory health insurance—10.3%, and (c) for unemployment insurance—0.75%.

6.2.11. Taxes

In Serbia, the following fees may be introduced by law: 1) administrative; 2) court; 3) utilities; 4) registration, and 5) residence.

6.2.11.1. Administrative taxes

If the criterion of differentiation is the level of government that introduces the tax, i.e., to which the collected revenues belong, the administrative taxes are divided into: a) republic administrative takes and b) local administrative fees.

Republic administrative fees are regulated by the Law on Republic Administrative Fees. These fees are paid for files and actions in administrative matters, as well as for other files and actions with the country body. An integral part of the Law on Republic Administrative Fees is the Tariff of Republic Administrative Fees, which contains Section A and Section B. Section A of the Tariff prescribes fees to be paid for documents and actions of bodies in the Republic of Serbia, and Section B prescribes consular fees. *Consular fees* are fees paid for files and actions of diplomatic and consular missions of the Republic of Serbia.⁸⁰

75 Article 3 and Article 6, paragraph 1, items 25 and 26. Law on Contributions for Mandatory Social Insurance.

76 Article 14 of the Law on Contributions for Mandatory Social Insurance.

77 Article 16 of the Law on Contributions for Mandatory Social Insurance.

78 Article 17 of the Law on Contributions for Mandatory Social Insurance.

79 Article 20: Law on Contributions for Mandatory Social Insurance.

80 Article 1a. paragraph 1, items 3. and Article 2. Law on Republic Administrative Fees.

The taxpayer is a person who addresses the body with a request⁸¹ to initiate an administrative or other procedure with the body, or a person in whose favour the file is issued, i.e., an action is performed with the body. If there are several taxpayers for the prescribed fee, their obligation is solidary.⁸²

The base for calculating the fee is the value of the case indicated in the request initiating the procedure. If the value of the case is not indicated in the request or a value less than the actual value is indicated, the value of the case shall be determined by a decision of the body conducting the procedure.

The fee is paid at the time of the tax liability, unless otherwise provided by law. The fee is paid in cash. Fees for documents and actions of bodies in Serbia are paid in *dinars* in the amounts prescribed by the Tariff, i.e., the amounts harmonized in accordance with the law.

Local administrative fees are regulated by the Law on Financing of Local Self-government. The Assembly of a local self-government unit may introduce local administrative fees for files and actions in administrative matters, as well as for other documents and actions issued by the bodies of the local self-government unit, i.e., performed within the scope of their original competence. The unit of local self-government may not introduce a local administrative fee for documents and actions within the competence of the body for which the law regulating the republic administrative fees prescribes the payment of the republic administrative fees.

6.2.11.2. Court fees

Court fees are regulated by the Law on Court Fees, of which the Tax Tariff is an integral part. They are paid in court proceedings.

The person liable for the court fee is the person on whose proposal or in whose interest the actions in the court procedure are taken. The fee shall be paid no later than eight days from the day of the occurrence of the tax obligation, unless otherwise provided by law. The fee is paid in court tax stamps or in cash.

6.2.11.3. Local utility fees

Local utility taxes are regulated by the Law on Financing Local Self-government. The assembly of the local self-government unit may introduce local communal fees for the use of rights, objects and services. No special fee may be introduced for the use of these rights, items and services. The payer of the local utility tax is the user of rights, objects and services for the use of which the payment of the local utility fee is prescribed. The tax obligation lasts as long as the use of the right, object or service lasts.

81 The request means a proposal, application, request, and other submission, including submissions submitted on the form, i.e., a statement sent to the body, as well as an oral address to the body, which initiates the procedure with the body. See: Article 1a. paragraph 1, item 1. Law on Republic Administrative Fees.

82 Article 3: Law on Republic Administrative Fees.

6.2.11.4. Residence tax

The Law on Financing of Local Self-government stipulates that the act of assembly of the local self-government unit introduces a residence tax, in accordance with the law governing the field of tourism. The income from the residence tax represents the income of the local self-government unit on whose territory it was collected.⁸³

6.2.12. Fees

The Budget System Law treats fees as non-tax revenues, together with fees, penalties and revenues arising from the use of public funds. From 2018, fees for the use of public goods can be introduced only by the Law on Fees for the Use of Public Goods.

The Law on Fees for the Use of Public Goods provides for the following types of fees: fees for geological research; fees for the use of resources and reserves of mineral resources; fees for the use of energy and energy products; fee for changing the purpose of agricultural land; fees for change of purpose and use of forests and forest land; fee for the use of game-protected game species; water fees; fees for environmental protection; fees for navigation and use of ports, piers, and navigation safety facilities on the country waterway; fees for the use of public roads; fees for the use of public railway infrastructure; fee for the use of public space; fee for the use of natural healing factor; fee for the use of tourist space; fees for electronic communications⁸⁴

The obligor to pay the fee for the use of a public good is a legal entity, entrepreneur or natural person who uses the public good. The basis for determining the fee for the use of a public good is the unit of measure (e.g., the amount of river sediment extracted expressed in cubic metres in the fee for extracted river sediment), the value of the good used (e.g., in the fee for changing the purpose of forests and forest land), or income generated (e.g., with compensation for the use of resources and reserves of mineral resources).

6.2.13. *Self-contribution and other public revenues*

Self-contribution in Serbia has a long tradition. He is a local public revenue. Unlike taxes and other fiscal revenues, self-contribution is introduced by the expressed will of citizens, future taxpayers. It is regulated by the Law on Financing of Local Self-government. The decision on the introduction of self-contribution is made by the citizens by referendum, in accordance with the regulations governing the procedure of direct declaration of citizens, unless otherwise provided by law.

The obligor for self-contribution is a natural person who has the right to vote and reside in the area where the funds are collected, as well as a natural person who does not have a residence in the area where the funds are collected, if he has real estate in that area.

83 Article 19 of the Law on Financing of Local Self-government.

84 See: Article 4 of the Law on Fees for the Use of Public Goods, Official Gazette of RS, no. 95/18, 49/19.

The basis of self-contribution is regulated by a decision. The self-contribution rate is proportional and is determined by decision.

Other public revenues are interest income; revenues from leasing, i.e., the use of real estate and movable property in country ownership; revenues from leasing, i.e., the use of real estate and movable property owned by the autonomous province and local self-government units; revenues generated from the sale of services of users of public funds whose provision has been contracted with natural and legal entities based on their free will; income from fines imposed in criminal, misdemeanour and other proceedings conducted before a country body and confiscated property gain in that procedure; revenues from fines imposed in misdemeanour proceedings for misdemeanours prescribed by an act of the local government assembly and confiscated property gain in those proceedings; concession fee; and donations, transfers, and financial assistance of the European Union.⁸⁵

7. Legal regulation of the application of tax laws—tax procedure

7.1. Legal rules of application of the tax procedure

The rights and obligations of natural and legal entities in connection with certain tax-law relations and tax-law situations are regulated by tax substantive legal norms, i.e., tax substantive legal regulations. Substantive legal regulations contain abstract legal rules, which should be applied in reality, for which it is necessary to apply tax substantive legal norms to certain cases and for certain natural or legal entities. For the correct application of substantive tax legal regulations to specific cases, legal rules are adopted which must be observed by tax authorities and natural and legal entities when applying tax laws and other tax substantive legal regulations to specific cases. These legal rules are called tax procedure or tax procedural rules.

In the Republic of Serbia, the tax procedure is regulated by the Law on Tax Procedure and Tax Administration. The Law on Tax Procedure and Tax Administration applies to all public revenues collected by the Tax Administration, unless otherwise regulated by another tax law. If the Law on Tax Procedure and Tax Administration does not regulate any issue in the field of tax procedure, the tax procedure is conducted according to the principles and in accordance with the provisions of the Law on General Administrative Procedure. This means that the Law on General Administrative Procedure serves as a subsidiary (supplementary) law in the application of the Law on Tax Procedure and Tax Administration.

The peculiarity of the tax procedure in relation to the general administrative procedure is reflected in the fact that the practical goal of the tax relationship—to provide the country with sufficient income necessary to perform its functions—is achieved through the obligation to pay taxes.

85 Article 14 of the Budget System Law.

7.2. Participants in the tax procedure

In the tax procedure, certain subjects appear, whose participation is necessary to accomplish the task of this procedure, i.e., lighting and solutions to tax matters. Starting from the role of participants in the tax procedure, they can be divided into: 1) main, i.e., obligatory participants in the tax procedure; 2) special participant and 3) possible participants.

The main, i.e., obligatory participants are the holders of basic activities in the tax procedure. The following appear as obligatory participants in the tax procedure: (1) the tax authority, which is authorized to conduct the tax procedure, and (2) the tax debtors—as the parties in respect of which the tax procedure is conducted. The tax procedure is authorized to be conducted by the Tax Administration and the competent bodies of local self-government units. The public prosecutor may appear as a special participant in the tax procedure, because by his participation in the procedure he does not protect and exercise his rights or interests, but represents the general interests. Thus, for example, a public prosecutor may request a retrial.

Possible participants in the tax procedure may be (1) witnesses, (2) experts, and (3) interpreters.

7.3. The content of the tax procedure

7.3.1. Tax determinations

Determining the tax is the activity of the tax authority, i.e., the tax debtor, which consists in issuing tax administrative acts, i.e., in undertaking legally prescribed actions, which establish the existence of an individual tax liability and determine the taxpayer, tax base and amount of tax liability. Determining public revenues is performed by: the tax debtor himself (so-called self-taxation); the tax authority (Tax Administration and the responsible authority of the local self-government unit), by issuing a tax decision; Customs Administration—in the customs procedure determines the value added tax and excises when importing goods, and organization for obligatory social insurance—determines contributions in certain cases.

7.3.2. Concept and types of tax collection

Tax collection is the most common way of repaying the tax debt, which consists of taking a certain, as a rule, amount of money from the tax debtor, to settle the tax claim. Collection of taxes and ancillary taxes can be: 1) regular or 2) forced. Regular collection is made on the maturity of the tax obligation, and is carried out by the tax debtor paying into the appropriate payment account of public revenues a sum of money corresponding to the amount of the due tax debt.

Compulsory collection is undertaken in accordance with the law, when the due tax obligation is not settled by the expiration of the prescribed period.

7.3.3. *Tax control*

The tax authority, in accordance with the law, performs tax control to determine violations of the law and irregularities in the application of regulations. In the tax control, the complete statement, correctness, accuracy and timeliness of calculation and payment of taxes by types are checked, depending on the subject of control, which is determined in the control order. If irregularities are found in the tax control or omissions in the execution of obligations from the tax law relationship, the tax debtor is ordered to eliminate them, which is a corrective function of tax control. The repressive function of tax control is reflected in the detection of tax crimes and misdemeanours, as well as in the taking of appropriate measures in relation to detected tax offences.

8. Conclusion

To have a more complete view of the tax system of a country, it is necessary to establish how, observed throughout history, the issue of certain forms of public revenues has been regulated. In terms of sources of income, it can be said that they have always been the same, but not equally represented. From the aspect of Serbia, the process of building the tax system began with the establishment of the country of Serbia. As the Serbian country grew and developed, so did its tax system. In the period after the end of the First World War, in 1918, the Kingdom of Serbs, Croats and Slovenes was formed, and five tax systems were applied at the same time in the new country: Serbian, Montenegrin, Austrian, Hungarian, and Turkish, which lasted until 1928. year, when the unification of the tax system of the former Yugoslavia. After the end of the Second World War, the tax system consisted of two parts: the part based on which the obligations of country-owned companies were determined and the part based on which the obligations of citizens and cooperatives were determined. In practice, there were nine tax systems, because in addition to the Federation, each of the six republics and two autonomous provinces pursued its own tax policy.

After the year 2000, a great, in many ways historical, process of the disappearance of the old and the birth of the new system began. As a sovereign country within a single and indivisible territory, the Republic of Serbia, in the tax area, has no restrictions on the scope of its tax jurisdiction.

From the mentioned aspect, many important laws have been passed from various areas of social life in Serbia, including tax legislation. The constitution regulates the subjective financial law of the country, i.e., the right to introduce and collect taxes and prescribe the duty of natural and legal entities to act in accordance with tax regulations.

The given fiscal rules in the Law on Budget System refer to the general level of the country. The General Fiscal Rules determine the target medium-term fiscal deficit, as well as the maximum debt-to-GDP ratio, to ensure the long-term sustainability of fiscal policy in the Republic. Special fiscal rules determine the movement of salaries

and pensions, as well as the manner of including public investments when calculating the fiscal deficit and public expenditures.

According to the positive legislation of Serbia, public revenues are all revenues generated by mandatory payments of taxpayers, legal and natural persons who use a certain public good or public service, as well as all other revenues generated by users of budget funds and funds for mandatory social insurance organizations. Public revenues and incomes in Serbia are introduced by law, i.e., by a decision of the local government assembly in accordance with the law. Their amount is determined by law, i.e., by an act of the competent authority in accordance with the law. Public revenues of Serbia include: 1) tax revenues, which include *taxes* determined by law: (1) value added tax; (2) excise duties; (3) personal income tax; (4) corporate income tax; (5) tax on the use, possession and carrying of certain goods; (6) taxes on international trade and transactions and *contributions for mandatory social insurance*; 2) non-tax revenues—fees, charges, penalties and revenues generated by the use of public funds; 3) self-contribution; 4) donations, transfers and financial assistance from the European Union.

The rights and obligations of natural and legal entities in connection with certain tax relations and tax situations are regulated by tax substantive legal norms, i.e., tax substantive legal regulations. These legal rules are called tax procedure or tax procedural rules. Its subject is resolving tax matters, as types of administrative matters. Under the tax item is meant an individual item, i.e., a case that is resolved by applying tax substantive legal regulations to a specific case. The tax procedure includes the determination, collection and control of all public revenues collected by the tax authorities.

Determining the tax is the activity of the tax authority, i.e., the tax debtor, which consists in undertaking the legally prescribed actions, which establish the existence of an individual tax liability and determine the taxpayer, the tax base, and the amount of the tax liability. The determination of public revenues is performed by: 1) the tax debtor himself (so-called self-taxation); 2) the tax authority (Tax Administration and the competent authority of the local self-government unit), by issuing a tax decision; 3) Customs Administration—in the customs procedure determines the value added tax and excise duties on the import of goods and 4) the organization for compulsory social insurance—determines the contributions in certain cases. Tax collection is the most common way of repaying the tax debt, which consists of taking a certain, as a rule, amount of money from the tax debtor, to settle the tax claim. Taxes and ancillary taxes are due for payment within the period prescribed by law. At the end of the due date, the tax debtor falls into debt arrears, from when the deadlines for: 1) calculation of interest begin to run; 2) sending a tax reminder; 3) the beginning of the procedure of forced collection of the tax debt and 4) the adoption of a decision on the establishment of a pledge (in certain cases). The tax authority, in accordance with the law, performs tax control to determine violations of the law and irregularities in the application of regulations. In the tax control, the complete statement, correctness, accuracy and timeliness of calculation and payment of taxes by types are checked, depending on the subject of control, which is determined in the control order.

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Regulation of Public Finances in Slovakia in Light of Financial Constitutionality

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ABSTRACT

This chapter is devoted to the foundations of financial law and financial regulation in Slovakia. Its aim is to define financial law in the system of law in Slovakia and to specify the basic areas of its regulation. In the introduction, it discusses the theoretical background of financial law as a branch of law and its relations to other branches of law. Then, building on the Constitution of the Slovak Republic, it defines the basic areas of its regulation—budgets, taxes and fees, currency, customs, and the financial market. In relation to all these areas, the aim is to specify their constitutional regulation and, consequently, the basic parameters of legal regulation. The aim is to give a basic overview of financial law instruments and concepts in Slovakia, such as the state budget and local budgets, state taxes and local taxes, customs, currency in the context of the monetary union, and financial market entities and instruments. However, the ambition is also to define the basic framework of the most important financial authorities and institutions in Slovakia, such as the Ministry of Finance of the Slovak Republic, the Supreme Audit Office, the National Bank of Slovakia, and the Council for Budget Responsibility. The conclusion will not only offer a summary, but will also highlight the most important current regulatory challenges for financial law, which are related to the COVID-19 pandemic, as well as to the digital transformation.

KEYWORDS

Financial law, budget, tax, customs, currency, financial market.

1. Financial law in Slovakia

Financial law in Slovakia has long been one of the traditional branches of public law. Of course, like the entire legal system, financial law has undergone a natural evolution. In Slovakia, as in other post-communist countries, this has been influenced by many factors. From a historical point of view, two turning points can be mentioned. The fundamental factor determining the current form of financial law in the broadest sense was the economic and political transformation of the 1990s. This factor was followed by European integration, culminating in Slovakia's accession to the European Union, which brought fundamental changes to all sub-branches of financial law.

In the context of a general treatise on financial law, we consider it necessary to begin by defining the subject of its regulation, since it can be perceived in various

forms. Different views of the subject of financial law are natural, and, after all, the authors of this comparative textbook also treat it differently. The issue of the subsumption or, on the contrary, the exclusion of tax law from the financial law system is essential. This issue is perceived in Slovakia—and particularly within the Košice school of tax law, which is also represented by the author—partly differently from other countries of Central and Eastern Europe. The strengthened position of tax law within the financial law system has, over the course of a few years, outgrown the previous boundaries of financial law. Nowadays, tax law is on an equal footing among the branches of law in Slovakia.¹ This is true for tax law as a branch of law, a branch of study, and a branch of science, as well. Finally, this view, although not the majority view, is also expressed by several academics in the Czech Republic or Poland. As an example, we can refer to the words of the renowned Czech professor M. Bakeš, who states that the understanding of tax law as a separate branch of law can undoubtedly be described as a new phenomenon in law on the threshold of the 21st century.² Similarly, in Poland, Gomułowicz Małecki state that tax law should be perceived as a separate branch of law and its science as a separate legal science.³

For the purposes of this publication, however, we will not further distinguish between financial law and tax law. This is neither practical nor necessary. From the financial regulation point of view, the foundations of the constitutional regulation of public finance, central banking, taxes, fees and customs duties, as well as financial audit, are jointly regulated in Title Three of the Constitution of the Slovak Republic. This constitutional regulation is the basis for the whole financial regulation in its broadest sense, including tax law. Thus, although in Slovakia we perceive tax law as a separate branch of law, to maintain the internal consistency of the content structure of this publication, we will refer to taxes and tax law as a part of financial regulation.

2. Theoretic issues of financial law

Theoretical issues of financial law are mainly related to its position in the system of law, its concept, subject, system, and interrelations with other branches of law.

As regards the classification of financial law into public law or private law, one can take a closer look at the historically formed theories of the division of branches of law, or objective law, into public and private. Although there are several these theories, two of them, interest-based and power-based, are most important. Under the interest-based theory, whose foundations were built by the classical Roman jurist Ulpian, public law pursues the interest of the state, or the interest of society as a whole, whereas private law pursues the interest of an individual.⁴ The power-based

1 Babčák, 2019, p. 57.

2 Bakeš, 2009, p. 254.

3 Gomułowicz and Małecki, 2004, p. 142.

4 Večeřa et al., 2011, p. 138.

theory assumes that where the state power acts in a superior position in relation to other entities of law, it is public law.⁵ Thus, if entities have unequal status in a legal relationship and one of them is superior to the other and exercises its command and coercive power in relation to the other, it is a public relationship.⁶

Applying these doctrinal grounds to financial law relations, it can be concluded that the state pursues its own fiscal or other interests in these relations through a system of its own authorities. At the same time, the state acts in a hierarchically superior position in this relationship. The state has control, decision-making and sanctioning powers, and legal means to enforce the fulfilment of obligations in the absence of their voluntary fulfilment.⁷ The content of financial law relations is determined by mandatory rules with only minimal possibilities of deviation from these rules.

The concept of financial law depends on the frame of its perception—that is, whether it is perceived as a branch of law, a branch of science, or a branch of study. The structure and classification of branches of science may differ,⁸ and financial law may be taught in several different courses at different universities. Therefore, it seems most effective to view financial law as a branch of law. Financial law is thus characterized as a set of legal rules that regulate the socioeconomic relations arising in connection with the creation, distribution, and use of public funds to provide for the public needs and the functions of the state, local self-government and other public entities.⁹ Financial law then constitutes an extensive and internally differentiated set of financial rules expressed in several financial laws.¹⁰

Starting from the concept of financial law as a branch of law, we can also define the subject of its regulation. The subject of financial law consists of socioeconomic relations arising in connection with the creation, distribution, and use of public funds, as well as in the execution of various transactions on the financial market. The relations which arise and are implemented in this context are referred to as financial relations.¹¹ It should not be forgotten that these relations are established at national, European, and international levels. The structure of the sources of financial law corresponds to this. These include national sources, European sources (primary and secondary EU law), and international sources (in particular, international treaties).

The system of financial law means the internal structural organization of this branch of law into groups of related financial legal regulations in terms of substance and content. Similarly to other branches of law, financial law can be divided into a general part and a specific part. The general part covers legal rules which regulate

5 Ibid., p. 139.

6 Karfíková et al., 2018, p. 61.

7 Štrkolec, 2020, p. 39.

8 In Slovakia, doctoral studies are provided in the study programme Commercial and Financial Law; in the same field of study, the scientific and academic degrees of associate professor and professor are awarded.

9 Babčák, Cakoci and Štrkolec, 2019, p. 48.

10 Králik and Jakubovič, 2004, p. 17.

11 Babčák, Cakoci and Štrkolec, 2019, p. 39.

common, systemic, organizational and control issues of financial law. These include the issues of competences of (state and local) authorities in the field of finance, the forms of activities of these authorities, and the issue of financial audit in a broader sense. The special part of financial law covers sub-branches of financial law which are characterized by a common content and systemic coherence of financial relations regulated by them. These sub-branches include budget law, customs law, monetary law and financial market law. Tax law, as already mentioned, is perceived in Slovakia as a separate branch of law, but in the past it was perceived as a sub-branch of financial law.

In the legislation of the Slovak Republic, financial law is not isolated, but, on the contrary, it has close links with other branches of law. It is therefore natural that closer links exist between the branches of public law than with the branches of private law. In this context, we can mention the following branches of public law in Slovakia with a close relation to financial law:

Constitutional law, whose basic source is the Constitution of the Slovak Republic, regulates the basic principles of the functioning of the state, the fundamental rights and freedoms, the separation of powers, as well as the basis and foundations of financial regulation. As will be discussed below, these include the issues of the state budget and local budgets, the legality of imposing taxes and fees, and the position of the National Bank of Slovakia and the Supreme Audit Office.

European law, which has precedence over the laws of the Slovak Republic, is permanently represented in financial regulation, particularly in the field of taxation (value added tax, excise duties, exchange of tax information), the financial market (regulation and supervision by the European Central Bank), currency and money circulation (the euro and the Eurosystem), as well as budgets (interrelationship between the EU budget and the budgets of Member States).

International law regulates mutual relations between countries, which in the case of financial regulation means, in particular, double taxation treaties, as well as international treaties establishing Slovakia's membership in international financial institutions. International treaties take, under the conditions laid down by the Constitution of the Slovak Republic, precedence over the laws of the Slovak Republic.

Administrative law, since financial authorities are, in their nature, public administration authorities, and in the exercise of their powers they apply methods and forms of activity typical of public administration authorities. It can also be noted that the procedural rules of administrative law are also applied in several sub-branches of financial law (for example, customs law).

Criminal law also protects interests expressed by the rules of financial law as the *ultima ratio*. The Criminal Code thus provides for several offences that protect the state's interest in sound financial management (tax offences, offences involving currency).

Commercial law and civil law regulate, *inter alia*, trading on a contractual basis between private law entities. The interrelationship with financial law is manifested in the form of regulation of financial market entities and instruments.

3. Slovak financial regulation

Slovak financial law is an internally diverse and structured branch of law. The foundations of financial regulation are contained in Title Three of the Constitution of the Slovak Republic (1992), under the title The Economy of the Slovak Republic, as well as in other laws forming the constitutional order of Slovakia. The Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union are also included in this category of sources of law with the highest legal power. In these sources of constitutional law, we find, of course, only the basic principles of financial regulation, which are subsequently regulated in detail in laws.

For clear organization of this chapter, the following basic areas will be considered as the subject of financial regulation: budget law of the state and of local self-government; tax and fee law; customs law; monetary law; and financial market law.

It applies to each of them that the foundations of regulation in a broader or narrower sense can be found in the constitutional order of the Slovak Republic.

3.1. Budget law of the state and of local self-government

Article 58 of the constitution provides that the financial management of the Slovak Republic shall be kept through its state budget. The state budget shall be adopted by a law. According to the constitution, a law shall lay down budgetary revenues, procedures of budgetary management and the relationships between the state budget and the budgets of territorial units. The importance of the state budget as the basic financial and economic instrument of the state's financial policy is also highlighted by the constitution in that the state budget (and taxes and levies) may not be the subject of a referendum (Article 93).

Article 65 of the constitution also regulates the foundations of the financial management of local self-government. According to the constitution, municipalities and higher territorial units are legal entities, which manage their own property and financial means independently, under the conditions laid down by a law. Municipalities and higher territorial units shall finance their needs primarily from their own revenues as well as from state subsidies. It shall be laid down by a law which taxes and fees are to be the revenues of a municipality and which taxes and fees are to be the revenues of a higher territorial unit. State subsidies may be claimed only within the limits laid down by a law.

Among the constitutional foundations of budget law, we must also include Article 60, establishing the Supreme Audit Office as an independent authority auditing the management of budgetary and financial resources of the state, local self-government, and public institutions. Its audit competences apply to all persons who manage and dispose of these funds.

The constitutional regulation of the state budget and the foundations of financial management of local self-government is further developed in several laws. The most

important sources of budget law include: the Act on Budgetary Rules of Public Administration (2004), the Act on Budgetary Rules of Local Self-government (2004), the State Budget Act, which is adopted every year, and the Constitutional Act on Budgetary Responsibility (2011).

The current concept of budget law thus has its foundations in 2004, when the abovementioned laws on budgetary rules were adopted as part of the package of laws of the so-called Fiscal Decentralization. In addition to the abovementioned laws, the Fiscal Decentralization framework also includes the Act on Local Taxes and Local Fee for Municipal Waste and Minor Construction Waste (2004), and the Act on the Budget Determination of Income Tax Revenues to Local Self-government (2004).

The central concept of budget law is the general government budget, which is a medium-term economic instrument of the state's financial policy. It is drawn up annually for at least three budget (calendar) years. The general government budget consists of the state budget and the aggregate of the budgets of other public administration entities (municipalities, higher territorial units, state funds, higher education institutions, the Social Insurance Agency, health insurance companies, and others), including revenues and expenditures related to the implementation of public health insurance for a respective financial year and the following two years. However, it should be added in this context that the revenues and expenditures shown in the budgets for the following two years are non-binding.

The state budget is an essential part of the general government budget and provides for the financing of the main functions of the state in a respective financial year. The state budget for a respective financial year includes revenues, expenditures and financial transactions on the state's financial assets and other transactions that influence the state's financial assets or financial liabilities. The state budget is approved by the National Council of the Slovak Republic through the State Budget Act in a special budgeting process, which is characterized by several differences compared to the standard legislative process, in particular:

- The exclusive right of the government to submit to the National Council the draft State Budget Act (the right of budgeting initiative),
- The existence of statutory deadlines for preparing and submitting the draft State Budget Act (by 15 October of a current year),
- The regular annual periodicity of the exercise of the right of budgeting initiative, which is associated with the limited period of force and effect of the State Budget Act—one calendar year,
- A legal solution to possible non-approval of the State Budget Act, which is a temporary budget,
- Prohibition of amendments and repeals of other laws through the State Budget Act,
- Setting objectives to be achieved (revenue and expenditure levels) in State Budget Act without specifying the procedures and means to achieve these objectives.¹²

12 Babčák, Cakoci and Štrkolec, 2019, pp. 211–214.

The state budget revenues include taxes, fees, fines, levies due to a breach of financial discipline, European Union budget funds, revenues from state holdings and other revenues. To illustrate the importance of the different types of revenues, we can offer the figures provided for in the State Budget Act 2021, which was amended to address the impacts of the COVID-19 pandemic on public finances. The total state budget revenues for 2021 amount to EUR 15.806 billion. The tax revenues amount to approx. EUR 11.798 billion, i.e., about 75% of the total state budget revenues, which include income tax in the amount of EUR 2.089 billion, value added tax in the amount of EUR 7.038 billion, and excise duties in the amount of EUR 2.438 billion. The non-tax revenues amount to approx. EUR 1.183 billion and funds from the budget of the European Union amount to EUR 2.782 billion.

The state budget expenditures mainly include expenditures of organizations financed from the state budget, expenditures resulting from international treaties, contributions to the European Union, expenditures on the delegated exercise of state administration to municipalities and higher territorial units, and expenditures on the state's obligations under special laws. The total state budget expenditures for 2021 amount to EUR 27.603 billion, which, when compared to revenues, results in a state budget deficit of EUR 11.797 billion.¹³ Of the individual ministries, the largest amounts of expenditures are allocated to the Ministry of Labour, Social Affairs and Family (EUR 3.282 billion), the Ministry of Interior (EUR 3.005 billion), the Ministry of Education, Science and Sport (EUR 1.760 billion), and the Ministry of Health (EUR 1.706 billion).

In the case of local self-government, municipalities and higher territorial units manage their own approved budgets. The budget of a municipality and the budget of a higher territorial unit is the basic instrument of financial management in a respective financial year which governs the financing of the tasks and functions of the municipality and the higher territorial unit in a respective financial year. The budget of a municipality and the budget of a higher territorial unit expresses the autonomy of their management. These budgets are approved by representative bodies and contain revenues and expenditures and financial relationships with the state (shared taxes, subsidies for the delegated exercise of state administration, other subsidies).

The revenues of the budgets of municipalities and higher territorial units include, in particular, shares in personal income tax,¹⁴ non-tax revenues from ownership and transfer of ownership of property, penalties for a breach of financial discipline,

13 This is the highest state budget deficit in the history of the Slovak Republic so far. The reason for this is naturally the slower growth of expected revenues in connection with the decline in the performance of the economy, and in particular the huge growth in state expenditures related to coping with the impacts of the COVID-19 pandemic. For illustration, it can be noted that, according to the state closing account 2020, which was also significantly affected by the pandemic, the state budget deficit was in the amount of EUR 7.758 billion.

14 According to the current legal situation, personal income tax revenues (except for withholding tax) are divided only between municipalities and higher territorial units in the ratio of 70% (municipalities) and 30% (higher territorial units).

donations and proceeds from voluntary collections, subsidies from the state budget to cover the expenditures on the delegated exercise of state administration, other state subsidies, funds from the European Union, and other funds from abroad provided for a specific purpose.

An important means of strengthening the budgetary and financial autonomy of municipalities is local taxes, which were introduced in Slovakia in 2004, although their introduction was considered much earlier not only at the legislative level, but also at the expert level.¹⁵ The purpose and ultimate objective of the Fiscal Decentralization was to create instruments for municipalities, cities and higher territorial units enabling these local self-government units to raise, through legal instruments, sufficient funds for the performance of their statutory functions,¹⁶ as well as the fulfilment of societal tasks. In its original version, the Act on Local Taxes (2004) provided for eight local taxes that could be imposed by municipalities on an optional basis (real estate tax, dog tax, public space use tax, accommodation tax, tax on vending machines, tax on non-winning gaming machines, tax on nuclear installations, tax on the entry and stay of motor vehicles in the historical part of towns) and one local tax that could be imposed by higher territorial units (motor vehicle tax). That *status quo* lasted for ten years, when the legislator adopted the Motor Vehicle Tax Act (2014), under which this tax became a state tax again. In the case of local taxes (apart from tax on nuclear installations), municipalities themselves can influence their budget revenues by setting their rates, increases, decreases, or exemptions. Thus, municipalities themselves construct the elements of these taxes so that their primary fiscal purpose can be fulfilled, and they have considerably stronger powers than before to influence their revenues.¹⁷

The adoption of the Constitutional Act on Budgetary Responsibility (2011) was a particularly significant moment for budget law in Slovakia.¹⁸ This constitutional act was adopted to achieve long-term sustainability of the Slovak Republic's economy and to strengthen the transparency and efficiency of the use of public funds. Its goal was also to promote the long-term competitiveness of Slovakia, considering the requirement of economic and social justice and solidarity between current and future generations. The Constitutional Act on Budgetary Responsibility provides the establishment and competences of the Council for Budget Responsibility, the rules of budgetary responsibility, and the rules of budgetary transparency. The Council for Budget Responsibility is an independent authority established to monitor and evaluate the development of Slovakia's economy and evaluate the implementation of the rules of budgetary responsibility. Its competences include publishing a report on the long-term sustainability of public finances, submitting a report on compliance with the budgetary responsibility and budgetary transparency rules to the National Council of

15 Babčák, 2001, p. 1326.

16 Jesenko, Vernarský and Molitoris, 2015, p. 106.

17 Románová, 2011, p. 67.

18 The adoption of a constitutional law in Slovakia requires the consent of at least a three-fifths majority of all Members of Parliament (Article 84 of the constitution).

the Slovak republic, publishing an opinion on legislative proposals, in terms of their implications for the general government budget and long-term sustainability.

The most important provisions of the Constitutional Act on Budgetary Responsibility set an upper limit of the government debt in the amount of 50% of gross domestic product. The benchmark is the level of Slovakia's debt as published by Eurostat. The measures provided for by the Constitutional Act on Budgetary Responsibility are activated as soon as the debt level reaches 40%. Then, depending on the increase in the debt level, increasingly stringent measures are activated to pursue the debt reduction target. (a) If the amount of the debt reaches 40% of gross domestic product and is below 43% of gross domestic product, the Ministry of Finance shall send a written justification of the debt level to the National Council, including a proposal for debt reduction measures. (b) If the amount of the debt reaches 43% of gross domestic product and is below 45% of gross domestic product, the government shall submit to the National Council a proposal for debt reduction measures, and the salaries of the members of the government shall be reduced. (c) If the amount of the debt reaches 45% of gross domestic product and is below 47% of gross domestic product, the Ministry of Finance shall block the state-budget expenditures in the amount of 3% of the total state-budget expenditures approved by the State Budget Act for the respective financial year, no funds shall be released from the Prime Minister's Reserve and the government's Reserve, and the government may not submit to the National Council any general government budget proposal entailing an year-on-year increase in general government expenditures compared to the previous year. (d) If the amount of the debt reaches 47% of gross domestic product and is below 50% of gross domestic product, the government may not submit to the National Council any general government budget proposal with a deficit, and municipalities and higher territorial units shall be obliged to approve only a balanced budget or a surplus budget for the following financial year. (e) If the amount of the debt reaches or exceeds 50% of gross domestic product, the government shall ask the National Council for a vote of confidence.

Effectivity of these provisions may be hampered by the clause of Constitutional Act on Budgetary Responsibility stating that the activation of restriction measures shall not apply in the two years following the adoption of the government policy statement and the vote of confidence.

The constitutional regulation of budget law undoubtedly includes the issue of audit of the use of public budget funds. The Supreme Audit Office of the Slovak Republic (the 'SAO') is one of the constitutional authorities established by the constitution at the time of its adoption by the Slovak National Council on 1 September 1992.¹⁹ The anchoring of the SAO as an audit authority directly in the constitution was standard when compared to the constitutions of other democratic countries (which were also used as a basis for the drafting of the constitution), with the SAO being established as a 'new type' of audit authority. The establishment and constitutional fixation of the

19 For the historical context and the establishment of audit authorities in Slovakia, see, for example, Čič et al., 1997, p. 263.

SAO as an independent authority standing outside the system of other state authorities was a manifestation of the effort to create a *sui generis* audit institution. The SAO was conceived to provide audit of the management of only state finances (at the time of the adoption of the constitution).

The development of the constitutional regulation of the SAO has recorded several changes, but the current situation has been in force since as early as 2006. The constitution-maker has twice expanded competences of the SAO to give the SAO the broadest possible ‘scope’ of audit of all public finances and public property. Similarly broadly as in the Slovak Republic, the material and personal audit competences of the state financial audit authority is defined in the Republic of Poland.²⁰ Under the current constitutional situation, the current scope of competences of the SAO (without claiming to be exhaustive) covers state finances (state budget, state funds, state enterprises), local self-government finances (municipalities and higher territorial units), other public finances on a national scale (public institutions such as the Social Insurance Agency, public higher education institutions), foreign, mainly European, finances (finances provided to the state, legal and natural persons within development programmes or for other similar reasons from abroad—currently, mainly finances from EU funds), mixed finances (legal entities with the participation of the state, public institutions, municipalities, and higher territorial units, as well as legal entities established by them), private finances (guaranteed by the Slovak Republic).²¹

3.2. Tax and fee law

It was mentioned earlier that tax revenues are a crucial group of state budget revenues. They are of similar budgetary importance for local budgets, whether they are local taxes imposed by municipalities or a shared income tax where the revenues are shared between municipalities and higher territorial units.

The basic principle of imposing taxes and fees only by a law or based on a law (*nullum tributum sine lege*) can be found directly in the constitution (Article 59). This constitutional rule is linked to Article 1 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, under which every natural or legal person is entitled to the peaceful enjoyment of his possessions. However, this provision does not preclude the right of the state to adopt such laws as it deems necessary to regulate the enjoyment of possessions in accordance with the general interest or to provide for the payment of taxes or other fees or fines. The constitution classifies taxes and fees as state and local.²² Given the same constitutional basis for their regulation, we will discuss both taxes and fees in this subchapter.

The tax system in Slovakia thus consists of state taxes and local taxes, which can be classified as direct taxes or indirect taxes, in accordance with the established classification.

20 Orosz and Jirásková, 2007, p. 267.

21 Štrkolec, 2009, p. 359.

22 Románová, Radvan and Schweigl, 2019, p. 591.

State taxes currently include direct taxes, namely income tax, motor vehicle tax, and indirect taxes, namely insurance tax, value added tax, and excise duties.

Local taxes, all of which are direct taxes, include real estate tax, dog tax, public space use tax, accommodation tax, tax on vending machines, tax on non-winning gaming machines, tax on nuclear installations, tax on the entry and stay of motor vehicles in the historical part of towns.

For the sake of completeness, it should be added that inheritance tax, gift tax, and real estate transfer and transition tax were abolished in Slovakia in 2004.

Income tax is a basic direct tax levied on the income of natural and legal entities. The applicable law dates to 2003, but it has evolved considerably into its current form since its adoption.

Personal income tax distinguishes between tax residents who have unlimited tax liability (their worldwide income is taxed in Slovakia) and tax non-residents who have limited tax liability (only income from sources in Slovakia is taxed in Slovakia). Of course, this is limited by the fact that international double taxation treaties may determine the scope of tax liability differently than national legislation.

Natural persons are subject to tax on income in four basic categories and the tax base is calculated as the sum of these partial tax bases. The following income is subject to tax: (a) Income from employment, which includes, for example, income of employees and civil servants, income of constitutional officials, income of liquidators, members, and directors of limited liability companies. However, it also includes non-cash income in the form of various fringe benefits (for example, prizes and winnings received by an employee, or 1% of the market entry price of a motor vehicle for each month during which the employee may use the company vehicle for private purposes). To determine the partial tax base, this income is only reduced by social security and health insurance contributions. (b) Income from business activity, other self-employment activity, rental income, and income from the use of works and artistic performances. This category of income includes income from agricultural production, from trade activity, from business activity carried out in accordance with special laws (lawyers, notaries, medical doctors, veterinarians), as well as income of expert witnesses, interpreters, and professional athletes. Rental income includes only income from the rental of real estate and the rental of movable property which is rented out as accessories to real estate. To determine the partial tax base, all such income is reduced by tax expenses, which are expenses provably incurred and recognized as expenses to attain, maintain, and provide for taxable income. Instead of provable expenses, persons who have income from business activity or other self-employed activity may deduct flat-rate expenses amounting to 60% of their income, up to a maximum of EUR 20,000. Flat-rate expenses and provable expenses may not be combined, and only social security and health insurance contributions may be deducted more than flat-rate expenses. However, only small entrepreneurs who are not subject to value added tax may deduct flat-rate expenses. For rental income and income from the use of works and artistic performances, only provable expenses may be deducted, flat-rate expenses are not allowed by law. (c) Income from capital, which

includes interest and income from securities, interest on deposits in bank accounts, interest on loans granted, or benefits from insurance on survival to a stipulated age. This income is in most cases subject to withholding tax at source and may not be reduced by expenses (again except for compulsory health insurance (if any)). (d) Other income, which includes, for example, casual income, income from the sale of real estate, from the sale of securities, from the sale of an ownership interest in a limited liability company, winnings and prizes from competitions, or income from the sale of virtual currency. Depending on the type of other income, it may be reduced by certain expenses (for example, the purchase price paid for real estate or the acquisition price of an ownership interest) to determine the partial tax base.

In 2017, the four basic categories of taxable income forming the object of personal income tax were supplemented by profit shares (dividends) paid to shareholders and members of companies and cooperatives, as well as members of their management and supervisory bodies. Profit shares were not subject to tax in Slovakia until 2016.

Personal income tax rates are set differently depending on the type of income and the amount of the tax base. The basic tax rate is 19% of the tax base which does not exceed 176.8 times the minimum subsistence level (currently EUR 37,981.94). A rate of 25% is applied to the excess tax base. In addition to this basic tax rate, which is progressive in nature, the Income Tax Act also provides for several special rates, for example, a 15% tax rate for small entrepreneurs whose annual taxable income does not exceed EUR 49,790, or a 7% tax rate for profit shares if their source is in Slovakia or in a foreign contracting state i.e., state that has with Slovakia international tax treaty concerning tax administration (with foreign non-contracting states, the tax rate is as much as 35%).

For the corporate income tax, the law also distinguishes between tax residents with unlimited tax liability and tax non-residents with limited tax liability. A specific feature of legislation governing corporate income taxation is the division between taxpayers established for business purposes and taxpayers established for non-business purposes. In the case of legal entities established for business purposes, the object of taxation is their income from their activities and from the disposal of their assets. In the case of legal entities established for non-business purposes (for example, civic associations, foundations, professional chambers, municipalities, higher territorial units, political parties), the object of their taxation is only income from activities by which they make profits or by which profits can be made, for example, from the sale of property, from rental, from advertisements, from membership fees.

The corporate income tax base is determined as the difference between taxable income and tax expenses. The basic rate of corporate income tax is 21%, with a reduced rate of 15% for small entrepreneurs whose annual taxable income does not exceed EUR 49,790.

Of course, the current legislation governing individual and corporate income tax is supplemented by other elements such as tax exemptions, special provisions on the determination of the tax base, transfer pricing rules, controlled foreign companies, hybrid mismatches, tax on exit, and the application of tax loss. The legislation

governing income taxation in Slovakia also provides for a possibility of tax assignment, where a taxpayer may transfer 2% of the tax paid to nonprofit organizations for the promotion and development of sports, health protection, education, protection of human rights, or other public benefit purposes.

The motor vehicle tax has undergone a special development in Slovakia. Until 2004, it was known as the road tax and had the character of a state tax. Due to the Fiscal Decentralization implemented in that year it became a local tax that could be imposed by higher territorial units, whose budgets also received the revenues from that tax. Paradoxically, however, that local tax was still administered by the tax offices as state authorities. The character of the motor vehicle tax changed again in 2014, when the Motor Vehicle Tax Act, which is still in force today, was adopted, establishing that tax again as a state tax and a revenue of the state budget. The compensation of the budget revenues of the higher territorial units was made by increasing their share in the personal income tax revenues from 21.9% to the current 30%.

Only motor vehicles used for business purposes are subject to the motor vehicle tax, and the tax rates are differentiated by type and technical parameters of vehicles. Interestingly, motor vehicles whose only source of energy is electricity are subject to a zero tax rate. There is also a strong green element in the concept of the motor vehicle tax rate. For the first nine years of registration of the vehicle the tax rate is reduced (by 15–25%) and, conversely, for vehicles older than twelve years the tax rate is gradually increased (by 10–20%). The use of motor vehicles in combined transport (by road and by rail) is also tax-favoured.

Value added tax is regulated by a law of 2004, which is a harmonized legislation in accordance with the European directive on the common system of value added tax. As a harmonized tax, it conforms European legislation. Four types of taxable transactions are subject to tax: (a) the supply of goods for consideration within the territory of Slovakia by a taxable person acting as such, (b) the supply of services for consideration within the territory of Slovakia by a taxable person acting as such, (c) the intra-Community acquisition of goods for consideration within the territory of Slovakia, and (d) the importation of goods into the territory of Slovakia.

In terms of the tax entity, the law distinguishes between a taxable person and a taxpayer. A taxable person is any person who independently carries out any economic activity, irrespective of the purpose or results of that activity. The concept of economic activity is broader than the concept of business activity under the Commercial Code, since economic activity means any activity from which income is earned and which includes the activities of producers, traders, and suppliers of services, including mining, construction and agricultural activities, activities carried out as a liberal profession under special laws, intellectual creative activities, and sporting activities. Taxable persons with their registered office or place of business in Slovakia are obliged to file a tax registration application with the tax administrator if they have reached a turnover of EUR 49,790 for no more than 12 consecutive calendar months. However, taxable persons who have not reached this amount of turnover may also register voluntarily. The registration process results in the issue of a registration certificate

and the assignment of a tax identification number. In addition to the registration of domestic taxable persons, the law also regulates the registration of a group and the registration of foreign taxable persons. The tax rate has changed several times over the period of application of value added tax, and thus the original uniform 19% rate has changed to the current basic rate of 20% and one reduced rate of 10%. The reduced rate is applied to selected goods and services, such as basic food products, medicines, books, magazines, and accommodation services.

The excise duty system includes taxes on alcoholic beverages, tobacco products, mineral oil, electricity, coal, and natural gas. These taxes, as well as value added tax, are harmonized with European legislation.²³

The insurance tax is the youngest tax in the Slovak tax system, which was introduced in 2018. It is an indirect tax and replaced the previously applied levy on non-life insurance. The persons liable to pay the insurance tax are insurance companies, which include the tax in the price of insurance in relation to insured persons and subsequently pay it to the tax administrator. The object of the insurance tax is insurance exclusively in the non-life insurance sectors (accident insurance, motor insurance, property insurance, credit insurance, legal expenses insurance, etc.). The tax rate is 8% of the amount of the insurance premium.

Local taxes were introduced in Slovakia in 2004 and originated from the transformation of the real estate tax (which until then had the character of a state tax) and the system of local fees applied until then. The common and characteristic features of local taxes are the following:

Optionality, where the law only defines the local taxes that municipalities may impose in their territory, but the decision whether to impose them is solely up to the municipalities,

The strong competences and autonomy of municipalities, which is manifested in the determination of the basic elements of local taxes (rates, exemptions, reductions) and in the fact that all local taxes are administered by the municipalities themselves.

In principle: (a) the tax rates have no upper limit, (b) municipalities may not impose and collect local taxes other than those set by law, (c) the tax period for most local taxes is a calendar year, and (d) the determining legal act for the application of local taxes is generally a binding ordinance adopted by the municipal council.²⁴

The most important local tax with the highest budgetary potential is the real estate tax, which includes tax on land, tax of buildings, and tax on flats and non-residential premises. In general, however, municipalities do not make full use of the budgetary potential of the real estate tax and rely more heavily on shared taxes and state subsidies, which is undoubtedly also a consequence of local policies.²⁵

The taxpayer is in principle the owner, but in certain cases it can also be the manager or the tenant. The tax on land and its base depends on the value of the land,

23 Cakoci et al., 2019, p. 17.

24 Babčák, 2019, p. 376.

25 Štrkolec, 2019, p. 344.

which is, however, determined for tax purposes directly by a law or by a municipal ordinance of general application. Slovakia has not yet introduced the taxation of land (or other real estate) based on its market value. However, the government policy statement for 2021–2024 contains a provision according to which the real estate tax should be differentiated depending on the value of the real estate and the nature of its use.

The tax on buildings and the tax on flats and non-residential premises depend on their area. In general, for all components of the real estate tax, tax rates are set by the municipality and may be differentiated by type of real estate as well as by specific part of the municipality where the real estate is located. There are no upper limits on real estate tax rates, but there is a maximum legal range between the lowest and the highest annual real estate tax rates introduced by the municipality.

Other local taxes (dog tax, public space use tax, accommodation tax, tax on vending machines, tax on non-winning gaming machines, tax on nuclear installations, tax on the entry and stay of motor vehicles in the historical part of towns) are characterized by the connection of the object of taxation with the territory of the municipality. Their common feature is that their rate, different rates (if any), exemptions and reductions are set by the municipalities themselves, without any legal restrictions. The only exception in this respect is the tax on nuclear installations, whose rates are laid down directly by a law. However, this tax may only be imposed by municipalities that are located in the area threatened by two nuclear installations in the territory of Slovakia (Mochovce and Jaslovské Bohunice).

In this part of the chapter, it is also worth mentioning the system of fees imposed and collected in Slovakia. According to the constitution, fees are state and local and, like taxes, may only be imposed by a law or be based on a law.

State fees include court fees and administrative fees. Court fees are collected for individual acts or proceedings of the courts, if they conducted upon a motion and for certain acts and proceedings conducted without a motion by the court for the benefit of the fee payer (in cases expressly provided for in the scale of fees). As a rule, the fee payer is the applicant of an act which is subject to fee, if the scale of fees provides for a fee for filing a motion, but in specific cases the fee payer may be another person. The basic rate of the court fee in proceedings for payment of a sum of money is 6% of the value of the object of the proceedings, or EUR 99.50 if the object of the proceedings cannot be valued in money. In summary proceedings upon a motion for an order for payment, the fee rate is 3% of the value of the object of the proceedings.

Administrative fees are paid for acts and proceedings of state administration authorities, higher territorial units, municipalities, and state archives. Their subject-matter are acts and proceedings of administrative authorities that are listed in the scale of administrative fees, which forms an annex to the law. These include various acts and proceedings in general administration, internal administration, transport, financial administration, or the environment. The fee payer is the person who initiated the act or proceedings. The fee rate is provided for in the scale of fees as a fixed amount or a percentage of the fee base. In the case of administrative fees, as well as court fees, the legislator encourages fee payers to communicate electronically,

reducing the fee rate to 50% for acts and proceedings initiated upon a motion or an application submitted by electronic means.

The system of local fees consists of the local fee for municipal waste and minor construction waste (introduced in 2004) and the local development fee (introduced in 2015). Unlike local taxes, the local fee for municipal waste and minor construction waste is obligatory, so municipalities impose it in their territory. The fee payers are persons who have a permanent or temporary residence in the territory of the municipality and persons who are entitled to use real estate in the territory of the municipality. The specific rate of the fee is set by the municipality in an ordinance of general application either per person and calendar day of residence or based on the quantity of waste produced. The fee is characterized by the earmarking of its proceeds, since the rate of the fee may not be higher than the sum of the average costs incurred by the municipality within municipal waste and minor construction waste management activities.

In contrast, the local development fee is optional and its proceeds may only be used by municipalities to cover capital expenditures related to the construction costs of childcare facilities, structures used for the provision of social, sporting, and cultural services, social housing, schools, hospitals, local roads, or other public works.²⁶ The object of the development fee is a building structure in the territory of the municipality as specified in the final building permit. The fee payer is the person named in the building permit. The specific rate of the development fee is set by the municipality in an ordinance of general application and ranges from EUR 3 to EUR 35 for each, even incomplete, square metre of the floor area of the above-ground part of the structure. The municipality may set different rates for different types of structures and for different parts of its territory.

In addition to state and local fees, many other fees are levied and collected in Slovakia which cannot be classified in any of these categories. These include, for example, recycling fees, fees collected by public higher education institutions, and air pollution fees.

Procedural issues related to tax law are mainly connected with the specification of financial administration authorities and their competences and the regulation of tax administration. The structural basis of the financial administration authorities and their powers is concentrated in the Financial Administration Act (2019). The state administration authorities in the field of taxes, fees and customs include the Ministry of Finance of the Slovak Republic, the Financial Directorate of the Slovak Republic, tax offices and customs offices, the Financial Administration Criminal Office.

The Ministry of Finance develops tax, fee and customs policy strategies and prepares legislation in these areas, but also has the decision-making power in appeal proceedings. The Financial Directorate manages and supervises tax offices and customs offices, decides on appeals, and exercises other statutory powers. The tax offices and customs offices have the status of tax administrators that administer taxes and fees in

26 Popovič, 2016, p. 1263.

the first instance. Besides regular tax offices, there is also a tax office for selected economic entities in Slovakia, whose competences include tax administration of selected financial market entities (banks, insurance companies, securities dealers) as well as tax entities with an annual turnover of more than EUR 40 million. The Financial Administration Criminal Office has nationwide competences and is responsible for investigating tax offences and the search for their perpetrators.

Tax administration is regulated by the Tax Procedure Code (adopted in 2009, in force since 2012), which is a general code that applies to the administration of all (state and local) taxes, as well as local fees. However, certain specific procedural issues related to the administration of individual taxes and fees are also regulated by the laws regulating these taxes and fees, which are to the Tax Procedure Code *lex specialis*. The Tax Procedure Code regulates general issues of tax administration, such as the principles of tax administration, documents filed within tax administration (tax returns), evidence,²⁷ security institutions and time limits. These are followed by the regulation of the activities of tax administrators, where searching activities, tax administrator local enquiry procedure, tax audit and the procedure for the determination of tax using tools are regulated. The main part of the procedural regulation in the Tax Procedure Code is devoted to tax proceedings, which are distinguished into general tax proceedings and special tax proceedings (registration procedure, assessment proceedings and appeal proceedings). Finally, the Tax Procedure Code also comprehensively regulates tax enforcement proceedings, including the execution of tax enforcement in nine possible ways (for example, sale of real estate, wage deductions, attachment of claims, but also withdrawal of the driver's licence).

3.3. Customs law

Customs law is a traditional part of the systemic basis of financial law. The constitution in Article 57 defines the territory of the Slovak Republic as a customs territory. Customs law regulates customs duties, customs procedures, customs supervision, as well as the organization of customs administration. Given the nature of regulated relations and the fact that the European Union is also a customs union with eliminated controls over the movement of goods at the borders between Member States, this area of legal regulation is heavily permeated by the influence of European law. The Union Customs Code is thus the basic source of customs law, which is supplemented by the Customs Act (2004) and other laws at the national level. In Slovakia, the Customs Act regulates the rules and procedures for the treatment of goods to ensure the application of measures issued based on the Union Customs Code for the movement of goods between the customs territory of the European Union and third countries in the territory of Slovakia and measures to prevent unlawful conduct of persons in the import, export, and transit of goods between the Union and third countries in the territory of Slovakia. The Union Customs Code is directly applicable. Therefore, the Customs

27 Sábo, 2020, p. 12.

Act focuses on the regulation of procedural issues related to customs supervision, customs control, and customs procedures.

3.4. Monetary law

Monetary law, as a subsystem of a special part of financial law, regulates legal relations that are related to the establishment and determination of the requisites of the system of money that circulates in a particular state (or in the territory of several states) and is used as legal tender in the performance of obligations within legal relations.²⁸ Similarly to customs law, the monetary law is due to the adoption of the Euro in Slovakia (2008) under the influence of European law. However, its constitutional foundations can be found directly in the constitution, which establishes the National Bank of Slovakia (NBS) as an independent central bank. The NBS may within its competences issue regulations of general application, if so authorized by a law.

The status and competences of the NBS in the field of currency and money circulation is regulated by the Act on the NBS (1992), which was amended by the Act on the introduction of the euro currency in the Slovak Republic (2007). The adoption of this Act also brought about a fundamental change in the position and tasks of the NBS. The NBS is part of the European System of Central Banks, which consists of the European Central Bank (ECB) and the national central banks. From the date of the introduction of the euro in the Slovak Republic, the NBS also became part of the Eurosystem as the central banking system of the euro area.

The main objective of the NBS is to maintain price stability. To this end, the NBS participates in the common monetary policy set by the ECB for the whole euro area. The NBS has the right to issue euro banknotes and coins in accordance with special laws. However, under the Article 128 of the Treaty on the Functioning of the EU, the ECB has the exclusive right to authorise the issue of euro banknotes within the EU. Both the ECB and the national central banks may issue banknotes. The NBS also manages the money circulation in Slovakia, provides for the printing of banknotes and the minting of coins, the management of banknotes and coins in stock, supervises their protection and security, replaces banknotes and coins worn out by circulation. NBS also supervises the safekeeping and destruction of printing plates and coining dies, and provides for the destruction of invalid and discarded banknotes and coins.

3.5. Financial market law

In recent years, financial law science has classified financial market law as a subsystem of a special part of financial law.²⁹ However, there are also opinions that the development will result in the full separation of financial market law from financial law,³⁰ which is mainly related to the specificity of the subject of its legal regulation.

28 Babčák, Cakoci and Štrkolec, 2019, p. 457.

29 Bakeš et al., 2012, p. 13.

30 Králik and Jakubovič, 2004, p. 116.

The subject of legal regulation of financial market law are socioeconomic relations which concern the instruments, entities, and regulation of the financial market.³¹ At this point it should be emphasised that financial market instruments (trading objects—securities, deposits, shares, loans) and financial market entities (banks, insurance companies, stock exchanges)³² are primarily regulated by the rules of commercial law. Financial regulation is therefore mainly related to financial market regulation, whose primary purpose is to protect its participants, especially those who have the status of creditors.

Supervision of the financial market in Slovakia was diversified between two supervisory authorities until 2005: (a) the NBS, which supervised banks, branches of foreign banks and the Deposit Protection Fund; and (b) the Financial Market Authority, which supervised other financial market entities in insurance and capital market. Its supervisory competences included, for example, insurance companies, reinsurance companies, stock exchanges, securities dealers, insurance intermediaries, the Investment Guarantee Fund, etc. The Financial Market Authority was established by a law as a non-state institution *sui generis*, separated from the system of state administration authorities, to which the state delegated part of the exercise of its powers (functions).

By adopting the Financial Market Supervision Act, in force since 2006, the Financial Market Authority was dissolved and the so-called integrated financial market supervision was introduced, which is carried out by the NBS in four main areas—banking, capital market, insurance, and pension savings.

In the banking area, supervised entities include banks, branches of foreign banks, the Deposit Guarantee Fund, electronic money institutions, and branches of foreign electronic money institutions.

In the insurance area, supervised entities include insurance companies, reinsurance companies, branches of foreign insurance companies, branches of foreign reinsurance companies, and the Slovak Insurers Bureau.

In the capital market area, supervised entities include securities dealers, branches of foreign securities dealers, the Investment Guarantee Fund, stock exchanges, the Central Securities Depository, asset management companies, branches of foreign asset management companies, mutual funds, and foreign collective investment undertakings.

In the pension savings area, supervised entities include pension fund management companies, pension funds, supplementary pension companies, and supplementary pension funds.

The objective of financial market supervision is, according to the current legislation, to contribute to the stability of the financial market, as well as to the sound functioning of the financial market to maintain the credibility of the financial market,

31 Babčák, Cakoci and Štrkolec, 2019, p. 396.

32 Čunderlík et al., 2019, pp. 34–36.

protect financial consumers and other clients in the financial market, and comply with competition rules.

Within the financial market supervision, the NBS exercises several powers, the most important of which is the supervision of supervised financial market entities (banks, insurance companies, stock exchanges, securities dealers, insurance intermediaries, asset management companies, mutual funds, pension companies, and others). With that regard the NBS (a) establishes prudential rules, safe operation rules, and other requirements for the business of supervised entities, (b) supervises compliance with the provisions of laws applicable to supervised entities or to their activities, as well as compliance with the provisions of legally binding acts of the European Union applicable to supervised entities or to their activities, (c) conducts proceedings, grants authorizations, licences, approvals, and prior approvals, imposes sanctions and remedial measures, issues other decisions, opinions, guidelines, and recommendations, and supervises the implementation of its decisions, including compliance with the conditions laid down in such decisions, (d) carries out on-site and remote supervision of supervised entities.

In the context of financial market supervision, mention should also be made, at least briefly, of the single supervisory mechanism established by Council Regulation (EU) No. 1024/2013, conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions. The single supervisory mechanism is the system of financial supervision composed of the ECB and national competent authorities of participating Member States, i. e., the NBS in the case of Slovakia. The ECB supervises major credit institutions, including the three largest Slovak banks.

3.6. Summary and current regulatory challenges

It follows from the above that the current financial regulation in Slovakia is contained in the constitution as well as in many laws. The main areas of the financial law are concentrated on budgets, taxes and fees, customs, currency, and financial market issues. Although Slovakia is a unitary state, there is a strong decentralization element in budgets, taxes, and fees.

The budget system consists of the state budget and local budgets. Taxes and fees are also imposed at the state and local levels. However, the financial management of all the units in the state is closely interlinked, as illustrated not only by the shared personal income tax, but also by the existence of a single general government budget. Finally, it cannot be overlooked that there is also a strong interaction with the European Union in financial relations, which is reflected both in the harmonized indirect taxes and in the relationship between the state budget and the Union budget.

As regards customs law, monetary law and financial market law, the influence of EU law is particularly strong. It is due not only to the existence of the Customs and Monetary Union, of which Slovakia is a part, but also to the creation of the Banking Union, built on three pillars (the Single Supervisory Mechanism, the Single Resolution Mechanism, and the Single Deposit Guarantee Scheme).

The current regulatory challenges in financial law are linked to two phenomena. The first is the ongoing COVID-19 pandemic and the second is the digital transformation of the economy.

Budget regulation will need to cope with the negative impacts of the pandemic in terms of shortfalls in budget revenues due to the downturn in the performance of the economy. Budgetary politics must also face an increase in public expenditures introduced for the elimination of the impacts of the pandemic on the population and the business sector. Responses can be seen in the Recovery and Resilience Facility, which at the European level is intended to address the economic and social damage caused by the pandemic, but also to kick-start the EU's green transition and digital transformation.

Several regulatory challenges can be identified in the tax area in Slovakia. The first is a new approach to the tax mix, that aims to increase the taxation of consumption and wealth, to introduce taxation of real estate on a value basis, to reduce the tax burden on labour and other economic activity, and finally to strengthen the environmental element in taxation. The search for an optimal approach to the taxation of the digital economy and multinational corporations is an ongoing challenge, but here we rather expect a European or global solution. For the sake of completeness, it should be noted that Slovakia, unlike some other European countries, has not yet proceeded to the introduction of a unilateral digital tax, and is waiting for a European solution to this issue.

In the area of monetary law and financial market law, coping with virtual currencies is currently a major challenge for several reasons, namely, their conceptual definition (currency, tender, crypto-asset³³), legal regulation, investor protection, taxation, but also their use in tax administration (for example, in tax enforcement).

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Regulation of Public Finances in Slovenia in Light of Financial Constitutionality

Rado BOHINC

ABSTRACT

The purpose and the objectives of this chapter is to present briefly some of the legal theory of finance, followed by information on recent developments and current challenges in financial law and to present relevant financial institutions in the Republic of Slovenia (RS). This chapter is comprised of four subchapters. The first subchapter deals with the legal theory of finance, presenting theoretical views on public finance and financial law, about legal nature of the public budget, further on the legal theory of finance and on theoretical views related to constitutional provisions and the performance of the economy. The second subchapter deals with the public finances developments and trends in Slovenia, followed by brief description of fiscal system in Slovenia and some facts on management of public property. The third subchapter presents financial institutions in Slovenia. Ministry of finance, constitutional (Court of Audit and the Central Bank) and other financial institutions are briefly presented as follows: the Financial Administration, Agency for public oversight of auditing, Securities market agency, Ljubljana stock exchange, Slovenian sovereign holding and public institutions and public funds in general. The fourth subchapter presents current and planned regulatory challenges; it presents resilience and recovery measures, current measures to mitigate the effects of the COVID-19 epidemic and information on some of the planned future legislative initiatives.

KEYWORDS

The legal theory of finance, public finance, financial law, public budget, management of public property. financial institutions in Slovenia, Court of audit, Central bank, Financial administration, Agency for public oversight of auditing, Securities market agency, Ljubljana stock exchange, Slovenian sovereign holding, public institutions, public funds in general, resilience and recovery measures.

1. Legal theory of finance, developments, institutions, and current challenges in financial law

1.1. Legal theory of finance

1.1.1. Public finance and financial law

Public finances perform an allocation (resource allocation), redistribution (market correction) and stabilization (realization of macroeconomic goals) function. Another

word, public finances allocate, distribute and direct resources according to predetermined macroeconomic goals.¹

Through its regulatory function, the state provides institutions and processes for the functioning of the market and the realization of macroeconomic goals. The regulatory function of a state is a *condicio sine qua non* not only of the rule of law, but also of the functioning of the market and economic relations (property, contractual relations, and technical standards).

There are many different views on how to define and classify financial law. Some classify financial and budgetary law only as financial law; according to these opinions, financial law is public law only. Others consider the law of financial markets (capital credit, investment markets) to be financial law. i.e., financial industries, which include financial instrument law, banking and insurance law, and corporate finance. This means that financial law is both public and private (civil, corporate) law.

Vertesy elaborates four possibilities for classifying banking law: 1) financial law; 2) public administration law, or regulated industries; 3) civil or commercial law; 4) banking law, independently; and proposes, as final solution, 5) law for financial industries.²

Benjamin defines financial law as the law and regulation of the insurance, derivatives, commercial banking, capital markets and investment management sectors. However, this definition is too narrow, focusing on financial instruments and markets only.³

Šoltes I. et al, 2010, p. 93, recognizes financial law as an independent branch of law governing the relations of collection, distribution, and use of funds; a special part of financial law is tax, banking, and budgetary law.⁴

The definition that we accept and follow in this paper is that financial law consists of areas such as budgetary and tax law, banking, insurance and financial instruments law and corporate finance. We agree that financial law encompasses both the public (tax and budget) and private (corporate finance and financial industry) parts. We understand financial law in a broader sense, as a field of regulation and legal principles that cover financial operations of state bodies regarding the collection and distribution of taxes, customs duties, and contributions for the purpose of financing public activities, including payment transactions and control over such transactions. On the other hand, financial law also covers financial industries and instruments, and corporate finance including banking and insurance business.

1.1.2. *Legal nature of the public budget*

There are different views on the legal nature of the budget, namely whether the budget is a law or not. Cvikl and Korpič Horvat emphasize that, in the legal order of

1 Stanovnik, 1998, p. 1.

2 Vertesy, 2007, p. 321.

3 Benjamin, 2007, p. 2.

4 Šoltes et al., 2010, p. 93.

the RS, the budget is a *sui generis* legal act adopted by the National Assembly (NA) in accordance with the procedure applicable to the adoption of a law.⁵

As a financial plan of the country for a certain period, it has great political, developmental, and legal significance. The general part of the budget consists of the balance of revenues and expenditures, the account of financial receivables and investments and the financing account. The special part of the budget in the RS is the plan of development programs.

The budgetary principles in the RS are the principle of budgetary unity, the principle of completeness and the principle of budgetary transparency, as well as the principle of budgetary balance. Specific budgetary principles apply to the implementation of the budget.⁶

In the RS, there are four balances of public financing (state budget, municipal budgets, the Pension and Disability Insurance Institution (PDII) and the Health Insurance Institution (HII), all of which operate on the principle of cash flow. The same disclosure applies to direct budget users, while for indirect budget users (public agencies, public institutes), the statements are based on both principles (cash flow and accrual principle—the occurrence of business events).

The pro-budget process comprises the governmental and parliamentary phases, as well as the implementation and control process. The fundamental question to be solved in legal regulation is, who determines the starting points and objectives of the period and how powers and responsibilities are distributed between the executive and the judiciary.

1.1.3. *The legal theory of finance*

The issue of the institutional and procedural basis of public finance is challenged by various theories, which generally claim that legal rules are a generally binding legal framework for the transparent, orderly, and efficient functioning of public finances.

Pistor proposed the legal theory of finance as a foundation for a political economy of finance and argues that the legal construct of finance is of first-order significance in describing and forecasting the behaviour of financial markets globally.⁷

In proposing the legal theory of finance, Pistor argues that there is no financial system of substantial scale that is not backed by a formal legal system with the capacity to authoritatively vindicate the rights and obligations of contractual parties, or to lend its coercive powers to the enforcement of such claims.

However, this theory also seems to focus on an argument relating to the functioning of financial markets—that financial markets are legally constructed and as such occupy an essentially hybrid place between state and market, public and private.

5 Cvikel and Korpič Horvat, 2007, p. 36.

6 Ibid., p. 60.

7 Pistor, 2013, p. 2.

1.1.4. Constitutional Provisions and the Performance of the Economy

Vertesy researches the correlation between the constitutional provisions (or other relevant law sources) and the performance of the economy (GDP growth), sound and sustainable fiscal policy (budgeting, government debt, taxation, audit), furthermore monetary policy (price and exchange rate stability) and national assets.⁸

The conclusion is meaningful. According to the results of the analysed different dimensions of public finances, Vertesy finds, that the correlation is loose between the constitutional bases and the economic performances of the countries.

Yet, the conclusion, that usually the legislative, the executive and other state organs define and manage the fiscal and monetary policy, for which the constitutional backgrounds are very general, is not necessarily correct in all cases. The functioning of the rule of law should be additionally considered.

1.2. Public finances developments and trends in Slovenia

1.2.1. General information on public finance developments in Slovenia

The development of financial, banking, and corporate system after the Second World War in Slovenia was very different from today's, and not at all comparable with what is the banking system today. Today's financial, banking, and corporate system was established after 1990, i.e., after the independence of Slovenia. As Štiblar, explains, Slovenia is a country with a banking tradition. Between 1862 and 1889, the first Slovenian savings banks were established.⁹ However, financial market and capital corporate structures did not exist in the period from 1945 to 1990 in Slovenia.

After the independence of Slovenia (1991), especially after the accession to the EU (2004) and the adoption of the euro (2007), financial law has been developing strictly in accordance with the European *acquis* and the rules of the eurozone. The development of financial law has been very dynamic; this particularly applies to monetary (Monetary Union) and budgetary (European semester) law, and in particular to the EU banking and insurance law, financial instruments law and corporate finance, together with corporate and insolvency law.

A characteristic of the contemporary financial law of the RS is the high level of normativism, as well as normative dynamics (constant changes). The basic financial rules on the management of public funds and the fiscal rule rank the highest in the hierarchy of legal norms—the Constitution of the Slovak Republic (CS), and all areas of financial law (public and private), which are defined in many laws and by-laws.

It should be added that in most areas in the RS there is already rich case law, both regular (civil, criminal, and administrative), as well as the Constitutional Court.

Recently, in 2020 and 2021, significant shifts have been made in the area of public financial law, as well as deviations from the previously established fiscal rules, which were caused by measures to eliminate economic damage, strengthen resilience and

8 Vertesy, 2017, p. 21.

9 Štiblar, 2010, p. 25.

economic recovery during and after the epidemic. This also had a strong impact on fiscal and other financial rules in the RS (presented briefly below).

Public finances in Slovenia today are managed within an extensive regulatory framework following a set of macroeconomic objectives, known as financial (fiscal) policy, determined in annual and strategic national and EU documents.

Public finance, in addition to direct budget users (state administration bodies) cover also so called indirect budget users, performing public services on the fields as education, science, culture, health, social care, sport, etc., under state or/and municipal control (public institutions, like public schools, universities, hospitals, functioning in the legal form of public funds, public agencies and state-owned corporations).

Economic governance and public finance planning in Slovenia as an EU member state and as the country of the euro area, is to a large extent subject to EU rules in this field. Following the Stability and Growth Pact (SGP), Slovenia every year draws up a stability program (a multi-year macroeconomic and fiscal framework and key fiscal projections) and national reform program (planned work priorities and measures and key policies of the government for the next two years) and at the end of each year's budgetary plan.

SGP is a set of rules designed to ensure sound public finances and coordinated fiscal policies of the EU member states, legally based on Articles 121 and 126 of the Treaty on the Functioning of the EU (TFEU).¹⁰ Slovenia annually submit draft budgetary plan to the European Commission (EC) by 15 October at the latest prior to their adoption by the National Parliament, where main orientations and elements concerning fiscal objectives and measures for the coming year are presented.

1.2.2. General information on the fiscal system in Slovenia

With Slovenia's accession to the EU in May 2004, certain changes also took place in the field of taxation, but EU Member States retain fiscal sovereignty. The consent of all Member States is required for the adoption of tax directives. Nevertheless, in general, we can conclude that there are no significant deviations from the established solutions in the field of financial law from those in most EU countries.

Tax law in Slovenia, follows the principles, standards, and best practices of EU and OECD countries. However, there are important differences in proportions of direct and indirect taxes in GDP. Slovenia traditionally has a high share of indirect taxes in GDP and a rather low share of direct taxes in GDP. As Štemberger notes, the largest share of taxes, (in % of GDP) have taxes and social contributions on labour, followed by consumption taxes and finally capital taxes.¹¹

According to OECD, Revenue Statistics 2020, Slovenia ranked 13th out of 37 OECD countries in terms of the tax-to-GDP ratio in 2019. In 2019, Slovenia had a tax-to GDP

10 Protocol 12 of the Treaty gives further details on the excessive deficit procedure, including the reference values on deficit and debt. Article 136 of the TFEU provides for specific provisions to be adopted for the euro area. See also Council Regulations (EC): 1466/97, 1467/97, 479/2009, 1173/2011, 1174/2011, 1176/2011, directive 2011/85/EU and Regulations (EU): 473/2013, 472/2013.

11 Štemberger, 2011, p. 2.

ratio of 37.7% compared with the OECD average of 33.8%. Relative to the OECD average, the tax structure in Slovenia is characterized by lower proportion of revenues from taxes on personal income, profits and gains, taxes on corporate income and gains and property taxes and substantially higher revenues from social security contributions, and higher revenues from value-added taxes and goods and services taxes (excluding VAT/GST).

Taxes in Slovenia include taxes on income (personal and of legal entities), consumption and property, taxes on gaming (lotteries and raffles, games in casinos or gaming halls), environmental tax (on pollution by waste products and other harmful substances) customs excise duties (tax on consumption, imposed on alcohol, alcoholic beverages, tobacco, energy products and electricity). In addition, there are social security contributions (for pensions, healthcare services, and parental and unemployment benefits).

Personal income taxes include consumption taxes and social security contributions. Unlike taxes, in the case of contributions, the taxpayer is at the same time a direct beneficiary of part of the rights for which he pays contributions (pension, healthcare). These rights might also be changed unilaterally, as it is not a contractual relationship. Unlike taxes, contributions create implicit debt to the population.

In addition to tax revenues, Slovenia also knows non-tax budget revenues, which, however, fill the budget to a much lesser extent. The Financial Administration of the RS is responsible for the collection of these charges.

1.2.3. The management of public property

Management of public property has an important impact on fiscal stability. Financial assets of the RS include cash, receivables, debt securities, and shares and equity interests in companies and other investments in legal entities (public institutions, public trust funds and public agencies), while tangible assets consist of movable and immovable property.

Slovenian Sovereign Holding (SSH) manages the state's ownership interests in more than 50 companies, covering industries as energy, finance, traffic, transport and infrastructure, general economic sector and tourism.

Government guarantees are granted in particular for projects of general public interest (public infrastructure, energy, environmental protection, new technical and technological development projects, health, and education). government guarantees for private sector entities help businesses obtain funding for prospective programmes and assist companies in difficulty. Annual quotas for government guarantees are set each year.

Liabilities on the part of the RS only become effective when the primary debtor to whom the guarantor is the state fails to comply with its obligations within the agreed time limit.

A public entity may issue a guarantee to other legal entities; however, the prior approval of the Ministry of Finance and a prior positive opinion of the line ministry must be obtained before the guarantee is issued.

1.3. Regulatory and supervisory financial institutions

1.3.1. Ministry of Finance, and constitutional and other financial institutions

The Ministry of Finance of the RS plays a central role in the creation and implementation of the financial system and microeconomic policy in the RS. It performs tasks in the fields of treasury, public accounting, budget, public procurement, the tax and customs system, the public finance and financial system, financial assets, guarantees, public sector borrowing, public–private partnerships, the transparency of financial relations, gambling, the prevention and detection of money laundering, state aid and macroeconomic analysis, and forecasts.

Apart from the Ministry of Finance, the government and the parliament, various autonomous agencies (Bank of Slovenia, Securities Market Agency, the Insurance Supervision Agency, the Court of Audit, and the Office for Money Laundering Prevention) are regulators and supervisors in the field of public finance and of the financial markets (financial instruments, banking, and insurance) and of corporate finance and the functioning the financial system as a whole.

Two of the financial institutions are laid down in the CS: the Court of Audit and the central bank. However, there are numerous other institutions that are established under different pieces of legislation.

The law governing public agencies as legal forms of publicly owned entities is the Public Agencies Act, PAA.¹² The law stipulates that public agencies are established by law. If this enables a more efficient and rational implementation of regulatory, development, or professional tasks in the public interest, or if, depending on the nature or type of tasks, it is unnecessary or unsuitable for them to have permanent direct political control over the performance of their tasks. There are 18 different types of public agencies with 956 employees now in Slovenia.

Payment and other services for budget users are provided by the Public Payments Administration of the RS (PPA). To perform this task, it keeps the Register of Budget Users, in which users of the public budget are registered.

1.3.2. Court of Audit

According to the CS, the Court of Audit (CA) is the highest body for controlling state accounts, the state budget, and all public spending. The CA is independent in its work and bound by the CS and the law (Article 150, CS). The members of the CA are appointed by the NA (Article 151, CS).

The Auditing Act (AAU¹³) determines the powers of the CA.¹⁴ AA regulates auditing, professional areas related to auditing, supervision of auditing and valuation, and

12 Official Gazette of the RS, No. 52/02 of March 23 1991.

13 Official Gazette of the RS, No. 65/08, 63/13—ZS-K and 84/18.

14 AA transposes into the legal order of the RS directives 2006/43 / EC (statutory audits of annual accounts and consolidated accounts) and the implementation of the Regulation 537/2014 / EU (specific requirements regarding the statutory audit of public-interest entities).

the operation of the Slovenian Institute of Auditors (SIA) and the Agency for Public Oversight of Auditing, APOA.

1.3.3. *The central bank—the Bank of Slovenia*

CS stipulates, that RS has a central bank—the Bank of Slovenia (BS). In its operation, BS is independent and reports directly to the NA. The BS is established by law. The NA (CS, Article 152) appoints the governor of the CB. It is regulated by Bank of Slovenia Act (BSA).¹⁵

The BS is a legal person under public law that independently disposes of its own assets. BS is exclusively state-owned with financial and managerial autonomy. BS and the members of its decision-making bodies are independent and in performing their tasks are not bound by decisions, positions, and instructions of state or any other bodies, nor may they turn to them for instructions or guidelines.¹⁶

1.3.4. *Financial Administration*

The Financial Administration Act (FAA)¹⁷ establishes the Financial Administration (FA) of the RS. FAA regulates the principles of operation, organization, tasks, and powers of the FA. FAA also lays down rights and peculiarities of employment relations of civil servants of the FA.

The operation of the financial administration is based on principles of publicity of work, transparency and predictability, economy and efficiency and internal control.

The tasks of FA are in details stipulated in the FAA, Article 11 (e.g., assessment and calculation of mandatory duties, customs clearance of goods, financial control, financial investigation, control over the organization of games of chance, control over the declaration of cash entry and exit to or from the territory of the EU, control over the entry, exit, transit, and transfer of goods, execution, etc.

1.3.5. *Agency for Public Oversight of Auditing (POAA)*

According to the Article 18 of the AA, POAA is the autonomous and independent supervisory and regulatory body, founded by the RS in the field of auditing and the supervisory body in the field of valuation. The POAA is the competent authority for supervising the implementation of Reg. 537/2014 / EU.

The POAA cooperates with the Committee of European Auditors' Supervisors and the competent authorities referred to in Article 20 of Reg. 537/2014 / EU, or with related supervisory authorities at EU level and with the competent authorities of third countries.

15 Official Gazette of the RS, No. 72/06—official consolidated text, 59/11 and 55/17.

16 The following EU Regulations are relevant to macro-prudential oversight of the financial system and European Systemic Risk Board: 1092/2010, 1096/2010, 468/2014 (SSM Framework Regulation) (ECB/2014/17).

17 Official Gazette of the RS, No. 25/14.

1.3.6. *Securities Market Agency (SMA)*

The rules of operation of the SMA in the exercise of powers are imposed by MFIA, Market in Financial Instruments Act.¹⁸ The SMA is a legal entity of public law. It is independent in performing its tasks. Its basic mission is to maintain a safe, transparent, and efficient market in financial instruments.

The SMA exercises control over the brokerage companies, banks engaged in investment transactions and services, management companies, investment funds, mutual pension funds, public companies, and public-limited companies.

The SMA performs regulatory tasks for efficient operation of market in financial instruments. The SMA reports to the NA of the RS on the situation and conditions on the market in financial instruments. The funds for the work of the SMA are provided by taxes charged for issuing decisions in individual matters and fees for exercising control. SMA is supervised by the CA.

1.3.7. *Ljubljana Stock Exchange (LSE)*

According to MFIA, the LSE is organized in the legal form of a joint stock company. The LSE manages the stock market with financial instruments, performs services of publishing and processing information and services for the electronic notification and storage system and other services and transactions which, regarding the manner of performance and the risks to which the stock exchange is exposed in their performance.

Only stock exchange members may trade on the stock exchange market. The SMA is responsible for supervising the stock exchange regarding all services and transactions performed by the stock exchange. The only shareholder of the LSE is Zagreb Stock Exchange. It was established 26 December 1989.

1.3.8. *Slovenian Sovereign Holding (SSH)*

SSH was founded under Slovenian Sovereign Holding Act (SSHA)¹⁹ regulating the status and operation of the SSH, the management of investments owned by SSH, and investments of the RS, managed by SSH.

The objectives of investment management are to increase the value of investments, to ensure the highest possible return for Slovenia as owner and to achieve other possible strategic objectives in investments, which are defined in the investment management strategy.²⁰

18 Official Gazette of the RS, No. 77/18, 17/19—amended and 66/19, ZTFI-1, See also: Regulation (EU) No 1095/2010 (European Securities and Markets Authority), consolidated version of the revised ESMA Regulation (December 2019).

19 Official Gazette of the RS, No. 25/14.

20 See also Act on the Transformation of the Capital Company of Pension and Disability Insurance and on the Investment Policy of the Capital Company of Pension and Disability Insurance and the Slovenian Compensation Company (Official Gazette of the RS, nos. 79/10, 26/11 and 105/12—ZSDH).

SSH is a fully state-owned holding company, which has the largest portfolio of state capital assets in more than 50 Slovenian companies. A general objective of state-owned enterprises being managed by SSH is pursuing a profitable, effective, and efficient operation of companies, In SSH held companies, performing public services, the objective is also to implement efficiently tasks related to public interest.

1.3.9. Public institutions

In Slovenia there are many publicly financed and held institutions (1,444 with 120,951 employees in 2020), rendering public services in the field of education, sports, health, culture, research and social care under state or municipality control and financing. The number of private-law providers of these services is relatively small.

Publicly owned public bodies in the RS are the most-used generic/universal form of a public institution (with several specific features), through which public services in different fields are delivered.

Public institutions are regulated by the Law on Institutions (LI),²¹ which is repeatedly delisted by sectoral legislation. In Slovenia, the state has an extremely important role in the field of education (at all levels), health, culture, research, social security, employment, pension, disability, and health insurance.

1.3.10. Public funds

The Public Funds Law (PFL)²² stipulates that the purpose of the public fund as a special legal entity, is the implementation of the policy of the public (state, municipality) founder in a certain field, e.g., promotion of development in a certain field, implementation of policies (social, cultural, environmental, housing etc.) of the founder; the law does not apply to mutual funds, pension funds and legal entities of private law which have the word ‘fund’ in their name and which are established by legal entities of private law.

The purpose of a public fund can be promoting development in a given field, implementation of the social, cultural, environmental, housing, spatial, agricultural, nature conservation, mining or other policies of the founder. The purpose can also be settlement of long-term liabilities of the founder, promoting creativity in science, culture, and education through the awarding of prizes, scholarships, tuition fees, project funding and other forms of incentives, etc. There are 13 public funds (with 475 employees) now in Slovenia.

1.4. Current and planned regulatory challenges

1.4.1. Resilience and recovery measures

The Stability Programme of the RS, 2021 is adapted to the needs stemming mainly from the COVID-19 epidemic and the recovery. The COVID-19 mitigation packages

21 Official Gazette of the RS, No. 12/91 of March 22 1991.

22 Official Gazette of the RS, No. 77/2008, 8/2010.

based on Recovery and Resilience Plan²³ have had a significant impact on economic growth in 2020.²⁴ According to the adopted Regulation (EU) 2021/241,²⁵ Slovenia is eligible to receive EUR 1,777,322.00 of non-reimbursable grant. Additionally, the EC may assume debt on behalf of the RS for a further EUR 3.6 billion.

The economic and financial consequences of the epidemic in the RS are significant. In 2020, general government revenue equalled EUR 20,195 million, i.e., 4.6% or EUR 966 million less than in 2019, while the growth of general government expenditure amounted to 14.8. As a consequence of that, the general government consolidated debt at the end of 2020 stood at EUR 37,429 million or 80.8% of GDP, which is EUR 5,684 million higher than the previous year, when it stood at EUR 31,744 million or 65.6% of GDP.

The debt of central government units increased the most, amounting to EUR 36,766 million or 79.4% of GDP at the end of 2020, while it equalled EUR 31,123 million or 64.3% of GDP the previous year.²⁶ Slovenia recorded a government budget deficit equal to 8.40% of the country's GDP in 2020.²⁷

1.4.2. Current measures to mitigate the effects of the COVID-19 epidemic

Due to the consequences of the epidemic of the infectious disease SARS-CoV-2 (COVID-19) (the epidemic), several acts lay down measures. Measures relate to tax collection procedures that provide taxpayers easier fulfilment of tax obligations and determine measures in the field of budget execution and deadlines for the submission of asset balance sheets, annual accounts, and annual reports and to mitigate the consequences for citizens and the economy (unemployment risks, wages, and contributions, postponing the payment of borrowers' obligations).

These acts are, as follows: Public Finance Intervention Measures Act (PFIMA),²⁸ Intervention measure postponing the payment of borrowers' obligations (IMPP),²⁹ Intervention Measures in the Field of Wages and Contributions Act (IMWCA),³⁰ Intervention Measures to Contain the COVID-19 Epidemic Act and Mitigate its Consequences for Citizens and the Economy (IMECE),³¹ Act to provide additional liquidity to the economy to mitigate the consequences of the COVID-19 epidemic (AALE),³²

23 On the 1 July 2021, the EC has adopted a positive assessment of Slovenia's recovery and resilience plan, a key step paving the way for the EU to disburse €1.8 billion in grants and €705 million in loans under the Recovery and Resilience Facility (RRF).

24 Slovenia's plan devotes 42% of its total allocation to measures that support climate objectives and 21% of its total allocation to measures that support the digital transition. The plan includes important reforms on long-term care, healthcare, pensions and labour market, education and skills, Rand D and innovation, business environment and public procurement.

25 Regulation 2021/241 of 12 February 2021, establishing the RRF.

26 Government of Slovenia, Stability Programme 2021, April 2021.

27 Slovenia's GDP for 2019: EUR 48,393 million, per capita: EUR 23,165.

28 Official Gazette of the RS, No. 36/20.

29 Official Gazette of the RS, No. 36/2, 49/20—ZIUZEOP and 203/20—ZIUPOPĐVE.

30 Official Gazette of the RS, No. 36/20, 49/20—ZIUZEOP, 61/20—ZIUZEOP-A and 80/20—ZIUOOPE.

31 Official Gazette of the RS, Nos. 49/20, 61/20, 152/20—ZZUOOP, 175/20—and 15/21.

32 Official Gazette of the RS, no. 61/20, 152/20—ZZUOOP and 175/20—ZIUOPĐVE.

Guarantee of the RS in the European Instrument for Temporary Support for the Mitigation of Unemployment Risks in Emergencies (SURE) after the outbreak of COVID-19 (GURE),³³ Intervention Measures Act for Preparation for the Second Wave COVID-19 (IMSW),³⁴ Intervention measures to mitigate the consequences of the second wave of the COVID-19 epidemic (IMMCSW),³⁵ and Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of the COVID-19 Epidemic Act (IMAMCSW).³⁶

1.4.3. Some future legislative initiatives

According to government plan, the amendments to the Tax Procedure Act and the Value Added Tax Act will be prepared towards a higher degree of digitalization.

In the area of corporate taxation, improved or new forms of tax relief to enable companies to increase their investments, contributing to reducing environmental pollution and increasing the degree of digitalization will be proposed.

Proposed new legislation will also transpose the provisions of the European directive against tax avoidance practices, addressing harmful tax measures and partly contributing to fair taxation.

To further relieve taxes away from labour, measures will be prepared in amendments to the Personal Income Tax Act. This will gradually relieve of income from work (through a gradual increase in the general allowance, a reduction in the personal income tax rate in the last, fifth tax bracket, the introduction of the so-called seniority relief for taxpayers over 70 years of age). Also revenues from the capital and renting a property are planned to reduce (reduction of the capital income tax rate to 25%, in the case of income from renting a property a reduction to 15%, at the same time reducing the flat rate costs to 10%).

Modernization is needed also in the field of public law entities, financed, and controlled by the government. Slovenia must update legislation in the field of public service delivery. The legislation on public agencies and public funds is also obsolete and lags behind modern achievements in this field.

The fundamental problem of the legal arrangement of public institutions (30 years old, pre-constitutional LI), public agencies and public funds is their diversity, which is a consequence of the casuistic solution of sectoral systemic issues and has led to the application of general legal organizational forms to a very limited extent. So that they are mainly governed by sectoral legislation-imposed exceptions.

Legal inconsistency leads to the lack of transparency and inefficiency of corporate governance and, consequently, several weaknesses in the performance of public services and sectoral regulation.

The PAA was adopted in 2002, i.e., before Slovenia joined the EU and before the implementation of the EU concept of liberalizing public utilities. This is important

33 Official Gazette of the RS, No. 80/20.

34 Official Gazette of the RS, No. 98/20 and 152/20—ZZUOOP.

35 Official Gazette of the RS, no. 175/20, 203/20—ZIUPOPĐVE, 15/21—ZDUOP, 51/21—ZZVZZ-O and 57/21—CC.

36 Official Gazette of the RS, No. 203/20, 15/21—ZDUOP and 82/21—ZNB-C.

because the basic system law governing public agencies is only valid for a limited number of those agencies that are key in terms of EU law and in the light of the process of liberalizing public utilities, i.e., agencies as independent regulatory bodies.

Regardless of the extreme diversity of public funds activities, the law prescribes a relatively uniform normative framework for the functioning of public funds, which greatly restricts the flexibility in choosing the organizational structure that would optimally fit to the specifics and functioning of a particular public fund. On the other hand, the relations between the state or the municipality, as the founder, and the bodies of the public fund are too casuistic.

2. Financial constitutionality, areas of regulation, and current regulatory issues

This chapter, comprised of five subchapters, deals with public finance law. The purpose and the objectives is to briefly present, using short descriptions with references to the relevant pieces of legislation, the current constitutional regulation and legislation in the field of public finance. The first subchapter presents constitutional regulation of public finances, fiscal rule, the process of preparation and execution of the budget and issues related to municipal financing. The second subchapter is on tax law; it lists and shortly presents all relevant Slovene tax legislation, starting by constitutional and procedural provisions on taxes, followed by reference on regulation of corporate income tax, value added tax, personal income tax, social security contributions and listing numerous special types of taxes. The third subchapter talks about the management of state real and financial property, presenting management of investments owned by the RS and regulation related to guarantees of the RS. The fourth subchapter presents current regulation on financial markets, banking, insurance law and corporate finance, including corporate financial operations, insolvency, and dissolution. The fifth subchapter presents legislation on prevention of money laundering and terrorist financing.

2.1. Public finance law

2.1.1. Constitutional regulation of public finances in the RS

There are constitutional provisions (Chapter VI of the CS) and several laws and sub-laws regulating public finances, state and municipalities funding, taxes, and the budget.

There is a general constitutional rule, that all revenues and expenditures for financing public spending must be included in the state budgets. In addition, a so-called golden rule is constitutionally stipulated, namely, that revenues and expenditures of general government budgets must be balanced in the medium term without borrowing, or revenues must exceed expenditures.

This principle may be temporarily waived only in exceptional circumstances for the state. The CS stipulates, that the law adopted by the NA by a two-thirds majority of all deputies shall determine the manner and timeframe for implementing the principle of golden rule (balance of revenues and expenditures of budget), the criteria for determining exceptional circumstances and the manner of acting upon their appearance. Such a law is FRA.

2.1.2. Fiscal rule

Fiscal Rule Act (FRA)³⁷determines the manner and timeframe for the implementation of the principle of medium-term balance of revenues and expenditures of general government budgets without borrowing, criteria for determining exceptional circumstances in which medium-term balance may be deviated from. FRA also regulates the operation of the Fiscal Council as an independent and autonomous state body.

According to Article 3 FRA, revenues and expenditures of general government budgets are balanced (in the medium term without borrowing), if the structural balance of the general government sector in a given year is not lower than the minimum value set in a ratified international (EU) treaty governing stability, coordination, and governance in economic and monetary union.

The medium-term balance is ensured by limiting the projected volume of general government expenditure upwards to the level that ensures such a compliance.

2.1.3. Preparation and execution of the budget

The preparation and execution of the budget of the RS and the municipal budgets, management of state and municipal property, state or municipal borrowing and guarantees, management of their debts, accounting and internal control of public finances and budget inspection is laid down by the Public Finance Act (PFA).³⁸ PFA also lays down the rules applicable to the Health Insurance Institute of Slovenia and the Pension and Disability Insurance Institute of Slovenia, both in the compulsory part of insurance. Also rules are laid down for public funds, public institutes and agencies in drawing up and submitting financial plans, managing cash, borrowing, guaranteeing, accounting, submitting annual reports and internal control of public finances, and budgetary inspections.

PFA also regulates borrowing and the granting of guarantees by public economic institutes, public companies, and other legal entities in which the state or municipality has a decisive influence on management. PFA also regulates the medium-term planning of fiscal policy and measures to ensure fiscal discipline and rules for the use of surpluses of institutional units of the general government sector.

37 Official Gazette of the RS, No. 55/15 and 177/20—amended.

38 Official Gazette of RS, Nos. 11/11—official consolidated text, 14/13—corr. 101/13; the law partially transposes directive 2011/85 (on requirements relating to the budgetary frameworks of the MS).

Budget composition, peculiarities of their implementation, use of cohesion policy funds, assigned revenues and state revenues, volume of borrowing and guarantees of the state and public sector, the amount of the lump sum, the assumption of obligations and other issues related to the implementation of the budget, determines the Act on the Execution of the Budgets (AEB).³⁹ If the budget is not adopted by the first day on which it is to be implemented, the beneficiaries financed from the budget are, according to CS provisionally financed under the previous budget (Article 148 of the CS).

Keeping of business books and the preparation of annual reports for the budget and budget users and for legal entities under public law and legal entities under private law that do not keep business books based on the CA, is regulated by Accounting Act (AA).⁴⁰

The transparency of financial relations between state bodies and bodies of self-governing local communities and public undertakings and legal entities, sole proprietors, and private individuals, who carry out activities in the general interest based on an exclusive or special right or public authority is specially regulated by Transparency of Financial Relations and Separate Registration of Various Activities Act (TFRSRVA).⁴¹

2.1.4. Municipal financing

The financing of tasks within municipal competence is set in Municipal Financing Act.⁴² Article 6 of the MFA lays down own tax sources of a municipality (revenues of the municipal budget as real estate tax, tax on watercraft, real estate transfer tax, inheritance and gift tax, tax on winnings from classic games of chance and other tax. The municipality is entitled to revenues from taxes in accordance with the law governing individual taxes.

In addition, revenues from self-contribution, fees, fines, concession fees, payments for local public services, environmental charges, and others are the sources of financing of a municipality. Revenues of the municipality are also revenues from the real and financial assets of the municipality, received donations and transfer revenues from the state budget and funds of the EU.

Borrowing of the municipality, municipal budget debt management, municipal guarantees and determination and financing of eligible consumption of municipalities is further precisely laid down by MFA.

39 For the budget of the RS for 2020 and for 2021: Official Gazette of the RS, No. 75/19, 61/20—ZDL-GPE, 133/20 and 174/20—ZIPRS2122.

40 Official Gazette of the RS, No. 23/99, 30/02—ZJF-C and 114/06—ZUE.

41 Official Gazette of the RS, No. 33/11.

42 Official Gazette of the RS, No. 123/06, 57/08, 36/11, 14/15—ZUUJFO, 71/17, 21/18—amended, 80/20—ZIUOOPE and 189/20—ZFRO.

2.2. Tax law

2.2.1. Constitutional and procedural provisions on taxes

State and local community funding is regulated in the Article 146 of the CS. It is stipulated that the state and local communities obtain funds for the implementation of their tasks through taxes and other obligatory duties, as well as from revenues from their own property.

It is also stated in the CS, that the state and local communities show the value of their property with property balance sheets.

Taxes are regulated in the Article 147 of the CS. It is stipulated, that the state prescribes taxes, customs duties, and other duties by law.

According to CS, local communities prescribe taxes and other duties under the conditions set by the constitution and the law. State and municipalities are therefore constitutionally authorised to impose taxes, however by the law only.

The tax procedure (the collection of taxes, calculation, assessment, payment, refund, control, and enforcement of taxes) and the rights and obligations of taxpayers, the rights of state and other bodies to collect taxes are regulated by Tax Procedure Act (TPA).⁴³

The obligation to carry out the procedure of certification of invoices for tax purposes in cash operations is additionally stipulated in Tax Certification of Invoices Act (CIA).⁴⁴

2.2.2. Corporate income tax

The system and the obligation to pay corporate income tax, whose taxpayer is a legal person of domestic and foreign law is regulated by Corporate Income Tax Act (CIT).⁴⁵ Also taxation on assets transfer, capital exchanges, mergers, and divisions, exit

43 Official Gazette of the RS, No. 13/11—official consolidated text, 32/12, 94/12, 101/13, 111/13, 22/14—CC decision, 25/14—ZFU, 40/14—ZIN-B, 90/14, 91/15, 63/16, 69/17, 13/18—ZJF-H, 36/19, 66/19, 145/20—ex. CC in 203 / 20.

44 Official Gazette of the RS, No. 57/15 and 69/17. CIA transposes into the legal order of the RS the following directives: 2010/24 (on mutual assistance for the recovery of claims relating to taxes, duties and other measures), 2016/881 (as regards access by tax authorities to information on the prevention of money laundering), 2016/2258, 2011/16 (as regards compulsory automatic exchange information in the field of taxation), 2015/2060 (on taxation of savings income in the form of interest), 2003/49 (on the common system of taxation applicable to interest and royalty payments made between associated companies), 2004/76 (as regards the possibility for certain Member States (MS) to apply transitional periods for the introduction of a common system of taxation), 2017/1852 (on mechanisms for the settlement of tax disputes) and 2016/1164 (rules against tax avoidance practices).

45 Official Gazette of the RS, no. 117/06, 56/08, 76/08, 5/09, 96/09, 110/09—ZDavP-2B, 43/10, 59/11, 24/12, 30/12, 94/12, 81/13, 50/14, 23/15, 82/15, 68/16, 69/17, 79/18 and 66/19). It transposes the following directives into the legal order of the RS: 90/434 (on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares), 2005/19 (on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges), 2011/96 (on the common system of taxation applicable in the case of parent companies and subsidiaries), 2003/49 (on the common system of taxation applicable to interest and royalty payments), 2016/1164 (rules against tax avoidance practices), last amended by 2017/952, 2016/1164 (hybrid incompatibilities with third countries).

taxation, tax reductions and elimination of double taxation of resident's income from sources outside RS are in details set out by CIT.

The subject of taxation is profit (surplus of revenues over expenses, determined by CIT), which is achieved by performing activities or transactions in a business unit or through a business unit located in Slovenia.

Income and expenses are determined in the income statement or annual report and shows income, expenses and profit or loss, based on the corporate law (LCC) and established accounting standards. The tax is paid at the rate of 19% of the tax base. There are special rules for determining the tax base, considering normed expenditure.

2.2.3. Value added tax

The Value Added Tax Act (VATA) introduces the obligation to pay value added tax (VAT) on the territory of the RS.⁴⁶ The following transactions are subject to VAT: supplies, import and acquisitions of goods and the provision of services made by a taxable person while performing their economic activity in the territory of the RS.

'Taxable person' is any person who independently carries out any economic activity, regardless of the purpose or result of the activity.

VATA in details regulates taxpayers and taxable transactions, place of taxable transactions, taxable event and VAT liability, tax base, vat rate and exemptions, deduction, and vat refund. Also liabilities of taxpayers and certain non-taxable persons, special arrangements for small taxable persons, for farmers, for travel agencies, for taxable dealers, for sale by public auction, for investment gold and for telecommunications, broadcasting or electronic services are precisely laid down in the VATA.

Currently, in Slovenia, VAT is charged and paid at the general rate of 22 % of the tax base and is the same for the supply of goods and services. However, VAT is calculated and paid at a lower rate of 9.5% of the tax base for supplies of goods and services listed in Annexes I –IV of VATA and at a special lower rate of 5% of the tax base for supplies of goods and services Annex IV. Occasionally the tax rates change.

2.2.4. Personal income tax

Personal income tax is a tax on the income of natural persons. It is regulated by Personal Income Tax Act (PITA).⁴⁷ Income under PITA is income from employment, income from activities, income from basic agricultural and basic forestry activities,

46 Official Gazette of the RS, No. 13/11—official consolidated text, 18/11, 78/11, 38/12, 83/12, 86/14, 90/15, 77/18, 59 / 19 and 72/19) introduces the following directives: 2006/112 (on the common system of value added tax, as last amended by 2019 / 475, amending directives 2006/112 / EC and 2008/118), 2008/9 (rules for the refund of value added tax, laid down in directive 2006/112 to taxable persons not established in the MS and 86/560 (on turnover taxes—procedures for refunding).

47 Official Gazette of the RS, No. 13/11—official consolidated text, 9/12—US decision, 24/12, 30/12, 40/12—ZUJF, 75/12, 94/12, 52 / 13—dec. US, 96/13, 29/14—dec. US, 50/14, 23/15, 55/15, 63/16, 69/17, 21/19, 28/19 and 66/19.

income from the letting of property and from the transfer of property rights, income from capital, other income (Article 18). Personal income tax rates for the tax year are:

If the net annual basis is in euros		Income tax in euros				
over	to					
0	8,500.00			16%		
8,500.00	25,000.00	1,360.00	+	26%	over	8,500.00
25,000.00	50,000.00	5,650.00	+	33%	over	25,000.00
50,000.00	72,000.00	13,900.00	+	39%	over	50,000.00
72,000.00	+	22,480.00	+	50%	over	72,000.00

2.2.5. Social security contributions

The calculation and payment and rates of contributions for compulsory pension and disability insurance, compulsory health insurance, parental care, and employment (social security contributions) in accordance with the laws based on which contributions are introduced is determined by Social Security Contributions Act (SSC).⁴⁸

Social security contributions are paid by employees, insured persons, employers (taxpayers) in the RS, to the PDII, the HII, and to other social security institutions, in accordance with the relevant social security laws.⁴⁹

2.2.6. Special types of taxes

There are several laws imposing special types of taxes. Insurance Sales Tax Act (ISTA)⁵⁰ introduces the obligation to calculate and pay sales tax on insurance transactions in the territory of the RS. Financial Services Tax Act (FSTA)⁵¹ regulates the system and introduces the obligation to pay tax on financial services (for ex: granting loans, issuing credit guarantees, transactions, including brokerage, relating to deposits and to currency, services of insurance, etc.).

The Special Tax on Certain Receipts Act (SCTRA)⁵² introduces the obligation to pay a special tax on certain benefits paid to a natural person. The basis for the calculation

48 Official Gazette of the RS, No. 5/96, 18/96—ZDavP, 34/96, 87/97—ZDavP-A, 3/98, 7/98—US decision, 106/99—ZPIZ-1, 81/00—ZPSV-C, 97/01—ZSDP, 97/01, 62/10—decision US, 40/12—ZUJF, 96/12—ZPIZ-2, 91/13—ZZVZZ -M, 99/13—ZSVarPre-C and 26/14—ZSDP-1.

49 Official Gazette of the RS, No. 106/99 and 72/00), with the Health Care and Health Insurance Act (HCIA, Official Gazette of the RS, No. 9/92, 13/93, 9/96, 29/98 and 6 / 99), the Family Benefits Act (FBA, Official Gazette of the RS, Nos. 65/93, 71/94, 73/95 and 26/99) and the Employment and Unemployment Insurance Act (EUIA, Official Gazette of the RS, No. 5 / 91, 17/91—corr., 12/92, 71/93, 2/94—corr., 38/94 and 69/98.

50 Official Gazette of the RS, No. 96/05—official consolidated text and 90/14.

51 Official Gazette of the RS, No. 94/12 and 90/14.

52 Official Gazette of the RS, Nos. 72/93, 22/94, 45/95 and 12/96.

and payment of tax is each individual gross payment to a natural person for a service provided based on an employment contract. The tax is paid at the rate of 25%.

The Tonnage Tax Act (TTATTA)⁵³ introduces a system of tonnage tax on income from the operation of ships in international navigation as an alternative form of determining the tax base for the payment of corporate income tax.

The Profit Tax on the Disposal of Derivative Financial Instruments Act (PTDDFIA)⁵⁴ regulates the system and introduces the obligation to pay personal income tax on the disposal of derivative financial instruments. The taxpayer is liable to pay tax on profits from the disposal of derivative financial instruments that have their source in the RS and from profits from the disposal of financial instruments that have their source outside the RS (Article 4). The tax is not paid on the profit obtained from the disposal of a derivative financial instrument after 20 years of ownership or after 20 years from the conclusion of the transaction (Article 10).

The Cadastral Income Determination Act (CIDA)⁵⁵ regulates the system of determining cadastral income and flat-rate assessment of income per beehive. Cadastral income is calculated as the difference between the market value of possible production and costs (Article 6).

The Gambling Act (GA)⁵⁶ regulates the system of organizing games of chance in such a way that games of chance take place in an orderly and controlled environment, to prevent money laundering, fraud and other criminal offences or acts contrary to public order. The law also protects minors and other vulnerable people from the harmful effects of excessive gambling. Lottery Tax Act (LTA)⁵⁷ introduces the obligation to calculate and pay tax on lottery tickets. The tax liability arises when the taxpayer receives payment for the lottery ticket. The tax is paid at the rate of 10% of the tax base (Articles 5 and 7). Earnings Tax on Classic Gambling Act (ETCGA)⁵⁸ regulates the tax on winnings in classic games of chance (15% of obtained profit).

The Excise Duties Act (EDA) regulates the system and introduces the obligation to pay excise duty on alcohol and alcoholic beverages, tobacco products and energy products and electricity, which are released on the territory of the RS.⁵⁹ Excise tax-

53 Official Gazette of the RS, No. 97/09—official consolidated text.

54 Official Gazette of the RS, No. 65/08, 40/12—ZUJF and 66/19.

55 Official Gazette of the RS, No. 63/16.

56 Official Gazette of the RS, No. 14/11—official consolidated text, 108/12, 11/14—amended and 40/14—ZIN-B).

57 Official Gazette of the RS, No. 63/13.

58 Official Gazette of the RS, No. 24/08.

59 Official Gazette of the RS, Nos. 47/16 and 92/21) in accordance with the following directives: 92/83 (on structures of excise duties on alcohol and alcoholic beverages, 92/84 (on the rates of excise duty on alcohol and alcoholic beverages), 95/60 (on the tax marking of gas oil), 2003/96 (taxation of energy products and electricity (as last amended by 2018/552), 2003/96 / EC (Combined Nomenclature codes for certain products), 2006/79 (on the exemption from taxes of imports of small consignments of a non-commercial character), 2007/74 (on the exemption from value added tax and excise duty of imports of goods travelling from third countries), 2008/118 (on the general arrangements for excise duty), 2011/64 (on the structure and rates of excise duty applicable to tobacco products), 2020/262 (general arrangements for excise duty (recast). This

payer is a person who manufactures, imports or imports excise goods or dispatches excise goods from the deferral regime for consumption or supplies or acquires excise goods from the network (Article 5).

The Motor Vehicle Tax Act (MVTA)⁶⁰ introduces the obligation to pay motor vehicle sales tax. A taxable person is a manufacturer or a person who acquires a motor vehicle in another Member State of the EU or an importer of motor vehicles (Article 4). Water Vessel Tax Act (WVTA)⁶¹ introduces tax on vessels of more than five metres in length, which are entered in records.

The Real Estate Sales Tax Act (RESTA)⁶² imposes the real estate transfer tax that belong to the budget of the municipality where the property is located. The tax is paid on the transfer of real estate and of a building right under the law governing property relations.

Inheritance and Gift Tax Act (IGTA)⁶³ imposes taxation property which a natural person receives from a natural or legal person as an inheritance or a gift and is not considered income (belong to the municipality where the real estate is located).

The implementation of the customs legislation of the EU and international treaties⁶⁴ governs the Act on the Implementation of EU Customs Legislation (AIEUCL, Official Gazette of the RS, No. 32/16)

2.3. Management of state property

2.3.1. Management of investments owned by the RS

The management of investments owned by the RS is governed by SSHA. SSH follows the objectives to increase the value of investments, to ensure the highest possible return for Slovenia as owner and to achieve other possible strategic objectives in public interest.

The purpose is to concentrate management of investments of the RS and to achieve separation of the function of the state as the owner of capital investments from other (regulatory) functions of the state, thus preventing conflicts of interest, distortion of competition in the markets and unequal treatment of companies.

Act implements the following regulations of the EU: 3649/92 (on a simplified accompanying document for the excise goods), 684/2009 (as regards computerized procedures for the movement of excise goods), 76/2014, 684/2009 (information to be provided in the context of the computerized procedure for the movement of excise goods) 952/2013 of the (on the Union Customs Code).

60 Official Gazette of the RS, No. 72/06—official consolidated text, 9/10, 40/12—ZUJF and 200/20—ZDMV-1

61 Official Gazette of the RS, No. 117/06 and 40/12—ZUJF .

62 Official Gazette of the RS, No. 117/06 and 25/16—US decision.

63 Official Gazette of the RS, No. 117/06 and 36/16—US decision.

64 Official Gazette of the RS, No. 32/16; it governs the implementation of the customs legislation of the EU and international treaties.

2.3.2. *Guarantees of the RS*

CS stipulates, that loans debited by the state and a state guarantee for loans are allowed only by law (Article 149 of the CS).

There are numerous laws regulating state loans and guarantees. Types and purpose of loans, the beneficiaries and authorized institutions are determined in the Guarantees of the RS for Financing Investments of Companies Act (GRSFIC).⁶⁵ The law prescribes in details the procedures for issuing guarantees of the RS for liabilities of companies arising from loans from first-class commercial banks and savings banks licensed by the BS to finance banking services.

The total amount of all guarantees of the RS issued under the GRSFIC for the obligations of companies for loans granted by beneficiaries to finance investments within development projects shall not exceed EUR 750,000,000 (for loans for financing working capital EUR 250,000,000).

The guarantees of the RS to banks and savings banks, as defined in the BA, for borrowing by natural persons, intended to mitigate the consequences of the economic and financial crisis that have arisen for certain groups of natural persons is regulated by Guarantee Scheme of the RS for Natural Persons Act (G SNP).⁶⁶

The Guarantee of the RS for Ensuring Financial Stability in the Euro Area Act (GEFSEUA)⁶⁷ regulates the capital participation of the RS in a joint stock company established for the purpose of ensuring financial stability in the euro area in accordance with the decisions of the Council of the EU (ECOFIN) of 10 May 2010 (hereinafter: the company). Slovenia for the company's liabilities.

The Deposit Guarantee Scheme Act (DGSA)⁶⁸ regulates the establishment and operation of a deposit guarantee scheme with banks and competencies and tasks of the BS in performing the tasks and powers of the Deposit Guarantee Authority. In addition, it regulates monitoring compliance with the obligations under the Deposit Guarantee Scheme. The act does not apply to Slovenian Export and Development Bank, d. d., Ljubljana, which was established as an authorized specialized Slovenian promotional export and development bank based on the law governing the Slovenian Export and Development Bank (Article 1).

2.4. *Financial markets, banking, insurance law, and corporate finance*

2.4.1. *Market in financial instruments*

Conditions for the offer of securities to the public and for the admission of securities to trading on the regulated market of financial instruments and obligations to disclose information relating to listed securities are laid down in the MFIA.

65 Official Gazette of the RS, Nos. 43/10, 87/11, 55/12 and 82/15.

66 Official Gazette of the RS, No. 59/09).

67 Official Gazette of the RS, Nos. 59/10 and 79/11.

68 Official Gazette of the RS, No. 27/16

MFIA further regulates conditions for the establishment, operation, supervision and termination of investment companies, trading venue managers, data reporting service providers and settlement systems with their registered office in the RS.

It also lays down the rules on trading on regulated markets, prohibited market abuse practices and rules on the settlement of transactions concluded on regulated markets, as well as rules for a multilateral trading facility (MTF) and an organized trading facility (OTF).⁶⁹

The procedure for imposing supervisory measures, the competent authorities and infringements by implementing the provisions of Regulation (EU) 2015/2365 is regulated by the Act Implementing the Regulation (EU) on the Transparency of Securities Financing and Reuse Transactions (AIRT).⁷⁰ Act Implementing the Regulation (EU) on documents with key information on packaged investment products for retail investors and insurance investment products (AIRD)⁷¹ determines the competent authorities and misdemeanours and the procedure for imposing supervisory measures and misdemeanours in the implementation of the provisions of Regulation (EU) no. 1286/2014 (on key information documents relating to retail investment products and insurance investment products).

The Takeovers Act (TA)⁷² is the law governing takeovers. The TA regulates the manner, conditions and procedure regarding the takeover bid (Article 1); it applies if the target company is a public company and if its voting shares are traded on a regulated market. The takeover threshold in the target company (the takeover threshold) is one-third of the share of voting rights in this company.⁷³

The Mortgage and Municipal Bond Act (MMB)⁷⁴ regulates the mortgage and utility bonds, the conditions for their issuance and the requirements regarding the guarantee for them.

The Dematerialized Securities Act (DSA)⁷⁵ regulates dematerialized securities, encumbrances on them, their transfer, fulfilment of obligations contained in them, the central register and access to data kept in the central register.

Foreign exchange operations are regulated by Foreign Exchange Operations Act (FEO).⁷⁶

69 MFIA transposes 10 of the relevant EU directives and seven related Regulations into the legal order of the RS.

70 Official Gazette of the RS, No. 55/17

71 Official Gazette of the RS, No. 30/18.

72 Official Gazette of the RS, no. 79/06, 67/07—ZTFI, 1/08, 68/08, 35/11—ORZPre75, 105/11—US decision, 10/12, 38/12, 56/13, 63/13—ZS-K, 25/14 and 75/15 ZPre-1.

73 The TA transposes into the legal order of the RS directive 2004/25 on takeover bids.

74 Official Gazette of the RS, No. 10/12 and 47/12.

75 Official Gazette of the RS, No. 75/15, 74/16—ORZNVP48, 5/17, 15/18—US decisions and 43/19); the law transposes into the legal order of the RS the following directives: 98/26 (on settlement finality in payment and securities settlement systems), 909/2014 (on improving the securities settlement arrangements in the EU), 2009/44 (on settlement finality in payment and securities settlement systems) and 2002/47 (on financial collateral arrangements as regards related schemes and bank loans).

76 Official Gazette of the RS, Nos. 16/08, 85/09 and 109/12); it implements the Regulation 1889/2005 (on controls of cash entering or leaving the Community).

2.4.2. Banking

The law governing banks is the Banking Act (BA).⁷⁷ It regulates conditions for the establishment, operation and regular termination of credit institutions with their registered office in and outside the RS. ZBan-2 further regulates competent bodies, measures and authorizations for the supervision of the operations of credit institutions and other persons who provide services for accepting deposits from the public. BA lays down also measures and powers for macro-prudential or systemic risk management in relation to credit institutions domiciled in the RS.

There are several acts referring to measures for stability of banking system in the RS. For ex. Bank Resolution and Compulsory Dissolution Act (BRCD) ⁷⁸ regulates competencies and procedures managed by the BS in performing the tasks and powers of the bank resolution authority, bank resolution planning, the resolution process, and powers regarding the application of resolution measures and compulsory winding-up proceedings of the bank.

In addition, Bank Resolution Authority and Fund Act (BRA) ⁷⁹ regulates the bank resolution authority and the bank resolution fund.

In addition, there is also Act Implementing the Regulation (EU) on Determining the General Framework for Securitization and Establishing a Special Framework for Simple, Transparent and Standardized Securitization (AIRDSS, Official Gazette of the RS, No. 22/19).

The Act on Measures of the RS to Strengthen the Stability of Banks (AMSSB) ⁸⁰ regulates the Bank Receivables Management Company and the Bank Stability Fund and measures to strengthen the stability of banks in the RS.

The Central Credit Register Act (CRA, Official Gazette of the RS, No. 77/16) enables the implementation of EU regulations on prudential requirements for credit institutions and investment firms.⁸¹

The Financial Conglomerates Act (FCA) ⁸² is the law governing financial conglomerates. FCA provides for the supplementary supervision of supervised entities that are part of a financial conglomerate in accordance with the requirements of the EU

77 Official Gazette of the RS, no. 25/15, 44/16—ZRPPB, 77/16—ZCKR, 41/17, 77/18—ZTFI-1, 22/19—ZIUUSDOL, 44/19—odl. US in 92/21—ZBan-3), ZBan-2.

78 Official Gazette of the RS, No. 44/16, 71/16—US Decision, 9/19, 72/19—ZPSVIKOB and 92/21—ZRPPB-1); the law transposes into the Slovenian legal order the following directives: 2001/24 (on the reorganization and winding-up of credit institutions, as last amended by directive 2014/59 (establishing a framework for the resolution of credit institutions and investment firms) and 2014/59 (concerning the classification of unsecured debt instruments in the event of insolvency). This Act regulates in more detail the implementation of the Regulation 806/2014 / EU.

79 Official Gazette of the RS, Nos. 97/14, 91/15, 44/16—ZRPPB and 27/17.

80 Official Gazette of the RS, No. 105/12, 63/13—ZS-K, 23/14—ZDIJZ-C, 104/15, 26/17—ORZUKSB33, 27/17—corr. and 174/20—ZIPRS2122

81 Official Gazette of the RS, No. 77/16); it implements Regulations: 575/2013 (on prudential requirements for credit institutions and investment firms), 648/2012 (as regards exemptions for traders in goods) and 1024/2013 (delegating to the ECB).

82 The Financial Conglomerates Act (FCA, Official Gazette of the RS, No. 43/06, 87/11 and 56/13).

directives.⁸³ The objectives of supplementary supervision are in particular to ensure the management of risks associated with the operations of supervised entities in the financial conglomerate and thus ensure greater stability of the financial sector. The objective of this law is also to increase the effectiveness of the supervision of supervised entities when they are part of a financial conglomerate and to increase the transparency and security of the financial market.

2.4.3. Insurance

Conditions for the establishment, operation and supervision of insurance and reinsurance undertakings, for the supervision of insurance and reinsurance groups and for reorganization and winding-up of insurance and reinsurance undertakings regulates the Insurance Act (IA).⁸⁴ Insurance transactions are the contracts on non-life and life insurance or reinsurance, except for compulsory social insurance.

Insurance includes services as advising, proposing, or carrying out other preparatory tasks before concluding insurance contracts, concluding insurance contracts, assistance in the management and implementation of insurance contracts, particularly in claims for compensation or insurance benefits and providing information on the insurance contract.

The Insurance and Financing of International Business Transactions Act (IFIBTA)⁸⁵ regulates the foundations of the system of insurance and financing of international economic transactions as instruments of trade policy of the RS and the role of the state in these activities,

2.4.4. Investment funds and management companies

The Investment Funds and Management Companies Act (IFMC)⁸⁶ is the law governing investment funds and management companies. It provides the conditions for setting

83 Directive 2002/87 (on the supplementary supervision of credit institutions, insurance undertakings and investment firms) and 2002/87 (as regards the supplementary supervision of financial entities in a financial conglomerate).

84 Official Gazette of the RS, Nos. 93/15, 9/19 and 102/20); IA transposes into the legal order of the RS several directives, as follows: 91/371 (on the implementation of the Agreement between the EEC and the Swiss Confederation on direct insurance other than life assurance), 91/674 / EEC (on the annual accounts and consolidated accounts of insurance undertakings), 2016/97 (on the distribution of insurance products (recast), 2004/113 (implementing the principle of equal treatment between men and women), 2009/138 (relating to the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II), 2013/14 (on the activities and supervision of institutions for occupational retirement provision), 2009/65 (relating to collective bargaining investment firms for investments in transferable securities (UCITS), 2011/61 (on alternative investment fund managers with regard to over-reliance on credit ratings), 2014/51 (as regards the competences of the European Supervisory Authority), 2019/2177 (relating to the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II), 2014/65 (on markets in financial instruments and 2015/849 (on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing).

85 Official Gazette of the RS, Nos 2/04, 56/08 and 82/15.

86 Official Gazette of the RS, Nos. 31/15, 81/15, 77/16 and 77/18, ZISDU-3.

up management companies and providing investment fund management services that publicly raise assets.

The law also provides conditions for the marketing of units of investment funds that publicly raise assets in the RS and in a Member State or a third country.

IFMC provides for the types of investment funds that publicly collect assets, conditions for their formation and the manner of their operation and sets control over the provision of investment fund management services and control over their operations (Article 1).⁸⁷

The law governing the managers of alternative investment funds is the Alternative Investment Fund Managers Act (AIFMA).⁸⁸

It provides the conditions and manner of management and operation of alternative investment funds (AIF) and investment funds with the status of a special investment fund (SIS). The law also lays down conditions of marketing of AIF units in the RS and conditions of marketing of AIF units established in the RS in another Member State or a third country. It regulates also control over the management of the AIF and the operation of the SIS (Article 1).⁸⁹

2.4.5. Corporate finance

The Companies Act (CA)⁹⁰ is the law governing companies. CA lays down the basic corporate rules for the establishment, governance and operation of companies, sole

87 IFMC transposes into the legal order of the RS the following directives: 2009/65 (relating to undertakings for collective investment in transferable securities (UCITS), as last amended by Regulation (EU) 2017/2402 (framework for simple, transparent and standardized securitization), 2010/44 (on fund mergers, central power supply structures and the notification procedure), 2010/43 (on the agreement between the depository and the management company), 2013/14 (on institutions for occupational retirement provision), 2009/65 (relating to collective bargaining investment firms for investments in transferable securities (UCITS), 2011/61 (on alternative investment fund managers with regard to over-reliance on credit ratings), 2011/61 (on alternative investment fund managers).

IFMC in more details implements the following Regulations (EU): 583/2010 (implementing directive 2009/65) as regards the conditions to be met when providing key investor information, 584/2010 (as regards the form and content of standard UCITS notification and certification, the use of electronic communications between competent authorities), 345/2013 (on European venture capital funds) and 346/2013 (on European Social Entrepreneurship Funds), 346/2013 (on European Social Entrepreneurship Funds) and 2016/438 (as regards depository obligations).

88 Official Gazette of the RS, No. 32/15 and 77/18 AIFA.

89 AIFA transposes into the legal order of the RS directives 2011/61 (on alternative investment fund managers) and 2013/14 (institutions for occupational retirement provision) and Regulations (EU) 2017/2402 (general and specific framework for securitization), 231/2013 (as regards exemptions, general terms and conditions, depositaries, leverage, transparency and control), 447/2013 (instituting proceedings for AIFM which choose to comply with directive 2011/61), 448/2013 (establishing a procedure for determining the reference MS of AIFM outside the Union), 345/2013 (on European venture capital funds), 346/2013 (on the European Social Entrepreneurship Funds), 694/2014 (types of managers of alternative investment funds), 2015/760 (on European long-term investment funds).

90 Official Gazette of RS, Nos. 65/09—official consolidated text, 33/11, 91/11, 32/12, 57/12, 44/13-US, 82/13, 55/15, 15/17, 22/19, 158/20 and 18/21, ZGD-1.

proprietors, economic interest associations, branches of foreign companies and their status transformation.

According to CA, companies and entrepreneurs must keep business books and close them once a year in accordance with CA and Slovenian accounting standards or international financial reporting standards. A business year may differ from a calendar year. Based on the closed accounts, an annual report must be drawn up for each financial year within three months of the end of that financial year (Article 54).

The annual report of companies consists of balance sheets, income statement, cash flow statement, statement of changes in equity, a statement of other comprehensive income, notes to the financial statements, and the business report referred to in Article 70 of the CA.

The financial statements and the annex with notes to the financial statements as a whole constitute the financial report. Further the law has detailed provision on business books and annual report, general accounting rules, public announcement, the financial report, further on the breakdown of account, balance sheet breakdown, income statement, valuation of items in the financial statements, annex to the statements and business report (Articles 54 to 70).

2.4.6. Financial operations, insolvency, and dissolution

The Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (FOIPCDA)⁹¹ regulates financial operations of legal entities, insolvency proceedings against legal and natural persons and proceedings for compulsory winding up of legal entities.⁹²

According to article 5, insolvency proceedings are compulsory settlement procedure, the procedure for simplifying compulsory settlement; and bankruptcy proceedings. Bankruptcy proceedings are bankruptcy proceedings against a legal entity, personal bankruptcy proceedings and bankruptcy proceedings of the estate. The compulsory termination proceedings are deletion from the court register without liquidation and compulsory liquidation (Article 6).

The law further defines short-term and long-term solvency, capital adequacy, long-term sources of financing and financial restructuring and sets rules on financial management. FOIPCDA lays down special rules on compulsory settlement of obligations, preliminary preventive restructuring procedure and preventive restructuring process.

91 Official Gazette of the RS, No. 13/14—official consolidated text, 10/15—amended.

92 FOIPCDA transposes into the legal order of the RS directives: 2001/17 (on the reorganization and winding-up of insurance undertakings) and 2001/24 (on the reorganization and winding-up of credit institutions) and implements the Regulation 1346/2000 (on insolvency proceedings).

2.5. Prevention of money laundering and terrorist financing

2.5.1. Money laundering

Slovenia adopted the Prevention of Money Laundering and Terrorist Financing Act (PMLTFA).⁹³ This is the law that regulates the prevention of money laundering and terrorist financing.

PMLTF lays down measures, competent authorities and procedures for the detection and prevention of money laundering and terrorist financing and regulates inspection supervision over the implementation of its provisions.⁹⁴

Money laundering under PMLTF is any handling of money or property acquired through a criminal offence, which includes the exchange or any transfer of money or other property resulting from a criminal offence; it also includes concealment of the true nature, origin, location, movement, disposition, ownership, or rights in respect of money or other property derived from a criminal offence.

2.5.2. Terrorist financing

The financing of terrorism under PMLTF is the provision, collection, or attempt to provide or collect money or other property of legal or illegal origin. The criminal offence can be made directly or indirectly, however always with the intention or knowing, that it will be used in whole or in part to commit a terrorist act or other act related to terrorism or to be used by a terrorist or a terrorist organization.

A terrorist act under PMLTF is a criminal offence specified in Article 2 of the International Convention for the Suppression of the Financing of Terrorism⁹⁵ and a criminal offence of terrorism and terrorism-related offences set out in a chapter of the Penal Code that sets out crimes against humanity.

2.5.3. Conclusions

Financial law in a broader sense is the law of public finance (budgetary and tax law) and the law on corporate finance (financial instrument law, banking and insurance law and corporate finance). *The Legal Theory of Finance* (Pistor, 2013) claims that legal rules are a binding legal framework for the transparent, orderly, and efficient functioning of public finances. Despite the great importance of financial law is the correlation between the high-quality constitutional bases (financial law) and the economic performance of a country, according to theory (Vertesy, 2017); the functioning of the rule of law should be additionally considered.

93 Official Gazette of the RS, No. 68/16, 81/19, 91/20 and 2/21.

94 PMLTF implements directive 2015/849 (on the prevention of the use of the financial system for money laundering or terrorist financing) and Regulation 648/2012, repealing directives 2005/60 and 2006/70). PMLTF also transposes into the legal order of the RS directive 2018/843 amending directive 2015/849 and amending directives 2009/138 and 2013/36.

95 Official Gazette RS-MP, No. 21/04.

Slovenia has adopted comprehensive and modern legislation in both fiscal and tax law, as well as in the field of banking and insurance law and the law of financial instruments.

The RS has its financial law harmonized with the EU law; so in the part covered by the *acquis communautaire*, it does not differ significantly from the financial law in force in other Member States. Slovenia has adopted extensive and modern legislation, both in the field of fiscal and tax law, as well as in the field of banking and insurance law and the law of financial instruments.

Public finance planning in the RS, as an EU member state (MS) and as the country of the euro area is subject to EU rules designed to ensure sound public finances and coordinated fiscal policies of the EU MS, based on Articles 121 and 126 of the TFEU rules. Each year each MS draws up budgetary plan at the end of each year prior to the adoption by the NA. In the budgetary plan, main orientations and elements concerning fiscal objectives and measures for the coming year shall be presented.

Provisions on taxes are laid down in CS. The CS stipulates that the state and local communities obtain funds for the implementation of their tasks through taxes and other obligatory duties, as well as from revenues from their own property. The state prescribes taxes, customs duties and other duties by law. The state and local communities show the value of their property with property balance sheets.

Tax structure in Slovenia is characterized by (relative to the OECD average) substantially higher revenues from social security contributions and higher revenues from value-added taxes and goods and services taxes (excluding VAT/GST). With contributions, the taxpayer in the RS, is at the same time a direct beneficiary of part of the rights for which he or she pays contributions, as for ex. pension, healthcare (unlike with taxes). These rights might also be changed unilaterally, as it is not a contractual relationship.

The Public Finance Act of the RS is the crucial piece of legislation in the field of fiscal law; it lays down the rules on the preparation and execution of the budget of the RS and the municipal budgets, management of state and municipal property, state or municipal borrowing and guarantees, management of their debts, accounting and internal control of public finances and budget inspection. PFA also regulates drawing up and submitting financial plans, managing cash, borrowing, guaranteeing, accounting, submitting annual reports for public funds, public institutes, and agencies.

MFIA of the RS regulates conditions for the offer of securities to the public and for the admission of securities to trading on the regulated market of financial instruments and obligations to disclose information relating to listed securities. MFIA also regulates the rules on trading on regulated markets, prohibited market abuse practices and rules on the settlement of transactions concluded on regulated markets, as well as rules for a multilateral trading facility (MTF) and an organized trading facility (OTF). BA of the RS regulates competent bodies, measures, and authorizations for the supervision of the operations of credit institutions and other persons who provide services for accepting deposits from the public. BA regulates conditions for

the establishment, operation, and regular termination of credit institutions with their registered office in and outside the RS. CA of the RS is the law governing corporate finance, as keeping business books in accordance with CA and Slovenian accounting standards or international financial reporting standards.

The constitutional or 'golden' fiscal rule in the RS declares that revenues and expenditures of general government budgets must be balanced in the medium term without borrowing, or revenues must exceed expenditures. The fiscal rule may be temporarily waived if the structural balance of the general government sector in a given year is not lower than the minimum value set in a ratified international (EU) treaty governing stability, coordination and governance in economic and monetary union.

As an exemption to fiscal rule, due to the consequences of the epidemic of the infectious disease SARS-CoV-2 (COVID-19), several acts in the RS lay down numerous measures; financial measures are related to additional liquidity to the economy, to mitigate the consequences of the COVID-19 epidemic for citizens and the economy (unemployment risks, wages and contributions, postponing the payment of borrowers' obligations).

There are numerous financial institutions in the RS; however, two of them only are laid down in the Constitution of Slovenia: the Bank of Slovenia and the Court of Audit.

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Summary

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ABSTRACT

The chapter aims to summarise the main findings of the previous chapters from two viewpoints. First, it analyses the financial constitutionality in Central European countries, namely Hungary, Croatia, the Czech Republic and Slovakia, Poland, Romania, Serbia, and Slovenia. It can be concluded that in all countries legislation at the top of the hierarchy of legal sources regulates these issues. In Hungary we find the most important provisions on finance in the Fundamental Law; in the other countries in their constitutions. The Hungarian Fundamental Law regulates the issue in a separate section. The constitutions of the other countries include rules on the public finance system, however, in different depths.

The second part of the chapter deals with budgetary rules in the examined countries. The act on the budget is one of the most important legal sources in each country, because financing is essential to the functioning of the state. The state's revenues and expenditures are laid down by the budget in every country.

KEYWORDS

Comparison, Constitution, Fundamental Law, budgetary rules, budget, national parliaments.

1. Introduction

The chapter is a summary of the volume's country reports. In the chapter, we use some parts of the chapters written by the respective authors, so footnotes are not used. We would like to thank the authors for their contributions: Tereza Rogić Lugarić and Irena Klemenčić (Croatia); Gábor Hulkó and Michal Radvan (the Czech Republic); Zoltán Nagy (Hungary); Mariusz Charkiewicz and Mariusz Popławski (Poland); Ion Brad (Romania); Goran Milošević (Serbia); Miroslav Štrkolec (Slovakia); Rado Bohinc (Slovenia).

The first part deals with the constitutional part of financial law of the examined countries. The second part examines the budgetary rules of the countries. We close our chapter with summarising thoughts.

2. Financial constitutionality in Central European countries

2.1. *Constitutional law of public finances in Hungary*

The constitutional foundations of financial law are not a new field in jurisprudence, the level of regulation differs from era to era. The new Fundamental Law of 2011 opened a new path in the Hungarian regulation by the extension of the constitutional rules related to financial law.

The constitutional regulation of public finances, the constitution of public finances form part of a larger economic constitution. The economic constitution is part of the constitutional regulation where the fundamental economic rights and principles, the provisions regarding market economy, economic provisions on the tasks and powers of certain public bodies, and restrictions of these can be found. The constitution of public finances is located within the economic constitution, interpreted in a broad sense, which primarily concern monetary and fiscal policy. The literature also highlights that state power and public finances cannot be interpreted without each other, public finances are the conditions and the measures of state power, therefore, provisions regarding this matter require constitutional regulation. The constitutions provide rules on which financial relationships must be regulated by law, thus norms that oblige the legislature to enact public finance laws can be found in the constitutions. However, these norms have changed throughout history and nowadays they set out not only legislative matters but they expanded into chapters about public finances that prescribe detailed rules. This process took place also in the Hungarian constitutional regulation, and the current Fundamental Law encompasses detailed financial rules, so today's constitutional rules of public finances can be called the constitutional law of public finances. Provisions regarding public finances determine the legal institutions of public finances and the essential rules of money and asset management and public charges. The constitutional regulation, however, is not exhaustive, the detailed constitutional rules are set out in cardinal laws which require two-thirds of the votes in the parliament. Consequently, the Hungarian constitutional law of public finances is two-tiered, as cardinal laws also provide fundamental constitutional rules concerning public finances. There are several laws of such kind (act on the Hungarian National Bank, act on the State Audit Office, etc.) but the Stability Act is particularly important as a comprehensive regulation of several legislative areas.

The regulatory method of public funds of the Fundamental Law is twofold: on one hand, it sets out principles, on the other hand, it provides concrete cases. It sets out norms that are related to budget management, by creating the principle of a balanced, transparent, and sustainable budget management. In connection with budget management, to reduce state debt, the Fundamental Law provides prohibitive standards.

If the constitutional rules of financial law are examined structurally, a significant part of the rules could be found in a separate chapter on public funds. Nevertheless, some rules on public funds are set out in different chapters as well.

The chapter on public funds includes: legislative obligation on the central budget and its implementation; authorization of the government on annual budget management, the principles of budget management; determination of the optimal (50% of the GPD) government debt ratio and related budget management; budget management during a special legal order; limitation of the powers of the Constitutional Court; rules on the property of the State and of local governments as national assets; the notion of public funds and the principles on managing public funds; the Hungarian National Bank; the State Audit Office; the Fiscal Council.

Besides the chapter on public funds, several other rules on public funds could be found in the Fundamental Law. In the chapter 'Foundation,' which contains the theoretical and basic provisions of the law, the principle of a balanced, transparent, sustainable budget, the declaration of the forint as the official currency, the obligation to preserve public and national property are set out. The obligation to bear the public burden and detailed rules on asset management could be found in a different chapter in the Fundamental Law. Regarding public burdens, the legislator states that everyone is responsible for him- or herself and is obliged to contribute to the performance of state and community tasks according to his or her abilities and possibilities. It further points out that natural resources and cultural values form the common heritage of the nation, and it is the obligation of the state and everyone to protect and maintain them.

In the chapter 'Freedom and Responsibility' where fundamental rights and obligations, public liability, social security, the pension system, and the principle of the finances of the healthcare system are set out.

A section on public funds has been added to the chapter 'The State', in which several financial law institutions are defined in line with the above. In addition, this chapter contains several provisions about finances. Such provisions are about the budgetary powers of the NA, the powers of the President of the Republic related to the budget, a ban on holding national referendum on certain financial matters and the principles of the economy of local governments.

To sum up the constitutional law of public funds, the Fundamental Law regulates the followings: public funds and asset management, government debt; public charges; money and monetary system.

The main organ for the protection of the Fundamental Law is the Constitutional Court. It examines the consistency of the jurisprudence of the courts with the Fundamental Law and international law. It has a right to the annulment of laws, court decisions that are contrary to the Fundamental Law or international law. However, the power of the Constitutional Court is limited in financial matters, which can be regarded as a special limitation of the powers with certain exceptions. The limitation of powers is related to the rules on government debt. If the government debt exceeds half of the gross domestic product, the Constitutional Court cannot annule laws on the central budget and its implementation, on central and local taxes, charges and customs, nor the provisions of these laws, according to the general rule. An exception to this rule is when the Constitutional Court overrides these laws in relation with the

right to life and human dignity, the right to personal data, the right to freedom of conscience, religion and thought or the right to the Hungarian citizenship. The case when procedural requirements of legislation and the publication of these laws are not met; then the Constitutional Court has right to annule without limitations.

2.2. Croatian financial regulation

The Croatian financial law is very broad and complex branch of law. The highest legal source is the constitution, but the relevant financial provisions are rather scattered throughout the document. When it comes to the financial law, the constitution offers basic principles (as in the case of the principle of equality) or guarantees (as in the case of social security).

When it comes to the state budget, the constitution is not very voluminous. The main article is Article 91(2), proclaiming the legal nature of the state budget—it is an organic law, as it must always be approved by a majority of all representatives of the Croatian Parliament (*Sabor*). It is *sui generis* law—‘law in numbers’. It also declares that the state’s revenues and expenditures are laid down by the budget. The last part of the Article 91 tackles sound financial management—if the implementation of the particular law needs additional financial means, its sources should be provided. However, the exact meaning of the provision is not quite clear, especially in terms of its further development in the relevant laws. Among the constitutional bases of budgetary law, we must also mention Article 54, inaugurating the State Audit Office as the highest audit institution, especially emphasising its independency and autonomy. This feature is underlined with provision regulating the accountability—the State Audit Office is governed by the main state auditor whose obligation is to regularly report to Croatian Parliament.

As to the budget of local and regional self-government, the constitution is almost silent. It could be concluded that the constitutional foundation in question could be best described as indirect and expressed through the financial autonomy concept. The starting point of financial autonomy of sub-national units is the citizens’ right to local and regional self-government (Article 128). Financial autonomy itself is referred to in Article 131. It emphasizes the right of subnational units on its own revenues over whom they freely dispose. The revenues should be proportionate to the competencies transferred and prescribed by the relevant laws (i.e., to the expenditures). Finally, there is an obligation of the central state to support financially weaker local and regional units.

2.3. Financial constitutionality in the Czech Republic

To deal with the financial constitutionality in the Czech Republic, it is necessary to consider the Constitution of the Czech Republic and the Charter of Fundamental Rights and Freedoms, which is part of the Czech Constitution *sensu lato* (the Constitutional Order), together with the constitution *sensu stricto*. Public finances are not regulated in the Czech Constitutional Order in detail; there is no specific part concerning public finances as the division of powers seems to be the criteria for the

structure of the constitution. However, there are specific parts of the constitution for the Czech National Bank and the Supreme Audit Office. That is why we may talk about the control power and the bank power as the fourth and the fifth power in the state. The bank power could then be easily transferred to the financial power, with the other financial institutes mentioned in the constitution.

The current constitutional regulation is limited only to several financial institutes. The first area is the budget law: the constitution states that the state budget is the act. The government has a monopoly to submit the draft of the state budget and the draft of the final state account. The Chamber of Deputies of the Parliament of the Czech Republic has a monopoly on discussing these proposals; there are no rights for the Senate in this field. The management of state property and the implementation of the state budget is controlled by the Supreme Audit Office. The constitution guarantees the budget autonomy of local self-government units. However, fiscal federalism is not guaranteed at the constitutional level.

The tax law's constitutional regulation is limited to one sentence in the Charter of Fundamental Rights and Freedoms stating that taxes and fees can be imposed only by acts. It means not only taxes but also all the fees (charges) and other taxes *sensu lato* must be imposed by acts, not just by municipal generally binding ordinances, governmental decrees, or ordinances issued by ministries. The interesting fact is that this principle is set in the article dealing with the protection of ownership rights, and taxes are then limiting ownership rights. The missing constitutional principles must be supplemented by the decision-making activity of the Constitutional Court. The Court considers mainly the aspects of extreme disproportionality (the so-called choking effect) and non-accessory and accessory equality.

From the area of public subsidies law, the Charter of Fundamental Rights and Freedoms guarantees a free provision of public goods in the field of education. It also establishes the existence of public health insurance, i.e., the creation of specific public monetary funds, and the right to free provision of healthcare as a public good.

The last financial law area regulated at the constitutional level is the banking law. The constitution states that the Czech National Bank is the central bank of the state and defines the main objective of Banks's activities: to ensure price stability. The activities of the Czech National Bank may be interfered with only based on law.

2.4. Slovakian financial regulation

Slovak financial law is an internally diverse and structured branch of law. The foundations of financial regulation are contained in Title Three of the Constitution of the Slovak Republic (1992), under the title The Economy of the Slovak Republic, as well as in other laws forming the constitutional order of Slovakia. The Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union are also included in this category of sources of law with the highest legal power. In these sources of constitutional law, we find, of course, only the basic principles of financial regulation, which are subsequently regulated in detail in laws.

For clear organization of this chapter, the following basic areas will be considered as the subject of financial regulation: budget law of the state and of local self-government; tax and fee law; customs law; monetary law; financial market law.

It applies to each of them that the foundations of regulation in a broader or narrower sense can be found in the constitutional order of the Slovak Republic.

2.5. Polish constitutional regulation

2.5.1. The Polish Constitution as a source of financial and tax law

The constitutional catalogue of sources of law in Poland includes the constitution, acts, ratified international agreements, regulations, and acts of local law (in the activity of the bodies that established them).

The fundamental source of financial law is the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483). Next in line are international agreements ratified with the consent of the act, which take precedence over the act in the situation when they conflict with the act (art. 91 of the constitution). Next are regulations issued based on specific authorizations contained in a statute (art. 93 of the constitution). The constitution is a normative act universally binding on the territory of the country or in the sector of activity of the body. In the Constitution of the Republic of Poland Chapter X is devoted to the issue of public finance. It contains information defining the process of collecting and disbursing public financial resources (article 216 paragraph 1) as well as the role of the state in this respect. The issue of adopting the state budget, as well as its changes or preliminary budget is also presented (articles 219-225). The provisions of the constitution have the character of general principles that must be respected when creating the tax law. In the constitution there are regulations concerning the tax system. They define: the tax base (art. 84); the definition of the essential elements of the construction of taxes (art. 217); the introduction of a specific procedure for the enactment of tax laws (art. 213) and the competence of self-governing bodies to create tax laws (art. 168). The constitution stipulates that the imposition of taxes is only possible by law (by parliament). The most important elements of a tax must be specified in the law. The constitution also does not allow for tax laws to be treated in an accelerated manner (they cannot be introduced in an extraordinary manner). Local government bodies (municipal councils) have the authority to set the amount of taxes and local government fees.

2.5.2. Constitutional and public finance rules (Articles 216–227)

The general principles that concern the economy in the field of public finance are an important element of the social and economic system of the country. For this reason they must be reflected in the Basic Law. Having interpreted the contents of the constitution of the Republic of Poland, it is possible to identify four general principles of public finance in the Polish law. The first principle provides for statutory regulation of public financial management. The second principle is to guarantee protection of the state's financial interests. The third principle concerns the assurance of adequate

financial basis for the activities of local government units. The catalogue closes with the principle of guaranteeing protection of fundamental rights and financial interests of citizens.

The principles of public finance are the principle of publicity (this principle states that the management of public resources is public, i.e., the citizen has the right to know and to supervise the state budget); the planning principle (financial activities of public law entities and entities in the public finance sector are planned); accounting principle (the economic entity is obliged to keep accounts and to draw up reliable financial statements, which makes it possible to analyse and control financial processes); the principle of considering the financial consequences of legal acts and financial law (when proposing a bill, proposers must present the financial consequences of its implementation).

Chapter X places emphasis on social control relating to public finance management. This is confirmed by the fact that only by means of a law can regulations relating to the collection and distribution of public finances be established (art. 216). Another important principle established in (art. 217) is the possibility of introducing taxes and other levies only by statute, which also increases the role of social control in the state. Article 218 of the Polish Constitution establishes the obligation to regulate by law the organization of the State Treasury and the manner of management of state assets by the State Treasury. At the same time, together with other provisions of the Constitution of the Republic of Poland, it forms the basis for the view that the State Treasury is a legal entity of a special nature, deriving its legal personality directly from the Constitution of the Republic of Poland and the Civil Code. In article 219, the constitution empowers the Sejm to enact the state budget. The budget is enacted in the 'Budget Act'. The constitution in article 227 gives the National Bank of Poland the status of a central bank, with the exclusive right to issue money, as well as to determine and implement monetary policy.

2.5.3. The constitution and basic concepts of public finance institutions

Provisions defining the essence of a financial institution will be detailed norms when they indicate the basis of the institution in the procedure, which implies that it cannot be regulated in the ordinary law, and thus sufficiently define the essence of the institution—sufficiently characterise the essential features (detailed definition). If the provision insufficiently specified the essence of the institution, i.e., partially characterized the essential features, or did not do so at all. If the legislator has used the notion of a given institution as a notion that has an established meaning, then we are dealing with a general constitutional norm. The legislature leaves this essence to be regulated, supplemented also by an ordinary law.

If a provision has insufficiently defined the basis of a given institution, the assessment would need to be made with reference to the regulation of the ordinary law. To check whether a provision has sufficiently defined the basis of a given institution, the assessment would need to be made in the context of the possible scope of control of the constitutionality of the institution in question. In defining a financial institution there

may arise the problem of the concepts of other financial institutions used to define it. A problem which, if it indeed arises, may negate or weaken the relevance of constitutionalization for the existence and functioning of a given financial institution.

The detailed definition of financial institutions and the introduction of financial restrictions into the constitution was introduced to realise the objectives of constitutionalization and to increase the scope of control over the creation of financial legislation.

2.6. Romanian constitutional regulation

2.6.1. The right to financial resources

Art. 137 of the constitution, entitled ‘Financial system’, states in the first paragraph that ‘Formation, administration, use and control of the financial resources of the state, of territorial-administrative units and public institutions shall be regulated by law’. Apparently, a vapid text which does not bring much constitutional contribution, only transferring the responsibility of regulation to the legislative level. But there are several relevant regulatory aspects which must not be overlooked. We will try to point them out throughout this chapter.

The most important one is that this text codifies the right of the public authorities to financial resources. It clearly implies that they are entitled to have and manage money. This reality is not automatic or self-evident, but it had to be ratified by the nation’s fundamental act. The public finance impacts and defines in such a measure the entire activity of the state that it had to be recognized and established at the constitutional level

Two further aspects must be emphasised regarding this right. First, its rightful holder. Who precisely has the right to receive, detain and spend public money? Interestingly, the constitutional text does not remain in the realm of generic terminology but offers some distinctions on this matter. Secondly, is there a corresponding obligation to this right? If the public authorities have the right to obtain money, who has the obligation to provide it?

2.6.2. A distinction regarding the right-holder

In common language, a general designation is usually employed regarding the holder or owner of the public finance: it is the state, the government, the administration, the public system, or the public authorities. But art. 137 para. 1 offers in fact an important specification on this issue, by mentioning that de financial resources belong to the state, to territorial-administrative units and to public institutions. The reference to the state is natural and not surprising, but the inclusions of the other two entities has a manifold meaning.

The territory of Romania is administratively organized into certain units, called territorial-administrative units. These units are public law legal entities, with full juridical capacity and their own patrimony. After the strict centralization of the communist era, the present democratic constitution envisioned a large decentralization of these entities. Thus, they benefit from a large administrative autonomy, that is the right and

capacity to manage and solve the public affairs of the local community that they represent. The constitutional recognition of a right to financial resources is in fact a strong affirmation of the principle of local autonomy. Territorial-administrative units have a right to their own financial resources, which the local Administration authorities can determine, manage, and utilize to adequately perform their attributions. Without this financial autonomy, the concepts of decentralization and local autonomy remain only an illusion.

In support of this right, other constitutional provisions consecrate the right of the local authorities to establish and collect local taxes (art. 139 para. 2) and the right to draft, approve and execute local budgets (art. 138 para. 4). The financial autonomy is thus strengthened, the territorial-administrative units being able to manage both the level of their revenues and the distribution plan of their resources.

The reference to the public institutions is somewhat superfluous. Public institution is a generic designation which includes all the public authorities and bodies. They are all in fact distinct entities in the massive organizational structure mainly of the state, but also of the territorial-administrative units. That is why their distinct mention in the constitutional text seems repetitive. But there is a purpose in that. It consecrates a right of all public institutions to financial resources. Their status is quite different: some of them have juridical personality, some do not; some have a high degree of independence, some are integrated in strict hierarchical structures. But all have their own part in the functioning of the public mechanism. All have been assigned a set of attributions that they must exercise. That is why they have the right to financial resources. Having no possibility to establish their own sources of financing, being completely dependent upon the public allocation of resources, this right implies a constitutional obligation of the state and the territorial-administrative units to provide each of them with the sufficient resources for their proper functioning.

The sense of the constitutional text becomes thus obvious. The distinct mentioning of the territorial-administrative units and the public institutions has a restraining purpose. It confers them their own right to financial resources, a right that can be interposed to the state. It is thereby a direct attempt to break the monopoly of the state upon the public financial resources, recognizing the importance of their activity and warranting them the allocation of necessary funds.

2.6.3. *A corresponding obligation*

After a consistent chapter devoted to fundamental rights and freedoms, the Romanian Constitution imposes three fundamental duties to its citizens: faithfulness towards the country, defence of the country and financial contributions. Thus, art. 56 para. 1 states that '*Citizens are under the obligation to contribute to public expenditure, by taxes and duties*'. It is obviously the counterpart provision to the right of the state to have financial resources. If public revenues can be procured from a lot of different sources, however the main source remains the funds collected from the population.

The text is not to receive a strict interpretation, but an extensive one. First, not only the citizens have this obligation, but also the legal entities or other collective

entities that obtain revenues or undertake activities subjected to the taxation system. Even the non-citizens who are in a certain relation with the Romanian State may be subjected to its fiscality. Secondly, the actual means of contributing are not to be reduced only to taxes and duties but can include other forms of contributions.

A principle of solidarity is the underlying fundament of this obligation. The state does not impose its financial claims abusively, on the ground of its force and constraining power, but based on the fact that it represents the nation's general interest. As the text makes evident, the collected resources are for the purpose of making possible the payment of public expenditure. Thus, when the citizens make the pecuniary sacrifice required by the fulfilment of this obligation, they should be motivated by the perspective of supporting and advancing both their own and the general good.

2.7. Financial constitutionality of the Republic of Serbia

When considering financial constitutionality, one should start from the fact that the constitution is the highest legal act in a country and that all positive rights have their source in the constitution, which is why they must be harmonized with the constitution. Since financial law is a branch of a positive legal system, its source is in the constitution. It is built on the principles contained in the constitution, that is, its legal solutions must be in accordance with the constitution. Tax laws must derive from the constitution, that is, they must be built on the principles proclaimed in the constitution. Therefore, the basic requirements on which the financial right is built are contained in the constitution. The constitution contains mostly declaratory norms whose obligation is achieved by norms of other branches of law (even financial), while financial law contains imperative norms whose obligation is secured by the application of sanctions. It follows that financial law cannot exist without constitutional norms. On the other hand, through tax law, the constitution gains its concretization and realization.

We find legal institutes of financial law in the provisions of the 2006 constitution on the economic organization of the Republic of Serbia. According to the Constitution of the Republic of Serbia, the economic system in the Republic of Serbia is based on a market economy, open and free market, freedom of entrepreneurship, independence of economic entities and equality of private and other forms of ownership.

According to the constitutional provisions, the element of economic regulation is also public finances, which in the constitution means the acquisition and distribution of funds for financing public needs. The constitution regulates the subjective financial law of the county, that is, the right to introduce and collect taxes and prescribe the duty of individual and legal entities to act in accordance with tax regulations. Modern constitutions have established the principle of legality of taxes, which can be expressed by the maxim *nullum tributum sine lege* (there is no tax without law). Thus, Article 91, paragraph 1 of the Constitution of Serbia prescribes that the funds from which the competencies of the Republic of Serbia, autonomous provinces and local self-government units are financed are provided from taxes and other revenues determined by law. Paragraph 2 of the same article proclaims the rule that the

obligation to pay taxes and other duties is general and is based on the economic power of the taxpayer. This constitutional principle is further elaborated upon in the tax regulations.

The constitution stipulates that the Republic of Serbia, autonomous provinces and local self-government units have budgets in which all revenues and expenditures that finance their jurisdictions must be presented. In terms of deadlines, the constitution stipulates that the law determines the deadlines within which the budget must be adopted and the manner of temporary financing in case the new budget is not adopted, and the validity of the previous one has expired.

The execution control over all the budgets is performed by the Country Audit Institution. The Country Audit Institution is the highest country body for the audits of public funds in the Republic of Serbia, it is independent and subjected to the supervision of the NA, to which it suits. The NA is considering the proposal of the final budget account based on the obtained opinion of the Country Audit Institution.

The constitutional category in the field of public finances is also public debt, i.e., debt of the country and public bodies. The constitution provides for the possibility of borrowing by the Republic of Serbia, the autonomous province and local self-government units in accordance with the law.

The Constitution of Serbia contains certain provisions that also refer to the matter of application of tax law. The realization of the norms of tax law encroaches on the freedom and rights of tax debtors guaranteed by the constitution. However, this restriction of freedoms and rights is provided for in the constitution itself, i.e., situations that may cause this restriction are provided. Thus, the provision of Article 40, paragraph 1 of the Constitution of Serbia proclaimed that the apartment was invulnerable. However, based on paragraph 2 of the same article, another's apartment or other premises may be entered against the will of their occupant based on a written court decision. In that sense, the provision of Article 125, paragraph 5 of the Law on Tax Procedure and Tax Administration stipulates that the tax inspector has the right to enter the taxpayer's apartment with the approval of the court, to perform control.

The provisions of the constitution that refer to the position of the country administration are also important. Based on these constitutional provisions, the organization of the Tax Administration, which appears as a tax authority as a participant in the tax procedure, is considered.

2.8. Slovenian constitutional regulation of public finances

There are constitutional provisions (Chapter VI of the CS) and several laws and sub-laws regulating public finances, state and municipalities funding, taxes, and the budget.

There is a general constitutional rule, that all revenues and expenditures for financing public spending must be included in the state budgets. In addition, a so-called golden rule is constitutionally stipulated, namely, that revenues and expenditures of general government budgets must be balanced in the medium term without borrowing, or revenues must exceed expenditures.

This principle may be temporarily waived only in exceptional circumstances for the state. The CS stipulates that the law adopted by the NA by a two-thirds majority of all deputies must determine the manner and timeframe for implementing the principle of golden rule (balance of revenues and expenditures of budget), the criteria for determining exceptional circumstances and the manner of acting upon their appearance. Such a law is FRA.

The main characteristics of constitutional regulation					
	Legal source	Financial rules	Content of constitutional regulation	Protection of the Constitution	The highest-level audit institution
Hungary	Fundamental Law	detailed (constitutional law of public finances)	chapter on public funds: public funds and asset management, government debt, public charges, money, and monetary system	Constitutional Court <i>limited power in the field of public finances</i>	State Audit Office
Croatia	Constitution	relevant financial provisions are rather scattered through-out the document	basic principles or guarantees, budget law	Constitutional Court	State Audit Office
the Czech Republic	Constitution and Charter of Fundamental Rights and Freedoms (part of the Constitution. Constitutional Order)	public finances are not regulated in Constitutional Order	but there are specific parts of the constitution for the Czech National Bank, and Supreme Audit Office,	Constitutional Court	Supreme Audit Office
Slovakia	Constitution	basic principle of financial regulation		Constitutional Court	Supreme Audit Office

SUMMARY

The main characteristics of constitutional regulation					
	Legal source	Financial rules	Content of constitutional regulation	Protection of the Constitution	The highest-level audit institution
Poland	Constitution	detailed regulation	four general principles- statutory regulation of public financial management. - guarantee protection of the state's financial interests - the assurance of adequate financial basis for the activities of local government units - guaranteeing protection of fundamental rights and financial interests of citizens. Principles of public finance: publicity, planning, account-ting, considering	Constitutional Tribunal	Supreme Audit Office
Romania	Constitution	detailed regulation the right to financial resources	the financial resource belongs to the state, to territorial-administrative units and to public institutions. citizens are under the obligation to contribute to public expenditure, by taxes and duties	Constitutional Court	State Audit Office

The main characteristics of constitutional regulation					
	Legal source	Financial rules	Content of constitutional regulation	Protection of the Constitution	The highest-level audit institution
Serbia	Constitution	detailed regulation	the subjective financial law of the country: the right to introduce and collect taxes. the constitution stipulates that the law determines the deadlines within the budget must be adopted and the manner of temporary financing in case of new budget is not adopted, and the validity of previous one has been expired. constitutional category the public debt	Constitutional Court	Country Audit Institution
Slovenia	Constitution	Fiscal Rule Act (FRA)	all revenues and expenditures for financing public spending must be included in the state budgets; golden rule: revenues and expenditures of general government budgets must be balanced in the medium term without borrowing, or revenues must exceed expenditures.	Constitutional Court	Court of Audit

Summing up the table, we can see that financial regulation appears in the constitutions of each country, albeit to varying degrees. The Hungarian, Polish, Romanian and Serbian regulations contain particularly detailed provisions. In all cases, we find rules related to the budget in the constitutions. Constitutional protection is carried out by the constitutional court in each country. The State Audit Office plays an important role as the most important body for auditing in each country. Monetary policy is always managed by national banks. The Treasury is named in two countries: Hungary and Poland. Local governments are entitled to their own revenues and have their own budgets.

3. Budgetary rules

3.1. *Hungarian budgetary rules*

The constitutional regulatory system of public funds is not new in the domestic regulation, but the provisions of the previous constitution were not as detailed as in the current one. However, the re-regulation of public funds was forced by the financial-economic crisis of 2008. The new Fundamental Law lays down the essential provisions of rule-based fiscal policy.

According to the literature, the rule-based fiscal policy is defined by the following: budget policy rules, planning requirements; procedural rules; transparency standards, reporting system; institutional guarantees for compliance with the rules.

One of the most important tasks of the state is the performance of public services. To guarantee public services, budgetary resources are needed which are secured by the annually adopted budget law. While the act on public finances sets out general, framework rules of the central budget, including procedural rules, specific budget laws set the financial framework for a given economic year and provide rules for that certain year. The creation of the regulatory system of the budget law is therefore a recurring activity, with yearly recurring tasks and rules on power and procedures. That is why this procedural order is called the budget cycle. The particularity of the budgetary cycle is that on one hand, it is a document that determines the rules of the central budget—which requires special planning and approval—on the other hand, it is an act, therefore the set of rules of legislation also applies for it.

The budgetary procedure, the budget cycle means the order of planning, implementation and control of the budget and it covers all phases of the procedure.

The relation of the executive and the legislative power is particularly important in the budgetary procedure. The balanced relation of the two branches and the division of power between them is crucial. In the Hungarian regulation, the Fundamental Law and the framework rules of the Act on Public Funds provide the necessary legal framework, thus the fundamental decisions originating from state sovereignty are taken by the parliament.

The role of the Fiscal Council makes determinations so that the National Assembly can make a well-founded decision about the approval of the budget and therefore, to ensure its adoption, the opinion of a professional body that is independent from the executive branch is necessary. The contribution of the council is essential in the procedure of the approval of the budget to comply with the government debt rule.

The Fiscal Council is a body that supports the legislative activity of the National Assembly which examines the grounds of the central budget. The council is involved in the drafting of the law on the central budget and its preliminary approval is required for the adoption of the law. Due to these rights, the council has a significant effect on the compliance of the budget to the requirements of the Fundamental Law and it specifically monitors the compliance of the rules on government debt ratios. The president of the Fiscal Council, the president of the Hungarian National Bank and

the president of the State Audit Office are the members of the council. The president of the council is appointed by the president of the Republic for six years. The organization and the operation of the council are regulated thoroughly in the Act on the Economic Stability of Hungary.

The duties and the powers of the Fiscal Council are (a) the expression of opinion regarding the central budget; (b) decision on the preliminary approval; and (c) the examination of the ratio of government debt.

The expression of opinion extends to several phases of the budgetary procedure. The expression of opinion of the council is not only limited to a mere right to advice or comment, but in several cases, the legislator also prescribes certain consequences that affect the order of the procedure. (Such a case, *inter alia*, is an opinion on the draft sent to the government, in which the council may indicate its disagreement. The Government, therefore, must renegotiate the draft.)

The decision on preliminary consent is also a strict quasi-veto power. The council is empowered by the Fundamental Law, stating that the consent of the council is required for the approval of the law on the central budget, to comply with the government debt rule.

The most important task of the council is to monitor compliance with the government debt rule. The provisions on the government debt rule are laid down in the Fundamental Law. The essence of this rule is that the National Assembly must adopt such a budget law—to ensure sustainable public finances and responsibilities for the future generations—according to which the government debt must not exceed the half of the gross domestic product, that is the optimal ratio of government debt set out by the Fundamental Law. Currently, however, the government debt significantly exceeds this level, therefore, the parliament must adopt such a budget law that intends to reduce this debt until the optimal ratio is reached. Obviously, the Fundamental Law allows derogation from the general rules in certain cases when serious, unavoidable problems arise in matters that affect public finances. Such an exceptional situation arose during the economic crisis in connection with the covid pandemic.

The first phase of the budgetary procedure is budget planning. The aim of budget planning is to approve the planned revenues to be economically justified and the planned expenditures to be necessary for the proper performance of public tasks. Preferences of budget planning are the most important factor in the budget planning mechanism. Expenditure should be used for the purpose of the budgetary target system, and revenues should be grouped here to perform the public task. Obviously, the multiplicity of public tasks and goals and the scarcity of the available resources are sources of conflicts, therefore, coordination and harmonization between decision-makers and the establishment of budget preference systems are of crucial importance.

Budget planning is typically a short-term activity that focuses on financial matters, however, demographic, economic conditions, and trends, as well as long-term goals and financial sustainability must also be considered. That is why the coordination of financial and realistic processes is important according to the literature, which

could be realized with a complex strategic planning. Under the current regulations, the government also carries out medium-term planning, since it also plans budget appropriations for the following three years.

Planning is facilitated by the principles that must be taken into consideration during the process. These principles ensure the efficiently and transparently operating economy and a system of legal guarantees. The principles are divided into two groups: general and other principles (such as authenticity, completeness, etc.) can be distinguished.

The general principle is set out in the Fundamental Law. The principle can be considered general because—according to the explanatory memorandum—the exercise of fundamental rights and the efficient operation of the state can only be guaranteed if the social and economic balance of the country is not threatened by problems of public finances. Therefore, the basic principle of budget management and budget planning is that Hungary implements the principle of a balanced, transparent and sustainable budget management, which must be respected by all bodies operating in both of the sub-systems of public finances. Balance serves the predictable functioning of the state, transparency serves the democratic life operating with well-informed and responsible citizens and sustainability serves the responsibility for future generations. Sustainable public finance management encompasses several financial principles, but the previously mentioned government debt rule has particular importance. The Fundamental Law delegates the task and responsibility of planning to the government, and the government submits the bill on the central budget to the parliament. It is the parliament's right to decide on all public revenues and expenditures, which also determines the leeway of the executive power, the government. With the adoption of the budget law, the parliament determines its own leeway for public finances. The Fundamental Law defines it as the main task and power of the parliament.

The Hungarian law does not set a deadline for the adoption of the budget, but the optimal case is when the budget is adopted by the end of the year preceding the year in question. However, it may occur that the adoption is delayed, and the final vote will take place in the target year of the budget. In this case, the *ex-lex* situation may arise in which the government does not have the power to continue budget management. According to the Budget Act, the government is entitled to implement the budget for one year, therefore a bridging rule is needed, under which the government may continue budget management. Such a rule was previously set out by the Public Funds Act, in today's regulation it is the Fundamental Law that provides regulation on the issue. The Fundamental Law states that if the parliament fails to adopt the budget by the beginning of the calendar year, the government is authorised to collect the revenues determined in laws, and, within the framework of the appropriations determined in the Act on the central budget for the previous year, disburse expenditures on a *pro rata temporis* basis.

It may happen during the final vote that the parliament does not vote or does not accept the budget law or its adoption is in delay. In this case, to not threaten public

finances and not to last for an indefinite time, the Fundamental Law provides a solution. The President of the Republic, while simultaneously setting a date for new elections, may dissolve the National Assembly when it fails to adopt the central budget for the year in question by 31 March.

If the budget is approved, the parliament authorizes the government to collect revenues and to implement expenditures (appropriation). The principle of responsible budget management must obviously apply to the government.

Public funds used in the management of public finances must be accounted for, and after the end of the financial year, the government is required to report on the implementation of the budget. Budget reporting is a technical and legal act, the conditions of which are set out in different acts apart from the Fundamental Law. The government must implement the central budget lawfully and expediently through the efficient management of public funds and transparency, and it is obliged to report this to the National Assembly. The report and the implementation of the budget is approved by the parliament, by controlling its execution at the same time. The government is responsible for the implementation of the budget, therefore, with the approval of the National Assembly it discharges the government from liability.

The reporting system also allows the control of the implementation of the budget but besides this, it is also necessary to set up the control system for public finances as well. The purpose of the control of public finances is to use public funds and national assets to ensure a lawful, economic, efficient, and effective management and the proper and lawful fulfilment of reporting and information obligations. The control system of public finances involves both sub-systems, which are divided by scholars into external audit and internal financial control. The Public Finance Act, however, divides the control system of public finances into three areas: external audit of public finances, the Government Act, control of public finances, the internal control system of public finances.

The tasks related to the external audit of public finances are executed by the State Audit Office. The State Audit Office is the supreme financial and economic audit organ of the National Assembly which is independent from any other bodies in its activities. It has general competence for the management of public funds and local governmental properties. The explanatory memorandum of the regulation also points out that the legislator opted for the office-type audit among the court-type, authority-type and office-type audit models. Thus, the State Audit Office does not have direct sanctioning powers, therefore its suggestions and findings are implemented through the activities of other organizations.

Besides public finance management, public asset management is also a constitutional area of high priority. Assets available for public finances are part of public finance management as well as assets that are not part of asset management but they play an important role in the performance of public tasks and they constitute revenues for public finances. From this theoretical aspect, the asset can be divided into public finance assets and assets that do not belong to public finances, however, the legislation does not follow this division. Assets that are available to the state and

to the local governments thus, on one hand, form the basis for the performance of public tasks and on the other hand, serve as a source of revenue for the performance of public tasks. The Fundamental Law also emphasizes the performance of public tasks. The constitutional regulation points out that the purpose of national property is to serve public interest and to meet public needs, of which the detailed regulation is set out in a cardinal law, the Act on National Assets. As a result, national property enjoys high protection.

The law divides assets both horizontally and vertically. Horizontally, the national asset can be divided to two equal parts, property of the state and that of the local governments. The explanatory memorandum of the law points out that the principle of lawful division prevails in the division of the assets of the state and of local governments, thus the assets are linked with the performance of tasks. This reflects the basic principle that the primary purpose of national assets is the performance of public tasks. This division applies in the regulation as well. The general rules on national assets cover both types, however, the property of the state and the property of local governments are regulated specifically and separately in the acts on state property and in the Local Government Act. Under the unified regulation, the National Property Act defines national property as a whole, considering both the property of the state and the property of local governments.

Vertically, national assets can be divided into four categories, primarily from the perspective of the severity of the regulation of asset management and the protection of the assets. The categories of assets are defined according to the gravity of public interest in the protection and preservation of national property, thereby defining stricter or more permissive rules. The four categories apply to the entirety of assets, so these categories appear in the division of both state and municipal assets.

The four categories of national assets: (a) exclusive property of the state and of local governments; (b) national assets of outstanding importance for the national economy; (c) national assets with limited marketability; (d) business assets.

Exclusive property of the state and of local governments are completely illiquid. It means that, generally, the property cannot be alienated, right of use, right of installation of masts, for example, cannot be established, it cannot be mortgaged, and shared property cannot be established on it. An exception from this rule is the establishment of the right to use or the right of way for the benefit of entities authorized for public interest in a separate legal act.

National assets of outstanding importance for the national economy are those which do not belong to the category of exclusive properties but of which the preservation by the state or local governments are justified overall and which is an outstanding purpose of asset management. Generally, these assets are also subject to restraint on alienation and encumbrance, except for the right to use and right of way established by law.

Assets with limited marketability are national assets that do not belong exclusively to the state nor to the local governments and that are not considered as national assets of outstanding importance. The property can be managed under the conditions

specified by law or local governmental decree, so the management of these assets are limited and fixed.

Business assets are the part of national assets that do not belong to the state treasury nor to local governmental assets. Elements of business assets do not fall into the scope of particularly protected assets, the right to manage them is not limited by law. These assets are not subject to the prohibition of alienation and encumbrance, they can be managed freely by the state and local governments, within the limits of the general rules of asset management. This property can be alienated, encumbered and rights representing assets can be registered to them. The purpose of business assets is to provide revenues, enforce strategic economic interests and perform certain public tasks in a marked-based way in return for payment.

3.2. The budgetary law in Croatia

The constitutional regulation of the budget is further developed in several laws which could be divided in subjective and objective budgetary law. The most important provision of subjective budgetary law (which is absolute subjective budgetary law in Croatia) is the Act on Budget (also systemic regulation). The Act on Executing the Budget (which is a one-year law, adopted annually along with the budget) is the provision of objective budgetary law. Then there is the state budget ('law in numbers'). *Largo sensu* the Act on Budgetary Responsibility, the Act on Financing of Local and Regional Self-government, and the State Audit Office Act must also be mentioned.

The central instrument of budgetary system is the budget of the general state, consolidated statistical statement of the planning data on revenues and expenditures, receipts and outlays of all subjects included in the general state, i.e., central state, local state, and social security funds.

The state budget and financial plans of extrabudgetary users are included in the so-called central state budget. Extrabudgetary users function as a special fund budget funded by specific mostly earmarked revenues.

According to the Law, the state budget is defined as an act estimating revenues/receipts and determining expenditures/outlays, enacted by the Croatian Parliament. Although the principle of annuality is a rule, it is supplemented by the principle of multi-year planning. In that framework, the budget (and financial plans) is enacted for a three-years period meaning a plan for the budget year and projections for the next two years (n+2 system). The projections are not binding except with the budgetary deficit/surplus limitations. The main functions of the budget are following: it has important strategical and management role in the public finance policy domain; it serves as the main instrument of state intervention; it is the most important financial instrument. Budgeting is geared to a cycle consisting of four usual phases: (1) preparation and design; (2) adoption and approval; (3) execution; (4) evaluation. The average duration of the cycle is 27 months. For the first and third phase executive authorities are responsible while in the second and fourth phase the parliament has the main role.

As stated above, the state budget is *sui generis* law, and it differs from ‘standard’ laws in formal and substantive aspects. In a formal aspect, primarily it is the law in numbers. The formal difference also tackles a special (legislative) procedure visible in, for instance, the existence of budgetary calendar (a concise schedule of activities, activity holders and statutory deadlines for preparing and submitting the draft of state budget); in the special meaning of the parliamentary debate and approval (the principle of prior approval); the possibility of introduction of a temporary financing (in the case of non-approval of the budget). In the substantive aspect, budget norms are temporary limited (they are in force only during a budgetary year) and individualized (especially in the special part where the addressee of the norm is known).

Structurally, the state budget consists of two main parts: a general and a special part. Within the general part, two accounts are differentiated: (i) the account of revenues and expenditures, (ii) the account of receipts and outlays. The first account contains revenues and expenditures classified in accordance with economic classification. The second one contains all transaction (receipts and outlays) related to the financial assets and borrowing. A special part is a plan of expenditures and outlays of the state budget and its budgetary users presented in accordance with the organizational classification. Budgetary revenues/recipes and expenditures/outlays in all budgetary documents are presented pursuant to budgetary classifications. There are six of them: economic (being the most common and important), organizational, functional, programming, locational, source of financing classification. Revenues should be classified following economic and source of financing classification whereas expenditures should be classified under all mentioned classification.

The state budget revenues and receipts include taxes, social contributions, revenues from assets, revenues from administrative fees, charges, fines, other revenues, revenues from financial assets.

The most important expenditures are operational expenditures which include expenditures for employees, material expenditures, financial expenditures, subventions, social expenditures, and others.

The budget of local and regional units is defined in a similar way as described above—as an act enacted by the representative body of local and regional self-government unit that entails a plan for a budgetary year and projections for next two years estimating revenues/receipts and expenditures/outlays of local and regional units and its budgetary users. However, the Act on Local and Regional Self-government defines it as the basic and most important financial act. The act also emphasizes constitutional principles (mentioned above) on which financial autonomy of sub-national units is established. The revenues of the budgets of sub-national units include own taxes, shares in personal income tax, grants, non-tax own and assigned revenues in accordance with special provisions. Own taxes are regulated by a special Local Taxes Act. Local taxes are defined as taxes whose revenues belongs to the sub-national units and could be further labelled as county or municipal taxes. Hence, inheritance and gift tax, tax on road motor vehicle, tax on vessels and tax on gambling machines are county taxes. Surtax (on the PIT), tax on local consumption, tax on holiday houses,

tax on the use of public surfaces, tax on real estate transfers are municipal taxes. PIT is a shared tax. Non-tax revenues include a variety of revenues among which the most significant (financially) are communal fee and communal contribution. Despite the decentralization process in force for the last twenty years (since 2001), the importance of ‘local state’ (measured by share of local expenditures in GDP) is growing very slowly—it remains mainly stable comprising around 15%.

In 2011 Croatia adopted the Act on Fiscal Responsibility. This act was adopted to achieve and maintain fiscal responsibility as well as to promote and strengthen the transparency and medium-term and long-term sustainability of public finances. In that context, the act introduced fiscal rules concept, two groups of them. The first one tackles certain fiscal goals and limits in relation to the structural balance, annual growth of budgetary expenditures and public debt level. The second one deals with the concept of fiscal responsibility of the head of the budgetary (and extrabudgetary) users of the state budget and of budgets of local and regional self-government. The crucial instrument is a statement on fiscal responsibility by which the head confirms that they have ensured legal, earmarked, and purposeful use of funds, efficient and effective functioning of the internal control system within the framework of the funds determined in the budget, financial plan respectively. The obligation also includes companies owned by the Republic of Croatia or local and regional units as well as legal entities founded by the Republic of Croatia or subnational units. The act also provides the establishment and competences of the Fiscal Policy Commission. The commission is an independent expert body established to envisage and evaluate the implementation of the fiscal rules. During the performance of its tasks, the commission takes the ‘positions’ that are posted on the website of the commission. A special procedure is prescribed in the case of serious fiscal risks. If the commission assess that there is such a risk, it prepares a special report for the government who must give an opinion within 45 days or if it is necessary to undertake additional measures.

As previously mentioned, it is inevitable to refer to State Audit Office as the supreme audit institution in Croatia. The entities subject to audit are numerous: state sector units, subnational units (including Croatian National Bank), legal entities financed from state budget, legal entities financed from the state budget, legal entities founded by the Republic of Croatia or local and regional self-government units and legal entities owned by the Republic of Croatia or local and regional self-government units, companies and other legal entities in which the Republic of Croatia or local and regional self-government units hold a majority block of shares or stakes and/or exercise a decisive influence on management, legal entities (subsidiaries) established by legal entities of which the founder is the Republic of Croatia or local and regional self-government units, legal entities which secure their operating funds from mandatory contributions, membership fees or other revenues regulated by law, political parties, independent members of the parliament and members of the representative bodies of local and regional self-government units in the manner stipulated by legislation governing the financing of political activities and election campaign promotion, legal entities in the Republic of Croatia that utilize funds from the European Union,

international financial mechanisms and other international organizations or institutions to finance public needs.

The object of the audit are revenues and expenditures, assets and liabilities, financial statements, transactions and the programmes, project, and activities of the audited entities. The audits are conducted in accordance with the Annual Programme and Plan of Work. The Croatian Parliament may also request the audit. The audit of the Execution of the State Budget is conducted every year.

3.3. Budgetary law in the Czech Republic

Budgetary law is a set of legal norms that regulate the system of public budgets, the content of public budgets, fund management, the budgetary process and the relations arising in the creation, distribution, and use of the financial assets in these public budgets. Budgetary law refers to the fact that through budgets, there is a redistribution of resources from resource-creating entities to those who do not create resources but who are an integral part of society. Budgetary law is commonly classified into three main parts: general (which defines general terms of budgeting, the various types of public budgets, budgetary principles, and budget's functions), special (dealing with the special rules on individual public budget types: state budget, budgets of state funds and budgets of local governmental units), procedural (containing the procedural rules of budget's creation, time limits and sanctions). Therefore, in short: the system of public budgets, their content, financial management, the budget process, and the related relations that arise in the distribution and use of funds are regulated by budgetary law.

All public budgets display several common basic features that are referred to as budgetary principles. These are the common characteristics, underlying the preparation, adoption, management, and control of public budgets, derived from knowledge of budgetary practice. The most relevant of these principles: (a) annual preparation and approval of public budgets (limiting the temporal validity of public budgets for one year, the carryover of funds to the following year is possible only to a limited extent); (b) timeliness of public budgets (the need for public budgets to be approved and published before the beginning of the financial year); (c) time-limited use of funds (only revenue received and expenditures allocated during the actual calendar year are included in the budget, e.g., budgetary units need to spend their allocated funds by the end of the financial year); (d) reality and veracity of public budgets (public budgeting should be based on an analysis of economic processes and real numbers); (e) completeness of public budgets (a public budget should provide a complex coverage of all revenues and expenditures over a given territory); (f) unity of public budgets (which requires a uniform qualification and classification of revenue and expenditure in public budgets); (g) clarity of public budgets (the budgetary structure should be clear, simple and comprehensible); (h) non-earmarking of revenue and earmarking of expenditure (budget revenue should not be earmarked for predetermined purposes, but, on the contrary, expenditure should be used only for a predetermined purpose; also: does not fully apply to fees, since these compulsory payments are usually paid

in return for some public service); (i) long-term balance of public budgets (budgets must normally be drawn up as a balanced); (j) publicity of public budgets (public budgets must be made publicly available in an appropriate manner—this includes the possibility for citizens to comment on the published draft budget); (k) gross budgets (meaning drawing up public budgets containing total revenue and total expenditure); (l) efficiency and economy of public budgets (public funds should not be wasted); (m) expenditure over revenue (expenditure should serve economic growth for which adequate resources should be provided: it is necessary to have objectives for which expenditure is needed and to provide the necessary revenue for this) and (n) identification of the budgetary implications of legislation (which should include quantifying the expected impact of new legislation on public budgets).

According to the legal sources, the system of public budgets includes the state budget, state funds budgets and budgets of local governmental units. Among these, the state budget has an increased relevance, which is approved each year in the form of a law, which goes through the normal legislative process. The purpose of the state budget is to create a financial plan to reallocate the state's funds to certain state tasks in the following year. The state budget is a monetary fund that collects the state's revenues so that these can be further used to cover the state's expenditures and functions. This type of budget is characterized by its irreversibility, non-voluntariness and non-equivalence, whereby revenues and expenditures are used for the needs of the state.

Public subsidies law is a set of legal rules that governs the conditions for providing of public funds in the form of subsidies. Subsidies law is closely related to the law of budgetary law, however according to theoretical approaches, budget law can be conceived in a narrower sense, as essential components of public budget revenues and expenditures are regulated by separate special regulation, like public subsidy law, social security law, etc.

The term subsidy (or grant) lacks legal definition in the Czech legal system, but as such a financial contribution from public sources or any other direct or indirect financial support or subsidy from such sources can be defined. Furthermore, relief from a tax or other public obligation which confers a benefit on the recipient can be considered as a subsidy also. Subsidies are the means of transferring funds within or outside the budgetary system, so the beneficiaries can be other state organs too.

The granting of subsidies is decided by the public body according to its own discretion under certain predefined conditions. The legal rules should ensure that in the field of subsidies equal opportunities are ensured between applicants, to eliminate the creation of illegal conduct or other negative consequences. Essential features of subsidies are their non-repayability (the beneficiary is not obliged to return the received grant if it fulfils all the conditions set out in for the grant) and frequent earmarking (the recipient of the grant is obliged to use the grant for a predetermined purpose).

3.4. Slovakian budgetary law

Article 58 of the constitution provides that the financial management of the Slovak Republic is kept through its state budget. The state budget is adopted by a law. According to the constitution, a law must lay down budgetary revenues, procedures of budgetary management and the relationships between the state budget and the budgets of territorial units.

The importance of the state budget as the basic financial and economic instrument of the state's financial policy is also highlighted by the constitution in that the state budget (and taxes and levies) may not be the subject of a referendum (Article 93).

Article 65 of the constitution also regulates the foundations of the financial management of local self-government. According to the constitution, municipalities and higher territorial units are legal entities, which manage their own property and financial means independently, under the conditions laid down by a law. Municipalities and higher territorial units must finance their needs primarily from their own revenues as well as from state subsidies. It must be laid down by a law which taxes and fees are to be the revenues of a municipality and which taxes and fees are to be the revenues of a higher territorial unit. State subsidies may be claimed only within the limits laid down by a law.

Among the constitutional foundations of budget law, we must also include Article 60, establishing the Supreme Audit Office as an independent authority auditing the management of budgetary and financial resources of the state, local self-government, and public institutions. Its audit competences apply to all persons who manage and dispose of these funds.

The constitutional regulation of the state budget and the foundations of financial management of local self-government is further developed in several laws. The most important sources of budget law include: the Act on Budgetary Rules of Public Administration (2004), the Act on Budgetary Rules of Local Self-government (2004), the State Budget Act, which is adopted every year, and the Constitutional Act on Budgetary Responsibility (2011).

The current concept of budget law thus has its foundations in 2004, when the abovementioned laws on budgetary rules were adopted as part of the package of laws of the so-called Fiscal Decentralization. In addition to the abovementioned laws, the Fiscal Decentralization framework also includes the Act on Local Taxes and Local Fee for Municipal Waste and Minor Construction Waste (2004), and the Act on the Budget Determination of Income Tax Revenues to Local Self-government (2004).

The central concept of budget law is the general government budget, which is a medium-term economic instrument of the state's financial policy. It is drawn up annually for at least three budget (calendar) years. The general government budget consists of the state budget and the aggregate of the budgets of other public administration entities (municipalities, higher territorial units, state funds, higher education institutions, the Social Insurance Agency, health insurance companies, and others), including revenues and expenditures related to the implementation of public health insurance for a respective financial year and the following two years. However, it

should be added in this context that the revenues and expenditures shown in the budgets for the following two years are non-binding.

The state budget is an essential part of the general government budget and provides for the financing of the main functions of the state in a respective financial year. The state budget for a respective financial year includes revenues, expenditures and financial transactions on the state's financial assets and other transactions that influence the state's financial assets or financial liabilities. The state budget is approved by the National Council of the Slovak Republic through the State Budget Act in a special budgeting process, which is characterized by several differences compared to the standard legislative process, in particular: the exclusive right of the government to submit to the National Council the draft State Budget Act (the right of budgeting initiative); the existence of statutory deadlines for preparing and submitting the draft State Budget Act (by 15 October of a current year); the regular annual periodicity of the exercise of the right of budgeting initiative, which is associated with the limited period of force and effect of the State Budget Act—one calendar year; a legal solution to possible non-approval of the State Budget Act, which is a temporary budget; prohibition of amendments and repeals of other laws through the State Budget Act; setting objectives to be achieved (revenue and expenditure levels) in State Budget Act without specifying the procedures and means to achieve these objectives.

The state budget revenues include taxes, fees, fines, levies due to a breach of financial discipline, European Union budget funds, revenues from state holdings and other revenues.

The state budget expenditures mainly include expenditures of organizations financed from the state budget, expenditures resulting from international treaties, contributions to the European Union, expenditures on the delegated exercise of state administration to municipalities and higher territorial units, and expenditures on the state's obligations under special laws.

In the case of local self-government, municipalities and higher territorial units manage their own approved budgets. The budget of a municipality and the budget of a higher territorial unit is the basic instrument of financial management in a respective financial year which governs the financing of the tasks and functions of the municipality and the higher territorial unit in a respective financial year. The budget of a municipality and the budget of a higher territorial unit expresses the autonomy of their management. These budgets are approved by representative bodies and contain revenues and expenditures and financial relationships with the state (shared taxes, subsidies for the delegated exercise of state administration, other subsidies).

The revenues of the budgets of municipalities and higher territorial units include, in particular, shares in personal income tax, non-tax revenues from ownership and transfer of ownership of property, penalties for a breach of financial discipline, donations and proceeds from voluntary collections, subsidies from the state budget to cover the expenditures on the delegated exercise of state administration, other state subsidies, funds from the European Union, and other funds from abroad provided for a specific purpose.

An important means of strengthening the budgetary and financial autonomy of municipalities is local taxes, which were introduced in Slovakia in 2004, although their introduction was considered much earlier not only at the legislative level, but also at the expert level. The purpose and ultimate objective of the Fiscal Decentralization was to create instruments for municipalities, cities and higher territorial units enabling these local self-government units to raise, through legal instruments, sufficient funds for the performance of their statutory functions, as well as the fulfilment of societal tasks. In its original version, the Act on Local Taxes (2004) provided for eight local taxes that could be imposed by municipalities on an optional basis (real estate tax, dog tax, public space use tax, accommodation tax, tax on vending machines, tax on non-winning gaming machines, tax on nuclear installations, tax on the entry and stay of motor vehicles in the historical part of towns) and one local tax that could be imposed by higher territorial units (motor vehicle tax). That *status quo* lasted for ten years, when the legislator adopted the Motor Vehicle Tax Act (2014), under which this tax became a state tax again. In the case of local taxes (apart from tax on nuclear installations), municipalities themselves can influence their budget revenues by setting their rates, increases, decreases, or exemptions. Thus, municipalities themselves construct the elements of these taxes so that their primary fiscal purpose can be fulfilled, and they have considerably stronger powers than before to influence their revenues.

The adoption of the Constitutional Act on Budgetary Responsibility (2011) was a particularly significant moment for budget law in Slovakia. This constitutional act was adopted to achieve long-term sustainability of the Slovak Republic's economy and to strengthen the transparency and efficiency of the use of public funds. Its goal was also to promote the long-term competitiveness of Slovakia, considering the requirement of economic and social justice and solidarity between current and future generations. The Constitutional Act on Budgetary Responsibility provides the establishment and competences of the Council for Budget Responsibility, the rules of budgetary responsibility, and the rules of budgetary transparency. The Council for Budget Responsibility is an independent authority established to monitor and evaluate the development of Slovakia's economy and evaluate the implementation of the rules of budgetary responsibility. Its competences include publishing a report on the long-term sustainability of public finances, submitting a report on compliance with the budgetary responsibility and budgetary transparency rules to the National Council of the Slovak republic, publishing an opinion on legislative proposals, in particular in terms of their implications for the general government budget and long-term sustainability.

The most important provisions of the Constitutional Act on Budgetary Responsibility set an upper limit of the government debt in the amount of 50% of gross domestic product. The benchmark is the level of Slovakia's debt as published by Eurostat. The measures provided for by the Constitutional Act on Budgetary Responsibility are activated as soon as the debt level reaches 40%. Then, depending on the increase in

the debt level, increasingly stringent measures are activated to pursue the debt reduction target:

If the amount of the debt reaches 40% of gross domestic product and is below 43% of gross domestic product, the Ministry of Finance must send a written justification of the debt level to the National Council, including a proposal for debt reduction measures,

If the amount of the debt reaches 43% of gross domestic product and is below 45% of gross domestic product, the government must submit to the National Council a proposal for debt reduction measures, and the salaries of the members of the government must be reduced,

If the amount of the debt reaches 45% of gross domestic product and is below 47% of gross domestic product, the Ministry of Finance must block the state-budget expenditures in the amount of 3% of the total state-budget expenditures approved by the State Budget Act for the respective financial year, no funds may be released from the Prime Minister's Reserve and the government's Reserve, and the government may not submit to the National Council any general government budget proposal entailing an year-on-year increase in general government expenditures compared to the previous year,

If the amount of the debt reaches 47% of gross domestic product and is below 50% of gross domestic product, the government may not submit to the National Council any general government budget proposal with a deficit, and municipalities and higher territorial units are obliged to approve only a balanced budget or a surplus budget for the following financial year.

If the amount of the debt reaches or exceeds 50% of gross domestic product, the government must ask the National Council for a vote of confidence.

Effectivity of these provisions may be hampered by the clause of Constitutional Act on Budgetary Responsibility stating that the activation of restriction measures will not apply in the two years following the adoption of the government Policy Statement and the vote of confidence.

The constitutional regulation of budget law undoubtedly includes the issue of audit of the use of public budget funds. The Supreme Audit Office of the Slovak Republic (the 'SAO') is one of the constitutional authorities established by the constitution at the time of its adoption by the Slovak National Council on 1 September 1992. The anchoring of the SAO as an audit authority directly in the constitution was standard when compared to the constitutions of other democratic countries (which were also used as a basis for the drafting of the constitution), with the SAO being established as a 'new type' of audit authority. The establishment and constitutional fixation of the SAO as an independent authority standing outside the system of other state authorities was a manifestation of the effort to create a *sui generis* audit institution. The SAO was conceived to provide audit of the management of only state finances (at the time of the adoption of the constitution).

The development of the constitutional regulation of the SAO has recorded several changes, but the current situation has been in force since as early as 2006. The

constitution-maker has twice expanded competences of the SAO to give the SAO the broadest possible 'scope' of audit of all public finances and public property. Similarly broadly as in the Slovak Republic, the material and personal audit competences of the state financial audit authority is defined in the Republic of Poland. Under the current constitutional situation, the current scope of competences of the SAO (without claiming to be exhaustive) covers state finances (state budget, state funds, state enterprises), local self-government finances (municipalities and higher territorial units), other public finances on a national scale (public institutions such as the Social Insurance Agency, public higher education institutions), foreign, mainly European, finances (finances provided to the state, legal and natural persons within development programmes or for other similar reasons from abroad—currently, mainly finances from EU funds), mixed finances (legal entities with the participation of the state, public institutions, municipalities, and higher territorial units, as well as legal entities established by them), private finances (guaranteed by the Slovak Republic).

3.5. Polish budgetary law

The budget and budgetary management based on it are of crucial importance for the proper condition of public finance, and thus for the proper performance of financial management in the state. The very notion of a budget is multifaceted, as a budget can be considered as: a financial plan, a stock of public funds, streams of financial flows, a legal act producing legal effects and an act of political choice. The feature that distinguishes the public budget from other financial plans is its political and legal status. It finds its expression in the political and legal acceptance of the budget by the representative bodies (in the case of the state budget—the parliament, and in the case of local government budgets—by the bodies that constitute local government units).

The budget can thus be defined as an annual plan of income and expenditure, as well as revenues and expenditures of state authorities, bodies of control and protection of the law, courts and tribunals, and government administration, being an annex to the budgetary act adopted for the period of the calendar year called the budgetary year. In the same way, it serves to fulfil the tasks of local government units, for which it is an annual plan of revenues and expenditures, as well as revenues and expenditures.

The dynamic environment makes the developing market economy face ever-new challenges to economics and management. One of the fundamental issues that has a key impact on the functioning of market mechanisms is risk. Due to its interdisciplinary nature, the term 'risk' can be interpreted in different ways depending on the conditions in which it is analysed.

The issue of risk is crucial to the functioning of the public finance sector. The government's budgetary policy is based on numerous assumptions and forecasts. 'Assessing the functioning of the budget, one may conclude that it is a device similar to a suction and pump, i.e., it receives streams of income from some entities and transfers them to others.

The most acute problem in this area of public life is public debt. Public debt can be defined as the aggregate of budget deficits incurred in previous periods.

An unbalanced budget is the cause of a constantly indebted state. This problem is noticeable in many countries of the European Union, especially in the eurozone. Disproportionate expenses in relation to limited income make it necessary to issue treasury securities. Their interest rate is determined in a crucial way by the credibility of a given country in the international arena, the ratings of rating agencies and the general situation on financial markets. A very worrying phenomenon is the high cost of servicing public debt.

An effective fiscal policy should consider long-term consequences of actions taken today in the area of public finance. Implementation of the necessary reforms of public finance, which arouses social protests, will ensure a stable economic growth by limiting the risk of budget imbalance and reducing the level of public debt in relation to GDP.

Sovereign public debt has a significant impact on the economy. A persistent budget deficit can also directly affect the rate of economic growth, understood as an increase in the country's ability to produce goods and services to meet the specific needs of society.

3.6. Romanian budgetary law

3.6.1. Budgetary procedures

Another efficient method of restricting the state in its financial activity is the obligation to operate within a budgetary framework. Art. 138 of the constitution sets the basic features of this procedure. It is important to differentiate between the financial and legal aspects of the budget, that is between the budget as a financial modus operandi and the law through which the budget is established. The constitutional text addressees both dimensions.

3.6.2. Financial technique

The references contained in the constitution to the national public budget are clear evidence of its firm implementation and mandatory character. Art. 138 is entitled, 'national public budget' and para. 1 regulates its basic structure, as a collection of autonomous, distinct budgets. Thus, the employment of a budget is not a mere recommendation or a vague political objective, but a constitutional obligation.

The state operating through a budget seems so ordinary that we can miss the true purpose of it, which is to discipline the entire public financial activity. As the financial document that determines public revenues and expenses for a year long, the national public budget is mainly a restrictive instrument. This restricting nature manifests itself at least in the following ways. (a) By ordering: All the public financial effort is envisioned and planned beforehand. The public action in this area is not chaotic and improvised, but is ordered, rationalized, disciplined by the budget's guidelines. The possibility for the public authority to act erratically,

randomly, unpredictably in financial matters would generate all kinds of abuse. (b) By provision: Through the budget, the state anticipates a level of revenues that is rationally needed and can be realistically obtained. This level is assumed, formally settled, and receives a certain stability, for it is not easy for the public authority to surpass this limit. The citizens receive thus the guarantee that the state will not extend indefinitely its financial claims. This aspect is also applicable to the public expenditures, specifically regulated by the budget, which generates important limitations for the public authorities, both in the level and the specific purpose for which they are allowed to use financial resources. (c) By correlation: The vital purpose of any budget is to make an essential correlation between the level of the expenses and of the revenues. This operates also as a restriction for the state, which is hindered to spend irresponsibly and is bound to be balanced in all its financial activity.

Besides consecrating the budget *per se*, the constitution also sets an important aspect of its structure. Art. 138 para. 1 states that ‘*The national public budget shall comprise the state budget, the state social security budget and the local budgets of communes, towns and counties*’. The national public budget is therefore an ensemble of budgets, distinctly drafted, approved, and carried out, but inserted and harmonized into a single document that can accurately display the true dimension of the public financial effort as well as the balanced or imbalanced character thereof.

3.6.3. Legislative procedure

As regards the most important budgets, the state budget and the social security budget, the constitution demands that they take the form of a law, adopted by the parliament. They must become legal documents, endowed with the juridical force of a law. Such a significant legal status attests the importance given to the financial aspects that they regulate. At the same time, the exclusive legislative competence of the parliament in this matter guarantees, as argued before, their fair, stable and competent character. As to the legislative procedure itself, art. 138 para. 2, 3 and 5 mention several specific elements. They concern the drafting phase and the approval phase of this procedure.

3.6.4. Drafting phase

Art. 138, para. 2, restricts to the government the possibility of legislative initiative: ‘*The Government shall annually draft the state budget and the state social security budget, which shall be submitted separately to Parliament for approval*’. The solution is normal, given the fact that the government has the responsibility to exercise the general management of the entire executive activity and to ensure the implementation of all domestic and foreign policies of the country. In addition, the government has in subordination the immense institutional structure able to proficiently draft these budgets. It is worth noticing that this text also consecrates the principle of annuality and imposes a separate submission of the drafts to the approval of the parliament.

Intricately connected with this provision is the final phrase of art. 111 para. 1:

The Government and the other bodies of public administration shall be obliged, within the parliamentary control over their activity, to present the information and documents requested by the Chamber of Deputies, the Senate, or parliamentary committees, through their respective presidents. In case a legislative initiative involves the amendment of the provisions of the state budget, or of the state social security budget, the request for information shall be compulsory.

Essentially, this text constrains the parliament to request the opinion of the government on every legislative initiative—coming from the deputies, senators, or citizens—that involves any modification of the budgetary laws. Thus, the government cannot be excluded from the legislative process, but has its essential role confirmed. The Constitutional Court has unravelled some of the more subtle implications of this text.

The participation of the government’s representative at the parliamentary debate and his agreement with the proposed amendments is enough to fulfil this obligation. But the participation of some representatives of the Ministry of Finance at the sessions of the standing committees that have inserted the amendments does not satisfy the constitutional requirements.

The government has the correlative obligation to present the financial impact of the proposal on the general budget. For this purpose, the government has 45 days to transmit the financial statement to the parliament.

The fact that the government does not support the amendments or refuses to communicate the financial statement cannot block the legislative process and is not a reason for unconstitutionality. The information must be requested, but the opinion of the government is not mandatory for the parliament, who remains the sole legislative authority.

3.6.5. *Approval phase*

The fate of the budget laws is decided in the parliament, in a joint sitting of the two Chambers. Being considered ordinary laws, they must be passed with a simple majority of the present deputies and senators. If for some reason the parliament fails to adopt them, the constitution provides as an emergency solution the prolongation of the applicability of the previous budgets: *‘If the law on the state budget and the law on the state social security budget fail to be passed by at least three days before the expiry of the budgetary year, the previous year’s state budget and the state social security budget shall continue to be applied until the adoption of the new budgets’* (art. 138 para. 3). The solution is financially and technically questionable, its obvious purpose being to place a severe constraint on the parliament to pass the budget laws on time, before the beginning of the year in which they must be executed. However, if the parliament does not comply,

the solution must be implemented. The state just cannot operate its financial activities without a budget.

We must underline the freedom that the parliament has in adjusting the draft presented by the government, in establishing the final form of the budgetary laws and in adopting subsequent modifications. There is only one constitutional restriction in this respect, stipulated by art. 138 para. 5: *'No budget expenditure shall be approved unless its financing source has been established'*. This succinct provision has elicited an intense constitutional debate. What exactly does it mean to establish the financing source? The Constitutional Court was called to bring clarifications:

The financing source is the necessary revenue to incur the expenditure. The purpose of the constitutional restriction is to prevent the extremely negative social and economic consequences of establishing budgetary expenses without coverage.

The budget allocation (that is the expenditure) and the financing source must be established simultaneously. The financing source cannot be subsequently established (for instance, when the next budget is drafted).

It is not necessary to expressly indicate the financing source in the text of the law itself. The constitution requires the establishment of the financing source before the approval of an expenditure and not the explicit indication of that source in the content of the law. A recurrent and notorious phrase used by the Court is that 'the absence of an explicit specification of the financing source does not automatically imply the non-existence of the financing source.'

The establishment of the financing source and the sufficiency of the financial resources from the established source are two different aspects. The first is a constitutional imperative, the second is entirely a problem of political opportunity that concerns in essence the relations between the parliament and the government. If the government does not have sufficient financial resources, it can propose the necessary legislative modifications to secure them. In other words, the court is not competent to rule about the sufficient character of the established financial resources.

The financing source must nevertheless have an objective and effective character. It must be realistically able to cover the expenditure, in the context of the annual budgetary law. A mere formal or general indication is unconstitutional.

3.7. Slovenian budgetary regulations

The Fiscal Rule Act (FRA) determines the manner and timeframe for the implementation of the principle of medium-term balance of revenues and expenditures of general government budgets without borrowing, criteria for determining exceptional circumstances in which medium-term balance may be deviated from. FRA also regulates the operation of the Fiscal Council as an independent and autonomous state body.

According to Article 3 FRA, revenues and expenditures of general government budgets are balanced (in the medium term without borrowing), if the structural balance of the general government sector in a given year is not lower than the minimum value set in a ratified international (EU) treaty governing stability, coordination and governance in economic and monetary union.

The medium-term balance is ensured by limiting the projected volume of general government expenditure upwards to the level that ensures such compliance.

3.7.1. Preparation and execution of the budget

The preparation and execution of the budget of the RS and the municipal budgets, management of state and municipal property, state or municipal borrowing and guarantees, management of their debts, accounting and internal control of public finances and budget inspection is laid down by the Public Finance Act (PFA). PFA also lays down the rules applicable to the Health Insurance Institute of Slovenia and the Pension and Disability Insurance Institute of Slovenia, both in the compulsory part of insurance. In addition, rules are laid down for public funds, public institutes, and agencies in drawing up and submitting financial plans, managing cash, borrowing, guaranteeing, accounting, submitting annual reports and internal control of public finances, and budgetary inspections.

PFA also regulates borrowing and the granting of guarantees by public economic institutes, public companies, and other legal entities in which the state or municipality has a decisive influence on management. PFA also regulates the medium-term planning of fiscal policy and measures to ensure fiscal discipline and rules for the use of surpluses of institutional units of the general government sector.

Budget composition, peculiarities of their implementation, use of cohesion policy funds, assigned revenues and state revenues, volume of borrowing and guarantees of the state and public sector, the amount of the lump sum, the assumption of obligations and other issues related to the implementation of the budget, determines Act on the Execution of the Budgets (AEB). If the budget is not adopted by the first day on which it is to be implemented, the beneficiaries financed from the budget are, according to CS provisionally financed under the previous budget (Article 148 of the CS).

Keeping of business books and the preparation of annual reports for the budget and budget users and for legal entities under public law and legal entities under private law that do not keep business books based on the CA, is regulated by Accounting Act (AA).

The transparency of financial relations between state bodies and bodies of self-governing local communities and public undertakings and legal entities, sole proprietors, and private individuals, who carry out activities in the general interest based on an exclusive or special right or public authority is specially regulated by Transparency of Financial Relations and Separate Registration of Various Activities Act (TFRSRVA).

3.7.2. Municipal financing

The financing of tasks within municipal competence is set in Municipal Financing Act. Article 6 of the MFA lays down own tax sources of a municipality (revenues of the municipal budget as real estate tax, tax on watercraft, real estate transfer tax, inheritance and gift tax, tax on winnings from classic games of chance and other tax. The municipality is entitled to revenues from taxes in accordance with the law governing individual taxes.

SUMMARY

Also, revenues from self-contribution, fees, fines, concession fees, payments for local public services, environmental charges, and others are the sources of financing of a municipality. Revenues of the municipality are also revenues from the real and financial assets of the municipality, received donations and transfer revenues from the state budget and funds of the EU.

Borrowing of the municipality, municipal budget debt management, municipal guarantees and determination and financing of eligible consumption of municipalities is further precisely laid down by the MFA.

Main characteristics of the budgetary rules					
	Legal source	Budgetary regulations	Adopted by...	Special rules	External audit institution
Hungary	Act on budget	budget circle: planning, implementation, and control of the budget. important principles	National Assembly	Fiscal Council task: monitor compliance with government debt rule	State Audit Office
Croatia	Act on Budget, Act on Executing the Budget, Act on Budgetary Responsibility	Budgeting is geared to a cycle consisting of four usual phases: (1) preparation and design; (2) adoption and approval; (3) execution; (4) evaluation. The average duration of the cycle is 27 months. For the first and third phase executive authorities are responsible while in the second and fourth phase the parliament has the main role. state revenues and expenditures are laid down by the budget	majority of all representatives of the Croatian Parliament (<i>Sabor</i>)	Act on Budgetary Responsibility	State Audit Office
Czech Republic	state budget, state funds budgets and budgets of local governmental units	preparation, adoption, management, and control. important principles	Parliament (National Council of the Slovak Republic)		Supreme Audit Office

Main characteristics of the budgetary rules					
	Legal source	Budgetary regulations	Adopted by...	Special rules	External audit institution
Slovakia	the Act on Budgetary Rules of Public Administration, the Act on Budgetary Rules of Local Self-government, the State Budget Act, which is adopted every year	The central concept of budget law is the general government budget, which is a medium-term economic instrument of the state's financial policy. It is drawn up annually for at least three budget (calendar) years. The general government budget consists of the state budget and the aggregate of the budgets of other public administration entities (municipalities, higher territorial units, state funds, higher education institutions, the Social Insurance Agency, health insurance companies, and others), including revenues and expenditures related to the implementation of public health insurance for a respective financial year and the following two years.	Parliament	Constitutional Act on Budgetary Responsibility	Supreme Audit Office
Poland	budget, as financial plan, a stock of public funds, streams of financial flows, legal act	annual plan of income and expenditure, revenues	Parliament (Sejm)		Supreme Audit Office

SUMMARY

Main characteristics of the budgetary rules					
	Legal source	Budgetary regulations	Adopted by...	Special rules	External audit institution
Romania	Art. 138. of the constitution sets the basic features of this procedure	the state budget and the social security budget, the constitution demands that they take the form of a law, adopted by the parliament	Parliament. in a joint sitting of the two Chambers. Being considered ordinary laws, they must be passed with a simple majority of the present deputies and senators.	If the law on the state budget and the law on the state social security budget fail to be passed by at least three days before the expiry of the budgetary year, the previous year's state budget and the state social security budget shall continue to be applied until the adoption of the new budgets'	State Audit Office
Serbia	Budget System Law, General Fiscal Rules		National Assembly		Country Audit Institution
Slovenia	Fiscal Rule Act	The preparation and execution of the budget of the RS and the municipal budgets, management of state and municipal property, state or municipal borrowing and guaran-tees, management of their debts, account-ting and internal control of public finances and budget inspection is laid down by the Public Finance Act (PFA)	Parliament	If the budget is not adopted by the first day on which it is to be implemented, the beneficiaries financed from the budget are, according to CS provisionally financed under the previous budget	Court of Audit

We have found differences in the details of the regulation but similarities in the most important provisions. As we can see, the budget is passed into law in each country by national parliaments. Planning and implementing the budget is the governments' responsibility; nevertheless, their control is the task of national parliaments. Court audits exist in all countries. Local governments are financed from the central budget and are entitled to local revenues.

4. Final thoughts

We can conclude that, as in the Hungarian Fundamental Law, the constitutions in the Central and Eastern European countries examined contain provisions on basic financial matters.

In each of the countries examined, the rules on budget planning, approval and implementation are regulated in detail. The planning is related to the government, the approval to the parliament (the Hungarian Parliament, the Croatian Parliament (*Sabor*), the Slovak National Council, the Serbian National Assembly, the Polish Sejm), the implementation is linked to the governments.

In all regulations, budget revenues and expenditures are presented in detail, which are the same in structure, revenues from taxes are typical, while on the expenditure side we find the financing of public tasks, as we have presented. An important principle in each country is that revenues and expenditures should be included in one budget.

In addition to the Hungarian Fundamental Law, the regulation on external public audits, i.e., the State Audit Office, is highlighted separately in Croatian Constitution (State Audit Office), in the Czech Constitution (Supreme Audit Office), the Slovak Constitution (Supreme Court of Auditors), the Romanian Constitution (State Audit Office) and the Serbian Constitution (National Audit Institute).

In addition to Hungary, the regulations on the Budget Council can only be found in the Slovak regulations, which do not work in the other countries examined. The Croatian Fiscal Policy Commission Policy has a similar task. The role of the Budget Council is determining so that the National Assembly can take a well-founded decision about the approval of the budget and therefore, to ensure its adoption, the opinion of a professional body that is independent from the executive branch is necessary. The contribution of the Council is essential in the procedure of the approval of the budget to comply with the government debt rule. The Budget Council is a body that supports the legislative activity of the National Assembly which examines the grounds of the central budget. The Council is involved in the drafting of the law on the central budget and its preliminary approval is required for the adoption of the law. Due to these rights, the Council has a significant effect on the compliance of the budget to the requirements of the Fundamental Law and it specifically monitors the compliance of the rules on government debt ratios. The president of the Budget Council, the president of the Hungarian National Bank and the president of the State

Audit Office are the members of the Council. The president of the republic appoints the president of the council for six years. The organization and the operation of the Council are regulated thoroughly in the Act on the Economic Stability of Hungary. In Slovakia the Constitutional Act on Budgetary Responsibility provides the establishment and competences of the Council for Budget Responsibility, the rules of budgetary responsibility, and the rules of budgetary transparency. The Council for Budget Responsibility is an independent authority established to monitor and evaluate the development of Slovakia's economy and evaluate the implementation of the rules of budgetary responsibility. Its competences include publishing a report on the long-term sustainability of public finances, submitting a report on compliance with the budgetary responsibility and budgetary transparency rules to the National Council of the Slovak republic, publishing an opinion on legislative proposals, particularly in terms of their implications for the general government budget and long-term sustainability. The Act on Fiscal Responsibility in Croatia provides the establishment and competences of the Fiscal Policy Commission. The Commission is an independent expert body established to envisage and evaluate the implementation of the fiscal rules. During the performance of its tasks, the Commission takes the 'positions' that are posted on the website of the Commission. A special procedure is prescribed in the case of serious fiscal risks. If the Commission assess that there is such a risk, it prepares a special report for the government who must give an opinion within 45 days or if it is necessary to undertake additional measures.

Besides the Hungarian regulations, the regulations concerning the State Treasury can be found in the Polish Constitution, and in other constitutions it is not regulated. In both countries, the implementation of the budget is its main task, as well as the related public audit tasks, but the Polish body also deals with asset management, while in Hungary the Hungarian National Trust performs this task.

The Hungarian Fundamental Law deals separately with the issue of public debt, as does the Constitution of Slovakia, while the Constitution of Serbia refers only briefly to it. In Croatia there is an Act about the fiscal responsibility. The provisions on the government debt rule are laid down in the Fundamental Law of Hungary. The essence of this rule is that the National Assembly must adopt such a budget law—to ensure sustainable public finances and responsibilities for the future generations—according to which the government debt may not exceed half of the gross domestic product, that is the optimal ratio of government debt set out by the Fundamental Law. Currently, however, the government debt significantly exceeds this level, therefore, the parliament must adopt such a budget law that intends to reduce this debt until the optimal ratio is reached. The most important provisions of the Slovakian Constitutional Act on Budgetary Responsibility set an upper limit of the government debt in the amount of 50% of gross domestic product. The benchmark is the level of Slovakia's debt as published by Eurostat. The measures provided for by the Constitutional Act on Budgetary Responsibility are activated as soon as the debt level reaches 40%. Serbia's Constitution states that public debt, i.e., the debt of the country and state bodies, is also a constitutional category in the field of public finances. The public debt rule is

very similar to the Slovenian golden rule, namely that the revenues and expenditure of general government should be balanced in the medium term without borrowing or that the revenues should exceed expenditure.

In 2011 Croatia adopted the abovementioned Act on Fiscal Responsibility. This act was adopted to achieve and maintain fiscal responsibility as well as to promote and strengthen the transparency and medium-term and long-term sustainability of public finances. In that context, the Act introduced fiscal rules concept, two groups of them. The first one tackles certain fiscal goals and limits in relation to the structural balance, annual growth of budgetary expenditures and public debt level. The second one deals with the concept of fiscal responsibility of the head of the budgetary (and extrabudgetary) users of the state budget and of budgets of local and regional self-government. The crucial instrument is a statement on fiscal responsibility by which the head confirms that they have ensured legal, earmarked, and purposeful use of funds, efficient and effective functioning of the internal control system within the framework of the funds determined in the budget, financial plan respectively. The obligation also includes companies owned by the Republic of Croatia or local and regional units as well as legal entities founded by the Republic of Croatia or subnational units.

The Constitutional Court's budgetary powers have been highlighted in Hungary, the Czech Republic, and Romania. The management of monetary policy is linked to the central bank, the national bank, for which, in addition to the Hungarian Fundamental Law, the Czech, Slovenian and Polish Constitutions contain provisions. The most important task is the issuance of money, but besides the classic central bank functions, it is a Hungarian specialty that the National Bank of Hungary also performs micro- and macroprudential functions, so it also acts as financial supervision.

All regulations include regulations on the finances of municipalities, the adoption and implementation of their budgets. In addition to the Hungarian Basic Law, the possibility of local taxation is highlighted by the Romanian and Serbian Constitutions, as described. In conclusion, it can be concluded that constitutional legislation is generally characteristic of the subject under consideration, although there are differences in the level of detail of the regulation. However, the detailed rules for the creation and implementation of the budget bear full resemblance to those presented.

In conclusion, it can be stated that the constitutional regulation is usually characteristic of the examined topic, although there are differences in the level of detail of the regulation. However, the detailed rules for drawing up and implementing the budget are fully similar to those presented.

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