| Chapter 8 |

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 parametres 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.

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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

1 Babčák, 2019, p. 57.
2 Bakeš, 2009, p. 254.
3 Gomułowicz and Małecki, 2004, p. 142.

whole, whereas private law pursues the interest of an individual.[4] The power-based 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

4 Večeřa et al., 2011, p. 138.
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.

general part and a specific part. The general part covers legal rules which regulate 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' 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-asset[33]), legal regulation, investor protection, taxation, but also their use in tax administration (for example, in tax enforcement).

33 Hrabčák et al., 2021, p. 38.

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