Economic and Social Crises, Model Change and the Responsiveness of the Legal System: Special Tax Measures and Their Regulation in Hungary

Márton Varju

Abstract Responding to various social, economic and policy crises, Hungary has introduced and has since maintained a broad range of special taxes, imposing additional taxation on certain corporate taxpayers. These measures enabled the state to secure necessary tax revenues and make strategic adjustments to the domestic tax structure. Through the special taxes and their regulation, the Hungarian legal system was able to respond to significant changes and challenges in its social and economic environment. However, their introduction came with significant consequences for the legal system at large. As demonstrated by the case of the turnover-based progressive taxes introduced, the responsiveness of law may come at a cost of legal regulation that does not guarantee that the declared objectives and the actual effects of legal measures coincide. Such legal changes thus enable—as concealed by the words of the legislation—discriminatory, or even abusive application of the law.

1 Introduction

The special taxes imposed on corporate taxpayers operating in specific sectors of the national economy have now become regular components of the Hungarian fiscal and legal system. These direct taxes, the main objective of which is to increase public revenues, have frequently been introduced as tools of crisis management in response to exceptional socio-economic situations. Their introduction was also connected to the objective of enabling and later maintaining strategic changes in the structure of the tax system driven by sovereign economic and tax policy considerations. Thus, they can be considered as particular manifestations of the responsiveness of the legal system in Hungary to changes and challenges in its social and economic environment. However, when examined more closely, the continued application of special taxes raises fundamental questions about the consequences of their introduction for

M. Varju (✉)
Institute for Legal Studies, HUN-REN Centre for Social Sciences, Budapest, Hungary
e-mail: varju.marton@tk.hun-ren.hu

F. Gárdos-Orosz (ed.), *The Resilience of the Hungarian Legal System since 2010*,
European Union and its Neighbours in a Globalized World 16,
https://doi.org/10.1007/978-3-031-70451-2_8

the legal system at large. The special taxes enable a controversial exercise of taxation powers by the state. Their application may not correspond with their declared objectives, which may be imprecisely determined, thus leading to discriminatory, or even abusive taxation.

In this chapter, we investigate the question of whether and how the special corporate taxes introduced in Hungary represent the responsiveness of its legal system, as interpreted in this volume. We will first examine the socio-economic context of the special tax measures, with particular reference to the socio-economic pressures that led to their introduction. We will also explore the specific objectives of domestic tax policy that made the additional taxation of certain corporate taxpayers necessary. In the second part, we will provide an overview of the Hungarian special taxes and their regulation, highlighting the declared objectives of taxation. We then continue by determining the main characteristics of the special taxes, as revealed by their regulation and the relevant domestic and international tax policy frameworks. We will close the chapter with an assessment of these characteristics and what they mean for the impact of these taxes on the Hungarian legal and tax system.

2 Tax Policy and Socio-Economic Pressures in Hungary

From a broader perspective, the introduction of special taxes and the consolidation of their position within the Hungarian tax system cannot be separated from the state of the economy and society, and the crises and crisis phenomena impacting them. Put simply, the special taxes, some of which were introduced in response to a specific crisis situation, and were declared to be crisis taxes, were the reactions of the Hungarian state and law to the relevant changes in economic and social conditions that came in waves after the turn of the millennium. The imposition of a tax burden on corporate taxpayers additional to their regular taxation obligations could usually be associated with a period during which the national economy and its development were undermined—recurrently—by crises.

The 2000s were characterised in Hungary by subdued economic growth, followed by a slowdown during the 2008 crisis, which was followed by a partly similar period in the 2010s with a more significant slowdown around 2012, and then a new crisis from 2020 onwards due to the impact of the corona virus pandemic.[1] The main indicators of the state of public finances show these changes relatively accurately, also indicating the challenges faced by the fiscal system over the past two decades. The data on the government deficit (Table 1) show the periods of increased financing needs for the government, as well as periods when the government's financing needs have been addressed, for example through increased tax revenues (Table 3). The level of government debt (Table 2) allows similar conclusions to be drawn about the government's financing needs.

[1] HCSO: Main macroeconomic data. https://bit.ly/3NuovBG.

Table 1 Evolution of the general government deficit (% of GDP)[a]

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
3.0	−3.7	−8.2	−7.2	−6.5	−7.8	−9.2	−5.0	−3.7	−4.5

2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
−4.5	−5.4	−2.4	−2.6	−2.6	−1.9	−1.6	−2.2	−2.2	−2.1	−8.0

[a]General government deficit (–) and surplus (+) (2007–2018) in millions of euros and as a percentage of GDP. https://bit.ly/3NL2m2f; HCSO: Report on the balance and debt of the general government sector (EDP Report 2021 II.). https://bit.ly/3wzxhZp

Table 2 Evolution of government debt (% of GDP)[a]

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
54.8	51.4	54.6	57.1	58.0	60.0	64.1	65.0	71.0	77.2

2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
79.7	79.9	77.6	76.0	75.2	74.7	73.9	73.6	70.8	66.3	80.1

[a]General government debt (1995–2016). Consolidated gross debt of general government as a percentage of GDP and in millions of euros. https://bit.ly/3NriR2Z; HCSO: Report on general government sector balance and debt (EDP II Report 2021). https://bit.ly/3G7AS46

According to the official government assessment of tax policy, which was published retrospectively, Hungarian tax policy in the 2010s had to address two major socio-economic problems. The first problem area concerned the so-called 'inherited disadvantages'—the socio-economic problems dating back to the 2000s. These were the high public deficit, external indebtedness and low labour market activity.[2] The document treated these as interrelated problems. Low labour market activity was associated with a high redistribution rate, which in turn led to high levels of taxation and a large deficit, which latter the state tried to finance by increasing external debt.[3] The second set of problems, which according to the official explanation could only be addressed after at least a partial resolution of the previously mentioned problem areas, was the stagnation or recurrent slowdown of economic growth and investment.[4]

In addition, the report observed that there was an almost constant need for minor or major adjustments to the budget, which necessitated the introduction of a number of new public charges.[5] Another important problem that had to be addressed in tax policy during this period was that Hungary, as an importer of capital, was forced to take steps in international taxation to maintain its ability to attract foreign investment, without risking the undertaxation of economic activity carried out in its territory (of value actually generated domestically) and thus the violation of the principle of proportionate taxation.[6] The COVID-crisis starting in 2020 was

[2]*Restoring the competitiveness of the Hungarian tax system in the 2010s* (2021), p. 19.
[3]*Restoring the competitiveness of the Hungarian tax system in the 2010s* (2021), p. 19.
[4]*Restoring the competitiveness of the Hungarian tax system in the 2010s* (2021), p. 19.
[5]*Restoring the competitiveness of the Hungarian tax system in the 2010s* (2021), pp. 23, 53.
[6]*Restoring the competitiveness of the Hungarian tax system in the 2010s* (2021), pp. 47–48.

Table 3 Revenue from taxes and social contributions (billion HUF)[a]

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
5228.5	5861.1	6531.6	7134.9	7788.8	8248.4	8865.9	10,120.3	10,726.2	10,296.7

2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
10,118.7	10,380.6	11,298.3	11,691.6	12,608.3	13,548.7	14,171.6	14,893.5	16,007.5	17,310.2	17,425.4

[a]HCSO: Revenue from taxes and social contributions - Government + Institutions of the European Union (current prices, HUF million). https://bit.ly/3MRzsgR

associated with both short- and long-term challenges.[7] Short-term challenges included job losses and a stagnation and partial collapse of the economy. The lack and the postponement of investment were identified as the long-term challenges.

Hungarian tax policy responded to these challenges primarily by strategically redesigning the tax structure.[8] Revenues come from different sources: taxes on private taxpayers, taxes linked to consumption (also including the public health tax, the insurance tax, the financial transactions levy and the telecommunications tax), and corporate taxation (also including the levy on credit institutions, the income tax of energy suppliers, the advertising tax, the special tax on financial institutions, the so-called special tax on certain economic sectors and the utilities tax). According to data from the Ministry of Finance, the special taxes provided the following revenues (as a share of the total GDP): below 0.5% in 2007–2009, slightly above 1.5% in 2010–2012, around 2.5% in 2013, around 2% in 2014-2015 and around 1.5% in 2016–2020.[9]

The design of the tax structure including the special taxes, and the deliberate model change of the Hungarian tax system after 2010 were based on complex economic and tax policy considerations. According to the official government policy position, the transformation of the Hungarian tax system followed one central strategic objective: to improve its competitiveness.[10] As an additional operational objective, the reform aimed to overcome the 'inherited disadvantages' mentioned above. The realisation of the latter aim was reported to have taken place in the first half of the 2010s, and it included actions such as the consolidation of the central budget, the reduction of the accumulated external debt, and the increase in labour market activity.[11] The second operational objective of the model change, the realisation of which had to wait until the implementation of the consolidation measures mentioned above, was the increase in labour productivity, and, in parallel, the stimulation of economic investment.[12] Its main instruments included tax cuts to stimulate investment and productivity, and a restructuring of the tax structure to the same end.[13]

Government policy identified five priority areas for the restructuring of the tax system. These included: maintaining and, later, when possible, reducing the overall level of taxation, shifting taxation from capital and personal income to the taxation of consumption and harmful activities (externalities), restructuring the taxation of labour, which would follow specific objectives of population (family) policy, with the purpose of stimulating employment, reducing and restructuring corporate

[7] *Restoring the competitiveness of the Hungarian tax system in the 2010s* (2021), p. 25.

[8] See the data available at Hungarian State Treasury: Budgetary balance of the central subsystem. https://bit.ly/3a8xXvX.

[9] *Restoring the competitiveness of the Hungarian tax system in the 2010s* (2021), p. 53.

[10] *Restoring the competitiveness of the Hungarian tax system in the 2010s* (2021), p. 6.

[11] *Restoring the competitiveness of the Hungarian tax system in the 2010s* (2021), p. 7.

[12] *Restoring the competitiveness of the Hungarian tax system in the 2010s* (2021), p. 7.

[13] *Restoring the competitiveness of the Hungarian tax system in the 2010s* (2021), p. 19.

taxation to stimulate investment especially in the small and medium-sized enterprise sector and in the essential export-oriented sectors of the national economy, and improving tax collection and, in parallel, 'whitening' the economy.[14] The aim of developing a tax system which is based on a broad range of taxpayers and tax bases, and which uses low, preferably differentiated tax rates where possible emerged as a general government and tax policy preference.[15]

The introduction of the special taxes did indeed take place in a complex economic and tax policy environment. After 2010, aiming primarily to increase the competitiveness of the national economy, the government wanted to decrease the general level of taxation, and to change the centre of gravity of the tax structure. In parallel, it also sought to secure the policy—the actual taxation—leeway necessary for the realisation of its narrower and broader objectives. The official government and policy position linked the introduction of the special taxes to the actual state of the central budget; however, it regarded as their main purpose—as declared explicitly—additional taxation, following the principle of proportionate taxation[16] of the substantial financial resources which were generated in the domestically oriented sectors of the services economy dominated by large enterprises, in part as a result of the oligopolistic nature of these markets.[17]

In their design, when determining the object of taxation, or when regulating the rate of taxation and the applicable tax exemptions, the policy-maker—gradually, having regard to the financing needs of the central budget—took into account the objective that these tax burdens must not significantly impede investment and growth in the Hungarian economy.[18] Furthermore, having regard to the economic and industrial policy priorities, the small- and medium-sized enterprises sector, and the export-oriented manufacturing sectors were intentionally excluded from this form of taxation, for example by means of regulating (steeply) progressive tax rates, or the restriction of the tax to specific sectors of the national economy.[19]

---

[14] *Restoring the competitiveness of the Hungarian tax system in the 2010s* (2021), pp. 8–9. In 2010, personal income tax was made single-rate, at a rate of 16% (Art. 4 of Act CXXIII of 2010). The declared legislative objective was to create conditions for financial stability and economic growth, to restore the competitiveness of the economy and to reduce the administrative burden. The tax rate was reduced to 15% in 2015 (Art. 2 of Act LXXXI of 2015). The corporate tax rate was reduced to 9% in 2016 (Art. 11 of Act CLXXXII of 2016).

[15] *Restoring the competitiveness of the Hungarian tax system in the 2010s* (2021), p. 1.

[16] Art. XXX(1) of the Fundamental Law: Everyone shall contribute to covering common needs according to his or her capabilities and to his or her participation in the economy.

[17] *Restoring the competitiveness of the Hungarian tax system in the 2010s* (2021), p. 53.

[18] *Restoring the competitiveness of the Hungarian tax system in the 2010s* (2021), p. 53.

[19] *Restoring the competitiveness of the Hungarian tax system in the 2010s* (2021), p. 53.

3 Special Taxes in Hungary and Their Regulation

The special taxes collected from different taxpayers under different legal titles can now be considered as forming a normal part of the Hungarian tax system.[20] They include taxes on consumption, for example the consumption of a service, taxes imposed in addition to regular taxes on corporate income and other corporate financial resources, and, as a special form of the latter, taxes levied in addition to corporate income tax on the turnover of undertakings.[21] As will be demonstrated shortly, the Hungarian legislator relied explicitly on reasons for their introduction which correspond with the tax policy considerations described above, such as securing the revenues necessary for the functioning of the State, particularly in times of a crisis or in connection with a specific emergency, and/or ensuring a supposedly more proportionate, fair and equitable distribution of the tax burden among taxpayers with different financial resources and, as a result, different taxability. The differentiated taxation introduced for the latter objective also has the effect in a given structure of taxation of providing the central government budget with additional, overall higher tax revenues. The scope, the preferred nature and the regulation of the special taxes have been modified several times in the recent period, most likely having regard to the tax policy needs, as well as the revenue needs of the central budget, as explained above.

3.1 Special Taxes in the Financial Sector

The legislation introducing the special taxes in the financial sector, which has been amended several times over the last fifteen years, introducing and abolishing specific taxes, was adopted in 2006, before the outbreak of the financial and economic crisis amidst a deteriorating state of public finances. The declared objective of Act LIX of 2006 on the special tax and levy imposed to improve the balance of public finances was to raise additional tax revenues for the state by imposing an extra tax burden on those taxpayers—having regard to their duty of solidarity—that are able to bear public charges in addition to their general tax obligations. Originally, the act introduced the tax on savings interest only, as the first special tax. The savings interest tax is payable by the credit institution concerned, at a rate of 5% on its interest and interest-related income.

The levy on credit institutions was introduced by Act CXXIII of 2010 and was subsequently phased out from 2017 by Act LXVI of 2016. The levy was payable

[20] For an overview, see Deák (2014), pp. 339–368.

[21] The tax on energy products was introduced in 2003 (Act LXXXVIII of 2003) on the basis of EU harmonisation obligations (Directive 2003/96/EC, the Energy Tax Directive). As a necessary technical amendment, the energy tax has been included in the scope of excise duties and is now provided for in the Excise Duty Act (Act LXVIII of 2016).

quarterly in advance at an annual rate of 5% based on the adjusted value of the credit portfolio held by the taxpayer credit institution. Financial institutions were required to pay a separate levy, quarterly in advance, on the reimbursement received under Act LXXV of 2011 on the fixing of the repayment rate of foreign currency loans and on the regulation of the forced sale of residential property. The reimbursement received by financial institutions from the state as a guarantee for their non-performing foreign currency loans was taxed at a rate of 50%.

The special tax on financial institutions was introduced by Act XC of 2010, which was incorporated into the 2006 general legislation. The tax needs to be established by the taxpayer by March of the tax year and is payable in four equal quarterly instalments. The tax is based on the taxpayer's balance sheet total for the second tax year preceding the tax year. For certain financial institutions, the tax base is the profit or adjusted net turnover for the same tax year. For credit institutions, the tax rate is 0.15% for the part of the tax base not exceeding HUF 50 billion and 0.2% for the part of the tax base exceeding HUF 50 billion. For other financial institutions, the tax rate varied between 5.6% and 6.5% depending on the nature of the financial institution. Credit institutions were allowed to deduct the tax payable under the special tax on credit institutions. The special tax on credit institutions was introduced in 2010 by Act CXXIII of 2010 and was repealed in 2019 by Act XLI of 2018. The tax was based on the taxpayer's profit for the tax year, to which the costs of the special tax on financial institutions had to be added. The tax rate was 30%. In 2014, for a single year, a special tax was levied on the transfer by credit institutions from their general risk provision to their profit and loss reserve as a one-off payment under the corporate income tax.[22]

The special tax on investment service providers was introduced in 2015 by Act LXXIV of 2014. The tax is based on the value of the investment securities held by the taxpayer or the value of the investment fund managed by the taxpayer. The tax is payable quarterly at a rate of 0.05%. The special tax on insurance companies was introduced in 2012. The underlying Act CII of 2012 declared as its objective the simplification of taxes on insurance and the provision of tax revenue for common social expenditure. The tax was based on the premiums paid, with a rate between 10% and 23%, depending on the type of insurance. For voluntary motor insurers, home and business insurers and accident insurers with a total tax base of less than HUF 8 billion, the act set the tax at progressive rates. The financial transaction levy was introduced by Act CXIV of 2012. It is payable by the service provider based on the amount of the financial transaction in question. The rate varies between 0.3% and 0.6% per transaction, depending on the transaction, with a maximum levy limit per transaction.

[22] Act CC of 2013.

3.2 The (Additional) Income Tax of Energy Suppliers and Public Service Providers

The special income tax for energy supply companies and public service providers was introduced in 2008, the first year of the economic and financial crisis, by Act LXVII of 2008 on increasing the competitiveness of the district heating sector. The tax, which is payable to the central budget, is based on the adjusted pre-tax profit of energy suppliers and public service providers for the tax year. The rate is 31% of the positive tax base. Taxable persons include: mining companies engaged in hydrocarbon extraction activities, petroleum product producers, wholesalers of petroleum products holding an excise licence, natural gas trading licence holders, electricity trading licence holders, production licence holders under the Electricity Act, universal service providers under the Electricity Act, distribution licence holders under the Electricity Act, universal service providers under the Natural Gas Supply Act and distribution licence holders under the Natural Gas Supply Act. As public service providers, taxable persons include: water utility providers, public service providers authorised to collect non-publicly collected domestic waste water, and providers of the waste management public service.

3.3 Sectoral Special Taxes Introduced in 2010 and Abolished in 2013 (the So-Called Sectoral Special Tax)

According to its text, Act XCIV of 2010 introducing the special tax on certain sectors, adopted in the autumn (18 October) following the 2010 elections, was generally aimed at improving the balance of public finances, which had been disrupted by the financial and economic crisis and the actions of previous governments. It sought to achieve this objective declaredly by means of imposing in specific sectors of the national economy an extra tax burden on taxpayers that are able to bear public charges in addition to their general tax obligations. In principle, the tax was a crisis tax. The additional tax obligation was introduced by the legislator only for the necessary period (tax years 2010, 2011 and 2012) and the act itself provided for its repeal after 3 years.[23]

The act established the additional tax obligation for three economic activities (sectors). These are commercial retail trade activities, telecommunications activities and the business activities of energy suppliers. The taxable amount was the taxpayer's annual net turnover. The tax rate was set progressively in several bands adjusted to the tax base. Therefore, the tax, in accordance with the legislator's intention, subjected taxpayers of different size and different economic relevance to

[23] Art. 10(2) of Act XCIV of 2010.

what was in principle objectively differentiated taxation. Energy suppliers, as one group of targeted taxpayers, were taxed at a single rate of 1.05%.

The tax rate for commercial retail was 0% for the part of the tax base not exceeding HUF 500 million; 0.1% for the part of the tax base exceeding HUF 500 million but not exceeding HUF 30 billion; 0.4% for the part of the tax base exceeding HUF 30 billion but not exceeding HUF 100 billion; and 2.5% for the part of the tax base exceeding HUF 100 billion. For telecommunications activities, the tax rate was 0% for the part of the tax base not exceeding HUF 100 million; 2.5% for the part of the tax base exceeding HUF 100 million but not exceeding HUF 5 billion; and 6.5% for the part of the tax base exceeding HUF 5 billion.

3.4 The Utilities Tax

Act CLXVIII of 2012, declaredly pursuing the principle of proportionate taxation, introduced a special tax on utility pipelines and cables. The tax is payable by the owner of the utility pipeline or cable. If the pipeline or the cable is owned by the state or local government, the tax is payable by the operator. The tax is levied on the actual utility pipelines or cable, not on their use or construction. In order to ensure adequate taxation revenues, the act defined the notion of utility pipelines or cables broadly, as covering water supply, sewage disposal, storm water drainage, natural gas supply and heat supply pipelines, and electricity supply and communication cables, which enable the satisfaction of intermittent and continuous consumer needs.[24] In the case of establishing a new public utility pipeline or cable, the tax obligation arises only in the sixth year following the year in which the pipeline or cable is put into service. The tax remains payable when the use of the pipeline or the cable is discontinued. The tax obligation ceases to apply only when the utility pipeline or cable ceases to exist or is dismantled.[25]

The act defined the basis of the tax as the length in metres of the utility pipeline or cable. Several pipelines or cables of a taxpayer on the same route and capable of providing the same service are considered as one utility pipeline or cable. The rate of tax is HUF 125 per meter per year for each meter. The state and local governments are exempt from the tax.

The act departs from the general tax objective of proportionate taxation by providing for a tax reduction regulated in bands for telecommunications lines, aiming to encourage infrastructure investment and development. Following a similar purpose, the act provided a further tax reduction possibility. Where an upgrade of an

[24] The part of the line located in, under or over public land and the part of the line located in, under or over a parcel of land not classified as public land, excluding a line located in public land or in a parcel of land not classified as public land which is used solely to serve the needs of the user of the parcel of land registered under the parcel number in question for the use of the parcel of land.

[25] The exact date of cessation of tax liability is the last day of the year concerned.

existing telecommunications network is carried out to allow data connection access at a speed of at least 100 Mbps on the subscriber section of the network, the tax base may be reduced for a period of five years by the length in metres of the section of the network affected by the upgrade.

3.5 *The Special Tax on Telecommunications*

2012 saw the introduction of another special tax. Act LVI of 2012 introduced the special tax on telecommunications with the declared objective of contributing to the 'common social expenses'. The tax is charged to the provider of telecommunications services. Telecommunication services are defined as publicly available telephone services within the meaning of the Electronic Communications Act provided on an electronic communications network within the territory of Hungary, including services enabling the sending of messages.

The tax is calculated on the basis of the duration of calls made from the number associated with a subscriber or, in the absence of a subscription, with the operator, and the number of messages sent. The act regulated the rate of the tax differentially. In the case of telephone calls made from a private phone number, the tax is HUF 2 per minute per call made. The tax is HUF 3 per minute per call when the call is made from a commercial phone number or a number associated with the operator. Messages are taxed at 2 HUF/item for private messages and at 3 HUF/item for commercial messages or messages from the operator. The act capped the tax at HUF 700/month/phone number for private subscribers and at HUF 5000/month/phone number for non-private subscribers and the operator. In the public interest, tax exemptions were granted for emergency calls, calls to a fundraising number and messages sent to a fundraising line. The first ten minutes per month of calls made from a private phone number are also exempt from the tax.

3.6 *The Special Taxes Introduced in 2014*

After the repeal of the 2010 turnover-based sectoral special taxes in 2013, the Hungarian state decided to introduce a new batch of similar taxes. This time, the insufficient state of public finances as caused by external and internal circumstances was not mentioned among the declared objectives of the tax measures. The advertising tax was introduced by Act XXII of 2014. It justified the taxation of income from the publication of advertising for consideration with reference to the need to impose more proportionate taxation on taxpayers. Act CXIV of 2014 introducing the so-called health contribution of tobacco undertakings (for 2015)[26] pursued several

[26] The Act entered into force on 1 February 2015 and expired on 31 December 2015.

declared objectives. These included, for example, the elimination of the harmful effects of tobacco consumption on health, the improvement of the quality of health care in Hungary and the provision of the necessary financial resources to achieve this aim, and finally, the specific objective of obliging tobacco companies to cover the significant increase in health expenditure resulting from the harmful effects of their products. By introducing the contribution, the Hungarian state also wanted tobacco undertakings to contribute to public expenditure in proportion to their economic strength (taxability). In Art. 1(2), the act expressly provided that the revenues from the health contribution can be used exclusively to finance the health subsystems of the central budget.

The advertising tax was originally levied in six progressive bands on the net turnover from the publication of advertising for the tax year.[27] The rate of the tax was set in Art. 5 as follows: 0% on the part of the tax base not exceeding HUF 0.5 billion; 1% on the part of the tax base exceeding HUF 0.5 billion but not exceeding HUF 5 billion; 10% on the part of the tax base exceeding HUF 5 billion but not exceeding HUF 10 billion; 20% on the part of the tax base exceeding HUF 10 billion but not exceeding HUF 15 billion; 30% on the part of the tax base exceeding HUF 15 billion but not exceeding HUF 20 billion; 40% on the part of the tax base exceeding HUF 20 billion. At the time of its entry into force, the act allowed for a reduction of the tax base for the 2014 tax year by 50% of the carry-forward losses of previous years, if the taxpayer's pre-tax profit was zero or negative in 2013 (Art. 10).

The original tax bands were abolished by Act LXII of 2015. The new provisions introduced two tax bands adjusted to the net turnover: 0% for the part of the tax base not exceeding HUF 100 million, and 5.3% for the part of the tax base exceeding HUF 100 million. When the taxable person is the undertaking commissioning the publication of the advertisement, the tax base was the costs directly incurred in connection with the advertisement's publication. In such cases, the tax rate was 5% of the tax base. Hungary introduced these changes autonomously in its own competences following the state aid investigation launched by the European Commission in 2015. When the taxable person is the advertising service provider (the service provider who undertook the publication of the advertisement), the new 2015 rules allowed (Art. 4) the taxable person to choose whether to apply the newly introduced tax bands from the date of entry into force of the original 2014 Act, or to be taxed at the previous tax bands in the tax year not covered by the new Act.

In 2017, following the closure of the Commission's state aid investigation, the rules on the advertising tax changed again. Act XLVII of 2017 provided that, where the tax is levied on media content providers or other persons with advertising space, the tax rate would temporarily (between 1 January 2017 and 30 June 2017) be 0%. It reinstated the tax burden on 1 July 2017, from which date the tax was imposed at a tax rate of 7.5% on the net turnover of the taxable persons concerned. For

[27] Art. 4 provides for two types of taxable amount: the net turnover from the taxable activity for the tax year (1) and, in the case of commissioning advertising services, the costs directly incurred in connection with the publication of the advertisement (2).

undertakings commissioning the publication of the advertisement, the new legislation did not introduce a similar a suspension period. The tax rate was fixed at 5%, with the proviso that the taxable amount is the part of the aggregate monthly income from the publication of advertising exceeding HUF 2.5 million. According to the 2017 provisions (Art. 5(3)), media content providers (or other persons with advertising space) are exempt from tax on HUF 100 million of their net turnover. This tax exemption was classified by the act as *de minimis* state aid, and it provided that it may only be claimed if the conditions of Commission Regulation (EU) No 1407/2013 on *de minimis aid* are met.

Art. 5/A of Act LXXIII of 2019 set the tax rate at 0% for the period from 1 July 2019 to 31 December 2022. The act also suspended the application of the relevant tax procedure provisions for this period. For media content providers, the act introduced a retroactive 0% tax rate for the period from 1 January 2017 to 30 June 2017. It also provided that the tax declared and paid for the tax years ending on 30 June 2017 shall be considered as an overpayment under the Act on the Rules of Taxation, the refund of which shall be subject to the tax refund rules of the same act. In addition, it held that tax declared but not paid for the tax years ending on 30 June 2017 does not have to be paid.

The health contribution of tobacco undertakings was imposed on legal persons engaged in the manufacture and sale of tobacco products in Hungary, or who carried out such activities in 2014. This was a fairly broad category of taxpayers. Its scope was clarified by the act specifying that only those undertakings were liable to pay the contribution whose net turnover from the manufacture and trade of tobacco products in 2014 was equal to or exceeded 50% of their total net turnover. The contribution payable in 2015 was based on the net turnover in the 2014 tax year. The rate was set in bands: 0.2% on the part of the tax base exceeding HUF 30 million but not exceeding HUF 30 billion; 2.5% on the part of the tax base exceeding HUF 30 billion but not exceeding HUF 60 billion; 4.5% on the part of the tax base exceeding HUF 60 billion. The act allowed specifically that the tax payable could be reduced by the amount of the investment expenditure incurred in 2014 (30% of the amount accounted for as investment in 2014 minus the amount of state or EU aid received for the investment), up to a maximum of 80% of the amount. The health contribution was extended to the 2015 tax year (and after) by Act LXXXI of 2015. It was finally repealed by Act CXXXV of 2016. Under the latter legislation, contributions already paid were refundable at the request of the taxpayer. This coincided with the closure of the state aid investigation by the European Commission with a negative decision.

The third turnover-based special tax introduced in 2014 was the modification of the food chain supervision fee introduced originally by Act CLXVI of 2011. Act LXXIV of 2014 modified the general legislation set out in Act XLVI of 2008 on the Food Chain and Official Supervision by regulating progressive bands for the fee. The legislator did not attach any explicitly stated specific policy or regulatory objective to the amendment. According to the amended provisions, the fee payable by retail units selling daily consumer goods (as defined in the Commercial Code) was: 0% on the part of the annual net turnover not exceeding HUF 500 million (approximately EUR 1.6 million); 0.1% on the part of the annual net turnover exceeding HUF 500 million but not exceeding HUF 50 billion; and 1% on the part of the annual net turnover exceeding HUF 50 billion but not exceeding HUF 100 billion; 2% for the part of the annual net turnover exceeding HUF 100 billion but not exceeding HUF 150 billion; 3% for the part of the annual net turnover exceeding HUF 150 billion but not exceeding HUF 200 billion; 4% for the part of the annual net turnover exceeding HUF 200 billion but not exceeding HUF 250 billion; 5% for the part of the annual net turnover exceeding HUF 250 billion but not exceeding HUF 300 billion; and 6% for the part of the annual net turnover exceeding HUF 300 billion. Following the Commission's negative state aid decision on the fee, the progressive band structure of the fee was repealed by Act CLXXXII of 2015. According to the new provisions, the rate of the fee is 0.1% of the net turnover from sales in the previous year. This corresponds to the regulation of the fee prior to its 2014 amendment.

3.7 The 2020 COVID-Crisis Special Taxes

The introduction of new special taxes in 2020 was justified by the Hungarian legislator with reference to the economic downturn caused by the COVID-19 pandemic and the concomitant challenges to public finances. The special tax on credit institutions linked to the epidemic situation was not in fact a separate tax. It was a modification of the special tax on financial institutions for the 2020 tax year, which increased the tax rate to 0.19% for the top tax bracket, i.e. the part of the tax base exceeding HUF 50 billion. As a parallel crisis tax measure, the government reintroduced the commercial retail tax phased out earlier in 2013. The emergency decrees 108/2020 on the special tax on credit institutions in the context of the epidemic situation and 109/2020 on the commercial retail tax were adopted under emergency powers to implement the so-called Economic Protection Action Plan, and within that objective to secure financial resources for the so-called Epidemic Fund. The former government decree was subsequently replaced by Act XLVI of 2020 and the latter by Act XLV of 2020. Under a third government decree,[28] which was also adopted under emergency powers, the remaining part of the motor vehicle tax (40%) was transferred from the budgets of local authorities to the central budget.

The base of the special tax on credit institutions was the balance sheet total of the second tax year preceding the 2020 tax year. The tax was payable in three instalments during 2020. The tax, which was incorporated into the provisions of Act LIX of 2006 regulating the special taxes of the financial sector, could be deducted from the special tax on credit institutions payable in subsequent tax years at the rate of 20% per year. The revised commercial retail tax covers both traditional and electronic retail, in particular the retail activities in Hungary of taxable persons established abroad. The tax is based on the net annual turnover from retail activities,

[28] Government Decree 90/2020.

plus the turnover of the supplier of the goods acquired for retail sale from the supply of services in connection with the sale of the goods acquired, plus the amount of the discount granted to the taxable person by the supplier of the goods acquired for retail sale. The tax rate is set in four progressive bands, copying the bands of the previous commercial retail tax: 0% for the part of the tax base not exceeding HUF 500 million; 0.1% for the part of the tax base exceeding HUF 500 million but not exceeding HUF 30 billion; 0.4% for the part of the tax base exceeding HUF 30 billion but not exceeding HUF 100 billion; 2.5% for the part of the tax base exceeding HUF 100 billion. In the top band, Act CLI of 2021 increased the tax rate to 2.7%.

Contrary to the original government decree, Act XLV of 2020 on the commercial retail tax does not include the pandemic and its effects among its objectives of taxation. Its declared objectives include general tax policy objectives, such as strengthening the role of consumption and sales taxes within the national tax system, reducing income taxes and the taxation of employment without undermining the balance of public finances, and applying taxation that is proportionate to the actual taxability of taxpayers. The tax was also justified with reference to the negative environmental impacts of retail activities. In contrast to the provisions of Act XLV of 2020, Act XLVI of 2020 on the credit institutions' special tax specifically identified as its objective the mitigation of the economic impact of the COVID-19 pandemic.

4 Responsiveness, Tax Policy and the Nature of the Hungarian Special Tax Measures

In light of the previous overview, the Hungarian special tax measures were introduced with the primary purpose of responding to the various challenges faced by domestic public finances. Their longer-term purpose was to enable a national tax policy that is responsive to the needs of its broader economic and social environment, as shaped especially by crises or specific crisis phenomena. In particular, the special taxes played an instrumental role in the restructuring of the tax system, aiming to enhance its competitiveness. Their introduction enabled the reduction of the overall tax burden and a crucial modification of the tax structure. Taxes on income, which discourage investment and labour market activity, could be reduced, and taxes on consumption could be increased, especially on consumption with negative externalities. As declared by the legislator, the special taxes were expected to implement the constitutional principle of proportionate public taxation. By targeting specific taxpayers (specific economic sectors), they can achieve their taxation objectives without undermining parallel economic and fiscal policy objectives, such as the fair taxation of small- and medium-sized enterprises or avoiding the overtaxation of the export sector. These sectors play a crucial role in maintaining the competitiveness and the resilience of the Hungarian economy.

From the perspective of the legal system, the response expected was fairly straightforward. Legislation had to be adopted to introduce new taxes in addition to the general tax burden. Legislation also had to ensure that the taxes are targeted and are therefore in line with the relevant fiscal and economic policy priorities. In modern Western tax systems, the introduction of taxes that increase tax revenues and that correspond with the priorities of the broader national policy framework, which aim to respond to economic and social changes and pressures, is considered to be an orthodox development. Western tax systems, which provide the basis and the main solutions of the European and global taxation and tax policy mainstream,[29] have been developed to increase tax revenues.[30] They abandoned formerly commonly used taxes, which generally undermined fiscal and economic policy objectives,[31] and introduced tax solutions[32] that are based on a sufficiently broad tax base and therefore make the collection of revenues particularly effective.[33]

In principle, the taxation favoured by the Western model is efficient, simple and neutral in its economic effects; it involves taxes that increase revenues without unnecessarily distorting market processes and without imposing intolerable administrative and other burdens.[34] Parallel considerations, such as the fairness or the equity of the tax burden for the individual or for society as a whole, enjoy lesser priority, and they are matters for the expenditure and not for the revenue side of the public finances.[35] However, there are local variants of the Western model that depart from the mainstream, for example to achieve objectives of local industrial or economic policy.[36] States are usually forced to introduce such taxation solutions as they compete with other states, often with their immediate neighbours to secure tax revenues or to realise crucial growth-oriented economic policy objectives, such as stimulating investment or labour market activity.[37]

In this light, the special taxes introduced by Hungary can be assessed as particular tax solutions that allow the state to increase its revenues while pursuing and supporting parallel tax and economic policy objectives. This assessment is affected neither by the perceived exceptional nature of the special taxes, nor by the fact that they aim to add a further burden to the general tax burden of taxpayers. Their characterisation as tax instruments that pursue what is essentially a mainstream Western taxation objective is unaffected by the disagreement surrounding the

[29] See, in particular, OECD Model Tax Convention on Income and Capital. https://bit.ly/3PCqXaS. On the general issue see Kaldor (1963), pp. 410–419.

[30] Genschel and Seelkopf (2016), pp. 316–344, 318, and the literature cited therein. See also Seelkopf et al. (2016), pp. 208–231.

[31] In particular, taxes on international trade.

[32] Such as personal income tax, the taxation of corporate income and value added tax.

[33] Genschel and Seelkopf (2016), p. 318.

[34] Genschel and Seelkopf (2016), p. 318.

[35] Genschel and Seelkopf (2016), p. 317.

[36] Genschel and Seelkopf (2016), p. 340.

[37] See Swank (2016), pp. 185–207.

additional taxation of corporate taxpayers within the Western model. The additional taxation of corporate taxpayers is usually defended by states the tax system of which suffers from a socially, economically and/or politically unacceptable undertaxation of these taxpayers. In other words, they are usually introduced when and where the national tax system fails to tax corporate income as expected.

Some Western jurisdictions responded to the problem of unacceptable and indefensible undertaxation by the introduction of so-called 'Robin Hood' or compensatory additional taxes.[38] These taxes, which are supposed to distribute the tax burden more fairly among taxpayers, aim to tax economic activities carried out in the national territory by residents and by foreign taxpayers, which latter are supposedly undertaxed, and equalise their respective tax burdens.[39] In the context of the OECD/G20 BEPS (Base Erosion and Profit Shifting) process,[40] which has confirmed the increasing of revenues as a central taxation objective,[41] it was accepted that in specific areas significantly affected by unfair undertaxation—for example in the digital economy—the introduction of such special taxes may be a legitimate response.[42] The relevant OECD preparatory material recognised the need for a digital special tax to equalise the tax burden, at least on a temporary basis.[43] However, lacking a global consensus the BEPS process did not officially endorse this form of taxation.[44] Digital equalisation special taxes were introduced only sporadically in individual countries.[45]

As presented earlier, official tax policy in Hungary has recognised the problem of unfair corporate undertaxation. However, it took notice of the problem only in the context of international taxation challenges. The special taxes have never been associated with an objective of equalizing respective corporate tax burdens. The legal measures regulating special taxes mentioned—in addition to the core objective of increasing revenues as necessitated by a crisis or similar situation—the objective of taxation that corresponds with the taxability of the taxpayer[46] targeted. This latter objective is clearly different from an objective of equalising the tax burdens of unjustifiably undertaxed corporate taxpayers. The Hungarian objective refers merely to the possibility that some taxpayers may have financial resources that could be subject to additional taxation having regard to the revenue needs of the state. The introduction of the special taxes is not based on an established case of unacceptable

[38] See Ismer and Jescheck (2017), pp. 382–390.

[39] See Kofler and Sinnig (2019), pp. 112–113.

[40] See OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting, https://bit.ly/3tckFpd.

[41] See Christians (2010), pp. 19–40.

[42] Kofler and Sinnig (2019), p. 114.

[43] See 2015 OECD BEPS Action 1 Report. https://bit.ly/3wzzvIf.

[44] See Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy. https://bit.ly/3GmeCnn.

[45] Kofler and Sinnig (2019), p. 106.

[46] Its assumed objective financial capacity to pay the tax.

undertaxation,[47] but rather on an assumption of extra taxability, i.e. that more can be taken away from them than from other taxpayers.

From a legal perspective, corporate equalisation taxes, which most often amount to an additional compensatory taxation of internationally mobile taxpayers not established in the national territory, may raise controversies, especially when their application is considered. It has been suggested that there is a significant risk that such tax measures may be used in a discriminatory and abusive manner by the state exercising its taxing powers.[48] The same risks may also be present in the application of the Hungarian special taxes. In fact, the risk of discriminatory or abusive use may even be higher considering that they were not introduced to address established cases of unfair and unacceptable undertaxation. The Hungarian special taxes aim to implement an unspecified principle of proportionate taxation by targeting more successful corporate taxpayers with higher tax burdens based on an assumption that they can pay more taxes than others, including their competitors in the national market. The application of the Hungarian taxes is not based on a precisely established actual taxability of taxpayers, therefore, when levied, they may function as mere fiscal penalties imposed on corporate size and a presumed corporate success.

5 Conclusion

The Hungarian special taxes were introduced during a period when there was a clear need to increase tax revenues. The economic and the social environment of the fiscal system had faced several crises, public finances were in deficit, and public debt remained high and increased again after occasional decreases. In this period, the clear objective of tax policy was to respond to these challenges and to changes in the economy and society and in public finances through taxation and the redesigning of the tax structure. From this perspective, the special taxes provide evidence of the responsiveness of the Hungarian tax system. They secured additional, permanent or temporary revenues for the central budget, and these revenues allowed the government to respond to the challenges of the time that had arisen from economic and social crises and other pressures. In general, the introduction of special taxes did not cause major complications for the Hungarian legal system. Tensions only arose with the introduction of the turnover-based progressive taxes. Their regulation does not guarantee that their actual tax effects coincide with their declared tax objectives. Therefore, it cannot be ruled out that their application—as concealed by the legislation—will not be discriminatory and abusive.

---

[47] Although the special taxes imposed on digital economy operators, such as the advertising tax or the new commercial retail special tax, may implicitly be justified by a case of undertaxation.

[48] See Stevanato (2019), pp. 538–546.

References

Christians A (2010) Taxation in a time of crisis: policy leadership from the OECD to the G20. Northwestern J Law Soc Policy 5(1):19–40
Deák D (2014) Legislating unorthodox taxes: the hungarian experience. Soc Econ 36(3):339–368
Genschel P, Seelkopf L (2016) Did they learn to tax? Taxation trends outside the OECD. Rev Int Polit Econ 23(2):316–344. https://doi.org/10.1080/09692290.2016.1174723
Ismer R, Jescheck C (2017) The substantive scope of tax treaties in a post-BEPS world: Article 2 OECD MC (taxes covered) and the rise of new taxes. Intertax 45(5):382–390
Kaldor N (1963) Will underdeveloped countries learn to tax? Foreign Affairs 410–419
Kofler G, Sinnig J (2019) Equalization taxes and the EU's digital services tax. In: Haslehner W, Kofler G, Pantazatou K, Rust A (eds) Tax and the digital economy: challenges and proposals for reform. Wolters Kluwer, Alphen aan den Rijn, pp 101–146
Restoring the competitiveness of the Hungarian tax system in the 2010 (2021) Ministry of Finance, Budapest
Seelkopf L, Lierse H, Schmitt C (2016) Trade liberalization and the global expansion of modern taxes. Rev Int Polit Econ 23(2):208–231. https://doi.org/10.1080/09692290.2015.1125937
Stevanato D (2019) Are turnover-based taxes a suitable way to target business profits? Eur Tax 59(11):538–546
Swank D (2016) The new political economy of taxation in the developing world. Rev Int Polit Econ 23(2):185–207. https://doi.org/10.1080/09692290.2016.1155472