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Parallels of the Development of Tax Law in Slovakia

Laudation for Professor Włodzimierz Nykiel

I have known Professor Włodzimierz Nykiel for more than 40 years. We have been regularly meeting at different academic events in Poland and Slovakia. Especially in the past, our lively professional discussion was concerned with the emancipation of tax law from financial law and its development towards a separate branch of law. In our professional work, we have been defending the notion that tax law is indeed a separate branch of law, I in Slovakia and Professor Nykiel in Poland. I am still convinced that the current development of tax law cannot be stopped. Therefore, I still firmly hold to the same views as before, which, in my opinion, have been confirmed by social changes in both countries since 1989.

1. Introductory thoughts[2]

At the beginning of 2021, almost three decades had passed since the start of the tax reform, in Slovakia, which we may call the first reform. In 1992, in which the work on tax reforms began, we witnessed the increased attention of the public and scientific community to matters relating to taxation. The

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number of changes that were implemented through the tax reform of 1992 we have not since seen – maybe except for the year 2004. The year 2004 is inseparably connected with Slovakia joining the European Union (EU). Nevertheless, we believe that the quality of change that happened in 1992 in comparison to 2004 was greater.

In 1992, new tax law institutions that mark the beginning of independent tax law were introduced. After the reform of 1992, all previous tax laws were abrogated. The tax law became one of the most dynamically developing branches of the Slovak legal order. Moreover, many changes in the system of taxes were made. Beginning in 1993, the former taxes were all replaced by new ones that, although resembling the former taxes on objects of taxation (business income, ownership of property), widely differ in their legal construction to the extent that their similarities are only peripheral. After all, currently there exists no tax that has the same designation/name as any of the taxes that were imposed before 1992.

Many new tax law institutions were introduced (e.g., tax execution, tax advisors, new remedies, etc.).[3] In addition, we could mention one fact that is often overlooked. After 1992, the whole system of taxes was generally set out by the Law on the Tax System.[4] In that period, the Law on the Tax System was the "basic norm" of the tax law or the "tax law constitution" providing that no other taxes could be imposed except the ones directly stipulated in this law.[5] It contributed to one of the major principles of the tax law, namely, legal certainty for taxable entities. This legal certainty was based on the guarantees that no other taxes than those mentioned in this law would have been imposed. This could have effectively limited government spending, which could not rely on the possibility of introducing new taxes. Over time, this important principle was forgotten. Sadly, the Law on the Tax System was derogated on 1 September 1992. This opened the way for the government and parliament to introduce several new taxes. It could serve as an example of how the economic interests of certain ruling groups, even the personal interests of politicians, adapt and in some cases warp the general principle of taxation widely accepted by tax law theory.[6]

[3] Concerning the impact of tax reform on forming independent tax law, see: V. Babčák, *Slovenské daňové právo*, EPOS, Bratislava 2012, p. 42.

[4] SK, Law of 15 April 1992 on System of Taxes [*Zákon o sústave daní*], Collection of Laws 1992, No. 212, amended.

[5] See: V. Babčák, *Daňové právo a príprava daňovej reformy v Slovenskej republike*, "Acta Universitatis Carolinae: Iuridica" 2003, No. 3–4, pp. 9–26.

[6] See: V. Babčák, *The Public Financial Interest in Slovak Republic (Certain Reflections)*, [in:] E. Lotko, U.K. Zawadzka-Pąk, M. Radvan (eds), *Optimization of Organization and Legal Solutions Concerning Public Revenues and Expenditures in Public Interest*, Temida 2, Białystok 2018, pp. 25–37.

Changes in normative areas themselves could not guarantee the forming of an independent status of tax law as a separate branch of law. In addition, this development was the object of many discussions in the academic community and members of the public. For a typical person, it is not overly important whether tax law is or is not an independent branch of law. On the other hand, many questions related to taxation have become more visible in the public eye through the years following the tax reform of 1992. Immediately after 1992, tax justice and the impact of taxation on business started to be widely discussed in public. This discussion only intensified with the passing of time. The public sometimes subconsciously started to realize the importance of tax regulation and its impact on the existence and development of society. It must be openly admitted that the independent status of tax law was challenged by some members of the academic community – who held conservative views in the mould of "what once was must remain the same" – therefore the academic community has been rejecting this qualitative and fundamental change of Slovak legal order. In our opinion, the change in the position of tax law was created (and proved necessary) by the evolution of the society and economic relations along with the complex evolution of the legal order.

The process of creating tax law as an independent branch of Slovak law was justified and necessary. It was part of Slovakia's preparation for joining the European Union, which happened on 1 May 2004. This work led to the introduction of several new concepts into national taxation. Moreover, it confronted tax law with new requirements that have not been wholly accepted due to the fear of a loss of tax sovereignty constituting state sovereignty.

Although important from a political-economic perspective, EU membership for Slovakia did not carry the significant or revolutionary change for tax law the 1992 reform held. It follows from the fact that even before joining the EU, Slovakia was required to adapt its national legislation in accordance with EU law (both material and procedural norms of tax law). Therefore, new legislation concerning harmonized indirect taxes[7] was introduced half a year before joining the EU in 2004. Moreover, that year witnessed the introduction of fiscal decentralization also with the introduction of local taxes and a new basis for the system of local duties (more precisely, the number of local duties was limited). Although these changes were significant, they did not exceed the importance of the tax reform of 1992.

[7] Former value added tax and excise tax(es) of 1992 significantly differ in their actual legal construction from the current taxation instruments known under this name today.

2. Present state of the Slovak tax law

Especially due to tax reform performed in the years 1992 and 1993, the tax law has exceeded the boundaries of financial law. It can be viewed as a natural, necessary, and irreversible development.[8] Professor Suchoža, one of the leading lawyers and academics in commercial law in Slovakia, noted: "the development of law in Slovak Republic provides enough reasons to believe that the traditional criteria by which the legal order (and legal theory) was measured including the creation and systematization of legal branches have been overcome."[9] We consider the outward (phenomenological) structure of the legal order and the relationships between its structural parts still to be an important academic topic. Sadly, broader academic discussions concerning these matters are currently lacking and we believe that it is our academic duty to pose these questions. Only an exchange of different opinions can provide an incentive for the future development of legal science and the science of tax law.

It takes roughly ten years until an independent body of norms that constitutes the tax law has been formed. This process was in our opinion finalized by the introduction of the Law on Tax Organs in 2001.[10] The law as a first competence legislation introduced the notion of "tax organ" (until then the notion of local financial organs was used). Moreover, the law introduced the term "tax proceedings" for a kind of procedure in which tax organs act and decide. Until then, no legislation used similar terms. In addition to that, the law began to distinguish between tax proceedings and administrative proceedings.[11] Unfortunately, the legislator later stopped using the term "tax organs" and, according to current legislation, this notion was replaced by the notion "organs of financial administration."[12]

[8] See: V. Babčák, *Daňové právo na Slovensku a v EÚ*, EPOS, Bratislava 2019, pp. 57–85; *idem*, *Nalogovoje pravo Slovakii*, [in:] *Nalogovoje pravo stran vostočnoj Evropy*, Wolters Kluwer, Moscow 2009, pp. 196–243; *idem*, *Tax Law Creation as a Result of Partial Atomization of Financial Law in Slovakia*, [in:] M. Radvan (ed.), *System of Financial Law. System of Tax Law*, Masaryk University Press, Brno 2015, pp. 29–44.

[9] J. Suchoža, *Hraničné problémy finančného práva a práva hospodárskeho*, [in:] M. Štrkolec (ed.), *Aktuálne otázky finančného práva a daňového práva v Českej republike a na Slovensku*, UPJŠ, Košice 2004, p. 11.

[10] SK, Law of 6 April 2001 on Tax Organs [*Zákon o daňových orgánoch*], Collection of Laws 2001, No. 150, amended.

[11] See: Paras. 4(3)(c) and 4(3)(d) SK, Law of 6 April 2001 on Tax Organs [*Zákon o daňových orgánoch*], Collection of Laws 2001, No. 150, amended.

[12] Para. 2(2) of SK, Law of 5 December 2018 on Financial Administration [*Zákon o finančnej správe*], Collection of Laws 2019, No. 35, amended.

At the first glance, it could seem like we are discussing some unimportant questions concerning tax law, at least for a reader who is not acquainted with the problem at hand. It is important to realize that tax proceedings were regulated by general administrative rules until the end of 1993. With that in mind, the importance of the regulation of tax proceedings suddenly started to be significant. Still, there are those who believe that tax proceedings are a special type of administrative procedure.[13] It could only be viewed as a relic of the conservative approach of certain representatives of administrative law. Certainly, it is less difficult to adhere to the old-fashioned views about certain structural and systematic questions concerning legal order than to start thinking about new changes of law that result from socio-political and economic development. Without a new way of thinking, we would still be stuck with the opinions that belong to the beginning of the previous century.

In a practical sense, the development of procedural regulations of tax law in Slovakia has taken a different course of action. The Law on Tax Administration of 1992[14] excluded the application of general administrative procedural rules (e.g., Law No. 71/1967 Coll. on Administrative Proceedings[15]) regarding tax proceedings.[16] This approach was also adopted by the current procedural legislation, i.e., the Tax Procedure Code of 2012.[17] The procedural norms of tax law, in our opinion, played an important role, even a decisive role, in the separation of tax law from the scope of financial law (and further in history from administrative law). Through these new procedural norms, the material norms governing tax rights and obligations have started to be fully realized.

We can ask to what extent legislative organs contribute to the increase of the importance of tax law and whether it was caused by other factors. At first glance, it is more theoretical in the sense that it does not offer an exact answer. In my opinion, we cannot make a strict distinction between the role of legislative organs and of other factors influencing the constitution of an independent tax law. One of these other factors is accepting an independent tax law as a separate legal branch, as supported by public

[13] See: V. Babčák, *K podstate daňového konania a jeho vzťahu k správnemu konaniu*, "Justičná revue" 2000, No. 8–9, pp. 914–925; *idem*, *Úvahy o vzťahu daňového, finančného a správneho práva*, [in:] M. Kiovská (ed.), *Pocta profesorovi Gašparovi*, UPJŠ, Košice 2008, pp. 11–20.

[14] SK, Law of 30 September 1992 on Tax administration of taxes and fees [*Zákon o správe daní a poplatkov*], Collection of Laws 1992, No. 511, amended.

[15] SK, Law of 29 June 1967 on Administrative Proceedings [*Zákon o správnom konaní (správny poriadok)*], Collection of Laws 1967, No. 71, amended.

[16] See: Para. 101 of SK, Law of 30 September 1992 on Tax administration of taxes and fees [*Zákon o správe daní a poplatkov*], Collection of Laws 1992, No. 511, amended.

[17] See: Para. 163 of SK, Law of 1 December 2009 on Tax Procedure Code [*Zákon o správe daní (daňový poriadok)*], Collection of Laws 2009, No. 563, amended.

opinion surveys. This opinion concerning tax norms hugely differs from the view held in the past. The change in public opinion resulted from the transfer of personal responsibility for material and financial well-being of an individual away from the state and shifting this responsibility to the individuals who at the same time play the role of bearers of new tax obligations. These new tax obligations include an obligation to register for a tax, an obligation to fill out a tax return, and so on. Although several of the procedural obligations did exist in the previous regime, the level of sophistication and difficulty of these legal relationships between taxable entities and the state or municipalities has become much higher. These relationships had to adapt to the requirements of new means of communication and information technology.

On the other hand, the option of creating one unified taxation instrument concerning natural and legal persons became possible (e.g., in the case of income taxation, the specific taxes such as tax on income from employment, tax on income from literary and art activities, tax on income of citizens, and tax on income from agriculture have been transformed into one tax on income; a similar situation happened in relation to the tax on income of legal persons).[18]

An important factor determining changes in tax matters has been changes in the system of government and planning. The transformation into a market economy, later joining the EU common market with distinct freedoms, led to an increase in Slovak legislative activity and contributed to the establishment of the principles and rules on which the current state tax policy is based (although these principles and rules are not codified). It is worth mentioning that a new rule has come into effect according to which new tax laws may come into effect and become binding only as of 1 January of a calendar year. As Art. 8(9) of the Legislative Rules of the Government of SR stipulates:[19] "In the case of law that regulates taxes or duties, it is required to set the date when the law comes into force on 1 January and a sufficient *vacatio legis* period shall be provided." We have stressed the importance of the introduction of such a rule several times in the past.[20]

[18] Contributions to the state budget (contributions on employment income, regulatory and price contributions), pensionary tax, agricultural tax.

[19] SK, Government resolution of 4 May 2016 on Legislative Rules of the Government of Slovak Republic [*Legislatívne pravidlá vlády Slovenskej republiky*], No. 164, amended.

[20] See: V. Babčák, *Úvahy o možnostiach daňového práva ovplyvňovať podnikateľské vzťahy najmä pri zdaňovaní príjmov*, [in:] J. Suchoža. J. Husár, R. Hučková (eds), *Právo, obchod, ekonomika VI*, UPJŠ, Košice 2016, pp. 8–34; *idem*, *Zamyslenie sa nad daňovou politikou (Slovenska/EÚ) z hľadiska jej vplyvu na daňové subjekty*, [in:] V. Babčák, A. Popovič, J. Sábo (eds), *3. slovensko-české dni daňového práva. Pozitívna a negatívna stimulácia štátu v oblasti zdaňovania*, UPJŠ, Košice 2019, pp. 11–41.

After the tax reform of 1993, tax law got rid of the high quantities of bylaws. Seldom does tax law employ government ordinances, especially in the case that certain provisions of tax law need to be more specified without directly impacting the rights of individuals. The SR Constitution[21] is clear on that issue and Para. 13(1) requires that an obligation be imposed only by law or on the basis of a law, within its limits, and while complying with basic rights and freedoms, by an international treaty or by a government ordinance. Government ordinances are adopted also when exceptions from a certain rule are provided, for example, regarding the extinction of tax arrears (which cannot be considered as going against the rights of taxable entities).[22] The Tax Code[23] states that the Government of the Slovak Republic shall lay down the conditions of extinction of tax arrears and cases in which tax arrears corresponding to an unsettled sanction pertaining to this tax shall become extinct for taxable entities who settled at least the tax within the period specified in the regulation.

In the area of tax law, decrees are rarely used except for excise taxes and income taxes. Every decree needs to have a statutory base for its adoption. The function of these decrees is to specify in more detail the rights and duties of legal subjects, for instance, when conditions for labelling of control stamps used on alcohol packaging, tobacco products, or duties concerning notification and publication of data or requisites for denaturing alcohol, and requirements for standards of mineral oil loss or tax return forms are set out (including the method of calculation), etc. In the case of income tax, decrees of Slovakia's Ministry of Finance are sporadically issued. Such decrees include, for example, methods for marking a tax payment, details concerning the verification of financial accounts, or they are used for issuing a binding opinion.

[21] SK, Constitution of Slovak Republic of 1 September 1992 [*Ústava Slovenskej republiky*], Collection of Laws 1992, No. 460, amended.

[22] E.g., SK, Government Ordinance of 14 September 2005 on Arrears on unpaid tax sanctions [*Nariadenie Vlády o zániku daňového nedoplatku zodpovedajúceho nezaplatenej sankcii prislúchajúcej k zaplatenej dani*], Collection of Laws 2005, No. 450 or SK, Government Ordinance of 7 June 2006 on Tax Arrears on unpaid sanctions imposed along the inheritance tax and tax on transaction of property [*Nariadenie Vlády o zániku daňového nedoplatku zodpovedajúceho nezaplatenej sankcii prislúchajúcej k zaplatenej dani z dedičstva, dani z darovania a dani z prevodu a prechodu nehnuteľností*], Collection of Laws 2006, No. 418 or SK, Government Ordinance of 15 April 2015 on Tax Arrears on unpaid sanctions imposed alongside value added tax [*Nariadenie Vlády o zániku daňového nedoplatku zodpovedajúceho nezaplatenej sankcii prislúchajúcej k zaplatenej dani z pridanej hodnoty*], Collection of Laws 2015, No. 90.

[23] SK, Law of 1 December 2009 on Tax Procedure Code [*Zákon o správe daní (daňový poriadok)*], Collection of Laws 2009, No. 563, amended.

Before 1989, by-laws were often used instead of laws in tax practice. This was most striking in the case of procedural regulations. The Ordinance on Tax and Fee Proceedings of 1962[24] had been in force for three decades. At the present time, it would be inconceivable that legislation of a lesser legal force should oblige taxable persons to perform such procedural duties, e.g., such as filing a tax return. Moreover, it is currently unthinkable that the tax law would confer to the government a power to adjust the percentages of tax rates as it seems fit to the government, especially when the observance of legality and legal certainty of tax subjects is to be respected.

Frequent changes in tax laws in Slovakia cause serious problems in the field of knowledge, implementation, and application of tax law. Therefore, tax law as a part of Slovak law is characterized by significant instability. Frequent amendments of tax regulations diminish the value of legal certainty[25], and at the same time, cause deviation from the clarity requirement of tax legislation.

Frequent changes in tax legislation were justified at the beginning of Slovakia's membership in the EU given that Slovakia had to adapt to different tax rules. Even with the best effort, such adaptation to the new legal tax framework took some time. Tax administrators were also confronted with frequent changes in procedural tax law. For example, The Act on the Administration of Taxes and Fees of 1992[26] used to be modified at least three times each year, not to mention its indirect amendments. Along with these changes, new laws on excise duties, a new law on income tax of 2003, along with a new law on local taxes were introduced at the end of 2004.

Thus, tax administrators and the entire tax system faced a challenge of how to implement these new rules into everyday practice.

3. Perspectives of Slovak tax law

A new quality level of tax law can be detected after 1 May 2004. Until then, the tax law was primarily concerned with domestic regulation of the rights and obligations of taxable persons (with the exception of issues

[24] SK, By-law of Ministry of Finance of 15 February 1962 on Proceedings concerning taxes and fees [*Vyhláška Ministerstva Financií o konaní vo veciach daní a poplatkov*], Collection of Laws 1962, No. 16, amended.

[25] See: Para. 22(2) of SK, Law of 11 December 1952 on Tax on income from employment [*Zákon o dani zo mzdy*], Collection of Laws 1952, No. 76, amended.

[26] SK, Law of 30 September 1992 on Tax administration of taxes and fees [*Zákon o správe daní a poplatkov*], Collection of Laws 1992, No. 511, amended.

concerning international double taxation). In the previous period, as a sovereign state Slovakia freely decided the questions concerning the weight of the tax burden that was imposed on taxable persons or tax rules governing its tax system.

Significant shift in these circumstances occurred after 1 May 2004. Suddenly, national tax legislation had to adhere to the rules of EU law, mainly regarding indirect taxes and partially direct taxation.

Development of the tax law – in a normative and a scientific sense – was affected in two ways:

1) close interconnection between EU law and Slovak law,
2) greater influence of EU law and international law on fundamental aspects of tax law.

Both factors naturally have their roots in EU membership. On the other hand, these factors could create great legal uncertainty for tax residents and non-residents performing their business activities in Slovakia. This uncertainty was rooted in frequent changes of tax legislation which Slovak businesses were not accustomed to in the past. It is not surprising that certain business circles are sceptical about the suitability of certain decisions on the part of EU institutions regarding taxes and to measures that have been adopted by the government during the past 10–12 years.

The Slovak economy faces a great number of cases of tax avoidance and evasion. The latter are mainly related to VAT, in respect to which it is simpler (at least at first glance) to evaluate the tax gap than in the case of income tax. We believe that from a quantification standpoint, the negative effects of tax avoidance and evasion in respect to indirect taxation (including cases of tax fraud) are comparable to the effect that tax avoidance and evasion have on income taxation. It is easier to quantify the missing VAT than relatively accurately estimate the unpaid amount of corporate income tax.

Despite the introduction of various new prevention mechanisms, tax evasion has not been eliminated. For example, over time Slovakia has shown a great tax gap on value added tax – the estimated difference between the potential tax revenue that is to be expected to be collected, providing taxable persons adhere to the tax norms, and the actual collected tax. This corresponds to the data of the Institute of Financial Policy of the Ministry of Finance. According to the preliminary estimate, the tax gap on VAT in 2008 reached 26.9%. In nominal terms, the difference between potential and actual collected tax revenue from VAT was estimated at EUR 2.3 billion for 2018 (2.6% of the GDP).[27]

[27] See: Institute Financial Policy of the SK Ministry of Finance, *Tax gap in case of VAT*, Bratislava, May 2009.

In recent years, various measures for combating tax fraud on VAT were introduced. We could mention several measures that cause a major upheaval, especially between businesses. One example is the obligation to provide a guarantee before registration as a VAT taxpayer. Although the directive on VAT[28] gives Member States the power to introduce measures for the proper collection of VAT, it does not stipulate specifically the measure in question.

The tax guarantee on VAT was introduced in 2012[29] and it was abrogated in 2019.[30] The amount of guarantee required for a period of 12 months was between EUR 1,000 and EUR 500,000 depending on the risk of tax abuse posed by the registrant. The embarrassment caused by this measure led to its derogation. According to the explanatory memorandum[31] on the novelization of the Law on VAT[32], the guarantee was abolished since it had fulfilled its goal – to eliminate tax fraud caused by newly registered taxpayers. Considering the troubles that continue to stem from VAT tax fraud, this explanation sounds comical as well as absurd. We believe that the guarantee should never have been introduced into Slovak legal system since it complicated the circumstances for business activities even more. In addition to that, it undermined the tax certainty of businesses. This conclusion is illustrated by vague terms governing the discretional power of the tax authority regarding guarantees: "the tax administrator shall take into account the risk of VAT fraud." The cited procedural norm does not provide any sufficient reasons on how to justify the amount of tax guarantee required from a taxpayer in a certain situation (even for a person that is not accustomed to the tax law, it sounds vague at best).[33]

A reverse-charge mechanism introduced in respect to the commodities that most often are used in a fraudulent transaction, the introduction

[28] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Official Journal EU L 347, 11 December 2006, p. 1, amended.

[29] SK, Law of 26 July 2012 on Amending of Law on Value Added Tax [*Zákon ktorým sa mení a dopĺňa zákon č. 222/2004 Z. z. o dani z pridanej hodnoty*], Collection of Laws 2012, No. 246.

[30] SK, Law of 29 November 2018 on Amending of Law on Value Added Tax [*Zákon ktorým sa mení a dopĺňa zákon č. 222/2004 Z. z. o dani z pridanej hodnoty*], Collection of Laws 2018, No. 369.

[31] See: Explanatory memorandum on SK, Law of 29 November 2018 on Amendment of Law on Value Added Tax [*Zákon ktorým sa mení a dopĺňa zákon č. 222/2004 Z. z. o dani z pridanej hodnoty*], Collection of Laws 2018, No. 369, p. 21.

[32] SK, Law of 6 April 2004 on Value Added Tax [*Zákon o dani z pridanej hodnoty*], Collection of Laws 2004, No. 222, amended.

[33] See: V. Babčák, *Daňové právo verzus podnikateľské prostredie*, [in:] P. Mrkývka, J. Gliniecka, E. Tomášková, E. Juchniewicz, T. Sowiński, M. Radvan (eds), *The Financial Law towards Challenges of the XXI Century*, Masaryk University Press, Brno 2020, pp. 301–326.

of a VAT control report and an institution of VAT collateral[34] are other measures aiming to tackle VAT fraud.

Similar tendencies could be observed in relation to tax evasion on corporate income tax. Corporate income tax revenues also suffer from many tax evasion and avoidance practices in the form of unlawful modification of a tax base, hiding of taxable income, failure to fill out a tax return, and due to relocation of the seat of a company abroad. According to the data provided by the consulting company Bisnode, the number of companies with seats located abroad was 4,113 in 2014 and since then this number increased to 5,298 as of 2020.[35]

One could suppose that the pandemic would have slowed down the speed by which companies relocated their seats to other countries commonly designated as tax havens. However, the opposite is true. The number of companies with their seats in the United States increased although it was a country heavily affected by the pandemic. As of today, the total number of companies with Slovak ownership that have their seats in the US is 1,406[36] (which is an increase of 178 companies).[37] Why this is the case? The reason for this situation is a long-term underestimation of an increase in the severity of tax legislation and its adverse effects on businesses by state authorities. The severity of tax legislation might be justified. Besides, tax laws also show an increase in difficulty and ambiguity of tax norms whose interpretation is problematic even for tax authorities. In addition, there are systematic failures in the form of introduction and soon cancelation of new tax institutions, without proper explanation from the state. One of such institutions was the tax licence, which also contributed to the current situation of many businesses relocating their seats, even ceasing to exist altogether. The tax license constituted an obligation to pay minimal tax for every registered business company. The tax license was introduced in 2004 and after three years it was abrogated by novelization of the law on income tax.

The relocation of companies to so-called tax havens is one of the major factors that are used by state authorities for justification of the increase in the severity of tax regulation. Businesses understand this trend as a breach

[34] See: M. Štrkolec, *Zabezpečovacie inštitúty pri správe daní*, UPJŠ, Košice 2017, p. 164.

[35] http://www.bisnode.sk/wp-content/uploads/2013/11/Tlac_raje_Q3.pdf (accessed: 5.03.2021).

[36] *Ibidem*.

[37] FinReport, *Počet slovenských firiem so sídlom v daňových rajoch rastie aj počas krízy*, 2020, https://www.finreport.sk/financie/pocet-slovenskych-firiem-so-sidlom-v-danovych-rajoch-rastie-aj-pocas-krizy/ (accessed: 22.11.2022); TASR, *Analýza: V daňových rajoch je viac ako 5000 slovenských firiem*, https://www.teraz.sk/najnovsie/analyza-v-danovych-rajoch-je-viac-ak/525193-clanok.htm (accessed: 22.11.2022).

of their freedom to conduct business, which is guaranteed under national and EU law. Similar trends could be also identified with respect to VAT (for example, in the case of the introduction of VAT guarantee or additional conditions for VAT registration).[38]

Besides relocation, a great number of companies were dissolved. We think that the reason for the increase in the number of dissolved companies cannot be justified solely by the pandemic, but also was caused by several other factors. This conclusion is supported by data collected since 2012:[39]

Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Number of dissolved companies	4,822	4,912	7,255	8,964	8,883	8,915	5,249	4,099	4,154	608

We believe that the tax system of every state shall support and not hinder the economic growth of that state. In that respect, the tax system in a broader sense (taxes, system of tax authorities, and mechanisms of tax administration) must be stable. The stability of the tax system depends upon economic, social, and legal relationships that exist in the economy. For the stability of the tax system, the government along with the Parliament and other state organs, each within its own capacity, are responsible.[40]

A stable tax system should respect certain criteria and be built upon certain principles which reflect the tax policy of a certain state. They should not be affected by political changes recurring after election victory of some political parties.

Stability must be granted for the whole system of legal norms (both material and procedural) that constitute tax law. We believe that requirements for stability of tax law in Slovakia are as follows:

1) legal certainty shall be guaranteed for taxable entities and be based upon longevity of tax rules;

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[38] SK, Law of 26 July 2012 on Amending of Law on Value Added Tax [*Zákon ktorým sa mení a dopĺňa zákon č. 222/2004 Z. z. o dani z pridanej hodnoty*], Collection of Laws 2012, No. 246.

[39] *Štatistika vzniku a zániku firiem a živnostníkov*, 2023, https://finstat.sk/analyzy/statistika-poctu-vzniknutych-a-zaniknutych-firiem (accessed: 5.03.2021). Number of dissolved companies include: limited liability companies, joint stock companies, co-operatives, societas europaea, general commercial partnerships and limited partnerships. From the chart it is evident that the number of dissolved companies culminated in the years 2017–2019. This situation was caused by the introduction of tax licences in 2013, which was effectively abolished as of 1 January 2018. Since then the number of companies returned to the level of 2014.

[40] E.g., it shows an effort to relocate the seat of a company or part of the business.

2) only one date per year shall be set for all tax legislation to come into force or be changed – currently this date is 1 January of a year;

3) all indirect changes of tax laws through other legislation shall not be permitted;

4) the tax system shall be simple and easy to understand;

5) increase in severity of tax laws shall be avoided – otherwise tax legislation would be prompting taxable persons to bypass tax laws that prove to be too strict.

Stability in the tax system contributes to the elimination of injustice and discrimination in taxation. Multinational companies are often present with better conditions for taxation than local businesses. Such a case constitutes an unjust privilege for multinational companies by the state.[41] Stability in tax law promotes the idea of tax prevention. In that respect, we share the belief that prevention requires less economic and administrative costs than ex-post therapy. This view is true for all forms of tax prevention (tax audit, forfeit of certain goods, etc.). What is particularly dangerous is the very low level of awareness about legal matters existing in Slovak society (understandable in its own right).

4. Instead of conclusion

Slovakia's entry into the EU required tax authorities to implement new tax mechanisms. The differences between Slovak's legislation and European legislation are:

1. Some of the EU legal acts are directly applicable in Slovakia.
2. Some of the EU legal acts (mainly directives[42]) contain provisions that must be implemented by the acts of the Slovak Parliament into a national legal order.
3. Some tools and mechanisms set out in the legal acts of the EU are facultative in the sense that it is up to the Parliament whether, when, and in what form they would be implemented into tax practice. Such national measures may never conflict with EU law. There were several occasions when the Slovak Parliament employed facultative measures of EU law, for

[41] Slovakia ceased to be considered a state with a preferential tax regime according to academic papers and the press. See: L. Leservoisier, *Daňové ráje*, HZ, Prague 1996, p. 9. See: E. Burák, *Daňová prevencia – v príkladoch z praxe*, Ján Šindléry – TESFO, Ružomberok 2014, p. 32.

[42] See: J. Sábo, *Smernica o úrokoch a licenčných poplatkoch v práve Českej republiky a Slovenskej republiky*, "Acta Universitatis Carolinae: Iuridica" 2018, No. 1, p. 145.

example we could mention the poorly framed introduction of guarantee on VAT based upon Art. 273 of the Directive 2006/122/EC.

State power in Slovakia should be promoting a balanced approach and the adoption of long-term tax policy in Slovakia. It follows from Para. 3(1)(a) the Law on Financial Administration[43] according to which the Ministry of Finance, is a central authority for the administration of taxes, duties, and customs, and prepares strategy for taxes and duties. The strategy shall find its expression in the text of concrete tax laws notwithstanding the nature of the law. From the recent past, one of the more renowned documents is *For a Modern and Successful Slovakia*,[44] which was prepared by the Ministry of Finance in 2020. This document includes provisions named *Fiscal reform*. However, it seems the document did not obtain the necessary support in the governing coalition.

According to the document, one of the main goals in the area of taxation is the promotion of tax discipline. The document stresses the importance of tax reform based on the increase of property taxation and environmental taxation along with the abrogation of taxes that are harmful for the economy. The document is a proclamation on the importance of the introduction of a mix of several taxes,[45] which could guarantee economic growth. Tax reform that was repeatedly publicly announced has not been implemented. The government justifies this inaction with the COVID-19 pandemic.

Finally, I would like to highlight certain open challenges that presently stand before the tax law and before the academic community in Slovakia. These challenges are systemic in nature. They are not secondary problems in the tax law that could be simply removed via small changes in tax legislation.

Challenges posted by the EU and the European Commission we leave omitted, which is wholly understandable. They represent long-term unresolved tax issues and several of them are not on the EU's current agenda due to the ongoing pandemic. Several other issues of EU taxation that had been proposed in the past 10–15 years ended up in failure. Often the failure was caused by the lack of a clear logical goal of the proposed changes. These problems were often recognized by the academic community that was often able to better evaluate the quality of the proposed measures than politicians. The EU tax policy often misjudges the response

[43] SK, Law of 5 December 2018 on Financial Administration [*Zákon o finančnej správe*], Collection of Laws 2018, No. 35, amended.

[44] *Moderné a úspešné Slovensko*, n.d., https://www.mfsr.sk/files/archiv/8/MaUS_NIRP2.pdf (accessed: 5.03.2021).

[45] *Ibidem*, p. 7.

on the part of national political representation to the proposed measures, which are often refused because of fear of infringement of national tax sovereignty of Member States. We could ask ourselves whether it is due to the stubbornness of Member States or due to the inability of the EU that precludes reaching an overreaching political consensus in tax matters. As an example, it could serve the case of indirect taxation (not only for the application problems that the tax system currently is facing),[46] but also for the lack of significant progress in the reform of indirect taxation.[47] Another example is the cases concerning CCCTB and CCTB[48] that were proposed, but their adoption had not come to fruition. In addition, we could mention a great number of cases of tax abuse and tax avoidance in harmonized taxes. Other cases worth mentioning (in our opinion useless and unsuccessful) is the fight against so-called tax havens – especially when in this regard the EU itself does not apply the same criteria to all Member States pretending that among EU Member States there does not exist any tax havens.

We could highlight the following problems with respect to the normative and application circumstances of Slovak tax law.

First, the current tax system is not flexible enough to be able to adapt to long-term development of the global (and European) economies and to face the challenges posed by globalization. In the past, the boundaries ceased to be a problem for conducting business. Relationships between states, international organizations, and different regions were virtually without borders. Therefore, the boundaries could no longer stop the development of international commerce. As well, taxes should not serve as a tool for slowing down economic development, but on the contrary, their aim should be to promote economic growth. In that respect, Slovak tax legislation and its tax system do not adapt well in a changing world and therefore cannot cope with international tax competition.

Second, against the background of the ongoing industrial revolution (Industry 4.0), Slovakia is not able to evaluate whether certain tax optimalization reached the level that it should be considered as tax evasion. It is often the case with respect to the new technological means employed

[46] See: V. Babčák, *Daňové právo na Slovensku*…, p. 141.

[47] L. Hrabčák, *Reforma systému DPH v Európskej únii – Revolúcia alebo Evolúcia?*, [in:] V. Babčák, A. Popovič, J. Sábo (eds), *3. slovensko-české dni daňového práva. Pozitívna a negatívna stimulácia štátu v oblasti zdaňovania*, UPJŠ, Košice 2019, pp. 63–175.

[48] See: European Commission, *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, COM(2011)121 final, 16 March 2011; European Commission, *Proposal for a Council Directive on a Common Corporate Tax Base*, COM(2016)685 final, 25 October 2016; European Commission, *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, COM(2016)683 final, 25 October 2016.

in the digitalization of goods and services markets across the global economy, international cooperation, and harmonization of international taxation rules.[49] Today, Slovakia is sadly not able to eliminate the tax gap caused by tax avoidance on income tax.

Third, there is a necessity to prepare a tax reform that would fulfil these conditions:

1) the tax system should be based on a combination of direct and indirect taxation, with a higher tax burden imposed on consumption and property, while reducing the tax burden for businesses;

2) the gradual introduction of robotization in several industries that will cause a decrease in human work force should prompt Slovakia to consider the introduction of specific levies imposed on robots that could serve as a source of tax revenue in the future for the state pension system;[50]

3) differences between big businesses and small and medium businesses should be abandoned;

4) exact legal conditions for granting tax exceptions should be adopted to ensure big international companies do not move to another country just before their special tax status is about to expire; each agreement concerning tax obligations conducted between the state and international companies should be publicly accessible (for example, via the Slovak government and Ministry of Finance websites);

5) introduction of a 0% VAT rate for goods deemed a basic need for people;

6) reduction of the high number of tax exceptions in the common system of VAT and direct taxes;

7) broadening the digitalization of the tax administration, including the introduction of automatic exchange of information between tax authorities and other relevant agencies such as the Cadastre Register, the Social Insurance Agency, and employment offices.

Fourth, since 2008, the Slovak Ministry of Finance has kept promising to undertake reform of the collection of taxes, customs, and social contributions.[51] This problem is addressed in a document *Concept of reforms in tax and customs administration towards the introduction of a unified system of collection of taxes, customs, and social contributions*[52] – which is known as *Programme UNITAS* and later as *UNITAS II*. Based on *UNITAS II*, a later

[49] See: V. Babčák, M. Štrkolec, A. Vartašová, *Daňové úniky, ich vznik a eliminácia*, UPJŠ, Košice 2020, pp. 114–115.

[50] See: V. Babčák, *Úvahy o možnostiach daňového práva…*, pp. 8–34.

[51] On page 27, the document *For a Modern and Successful Slovakia* addresses the vision to unify compulsory payments in Slovakia.

[52] *Program UNITAS*, n.d., https://www.mfsr.sk/sk/dane-cla-uctovnictvo/programy/program-unitas/ (accessed: 5.03.2021).

document under the name *Strategy of development of financial administration for the years 2014–2020*[53] was adopted. The name of this document suggests it was adopted with the programme period of the EU financial framework in mind. The document was adopted in direct relation to the document *Europe 2020: A European strategy for smart, sustainable, and inclusive growth*.[54] Slovakia has succeeded in attaining several goals set up in the European strategy. One of the most prominent successes was the unification of tax authorities and customs authorities into one system under the name the Financial Administration. On the other hand, the places for collection of taxes, customs, and social contributions remain fragmented. In a way, this is mainly due to the sectoral fragmentation of the collection of compulsory payments as a whole. This is caused by the high number of compulsory payments (with different calculation bases and different rates) currently collected in Slovakia. This leads to an inappropriate administrative burden for businesses, which must at the same time cope with different legal rules for the collection of taxes, customs, and social contributions. Therefore, we believe that the call for unification (approximation) of the bases of calculation of mandatory contributions is fully justified.[55]

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[53] *Ibidem*.

[54] European Commission, *Communication from the Commission Europe 2020. A strategy for smart, sustainable, and inclusive growth*, COM(2010)2020, Brussels, 3 March 2010.

[55] V. Babčák, *Daňové právo ako forma a nástroj pôsobenia štátu na ekonomické vzťahy*, [in:] J. Suchoža. J. Husár, R. Hučková (eds), *Právo, obchod, ekonomika VI*, UPJŠ, Košice 2016, pp. 9–26.

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Abstract

The author presents a short historical look at the development of tax law in Slovakia after November 1989. The main focus of the article concerns questions about the status of tax law in the legal order and the distinct periods of its development. The discussion of this topic is related to the different time periods that form the circumstances of development of tax law within Slovak legal order. In the conclusions, the author points out the major challenges for the legislation and academic study of tax law that have been caused by globalization, Europeanisation, and the global pandemic.

Keywords: tax law, development of tax law