

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

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ABSTRACT

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

KEYWORDS

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

1. Introduction

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

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forces EU Member States to incorporate hundreds of EU directives into national legislation.¹

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

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

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

1 Radvan, 2020, p. 9.

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

3 Mrkývka, 2012, p. 49.

by financial law belong to the category of public law relationships, i.e., relationships between entities on an unequal footing, that is, vertical relationships, and considering the method of regulation, they are also potentially diagonal relationships.⁴

2. Method of regulation

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

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

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

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

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

3. System coherence of financial law norms

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

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

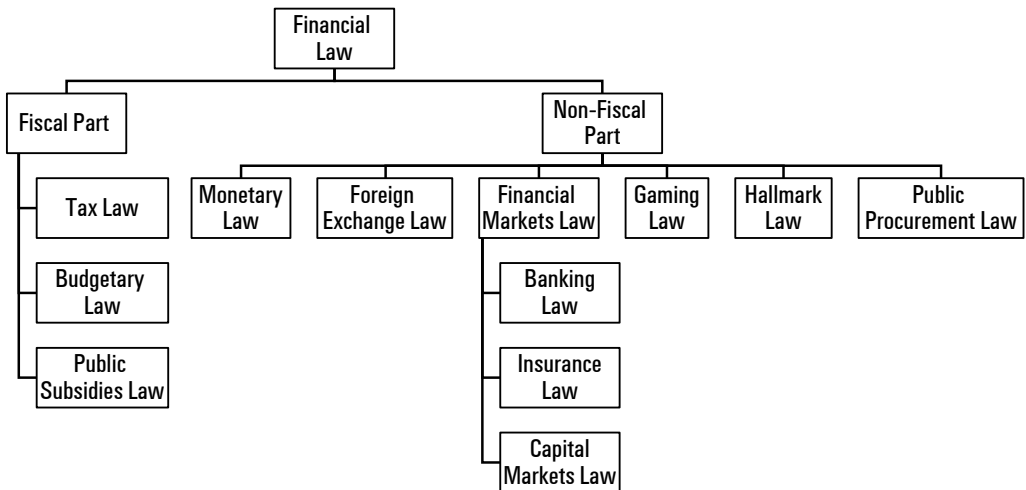
6 Radvan, 2014, pp. 818; Radvan, 2020, pp. 13-14.

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

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

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

Chart 1: System of Czech financial law



4. Financial constitutionality

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

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

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

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

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

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

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

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

10 Radvan, 2016a, p. 517.

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

12 Constitutional Court, Pl. ÚS 29/08.

5. The fiscal part of financial law

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

5.1. Tax law¹⁴

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

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

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

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

13 Boháč, 2006, pp. 6–10.

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

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

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

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

Both tax law *sensu stricto* and charge law have the substantive part (substantive tax law) and procedural part (procedural tax law). The norms of the substantive part determine the structural elements of the tax: persons burdened with tax liability (taxpayers and payors/paying agents); the object, base, and rate of the relevant tax; and other structural elements of the tax.

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

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

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

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

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

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

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

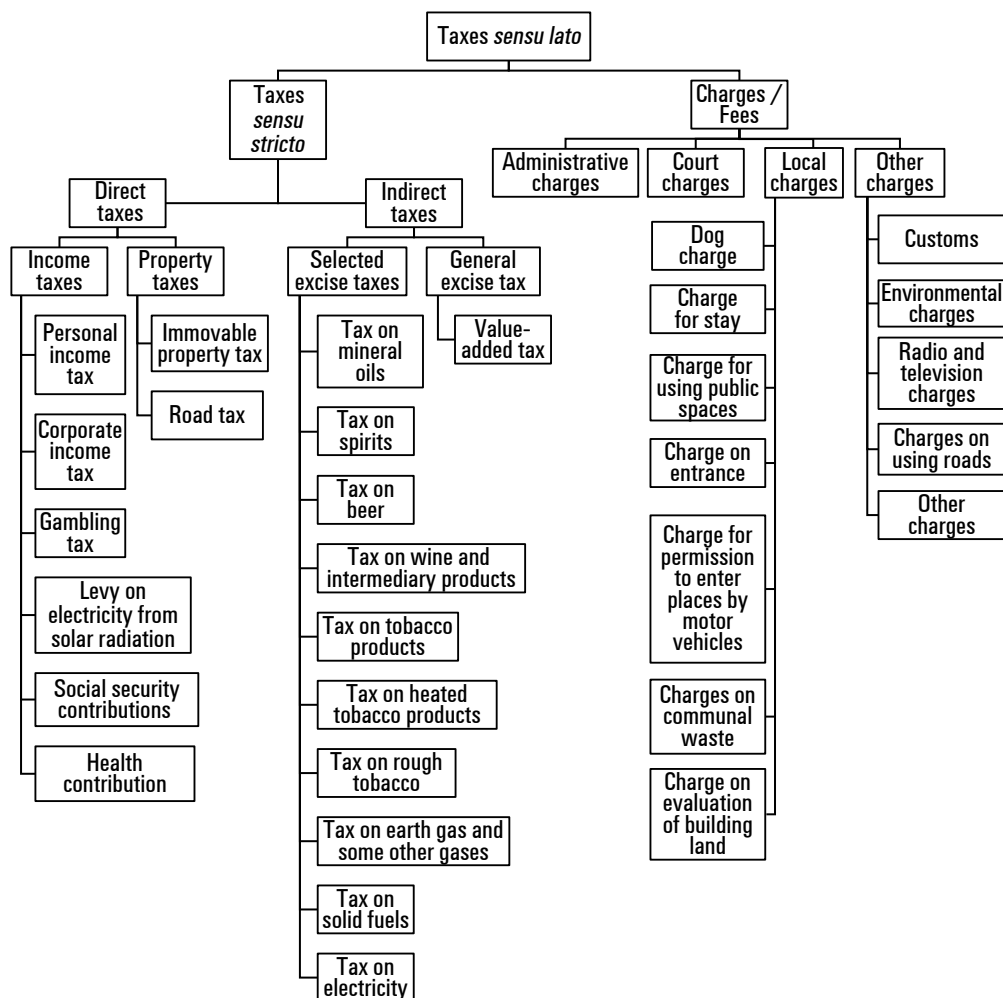
5.1.1. System of taxes

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

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

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

18 Radvan, 2020, pp. 25-27.

Chart 2: System of Czech taxes

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

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

5.1.2. Income taxes

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

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

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

The formula of assessing personal income tax is as follows:

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

19 Radvan, 2020, pp. 31-42.

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

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

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

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

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

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

22 Radvan, 2020, pp. 45-48.

23 Ibid., pp. 43-44.

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

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

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

5.1.3. Property taxes

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

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

25 Radvan, 2020, p. 67.

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

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

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

5.1.4. Indirect taxes

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

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

28 Radvan, 2020, pp. 43-45.

29 David, 2012, pp. 483-491.

30 Radvan, 2020, pp. 49-50.

31 Radvan, 2020, pp. 51-54.

32 Radvan, 2009, pp. 108-123.

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

5.1.5. Charges

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

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

Every municipality in the Czech Republic has a possibility to levy local charges (local fees, local taxes): the town council has an opportunity to decide whether the municipality will levy the local charge, and it can define the amount of this charge. The ordinance may not exceed the conditions defined by the Local Charges Act (e.g., the absolute charge rate or varieties of charges).³⁵ Czech municipalities in the Czech Republic have an opportunity to levy a dog charge, a charge for stay (a tourist charge), a charge for using public places, a charge on entrance (to cultural, sport, sale or advertisement action), one of two possible charges on communal waste³⁶ (a charge for the municipal waste management system, or a charge for the disposal of municipal waste from the immovable property), a charge for permission to enter selected places by motor vehicle, and a charge on evaluation of building land. Most of these charges are having fixed rates. They are administered by municipal offices.

33 Radvan, 2020, p. 59.

34 Ibid.

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

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

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

5.1.6. *Tax procedure*

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

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

37 Boháč, 2013.

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

39 Radvan, 2020, pp. 87-88.

40 Ibid., pp. 92-94.

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

5.2. Budgetary law

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

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

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

42 Bakeš, 2012, p. 83.

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

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

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

5.3. Public subsidies law

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

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

44 Ibid., p. 3.

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

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

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

6. The non-fiscal part of financial law

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

6.1. Monetary and foreign exchange law

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

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

46 Mrkývka, 2016.

47 Mrkývka, 2012, p. 183.

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

49 Mrkývka, 2012, pp. 188-189.

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

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

6.2. Financial markets law

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

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

51 Mrkývka, 2012, pp. 194-195.

52 Ibid., 2012, p. 196.

53 Kotáb, 2009, p. 100.

54 Mrkývka, 2012, p. 187.

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

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

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

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

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

6.3. Gaming law

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

6.4. Hallmark law

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

6.5. Public procurement law

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

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

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

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

57 Mrkývka, 2014, p. 59.

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

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

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

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