

Tax legislation in a globalizing world

TAX LEGISLATION AND CONSTITUTIONAL PRINCIPLES/RIGHTS
IN HUNGARY

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II. Introduction

The European Universities Cooperating on Taxes unites researches and students each year to discuss the progress of European harmonization of tax law, with the focus in 2017 being on tax legislation in a globalizing world. As a member of the Hungarian team, tax legislation and constitutional principles/rights in Hungary will come under scrutiny in this essay. The main aim of this paper is to locate and describe which constitutional principles and rights are present in the Fundamental Law of Hungary and to assess the extent these principles and rights are taken into consideration in tax legislation. In the main section domestic law will be in focus, starting with a general overview of the most important questions regarding the debate. Still in the frames of the main section the aim is to provide the Reader a deeper insight into the most important constitutional principles in the area of taxation in Hungary, such as the principle of legality, legal certainty, trust in the state and law, non-retroactivity. It will also be presented whether the Hungarian tax system provides for these generally excepted and applicable principles, and also examples will be introduced as well as areas of controversy, which are meant to highlight potential areas for improvement. The last subtopic of the main section will aim to showcase the distribution of tax burden among tax payers with special consideration of principles such as equality, the ability-to-pay, the protection of ownership and the protection of family. After the presentation of the characteristics of domestic law, the Hungarian tax system will be tried to be placed in the context of international law, especially a comparison between the principles of the Fundamental Law of Hungary and the provisions of the European Convention on Human Rights. This leads to the third definable topic, which tries to demonstrate the relations between the law of the European Union and the Fundamental Law of Hungary.

Globalization, according to Joseph E. Stiglitz, is the closer integration of the countries and peoples of the world [...] brought about by the enormous reduction of costs of transportation and communication, and the breaking down of artificial barriers to the flows of goods, services, capital, knowledge, and people across borders. [Stiglitz, 2002, p.9] The world in the past few decades has gone through significant and expeditious change, and is still constantly transforming in front of our eyes, and keeping pace with the phenomenon of globalization is challenging in areas, where interests strongly collide, e.g., in the area of taxation. Globalization requires, or forces the decision makers of each and every government

of the world to think on a global scale; however the majority of policy-making is mostly still in the hands of each nation, which makes it even more difficult to find global answers to global questions.

Taxes are one of the main sources of income for each state, and are essential for providing coverage for the expenditure and also for keeping the stability of the budget. Moreover, taxes also serve as a mean to influence behavior, and have an important role in redistribution. The following data should help to showcase the importance of taxes, at least in Hungary: Act C of 2015 on the Budget of Hungary for 2016 earmarked a total income of 52 618.6975 million Euros, from which 41 492.9342 million Euros were provided by tax incomes. To have an easier understanding of the sum, this means that nearly 79 percent of the income was covered by taxes, showcasing the significance of taxes.

As stated above tax incomes are fundamental for governments, and the importance of securing the sufficient amount of taxes by a given state raises two questions, among others. First of all, a given state might try to raise its tax income at the expense of other states by forming a tax regime, which might be seen as beneficial for companies and investors of other states. Although members of the European Union have to take some common guidelines and frameworks into consideration when deciding on tax policies, filling the frames with content and defining the means and goals is mostly in the hands of the states. According to many these tax “battles” could only be resolved through the harmonization of tax laws, and with deeper supranational cooperation, as unilateral initiatives can do more harm than good. Italy’s struggle to tax the digital economy could justify the sentences regarding the limited effects of unilateral initiatives, as after looking at the potential consequences of the proposed tax laws, it was agreed that the expected positive impacts were negligible to the loss in attractiveness of the Italian economy’s ability to attract investment compared to other European Union members. [Oana Popa, 2016, p.39] Secondly, a state could also raise its tax incomes at the expense of overtaxing its own citizens, companies active on its territory, or it could try and tax by illicit means. An example for the above mentioned phenomenon is the 98 percent taxation on the severance payment of civil servants in cases such as the *N.K.M v. HUNGAR*, application no. 66529/11. [Dániel Deák, 2016, p.26] This shows the traditional function of the constitution, that is, to provide protection for citizens against the state, who could prove to be defenseless against its power. In times of drastic measures and the lack of professional considerations in tax legislation, constitutional principles and rights should and potentially could serve as a boundary to illegitimacy. Agreeing with the above mentioned statement,

gives the assessment of the constitutional rights and principles from the perspective of taxation its *raison d'être*.

III. Domestic Law

I. General questions

1. Does your country have written constitutional principles or rights that influence tax legislation? If so, please list them and explain briefly.

The first of January 2012 has been a turning point in the history of Hungary, as on this day came the new constitution, the Fundamental Law of Hungary, into effect, with the wish of forming an alliance between the people of Hungary from the past, present and future, and also setting the new frames for social, economic and legal cooperation and progression. The Fundamental Law is the basis of the Hungarian legal order. In this part the written constitutional principles and rights will be introduced shortly, which influence the tax legislation.

According to article M) of the Fundamental Law of Hungary “*the economy of Hungary shall be based on work which creates value, and on the freedom of enterprise.*” The term value creating work is not defined further, or what the substance of value creation is. From an economic point of view each human activity could be seen as value creating as long as monetary consideration is also involved. This stance on the matter inevitably includes some and excludes other activities in the circle of value creation, and in the following I would like to bring an example for each. For instance, the organization of gambling is done for money, which, in compliance with the economic stand, is considered as a form of value creation. However, the Fundamental Law does not recognize or protect the right to access gambling, raising the question whether an unrecognized activity in the Fundamental Law could be value creating, just because it is done for money. On the other hand, could one not consider the caring of a mother for her children as value creation, even though it is not done for money, but is acknowledged in the constitution, in section (1) of article L)? [Márton Gellén et al., 2014, p.11] As seen above, this area does still require some further defining, and identifying in the future.

Secondly, article O) pronounces that *“Everyone shall be responsible for him- or herself, and shall be obliged to contribute to the performance of state and community tasks according to his or her abilities and possibilities.”* The declaration that everyone has to take responsibility for their own life and actions is not a new guideline (Margaret Thatcher talking to Women’s Own magazine, October 31 1987), but does not necessarily mean that the state accepts no responsibility for its citizens whatsoever, but the allocation of this responsibility between the individual and the state is in question. The degree of allocation of the responsibility, according to the above mentioned article, has moved in the direction of the individual, emphasizing self-sufficiency. This mindset is clearly visible in the economic policies of the Orbán administration, with stress being on a work-based society, instead of a knowledge-based society, or a welfare state. This shift in priorities has also affected the tax system, which will be discussed in more detail in the later sections. The creation of jobs has been one of the top priorities of the last few years, bringing the unemployment rate to about 4.4 percent in the fourth quarter of 2016, [KSH, 2016, 6.2.1.11] however nearly 5 percent of the employees were working in the public-works program, [KSH, 2016, 2.1.60. and 2.1.1.1.] implementing the policy of workfare. The public-works program was reformed by the Orbán administration in the beginning of 2011, and under the current administration the number of employees in the program has increased significantly, with a growth of about 65 percent between 2013 and 2016. [KSH, 2016, 2.1.60] The conventional idea behind the public-works program is to provide a temporary living for those, who have recently lost their jobs, until they can find a new workplace, which was essential after the global economic crisis breaking out in 2008. The affects were felt in the first quarter of 2009, as compared to the last quarter of 2008, as the unemployment rate increased by 22.5 percent to 9.8 percent. [KSH, 2016, 6.2.1.11.] The gradual increase in the number of people working in the public-works program to this day shows the intentions of the current administration, that is, to have a society based on work. Statistically the unemployment rate has decreased radically, but many argue that the public-works program lacks value creation, and has paved the way to abuse, causing controversy. The shift to a work based society also explains the extraction of resources from healthcare and education, as short term investments with faster achievements are preferred to long term investments in human infrastructure. Moreover, article O) combines tax payment with community tasks, which is advised, as tax payment is not autotelic, but is an instrument for financing these public tasks. [Deák, 2016, p. 430]

Article XII. states that “[...] *Everyone shall be obliged to contribute to the enrichment of the community through his or her work, in accordance to his or her abilities and possibilities.*” This article manifests the principle of burden sharing, that is, the universality and equality of the burden distribution. This principle provides for the equality in a sense that everyone is made to contribute, however the amount of contribution is not necessarily identical. The ideal of equality in the area of taxation demands equality on another plain, taking the principle of vertical equity into consideration. The principle of vertical equity requires a differentiated treatment of social groups, which are in different position, providing for equality in another sense. Clearly, the institution of head taxes provide for equality in a manner that each burden sharer has to pay an equal amount, however as the saying goes: there is nothing more unequal than the equal treatment of unequal people. Alexander Hamilton points out that “society naturally divides itself into the very few and the many,” [Henry Cabot Lodge, 1971, p. 375] which ultimately shows in financial differences, meaning that head taxes prove a bigger strain to some than others. This train of thought leads to the need to differentiate between the ability-to-pay of different social groups to provide for equality in the area of taxation.

Article XXX. declares that “*Everyone shall contribute to covering common needs according to his or her capabilities and/or to his or her participation in the economy.*” As seen above the ability-to-pay principle is unavoidable for the ideal of equality in taxation, however looking at the Hungarian tax system we can find inconsistency. The ability-to-pay principle can be implemented in two major ways, either through proportional taxation or progressive taxation. The flat tax system does not differentiate based on the size of the amount to be taxed, thus applying one given tax rate, so the same percentage of tax is levied on each person, or legal entity, providing for financial neutrality. Even though a person with higher income pays more taxes in a flat tax system than a person with lower income, there is argument about the regressive nature of proportional taxes. This phenomenon means that a greater financial burden is placed on low-income individuals, as there is a bigger sacrifice, because of marginal utility. This is the reason opponents of the flat tax system argue that people or legal entities with higher income should pay higher tax rates with the increase of the taxable base, thus an increasing average tax rate, which leads to the theory of progressive taxation. It has to also be mentioned that supporters of the proportional tax systems claim that this system motivates people to try and reach a higher income, through taking risks, which means taking a step back in this area with the use of a progressive tax system.

It has been previously mentioned that taxation is one of the most radical means by which a state intervenes in the lives of its citizens [Deák, 2016, p. 33], and it is important to present the options and instruments the people have to let their voices be heard, or to what extent they are allowed to get involved in such important decisions. For one, there is always a chance to initiate discussion with the leaders of the state. The state can also interact with its citizens, like in Hungary through the institution of the so called National Consultation, but it is always questionable to what extent these opinions will be taken into consideration at the time of policy making. Secondly, the fact that taxes can only be levied in acts, which falls under the authority of the National Assembly, means that the representatives, chosen by the people, have the task and obligation to create the taxation policies, which provides indirect control over tax affairs. Thirdly, there is the institution of the National Referendums, which may be the strongest and most direct method of expressing opinion, which is regulated by article 8 of the Fundamental Law. Point b) of Section (3) declares that “*No national referendum may be held on: the contents of the Acts on the central budget, the implementation of the central budget, central taxes, duties, contributions, custom duties or the central conditions for local taxes.*” As seen above the option to organize a national referendum in these areas is not available, thus limiting the control of the people over tax affairs.

2. Does your country have unwritten constitutional principles or rights governing the country’s domestic tax law? If so, please list them and explain briefly. Is there a need for implementation of unwritten constitutional principles in the domestic tax law of your country?

After having looked at the written constitutional principles and rights, one might also consider taking an overview of the unwritten principles and rights, provided that there are any. Looking at the opening part of the Fundamental Law of Hungary, the avowal, there is a section, which reads: “*we honor the achievements of our historical constitution.*” The historical constitution incorporates a thousand years of legal tradition, including written and also unwritten principles, which have a significant role in filling in the gaps of the written text. It has to be mentioned that I could not find similar rulings of the Constitutional Court regarding the recognition of unwritten principles like in Canada for example. Naturally, the written part of any constitution cannot deal with every situation, which signals the importance of the unwritten principles. The fact that the Hungarian Constitutional Court does not have explicit recognition of unwritten principles like the Canadian Supreme Court [Angel Vora, 2015, p. 1], does not necessarily mean that it also lacks implicit recognition. Constitutions, due to their place on the very top of law hierarchy, are abstract and general, delegating the

right of interpretation and to fill the frames with content to laws. When the written principles of the constitution leave a wide area open for interpretation it can happen that the content of law, which is meant to specify the given principle, is able to deviate from the mentality of the principle. Article XXX. of the Fundamental Law states that “*Everyone shall contribute to covering common needs according to his or her capabilities and/or his or her participation in the economy.*” As mentioned previously, this section indirectly refers to the ability-to-pay principle, which leaves open the method of flat taxes and tax progression in the area of income taxes. According to Dániel Deák tax progression complies with the mentality of the ability-to-pay principle rather than flat taxation, due to the principle of vertical equity, which is founded on the idea that people with different financial power have different ability to contribute to common needs. [Deák, 2016, p. 35] Tax progression was operative until 2011 in Hungary, when there was a change to flat taxation, but sufficient explanation, based on professional considerations, was not given. [Deák, 2016, p. 44] The change to proportional taxation from progressive taxation has caused an emptying of the substance of article XXX. The same could not have been done in Italy for example, where article 53. expressly orders the ability-to-pay principle to be taken into consideration, and in accordance with the provisions of this article, tax progression has to be applied. [Deák, 2016, p. 43]

Lastly, I would like to mention a principle, which is explicitly not expressed in the Fundamental Law, but has major influence on the examination of tax systems: the prohibition of confiscation, which seems as a violation of the ideal of proportionality. The 98 percent taxation on the severance payment of civil servants was declared as a tax of confiscating nature, and was nullified by the Hungarian Constitutional Court and also by the European Court of Human Rights.

3. How do the constitutional principles or rights be changed? Does this happen regularly?

A further aspect of the matter is to evaluate the stability of the Fundamental Law of Hungary, as stability of the principles and rights is essential for the Fundamental Law to fulfill its purpose; that is: to regulate the fundamental rights and obligations of its citizens, and to manifest the fundamental rules regarding the state. The fact that the Fundamental Law is at the very top of the legal order means that no law can be in contradiction with it, which explains the importance of describing the stableness of the Fundamental Law. The above mentioned functions and characteristics of the Fundamental Law also provide the answer for the need of a lasting constitution. This assessment consequently requires looking at the process of changing the constitutional principles and rights. Firstly, the word fundamental

itself describes principles and rights, which cannot be neglected, and should be the foundation of society, providing a framework, thus changing them constantly would undermine the very core of society. Secondly, the constitution is a mean for complementing laws, which might have fallen prey to short term driven decisions. However, if the Fundamental Law could just as easily be adjusted to the short term political needs, then it would ultimately lose its withholding power. In terms of the Fundamental Law of Hungary it has to be said that it is very young, as it came on the 1st of January 2012 into effect. Article S) of the Fundamental Law contains the process of the adoption of a new Fundamental Law or the amendment of the Fundamental Law. Firstly, the President of the Republic, the Government, any parliamentary committee, or any Member of the National Assembly can propose the adoption of a new Fundamental Law or the amendment of the Fundamental Law. Secondly, section (2) of the above mentioned article declares that *“For the adoption of a new Fundamental Law or the amendment of the Fundamental Law, the votes of two-thirds of the Members of the National Assembly shall be required.”* Thirdly, section (3) of article S) states that *“[...] If the President of the Republic finds that any procedural requirement laid down in the Fundamental Law with respect to adoption of the Fundamental Law or the amendment of the Fundamental Law has not been met, he or she shall request the Constitutional Court to examine the issue. Should the examination by the Constitutional Court not establish the violation of such requirements, the President of the Republic shall immediately sign the Fundamental Law or the amendment of the Fundamental Law, and shall order its promulgation in the official gazette.”* In the Fundamental Law’s short history of five years it has been modified six times. The Constitution of the United States is often seen as a benchmark, and in its nearly 228 year history it has been modified 27 times, including the 10 modifications of the Bill of Rights. To summarize the train of thought, the second Orbán Government between 2010 and 2014 had an outright majority in the National Assembly, which gave the FIDESZ party the power to create, and transform the Fundamental Law, not aggressively, but to their own taste, without the need to find consensus or compromises with other parties.

4. How do the constitutional principles or rights influence tax legislation in general? How has case law or administrative practice regarding tax legislation in your country been affected by constitutional rulings?

Constitutional principles and rights have a significant influence on tax legislation, as they provide the framework for taxation as well, tying the hands of the National Assembly. Should tax laws be in conflict with the Fundamental Law, the Constitutional Court is obliged

to nullify the unconstitutional provisions. In the area of constitutional rulings there has been a significant change since 2011. The turning point could be seen as the day the Fundamental Law of Hungary came into effect. From this day the Constitutional Court's authority with regards to tax matters has dramatically been restricted, and in a later section the Constitutional Court's role in tax matters will be presented in detail. It has to also be mentioned that the fourth amendment of the Fundamental Law has placed a further obstacle in front of the Court. The fifth point of the Closing and Miscellaneous Provisions states that *"The decisions of the Constitutional Court taken prior to the entry into force of the Fundamental Law are repealed. This provision shall be without prejudice to the legal effects produced by these decisions."* Ultimately this would mean that the Constitutional Court would not be able to refer to its previous decisions as a guiding point in matters in the future, which of course would have been true to the decisions in the area of taxation as well. However, it has to be mentioned that the Court did find a way to save these decisions in cases when it is provable that there is correspondence between the previous Constitution and the Fundamental Law. All in all, it has to be stated that the Constitutional Courts activity in the area of taxation has significantly decreased since the Fundamental Law of Hungary entered into force.

5. Who is allowed to invoke constitutional rights/principles (individuals, legal entities)? Please answer with special reference to fundamental rights that affect tax legislation.

A further aspect of the constitutional examination regards taking into consideration who has the right to invoke constitutional principles and rights. It is a question of how the rights provided in the Fundamental Law can be enforced. Article 24 of the Fundamental Law regulates the status of the Constitutional Court, and also provides the extent of the right to invoke.

Firstly, the Constitutional Court shall examine adopted acts not yet promulgated for conformity with the Fundamental Law, meaning, that there is always a preliminary norm control in place. Secondly, it shall, at the initiative of a judge, review the conformity with the Fundamental Law of any legal regulation applicable in a particular case. Thirdly, the Constitutional Court shall, on the basis of a constitutional complaint, review the conformity with the Fundamental Law of any legal regulation applied in a particular case or of any judicial decision. Section 26 and 27 of act CLI. of 2011 on the Constitutional Court regulates the institution of the constitutional complaint. Section 26 (1) declares that an individual or

institution (legal entity) affected in a particular case may turn to the Constitutional Court with a constitutional complaint, if in the judicial process a legal regulation was applicable, which caused an offence to the rights insured in the Fundamental Law, and all options for legal remedy had already been exhausted. Section 27 declares that an individual or institution affected in a particular case may turn to the Constitutional Court with a constitutional complaint, in case of an unconstitutional judicial decision, provided that a substantive part of the decision caused an offence to rights insured in the Fundamental Law. Furthermore, the Constitutional Court shall, at the initiative of the Government, one-fourth of the Members of the National Assembly, the President of the Curia, the Prosecutor General or the Commissioner for Fundamental Rights, review the conformity with the Fundamental Law of any legal regulation, and it also has to be mentioned, that no legal regulation can be in conflict with any international treaties. All in all, in a particular case the affected individual or institution may confront an applicable regulation or judicial decision, in case provided rights in the Fundamental Rights were offended.

6. To what extent do constitutional principles and rights contribute to tax fairness?

One might consider evaluating the constitutional principles' and rights' contribution to tax fairness, however finding the description of fair is a task in its own, as our perception of what fair is might differ considerably. Even if we manage to find common consent in a given state about which requirements a fair tax system should meet, that does not necessarily mean that in another state the same criteria would be set. Keeping this in mind, I can relate to the opinion of Dániel Deák, who defines a couple of attributes, which helps to define the relationship between fairness and taxation. He argues that the essence of the problems relating to fairness is not due to significant differences in financial status between people. Rather, difficulties arise when whole social groups fall behind, and some are not granted a life of dignity. [Deák, 2016, p. 97] In my understanding, total material equality reached through significant intervention (redistribution) from the state does not serve fairness, rather a mutual agreement on complying with the rules has to be developed among the citizens. [Deák, 2016, p. 97] This does not guarantee that there will be no victims during the transactions between the members of society, but it does guide these transactions in a foreseeable set of frames applicable to everyone. All in all, constitutional principles could help form these sets of rules and could provide security and protection to the less fortunate. Section (4) of Article XV. of the Fundamental Law pledges itself to the protection of the less fortunate by claiming that "*By means of separate measures, Hungary shall promote the achievement of equality of*

opportunity and social inclusion.” Constitutional rights and principles serve the long term; they have a strategic approach in setting the above mentioned framework. In contrast, political considerations may keep the near future in perspective to gain acknowledgement and to potentially maximize votes. These fundamental principles and rights, which are, or should be, carved in stone should act as checks and balances against political self-interest, or momentary, economic necessities.

7. What is the role of the constitutional court in tax matters in your country?

The role of the constitutional court in tax matters is also an important aspect in order to provide a complex and comprehensive overview of the Hungarian tax system, as it is not enough to have the most enlightened constitutional principles and rights, they also have to be observed. At the time, when the Fundamental Law of Hungary came into effect, one of the major concerns was the restriction of the scope of the constitutional court’s authority. Firstly, section (5) of article 24 of the Fundamental Law declares that the Constitutional Court may only examine whether procedural requirements, laid down in the Fundamental Law for its making and promulgation, were met in the making and promulgation process of the Fundamental Law or the amendment of the Fundamental Law. It has to be mentioned that this section was initially part of the Closing and Miscellaneous Provisions, which was previously nullified by the Constitutional Court, however with minor alterations, they were later passed in the National Assembly, and have been inserted in the Fundamental Law.

In a few words I would like to briefly summarize the events regarding the new Fundamental Law to try to give context to how and why previously nullified provisions could be lifted into the Fundamental Law. In the election in 2010 the FIDESZ and KDNP coalition managed to secure more than two-thirds of the parliamentary seats, enabling them to create law and constitution without the need to cooperate and find consensus with other parties in minority. This has given the coalition the power to free themselves from the constitutional control by lifting previously nullified provisions by the Constitutional Court into the Fundamental Law. The way the provisions regarding actual life imprisonment were lifted into the Fundamental Law provides an example on how the Constitutional Court could be bypassed. At the time an act regarding actual life imprisonment was being examined by the Constitutional Court, but as a pre-emptive strike, the ruling coalition lifted the contested provisions into the Fundamental Law, preventing any further examination by the Court. This phenomenon shows how law was submitted to the political will. [Deák, 2016, p. 71] As Dániel Deák also writes, it has been tempting for the coalition, with the power of the two-

thirds of mandates, to remove the obstacles from the way, [Deák, 2016, p. 85] with the mindset of *finis sanctificat media*. In times, when law seems to be an instrument to serve the political will, the Fundamental Law could serve as a guard for stability. However, this function is not available, if the Fundamental Law also becomes a servant of politics, threatening democracy and the rule of law. February of 2015 has proved as a turning point, as the FIDESZ-KDNP coalition lost its two-third majority in interim elections, ending their constitution forming majority, but the previously enacted restrictions stayed.

All in all, the Constitutional Court cannot examine the substantive part of the Fundamental Law, or its amendments, just its form. This raises a question where a line could be drawn between content and form. [Deák, 2016, p. 88] The limitation of the Constitutional Court to questions only of form might seem as a threat, but prof. dr. Deák Dániel emphasizes, based on the theory of Lon Fuller, the importance of form, claiming that the democratic constitutional state is itself the form of law. [Deák, 2016, p. 88] This leads to the main point, that is, section (4) of article 37 of the Fundamental Law, which ties the hands of the Constitutional Court in tax matters. In this section I would like to present the conditions of section (4) of article 37, and the scope of the limitation it means for the Constitutional Court in tax matters. Section (4) of the above mentioned article declares that *“As long as the state debt exceeds half of the Gross Domestic Product, the Constitutional Court may [...] review the Acts on the central budget, the implementation of the central budget, central taxes, duties and contributions, customs duties and the central conditions for local taxes for conformity with the Fundamental Law exclusively in connection with the rights to life and human dignity, to the protection of personal data, to freedom of thought, conscience and religion, or the rights related to Hungarian citizenship, and it may annul these Acts only for the violation of these rights. The Constitutional Court shall have the unrestricted right to annul also Acts having the above subject matters, if the procedural requirements laid down in the Fundamental Law for the making and promulgation of those Acts have not been met.”* The condition in the article states that the restriction of the court’s authority will be in effect as long as the national debt exceeds the half of the gross domestic product. This ratio is currently around 75 percent, and in the past 12 years it has never been lower than the half of the GDP. The closest, according to the Central Statistical Bureau, was in 2001, with a ratio of about 51.7 percent. [KSH, 2015, p. 1]. Laws can only be nullified by the Constitutional Court in case of unconformity on the ground of the above mentioned principles, or because of procedural requirements not being met. As presented before with regards to section (5) of

article 24, if a section of the Fundamental Law or an amendment of the Fundamental Law meets the procedural requirements, the Constitutional Court cannot further examine its content that is why the court could not contest section (4) of article 37, which restricts the Constitutional Court from examining tax policies in merit.

The above mentioned provisions, among others, caused widespread controversy in the European Parliament, and also in Hungary. The former President of the Republic and the first President of the Constitutional Court, László Sólyom, described the restriction of the Constitutional Court's authority as an incurable wound. He claims that a legal system is to be seen as unconstitutional in case it has areas, with no constitutional control, as anything can potentially be done, because the Fundamental Law cannot be enforced. The above mentioned "area" contains the laws regarding the budget, taxes and other fees, a significant area of the governmental activity, without any constitutional control.

8. Is there a debate in your country on how to improve constitutional protection for tax affairs?

In the previous sections the current general state of taxation from a constitutional perspective, from different aspects, was presented. There was some reference as to what kinds of changes were made in the past few years, however, it is also decisive to discuss where taxation from a constitutional perspective might be heading. The need for a strategic approach in the area of taxation first appeared in 2005 in the works of the Tax Reforms Committee. [dr. István Juhász, 2016, p. 1] This strategic approach manifested in the so-called act of burden-sharing, and in the following I would like to summarize its recommendations.

Firstly, according to the Committee, a stabilizing market economy requires a calculable, computable tax system, which is based on law of substantial legitimacy, that is, based on the votes of two-thirds of the Members of the National Assembly. Secondly, the fundamental objectives of the tax system and a listing of its potential elements should be anchored in this law, from which the application of some would be compulsory, some optional. Thirdly, it is also recommended to declare the minimum and maximum rates of these means, the purposes and conditions of the favors and exemptions and the general rules how tax laws can take effect. These recommendations are meant to put a strategic approach into practice in the area of taxation with emphasis on stability, calculability, predictability and ultimately forming legitimate expectations between taxpayers and the tax authority. These recommendations, or at least some of them, can be found in Act XCIV of 2011 on The

Economic Stability of Hungary, such as the principle of legality or the principle of non-retroactivity, the regulations regarding favors and exemptions, and some regulations regarding the way a new tax law can take effect. Since 2011 there has not been public discussion about further potential areas for development or intensification of taxpayer protection in Hungary. Looking at countries with the most progressive tax law cultures, a new form of relationship between taxpayers, tax advisors and the tax authority is evolving, which is based on horizontal cooperation relying on mutual trust. [Deák, 2016, p. 50] This form of shift from a vertical to a horizontal relationship is a step that has not yet been taken in Hungary, however the head of the tax authority has made some statements regarding a friendlier tax authority. In the past centuries Hungary and our region in general has developed a tendency to be forced into adapting to phenomena from Western Europe, constantly playing “catch up.” The area of taxation is no exception, and there are always new ideas and methods to be adopted. It has been mentioned that there has not been widespread public discussion regarding further improvement, however, it is vital for the Hungarian tax system and authority to constantly keep on evolving and improving.

II. Constitutional principles relating to the law-making process, drafting of tax legislation and application/interpretation of tax law

Principle of legality

9. Does your country’s domestic law provide for the principle of legality? Briefly describe its scope and meaning, the conditions and consequences of its application.

The principle of legality is a commonly recognized principle in the area of taxation, which sets the rule of law as standard. This framework requires that a tax can only be levied based on a statute lawfully enacted, [Victor Thuronyi, 1996, p. 1] which is the ultimate tool against arbitrary taxation. Essentially this means that taxation must have a firm legal basis, which prior to the obligation, specifies who, why and how the tax has to be paid. Tax liability is formed then, and only then, when the criteria set previously in law are fulfilled. Secondly, tax must be applied impartially, which sets the ban against discrimination.

Article 40. of the Fundamental Law of Hungary claims that “*In the interest of predictable contributions to common needs and of a secure livelihood for the elderly, basic rules for the sharing of public burdens and for the pension system shall be laid in a cardinal Act.*” This article of the Fundamental Law provides for the delegation of tax law making

authority. Based on section (4) of article T) of the Fundamental Law “*Cardinal Acts shall be Acts, for the adoption or amendment of which the votes of two-thirds of the Members of the National Assembly present shall be required.*” The cardinal Act, which sets the legal framework for taxation, is act XCIV of 2011 on The Economic Stability of Hungary.

Section 28 (1) of act XCIV of 2011 expresses that in Hungary each natural person, legal person, and other subjects of law has to contribute to the coverage of collective necessities in the form of taxes, duties and contributions, customs duties without receiving any direct consideration from the state. The second paragraph of the same section declares that, unless a law states otherwise, these payments have to be fulfilled in Hungarian Forint. Section 29 embodies the principle of legality by declaring that imposing new paying obligations, determining the subjects and the rate of the burden, and specifying the extent of favors, exemptions can only be done through an Act, or in a local governmental order based on authorization through an Act. The condition in section 30 expressed, is a requirement, which further strengthens the principle of legality by the specification of a new paying obligation, that is: to which sub-system of the central budget the income will belong to. However, in contrast to the institution of the appropriation law in the Anglo-Saxon part of the World, in Hungary and on the rest of the European continent no specific aims are set, for what purposes the taxes are levied, nor are their necessity explained or justified. [Deák, 2016, p. 38] This phenomenon weakens the controllability, accountability, transparency, consistency and the justification of levy in general, and could potentially harm the requirement of proportional interference from the state. Section 31 sets the frames for the restriction of retroactivity in terms of liability and preferences as well. The increase of the amount payable, the expansion of the subjects, or ceasing, limiting favors or exemptions for the time period before the act entered into force, is prohibited.

The above mentioned directions define the legal framework for taxation, but the content of these frames are not defined. Can it be declared that any intention or ambition complying with the principle of legality is justified, or is it just a necessary, but not a sufficient condition? Looking back at history, without the intention of pointing a finger, one can discover that at times, even when staying between the frames of legality acts of great injustice were done, [Deák, 2016, p. 77] which highlights the importance of the simultaneous existence of multiple principles.

10. What is the role of the principle of legality and how is it implemented in your country's tax law?

The ultimate role of the principle of legality, as mentioned above, is to provide the definitions of taxpayer, taxable event or object of taxation, tax base, tax rates, and basic rules for administration in an act prior to the liability of taxation. [Victor Thuronyi, 1996, p. 2] This provides safety to citizens and at the same time ties the hands of the state.

Firstly, a natural person, legal person or other subject of law can only be bound to pay tax, if this obligation is based on law, which gives the authority to tax to the National Assembly. The fact that the National Assembly is an organ of the people, and the constitutional control above the National Assembly should insure that the will of the people and the fundamental rights provided in the Fundamental Law have to be considered in every act made by the National Assembly, showcasing the system of checks and balances. As seen in the first main section, the observance of the fundamental rights in the area of taxation, due to the limitation of the Constitutional Court's authority, is not possible unconditionally. However, forming tax paying obligation based on a decree of the President of the Republic, the Prime Minister, other Ministers or the Government is prohibited, which insures protection against arbitrary taxation. Moreover, the fact that the process of taxation is ruled by law, the rights and obligations should be clear to each taxpayer before the tax liability is founded, contributing to calculability. However, it must be demonstrated that the principle of legality does suffer some damage. As stated before, section 29 of act XCIV of 2011 on The Economic Stability of Hungary states that local governments may also raise taxes in orders based on authorization given by an act. Act C of 1990 on Local Taxes delegates the right to tax to the local governments, but with restrictions. Section 1/A (1) states that the local government may only pass such local taxes, which are not prohibited by law, and cannot have a subject of tax that is already taxed centrally. The act also lists examples of potential local taxes, which could be implemented and it also sets the maximum amount of the burden associated with these mentioned taxes, but as stated before, with a bit of exaggeration, only imagination can set limits to the types of taxes leviable by local governments. In the following I would like to showcase some examples of local taxes. The tax on field land proved to be one of the most popular new local taxes, but some local governments chose to tax farming machinery or industrial real estate that are out of use. Some were better aimed, such as the tax on buildings higher than 20 meters, because in given areas, where such taxes were levied, only the telecommunication repeaters of the three major providers and a church, which was given exemption, passed the threshold. Another local government chose to tax dogs, the amount rising to a significant amount per animal above ten. As rumors have it the leaders of

that given local government had the intention to persuade an animal shelter to place its activity out of the city. [Zsolt Kerner, 2015, p.1] As visible, these examples show that such taxes can lead to abuse and cause a lot of dispute, highlighting the importance of the principle of legality.

Secondly, the principle of legality also insures that the tax authority is bound by law, meaning it cannot overstep the boundaries of the norms by referring to considerations of purposiveness, or to any other aims. Section 1 (1) of act XCII of 2003 on the Rules of Taxation states that *“The purpose of this Act is to govern taxation procedures in a uniform concept consistent with the rights and obligations of taxpayers and the tax authorities with a view to ensuring the legality and effectiveness of such procedures.”* It has to be mentioned that act XCII is similar in role and substance to the German Abgabenordnung Gesetz, defining the common frames of taxation, with a commitment to legality as visible in Section 1 (1). Moreover, Section 1 (2) states that *“Taxpayers and the tax authority shall exercise their rights and fulfil their obligations in compliance with the provisions of this Act and other acts. If vested by law with discretionary powers, the tax authority shall exercise such right as consistent with the purpose of authorization and within the framework of law.”* As visible, the whole taxation procedure is ruled by law, providing the exercise of rights, but also restricting the tax authority to stay between the frameworks of law, thus providing for legality.

11. What is the rationale behind this rule?

The rationale behind the principle of legality is to safeguard human liberty. With other words, the principle of legality showcases the idea of keeping the balance between the state and its citizens, or more likely to protect the individual against the state, as a lot of power can concentrate in the hands of the state directed by few. According to Abraham Lincoln the ultimate test of a man's character is power, however hope alone that leaders do not take advantage of their power is no guarantee. The power of taxation is one of the most radical means that a state intervenes in the lives of its citizens, providing space for the abuse of authority. The main purpose, or role of the principle of legality, in my opinion, is the limitation of the probability of arbitrary. The “*nullum tributum sine lege*” theory ties the hands of the ones authorized to manage the common affairs, as the National Assembly is accountable for legislation, whose members are chosen by and are representatives of the citizens. In other words, taxes have to have a firm basis in law, which are legislated by the Members of the National Assembly, who were chosen by the people, who are ultimately affected by the taxes. The above mentioned cycle was not always self-evident, as the

American colonists' "no taxation without representation" principle shows, but the strive to have control over tax affairs is not only visible in the history of the United States of America, but also in many other countries, such as the United Kingdom, France, and Hungary as well. As visible, the major highlights or turning points in History, with regards to taxation, were tied to the forming of tax paying obligation, however the principle of legality has an immense role in controlling the enforcement, collection and administration of taxation. The other aspect, which has to be taken into account, is the regulation of the taxation procedure as a whole, not just the formation of the obligation, but also the whole interval of taxation, in other words, the relationship between the tax authority and the taxpayers. It could leave room for abuse, discretionary conduct by the tax authority or corruption, in case the relations between these two sides are not regulated by an act. All in all, history has provided evidence for the importance of the protection of citizens, thus also for the principle of legality, as a state may tend to intrude into the freedom of its citizens arbitrarily.

12. To what extent has this principle been interpreted by courts and tax authorities in the tax context?

An important aspect of our examination is to see how the principle of legality has been interpreted by courts. It has previously been mentioned that the fact that local governments have been given authority to raise taxes may seem to be an offence against the principle of legality. The Constitutional Court's decision 67/1991 (XII.21.) investigated whether the delegation of taxation authority by the National Assembly to local governments may be seen as unconstitutional. As mentioned in a previous section the decisions of the Constitutional Court taken prior to the date the Fundamental Law entered into force have been repealed, however it has also been mentioned that the Constitutional Court has found a way to save these decisions, thus keeping the continuity of the interpretation of the Constitution. In the referred decision the appeal to the court was questioning the conformity of the delegation of taxation authority to the local governments with the Fundamental Law, among other things. The main argument of the court was that the National Assembly did not delegate its own authority, but the local governments have their own authority for taxation provided in the previous Constitution of Hungary, and local governments may only exercise their authority in the frames of laws made by the National Assembly. Secondly, the court agreed with point 3 of

article 9 of the European Charter of Local Self-Government, which declares that *“Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of stature, they have the power to determine the rate.”* All in all, the Court did not find an offence to the principle of legality, or other aspects, in connection with local taxes, and the proposal was subsequently rejected. With regards to what extent the principle of legality has been interpreted by the Hungarian tax authority the main point has been already introduced. Section 1 (2) of act XCII of 2003 on the Rules of Taxation states that *“If vested by law with discretionary powers, the tax authority shall exercise such right as consistent with the purpose of authorization and within the framework of law.”* The above mentioned section requires the tax authority to stay between the frameworks of law even if it is authorized with discretionary power by law. Moreover, act XCII determines the rights and obligations of the tax authority, which limits its scope of authority.

13. What impact does this principle have on the legislative process?

The principle of legality has the most direct impact on the legislative process, they go hand in hand, with the imposition of tax obligation being in the center. The principle of legality presumes the definiteness of the substantive and procedural tax law norms, which ideally would mean a perfect legal imaging of reality; harmony between law and reality. Some potential areas of difficulty will be presented, as to why the previous condition is difficult to fulfil.

Tax law seems to be exposed to a lot of influence from politics through economic [Deák, 2016, p. 110] and social policies and is heavily reliant on other sources of law, such as acts on accounting, among others. It is reliant, since often tax law cannot rely on primary economic information (income), but must work with synthetic data (profit) based on income and expenses [Deák, 2016, p. 109], achieving an interlocking between tax law and non-tax law. Another aspect of exposure is due to the ever changing business world, which could prove as the most substantial difficulty for taxation, meaning that regulating every possible situation is clearly not possible, thus leaving unfilled space between regulations. This gap expands due to the constant change of business models founded on technological progress, which would require proactive action, but it seems keeping pace alone with these innovations proves to be difficult for legislation. The other side of the coin is that there are often unwanted side effects of the norms, (upside-down effect) [Deák, 2016, p. 130] which is only exposed by the tax payers' behavior, thus demanding further action. The other aspect of the matter is due

to the fact that law is formed by politics, but more importantly: people, leaving room for inconsistencies.

14. What impact does this principle have on the application of tax law on the practice of tax authorities?

In previous questions the role of the Hungarian Tax Authority has been looked at, and here only a brief summary will be given as to how the principle of legality impacts the tax authority. Section 1 (3) of act XCII of 2003 on the Rules of Taxation declares that *“In all matters, the tax authority must be unbiased and shall act without discrimination in accordance with the law.”* In this given question emphasis is placed on the phrase *“shall act in accordance with the law,”* which ultimately means that the tax authority is also bound by the law. The tax authorities rights and obligations are expressed in this act as mentioned above, which limits its scope of authority, safeguarding taxpayers against abuse and arbitrary.

15. Are there any disputed provisions/features in the country’s tax law that are in conflict with the principle of legality? If yes, how are they justified?

I believe it is safe to state that the current Hungarian tax system provides for the principle of legality. As mentioned in a previous section, regarding local taxes, some questions could be raised in this area. It was also presented that a previous Constitutional Court decision did not find the delegation of taxation power to local governments to be unconstitutional. The act limiting the taxation power of local governments does leave too much room for consideration for local governments in my opinion, as limiting the availabilities to those tax instruments, which are explicitly named in the act, would be beneficial. Otherwise, I could not locate any provisions or features that are in conflict with the principle of legality.

16. Has the interpretation and application of this principle by courts and the tax authorities been affected by anti-avoidance measures such as a GAAR or the judicial doctrine of substance over form etc.?

The phenomenon of tax avoidance threatens the integrity of law and its inner order, [Deák, 2016, p. 158] because even though tax payers comply with each letter of the tax laws, they do not meet the purpose of it, they evade it. Many times, the reason behind their dealings is motivated by the avoidance of taxes, rather than real business considerations. The fact that

complying with each letter of the law, and subsequently being able to evade the essence of the law, that is tax liability, could be seen as the failure of positive law, *ius positum*. The recognition of this phenomenon by the tax authorities has led to the introduction of the General Anti Avoidance Rules (GAAR). The Hungarian tax law system introduced two principles with the aim of preventing tax avoidance. Section 1 (7) of act XCII of 2003 on the Rules of Taxation declares that *“Contracts, transactions and other similar operations shall be judged in accordance with their true content,”* expressing the substance over form principle. The Constitutional Court in its decision, 724/B/1994, which examined the unconstitutionality of section 1 (7) defined the institution of a sham contract: a contract shall be considered a sham contract, which in its appearance does not bear the real content of the contract, that is the intention expressed differs from the real intentions. [István Simon, 2012, p. 13] Section 2 (1) of the same act declares that *“All rights in tax-related matters shall be exercised within their meaning and intent. In the application of tax laws, contracts and other transactions contrived with the intent to evade the provisions of tax laws shall not be construed as exercised within their specific intent.”* A problem arises when the above mentioned intents are not portrayed in the norm, as it could harm the legality of taxation, if severe punishment could be formed on the ground of abstract prohibitive legal provisions. [Deák, 2016, p. 155] It has to also be mentioned that tax paying obligation has to have a firm legal basis, speculation cannot form tax liability in itself, [Deák, 2016, p. 158] thus preventing and contending tax avoidance, and staying at the same time between the frames of legality is difficult.

Principle of legal certainty

17. Does your country provide for the principle of legal certainty? Briefly describe its scope and meaning, the conditions and consequences of its application.

Adam Smith has already expressed the need for legal certainty in his five-part volume book, the Wealth of Nations. According to him “the tax which each individual is bound to pay ought to be certain, and not arbitrary.” [Adam Smith, 1776, p. 892] The canon of certainty requires the time, the manner, and the quantity of the payment to all be clear for every person based on their income. The fulfillment of this principle inevitably leaves little discretion for tax collectors on how much tax each person has to pay. Moreover, stability, calculability, and transparency are requirements, which also support legal certainty. The lack of legal certainty leaves room for corruption, abuse of tax payers, and weakens the incentive to work and invest

more. The practice of the Hungarian Constitutional Court also complies with the above mentioned requirements. The practice of the Court shows that the laws shall be clear, unambiguous, calculable and foreseeable with regards to their operation for the subjects of the laws. Some commonly agreed aspects of legal certainty are the following: laws and decisions must be made public, they must be definite and clear, the decisions of the courts must be regarded as binding, the retroactivity of laws and decisions must be limited and legitimate interest and expectations must be protected. [James Maxeiner, 2008, p. 32] Moreover, there is also a pragmatic side to the principle of legal certainty, that is, the enforcement of law places a significant financial burden on the state, which could be reduced by clear and certain laws, encouraging and aiding compliance with the law.

The term legal certainty cannot be directly found in the Fundamental Law of Hungary, however section (1) of article B) declares that “*Hungary shall be an independent, democratic rule-of-law State.*” It can be declared that there is mutual agreement that the standard of the rule of law incorporates the principle of legal certainty. [James Maxeiner, 2008, p. 28] This mutual understanding is clearly visible in the practice of the Constitutional Court, as it derives the principle of legal certainty from section (1) of article B), that is the rule of law in decisions like 13/2013. (VI.17.), 23/2013. (IX.25.) or 26/2013. (X.4.).

18. What is the rationale behind this principle as explained by your country’s doctrine and jurisprudence?

In this part, discussing the rationale behind the principle of legal certainty, an emphasis will be placed on the economic aspects, as nearly each economic decision has a tax-effect, and the nature of economic decisions relates very closely to the essence of this principle. An important area of the principle of legal certainty sets foreseeability and calculability as standard, giving room for the members of the economy to plan their actions. This is the supply side of things.

Financial decisions mostly are not out of the blue, but rather are made after substantial consideration, analysis and evaluation of different options. To be able to realize the biggest profit reachable one has to be fully aware of the tax-effects tied to the investment options. Keeping this in mind, it can be declared that overwriting, modifying tax laws during the fiscal year is indefensible, [Deák, 2016, p. 178] and can be seen as a threat to the principle of legal certainty and the rule of law. This is the demand side, and where demand and supply meet, a stable, foreseeable and calculable economic environment is reached, leaving room for

investment and an uprise in lending, which in the end leads to economic growth. An investor's worst enemy is unpredictability, as investments mostly require commitment for many years ahead. Due to the importance of taxation, in my opinion, it is elemental for a given state to enforce the principle of legal certainty to extract and stimulate investment.

19. What is the role of the principle of legal certainty and how is it implemented in your country's tax law?

Going through the criteria the principle of legal certainty sets for the tax law system we can find some inconsistencies in Hungary. Firstly, the Hungarian tax system does comply with the condition that laws and decisions must be made public. Section (1) of Article T declares that "*Generally binding rules of conduct [...] are promulgated in the official gazette,*" which is called "Magyar Közlöny," and is also available online. Secondly, laws and decisions must be definite and clear, which in the area of taxation requires defining the quantity, the timing and manner of the payment prior to the actual tax liability. The amount to be paid is often unclear due to alternative minimum tax rates, the timing and manner of the payment is not regulated in the different acts on different taxes, but in the act on the Rules of Taxation, which should assist transparency. In the area of clarity of the tax laws I believe there is still significant room for improvement, but this phenomenon will be discussed in a later section with more detail. With regards to complexity, it has to be said that there are finer regulated tax systems, like in Germany for example. One Hungarian tax expert, dr. Szabolcs Vámosi-Nagy, stated that the Hungarian tax system is more complex, than what the Hungarian society's structure would suggest. [Tamás Falus, 2015, p. 1] Thirdly, the decisions of the courts must be regarded as binding, with which the Hungarian legal system complies. Fourthly, with regards to retroactivity in the past few years there has been one major controversial case due to the tax on financial institutes, which will be discussed in the section about retroactivity.

20. To what extent has this principle been interpreted by the constitutional court, tax courts or tax authorities in the tax context?

In this section I would like to present a decision of the Constitutional Court, which, in my opinion, showcases as to what extent the principle of legal certainty has been interpreted in Hungary. The decision was made with regards to the 3/2013. decision ensuring uniformity of the Hungarian supreme judicial organ, the Curia, which was deemed to be in conflict with the Fundamental Law. This uniformity ensuring decision provided guidelines as to when the

sale of movables can be considered to be businesslike, which ultimately affects the amount of taxes to be paid. In the decision 2/2016. (II.8.) the Constitutional Court found that the decision ensuring uniformity was in conflict with the Fundamental Law, offending the principle of legal certainty. The argument of the Constitutional Court stated that citizens plan their tax-relevant actions with trust in the text of the laws, and the Curia, by interpretation of law, ordered a whole sentence from the text of the law to be left out of consideration, thus harming the principle of legal certainty. The Court of Justice of the European Union also protects the principle of legal certainty, which is visible in cases such as 70/83 Cloppenburg, and 120/86 Mulder. [Deák, 2016, p. 55]

21. Are there any disputed provisions/features in your country's tax law that are in conflict with the principle of legal certainty? If yes, how are they justified?

In the area of disputed provisions I would like to concentrate on the time period between 2010 and 2014, which was already mentioned as a time of comprehensive and drastic change on a wide spectrum in Hungary. Although there has been consolidation, the alterations in this time period provide the fundamentals for today's phenomena. I would also like to highlight the aspect of legal certainty regarding the requirement of foreseeable taxes, so that members of the economy can plan their actions. This ultimately calls for stability, and looking at this time of significant change, we can also notice its marks in the tax system. As far as I am concerned, the more than thirty new taxes implemented between this time period had a negative effect on calculability. Section (1) of article XXX had also taken its toll on calculability, as it declares that *"Everyone shall contribute to covering common needs according to [...] his or her participation in the economy."* The interpretation of participation brought sector specific taxes targeting the biggest companies, which were deemed to be making "extra" profits. The major players in sectors such as the financial, telecommunication, energy and food retail sectors were made to pay extra taxes, which will be deeper presented in the section about the distribution of taxes. However, it must be said that in this time period, it could have been very difficult to plan for the future, as no one could be sure, whether what type of new taxes would be implemented, or whether a new sector would be deemed to also be part of the so called sectors with extra profit. A further difficulty was not just the number of changes, but also the rate of these changes. As mentioned before, there was no need for the ruling party to consult with any other parties, and the non-professional aspects seemed to have a greater impact on decision making, thus giving room for a type of power politics. The

volume and rate of changes, and the sense that the government could make decisions based on non-(tax) professional considerations all lead to undermining calculability and stability.

22. Has the interpretation and application of this principle by courts and the tax authorities been affected by anti-avoidance measures such as a GAAR or the juridical doctrine of substance over form etc.?

In the section concerning the principle of legality the two main anti-avoidance measures were introduced, and in this section I will refer to them from the viewpoint of the principle of legal certainty. But firstly, I would also like to introduce a provision, which can be found in Act CXVII of 1995 on Personal Income Tax and Act LXXXI of 1996 on Corporate Income Tax and Dividend Tax. The provisions declare that favors are only claimable as per their purpose, however the purposes are not declared. A decision based on a purpose, which is not declared in the law could be seen as a threat to the principle of legal certainty. [István Simon, 2012, p. 11] With regards to the general anti avoidance rules, I would like to place an emphasis on section 2 (1) of act XCII of 2003 on the Rules of Taxation, which declares that an *“intent to evade the provisions of tax laws shall not be construed as exercised within their specific intent.”* With regards to this specific provision, the determination of intention is worrisome. As it is widely accepted, the modern, ever changing economy, growing in complexity, is calling ever newer business solutions and models to life, mostly having motives on a wide spectrum behind them, of which one aspect could be tax advantages. As usual, complex questions need to be looked at from a wide variety of different angles, and even then it is difficult, if possible at all, to declare whether the answer to a given question is “black” or “white,” as most of the time it will be some kind of shade of gray. Where there is room for discretion, uncertainty is unavoidable. Uncertainty leads to decisions not being made, opportunities not being taken, a loss for the whole of society.

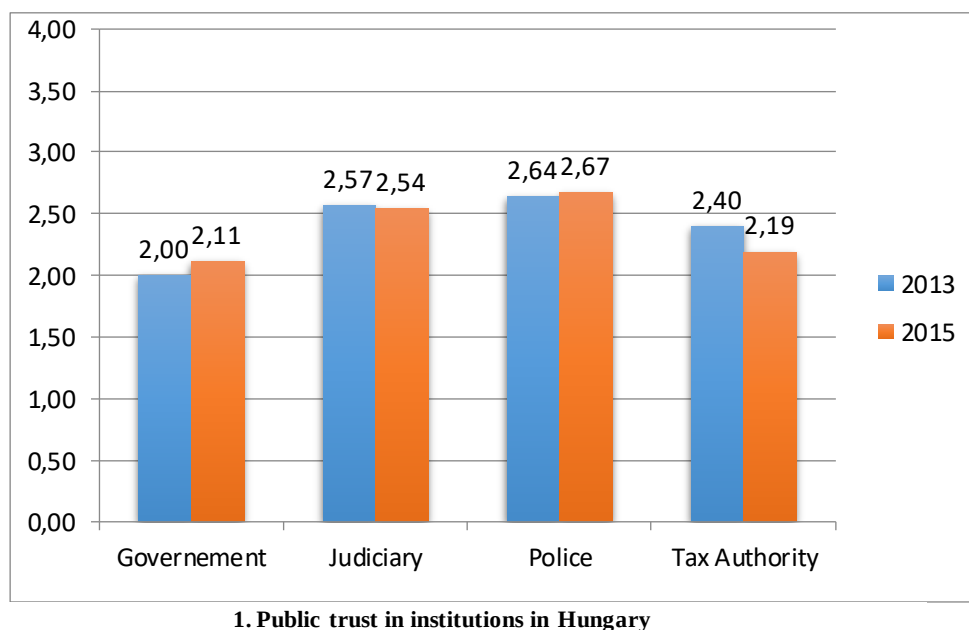
Principle of confidence or trust in the state and law

23. Does your country provide for the principle of confidence or trust in the state and law? Briefly describe its scope and meaning, the conditions and consequences of its application.

The examination of the principle of trust in the state and law is not as clear, as it does not seem to be a major point of consideration in the Hungarian legal system. However, as most of the principles discussed have effect on one another, we can make some assumptions

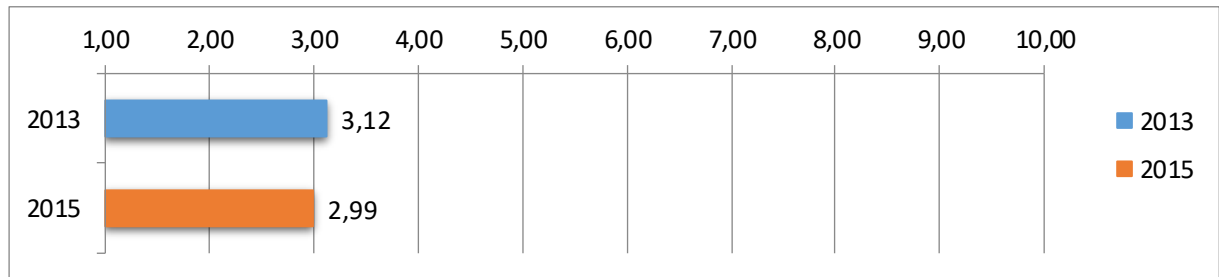
even though this principle can only be found in traces and indirectly. With all this said, the principle does have a significant economic side, which I will try to showcase, as well as to highlight some of the tendencies, which could provide a general understanding of how the trust in the Hungarian state takes shape, and what events had influenced it.

From the perspective of institutional economics paying tax is comprehensible as a psychological agreement based on mutual respect and honesty between the taxpayers and the tax authority. [Attila Bartha – Zsolt Boda, 2016, p. 1022] Provided that the members of the political community have trust in general in their institutions, especially in the tax authority, they will pay their taxes. [Bartha – Boda, 2016, p. 1022] Tax paying willingness is influenced by external, forced motives, that is, the fear against being caught and the sanctions enforced by the tax authority. On the other hand, tax paying willingness is also influenced by voluntary motives, that is, the trust placed in the public institutions. Comparing these two aspects, it has been proven that people do not comply with the laws because they are afraid of the sanctions, but due to the fact that they trust the legal system and the authorities. [Bartha – Boda, 2016, p. 1024] The previously mentioned research results showcase the importance of trust in the state. In the following few diagrams I would like to present the results regarding the trust in and fear of the Hungarian tax authority based on the article referenced, and after I would like to showcase the trust in the political systems in the European Union, as the willingness to pay taxes is also influenced by the political system.



Public trust in the tax authority ultimately manifests in the requirement that it must not be allowed to exercise an unfair advantage over taxpayers, [Thurony, 1996, p. 7] which points

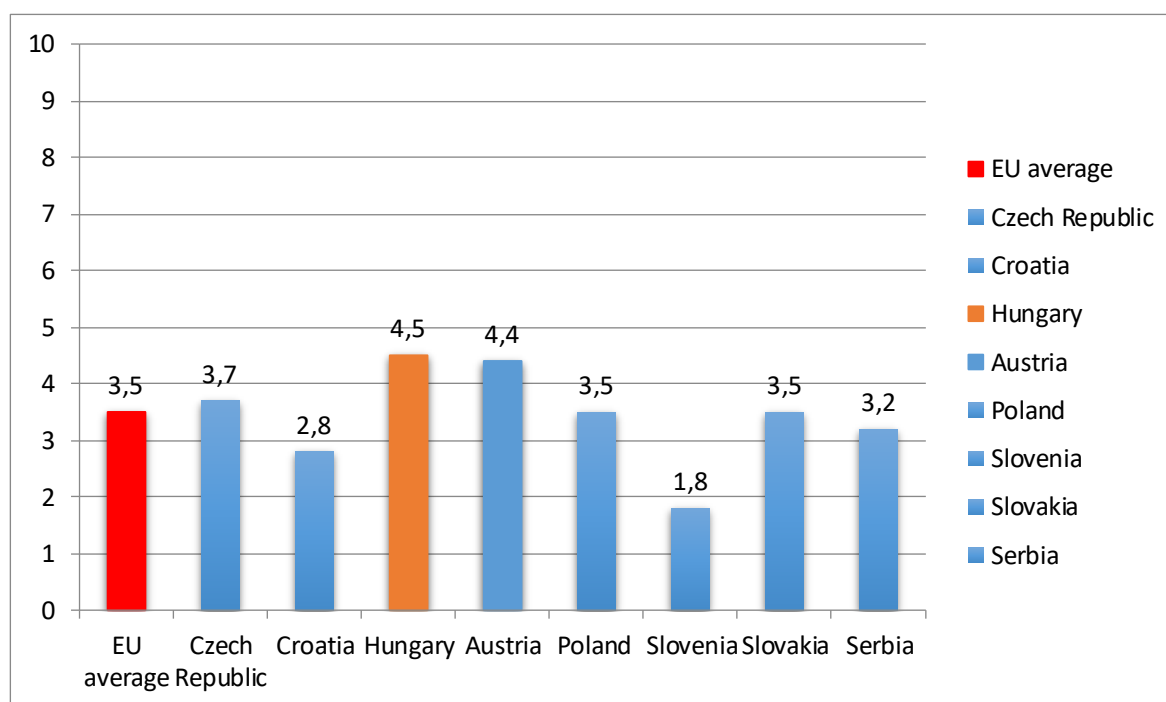
out three areas of consideration. Firstly, the authority must notify a taxpayer of any action the authority may take relating to that taxpayer, [Thurony, 2016, p. 7] however it has to be mentioned that there can be exceptions from the rule. Section 93 (1) of Act XCII of 2003 on the Rules of Taxation declares that “*A control procedure shall commence upon delivery of the letter of authorization. If there is no letter of authorization delivered by decision of the tax authority, the control procedure shall commence upon conveyance of a copy of the letter of authorization or presentation of the general letter of authorization.*” All in all, the tax authority is not obliged to pass a judgement about the start of an examination. Secondly, during the litigation, the taxpayer must be afforded all the rights of process allowed the authority. [Thurony, 2016, p. 7] Thirdly, the authority must be bound by its interpretation of the law as applied to a taxpayer’s particular situation. [Thurony, 2016, p. 7] Both of these criteria will be introduced later in more detail. The next diagram is meant to showcase the answers to the following question: “To what extent do you agree with the statement that tax evaders will likely be caught by the tax authority?” In the representative survey the subjects of the study had to rank their opinion on a scale of 1 to 10, with 1 standing for not at all, 10 for completely.



2. Fear of being caught

As visible, the fear against being caught is not significant. To summarize what has been said, an important aspect of tax paying willingness is up to the trust in the tax authority. On the one hand internal motives (trust in the tax authority) can influence tax paying willingness. On the other hand external motives (fear against being caught, and fear of the sanctions) can also affect this willingness. With the help of the two previous diagrams the current condition in Hungary was intended to be introduced regarding both sides of motives. On common scales, both the internal and the external motives decreased, however the internal motives (trust) was greater in both 2013 and 2015 than the external motives (fear).

The second part of the discussion is the trust in the political system. I believe that this is also an important aspect to understand tax paying willingness, because the attitude towards the tax authority alone cannot showcase the whole phenomenon. The tax authority is only a narrow segment of the whole picture. Taxes are ultimately collected for the coverage of



3. Trust in the political systems in the EU

collective necessities, but what happens, when everyone sees that taxpayer money lands in the pockets of a few? The current tendencies and public discussions show that the above mentioned phenomenon clearly has taken its toll on the trust in the political system in Hungary. This loss of trust, due to taxes not being used for the good of the public, has also had a negative effect on the tax paying willingness in Hungary. The following diagram is meant to find out whether the general feeling of distrust in the political system in Hungary can be traced in surveys as well, or whether it is a unique tendency in the European Union.

Based on a Eurostat survey the European Union average, with regards to trust in the political system, is 3.5 on a scale of 0 to 10. Diagram number 3 shows the EU-member neighbors of Hungary and it can be seen that the trust in the political system in Hungary is higher than the European Union average and higher than our neighbors as well. It has to be mentioned, that the results do not showcase the components behind the results, and there may be completely different reasons behind the outcomes in a given country. In Hungary, I believe, the biggest cause of distrust in the state is in connection with corruption scandals, which I will touch in a

later section. All in all, I believe that the lack of trust in the tax authority, and state affects the willingness to pay taxes in a negative way in Hungary.

24. What is the rationale behind this principle as explained by your country's doctrine and jurisprudence?

As mention in the introduction of this sub topic, regarding the principle of trust in the state and law, it does not have a significant role in the Hungarian legal system; however it does have a significant economic role, thus has a detectable role in the governmental actions. The rationale behind the principle of trust in the state is practical, as trust in the state and in the tax authority could lead to an increase in the tax paying willingness. Trust in the tax authority can be aided by providing taxpayers with security and protection against abuse from it. The Hungarian example proves that there is correlation to a certain extent between the trust in the state and the willingness to pay tax. Maybe this recognition led to the introduction of a reform to the Hungarian Tax Authority in 2016 by the Minister for the National Economy, Mihály Varga. He declared that in the future the tax authority should be seen as a partner to the members of the economy, with the final aim of reaching the Swedish model, where the most popular administrative authority is the tax authority. [Bartha – Boda, 2016, p. 1026] All in all, the wish to increase tax paying willingness could be seen as one of the main motives behind this principle.

25. What is the role of the principle of confidence in the state and law and how is it implemented in the country's tax law?

The trust in the tax authority was presented in the first part of this section, with regards to three aspects, which could influence the trust of taxpayers in the authority. Two of these three requirements will be discussed in the sections regarding interpretation of tax law and procedural rights. The third aspect, which could affect trust in the tax authority, was already briefly introduced, by showcasing the regulations regarding the notification of taxpayers. The trust in the tax authority increases the trust in the state as well, but there is more to the trust in the state than the tax authority, as it is only a small segment of the state. In the following I will be concentrating on aspects, which influence the confidence in the state, and indirectly taxation. As mentioned before, this principle is only sensible in traces in the legal system, but it does effect taxation through the government's actions. For this reason the governmental actions will be in the central of my examination, which have an indirect effect on the trust in the state. In Hungary, I must say sadly, the trust in the state is strongly undermined by

corruption scandals. One of the biggest scandals broke out in 2014, when the United States of America barred the then-head of the tax authority, Ildikó Vida with other senior officials, from entering the United States referring to charges of corruption. It is also part of everyday life that abuse regarding the use of tax payer money and funds of the European Union are uncovered, which of course have a negative effect on tax paying moral. All in all, it can be said that these cases decrease public trust in the state, leading to severe negative consequences for the future, as a phenomenon of the Hungarian tax system is that too few people pay taxes, thus are burdened to a great extent.

26. To what extent has this principle been interpreted by the constitutional court, tax courts or tax authorities in the tax context?

One is left in the dark when trying to uncover how the principle of trust in the state and law has been interpreted by the Constitutional Court and tax authorities, as it is not part of the Hungarian legal system. It has to be said that the before mentioned tendencies, which lead to the lack of trust in the state and the tax authority have not gone unnoticed, and have generated public reactions. In the following I would like to showcase one of these reactions, which ruled the press in the end of January of 2017. Kálmán Szentesi, a workman, turned to the Tax Authority to request that his taxes, which were deducted from his salary, be repaid to him. His argumentation was that people pay taxes to improve public healthcare services and public education, among others, not to increase the private bank accounts of a few chosen. His story embodies the general lack of trust in the state. The tax authority had a different stance on the matter, and did not except this argument and subsequently was handed a fine worth of two months of an average Hungarian wage. A further damage to the trust in the state is the way corruption is being handled, as no significant steps have been taken to prevent corruption or to punish those involved.

Principle of non-retroactivity and principle of a proper vacatio legis

30. Does your county provide for the principle of non-retroactivity of tax law? Briefly describe its scope and meaning, the conditions and consequences of its application.

The principles of non-retroactivity and proper vacation legis have a very important role in our examination, and I believe, this is perhaps the area, where the Hungarian tax system shows its most unique side. Unique not in a sense due to the existence of unknown institutions, but in a sense that the requirements in these areas are perhaps stricter than elsewhere in Europe. Retroactive legislation is the expression of truth in a period of transition,

a trade-off between a certain ideal of truth and the rule of law, where an offence to the rule of law could sometimes be justified by this ideal of truth. [Deák, 2016, p. 178] Retroactive legislation can serve justice by changing the rules, which would have applied to transactions starting and finishing in the past, or which would apply to transactions starting in the past, but not yet completed. Retroactive legislation is not unprecedented, however Hungary seems to be more sensitive to retroactivity than in other countries of Europe, which may be due to our relative young democratic regime. Tax systems could also sometimes be subjects of retroactive legislation due to the importance of securing the sufficient incomes for the state, and ensuring economic stability. With regards to taxation it can happen that due to a technical mistake in legislation an income stays untaxed, which was obviously meant to be taxed. [Deák, 2016, p. 182] It can also be the case that during the fiscal year a technical mistake made by legislation is revealed, as the gap between the law lead to tax avoidance in quantities. [Deák, 2016, p. 182] It is also imaginable that retrospective legislation is needed to end an opportunity for tax planning. [Deák, 2016, p. 176] In cases such as the ones mentioned above, the public interest tied to the security of tax incomes could justify retroactive legislation and an offence against the principle of legal certainty. This could be seen as the reason why retroactive legislation has to be heavily justified. [Deák, 2016, p. 179] The justification, whether the given situation is desperate enough to prove such drastic measures as retroactive legislation, can of course be questionable, as in the case of the decision regarding currency credits in Hungary.

31. Does your country provide for the principle of a proper *vacatio legis*? Briefly describe its scope and meaning, the conditions and consequences of its application.

Vacatio legis is the time period between the promulgation of a law and the time the law takes its legal effect. Section 32 of Act XCIV of 2011 on The Economic Stability of Hungary declares that laws, which determine paying obligations, expand the circle of subjects, raise the amount to be paid, end or limit exemptions or favors have to have a minimum of 30 days between the day of promulgation and the day the law takes its legal effect. If the above mentioned conditions are met, then this section is applicable without further consideration. It has to be mentioned that this 30 day rule was, before the Orbán administration 60 days. The vacation legis principle enables those who are subject to the new provision to prepare for the changes, so they can plan their actions accordingly.

32. What is the rationale behind these principles as explained by your country's doctrine and jurisprudence?

As it has already been mentioned, the rationale behind the principle of non-retroactivity is to lay an obstacle in front of legislation, which may be tempted to constantly change the rules, if it notices a mistake had been made on its part. Another way to look at it is to limit the one-sided allocation of risk to the subjects of law from legislation. As laws are also made by humans, it can happen that something was not taken into consideration, or a mistake was made, which only appears after the law has taken its legal effect. Without obstacles in the legislation's way, it might allocate all of the risk to the subjects of law, and simply retroactively correct the mistakes. It can be seen that this would offend the requirement that people should be able to plan their actions and foresee its consequences, thus being incompatible with the principle of legal certainty. *Vacatio legis* also contributes to the requirement above mentioned. As it has been presented in the section regarding the principle of legal certainty, both the principle of non-retroactivity and *vacatio legis* contribute to reaching legal certainty, with all its benefits.

33. What is the role of the principle of non-retroactivity and how is it implemented in your country's tax law?

According to the Constitutional Court (decision 11/1992. (III.5.)) the principle of legal certainty, reliant on objective and formal principles, has priority over the always partial and subjective justice. [Deák, 2016, p. 184] Moreover, only such a law can be in accordance with the concept of the rule of law, which is clear, unambiguous, calculable with regards to its effect and foreseeable for its subjects, that is why retroactive legislation, in general, is prohibited. [Deák, 2016, p. 184] Thirdly, the intervention from the state can be seen as constitutional, if there was an unavoidable reason behind it, is necessary and proportional with the aim desired to be reached. [Deák, 2016, p. 184] All of these criteria set limitations for retroactive legislation, thus also limiting its role, however there have been cases including retroactive activity.

34. To what extent have these principles been interpreted by the constitutional court, tax courts or tax authorities in the tax context?

In the following I would like to give some examples of the Constitutional Court's stance on retroactivity in tax matters. Firstly, there was a case with a transaction liable to duties in the Constitutional Court's decision 34/1991 (VI.15.). [Deák, 2016, p. 186] The transaction was completed near the end of December, but was only reported to the authorities on the 2nd of January of the next year, when the favors regarding duties were removed from

the previous year. The law, however, was only promulgated on the 8th of January in the official gazette, the “Magyar Közlöny.” According to the decision of the Constitutional Court, the transaction, which caused the paying obligation, occurred before the law was promulgated, which could not have been accessible for the person at the time the decision was made, thus is unconstitutional. On the other hand, the legislator did not leave enough room for preparation, transition, which was also deemed as unconstitutional. An interesting aspect to the case was that the law was passed near the end of December, and was published in the press, but according to the Constitutional Court appearance in the press does not count as accessible, it has to be promulgated in the official gazette. [Deák, 2016, p .186] With regards to vacation legis, it has to be mentioned that there is a possibility for the day of the promulgation and the day the law takes its legal effect to overlap, if it is meant to prohibit an evident tax avoidance attempt. [Deák, 2016, p. 187]

35. Are there any disputed provisions/features in the country’s tax law that are in conflict with the principles of non-retroactivity or proper vacatio legis? If yes, how are they justified?

In 2010, as a reaction to the financial crisis the government, in autumn, passed an act on emergency taxes, placing extra burden on banks, which stepped into effect from January 1st of 2010, that is, retroactively. As mentioned before, the use of retroactivity has to be justified, and can only be an answer in drastic times. The bank taxes implied in Hungary were nothing new under the sun, as on the rest of the Continent similar actions were already taken as well as in the USA. The emergency bank taxes could have been justified by the fact that the banks also have to accept responsibility, and help finance the bail out packages. It could have been seen as a sense of burden sharing, so not only the states, with taxpayer money, had to finance the saving of banks. However, contrary to the rest of Europe, and the United States, in Hungary the banks were mostly financed by parent companies, and not with taxpayer Forints, thus questioning whether retroactivity was really unavoidable. Moreover, Hungary applied the highest rates on the whole continent. All in all, retroactive legislation was done, even though its necessity was very questionable, which might have proved a bigger sacrifice to the rule of law.

36. Has the interpretation and application of these principles by courts and the tax authorities been affected by anti-avoidance measures? Do anti-avoidance measures apply retroactively to situations that occurred before they were introduced?

The implementation of anti-avoidance rules had their effect on both the principle of non-retroactivity and vacation legis. Firstly, with regards to retroactivity, it must be said that the introduction of anti-avoidance rules in 1997 was not contested by the Constitutional Court, even though it had a strict stance on the application of retroactivity. [Deák, 2016, p. 180] It could have meant a problem, since these rules were also bound to be applied to legal relationships already in existence, which provides for retroactivity. Even though the Constitutional Court is very strict about retroactivity the provisions were passed. The exception regarding the 30 day vacatio legis rule was also passed with the intention to fight tax avoidance, through faster reaction ability.

Principle of clarity of law and appropriate legislation

37. Does your country provide for the principle of clarity of law and appropriate legislation? Briefly describe its scope and meaning, the conditions and consequences of its application.

The idea of having a legal system, which consists of clear laws, is nothing new under the sun, but tendencies show just the opposite. Clarity can be understood from a linguistic perspective, setting the requirement of readability, simplicity and conciseness as standard. [Flueckiger Alexandre, 2008, p. 9] Clarity, however, can also be understood from a legal perspective setting the requirement of concrete applicability, precision of wording, which provides the reader with an immediate and precise solution to a concrete case. [Flueckiger Alexandre, 2008, p. 9] There seems to be a trade-off between these two aspects, pursuing one means overlooking the other. [Flueckiger Alexandre, 2008, p. 9] The Hungarian government unquestionably decided to try and regulate as many aspects of life as possible, which of course led to an increase in the number of laws passed, which had a negative impact on the quality of law. This phenomenon can be observed in the number of modifications, which has also increased, showing the effect of the speedy passing of laws. There was an act, regarding banks and insurance companies, which had 20 text-versions in one year. It also has to be mentioned that between the two poles of clarity (linguistic clarity, legal clarity) the emphasis has been shifted to legal clarity. This ultimately led to laws being harder to understand, and to interpret, which makes it harder to foresee and plan one's actions.

38. What is the rationale behind this principle as explained by your country's doctrine and jurisprudence?

The rationale behind the principle of clarity is to support the realization of the principle of legal certainty. Having access to the laws is a requirement, but is alone not

sufficient, as they have to be understandable, and have to be fitting to guide actions. As mentioned before, implementing both of these at the same time is not possible; legislation has to commit itself for one of these aspects, while the other is damaged.

39. What is the role of the principle of legal clarity and how is it implemented in your country's tax law?

Legal clarity is an important aspect of the principle of legal certainty, however as presented before, in Hungary it has not played a central role in legislation, as emphasis has been placed on regulating as many possible situations as possible.

41. Are there any disputed provisions/features in your country's tax law that are in conflict with the principle of clarity of law and appropriate legislation? If yes, how are they justified?

Making clear laws and appropriate legislation takes time, and like many things in life quantity can take its toll on quality. In Hungary, after 2010 a legislative fever started, and there was a year when more than 250 laws were passed, which even made it hard for experts to keep up pace with the changes, thus harming legal certainty.

Principles concerning the interpretation of tax law

42. Does your country provide for the principles regarding tax law interpretation, in particular in dubio pro tributatio or in dubio pro fisco, prohibition of analogy, interpretation in accordance with the constitution? Briefly list these principles, describe their scope and meaning, the conditions and consequences of its application.

In the Fundamental Law of Hungary the interpretation of law is present in two different articles. Firstly, section (3) of article R) provides guidelines for the interpretation of the Fundamental Law. It declares that *"The provisions of the Fundamental Law shall be interpreted in accordance with their purposes, the National Avowal contained therein and the achievements of our historical constitution."* The danger of interpretation in accordance with a purpose, which is not written down has already been presented in the part regarding the principle of legal certainty. Secondly, with regards to interpretation of law article 28 declares that *"In the course of the application of law, courts shall interpret the text of legal regulations primarily in accordance with their purposes and with the Fundamental Law. When interpreting the Fundamental Law or legal regulations, it shall be presumed that they serve moral and economical purposes which are in accordance with common sense and the public good."* Both of these provisions are abstract, and leave lot of room for consideration. It has

also been mentioned how the act on the Rules of Taxation ties the hands of the tax authority when it is empowered with the power of discretion.

Principles concerning procedural rights

46. Does your country provide for the principles regarding tax proceedings? Briefly describe its scope and meaning, the conditions and consequences of its application.

Act XCII of 2003 on the Rules of Taxation contains the principles and provisions regarding tax proceedings. An important aspect of the efficient protection of taxpayers against arbitrary is the requirement that tax paying obligation must have a firm legal basis (*nullum tributum sine lege*) and that procedural rights are provided. This ensures that the taxpayers have protection against the state, and tax authority from the forming of tax liability to the point of actual payment. Too often is the forming of tax obligation in the center of the examination, placing less emphasis on the tax procedure and administration, however the forming of the tax liability is just the tip of the iceberg. In the following I would like to present the procedural rights that are provided for taxpayers.

47. What is the role of the procedural principles and how are they implemented in your country's tax law?

Firstly, section 100 (2) of Act XCII of 2003 on the Rules of Taxation declares that “*If a private individual taxpayer is unable to exercise his rights - unless the inspection concerns specific tax liabilities or information gathering and with the exception of simplified control procedures and investigations of the authenticity of economic events - he may request postponement on one occasion of the control procedure or suspension of the inspection until his ability is restored, not to exceed sixty days. The duration of suspension shall not be included in the duration of control.*” The tax authority has discretionary power to decide whether the reasons provided by the taxpayer are justifiable. This is a right that most taxpayers do not exercise, as usually the motivation is to end the inspection as fast as possible. Secondly, section 100 (1) point a) declares that “*the taxpayer shall be entitled to confirm the identity and authorization of the inspecting officer.*” This is important, because according to section 93 (3) “*Control procedures may be carried out by an officer of the tax authority who has official identification and a letter of authorization.*” In compliance with section 93 (6) “*The letter of authorization shall contain the name of the tax inspector carrying out the inspection as well as the name of the taxpayer to whom it pertains, the type of tax liability, the*

period to be inspected, and the type of control procedure to be carried out.” All in all, the taxpayer has the right to control whether the inspector has the required authorization, who also has to identify him- or herself. Thirdly, section 97 (2) sets limits to the inspector’s activity, thus contributing to the protection of the taxpayer’s economic interest by declaring that “The tax inspector shall exercise his powers of inspection in a manner so as to cause the least amount of impediment in the taxpayer’s business operations.” Fourthly, section 100 (1) point b) and c) declares that “The taxpayer shall be entitled to be present at any and all acts of the inspector,” and „to have an attorney present,” which provides further protection for the taxpayer. Fifthly, section 93 (4) declares that “The tax inspector may commence an onsite inspection only in the presence of the taxpayer, his representative or proxy or, in the absence of such, two official witnesses.” Sixthly, regarding the availability of documents for inspection section 12 (1) declares that “Taxable persons and the persons required to pay tax under Subsection (2) of Section 35 shall be entitled to review documents pertaining to their taxation matters. This entitlement shall include the right to make or request copies of all of the documents that are necessary for the enforcement of their rights and for the fulfillment of their obligations.” Furthermore, section 100 (3) states that “The taxpayer shall be entitled to review the documents drafted in the course of an inspection, request information concerning the findings of the inspection, comment on such findings, present evidence, read the inspection report and make written comments within fifteen days of receipt of the report.” The right to inspect documents can be limited based on section 12 (2), which declares “In respect of documents pertaining to the disclosure of data, access may be restricted until the commencement of an audit if it is presumed that knowledge of the contents of such documents would frustrate the conclusion of the audit. The tax authority shall restrict access to documents by way of a ruling.” Section 12 (3) also contains limitation to the right of inspection. Seventhly, the act also provides regulations regarding deadlines, in order to provide protection to the taxpayers against the tax authority, and guarantee legal certainty, by declaring in section 92 (1) that “The time limit for control procedures shall be thirty days, including the first and last day of the procedure.” Section 92 (2) regulates the exceptions under the before mentioned provision, but the maximum time of the inspection can only be 120 days, if conditions are met. Lastly, I would also like to mention section 136 (1), which declares that “Taxpayers shall have the right to appeal resolutions of the first instance. Any party to whom the resolution pertains shall also have the right to appeal.” All in all, the provided examples should showcase that the Act on the Rules of Taxation contains provisions providing rights for the taxpayers (as well as obligations) during the whole tax procedure.

Furthermore, the Fundamental Law of Hungary also provides safeguard should these, or other rights provided in law be offended. Section (1) of Article XXVIII of the Fundamental Law of Hungary declares that *“Everyone shall have the right to have any charge against him or her, or his or her rights and obligations in any litigation, adjudicated within a reasonable time in a fair and public trial by an independent and impartial court established by an Act.* Moreover, section (7) declares that *“Everyone shall have the right to seek legal remedy against any court, authority or other administrative decision which violates his or her rights or legitimate interests.”* [APEH Tájékoztató (informant), 2010]

III. Constitutional principles regarding the distribution of tax burdens among taxpayers

Principle of equality

50. What is the scope of the principle of equality and how is it implemented in your country’s tax law? What criteria determine whether circumstances should be treated in terms of equality? What is the standard of comparison in your country?

In the area of taxation there are two major pathways of considering equality. Horizontal equity requires that comparable groups shall be treated in an equal manner, based on the premise that each citizen enjoys the fruits of common service. This is the principle of “equal treatment of equals,” leaving room for not treating unequal people, determined by some criteria, equally. However, as it has been said before by exceptional people in history, there is nothing more unequal than the equal treatment of unequal people. From a financial point of view, in a market economy there is bound to be unevenness between people, thus equal tax contribution, without considering the financial strength of the given individual, leads to inequality. This train of thought leads to vertical equity, which requires that those with more resources shall pay higher taxes, and provide a notable contribution, which provides for the principle of ability-to-pay. With regards to the Fundamental Law of Hungary article XXVIII declares the principle of equality. Section (1) declares that *“Everyone shall be equal before the law.”* Section (2) declares that *“Hungary shall guarantee the fundamental rights to everyone without discrimination and in particular without discrimination on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.”* Converting these principles to the ground of taxation, equality is ultimately visible in the obligation stated in Section 28 (1) of act XCIV of 2011 on the Economic Stability of Hungary, which expresses that each natural person, legal person, and other subjects of law has to contribute to the coverage of collective

necessities in the form of taxes. In compliance with this provision everyone is equal in the sense that everyone is obliged to pay taxes, however, we are left in the dark with regards to the distribution of the burdens, as it is not regulated in the Fundamental Law of Hungary. The above mentioned interpretation of equality could mean that poll taxes, proportional or progressive tax rates could all be applicable, as they do not offend the demand that everyone is obliged to contribute. From an economic point of view the law of diminishing marginal utility leads to a sense of equality on a different plain, which not only dismisses head taxes, but also proportional tax rates. Article XXX of the Fundamental Law does narrow the options to proportional or progressive tax rates with the introduction of the principle of “*accordance to capabilities*,” with which head taxes do not comply. This ultimately means that the criteria and the standard for comparison is the size of income both in personal and corporate taxation. To summarize the thought, in the area of taxation equality can only be imagined by some sort of inequality, with regards to the amount that is to be paid in taxes, due to the different bearing strengths. Economic laws showcase that this is not enough, and progressive tax rates are the best instrument to provide equality on a different plain, by considering and distinguishing based on everyone’s different ability to contribute. In Hungary this depth of the interpretation of equality is not present, which leaves room for inconsistencies.

51. Describe the importance of the principle of equality for your country’s tax legislation.

One of the most important pillars of a tax system is the ban of discrimination, which manifests in the requirement of equality; however there are different plains of equality. It has been mentioned how the principle of equality is interpreted in Hungary, and how Hungary complies with the ideal of equality only to a certain extent. The fact that Hungary does not consider that flat tax rates (15% income tax, 9% corporate tax) have different effect on taxpayers with differing bearing capacities showcases that it is not a main consideration, as progressive taxation was decommissioned by the Orbán administration. The other side of the medal is that it would be very important to reach equality as interpreted in Hungary, that is that everyone is equal in a sense that everyone has to contribute to the common necessities. Even this restricted understanding of equality has not been implemented. A phenomenon of the Hungarian tax system is that the number of taxpayers is relatively low, which hints at the significance of the grey and black markets. The national tax authority made efforts to increase the number of taxpayers by “whitening” the economy, with the instruments of online cash registers, among others.

52. Are there any disputed provisions/features in your country's tax law that are in conflict with the principle of equality? If yes, how are they justified?

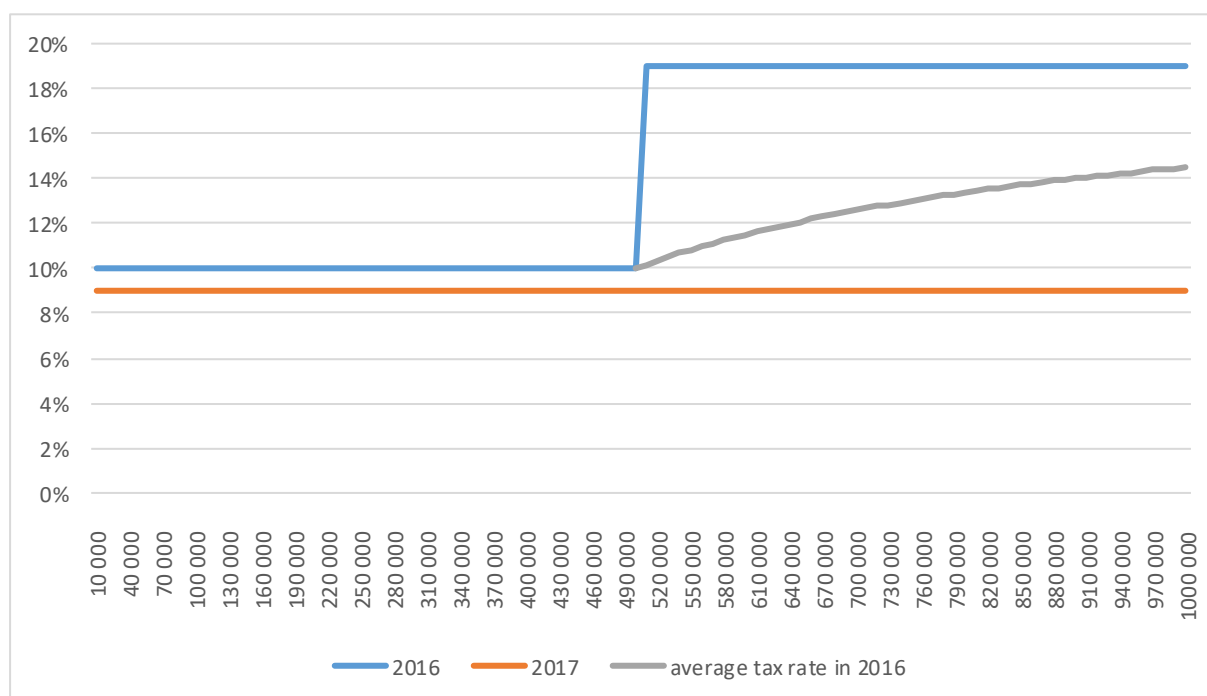
With regards to disputed provisions the sector-specific taxes are on the top of the list, as it could be considered to be discriminatory to place extra burden on only some sectors, but it could sometimes be justified. However there is an important side to these taxes, which are hard, if possible at all, to justify regarding the principle of equality. The sectors picked by the government mostly consist of some major players, usually multinational companies, and some smaller companies, which have domestic background in general. One might agree that there is some correlation between the amount of income, many times also the profit, and between the market shares of companies. These taxes mostly apply progressive tax rates, therefore affect companies with bigger profits, which in these sectors are mostly multinational companies. To make matters worse, these tax laws are often made in a way, which seem to target specific companies even in these specific sectors, which is a significant harm to the principle of equality. In the next question sector-specific taxes will also be touched and the justification of its usage will also be demonstrated.

53. Does the principle of equality oblige the legislator to create "neutrality" in company taxation?

As described before, the interpretation of equality in the Hungarian tax system only demands that everyone shall contribute, but the distribution of the burden is not under the scope of equality. Furthermore, article XXX of the Fundamental Law declares that *"Everyone shall contribute to covering common needs according [...] to his or her participation in the economy."* The introduction of sector-specific taxes place an extra burden on companies in the retail, telecommunications, energy and financial sectors, which is an offence to neutrality. At the time of the introduction of these specific taxes the Orbán administration declared that companies in these sectors, where generally only a few foreign companies with significant market share in each sector, were realizing "above average" profits. The companies active in these sectors were deemed to be making extra profit, and the administration opened warfare against these companies in the media, by claiming that these companies have taken advantage of the Hungarian people, which has to come to an end. As visible, the justification regarding the introduction of these taxes was not on the ground of professional considerations. With regards to neutrality there has also been change in act LXXXI of 1996 on Corporate Tax and Dividend Tax, which came into effect from January 1st of 2017. Before this period, subjects of

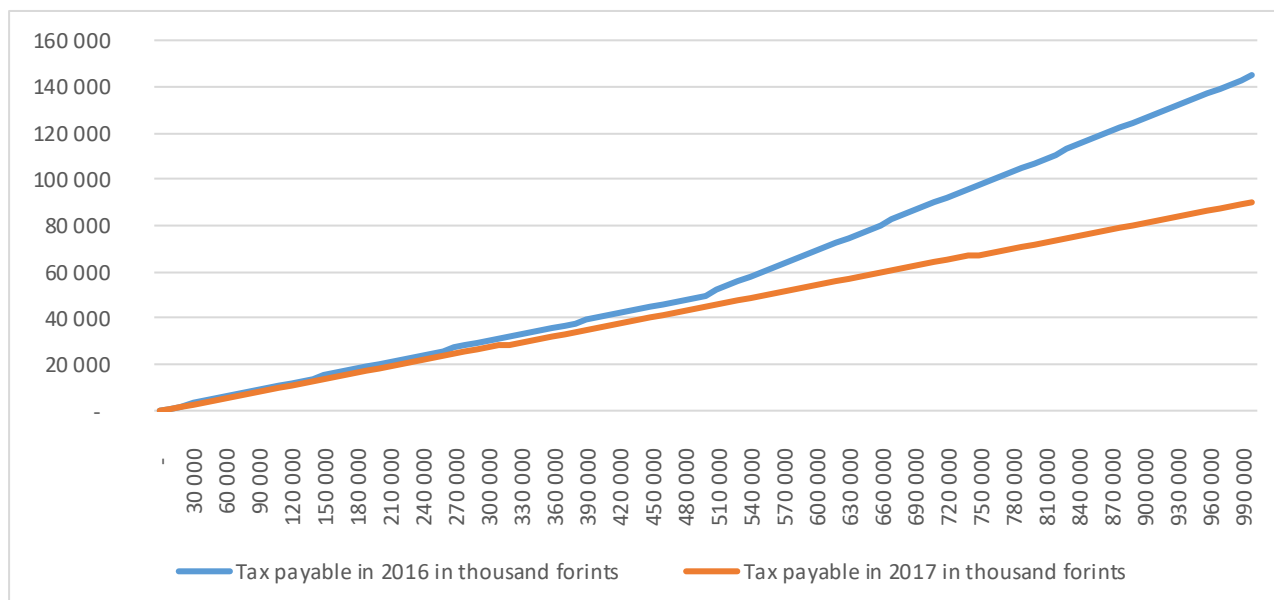
the act had tax liability of 10% for the first 500 million forints, which is approximately 1,602,564 euros. Above this amount the tax liability was 19%, but only for the amount bigger than 500 million forints. From 2017 the tax rate is uniformly 9%. In the following three diagrams I would like to showcase the applicable tax rates, the difference in the amount of tax payable since the reform, and in the third diagram I would like to showcase with how much percent the tax burden has decreased due to the reform for companies with different profits.

Diagram number 4 shows the change in the tax rates, and the average tax rate for 2016, which of course only shows difference on the amount above 500 million forints, and is identical to the rate below this amount, and is also identical to the tax rate in 2017 due to its nature. The horizontal axis showcases the profit in thousand Forints, the vertical axis the applicable rate of the corporate income tax. The growing average tax rate in 2016 showcases that the corporate income tax system was build on tax progression



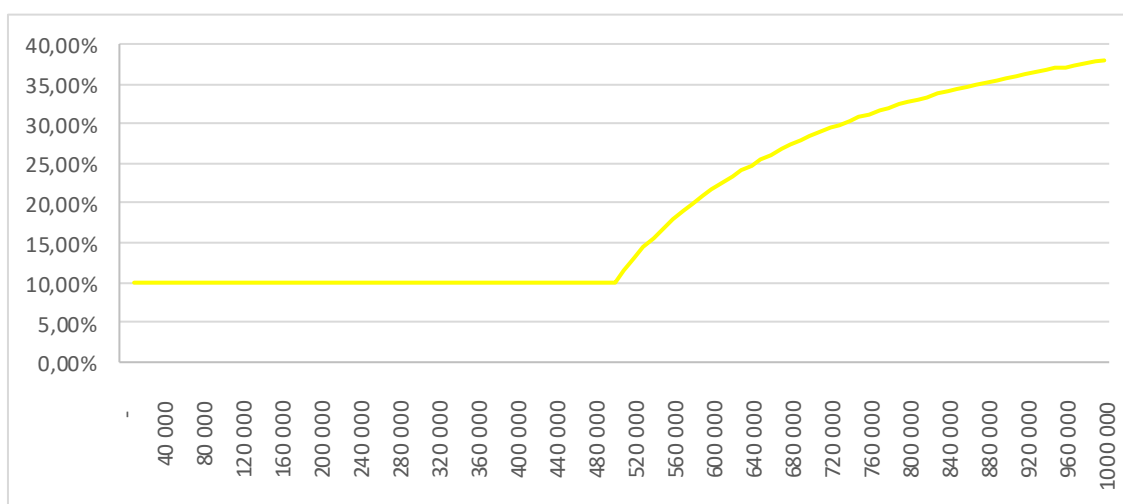
4. Corporate income tax rates and average tax rates in 2016 and 2017

Diagram number 5 showcases the amount of corporate tax payable, with the “tax scissors” clearly opening after 500 million forints. This ultimately means that the biggest advantage of the reform could be realized by entities with bigger than 500 million profit per year. The horizontal axis is identical to the diagram above, however the vertical axis showcases the amount of corporate tax payable in thousand Forints.



5. Corporate income tax payable in 2016 and 2017 in thousand Forints

Diagram number 6 is meant to justify my previous argument, which reflected on the fact that the higher the profit, the higher the percentage, which can be saved in corporate income taxes. The horizontal axis is identical to the previous two diagrams, with the vertical axis representing the percentage saved in corporate income tax between 2017 and 2016. Up until 500 million each entity saves 10 % of taxes, given that there is no difference in the profits, and the tax base is not modified. The decrease of the tax rate, ceteris paribus, means that a company earning 1,000,000 thousand forints per year would save almost 38% of taxes in 2017 in comparison to 2016, due to the decommissioning of progressive tax rates. This could be seen as a sense of neutrality, however it is also a harm to the ability-to-pay principle, as legal entities with more financial strength do not have to contribute to the common necessities to a greater extent.



6. Difference in corporate tax payable in percentage between 2016 and 2017

55. What conditions must be met to justify a restriction in the event of a domestic provision being in conflict with a constitutional right or principle? Please, list them.

Taxation inevitably offends the right to property, which is anchored in the section “FREEDOM AND RESPONSIBILITY” in section (1) of article XIII, which declares that *“Everyone shall have the right to property and inheritance. Property shall entail social responsibility.”* Taxation limits the extent of the right to property, a fundamental right, which can also only be imagined between frames. The before mentioned framework can be found in section (3) of article I of the Fundamental Law, which declares that *“The rules for fundamental rights and obligations shall be laid down in an Act. A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of such fundamental right.”* As visible, the conditions for restriction of a fundamental right are: necessity, proportionality and the essential content of the restricted fundamental right has to be respected.

Ability to-pay principle

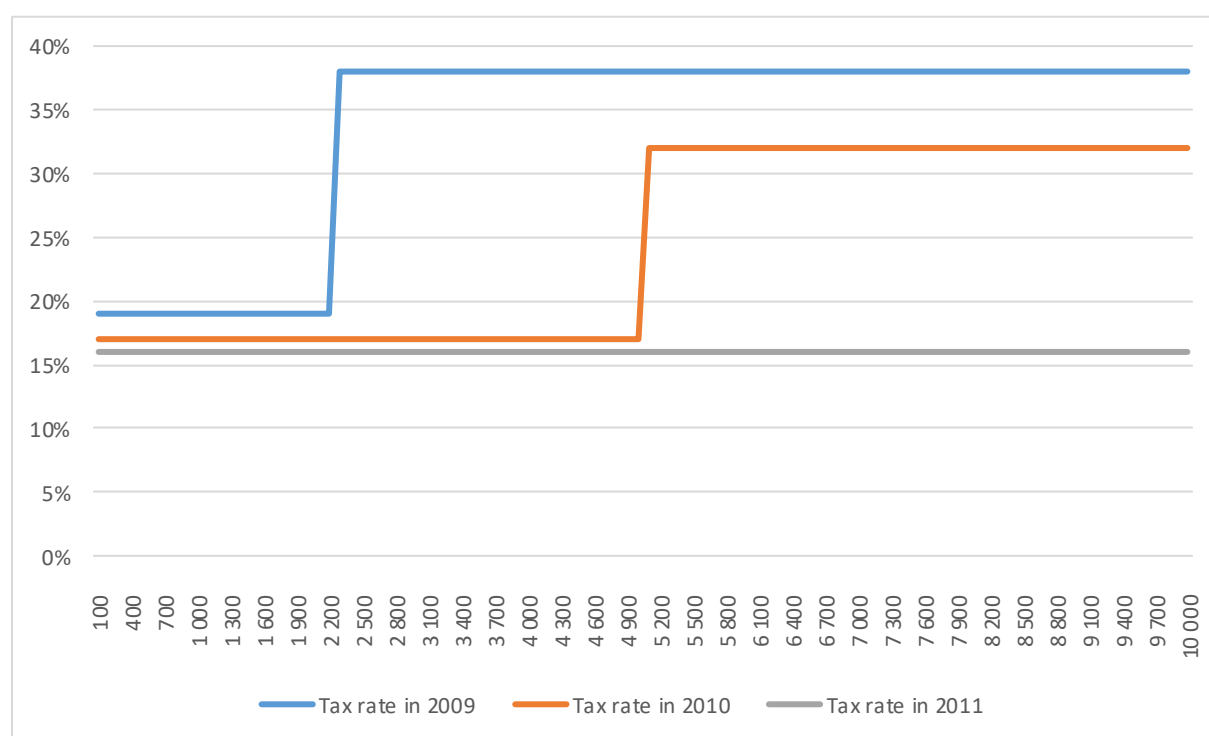
57. What is the scope of the ability to-pay principle? Does it affect individuals as well as legal entities?

In previous sections the ability-to-pay principle has already been touched, and it has also been mentioned that the Hungarian tax system does not fully provide for the ability-to-pay principle due to the application of proportional tax rates. It has also been previously discussed how proportional taxes do not result in equal sacrifice, as people with lower income endure a greater sacrifice. The ability-to-pay principle could be seen as the complementary side of the principle of equality, which requires treating equal circumstances equally. In a market economy differences in income are inevitable, which also has to be taken into consideration in taxation. The differentiation based on this phenomenon leads to the ability-to-pay principle, which provides a framework to handle the differences between members of the economy. The coexistence of the principle of equality and the ability-to-pay principle manifest in the horizontal and vertical equity, that is the requirement of treating equals equally, however individuals or legal entities with different abilities to contribute to the common necessities shall be taken into consideration. This ultimately leads to progressive taxation, which requires that individuals and legal entities with higher-income shall contribute

with a higher percentage of their income in taxes. The fact that an individual or a legal entity contributes with a higher sum of tax to the collective necessities does not fully comply with the ability-to-pay principle, as it would be required to have an increasing average tax rate.

58. Describe the importance of the ability to-pay principle for your country's tax legislation, i.e.: what provisions of your country's tax law are based on the ability to-pay principle?

Demonstrating the events of the previous years in the area of the Hungarian tax system should showcase the importance of the ability-to-pay principle, and how its significance has changed in the last few years. With regards to the personal tax field the Orbán administration brought significant changes in 2011, and in the following I would like to present these reforms.



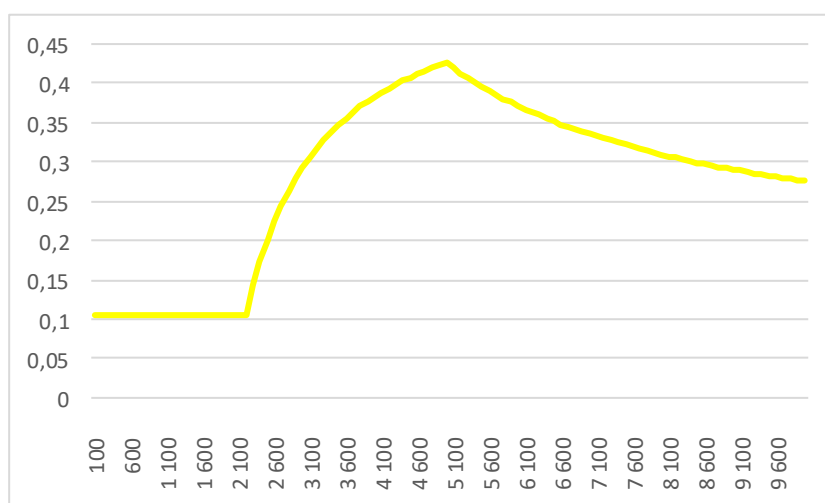
7. Personal income tax rates in 2009, 2010 and 2011

First of all I would like to present the personal income tax rates for 2009, 2010 and 2011 in diagram number 7. The horizontal axis showcases the annual income in thousand Forints, and the vertical axis the applicable personal income tax rates. Until 2010 the Hungarian Socialist Party had the opportunity to form government, however in the 2010 Hungarian parliamentary election the FIDESZ-KDNP coalition, led by Viktor Orbán managed to secure two-thirds of the mandates. The change in politics is also clearly visible in taxation. As visible in the diagram the Socialist Party placed emphasis on progressive taxation, which was not immediately altered after the election, however in 2011 the progressive tax system

was dismissed in favor of a flat tax system. Even though article XXX of the Fundamental Law of Hungary hints at the ability-to-pay principle it was and is possible to dismiss progressive taxation. Article 53 of the Constitution of the Italian Republic [Deák, 2016, p. 43] is almost identical to article XXX of the Fundamental Law of Hungary by declaring that “*Every person shall contribute to public expenditure in accordance with their capability,*” However, the Italian Constitution also declares that “*The tax system shall be progressive,*” which cannot be found in the Fundamental Law of Hungary, thus giving room for the dismissal of the progressive tax system. I believe the ultimate measure of the importance, or more likely the decrease in significance, of the ability-to-pay principle is visible in these changes to the tax system. Progressive taxation was dismissed, which is considered to be the ultimate tool for taking the ability-to-pay principle into consideration, thus signaling that the ability-to-pay principle has lost its significance. The reforms of the corporate income tax system were also presented, where progressive taxation was also dismissed, further confirming the decrease of the importance of the ability-to-pay principle. It can be stated that the central taxes are not based on progressive tax rates, thus restrictedly correspond to the ability-to-pay principle.

59. Does the ability to-pay principle affect the tax rates (e.g. with respect to flat/progressive income tax rates)?

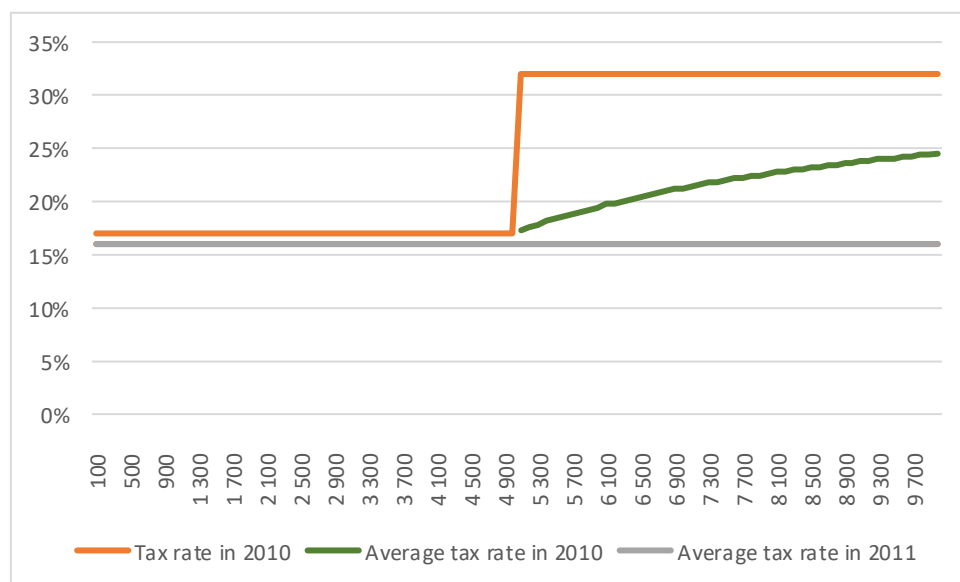
In the following I would like to focus on the tax rates of the personal income taxes, and showcase as to how the significance of the ability-to-pay principle has decreased. Diagram number 7 shows the personal income tax rates between 2009 and 2011, which proves at first sight how different the ideology of the new majority in the National Assembly is compared to their predecessors. First of all, after the successful elections the lower personal income tax rates were modified from 19 to 17 percent, and the higher rates were decreased from 38 to 32 percent. Moreover, the border between the two zones was raised from an income of 2.2 million forints per year (roughly 7100 euros) to 5 million forints (roughly



8. Difference in personal income tax due in percent between 2009 and 2010

16.100 euros).

Diagram number 8 above showcases with how many percent the amount of tax to be paid (on the vertical axis) was decreased due to the combined decrease of tax rates and the shift of the boarder of the progression zone. The peak of the graph stands at an annual income of 5 million forints (horizontal axis) with a decrease in personal income taxes by more than 42 percent. According to the Hungarian Central Statistics Office the average income of a person in Hungary was roughly 2.4 million forints, [KSH, 2016, 2.1.35.] which, according to the diagram above, meant saving an average of 17 percent of personal income taxes for a Hungarian with an average yearly income. This shows that the people with above-average yearly income were able to save the most with regards to the personal income tax, which does not correspond to the ability-to-pay principle, where people with income above the average should contribute to a greater extent to the common expenses. As visible, the diversion from the ability-to-pay principle started right after the FIDESZ-KDNP party won the elections. However the real change came in 2011 when the progressive tax rates were decommissioned, and in the following I would like to showcase the effects of the flat tax personal income tax system compared to the progressive system.



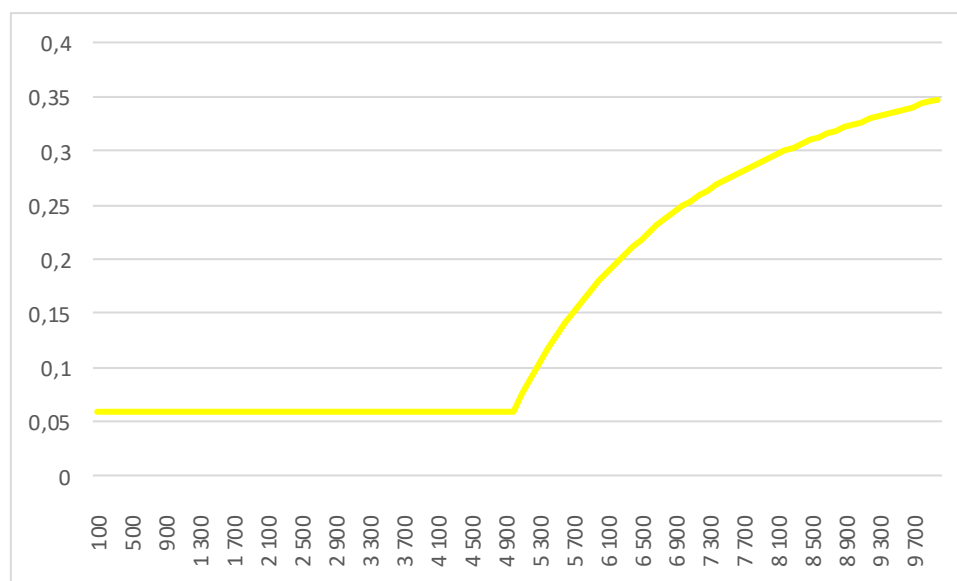
9. Personal income tax rates in 2010 and 2011

Diagram number 9 above shows the progressive income tax system from 2010 with the orange curve, and its average tax curve in green. Progression is visible due to the growth of the average tax curve. The curve below shows the tax system from 2011, where the tax rate and the average tax rate is the same. The reform resulted in a lower personal income tax burden, however, as we will see the decrease of the burden did not affect everyone evenly.



10. Difference in personal income tax due between 2010 and 2011 in thousand Forints

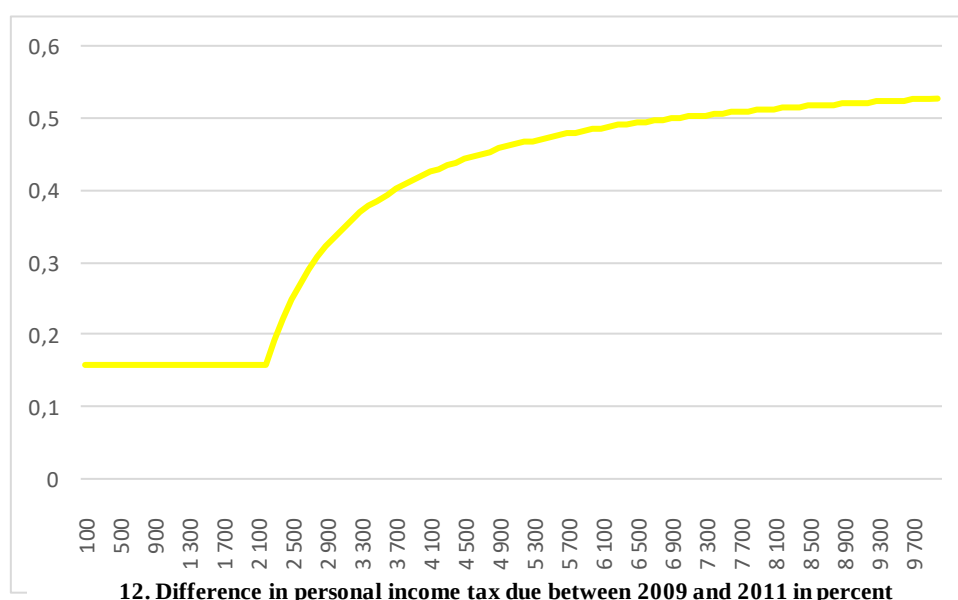
Diagram number 10 above compares the amount of tax to be paid, the horizontal axis being the yearly income and the vertical axis the amount of personal income tax to be paid in thousand Forints. It is clearly visible that the “tax scissors” open at an annual income of 5 million forints, which is due to the decommissioning of progression, thus showing how individuals with more income save more in taxes due to the reform.



11. Difference in personal income tax due between 2010 and 2011 in percent

Diagram number 11 above is meant to showcase to what extent the reform to the flat tax system influenced different groups of society. In 2011 the average income of a Hungarian

was a little more than 2.5 million forints, [KSH, 2016, 2.1.35.] which is about 8.200 euros. On the horizontal axis is the annual income visible and according to the statistics, the change to the flat tax system resulted in a 5.8 percent decrease in the personal income tax due in comparison to the previous year. The diagram also shows that above an annual income of 5 million forints the percentage saved starts growing. According to the diagram above, the biggest winners of the reforms were the groups with higher income, as someone with an annual income of 10 million forints saved nearly 35 percent in taxes to be paid in comparison to the progressive tax system.



The aim of the last diagram, number 12, is to summarize what has been presented in this section regarding the change to a flat tax system from a progressive tax system, which was one of the most significant acts of the Orbán administration. For a person with an average income the reform meant saving nearly 16 percent of personal income tax, however, members of society earning above average managed to save a greater percentage of income tax due, as someone earning 10 million forints needed to pay nearly 53 percent less personal income tax in 2011 in comparison to 2009. After 2011 the ability-to-pay principle does not prevail anymore, as individuals with higher income do not contribute to the collective expenses with higher percentage of their income. The same phenomenon can be seen in the area of corporate income taxation, which was presented in the previous section, thus the main central taxes do not comply with the ability-to-pay principle due to the reforms made by the Orbán administration.

60. Are there any disputed provisions or features in your country's tax law that are in conflict with the ability to-pay principle? If so, how are they justified?

The provision, which caused the most controversy in the tax reforms of the Orbán administration was undoubtedly the decommissioning of the non-taxation of the minimum wages. Prior to the reforms of 2011 the taxation of minimum wages was not part of the Hungarian personal income tax system due to social considerations, however the new political majority decided on shifting favors and exemptions based on other aspects, such as the number of children a person is raising. Before the reforms, the Hungarian personal income tax system showed similarities to the German personal income tax system, especially the institution of the "Grundfreibetrag," where a minimum income amount is declared, and is therefore tax exempt. This institution is further strengthened in Germany by the practice of the Constitutional Court, which is also not present in Hungary. The fact that the biggest winners of the change to the flat tax system were the individuals with above average incomes, and the fact that the tax exemption of minimum wages was decommissioned took its toll on individuals with below average income. The European Commission's Country Report Hungary 2016 paper also states that the labor tax wedge is high, in particular for low-income earners, which was the highest in the European Union in 2014. [European Commission, 2016, p. 36] The tendency of not favoring individuals with lower income is worrisome and is hard to justify.

62. Are there any suggestions or discussions in your country regarding an alternative to the ability to-pay principle as a principal standard for sharing the tax burden?

As it has been mentioned the Hungarian tax system only provides for the ability-to-pay principle to a certain extent, and before the next parliamentary elections in 2018 some political declarations have already been made by parties in minority. The party prior to the FIDESZ-KDNP coalition, the Hungarian Socialists Party, has already declared the program of reintroducing the progressive tax system, given that they win the elections. There has been much debate whether the flat tax system or the progressive tax system is fair. I would not like to take a stance on this matter, however as seen in the diagrams above, each system tends to favor a different group of earners. The FIDESZ-KDNP coalition decided to divert from the ability-to-pay principle, favoring individuals with average and above average incomes more than people with low-income, thus causing controversy in Hungary. The diversion from the ability-to-pay principle resulted in discussions not about alternatives to the above mentioned principle, rather on how to return to the predominance of the ability-to-pay principle.

Principle of protection of ownership

63. What is the scope of ownership? Are assets as a whole protected by the principle of protection of ownership? How many and what kind of taxes can be imposed on assets without infringing the right to property? Does the right to property set a limit to tax rates?

First of all I would like to introduce the regulations of the Fundamental Law of Hungary regarding the right to ownership. Section (1) of article XIII declares that *“Everyone shall have the right to property and inheritance. Property shall entail social responsibility.”* The article provides the fundamental right of ownership, however it also declares that this right also has an obligation attached to it that is ownership has responsibility, thus practicing the right of ownership also has a cost. Section (2) of the same act describes the scope of the protection of ownership by declaring that *“Property may only be expropriated exceptionally, in the public interest and in the cases and ways provided for by an Act, subject to full, unconditional and immediate compensation.”* With regards to taxation, a conflict appears between the obligation to contribute to the common expenses and the right of ownership, as taxation inevitably intrudes in the right of ownership. The question is how to resolve this conflict, and section (3) of article I provides framework for the resolution of the above mentioned conflict. The above mentioned section declares that *“The rules for fundamental rights and obligations shall be laid down in an Act. A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of such fundamental right.”* The three criteria, which have to be taken into consideration regarding the conflict of taxation and the protection of ownership as visible above are the requirement of necessity, proportionality and respect of the essential content. The decision 64/1993. (XII. 22.) of the Hungarian Constitutional Court describes the scope of ownership by declaring that the scope of the constitutional protection of ownership is always concrete: is dependent on the subject, object and function of ownership as well as the method of restriction. From the other point of view the constitutional possibility of executive intervention into the right to ownership may vary. Most importantly, the decision declares that the main emphasis of judgement whether the restriction of ownership by the state is constitutional has to be done by investigating whether the intentions and the used means, with other words the public interests and the restriction of the right to ownership was proportional or not. From the Constitutional Court’s practice the main emphasis is placed on the requirement of proportionality, which is always up to the given circumstances, and it does not

set a limit to number of taxes imposable on a given asset, but the extent of restriction of ownership has to be proportional to the common will. The above mentioned decision also declared that it considered article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms to be exemplary, which declares that “*No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*” The Constitutional Court argued, based on the above mentioned article that the article does not restrict the states to apply such laws, which they consider to be necessary to control the use of ownership in compliance with the public will, or to secure tax incomes. This ultimately justifies taxation, which although means a restriction to the right to ownership, on the condition that the applicable laws are proportional to the public will. All in all, the Hungarian Constitutional Court’s practice does protect the right to ownership, and sets limits to the restriction of ownership, however, as described above the ultimate measure of constitutionality is the requirement of proportionality, which is only interpretable for a concrete situation, thus there is no previously determined number of taxes imposable on a given asset, nor is there a general rule for the maximum tax rate up to which the right to ownership is restricted constitutionally.

64. Describe the importance of the right to property for your country’s tax legislation. What is the role of the right of ownership? How is it used by the domestic tax legislator as a guiding domestic policy principle? Does the tax legislator for instance consider the right of ownership when rising tax rates or introducing new taxes?

The taxation practice of the Hungarian state does not suggest that the right to ownership is one of the main considerations when deciding on imposing a new tax, even though the requirement of proportionality has to be met. However, in the area of local taxes there is a restriction that the local governments cannot impose taxes on tax objects, which are already burdened by central taxes, preventing an unproportioned restriction to the right to property. It has to be said that the requirement of proportionality in the restriction of the right to ownership with regards to taxation very rarely surfaces, and it seems that there is a wide room for deciding on tax rates, and taxes in general, as the National Assembly has comprehensive rights to tax almost anything, which looking at the taxes imposed by the Orbán administration is visible. All in all, it can be said that at the time of raising tax rates or introducing new taxes the protection of ownership was rarely a main consideration, or topic of discussion, as the requirement of proportionality provides a wide framework for movement

for the government, however in the following question I would like to introduce a provision of the Orbán administration, which effected the principle of protection of ownership.

65. Are there any disputed provisions or features in your country's tax law that are in conflict with the right to property (e.g. concerning wealth taxes or taxes on real estate)? If so, how are they justified?

As it is widely known in 2010 the Hungarian National Assembly adopted an act (XC. of 2010), which introduced a tax on the severance pay and other payments related to the termination of employment of employees of the public sector, with a tax rate of 98 percent on the amount exceeding 3.5 million forints, which is almost 11.300 euros. [ECHR, 2013, II.] The European Court of Human Rights found that this provision violated Article 1 of Protocol No.1, due to not meeting the requirement of proportionality. In the case 66529/11 the amount of severance pay subject to the 98 percent tax was 2.4 million forints. At that time, the general personal income tax rate of 16 percent was in force, and in this concrete case the overall tax burden was near to 52%, thus the court found that the requirement of proportionality was violated. The Hungarian government argued that such high severances were against good morals, and tried to justify the tax on a moral plain.

Freedom of religion

66. What is the scope of religious freedom?

First of all I would like to call attention to the fact that the victory in the 2010 parliamentary elections brought significant change to Hungary, due to the FIDESZ-KDNP coalition securing two-thirds of the mandates. Less has been spoken about the KDNP party, as it does not have as significant role in the coalition as the FIDESZ party, which is also visible in the fact that only three members of the twelve-member government are delegated by the KDNP party. The name KDNP stands for Christian Democratic People's Party in Hungarian, which is vital to know to understand the ideology behind the actions of the government and the members of the National Assembly, as some policies of the KDNP party was the cause of major controversy. The number one disputed provision was undoubtedly the act initiated by the KDNP party, declaring that every store exceeding 400 square meters must be closed on Sundays, which due to public pressure had to be decommissioned just one year after it had taken force. All in all, the KDNP party does have influence in a wide variety of different matters, which is probably most visible in the area of religious matters.

With regards to religious freedom I would like to present the provisions of the Fundamental Law of Hungary. First of all, according to the National Avowal of the Fundamental Law, *“We recognize the role of Christianity in preserving nationhood. We value the various religious traditions of our country.”* As visible emphasis is placed on Christianity, which of course has its tradition in the history of Hungary, however other religious traditions are also acknowledged. Furthermore, article VII. regulates the freedom of religion. Section (1) of the above mentioned article declares that *“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to choose or change one’s religion or other belief, and the freedom of everyone to manifest, abstain from manifesting, practice or teach his or her religion or other belief through religious acts, rites or otherwise, either individually or jointly with others, either in public or in private life”* Section (2) declares that *“People sharing the same principles of faith may, for the practice of their religion, establish religious communities operating in the organizational form specified in a cardinal Act.”* These sections provide the scope of religious freedom in Hungary.

67. How is it implemented in your country’s tax law? For example, does your country’s tax law encourage donations for religious purposes?

The religious communities can greatly contribute to reaching collective aims, however these communities also need financial means to successfully engage in important issues, and in securing the appropriate financial background the state can also take its part through the tax system. In the following I would briefly like to present how these communities are aided by the Hungarian tax system. First of all, section (4) of article VII of the Fundamental Law declares the prospect for cooperation between churches and the state by declaring that *“The State and religious communities may cooperate to achieve community goals. At the request of a religious community, the National Assembly shall decide on such cooperation. The religious communities participating in such cooperation shall operate as established churches. The State shall provide specific privileges to established churches with regard to their participation in the fulfilment of tasks that serve to achieve community goals.”* Furthermore, section (5) of the same act declares that *“The common rules relating to religious communities, as well as the conditions of cooperation, the established churches and the detailed rules relating to established churches shall be laid down in a cardinal Act.”* As visible the cooperation shall be initiated by the churches, and the National Assembly has the right to decide on cooperation. A further restriction is the fact that the state only cooperates with established churches. Schedule No. 1 to act CCVI lists 27 established churches in Hungary.

Subjects of the act on corporate income tax may donate to established churches to support their activities regulated in the above mentioned act. Act LXXXI of 1996 on Corporate Tax and Dividend Tax regulates in Schedule No. 3 section B) point 17 that donations may only be taken into consideration as costs provided that the donation is free of charge, was done willingly, and that the donator has a certification from the established church, showing the name of the established church and the donator, its headquarters, tax identification number, the value of the donation and the for what purpose the donation will be used for. Provided that all of these criteria are met, the donation will be considered to be costs and expenses incurred in the interest of business operation, thus decreasing the pre-tax profit of the donator. Furthermore, section 7 of the same act regulates tax base deductions, in which point z) declares that even though a donation meets all the criteria in section B) point 17, thus is considered a cost incurred in the interest of business operation, does not mean that all type of these acknowledged donations can be used for the purpose of tax base deduction. According to point z) only donations to public-benefit organizations can be acknowledged for purposes of tax base deduction, thus the tax base cannot be deducted based on donations to established churches. Furthermore, it has to also be mentioned that according to the act on personal income taxes, each individual may decide to donate 1 percent of his or her tax to an established church as well.

68. Are there any disputed provisions or features in your country's tax law that are in conflict with the freedom of religion? If so, how are they justified?

Looking at the previously presented rules on the support of religious communities one might consider it to be disputable that only donations to established churches can be considered as costs and expenses incurred in the interest of business operation. As mentioned, in Hungary there are 27 established churches, which might not recognize the whole palette of religious communities. Furthermore, the donations to these churches may only be acknowledged as expenses with no further opportunity to apply deductions to the tax base, which ultimately questions whether this system really endorses and motivates donation to churches.

69. What kind of method applies in your country for the financing of churches? Does it apply to all churches – if not, how are different treatments justified?

As mentioned before in Hungary the state provides the opportunity for subjects of the corporate income tax act to acknowledge their donations as costs, thus decreasing their pre-

tax profit, however further deductions are not possible from the tax base. It has also been mentioned that the acknowledgment of donations have some criteria, and only donations to established churches may be acknowledged. The criteria for an established church is that it has to have an international operation of more than 100 years, a minimum of 20 year presence in Hungary and followers of more than 0.1 percent of the population, which is an estimate of 10 thousand people. In accordance with the formation of the institution of established churches nearly 70 communities lost their status, thus losing the advantages (financial as well) attached to the status of established churches. One can only imagine the reason behind this drastic cut of supportable churches, as the official position on the changes was to find a long term resolution for the dominancy of the freedom of thought, conscience and religion. It is question to be answered in the future, whether these changes to the religious communities are the best method to reach the above mentioned targets.

70. If there is a church tax (or similar levy) in your country, please describe its basic structure and proceedings (e.g. who is competent for imposing church taxes? What are the tax rates? Is there a possibility to be exempted from the church tax?)

In Hungary there is no church tax like the German Kirchensteuer for example. The connection of the tax system with the financing of churches manifests in the donations, which can be acknowledged as costs for subjects of the corporate tax act, or the 1 percent donations by subjects of the personal income tax act. It has to be mentioned that acknowledging donations as costs and donating 1 percent of the personal income tax may only be done to established churches.

Protection of the family

71. What is the scope of the constitutional protection of the family?

In the National Avowal of the Fundamental Law of Hungary we can find the first commitment to the protection and importance of the family, which declares that *“We hold that the family and the nation constitute the principal framework of our coexistence.”* Article L) of the Fundamental Law further defines the scope of the protection of the family, as section (1) declares that *“Hungary shall protect the institution of marriage as the union of a man and a woman established by voluntary decision, and the family as the basis of the survival of the nation. Family ties shall be based on marriage and/or the relationship between parents and children.”* One might consider the wording of the declaration as very conservative and exclusive, but was taken from the ECHR, thus is not a restriction made by Hungary alone.

Section (2) declares that “*Hungary shall encourage the commitment to have children,*” which is very strongly present in the Hungarian tax system. Furthermore, article XV declares that “*By means of separate measures, Hungary shall protect families, children, women, the elderly and persons living with disabilities.*” These declarations form the scope of the protection of the family in the Hungarian legal system.

72. How is it implemented in your country’s tax law (e.g. is there a preferential tax regime applicable to families/married persons/single parents in your country? If so, is it mandatory/ is there a possibility to opt out?)?

The Orbán administration has placed significant emphasis on the creation of working opportunities, whatever it may be, and on the protection of the family. Both of these aspirations are strongly present in the tax system, and in the following I would like to present the way these political ideals are manifested in the tax system. In previous sections it was described how the tax exemption of low income individuals was decommissioned, and it is also a significant change that the social redistribution’s main flagship is the family allowance, which has significantly been increased, as the amount of other social aids have not been raised considerably, if even raised at all. The fact that the biggest benefit can be realized in taxation combines the two major aspirations of the Orbán administration: urging labor and the protection of family. Act CXVII of 1995 on the Personal Income tax regulates the family allowance in section 29/A. Point (2) of the mentioned section regulates the amount with which the tax base can be reduced by. In case of raising one child the amount is 66.670 forints (215 euros) per month, for a person or family with two children the amount is in 2017 100.000 forints (323 euros) per month per child, which will increase to 116.670 (376 euros) in 2018 and to 133.330 forints (430 euros) in 2019 per month per child. For an individual or family raising three or more children this amount is 220.000 forints (710 euros) per child per month. It has to also be mentioned that this amount may be split between the parents optionally, in order to use up the entire amount. Secondly, labor is not only burdened by the 15 percent income tax, but also other social contributions, (which were not part of our discussion) and the part of the unused family allowance may be applied to decrease the amount of social contributions payable, which mean a burden of 7 percent extra to the personal income tax.

annual income in 2017	tax due	tax due raising 1 child	raising 2 children	raising 3 children	raising 4 children
1 020 000	153 000	32 994	-	-	-
3 000 000	450 000	329 994	90 000	-	-
9 000 000	1 350 000	1 229 994	990 000	162 000	-

13. Family allowance of the tax base deduction

The table above contains three annual income categories in forints, the first being the minimum wage, the second the average income and the third a well over average income. The tax due column shows the personal income tax due, given that there are no tax base modifications, and no children are being raised by the individual. The table shows, that people with low income cannot fully use the advantages of the family allowance, because of their low tax base, thus a person with low income raising two children will not be obliged to pay personal income tax due to the tax base being reduced to zero, and the person will still have enough of the family allowance to decrease some part of the social contributions. Of course, these results are modified when a family of two employees are raising children, thus the unused family allowance could be applied to reduce the tax base of the other parent. As visible, to fully be able to take advantage of the family allowance, the children should be raised by two jobholders, earning an average income or higher, and having 3 or more children.

The Fundamental Law also vows to protect marriage, and section 29/C provides a further opportunity to decrease the tax base through the institution of the allowance of newly-weds. According to the above mentioned section, the married couple may decrease their tax bases with a sum of 33.335 forints per month for 24 months, in case it is a first marriage for one of the newly-weds, and the sum mentioned above is the total sum applicable together, not per person.

73. Are there any special provisions in your country's tax system that deal with the deductibility of alimonies?

Tendencies show that the number of divorces is increasing also in Hungary, which means an increase in the importance of the institution of alimonies. The Fundamental Law also vows to protect mothers and children, thus Schedule No. 1 to the act on personal income tax declares in point 6.1 that the amount of alimony regulated in an act received shall be tax exempt.

74. Are there any disputed provisions or features in your country's tax law that are in conflict with the principle of protection of the family? If so, how are they justified?

As previously showcased significant emphasis is placed on the protection of family through the tax system, and it has been also mentioned that the number and amount of other social aids have not been increased, or generally their importance have been cut back. This ultimately means that effective protection to the family, from a financial point of view, which might be considered as one of the most important aspects, is only reachable for parents in employment. As with other segments of the tax system, as presented, seems to favor individuals with higher income, and the family allowance also shows characteristics, which prefer individuals with higher income and more children. I believe that the institution of the family allowance showcases best what type of aspirations the Orbán administration is motivated by, namely, to encourage labor and having (more) children.

III. International tax law

77. If your country is signatory of the ECHR: Where does the ECHR rank in your country (when answering this question, please also explain whether your country follows the monistic or dualistic system)?

The European Convention of Human Rights is applicable in Hungary since November the 5th of 1992. Article E) regulates the relationship between Hungary and the European Union and different treaties. Section (2) of the above mentioned article declares that *“With a view to participating in the European Union as a Member State and on the basis of an international treaty, Hungary may, to the extent necessary to exercise the rights and fulfil the obligations deriving from the Founding Treaties, exercise some of its competences set out in the Fundamental Law jointly with other Member States, through the institutions of the European Union.”* Furthermore, section (4) declares that *“For the authorization to recognize the binding force of an international treaty referred to in Paragraph (2), the votes of two-thirds of the Members of the National Assembly shall be required.”* Section (4) expresses that Hungary follows the dualistic system, and international treaties recognized by the National Assembly are ranked directly below the Fundamental Law of Hungary, above laws.

- a. Please compare the relevant articles of the ECHR to the corresponding provisions of your country's constitution (esp.: definition in article 1 of Protocol 1 of the ECHR – does it deviate from your domestic definition of the principle of equality?)

In the following I would like to compare the previously presented articles of the Fundamental Law of Hungary with the European Convention on Human Rights. The first point of linkage can be found in article XXVIII of the Fundamental Law of Hungary regarding the right to a fair trial, regulated in article 6 of the ECHR and also the principle of no punishment without law declared in article 7 of the ECHR. Section (1) of the above mentioned article of the Fundamental Law of Hungary declares that *“Everyone shall have the right to have any charge against him or her, or his or her rights and obligations in any litigation, adjudicated within a reasonable time in a fair and public trial by an independent and impartial court established by an Act.”* The requirement for a fair and public trial, within a reasonable timeframe and the requirement for an independent and impartial court are present in both the Fundamental Law as well as the ECHR. Section (2) of the before mentioned article of the Fundamental Law declares that *“No one shall be considered guilty until his or her criminal liability has been established by the final decision of a court,”* which is very similar in wording to the second point of article 6 of the ECHR. Section (3) of the previously mentioned article of the Fundamental Law of Hungary declares that *“Persons subject to criminal proceedings shall have the right to defence at all stages of the proceedings. Defence counsels shall not be held liable for their opinion expressed while providing legal defence.”* This provision is regulated in more detail in point three of the ECHR. Section (4) of the same article of the Fundamental Law of Hungary declares that *“No one shall be held guilty of or be punished for an act which at the time when it was committed did not constitute a criminal offence under Hungarian law or, within the scope specified in an international treaty or a legal act of the European Union, under the law of another State,”* which bears resemblance to article 7 of the ECHR regarding the principle of no punishment without law, however the ECHR also declares the prohibition imposing a heavier penalty than the one applicable at the time the criminal offence was committed. Section (5) of the article discussed before of the Fundamental Law declares that *“Paragraph (4) shall not prejudice the prosecution or conviction of any person for any act which, at the time when it was committed, was a criminal offence according to the generally recognised rules of international law,”* which is very similar in wording to point two of article seven of the ECHR, however the ECHR uses the phrase *“general principles of law recognised by civilised nations,”* instead of *“generally*

recognised rules of international law.” Section (6) and (7) of the Fundamental Law goes further and contains provisions not visible in article seven of the ECHR, by declaring “*With the exception of extraordinary cases of legal remedy laid down in an Act, no one shall be prosecuted or convicted for a criminal offence for which he or she has already been finally acquitted or convicted in Hungary or, within the scope specified in an international treaty or a legal act of the European Union, in another State, as provided for by an Act*” and „*Everyone shall have the right to seek legal remedy against any court, authority or other administrative decision which violates his or her rights or legitimate interests,*” which is regulated in article thirteen of the ECHR. With regards to the principle of protection of ownership the related provisions can be found in article 1 of the ECHR’s first protocol and article XIII of the Fundamental Law of Hungary, which declares in section (1) that “*Everyone shall have the right to property and inheritance. Property shall entail social responsibility,*” and section (2) of the same act declares that “*Property may only be expropriated exceptionally, in the public interest and in the cases and ways provided for by an Act, subject to full, unconditional and immediate compensation.*” In comparison to the ECHR the Fundamental Law introduces the idea of social responsibility tied to ownership , and should one be deprived of his or her possessions, which has to be done in the frames of an act, unconditional and immediate compensation is required, which is not explicitly present in the ECHR. Thirdly, with regards to the principle of freedom of thought, conscience and religion, which can be found in article nine of the ECHR and article VII of the Fundamental Law of Hungary is very similar in wording, however the restriction of these rights present in point two of the above mentioned article of the ECHR is not present in the Fundamental Law, but in the cardinal act CCVI of 2011 in article 1 section (4) based on article I section (3) of the Fundamental Law of Hungary. Fourthly, regarding the protection of family article 12 of the ECHR protects the right to marry, which is the same in wording in article L) of the Fundamental Law of Hungary. Fifthly, the prohibition of discrimination is expressed in article 14 of the ECHR and in article XV of the Fundamental Law of Hungary. The ECHR bans discrimination on any ground, and also lists examples. All of the examples can be found in article XV of the Fundamental Law, except the explicit ban on discrimination on the ground of national minorities, but the Fundamental Law also lists a further area of consideration, namely the ban of discrimination on the ground of any disabilities, which is not present in the ECHR. All in all, as visible the Fundamental Law of Hungary has explicitly taken the provisions of the European Convention on Human Rights into consideration, granting the generally excepted human rights.

b. Describe the influence of the ECHR on your country's tax legislation.

Hungary, as a signatory of the European Convention on Human Rights, committed itself to comply with the provisions of the ECHR, and most of the rights guaranteed in the ECHR have been incorporated in the Fundamental Law of Hungary as well. The European Court of Human Rights with its judicial practice provides a comprehensive framework as a guiding point on the execution of the rights guaranteed in the ECHR, and the contracting parties have undertaken to abide the decisions of the court. This ultimately leads to the obligation of respecting the provisions of the ECHR in tax legislation, but in legislation in general as well, or the state has to face the consequences should the state leave the provisions of the ECHR out of consideration. Potential consequences could be seen in cases such as 66529/11, 65499/11, 41838/11 or 49570/11, in which Hungary was found to have offended article 1 of protocol 1 of the ECHR by violating the right to property with the 98 percent tax rates of severance payments above a certain amount. All in all, it must be said that the ECHR is respected in the process of legislation; however should there be any controversial provisions the European Court of Human Rights is present to safeguard the provided rights in the ECHR.

c. Are the courts and tax authorities in your country bound by decisions of the European Court of Human Rights? If so, is this of importance for taxation matters?

Article 46 of the European Convention on Human Rights declares in point 1 that “*The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.*” In decisions of the Constitutional Court of Hungary, especially in the decision 3146/2016. (VII. 22.) of the Hungarian Constitutional Court in section III. [20] the Court states that of the European Court of Human Rights decisions' regarding the 98 percent taxes mentioned above, where Hungary was found to have violated article 1 of the first Convention of the ECHR, are binding for Hungary.

IV. European Union Law

78. What is the relationship between the constitutional principles or rights and European Union law? For example, what is the consequence if a domestic provision based on a constitutional principle or right restricts a fundamental freedom?

As members of the European Union Hungary has committed itself to respect the authority of the European Union in specific matters, as visible in article E) of the Fundamental Law of Hungary. The European Union may find domestic provisions to be in conflict with the law of the European Union, and in such cases domestic provisions have to be

aligned to the regulations of the European Union. In case the Fundamental Law of Hungary would be in conflict with the law of the European Union would lead to unprecedented situations. However, this conflict does not seem to be unprecedented in the European Union, based on the case *Costa v E.N.E.L*, which was the first major conflict between the European Court and the Constitutional Court of a member state. [László Blutman, 2014, 6.4.1.] The European Court found that the European Union's law has primacy over the laws of the member states, including the constitutions. It has to be said that there has not been conflict between the Fundamental Law and the European Union law directly, however domestic provisions in conflict with the European Union law have to be harmonized with the European Union law.

79. Are national courts competent to test EU law against national constitutional law?

According to article 28 of the Fundamental Law of Hungary *“In the course of the application of law, courts shall interpret the text of legal regulations primarily in accordance with their purposes and with the Fundamental Law. When interpreting the Fundamental Law or legal regulations, it shall be presumed that they serve moral and economical purposes which are in accordance with common sense and the public good.”* The national courts of Hungary are obliged to apply the law of the European Union, but could also compare the Fundamental Law with the law of the European Union, however, since the Fundamental Law of Hungary has not been in conflict with the law of the European Union this has not caused confrontations between the Fundamental Law and EU law.

80. Do the domestic constitutional rights apply differently to residents and to residents of the Member States of the European Union? If so, how is this justified?

The Fundamental Law of Hungary declares that everyone shall be equal before the law and discrimination on the ground of national origin, thus domestic constitutional rights cannot apply differently to Hungarians and to residents of the Member States of the European Union. However, there have been controversial provisions such as the restriction of the acquisition of land for residents of the Member States, which step was threatened by the infringement procedure by the Commission. All in all, the constitutional rights do not apply theoretically differently to residents of the Member States, but there have been measures taken, which do discriminate foreigners, which has been addressed by the European Union, due to being incompatible with the ideal of the European Union.

81. Explain the relationship between the European Charter of Fundamental Rights and the constitutional rights. Under what circumstances do they respectively apply? Can they apply at the same time and/or for the same situation/facts? Please consider in your answer the decision of the ECJ: “Hans Akerberg Fransson” – C-617/10

The scope of the European Charter of Fundamental Rights declares that the institutions and bodies of the Union are obliged to apply the provisions of the Charter only when they are implementing Union law. The question in general arises, as visible in C-617/10, when it is questionable whether the institutions or bodies are implementing Union law or not. The judgement of the Court in C-617/10 in paragraph 29 declares that “*where a court of a Member State is called upon to review whether fundamental rights are complied with by a national provision or measure which, in a situation where action of the Member States is not entirely determined by European Union law, implements the latter for the purposes of Article 51(1) of the Charter, national authorities and courts remain free to apply national standards of protection of fundamental rights, provided that the level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of European Union law are not thereby compromised.*” This decision is also exemplary for Hungary.

82. Does the principle of equality as applied in your country deviate from the principle of equality as laid down in article 20 of the EU Charter of Fundamental Rights?

Article 20 of the Charter of Fundamental Rights of the European Union declares that “*Everyone is equal before the law.*” Article XV of the Fundamental Law of Hungary declares that “*Everyone shall be equal before the law.*” The requirement of equality inevitably derives the prohibition of discrimination, both direct and indirect. Furthermore, the equal treatment of unequal situations is considered to be an offence to the requirement of equality. It must also be said that the Hungarian legal system cannot be viewed as an isolated legal system, as the European Union affects it to a great extent. As visible the two articles are very similar in wording, and when applying European Union law, the juridical practice of the Court of Justice provides a common framework for the interpretation of the principle laid down in the Charter of Fundamental Rights.

83. Does the right to property as applied in your country deviate from the right to property as laid down in article 17 of the EU Charter of Fundamental Rights?

Article 17 of the EU Charter of Fundamental Rights declares that *“Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.”* Article XIII of the Fundamental Law of Hungary declares that *“Everyone shall have the right to property and inheritance. Property shall entail social responsibility,”* and that *„Property may only be expropriated exceptionally, in the public interest and in the cases and ways provided for by an Act, subject to full, unconditional and immediate compensation.”* As visible the Fundamental Law of Hungary has been aligned to the EU Charter of Fundamental Rights in the area of right to property.

84. To what extent can the fundamental freedoms influence tax legislation? Please discuss briefly in general terms.

The European Union guarantees the free movement of goods, capital, services and people, which is a fundamental achievement of the European integration, thus enjoys significant protection and stands at the forefront of consideration in legislation. Taxation, a powerful mean of influencing behavior and decisions, can contribute to the realization of the free flow of goods, capital, services and people, but it could also serve as a restriction to these tendencies. Each member of the European Union has committed itself to respect the achievements of the internal market, thus the tax systems of the member states cannot contain provisions, which could potentially offend the integrity of the European Union’s internal market. Tax legislation is greatly influenced by these four freedoms, limiting protectionist economic policy making, which ultimately prohibits discrimination in tax policy making, and legislation in general as well. The power of forming tax policies is the right of each member of the European Union, and is a guarantee of sovereignty for the member states, however the free flow of the four freedoms cannot be restricted by the taxation policies of the member states. Should any provisions be applied, with regards to taxation as well, the Court of the European Union is responsible to protect the internal market.

85. How does your country react to changes in ECJ decisions? Does it align domestic provisions immediately to changes?

According to article 51 of the European Charter of Fundamental Rights the Charter is addressed to the institutions and bodies of the Union when they are implementing Union law.

The case-law of the Court of Justice of the European Communities is a fundamental element of the observation of the Charter, and its decisions are significant in the interpretation and execution of the provisions of the Charter. The decisions of the Court have to be taken into consideration, and Hungary tries to react to them as soon as possible, as article 6 of the Treaty on European Union declares that the Charter of Fundamental Rights of the European Union shall have the same legal value as the Treaties, thus the practice of the Court is substantial.

86. Does your country have the same standards to determine equal or unequal treatment of taxpayers with limited and with unlimited liability to taxation in cross-border situations as laid down in the ECJ decisions: C-279/93 “Schumacker”, C-311/97 “Royal Bank of Scotland” and C-330/91 “Commerzbank”?

The determination of cross-border tax liability it has to be first investigated, whether Hungary has a double tax treaty with the State in question, if so the treaty has to be applied. In cases where no double tax treaty is applicable the Hungarian tax system has the same criteria to determine tax liability like in Germany. The act on personal income tax declares in section (4) of article 2 that residents shall have an all-inclusive tax liability, non-residents shall only have tax liability based on their income, which originates from Hungary, or is taxable by virtue of international agreement, thus have limited tax liability. The determination of all-inclusive or limited tax liability, like in Germany, is based on the 183 day rule, thus should a citizen of the EEC member states reside in Hungary for more than 183 days, or is a resident of Hungary only, or the center of his or her vital interests is in Hungary, or the place of his ordinary stay is in Hungary, then is all-inclusively liable for tax in Hungary.

87. To what extent do the conditions given by the ECJ to justify a restriction of the fundamental freedoms match the conditions set up in your country to justify a restriction of domestic constitutional rights (esp. principle of equality) in cross-border circumstances?

Article 52 of the Charter of Fundamental Rights declares in point 1. that *“Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.”* The criteria above mentioned is the requirement of proportionality, necessity and general interest, which have to be taken into consideration. Section (3) of article

I of the Fundamental Law of Hungary declares that “A *fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of such fundamental right.*” The Fundamental Law also expresses the requirement of necessity and proportionality, however the requirement to meet the objectives of general interest is not present in the Fundamental Law.

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