

# CZECH TAX LAW INSTABILITY IN TIMES OF ECONOMIC PROSPERITY

Milan Bakeš,\* Jakub Vojtěch\*\*

**Abstract:** *The aim of this paper is to discuss tax law instability in the Czech Republic, its causes and related aspects and to propose possible solutions. The authors first describe the current economic situation and the main problems that, in times of economic prosperity of the Czech Republic, pose a burden especially to the business environment. These problems include in particular the complexity and instability of the Czech tax law framework. Afterwards, the authors offer a brief description of the tax system of the Czech Republic accompanied by an explanation of what can be regarded as taxes in a narrower and broader sense. This is followed by an examination of the frequent amendments to the two important Czech tax laws, the Act on Income Taxes and Act on Value Added Tax, that serve as an example demonstrating the instability of Czech tax legislation. The authors conclude that the current legislative situation is characterized by an absenting long-term vision as well as a lacking moderate and thoughtful approach of Czech lawmakers, which inevitably results in inconsistent tax laws. Another cause of tax law instability might be hidden in the residue of the former etatism, perhaps surviving to a certain extent to this day in the form of a presumption that any problem has to be solved by law; where, therefore, an adopted legal regulation does not meet the initial expectations, the legislator tends automatically to respond with yet another amendment. This leads into a never-ending process of re-amendments. Finally, an example of the existing solutions is discussed and authors' suggestions that include specific measures in the tax-legislative strategy and an adjustment of the tax system are presented.*

**Keywords:** *taxes, instability, Czech Republic, tax system, reform*

## INTRODUCTION

In the last parliamentary term of the Chamber of Deputies (the upper house of the Czech Parliament) between 2013 and 2017, 357 laws were adopted.<sup>1</sup> This translates into an average of 90 legal acts (statutes) with the force of law each year, or, as the case may be, almost two laws passed every week in the past four years.

From these data it seems that in the past four years the Czech Republic had to be facing very turbulent economic and political circumstances necessitating frequent changes to

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\* Professor, JUDr. Milan Bakeš, DrSc., Faculty of Law, Charles University, Prague, Czech Republic. This paper has been elaborated within the programme “PROGRES Q02 – Publicization of Law in the European and International Context” which is realized in 2018 at the Faculty of Law of the Charles University. A part of this paper was presented at the XI<sup>th</sup> International Conference *Days of Law 2017* held on 9<sup>th</sup>–10<sup>th</sup> November 2017 in Brno, Czech Republic.

\*\* JUDr. Jakub Vojtěch, a Ph.D. candidate at the Charles University, Faculty of Law, Charles University, Prague, Czech Republic. This text has been elaborated within the project of the student scientific research “Finance and information technology as drivers of legal regulation in the European Union countries and their criminal law aspects” which is realized in the years 2017–2019 at the Faculty of Law of the Charles University, SVV 260 360/2017. A part of this paper was presented at the XI<sup>th</sup> International Conference *Days of Law 2017* held on 9<sup>th</sup>–10<sup>th</sup> November 2017 in Brno, Czech Republic.

<sup>1</sup> See the search results at the website of the Chamber of Deputies of the Parliament of the Czech Republic after setting up a general overview of the parliamentary prints – draft laws (bills) that were approved in the 7<sup>th</sup> parliamentary term and published in the Collection of Laws: Parliamentary Publications. 7<sup>th</sup> Parliamentary Term (2013–2017) In: *Chamber of Deputies of the Parliament of the Czech Republic* [online]. 2017 [2018-02-20]. Available at: <<https://www.psp.cz/sqw/sntisk.sqw>>.

Czech legislation. In reality, the opposite is true. No revolution, no dramatic change in the social situation of the population, no economic crisis or any similar phenomenon occurred that would trigger the need for frequent changes in the legal order. In the past four years, there was a stable centre-left government. On the economic level, the Czech Republic was experiencing an economic upswing: dynamic economic growth, low unemployment, rising wages, strong exports and manageable inflation. That was the big economic and political picture of the Czech Republic in 2017 and in the years before.

There are many critical voices from the business environment, as well as economic analysts, lawyers and other experts including the members of the Czech judiciary systematically pointing to the problem of an ever-increasing number of legal norms being passed. For example, deputy Chairman of the Supreme Court of the Czech Republic R. Fiala considers the Czech legal system so complicated and unclear that it is slowly ceasing to work.<sup>2</sup> The chaotic development of laws in the long-term and poor-quality legislation are also criticized by Chairman of the Supreme Court of the Czech Republic P. Samal.<sup>3</sup> In the view of the former Chairman of the Supreme Administrative Court J. Baxa, politicians should even stop adopting new laws and make an inventory of the existing legislation instead; this, in turn, should lead to the repeal of some of the laws in force.<sup>4</sup>

Several other professionals criticize the development of the legal framework and of the tax system in particular. The strong criticism is often directed not only against the adoption of legislation introducing completely new tax obligations (for instance the recently introduced value added tax control statement or the electronic records of sales) but mainly against partial amendments to existing tax laws. The Czech tax system is characterized by a considerable number of legislative acts amending the existing legislation which is considered by many to constitute perhaps the biggest problem of Czech tax legislation.

The aim of this paper is to discover whether tax instability is an issue and to discuss it in a broader context of a prosperous Czech economy, all the while assessing the overall state of the tax system of the Czech Republic in an international context. This is followed by an examination of what is at the beginning of the often criticized unstable Czech tax legislation. The purpose of this paper is also to explore select related problems, as well as the manner in which the instability of Czech tax law has been solved so far and how it can be dealt with in the future. Considerations will be made only from a legal point of view, i.e. with a focus on the problems associated with frequent changes in tax legislation and the limited predictability of its development for taxpayers. Aspects of a predominantly

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<sup>2</sup> PRAVEC, J. Právo je v jedné zemi jen jedno. Pokud by to neplatilo, tak západní demokracie v Evropě končí, říká místopředseda Nejvyššího soudu ČR Roman Fiala. In: *EKONOM* [online]. 2. 3. 2017 [2018-02-20]. Available at: <<http://m.ihned.cz/ekonom/c1-65642720-pravo-je-v-jedne-zemi-jen-jedno-pokud-by-to-neplatilo-tak-zapadni-demokracie-v-evrope-konci-rika-mistopredseda-nejvyssiho-soudu-cr-roman-fiala>>.

<sup>3</sup> GINTER, J. Předseda Nejvyššího soudu Pavel Šámal: Nových zákonů je zbytečně moc. In: *Novinky.cz* [online]. 22. 10. 2018 [2018-10-22]. Available at: <<https://www.novinky.cz/domaci/486735-predseda-nejvyssiho-soudu-pavel-samal-novych-zakonu-je-zbytecne-moc.html>>.

<sup>4</sup> POKORNÝ, M. Politici už by neměli přijímat další zákony. Je čas udělat inventuru a proškrtat je, říká předseda Nejvyššího správního soudu Baxa. In: *Hospodářské noviny* [online]. 27. 12. 2017 [2018-02-20]. Available at: <<http://m.ihned.cz/c1-66000560-politici-uz-by-nemeli-prijimat-dalsi-zakony-je-cas-udelat-inventuru-a-proskrtat-je-rika-predseda-nejvyssiho-spravniho-soudu-baxa>>.

economic nature (in particular regarding the level of a tax burden on entrepreneurs and other entities) are not analysed.

## I. THE CZECH REPUBLIC: PICTURE OF ECONOMIC PROSPERITY

The Czech economy is experiencing golden times and is among the fastest growing in the whole European Union<sup>5</sup> as the Czech gross domestic product increased by 4.5 percent in 2017.<sup>6</sup> Even in the previous years, the economy had a strong showing marked with high household consumption, low interest rates, wage increases<sup>7</sup> and inflation near to the Czech Central Bank's (the "CNB") 2 percent target,<sup>8</sup> as well as a rising export demand and falling unemployment.<sup>9</sup> Especially the last point is most interesting: the unemployment rate of 2.3 percent as of December 2017 was the lowest in the European Union.<sup>10</sup> The country further witnessed a strong appreciation of its currency (the Czech koruna) following the removal of the exchange rate floor by the CNB in April 2017. The financial sector was appropriately capitalised, liquid and profitable.<sup>11</sup> Given the economic prosperity, public budgets collected billions in excess and the government debt is relatively low.<sup>12</sup> In the past few years, the state treasury has even issued bonds with a negative yield.<sup>13</sup>

Economic analysts and international consulting firms, public institutions and entrepreneurs themselves are also optimistic about the forecasts for 2018 and beyond. The economic performance of the Czech Republic should remain above average.

Though the growth is expected to moderate, the economy should keep growing in 2018 and 2019, says the European Commission.<sup>14</sup> The Organisation for Economic Co-operation

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<sup>5</sup> EUROSTAT. Real GDP growth rate – volume. In: *Eurostat* [online]. 2018 [2018-02-25]. Available at: <<http://ec.europa.eu/eurostat/web/national-accounts/data/main-tables>>.

<sup>6</sup> CZECH STATISTICAL OFFICE. GDP preliminary estimate – 4th quarter of 2017. GDP 4.5% up in 2017. In: *Czech Statistical Office* [online]. 16. 2. 2018 [2018-02-17]. Available at: <<https://www.czso.cz/csu/czso/ari/gdp-preliminary-estimate-4-quarter-of-2017>>.

<sup>7</sup> OECD. Czech Republic – Economic forecast summary (November 2017). In: *Organisation for Economic Co-operation and Development* [online]. 2017 [2018-02-14]. Available at: <<http://www.oecd.org/eco/outlook/czech-republic-economic-forecast-summary.htm>>.

<sup>8</sup> CZECH NATIONAL BANK. Inflation Report – I/2018. In: *Czech National Bank* [online]. 2018 [2018-02-21]. Available at: <[https://www.cnb.cz/en/monetary\\_policy/inflation\\_reports/2018/2018\\_I/index.html](https://www.cnb.cz/en/monetary_policy/inflation_reports/2018/2018_I/index.html)>.

<sup>9</sup> JOHNSTONE, C. Czech Economic Highlight of a Probably Overheated 2017. In: *Radio Praha* [online]. 28. 12. 2017 [2018-02-14]. Available at: <<http://www.radio.cz/en/section/special/czech-economic-highlights-of-a-probably-overheated-2017>>.

<sup>10</sup> EUROSTAT. Unemployment statistics. In: *Eurostat* [online]. 2017 [2018-02-14]. Available at: <[http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment\\_statistics#Recent\\_developments\\_in\\_unemployment\\_at\\_a\\_European\\_and\\_Member\\_State\\_level](http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics#Recent_developments_in_unemployment_at_a_European_and_Member_State_level)>.

<sup>11</sup> OECD. Czech Republic – Economic forecast summary (November 2017). In: *Organisation for Economic Co-operation and Development* [online]. 2017 [2018-02-14]. Available at: <<http://www.oecd.org/eco/outlook/czech-republic-economic-forecast-summary.htm>>.

<sup>12</sup> CZECH NATIONAL BANK. Government finance statistics. In: *Czech National Bank* [online]. 2018 [2018-02-14]. Available at: <[https://www.cnb.cz/en/statistics/government\\_fin\\_stat/](https://www.cnb.cz/en/statistics/government_fin_stat/)>.

<sup>13</sup> MINISTRY OF FINANCE OF THE CZECH REPUBLIC. Debt Statistic. In: *Ministry of Finance of the Czech Republic* [online]. 2018 [2018-02-14]. Available at: <<http://www.mfcr.cz/en/themes/state-debt/debt-statistic>>.

<sup>14</sup> EUROPEAN COMMISSION. Economic forecast for Czech Republic. In: *European Commission* [online]. 2017 [2018-02-14]. Available at: <[https://ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-performance-country/czech-republic/economic-forecast-czech-republic\\_en](https://ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-performance-country/czech-republic/economic-forecast-czech-republic_en)>.

and Development (the “OECD”) expects the Czech economy to be driven by both domestic and foreign demand.<sup>15</sup> Economic forecast of the Czech Ministry of Finance describes a stable situation within the Czech economy, characterized by increased confidence and conditions for successful continuation of the economic boom in the Czech Republic.<sup>16</sup> All macroeconomic indicators are looking very positive in the view of the governor of the CNB<sup>17</sup> since the expectations show a stable inflation and a strengthening Czech koruna.<sup>18</sup> Even the private sector seems to be very positive in its assessments. The optimistic expectations of entrepreneurs are confirmed by the data of the Czech Statistical Office according to which at the end of 2017 the overall confidence of entrepreneurs in the economy was even the highest since 2008.<sup>19</sup>

In the past few years, the Czech Republic has also managed to create a more and more appropriate market environment and business conditions. In the *Doing Business* ranking prepared annually by the World Bank and the international consulting firm PwC, the Czech Republic placed 44<sup>th</sup> in 2015.<sup>20</sup> For 2018 it is ranked as the 30<sup>th</sup> country among the 190 economies being compared.<sup>21</sup> The *Doing Business* analyses measure on an annual basis aspects of regulation concerning eleven areas of the life of a business: (i) starting a business, (ii) dealing with construction permits, (iii) getting electricity, (iv) registering property, (v) getting credit, (vi) protecting minority investors, (vii) paying taxes, (viii) trading across borders, (ix) enforcing contracts, (x) resolving insolvency and (xi) labour market regulation.<sup>22</sup>

## II. TAX LAW INSTABILITY AS A LONG-TERM PROBLEM

Yet, in the long term, less optimistic data and information not influenced by the current conjunction can be found. They are rather of a structural nature combined with certain

<sup>15</sup> OECD. Czech Republic – Economic forecast summary (November 2017). In: *Organisation for Economic Co-operation and Development* [online]. 2017 [2018-02-14]. Available at: <<http://www.oecd.org/eco/outlook/czech-republic-economic-forecast-summary.htm>>.

<sup>16</sup> MINISTRY OF FINANCE OF THE CZECH REPUBLIC. Macroeconomic Forecast – January 2018. In: *Ministry of Finance of the Czech Republic* [online]. 31. 1. 2018 [2018-02-14]. Available at: <<http://www.mfcr.cz/en/statistics/macro-economic-forecast/2018/macro-economic-forecast-january-2018-30911>>.

<sup>17</sup> INTERNATIONAL MONETARY FUND. Czech Republic: Economy So Far So Good. In: *International Monetary Fund* [online]. 3. 10. 2017 [2018-02-14]. Available at: <<http://www.imf.org/en/News/Articles/2017/10/02/na100317-czech-republic-economy-so-far-so-good>>.

<sup>18</sup> CZECH NATIONAL BANK. CNB current forecast (Announced on 1st February 2018). In: *Czech National Bank* [online]. 2018 [2018-02-14]. Available at: <[https://www.cnb.cz/en/monetary\\_policy/forecast/#GDP](https://www.cnb.cz/en/monetary_policy/forecast/#GDP)>.

<sup>19</sup> CZECH STATISTICAL OFFICE. Czech Republic: Business cycle survey – December 2017. In: *Czech Statistical Office* [online]. 27. 12. 2017 [2018-02-14]. Available at: <<https://www.czso.cz/csu/czso/ari/business-cycle-survey-december-2017>>.

<sup>20</sup> INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT/THE WORLD BANK. Doing Business 2015. In: *The World Bank* [online]. 2014 [2018-02-14]. Available at: <<http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB15-Full-Report.pdf>>. See p. 4.

<sup>21</sup> INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT/THE WORLD BANK. Doing Business 2018. In: *The World Bank* [online]. 2018 [2018-02-14]. Available at: <<http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB2018-Full-Report.pdf>>. See p. 4.

<sup>22</sup> *Ibid.*, p. 12.

economic and legal deficiencies, which can be observed over a longer period of time. The area of taxation and tax law can serve as a good example.

One evidence is being presented by the above-mentioned research conducted by the World Bank and PwC. The Czech Republic was ranked 53<sup>rd</sup> within the category “paying taxes”, thus performing below its overall average rating.<sup>23</sup> This indicator consists in assessing data collected from the following areas: what are the time, total tax and contribution rate, and number of payments necessary for a local medium-size company to pay all taxes and how efficient is it for a local medium-size company to comply with post-filing processes? The evaluation thus includes the overall tax burden, total number of taxes and contributions paid, including consumption taxes (value added tax, sales tax or goods and service tax), method and frequency of filing and payment, time required to comply with three major taxes in hours per year (which includes collecting information and computing the tax payable, completing tax return forms, filing with proper agencies, arranging payment or withholding, preparing separate mandatory tax accounting books) and post-filing compliance time (value added tax refund process, correcting an error in the corporate income tax return including compliance with an audit process etc.).<sup>24</sup>

When looking at the detailed *Doing Business* analysis, the Czech Republic has a poor ranking especially in the fields of the time spent to meet all tax obligations (“*time to comply*”) and the overall tax burden (“*total tax & contribution rate*”) that reflects the proportion of taxes and other mandatory contributions paid by enterprises to their profits. Based on these partial aspects, it is even placed outside the top 100 of the compared economies.<sup>25</sup>

If we rely on these data, it follows that the Czech Republic still has a lot to improve as regards the clarity of its tax system and the level of tax burden bestowed on its businesses. However, while the level of tax burden is a political and economic issue which has to be addressed based on sophisticated economic data and which comprises economic and political preferences of the government and the corresponding majority in the parliament (which ultimately approves all tax laws), the complexity of the tax system and legal order as a whole is a problem solvable regardless of the specific ideological or political views.

Even though entrepreneurs would certainly welcome taxes as low as possible, within the Czech framework the main problem seems to be the instability of the tax environment and the legal order in general. The current data obtained from surveys conducted by the international consulting firm KPMG show that in the first place, entrepreneurs in the Czech Republic lack the stability and predictability of future tax law developments. Managers of major corporations operating in the Czech Republic consider high taxation (especially in the form of tax burden on wage costs) as a significant issue, but the biggest

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<sup>23</sup> For completeness, however, it is necessary to state that certain indicators were even worse: “*protecting minority investors*” (62<sup>nd</sup>), “*starting a business*” (81<sup>st</sup>), “*enforcing contracts*” (91<sup>st</sup>), “*dealing with construction permits*” (127<sup>th</sup>). *Ibid.*, p. 156.

<sup>24</sup> *Ibid.*, p. 96 ff.

<sup>25</sup> PwC. Paying Taxes 2018. Overall ranking and data tables. In: PwC [online]. 2017 [2018-02-14]. Available at: <[https://www.pwc.com/gx/en/services/tax/publications/paying-taxes-2018/overall-ranking-and-data-tables.html?WT.mc\\_id=CT13-PL1300-DM2-TR2-LS1-ND30-TTA4-CN\\_payingtaxes-2018-ranking-data-table-button](https://www.pwc.com/gx/en/services/tax/publications/paying-taxes-2018/overall-ranking-and-data-tables.html?WT.mc_id=CT13-PL1300-DM2-TR2-LS1-ND30-TTA4-CN_payingtaxes-2018-ranking-data-table-button)>. See also PwC. Paying Taxes 2018. In: PwC [online]. 2017 [2018-02-14]. Available at: <[https://www.pwc.com/gx/en/paying-taxes/pdf/pwc\\_paying\\_taxes\\_2018\\_full\\_report.pdf](https://www.pwc.com/gx/en/paying-taxes/pdf/pwc_paying_taxes_2018_full_report.pdf)>.

issue lies in frequent legislative modifications and the changing approach of the tax administration.<sup>26</sup>

### III. EMPIRICAL EVIDENCE OF THE CZECH TAX LAW INSTABILITY

The criticized instability of the Czech legal environment can be documented typically in the area of tax law. The Czech tax system consists of sixteen obligatory payments designated as “tax” by law. These taxes are traditionally divided by Czech tax legal theory into two main categories: (a) direct taxes and (b) indirect taxes.

Direct taxes can then be broken down further into three subcategories reflecting the applicable Czech taxes:

- (i) income taxes: *personal income tax* and *corporate income tax*;<sup>27</sup>
- (ii) property tax: *immovable property tax*;<sup>28</sup> and
- (ii) other taxes (being a residual group of direct taxes): *tax on the acquisition of immovable property*,<sup>29</sup> *road tax*<sup>30</sup> and *gambling tax*.<sup>31</sup>

Indirect taxes are then divided into two subcategories:

- (i) general indirect tax: *value added tax*;<sup>32</sup> and
- (ii) selective indirect taxes: consumption taxes, i.e. excise duty (*mineral oil tax, alcohol tax, beer tax, tax on wine and its intermediate products, tax on tobacco products* and *tax on raw tobacco*),<sup>33</sup> energy taxes (*tax on natural gas and certain other gases, tax on solid fuels* and *electricity tax*).<sup>34</sup>

These taxes contained in the Czech legal order also meet the theoretical definitions of a tax as this term is understood and developed by the Czech and foreign tax theory. In other words, the foregoing obligatory payments fulfil both formal (by virtue of law) and material (theoretical) criteria for being considered a tax.<sup>35</sup>

In addition to the taxes formally marked as such by law, other obligatory payments exist under Czech law which fulfil the theoretical definition of a tax and in the material sense, the term “tax” may also be applied to them. However, they are not explicitly designated as such by law. The reason lies in both legislative inconsistency and political effort to avoid introducing new “taxes” at least optically. Thus, other similar obligatory payments marked

<sup>26</sup> KPMG. Survey: Czech tax environment not supportive of business. In: *KPMG* [online]. 2017 [2018-02-20]. Available at: <<http://danovky.cz/en/survey-czech-tax-environment-not-supportive-of-business>>; KPMG. Čestí top manažeři volají po jednodušších daních a podpoře inovací. In: *KPMG* [online]. 2017 [2018-02-20]. Available at: <<https://home.kpmg.com/cz/cs/home/pro-media/tiskove-zpravy/2017/11/pruzkum-manazeri-dane-inovace.html>>.

<sup>27</sup> Act No. 586/1992 Coll., on Income Taxes, as amended.

<sup>28</sup> Act No. 338/1992 Coll., on Immovable Property Tax, as amended.

<sup>29</sup> Statutory Measure of the Senate No. 340/2013 Coll., on Tax on the Acquisition of Immovable Property.

<sup>30</sup> Act No. 16/1993 Coll., on Road Tax, as amended.

<sup>31</sup> Act No. 187/2016 Coll., on Gambling Tax, as amended.

<sup>32</sup> Act No. 235/2004 Coll., on Value Added Tax, as amended.

<sup>33</sup> Act No. 353/2003 Coll., on Consumption Taxes, as amended.

<sup>34</sup> Part forty-five to forty-seven of Act No. 261/2007 Coll., on the Stabilization of Public Budgets, as amended.

<sup>35</sup> BOHÁČ, R. *Daňové příjmy veřejných rozpočtů v České republice*. Praha: Wolters Kluwer Česká republika, 2013, p. 88.

as *duty, insurance payments, levies* etc. present in the Czech legal order often meet the definition criteria of a tax. These obligatory payments can be classified together with the taxes in the narrower sense (*stricto sensu*) as taxes in the broader sense (*largo sensu*), and therefore constitute the Czech tax system in the broader sense.<sup>36</sup>

Considering the overall revenue of public budgets and the number of taxpayers concerned,<sup>37</sup> two laws encoding three of the most important Czech taxes can be taken as an example, namely the Act on Income Taxes (containing the personal income tax and corporate income tax) and the Act on Value Added Tax.

The Act on Income Taxes lays down a legal basis for two of the most important taxes, i.e. the personal income tax and the corporate income tax. As such, it concerns a substantial part of the population by covering income taxation of both individuals and legal persons, entrepreneurs and non-entrepreneurs. This law should also help generate a considerable part of the income of the public budgets as a material basis for fulfilment of the functions of the state and public administration.

From the date of its entry into force on January 1, 1993, approximately 160 amendments have been made to this Act until now. Only in the past four years (in the period from January 1, 2014 to January 1, 2018), twenty-nine amendments have been enacted. In 2014 the Act was amended six times,<sup>38</sup> five times in 2015,<sup>39</sup> in 2016 it was amended nine times<sup>40</sup> (and once the Constitutional Court annulled certain of its provisions<sup>41</sup>), in 2017 it was changed six times<sup>42</sup> and in 2018 it has been affected by three amendments with effect as of January 1, 2018.<sup>43</sup> What is alarming is not only the total number of the amendments passed in such a relatively short period but also the fact that changes often occurred during an already commenced tax period; this has required millions of taxpayers to follow the changes of provisions constantly. On average, every one and a half months in the last four years, there was a change of the provisions of an act that basically every adult person and every businessperson needs to take into account in their lives.

Another example is the Act on Value Added Tax. This law is very important mainly to entrepreneurs. Since its entry into force on April 24, 2004, there have been some 70

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<sup>36</sup> KARFÍKOVÁ, M., BOHÁČ, R. Daňové právo. In: Marie Karfíková et al. *Teorie finančního práva a finanční vědy*. Praha: Wolters Kluwer Česká republika, 2018, pp. 145–155.

<sup>37</sup> FINANCIAL ADMINISTRATION OF THE CZECH REPUBLIC. Tax collection data: The evolution of collection of selected taxes in the Czech Republic in the years 1993-2017. In: *Financial Administration of the Czech Republic* [online]. 2018 [2018-02-20]. Available at: <<http://www.financnisprava.cz/cs/dane/analyzy-a-statistiky/udaje-z-vyberu-dani>>.

<sup>38</sup> These were the amending laws to the Act on Income Taxes in 2014: Act No. 105/2013 Coll., Act No. 160/2013 Coll., Act No. 215/2013 Coll., Act No. 344/2013 Coll., Act No. 162/2014 Coll., Act No. 247/2014 Coll.

<sup>39</sup> These were the amending laws to the Act on Income Taxes in 2015: Act No. 458/2011 Coll., Act No. 267/2014 Coll., Act No. 84/2015 Coll., Act No. 127/2015 Coll., Act No. 332/2014 Coll.

<sup>40</sup> These were the amending laws to the Act on Income Taxes in 2016: Act No. 221/2015 Coll., Act No. 375/2015 Coll., Act No. 377/2015 Coll., Act No. 105/2016 Coll., Act No. 125/2016 Coll., Act No. 148/2016 Coll., Act No. 47/2016 Coll., Act No. 113/2016 Coll., Act No. 321/2016 Coll.

<sup>41</sup> Judgement of the Constitutional Court of the Czech Republic of 28 June 2016 (Case Pl. ÚS 18/15), published in the Collection of Laws under No. 271/2016 Coll.

<sup>42</sup> These were the amending laws to the Act on Income Taxes in 2017: Act No. 377/2015 Coll., Act No. 188/2016 Coll., Act No. 454/2016 Coll., Act No. 170/2017 Coll., Act No. 246/2017 Coll., Act No. 254/2017 Coll.

<sup>43</sup> These were the amending laws to the Act on Income Taxes as of January 2018: Act. No. 200/2017 Coll., Act. No. 225/2017 Coll., Act. No. 293/2017 Coll.

amendments to this Act. In the past four years (in the period from January 1, 2014 to January 1, 2018), this Act has been revised eighteen times. Its wording underwent changes three times in 2014<sup>44</sup> and three times in 2015.<sup>45</sup> The Act was amended five times in 2016,<sup>46</sup> four times in 2017<sup>47</sup> (and once was its wording affected by a judgement of the Constitutional Court repealing certain of its provisions<sup>48</sup>). On January 1, 2018, two amendments have entered into force.<sup>49</sup>

#### IV. INSTABILITY OF THE CZECH TAX FRAMEWORK: CAUSES AND SOLUTIONS

In our opinion, amendments to (not only) tax laws should take place within certain limits, respect a certain long-term logic and strategy, and be underpinned by a vision of how the legal order and the tax system should ultimately be conceived. The current situation already exceeds an acceptable level, which makes it impossible to ensure legal certainty and the stability of the legal order as prerequisites for the rule of law.

We can observe that changes in government and legislature often lead to a significantly different orientation of fiscal policy and tax legislation. This is certainly the natural state of things since the determination of the tax burden, public revenues and expenditure, i.e. the amount of money to be redistributed through public budgets, government and lawmakers realize their political will and ideological orientation they promised to put into practice from the position of representatives of the citizens. Unfortunately, legislative changes still have a high frequency even in the course of a single legislative period as shown above. Besides that, the problem of the instability of Czech tax law relates to a much longer period than the past four years as the laws have been affected by many amendments already in the past (and even where the succeeding governments had a similar political orientation to that of their predecessors).

One of the reasons of the instability of the legal and tax framework and of the limited predictability of future tax developments is the inconsistency and lack of concept in the Czech legislation. We are lacking a clear vision or strategy in the field of policy aimed at unifying incoherent legal norms and removing the unnecessary ones. The current situation can be described as over-regulation without clear rules for amending the existing legislation.

Second, there might be a rooted conviction stemming from the former totalitarian etatism, perhaps surviving to a certain extent to this day, that all matters of life can be cov-

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<sup>44</sup> These were the amending laws to the Act on Value Added Tax in 2014: Act No. 502/2012 Coll., Legislative Measure of the Senate No. 344/2013 Coll., Act No. 196/2014 Coll.

<sup>45</sup> These were the amending laws to the Act on Value Added Tax in 2015: Act No. 196/2014 Coll., Act No. 262/2014 Coll., Act No. 360/2014 Coll.

<sup>46</sup> These were the amending laws to the Act on Value Added Tax in 2016: Act No. 360/2014 Coll., Act No. 113/2016 Coll., Act No. 243/2016 Coll., Act No. 298/2016 Coll., Act No. 113/2016 Coll.

<sup>47</sup> These were the amending laws to the Act on Value Added Tax in 2017: Act No. 377/2015 Coll., Act No. 188/2016 Coll., Act No. 33/2017 Coll., Act No. 170/2017 Coll.

<sup>48</sup> Judgement of the Constitutional Court of the Czech Republic of 6 December 2016 (Case Pl. ÚS 32/15), published in the Collection of Laws under No. 40/2017 Coll.

<sup>49</sup> These were the amending laws to the Act on Value Added Tax as of January 2018: Act No. 225/2017 Coll., Act No. 371/2017 Coll.

ered by law and that all problems may be solved by the state by adopting an appropriate legal regulation. When discovering that the newly adopted law is not meeting the initial expectations, lawmakers find a solution in adopting a new law amending the faulty one. This leads into a never-ending process of re-amendments. Lawmakers are completely missing a moderate approach in drafting and adopting new legal regulation. On the contrary, it can be observed that some politicians (including the current Czech Prime Minister A. Babis) even tend to compete in how much legislation they have submitted for approval.<sup>50</sup>

What are the current solutions in an environment where there are new and new laws and amendments constantly being passed? The principle called *in dubio contra fiscum* (“in doubt against the public treasury, i.e. the government”) is a good example of how the Czech case law deals with frequently amended and therefore not always consistent tax legislature. This legal maxim going back to the Digest of the Emperor Justinian,<sup>51</sup> also known as *in dubio mitius*, *in dubio in favorem* or *in dubio pro libertate*, was developed to support purposive interpretation of tax law. The doctrine is currently sustained by Czech administrative courts (especially the Supreme Administrative Court as head of the administrative judiciary system) with respect to unclear Czech tax laws. Where there are two or more equally acceptable interpretations of the substantive tax law, the tax administration is not allowed to automatically apply the interpretation that is more favourable in relation to fiscal interests of the state (public budgets). Based on the public law imperative of minimization of the effects of exercise of the public power on the rights of individuals, it is on the contrary necessary to apply the taxpayer-friendly interpretation of law.<sup>52</sup>

Although the above-described principle motivates the lawmaker to adopt as clear tax laws as possible in order to prevent shortfall in revenues for public budgets, it is rather an *ad hoc* interpretation tool of the administrative courts. It should be in the interest of any democratic lawmaker to have clear and stable tax laws. Thus, in the future, specific systemic steps should be taken to make the tax legislation more accurate and consistent. This would bring about the desired stability of the tax environment. Below, suggested proposals can be found that include specific measures in the tax-legislative strategy and an adjustment of the tax system.

In the first place, we consider it appropriate to amend tax laws on an annual or at most a half-year basis. The entry into force shall be fixed always on January 1 or July 1 of the relevant year. This would avoid the currently observed situation where taxpayers have to adapt to newly adopted tax legislation several times within an already commenced tax period.

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<sup>50</sup> Statement of Mr. Babis can be found here: Výrok dne: já mám nejvíc zákonů, vy domluvených dotazů, říká Babiš Sobotkovi. In: *Respekt* [online]. 16. 12. 2017 [2018-02-20]. Available at: <<https://www.respekt.cz/denni-menu/vyrok-dne-ja-mam-nejvic-zakonu-vy-domluvenych-dotazu-rika-babis-sobotkovi>>.

<sup>51</sup> THURONYI, V. *Comparative Tax Law*. The Hague: Kluwer Law International, 2003, p. 136.

<sup>52</sup> The case-law of the Supreme Administrative Court on this matter includes following rulings: judgment of November 29, 2011 (Case 2 Afs 16/2011 – 78), judgement of July 25, 2013 (Case 2 Afs 57/2013 – 34), judgment of April 1, 2015 (Case 6 Afs 84/2014 – 39), judgement of September 30, 2015 (Case 2 Afs 193/2015 – 70), judgement of October 20, 2016 (Case 5 Afs 13/2016 – 76), judgement of July 13, 2017 (Case 6 Afs 278/2016 – 54).

Another remark relates to the number of adopted tax changes in general. In view of the above submitted data on the quantity of new legislation adopted in recent years and amending two of the most important tax laws, it is necessary in the future to consider whether a legal regulation needs five or even more amendments over a short period of time, often during one year only. Apart from the fact that constant legislative changes certainly do not make life easier for entrepreneurs and other taxpayers, it can also be assumed that due to such frequency, the quality of both the amended legislation and the amendments will suffer. A closer look into the wording of some of the amendments or the common need for further regulation or re-amending of an already amended law rather confirm this concern.

In the light of the above, it is also necessary to seriously consider an overall revision of the tax system. A new systematization might involve both the adjustment of substantive tax laws as well as changes in the area of tax administration. In the first place, all newly introduced obligatory payments that meet the definition of a tax should be marked by law as such.<sup>53</sup> Further, in times of the European trend of strengthening indirect taxes, another step may consist in the abolition of some direct taxes when taking into account their proportion to the total tax collection in the Czech Republic. In this respect, the road tax (which is particularly burdensome on entrepreneurs) and the tax on the acquisition of immovable property seem to be the potential subject of debate on the reform of the Czech tax system. Their revenue amounting to several billions Czech crowns is relatively insignificant compared to revenue from indirect taxes (and in particular the value added tax) or income taxes.<sup>54</sup>

With regard to the number of amendments that have been made so far to certain tax laws (often amounting to dozens and, in case of the Act on Income Taxes, more than one hundred and fifty amendments) and the repeated weakening and rewriting of their original concept, some tax laws should be replaced by a completely new legal regulation. In this regard, the preparatory works of the Ministry of Finance on the new Act on Income Taxes can be considered positive.<sup>55</sup> In the past years, there have already been many considerations in the legal theory concerning the adoption of an entirely new Act on Income Taxes. For example M. Kohajda has brought a detailed paper<sup>56</sup> about works on the bill of the act nearly ten years ago. Unfortunately, no such legal effort has been finished and successfully adopted in the Czech Parliament.

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<sup>53</sup> From this terminological point of view it can be welcomed that the most recent tax in the Czech tax system has been marked as the “gambling tax”. It is contained in the Act No. 187/2016 Coll., on Gambling Tax, as amended, which came into force on January 1, 2017 and replaced the former “levy on lotteries and other similar games”.

<sup>54</sup> See the data provided by the Czech Financial Administration. Tax collection data: The evolution of collection of selected taxes in the Czech Republic in the years 1993–2017. In: *Financial Administration of the Czech Republic* [online]. 2018 [2018-02-20]. Available at: <<http://www.financnisprava.cz/cs/dane/analyzy-a-statistiky/udaje-z-vyberu-dani>>.

<sup>55</sup> MINISTRY OF FINANCE OF THE CZECH REPUBLIC. Veřejná konzultace k prvním řešením pro připravovaný nový zákon o daních z příjmů. In: *Ministry of Finance of the Czech Republic* [online]. 24. 10. 2016 [2018-02-20]. Available at: <<http://www.mfcr.cz/cs/o-ministerstvu/verejne-diskuze/2016/verejna-konzultace-k-prvnim-resenim-pro-26405>>.

<sup>56</sup> KOHAJDA, M. Několik poznámek o přípravě nového zákona o daních z příjmů v České republice. In: *Milníky práva v stredoerópskom priestore 2009*. Bratislava: Právnická fakulta Univerzity Komenského v Bratislavě, 2010, pp. 781–787.

In the field of tax administration, it may be advised as for future development to reduce bureaucracy and to put larger emphasis on electronic contact with the tax administration. The aim of these efforts should be to ensure that tax filing does not constitute an unnecessary burden on taxpayers. Nothing has been done so far to ensure that the tax administration is perceived rather as a service to citizens in the true sense of the word. Due attention should be paid to designing a modern public administration that would become an effective and predictable state body which collects funds to finance the functions of the state and public services in an understandable manner. In this respect, the introduction of the so-called “single-collection-point”<sup>57</sup> in 2011 was a positive step of the then centre-right government. It was intended to enable a large part of the obligatory payments to be paid at one office only and to make tax filing easier.<sup>58</sup> However, this ambitious project was cancelled by the next government with a different political orientation before its planned introduction (proposed for 2015). Since then, there has unfortunately been no such project planning to reduce the administrative burden and simplify the overall system of tax administration from the perspective of tax filing and taxpayers.

Although the ethos of the last few governments was marked by proclamations of reducing the administrative and tax burden on businesses and households,<sup>59</sup> no concrete steps have been taken in this area to date. The current situation and the ongoing creation of new tax obligations or amending the existing tax laws are in no way making the orientation in the current legal order easier. This state of affairs inevitably calls for a tax reform which should in particular be aimed at simplifying the tax system and putting more emphasis on electronization.

These are only some of the ways how to further support economic development and to ascend in international comparisons. But there is a more serious aspect. Former Chairman of the Supreme Administrative Court J. Baxa noted that the task of future governments should be to address the overall situation of the legal environment on which the functioning of public institutions and the trust in rule of law rely.<sup>60</sup> However, cultivating the institutional environment and ensuring the stability of the legal and economic framework is not a task for a single election period.<sup>61</sup> Possible solutions are in the hands of the new members of the Chamber of Deputies that have been elected in the October 2017 elections; the new government, in particular, faces expectations that it will present a new

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<sup>57</sup> Act No. 458/2011 Coll., on the Amendment of Laws Related to the Establishment of Single Collection Point and on Other Amendments to Tax and Insurance Laws.

<sup>58</sup> MINISTRY OF FINANCE OF THE CZECH REPUBLIC. Jedno inkasní místo. In: *Ministry of Finance of the Czech Republic* [online]. 2010 [2018-02-20]. Available at: <<http://www.mfcr.cz/cs/archiv/jedno-inkasni-misto>>.

<sup>59</sup> For example in 2016 the Ministry of Finance presented a reform proposal called “MY Taxes” (in Czech “MOJE daně”) which has not yet been put into practice. See more in: MINISTRY OF FINANCE OF THE CZECH REPUBLIC. Ministerstvo financí představilo projekt MOJE daně. In: *Ministry of Finance of the Czech Republic* [online]. 14. 6. 2016 [2018-02-20]. Available at: <<http://www.mfcr.cz/cs/aktualne/tiskove-zpravy/2016/ministerstvo-financi-predstavilo-projekt-25248>>.

<sup>60</sup> POKORNÝ, M. Politici už by neměli přijímat další zákony. Je čas udělat inventuru a proškrtat je, říká předseda Nejvyššího správního soudu Baxa. In: *Hospodářské noviny* [online]. 27. 12. 2017 [2018-02-20]. Available at: <<http://m.ihned.cz/c1-66000560-politici-uz-by-nemeli-prijimat-dalsi-zakony-je-cas-udelat-inventuru-a-proskrtat-je-rika-predseda-nejvyssiho-spravniho-soudu-baxa>>.

<sup>61</sup> SOBÍŠEK, P (2017). Optimismus s trochou výhrad. *Hospodářské noviny*. 29.–31. 12. 2017, p. 9.

vision and open a new chapter of future legislative developments in the field of tax law. A moderate and thoughtful approach is more than desirable.

## CONCLUSION

The Czech legal order and in particular the area of tax law is a very heterogeneous and an ever-changing set of legal norms. The Czech tax system currently comprises sixteen taxes. Besides that, the Czech legal order contains a number of other financial obligations having a tax-like nature (taxes in a broad sense). Regardless of the specific parametric configuration of the tax system, improving efficiency in governance and stabilizing conditions for the private sector should be the main tasks of any democratic legislative and government. Minimizing mandatory administration and removing regulatory barriers constitute possibilities how to facilitate the development of the Czech economy and how to ensure even higher competitiveness on a regional and global scale. The Czech Republic still has significant room to grow in the area of stabilization and simplification of the tax system even in international comparison. The new government should therefore present a clear vision in this regard.

In the future, it is also necessary to promote a moderate and thoughtful approach of lawmakers. The implicit ideological burden from the time of totalitarian etatism that any problem might be solved by a legal regulation, and, in case the new law does not meet the initial expectations, an amendment ought to be passed, which results in a never-ending process of re-amendments destabilizing the tax and legal framework, must be tackled in public discourse. In general, a future tax reform should be considered. It should mainly consist in a simplification of the tax system, larger emphasis on terminological harmony, easy orientation, electronization and a taxpayer-friendly approach. Real steps should also be undertaken towards the reduction of compulsory bureaucracy related to business activities.

All of the above can help ensure the much-needed clarity and stability of the tax law framework which especially entrepreneurs have been calling for. Other than helping Czech taxpayers find their way around the legal order, the above-mentioned suggestions might make the Czech Republic more attractive for business and investors. Ultimately, this might be another way of stimulating economic growth and prosperity in the Czech Republic.