

Financial Law Review

No. 15 (3)/2019
quarterly

UNIVERSITY OF GDAŃSK • MASARYK UNIVERSITY • PAVEL JOZEF ŠAFÁRIK UNIVERSITY • UNIVERSITY OF VORONEZH
<http://www.ejournals.eu/FLR>

SOME VALUE ASPECTS IN TAXATION IN SLOVAKIA *VLADIMÍR BABČÁK **

Abstract

The author deals with some of the values that are more or less manifest in Slovakia in the field of taxation, and which should also more manifestly absorb the tax law into its normative base. Before focusing on the topic itself, the author formulates, albeit in brief, his idea of the fundamentals of values in society. He emphasizes the idea that every individual understands values differently, with due regard paid to what is ethically correct/incorrect, beautiful/ugly, desirable/undesirable, advantageous/disadvantageous. This means that each person would hold their own view of what the values are.

In the following text the author emphasizes the idea or the thesis that the value system of society is necessarily transformed into the value system of law. In relation to the issue of value-related issues examined, he focuses on such important values as taxation fairness, equality in taxation, non-discrimination, interests, taxation morality, legal certainty or transparency of taxation. Except for interests, he considers the other examples of the value to be the values of ideological or "noble" meaning. He points out how these values are transformed into the tax system and tax legislation in Slovakia.

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This article presents a partial output of the grant project APVV-16-0160 "Tax evasions and tax avoidance (motivation factors, formation and elimination)".

In relation to values, he emphasizes the idea that they should be regarded as the basic pillars of relationships in which each society, thus also the Slovak one, should be created and further shaped.

In conclusion, and in line with other authors, he argues that values also represent a cultural legacy that is not automatically transferred from generation to generation, but each individual has to acquire them repeatedly, take a personal stance, and decide for themselves. In this way, the values that a majority society recognizes in tax law may not be positive for a particular individual, and vice versa.

Key words: Values, taxation, taxation fairness, equality in taxation, prohibition of discrimination, tax law, legal certainty

JEL Classification: K340

1. Introduction

Writing on value aspects in the field of taxation in Slovakia presupposes that the author will at least in general terms mention how the scholarly discipline whose "portfolio" includes the issues of *values*, understands terminological, conceptual, and generic definition of this social phenomenon. In this regard, I wish to point out that these issues in their primary framework are not subject to interest of the science of tax law, although several contexts of the science of tax law and the issues of values are indisputable.

Even though the term "value"/"values" is one of the most widely employed terms in everyday communication among people and therefore there should be almost no problem with understanding it by the majority of the population, the opposite is true; people have different views on what is valuable and what is not valuable. These views usually refer only to individual values and not to their totals. In this sense, they regard values as being ethically correct/incorrect, beautiful/ugly, attractive/inconvenient, advantageous/disadvantageous for them. Thus, a number of opinions on the term of values, their breakdown and classification criteria may be encountered on the pages of expert writings [Děd 2016: 1-11]. Moreover, this is also due to the fact that values are not just subject to interest of axiology, but also doctrines of origin and nature of values, as well as a number of other disciplines. Values rank among the central concepts of economics, philosophy, psychology, pedagogy, and some other disciplines.

A person would recognize values in everyday life without having considered their previous experience with values. Values are not dependent on experience, nor are they passed over from generation to generation. Every epoch in the evolution of mankind renders them

their own content and meaning, and it is to be decided by an individual whether this content and meaning will be "private" or not. Values, however, depend on their emotional-rational reflection, and as a result of the rational reflection of emotional facts, what an individual would experience as a value, would become part of human cognition. From this it may be inferred that values "are plummeting to the surface" of the perception by man, so they acquire specific contours/ personify themselves through rational analysis.

Things that surround us are not values per se. They are only the bearers of values if such values are attributed to them. Many things, through the passage of time, by way of changes of economic, social or other social and personal circumstances, gain or lose value, depending on how a particular individual understands their values.

What in fact are values? Are they the things of the material world that people own or make use of, and which for them mean a kind of utility (in economic terms)? Or are they images or ideas, that is what in fact surrounds people, with which individuals come into contact in the everyday life cycle, but which is not tangible, though people may perceive it with their other senses? In the former case, therefore, the values should represent the worth that these things have for their owners or users, and in the latter case, only the ideas belonging to spirituality of man or issuing from it may be considered values.

In a broader sense, value is understood as a specific feature of all the natural and social phenomena that reflect their positive or negative meaning for a person. Values are thus perceived as the principal, primary, first source of motivation, a source of setting man in motion [Klčovanská 2000: 76].

It is not possible or purposeful to deal here with the theory of values in the "purest" scholarly understanding of axiology. I admit, therefore, that the differentiation of values offered here by me into two groups (material and spiritual ones) is very general, superficial, and to a great extent inaccurate (for example, in some cases values may overlap with needs). On my part, therefore, it is a very simplified view of the nature of values and their differentiation; on the other hand, however, I considered it necessary, at least in the basic framework, to create a space for exploring the value aspects of taxation in Slovakia. In this sense, I also realize that I have found myself so to say "on a thin ice" because the values in legal norms contained in the sphere of tax law are not expressed *expressis verbis* and they need to be searched for in these norms. In addition, what seems to me to be a positive value may for another tax law scientist evoke mixed feelings and a different approach to a particular value.

The present, more than the past, convinces us that much more attention needs to be paid not just to the issues related to the macroeconomic "successes" of the Slovak economy, but also to issues other than those nourished by the governmental officials as "success story" of

Slovakia¹. However, what needs to be included within the framework of other issues, which are no longer a "cup of tea" for the current political grouping, are the issues of the value orientation of the State and the value orientation of our population, in the degradation of which the State itself, its political representatives and financial oligarchs have their share, as well as the "invisible hand" of the media that belong to them. This statement, however, does not only concern Slovakia, but is significant for most countries of the world today.

Development shows that after the global ignorance of the suggested issues, when the only *value in the global sense became money or interests* behind the implementation of which one may once again recognize the money (and money means power and vice versa), it is becoming ever more frequent to discuss and point to the incredible marasmus that our society has made almost thirty years since the so-called "Velvet Revolution". It concerns all the aspects of values, not just those that motivate the acts and behaviour of the human population or those that affect cultural and artistic life on Earth, morality, ethics, and morals. Values, according to my belief, must be seen as ***the basic pillars of relationships in which each (including Slovak) society should be created and developed.***

It is clear that values represent a phenomenon that affects all areas of social relations. It is a social phenomenon in which they are concentrated and from which philosophical, sociological, psychological, economic, and legal roots grow. It may be inferred indirectly from this that in each of the values (we mean, in the first place, those that are generally regarded as positive) are hidden elements/parts of the world view through the prism of those disciplines which deal with the issue of values within a broader or a narrower framework. Axiology or value theory stands at the imaginary ladder above them, grows into them and affects them.

2. "Translation" of the basic value categories of law into the field of taxation

The value system of every society, in my opinion, should be translated into the value system of law and should influence its preparation, development, and implementation.

¹ This, however, may be disputed when we look at not quite delightful forecasts about the development/growth of the Slovak economy and the situation on the labour market in Slovakia. For example, according to José Ángel Gurrí, the OECD Secretary-General, the changes resulting from technological advances threaten in Slovakia almost 70% of jobs: "These are the highest figures in the OECD regarding vulnerability to technological change," Gurría said. One third of jobs is endangered by automation. Another third of them is already being hit by some kind of automation [*Časť Slovákov môže mať problém, prácu im zoberú roboty*]. The Ministry of Finance of the Slovak Republic reduced the estimate of the growth of the Slovak economy in the year 2019 from 4.5 to 4 per cent. In the year 2020, the economy should slow down to 3.7 percent [*Kažimír oznámil nižší odhad rastu ekonomiky, ale vyšší rast platov*].

Alongside these lines, the value system of society should stand at the top of the "pyramid" of value systems of individual articles of the normative mechanism of the State.

The law itself represents a social value whose relative autonomy is at the forefront of contact with other values. In a general legal and theoretical view, values such as justice, equality before the law, non-discrimination, legal certainty, ethics and morality, freedom and dignity of man are the most frequently mentioned ones as components of the value system of law. It is just to remind Aulus Cornelius Celsus, a Roman scholar and encyclopaedist of his time, who characterized *law as the art of good and justice*².

This is, so to say, the theoretical aspect of what the law should be like and what it should express in its respective sectors and subsystems. In particular, the unity of positive (valid) law and justice should be highlighted in this respect as the values to be immanent in the applicable law³. Another question is of how the postulate values themselves are rooted in the Slovak legal reality and law-making, and how their implementation is reflected in legal practice.

The issue of several of these values, and in particular their enforcement, is also addressed in everyday reality by the science of tax law as the theoretical basis of tax law. As the core of these values is formed/formulated, modified/clarified, evaluated and explained based on the experience of their application in taxation practice, these values are then to be translated into the individual components of the tax law normative base, even on the presumption that they will *expressis verbis* not be expressed in them, but it will be possible to derive their (non)existence from the application of scientific methods of knowledge, especially the methods of logics, formal legal methods, and comparative methods [Knapp, Gerloch 2000: 188].

The values on which the value potential of our society is based are not clearly expressed or formulated in the normative part of tax law. This is not the purpose of tax law, rather the role of the science of tax law, which is naturally related to the subject orientation and the profiling of tax law. Therefore, it cannot be expected that individual taxation-law standards will also contain provisions on the substance/content of those values. Rather, it is necessary to search for, locate, analyse, and point out their existence, meaning, effectiveness, or absence. Nor is it in the case of the secondary EU law, regardless of whether we focus our

² *Ius est ars boni et aequi*. This definition of the law has been preserved at the beginning of the 1st Book of Justinian Digest [Digesta Iustiniani]. According to Celsus, the law should be fair, that is moral, which means that it should not be applied mechanically, but its use should correspond to what is generally good, correct and decent (moral). Such an understanding of law was close to the understanding of justice in Rome [ius est ars boni et aequi (in:) Encyclopaedia Beliana].

³ The Radbruch Formula is well-known in this respect, based on the fact that the conflict between justice and legal certainty could be resolved in such a way that a given positive right guaranteed by power takes precedence even if it is unfair as to content and ineffective, except that the contradiction between the positive law and justice has reached such an unbearable level that the law as an unfair law has to cease.

attention on legal acts which national tax legislation must implement within its set deadline (in particular the directives) or those that are valid in the EU directly and immediately without having to implement them (for example, regulations). It is only exceptional that in the EU legal acts the emphasis laid on one of the values, in particular transparency and fairness of taxation, appears in explanatory statements rather than in the normative part of a legal act. An example may be mentioned in Directive 2016/881/EU as regards compulsory automatic exchange of information in the area of taxation, in which paragraphs 4 and 8 of the explanatory memorandum highlight fairness in the distribution of taxes in the country where the profits are created or the Union's obligation to ensure fair competition across the groups of multinational enterprises from the Union and from countries outside the Union. It would be beyond the values on which the EU is founded and which are enshrined in founding treaties (for example Article 2 of the Treaty on the EU) and in the Charter of Fundamental Rights of the EU, that the legal acts which are based on these documents in their normative parts have declared the existence of these values.

Similarly, Slovak law practice also approaches the issue of highlighting the values in tax law. Specification of the values that are implicitly expressed in tax law acts may be found in explanatory statements to some draft law acts/jurisprudence⁴.

Fairness represents a significant value whose content and application in taxation practice is determined by the relevant tax legislation and is also conceptually characterized by the science of tax law. Personally, I consider the issue of fairness in tax law as an important component of the justice system in law. Justice cannot be separated from the respect for law in society; this was perceived in ancient Rome, when a thesis was formulated that the sense of law is complete justice (*Ratio in iure aequitas integra*) [Rebro 1995: 250].

Justice and law are two inseparable attributes of a single social structure represented by the rule of law.

The public is highly sensitive in perceiving *taxation fairness*, considering it to be part of the phenomenon of justice. But it would not be right for me to forget that the term taxation fairness is a highly *uncertain and vague notion* of the tax law science. In addition, it also contains an element of *flexibility*, which most frequently brings to the surface changes in the perceptions of the economic direction of a given society that usually co-occurs with the changes in the political and governmental spectrum. Consequently, the society is witnessing the fact that, at some point in time, a specific taxation measure is judged to be fairly taxed so that with the change of the governmental grouping it is abolished on the ground that it was unfair. A traditional example of such a different approach to one and the same thing in Slovakia in the recent past was the so-called equal tax.

⁴ For example, on pages 1.3.4 and 7 of the explanatory memorandum to Law Act No. 11/2019 Coll. on the rules on taxation disputes.

The requirement for fairness of taxation is very closely linked with the requirement for taxation transparency. This is considered by the European Commission as a key element in attaining simplification and streamlining of tax systems⁵, which one cannot but agree with.

The principle of taxation fairness is not only ethical but also moral, psychological and indirectly also a legal phenomenon. It is a phenomenon that does not only affect the substantive aspect of tax law relations but also their procedural aspects.

However, few of the representatives of the professional community are absolutely clear about taxation fairness, what it is to be compared to, what is not yet and what is taxation-fair and to what degree and by what means this fairness should be attained. It should be emphasized that the *very idea of taxation fairness does not address the issue of fairness of tax collection, but rather the way in which taxes are levied.*

A lay public holds a similar but somewhat simplified view of the taxation fairness institute. Such a view, in my opinion, is based on the fact that this part of the public is not "burdened" by the knowledge of the tax legislation in its historical, theoretical and abstract contexts: On this basis, I believe that the question of fairness in taxation is associated with the issue of fair share in the distribution of public revenue from the taxes paid by them to the State budget.

While tax law can respond to the prevailing views of the professional public on how to express income/consumption taxation, etc. in the form of rules for defining the taxable entity, calculation of the tax base and determination of the tax rate in such a way that at least in certain singularities it coincides with that of the general public. However, this will not yet reflect satisfaction of the majority of society that the method and level of taxation by any tax (most often the income tax, even less so the VAT or some excise tax) is approaching the idea of what fair taxation should look like [Babčák 2016: 8-34].

Unlike other principles that are inherent in an optimal/good tax system, the essence of taxation fairness is primarily ethical-moral, which means that it does not even constitute a legal phenomenon. In addition to that, especially from the perspective of economists, everything that happens in the tax system is either fair or efficient [Schultz 2015: 21].

The relationship between the principles of taxation fairness and the efficiency of taxation and their specific application at a given time is a clear indication of the link between politics, economics, and tax law. The Slovak tax law is being overwhelmed by political influences and interests more than other legal sectors. The real needs of our country's economy, which should reflect the relevant tax legislation, are often put to a halt by public

⁵ See, for example, some Commission communications where the Commission has paid particular attention to the issue of taxation transparency, such as: [*Tax Transparency in the Fight Against Tax Evasion and Avoidance*].

authorities. This policy is projected into taxation-law regulation and this again affects the economy, i.e. companies and other entities that are involved in the economic growth. This is reflected retroactively in taxpayers' access to (no) compliance with their tax liabilities.

The phenomenon of taxation fairness is a significant value for any modern society, especially in those cases where the tax system in question is accepted by the majority of the public. Unfortunately, this phenomenon can easily manipulate the public by under-thrusting various half-truths and lies on the advantages or disadvantages of a particular taxation instrument. It is even more difficult for entrepreneurs, especially given the experience they have had in their day-to-day business reality. This applies to cases where foreign investors are favoured in taxation relations compared to national entrepreneurs, to the fact that SMEs have incomparably more difficult conditions for doing business than large multinational companies, and so on. Such manifestations of unfairness (both purported and legitimate) relate not just to their own taxation issues but also to the whole set of relationships governed by law, including commercial law, criminal law, etc., which are directly or indirectly related to taxation.

It is an indisputable fact that the present tax law is being increasingly influenced by the political and especially economic interests of political parties and movements, various lobbyist groups, the business community, as well as populist statements by politicians who want to get involved with voters [Babčák 2012: 355]. The possibility of specifically fulfilling the idea of taxation fairness is then often dependent on the objectives of the taxation policy of the State, but also on the intention and willingness of the legislator to reflect what appears to the public as tax-fair to tax law. From this point of view, the application of taxation fairness in the business environment is a hypothetical question rather than a realistic fact. Taxation fairness is, in the first place, a matter of perception and feeling of a particular entrepreneur whether the tax, its amount and method of levying is fair or not. If the taxpayer feels taxation rules as unfair, s/he will at the same time have lower barriers to tax evasion [Babčák 2015: 55]. In my opinion, in the hierarchy of values created by the government power, taxation fairness does not include the priority values to be protected and developed.

The idea of taxation fairness in Slovakia often changes its "face" and realistically translates into the form of taxation unfairness. This is particularly perceived by the small and medium-sized entrepreneurs, on whom actually the Slovak economy is standing⁶. In practice, this is manifested in a number of ways, for example by granting tax concessions

⁶ According to the data on small and medium-sized enterprises in the year 2017 processed by the Slovak Business Agency, small and medium-sized enterprises in Slovakia account for 99.9% of the total number of business entities. In the corporate economy, they provide jobs to almost three quarters of the active workforce. Up to 97% of them are micro-enterprises employing less than 10 employees. See: [*Finančné aktuality* 14/2018] or [*Analýzy slovenského podnikateľského prostredia*].

and other benefits to foreign investors not granted to national entrepreneurs, taxation deduction rules enshrined in the applicable Income Tax Law Act [Babčák 2016: 8-34], and the like.

Equality is one of the fundamental social values. This value is very closely linked to *non-discrimination* or to the *ban on discrimination*.

Equality as a certain ideal/principle has several meanings in law and in politics. It is not my intention to take a closer look at enumeration of these meanings, as it would go beyond the primary focus of my interest. In a nutshell, in my opinion - in relation to the law - one may primarily distinguish between *formal/procedural* equality guaranteed by law (i.e. it comes to equal rights = equality of all the people before the law), and *material/substantive* equality, that is real equality of all the individuals in relation, for example, to the size and value of property, equality of knowledge and skills, and so on. In this second case, we would have "slipped" into a utopia or idealism, which in the practical sense of the word does not come into consideration. From this point of view, we can only be interested in equality in the legal sense.

Equality in the legal sense is based on the principle of freedom and equality of every person in dignity and rights as the most important values (Art.12 (1) Constitution of the Slovak Republic) and the equality of the parties in the proceedings before the State authorities or public administration bodies from the beginning of the proceedings, under the conditions laid down by law (Article 12 (2) and (3) of the Constitution of the Slovak Republic).

In tax law, legal equality can/should be expressed in the following way:

1. *Tax law acts will provide the same standard of rights and obligations towards taxpayers regardless of their taxation jurisdiction (tax domicile/tax residence).* Slovak tax legislation, in principle, guarantees equality in the above meaning, however under the conditions laid down by law and international obligations resulting from the EU membership and international/interstate treaties;

In the proceedings before the tax administrator/second-level body, all the taxable entities involved in the proceedings shall have the same procedural rights and the same procedural obligations. This means that law grants the taxable entities the same procedural status. This idea is also embodied in the construction of one of the procedural principles of tax administration, which is the *principle of the same procedural status of taxable entities* under

the Taxation Code⁷. This principle is based on the fact that "*Taxable shall entities have the same rights and obligations in the administration of taxes*".

Ad 1) Tax legislation shall provide the same standard of rights and obligations towards taxpayers, regardless of their taxation jurisdiction

In this respect, account must be taken first of all of the rules on taxation applicable in relations between countries, including the EU Member States, which lay down the conditions and requirements for determining taxpayers' tax domicile and the extent of the subject matter of taxation. Therefore, even the Slovak tax legislation regulating the taxation of income sets the scope of the tax liability differently, depending on the taxpayer's taxation jurisdiction (tax resident versus non-resident taxpayer), but does not take into account the nationality of the taxpayer.

This means that a natural person who has a tax residence in the territory of the Slovak Republic will be taxed on all the income originating in the Slovak Republic, as well as on the income received from foreign countries, regardless of whether in a particular case it is a citizen of the Slovak Republic or a national of another State. Possible contradictions in taxation will be subject to the provisions contained in bilateral agreements on the avoidance of double taxation in the field of taxes on income and on capital (hereinafter referred to as "tax treaties"), and if the Slovak Republic does not have such a treaty made with another State, the States concerned may proceed on the basis of international conventions⁸. Other States address this issue in a similar way. To this end, it is to be added that, in the case of tax disputes, the Directive on Dispute Settlement Mechanisms in the EU was adopted at the EU level and, on the basis of this, the Slovak Parliament approved the Implementation Law Act on Dispute Settlement Rules⁹.

Moreover, if any taxpayer considers that s/he was, for example, affected in his rights by the fact that the State in whose territory he/she is operating receives income and is not its tax resident, and it has not granted him/her a tax credit comparable to that which s/he confers to its own tax residents, s/he shall have the possibility to invoke his/her tax credentials even before the EU Court of Justice ("EU CJ"). This is already linked to the issue of consequences of inequalities in taxation relations between countries resulting from the applied fiscal discrimination, whose roots are enshrined by nationality.

⁷ See Section 3 (7) of Law Act No. 563/2009 Coll. on Tax Administration (Taxation Code) and on Amendments to Some Law Acts as amended.

⁸ In this case, in particular, the Convention on the Elimination of Double Taxation in Connection with the Adjustment of Profits of Associated Enterprises (90/436 / EEC) of 23 July 1990.

⁹ This is Law Act No. 11/2019 Coll. on the Rules of Resolving Tax Disputes.

Article 18 of the Treaty on the Functioning of the European Union (“TFEU”) prohibits any discrimination on grounds of nationality. Despite the seemingly seamless solution to the question of the extent of the tax liability, which is based on the tax domicile and not on the taxpayer's nationality (which actually reflects the above provision), yet we can identify in the decision-making practice of the EU CJ a number of decisions that through their significance translate into our tax law and taxation practice, and these are thematically related to the issue of the ban on discrimination.

One of the best known decisions of the EU CJ in this respect is the case of *Roland Schumacker v the Finanzamt Köln-Altstadt*¹⁰. In this case, a Belgian national has claimed his rights by pointing to discrimination caused by the non-compliance of national legal norms with current Art. 45 TFEU¹¹. The above Article concerns the free movement of workers within the Union and, in the opinion of the EU CJ, that Article is to be interpreted as limiting the Member States to laying down the conditions of taxation of non-resident taxpayers, since it does not permit, in comparable cases, to determine the conditions for taxing non-resident income less favourably than in relation to their own tax residents.

Although Article 45 TFEU does not state that national tax legislation cannot provide for a higher rate of taxation for non-resident taxpayers than for tax residents, such a procedure would still not be possible in cases where a non-resident taxpayer does not receive income in the State of residence to allow that State to grant him/her any benefits following from his/her personal or family status and where the major part of that person's income is in the State in which s/he is deemed to be a non-resident taxable entity. In the EU CJ's view, in such a case it is necessary to consider and assess the situation on the part of the non-resident taxpayer as comparable to the situation in which the tax resident is resident. As a result, it is not possible to apply a different tax rate in the area of taxing their income, which would result in indirect discrimination against a non-resident taxpayer. It follows that indirect discrimination is possible where a resident taxpayer and a non-resident taxpayer are in a comparable situation [Štrkolec 2011: 139].

¹⁰ EU CJ Case C-279/93 *Roland Schumacker v Commission* [Finanzamt Köln Altstadt of 14 February 1995. Reference for a preliminary ruling: Bundesfinanzhof - Germany. The substance of the dispute consisted in the fact that Roland Schumacker (a Belgian national) worked in the territory of the Federal Republic of Germany (FRG) while residing in the Kingdom of Belgium. In Germany, therefore, he was considered as a non-resident taxpayer. As a non-resident taxpayer he was subject to income tax in Germany in respect of his income in Germany, but did not cover the tax advantages of his spouse - a German tax resident. As a result, Mr Schumacker and his wife were not able to claim a tax advantage in either of those States (in Germany for non-fulfilment of the residence requirement and in Belgium on the ground that they did not receive any income in their territory).

¹¹ The former Article 39.

Ad 2) Tax jurisdiction shall guarantee equal procedural rights and obligations for all the taxable entities in the proceedings before the tax administrator/the second-level body

The principle of equal procedural status for taxable entities is partly based on the constitutional equality of all the people before the law. Equality of the procedural rights and obligations of taxable entities lies in the fact that the tax administrator is obliged to apply the law in principle equally under the same legal conditions regardless of the type of taxable entity. In this respect, the tax administrator cannot inspect non-resident taxpayers through a prism different from that of tax residents (regardless of whether they are natural or legal entities and any form of organization). In relation to this, the law must be the only guiding element for the tax administrator.

The practical importance and meaning of the principle of equal treatment of taxable entities in tax administration is particularly clear when more taxable entities are involved in tax administration and their consensus is assumed in the common procedure (e.g. the appointment of a joint representative in those cases where several taxable entities have filed a joint tax return, or if they act jointly in the same case or as co-owners of an item that is the subject matter to taxation) [Babčák 2015: 440-441].

It is clear from the wording of this principle in the law act that equality can only relate to the relationship between taxable entities, not their relationship to the tax administrator (the tax authority, the customs office or the municipality) or in some procedural situations also to a second-level body. In this procedural position, on the one hand, their procedural relationship appears to be uneven *de iure* and *de facto*, which is difficult to challenge in specific procedural situations. The overriding position of these bodies stems from the general overriding interest of the State in taxing other taxpayers' interests in the administration of taxes, which are primarily of a private-law nature.

Although the interests of society/State do not have to appear at first glance as a value, I still believe that interests are themselves a value, not always accepted or generally accepted, often also questioned, but still a value. Interests are a value that can greatly help or dampen the development of other values in law, such as fairness, but also equality, non-discrimination, legal certainty, and so on.

Interests are one of the values on which the State position and State power resides, and this value, given that it is to be used by the State in favour of the public good, should be in a hierarchy of values above other values. I do not want to build a ranking of values in this context and look for a place for interests, it would be a contribution of mine of small value and credibility to the issue of values in law. In any case, however, I believe that in a society

such as the Slovak one, interests do have a privileged position in relation to ideological or the so-called "noble" values of law.

In the field of tax law, interests are embedded in the form of fiscal interests, which in other words can purposefully be expressed as an effort to ensure sufficient income tax revenues for the State budget. The fiscal interest of the State overrides the interests of taxable entities. In this respect, it may be concluded that a taxable entity has never had and cannot at present have any opportunity to comment on the introduction of tax liability and has always been compelled to observe legal acts by which a specific tax liability, group of taxable entities, specific tax rate, subject matter and scope of taxation, etc. were constituted.

As I have already stated, equality is very closely linked to **non-discrimination**, in particular to *ban on discrimination*.

The model of equality and ban on discrimination is actually the basic idea behind the EU integration process and the application of four fundamental freedoms. This is particularly noticeable in formulating the ban on discrimination on grounds of nationality, which reflects the free movement of labour within the Union.

Breach of the principle of equality raises a discriminatory effect regardless of what/whom it concerns, i.e. whether it will interfere with the equality of persons before the law, the State authorities, etc. Therefore, individual Member States should pay particular attention to the question of the formulation of the ban on discrimination in the area of tax law in its legislation. However, this prohibition cannot only be a domain of national legislation but must have a much broader scope, for example, the tax treaties made by the Slovak Republic must, inter alia, cover the elimination of discrimination against taxpayers. Expert writings also point out that the important framework of tax treaties also includes efforts to prevent discrimination by tax non-residents [Huba, Sábo, Štrkolec 2016: 140].

However, the Slovak Income Tax Law Act may in some of its provisions render an impression that it contributes to the violation of equality before the law. See, for example, the purposeful breakdown of individual earnings into groups depending on what kind of taxable income is involved (income from dependent activity (employment), from business, from other self-employment, etc.). In this case, discriminative is not the purposeful breakdown of income itself, as it is necessary to distinguish whether a natural entity receives income in a dependent activity or business, rather it is a question of not applying distinctly different principles for each income group taxation (for example, the possibility and the impossibility of lump-sum expenditure by the type of business), different amounts of this lump sum in relation to natural entities - entrepreneurs (60 per cent of total business income and other self-employment limited to EUR 20,000 per annum) and income from occasional agricultural production, forestry and water economy where the taxpayer may

apply for expenses amounting to 25 per cent of this revenue, up to a maximum of EUR 5,040 per year, furthermore, creating the conditions for legal regulation of income tax of natural entities to distinguish between whether these revenues are as employees or as entrepreneurs, and so on. In this respect, it is necessary to agree with the opinion presented in the sources that there are, however, higher risks for natural entrepreneurs, which should be offset by a corresponding taxation method. This leads to the view that such a situation is not in line with the requirement of fairness in taxation [Bakeš 2010: 13]. In this way, by applying tax credits in relation to some of the groups of taxpayers, other groups of taxpayers are at the same time unfairly disadvantaged.

The system of applying the withholding tax under Section 43 of the Income Tax Law Act (pursuant to which tax liability is considered settled) in relation to taxpayers against whom the withholding tax system does not apply is also mentioned as the case of possible discrimination.

With regard to the introduction and existence of taxes, the economic and legal aspects of their levying and collection have always been highlighted, less so **ethical arguments**, in particular because of the greater complexity of their justification and acceptance. Ethics is very closely related to morality, but also to other related normative systems of society. Therefore, even theories of ethical justification of taxation are more or less soaked by values such as moral aspects of taxation, psychological impacts of taxation on various social groups of the population, and the like.

The basis of morality is represented by values, not orders, prohibitions, or various rules. **Morality** is perceived in the professional sources as a set of moral ideas, values, and norms that determine the acting and behaviour of people [Čečotová 2005: 15] or as a sum of positive values that people profess and which they seek in their lives [Miežgová 1994: 11]. It is the moral norms which, in terms of the importance of their action, rank first among the non-legal normative systems. Morality, more often than not, provides behavioural patterns that are worthy of following and even makes use of a wide range of positive sanctions. Morality is thus regarded as an expression of the concept of active (positive) responsibility [Večeřa et al. 2011: 17].

I personally understand **taxation morality** as a manifestation of the will of taxable entities to voluntarily accept the obligations arising from tax-law norms and to fulfil them without (threats of) State enforcement. Tax morality may also be perceived as an **indicator** of the tax-legal awareness of society. In this sense, tax morality of individuals may be distinguished and, in the transferred meaning, also the society's tax morality.

In the theory of law, some authors consider law to be a *minimum of morality*, although at the same time the existence of legal norms lacking moral attributes is admitted¹².

The issues of the relationship between law, legal awareness, and morality are generally related mainly to the fact that specific legal standards issued by the competent authorities are accepted or rejected by the persons whose actions are regulated. As a result, there is social functionality or malfunction of legal standards. Explanation of this situation is mainly attained through the category of legal awareness. If the legal standard is legally consensual, it will be accepted, it will be followed, but otherwise it will be denied and non-compliant. The existence of a conflict of a particular legal standard with legal awareness must be counted on and this discrepancy is a factor that determines the social function of a legal norm. The relationship between law and legal awareness is clearly important for the functioning of law (its effective action) [Horvánek 1991: 51].

The inner conviction of the need to behave in a certain way is the most expressive manifestation of the individual's morale [Harvánek 1995: 39].

In my opinion, tax science has for long been lagging behind research into the relationship of tax law ↔ tax-legal awareness ↔ tax morality. I am convinced that the relationship between legal awareness and morality is evident in the area of tax-law relations. Only a few problems in society are so sensitive and at the same time interdisciplinary as the relationship between taxable entities and the State regarding the fulfilment of their tax liabilities. Taxable entities usually fulfil or, in some cases, do not fulfil their tax liabilities, and this is very closely linked to the existing discrepancy between the fiscal (public) interests of the State and the private-owner interests of the liable persons, which must also be attributed to various fraudulent cases related to public procurement and corrupt behaviour in deciding on them, as well as uneconomical spending of budget funds from the State budget. Tax-law standards are accepted by the State highest authorities and become binding on their addressees, also aware of the fact that they are largely lacking a moral aspect. However, the extent of the absence of the moral aspect of tax-law norms will generally be negative only after expiration of a longer period of time, mainly due to the media coverage in print or electronic media. However, media coverage itself merely indicates that one of the tax-law instruments was most likely introduced into the amendment/new tax law with the intention of giving preference to a certain area of business activity/a certain group of business entities at the expense of other entrepreneurs.

Legal certainty is a value that has for long been in contradiction with the unstable tax milieu in Slovakia. This reflects my conclusion on the *lack of legal certainty*, in particular, of entrepreneurs. The accompanying sign of this absence is the transfer of the seat of

¹² But there also exist opinions (V. Knapp) of two interpenetrating normative systems (law and morality). For more details, see: Gerloch [2001: 254-255].

Slovak companies to the so-called tax havens¹³ or terminating their business. The issue of legal certainty would certainly deserve a separate and integral part of a professional publication. In relation to this, I just conclude that legal certainty can only be discussed in Slovakia in its abstract meaning.

3. Conclusion

It would certainly be possible and also necessary to pay attention to other value aspects that are/should be reflected in tax law. For example, it is the taxpayer's *taxation competence* and its rate, whose absence C. Kosikowski once pointed out¹⁴.

Values represent such a type of cultural legacy that is not automatically transferred from generation to generation, but each individual has to acquire them again, take a personal attitude and decide in favour of these [Klčovanská 2004: 6]. Therefore, the society's value ranking scale will in the future become subject to changes in which the government power will participate to the extent that it will be beneficial for it. This is a general statement to conclude, but it has its true reflection in the area of values in the jurisdiction of this country and in the science of tax law.

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¹³ The number of Slovak business companies whose owners are in the so-called tax havens reached 4 796 by the end of 2017 [V daňových rajoch je historicky najviac slovenských firiem]. For comparison, by the end of 2015 it was 4,701 companies, and two years earlier (2013) it was 3,853 companies. Available at: www.bisnode.sk, or www.webnoviny.sk.

¹⁴ According to C. Kosikowski, the State should establish and subsequently respect the boundaries of taxation, as well as rely on the consequences thereof. The principle of taxing borders should be enshrined even in the country's constitution. In addition, C. Kosikowski considers, in relation to the Polish Constitution, that the principle of the taxpayer's tax jurisdiction should also be implemented in the Constitution, which is essential in the understanding of microeconomics. Its essence lies in the fact that the amount of the tax burden does not exceed the taxpayer's ability to bear it without threatening to liquidate the tax resource or to reduce the taxpayer's assets. For more details, see [Kosikowski 2014: 4-10]; [Babčák 2014: 9-26].

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