Financial Law Review

No. 26 (2)/2022

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

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SICAV IN THE CZECH REPUBLIC – SUCCESS STORY OF CONTINUING FAILURE?[1]

Abstract

This paper explores the introduction of SICAV in Czech law, its development and the related difficulties including the tax perspective. Although this legal form helped to boost the collective investment sector in the Czech Republic, in particular for qualified investors' funds, it is under constant threat of law amendments, which have a negative impact on further progress in the popularity of SICAVs as well as other forms of investment funds.

SICAV, as a legal form governed by both private (corporate) and public (regulatory) law, presents a good example of how the two sets of partly autonomous rules may clash and cause undesirable effects. The paper highlights the main inefficiencies and discrepancies, which lead to interpretation difficulties and legal uncertainty.

The hypothesis of this paper lies in investigating how local factors in one country, such as the influence of other pieces of legislation and tax environment, negatively impact solutions and models which are standardised and successfully deployed across the EU.

It is argued that not only legal and regulatory aspects determine the popularity of investment funds, but a wider landscape, including the activities and approach of the supervisory authority and network of professionals (legal and tax advisors or auditors), plays a crucial role in capital markets development.

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[1] This paper has been prepared as part of the Grant Agency UK (GAUK) project "460420 Investment funds regulation and taxation" at the Faculty of Law, Charles University.

Keywords: Collective investment, capital markets, SICAV, joint-stock company, corporate law, investment funds taxation.

JEL Classification: K34

1. Introduction

A joint-stock company with variable registered capital, also known as SICAV (from French société d'investissement à capital variable), is an investment vehicle widely used across the collective investment world. First created in Luxembourg, popular in Ireland and spread all over the EU, it has become a synonym for an open-end investment company and umbrella fund. Since its introduction to Czech law in 2013, SICAV has received a lot of attention, especially from qualified (professional) investors, and thus contributed to the development of the capital market in Czechia. However, this came at a price of heavy legislative changes over the course of time due to conflicts with regular corporate law.

This paper presents the background and development of collective investment legislation in the Czech Republic, primarily regarding SICAV. Although SICAV played an important role in popularizing investment structures, a number of legal uncertainties called for repeated legislative changes. Also, this paper compares the Czech rules with those applicable in other jurisdictions, mainly Ireland and Germany.

The piece of legislation which brought SICAV to Czech law is Act No. 240/2013 Coll. on Management Companies and Investment Funds ("AMCIF"). This Act, adopted in 2013, initiated radical modernization of Czech collective investment law. The main driver was the alignment of Czech legislation with core EU directives[2] [Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)] and AIFMD [Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010]) and reflection of accompanying regulations (such as EuSEF [Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds] and EuVECA [Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds]). The preceding piece of legislation (Act No. 189/2004 Coll. on

[2] Like Germany, which adopted the Kapitalanlagegesetzbuch (German Capital Investments Act) at the same time.

Collective Investments) was in force from 2004 and was adopted in relation to the Czech Republic's joining of the EU. Still, despite this massive improvement, the legislator's idea of making the Czech Republic an important fund destination, like Luxembourg or Ireland, has failed so far[3]. What is more, I can see no turning point in foreseeable future.

Constant changes, not only in the core legislation, but in particular, to related tax rules, make the Czech fund environment unpredictable. Investors' favourite investment fund destinations boast a significantly wider network of professionals, lawyers, accountants, tax advisors and auditors [Tyne, Davies, Traub 2016: 9-11]. Coupled with a language disadvantage[4] and a rather rigid supervisory authority, this creates a cocktail hardly attracting fund industry's attention. At the same time, this is disappointing, because the AMCIF provides great flexibility in structuring the investment vehicles and is comparable in this respect with the jurisdictions mentioned above.

The hypothesis of this article is to demonstrate that the transposition of harmonized EU legislation and copying a popular legal structure is not sufficient for closing the gap in market volume and number of investment funds between countries considered leading financial centres and countries such as Czechia, with a less developed collective investment sector and capital market in general.

Section 2 of the paper provides a short historic overview of the Czech capital market development and its legal and regulatory governance. Section 3 evaluates the difficulties that have arisen with respect to the combination of the regulatory (public law) landscape and of corporate and civil (private law) rules, especially on the example of SICAV. Section 4 investigates the tax regime of SICAV and the definition of a basic investment fund. Section 5 examines whether certain legislative changes are still necessary and concludes the whole paper.

2. Background

The Czech capital market is strongly underdeveloped, especially in comparison with traditional investment fund destinations [EFAMA report Asset Management in Europe: An

[3] On what makes financial centre a financial centre, see [Zetsche 2017: 390 - 409].
[4] One should not underestimate the impacts of missing translations of up-to-date legislation. This is already hugely disadvantageous in the first step, when a potential investor or asset manager considers a fund's domicile. On a positive note, in May 2021 the Ministry of Finance published an updated (but unofficial) translation of the AMCIF.

Overview of the Asset Management Industry][5]. This owes to historical reasons, because the period of 1948 – 1989, with a communist regime and centrally planned economy, naturally completely prevented the existence of any free market.

The shift to free market economy in the 1990s was marked by a number of financial scandals related to the Czech-specific way of denationalization of public property[6], known as "voucher privatization"[7]. Among other means, privatization took place through investment funds. With a very rudimentary legislation and no experience with collective investment, the fund managers (often people connected with the communist state apparat) lured a great number of citizens into the funds, took massive loans, and used this money to acquire major manufacturing companies and prime real estate. After that, through complex schemes, the vouchers were made worthless and the funds stripped of their assets. These ended in private companies controlled by the funds' managers. One of the notorious examples and symbols of this era was Viktor Kozeny and his Harvard Funds (appealing name for the naïve Czech investors in the 1990s). He was trialled for misappropriation and sentenced to long jail time in the Czech Republic as well as in the United States. Kozeny fled to Bahamas, where he has been avoiding justice ever since.

Such a fiasco naturally led to a long period of mistrust in anything related to investment funds. For a decade, they were practically non-existent. An important piece in the financial markets' jigsaw puzzle for raising capital and household savings came into play again after 2000, when the country progressed in its steps towards joining the EU. The requirement for harmonization of national legislation with EU law swept over all areas of the legal system, including the financial regulation.

Since 2004, Czechia has become a fully integrated EU member, which means that the financial services regulation is harmonized with other EU countries, be it consumer protection or capital requirements for credit institutions and investment firms. The Collective Investments Act came into force in 2004, but the real milestone for levelling the playing field with other states was the adoption of the AMCIF in 2013.

Since then, the number of investment funds and asset managers has constantly increased. Also due to the favourable tax regime, especially funds for professional (Czech law uses term "qualified") investors ("QIF") have gained notable popularity [Q2 2021 Czech Capital

[5] It can be seen that Czechia is not even amongst the top 18 EU countries in the volume of assets under management.
[6] Basically, all enterprises, from manufacturing companies to service providers, were state-owned and controlled.
[7] For more details regarding the transformation of the economy, see [Zidek 2017].

Markets Association Press Release][8]. The Ministry of Finance is now striving to increase the appeal of the collective investments sector, such as personal long-term savings accounts[9]. Unfortunately, the never ending amendments to the legislation might have the very opposite effect as we shall see below.

3. SICAV in Czechia

3.1. Corporate law perspective

SICAV rules are contained in the AMCIF, which states that only an investment fund can use this corporate form. However, the general rules for joint-stock companies enshrined in Act No. 90/2012 Coll., on Business Corporations ("BCA"), remain applicable. This means that, in essence, SICAV is still a joint-stock company and must follow the corporate law rules of the BCA. Along with that, the AMCIF specifies which rules of the BCA are not applicable to SICAVs (e.g. the requirement to specify in the articles of association the total number of shares issued, since this number obviously changes all the time in SICAVs) and conversely, which certain specific rules are applicable only to SICAVs.

The basic differences are the option for a SICAV to create sub-funds (investment compartments) and its variable registered capital. A sub-fund is a separate asset pool (also for tax and accounting purposes), but with no legal personality per se (in this regard, a sub-fund is similar to a mutual fund or unit trust)[10]. This creates room for umbrella structures with a number of sub-funds following different investment strategies. The obvious advantage is that the sub-funds' assets are segregated so if one sub-fund's investments are not profitable, there is no negative impact on other sub-funds.

SICAV issues two basic types of shares: founders' shares and investment shares. Founders' shares are similar to regular shares issued by a regular joint-stock company. They bear rights and obligations related to SICAV (umbrella), including especially the appointment and removal of the fund's manager, dissolution of the fund etc. These shares are not related to investment activities, which take place in sub-funds. For this purpose, SICAV

[8] Recent statistics of the Czech Capital Markets Association show that the volume of assets managed by Czech asset managers in 2020 amounted to 1,6 trillion CZK (approximately 63,8 billion EUR). This was a 5.8% increase from 2019.
[9] In January 2021 the Ministry published a report describing the progress in its capital markets development strategy for 2019-2023.
[10] Some additional aspects of sub-funds existence are covered in [Zetsche, Preiner 2020: 25 - 61].

issues investment shares, which are connected to a dedicated sub-fund and encompass the right to receive the related profits and to be redeemed[11].

Since SICAV's capital and net asset value is constantly changing due to the issue and redemption of the sub-funds' shares, the variable registered capital makes SICAV's life easier with respect to otherwise burdensome registration of changes in the articles of association and the Commercial Register.

The Czech regulation follows the logic of the EU approach, providing that each investment fund must have a manager. There is an option for a fund to be internally (self-) managed, but a more common option is to have the fund managed by a licensed management company ("ManCo")[12].

Given the relative insignificance of the local market to international institutional investors as well as asset managers, we rarely come across more sophisticated arrangements regarding ManCos. Unlike the Irish or German SICAVs, which appoint various household investment advisors and managers for their sub-funds, outsourcing of asset management or fund's administration usually depends on local players.

Germany in particular is attractive for US managers raising funds from high-net-worth-individuals through AIFs [Bärenz, Steinmüller, Garncarz 2016: 153-162]. US providers are then involved either via cross-border outsourcing of AIF's asset management[13], or by providing the investment advisory[14]. This is not the case in Czechia.

3.2. Corporate and regulatory conflict

Soon after the AMCIF became effective, the first entities with a SICAV structure encountered a severe discrepancy between private and public law rules. According to the BCA, there are two systems of corporate governance of joint-stock companies. The two-tier (dualistic) system (the only system possible prior to the adoption of the BCA) consists of a board of directors and a supervisory board. On the other hand, the one-tier system originally comprised a managing director and an administrative board.

[11] The same principle applies to German SICAVs (Investmentaktiengesellschaften mit veränderlichem Kapital) [Bärenz, Steinmüller, Garncarz 2016: 153-162].
[12] For a basic overview of the EU regulation principles, including distinction of the key players – manager, administrator and depositary, see [Zetsche 2018: 302-359]. I use the term ManCo irrespective of UCITS or AIFMD manager.
[13] Usually a more painful way because of complex notification or approval requirements.
[14] Although regulated by Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID II), this way is simpler since major US institutions have an EU company established, which then can make use of the EU passport for providing its services.

The difference is that the board of directors is responsible for day-to-day operation and business decisions, and owes a fiduciary duty to the shareholders, while the supervisory board, as its name suggests, supervises the board of directors. It does so by keeping an eye on board of directors' decisions, having access to all accounting information and reviewing annual financial statements and profit distribution proposed by the board of directors.

A one-tier (monistic) system introduced by the BCA in 2013 was an attempt to replicate the US-like structure of one director (CEO) appointed and supported by an administrative board. However, in the BCA, the setup of the bodies' powers was basically the same as in the two-tier system. Since in the two-tier system, the board of directors can have a single member, both systems effectively worked (by default, in accordance with the BCA), more or less, in the same way. Simply put, the board of directors or the managing director is an executive body and the supervisory or administrative board is the overseeing body.

The one-tier system, however, created a significant confusion, as it was stated in Section 460 of the BCA that the administrative board had the authority in all matters regarding the company, except for matters reserved for the general meeting. This meant in practice that the administrative board shared the executive power with the managing director, which was obviously not the desired outcome.

To make matters worse, the AMCIF prescribed the one-tier system as the mandatory corporate governance structure for SICAV, where a ManCo (licensed entity) had to be the managing director. The rationale behind this was that the business decisions and executive operation of an investment fund could only be vested in a professional asset manager. There was no such qualification required for the administrative board members. However, given the blurred line between the managing director's and the administrative board's responsibilities, there was a threat that the administrative board would start to usurp and carry out powers, which could be detrimental to the fund's investments. This caused a great deal of legal uncertainty in something as risky as liability for operating investment fund[15].

This situation required a swift amendment to the legislation and represents a simple, unfortunate, and quite typical example of negative results of mixing private (BCA) and public (AMCIF) law rules applicable to the same subject (SICAV's corporate governance). In addition, it shows how the need for frequent legislation changes in the Czech Republic arises.

[15] Bear in mind the controversial history of collective investment in Czechia.

Only after the BCA amendment in 2021 (more on different complications caused by this change below), did the one-tier system become truly one-tier. The position of managing director has been cancelled and the administrative board remains the sole company's body, performing both executive and supervisory functions.

3.3. Open character of the SICAV structure

In terms of the traditional distinction between open- and closed-end investment structures[16], in the Czech Republic, as in most of other countries, SICAV is an inherently open vehicle. The reason for that is that investment shares as instruments issued by SICAV's sub-funds are redeemable at any time[17]. Generally speaking, an open-end structure is desirable for UCITS funds, as it gives freedom to investors to withdraw their money at any time, whereas AIFs require a more variable structure with greater freedom for designing and balancing interests of the parties involved.

Therefore, in Ireland, SICAV is used mainly as an umbrella UCITS fund [Mackey, Layden 2019: 569-605], in the UK, there is a similar structure of an open-end investment company (OEIC) used for this purpose [Kay, Clark, Bartram 2016: 109-126]. In the Czech Republic, SICAV gained particular popularity primarily for the QIFs. On the one hand, it is positive that a certain investment vehicle helped to attract investors to collective investment undertakings. On the other hand, it is odd that SICAV is so widely used, given its open-end structure, while alternative investments often need an arrangement other than having shares redeemable at any point in time.

From the practical perspective, one of the most severe conflicts owes to the fact that QIFs' investment strategy is often focused on asset classes with limited liquidity, typically real estate or private equity. The minimum expected investment horizon in such cases is usually more than five years. Although the AMCIF makes it possible to have one (for private equity) or two (for real estate) years for redemption, there is still a risk that investors will start leaving the fund during the investment phase.

[16] The logic of the dividing factor is reflected in Commission Delegated Regulation (EU) No 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers.

[17] This means an investor has the right to ask the asset manager to buy his/her shares back and pay him/her the current value calculated from fund's net asset value. Naturally, different types of funds have different deadlines for settling an investor's application for redeeming his/her shares. A shorter period applies for retail funds and a longer one for funds focused on less liquid assets, such as real estate.

ManCos then try to prevent this usually with excessively high exit fees, deterring the investors from redeeming their shares before the end of the anticipated holding period. This practice, although common in the market, might be viewed as controversial. The resulting situation, where a SICAV needs to keep the client's money, on the one hand, and its investor has the right to redeem his/her investments shares, on the other hand, gives rise to a significant conflict of interest, which has to be managed by the ManCo in accordance with Article 32 of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision [Zetsche, Eckner 2020: 181-230].

As a result, when establishing private equity or real estate QIF in the form of SICAV, ManCos seek ways to transform an open-end structure into a less open one. These measures can be viewed as questionable regarding their compliance with the AMCIF, although there are no precedents of the Czech National Bank's ("CNB"[18]) official disapproval.

One explanation, why the SICAV structure is used even for such unsuitable investments is that the AMCIF does not provide any other, more suitable solution. One alternative might be closed-end mutual funds. This would, however, not offer the possibility to create sub-funds, and thus ringfence different asset pools (each pool requires a separate dedicated fund)[19].

In addition, we have recently seen a shift from SICAVs to open-end mutual funds. This occurred in some cases through a merger of an existing SICAV (or a particular sub-fund) with a mutual fund established specifically for this purpose. This is yet another controversial issue since such a merger is not explicitly permitted by the AMCIF and the CNB has expressed certain doubts regarding its viability. The answer to this question can be found, however, in the FAQ published by the CNB: it seems that such a merger is prohibited for retail (UCITS) funds and, with QIFs, it is up to the ManCo to demonstrate that the merger will have no negative impacts on the investors and that the manager is acting with due care and loyalty.

[18] The CNB is the central bank of the Czech Republic, the supervisor of the Czech financial market and the Czech resolution authority. It is the sole national competent authority regarding the oversight of capital markets, granting relevant licenses and issuing respective fines.

[19] The legislator is probably aware of this limitation and there have been efforts to amend the AMCIF to enable mutual funds to create sub-funds as well. While this suggestion looks quite exotic, I believe such a change would be welcomed and quickly embraced.

One of the reasons for this shift are certainly the higher administration costs of SICAV (related primarily to the necessary corporate actions and corporate governance in general). Another factor is that mutual funds always qualify as basic investment funds in order to obtain the special CIT rate of 5%, whereas SICAV and its sub-funds must meet certain criteria regarding the investment strategy and permissible asset classes (more on this below).

While in the UK, a structure commonly used for AIFs is limited partnership, which has also become popular in Germany [Bärenz, Steinmüller, Garncarz 2016: 153-162], the AMCIF unfortunately does not offer a comparable option. AMCIF's attempt to use a similar structure in the form of limited partnership with investment certificates (see Section 170 of the AMCIF) is yet to be used in practice in the Czech Republic.

In comparison with foreign limited partnerships, which offer the desired freedom of stipulating mutual rights and obligations in partnership agreements, while simultaneously benefiting from developed and established market practices regarding the role of general and limited partners (not to forget tax transparency), the Czech version in the AMCIF brings considerable uncertainties as to the investment fund's specifics and their relation to the general rules for limited partnerships governed by the BCA (similar to what has been described above in relation to the early problems of SICAV after the adoption of the AMCIF).

3.4. Corporate law amendment

An amendment to the BCA came into force on 1 January 2021. In this amendment, we can see once again a blatant example of why the Czech Republic has yet to become a preferable fund destination.

SICAV, as all funds, can be managed externally (by a ManCo) or internally [AMCIF, Section 8, AIFMD, Art. 5(1)(a)]. According to Section 9(2) of the AMCIF, an externally managed fund must appoint a ManCo as its sole statutory representative (i.e. member of the board of directors in a joint-stock company). Czech corporate law allows a corporation to become a statutory representative of another company. In such a case, however, this corporation must appoint a single natural person to act on its behalf ("authorized representative"). This is due primarily to the accountability and qualification required of company's representatives. These criteria can be obviously met only by natural person. In practice, SICAV's statutory representative is its ManCo and a member of ManCo's board of directors usually acts as such an authorized representative.

At the same time, we must bear in mind that the AMCIF requires asset managers (ManCos) to have at least two persons appointed, who have sufficient knowledge and experience regarding the asset classes managed by that particular ManCo. Also, as part of the corporate governance requirements, these regulated entities must ensure substitutability of the directors so that the discharge of ManCo's duties to manage assets is not impaired, typically due to unexpected long absence of one of the directors.

Until the end of 2020, a corporation as a board member could appoint more than one authorized representative. This was indeed common in collective investment, also because of the regulatory requirements described above. It is also safer from the clients' protection perspective to have mutual supervision by a greater number of representatives in place when dealing with large sums of client's money[20]. However, since the amended BCA necessitated a reduction in the number of authorized representatives, ManCos as a statutory representative can now appoint and register only one authorized representative. This is in direct contradiction with the purpose followed by public law and the regulatory framework for corporate governance.

Thus, in early 2021 ManCos were forced to change the SICAVs' records in the Commercial Register. After reducing the number of authorized representatives empowered to represent ManCos as SICAVs' board members, market participants are now still seeking the optimal solution, yet there is none. I have been involved in a procedure of applying for the CNB's approval of a proxy[21] (as a substitute for authorised representatives) on behalf of ManCo, and it took a great deal of negotiations with the regulator to reach an acceptable outcome, since this legal construct is not envisaged by the AMCIF or any other financial market legislation.

Based on market participants' comments, the Ministry of Finance prepared an amendment to the AMCIF to carve out ManCos from the problematic corporate rule of only one authorized representative. It is, however, uncertain when (and if at all) this practical and necessary change will be adopted.

[20] Companies' articles of association often prescribe joint action by several board members on behalf of the company in significant matters, such as concluding contracts exceeding a certain threshold or involving real estate.

[21] The performance of such a regulated function requires prior approval of the CNB, according to the AMCIF.

4. Tax regime

As in other countries, favourable tax treatment is a strong factor in the popularity of collective investment schemes. Apart from that, the stability of the tax system plays a key role in national economy's success. Unfortunately, this unpredictability and frequent changes are particularly characteristic of the Czech tax legislation. Act No. 586/1992 Coll., on Income Tax ("TIA"), has been amended more than 130 times since its adoption[22].

To illustrate the above, during the AMCIF preparation, the Ministry of Finance announced that it would introduce a preferred tax rate of 0% for most investment funds[23] (similar to pension funds) in the TIA. Eventually, a CIT of 5% has been approved. This was, however, not the end of story.

Some businesses outside the capital markets quickly seized the opportunity and established investment funds de iure to enjoy the 5% CIT rate. However, these were not investment funds de facto, because they were not offered to public or utilized for collective investment. A typical example were large construction and development companies, which transferred significant real estate assets and projects into these vehicles.

Soon after that, the tax rate was changed again in 2014. The introduction of Section 17b into the TIA established a definition of "basic investment fund", which is taxed by the 5% rate. Thus, not all investment funds can benefit from this reduced tax rate. The legislator's aim was to include only vehicles and structures truly engaged in collective investment in the new category.

There were, and still are, certain problems associated with the current definition of basic investment fund. At first, all investment funds with their instruments registered as publicly tradable fell under the definition. The entities mentioned above followed suit and registered SICAV investment shares with the Prague Stock Exchange, thus meeting the "publicly tradable" condition, although these shares were, in fact, never traded. The Ministry of Finance was forced to amend Section 17b(1) once again to finally prohibit this circumvention of the law, providing that a basic investment fund could, in fact, not carry out regular business according to the Trade Licensing Act. Only then was there no doubt that such an abusive practice of mere registration of shares on the regulated market was not sufficient to obtain the status of basic investment fund.

[22] Probably a sad record for Czech legislation. The TIA originates from 1992, at which time the Czech Republic was still Czechoslovakia.
[23] Otherwise, the standard CIT rate is 19% and applies to all business profits including capital gains.

Still, the TIA continues to apply rather formal criteria for the definition of basic investment fund. Whereas SICAV's sub-fund must meet the requirements for an investment strategy listed in Section 17b(1)(c) of the TIA, all mutual funds (both open- and closed-end) qualify as basic investment funds without any further restrictions. In practice, closed-end mutual funds can be used in a similar abusive way as we have seen in the past.

It is not well-reasoned why mutual funds benefit from this categorisation irrespective of their investment strategy, while the conditions for SICAV[24] imply that a sub-fund must invest more than 90% of its assets in securities, units in collective investment undertakings, money-market instruments, participations in corporations (private equity investments), financial derivatives, IOUs or loans originated in investment funds to qualify. As can be seen, investments in real estate are not included. The reason is embedded in the historical development described above. However, since the market practice in the Czech real estate market is to effect transactions practically only through SPVs[25], this presents no significant obstacle to taxpayers seeking an unlawful tax advantage.

From my point of view, the material characteristic and investment activity, not the formal legal structure, should be the decisive factors for tax assessment. This a common practice in Germany [Bärenz, Steinmüller, Garncarz 2016: 153-162] with the category of qualifying funds. Although the desired situation of zero domestic income tax at the fund level has not been achieved (as compared to e.g. Ireland) [Mackey, Layden, 2019: 569-605], the current status of the basic investment fund definition (apart from the anti-abuse provisions) has at least been more or less stable for the last few years.

It has become an unfortunate tradition that amendments to the tax legislation are adopted in the dying moments of every calendar year, without careful consideration, calculations and wide discussion with tax professionals. Therefore, it remains to be seen how long the current regime will stay in place.

5. Conclusion

Despite the immensely positive role SICAV has had in levelling the playing field in comparison with countries having more developed collective investment structures than

[24] A sub-fund, strictly speaking, since a sub-fund forms a separate unit for tax and accounting purposes.

[25] Special-purpose vehicles. Entities usually formed as a simple limited liability company, established solely as a shell for owning a piece of real estate. The relevant transactions (obtaining a bank loan, providing security or subsequent sale of the asset) are carried out at the SPV level.

the Czech Republic, it shows that a mere incorporation of a successful and widely used legal form (institution of law) can be hindered by other, no less important, factors.

In particular, changes in corporate law not reflecting the special rules in the AMCIF, together with an unpredictable and unstable tax environment, strongly discourage an inflow of foreign capital in the form of a boost in the assets under management in collective investment vehicles in the Czech Republic.

Therefore, as opposed to the common practice of research papers recommending a number of legislative amendments or the introduction of additional rules, my suggestion is to take a more moderate approach in the Czech legal environment.

As we could see with the BCA amendment, one part of the legislative package dealing with the one-tier system was helpful and removed major interpretation difficulties regarding the powers and position of statutory representatives and company's bodies. On the other hand, restricting the possibility to appoint more than one authorized representative put ManCos in an uncomfortable position as they must follow the specific requirements of the AMCIF for board composition, and for the fitness and probity of the members.

Hence, what Czech law needs (and this is not related specifically to the SICAV legal form) is to resolve the above-highlighted discrepancies and adopt future legislative and regulatory changes, together with careful planning, cooperation and coordination among various legislation-making branches (in particular, the Ministry of Finance and the Ministry of Justice).

Reflecting on the hypothesis of this paper, I have demonstrated that introducing a suitable legal form for investment funds is only one step of many that need to be taken for such a legal form (SICAV, in this case) to prove successful. We can see an even more unfortunate example in the long lasting inability of the Czech legislator to replicate a widely used structure for private equity investments. The form of limited partnership with investment certificates, contained in the AMCIF, is yet to be tested (seven years after the law's adoption) and market participants rely on establishing such structures in jurisdictions where this (in fact, quite simple) vehicle is used on a regular basis.

This is certainly not to say that everything which comes with the legislation (be it private or public law) brings extra problems, however, the changes highlighted in this paper seriously compromise the Ministry of Finance's ambition to achieve a more developed collective investment sector of the capital market.

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