

Major Problematic Issues in the Property Taxation in the Czech Republic

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This article aims to open the debate on the recurrent property tax in the Czech Republic, to define most important problems of the existing legal regulation and to set the list of possible solutions *de lege ferenda*. The hypothesis that the immovable property tax is a good tax and a traditional part of the Czech tax system, was confirmed. The most problematic issue is the low tax revenue. However, *ad valorem* system does not seem to be the solution and the unit system (area) tax base should be retained. There should be one maximum tax rate in the legislation for every type of property, and municipalities should have the right to introduce their own specific tax rates below that level. At the same time, there should be another rate (standard rate) in the legislation for those municipalities that do not set their own specific tax rates.

Keywords: immovable property tax, property tax, tax law, *ad valorem*

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Introduction

Immovable property tax in the Czech Republic is one of the oldest and most traditional taxes. Despite criticism that property taxes are the second or even the third taxes taxing still the same income of the taxpayer, it has its place in every tax system all over the world. There are many advantages of this tax: it is very simple to identify the property and the taxpayer, it is difficult to hide the property and avoid taxation, the concept of tax is relatively simple, etc. However, the greatest benefit of this tax is the fact that the exclusive beneficiaries of the immovable property tax are municipalities. Thus, the main function of the

immovable property tax is its fiscal function as it ensures a regular income for municipal budgets.

This article aims to open the debate on the recurrent property tax in the Czech Republic, to define most important problems of the existing legal regulation and to set the list of possible solutions *de lege ferenda*. It works with the hypothesis that the immovable property tax is a good tax and a traditional part of the Czech tax system, especially because of the revenue for the municipal budgets. The first part of the contribution presents the critical analysis of the *de lege lata* regulation of the immovable property tax in the Czech Republic. In the second part, the most important problematic aspects connected with

the contemporary regulation of the property taxation are discussed, using the analytical and comparative methods. It deals primarily with the low revenues for public budgets and the inadequate possibilities of municipalities to influence the immovable property tax, and the issues of tax administrators. The third part is focused on the method of tax law regulation and related tax law principles, so that in the conclusions it is possible to summarize and synthesize existing knowledge and present some solutions *de lege ferenda* in this area. Most of the existing scientific literature dealing with the property taxation in the Czech Republic was published by Radvan, as obvious from the references.

Immovable Property Tax Regulation

Brief Historical Overview

Property taxes have a long tradition not only at the territory of the Czech Republic. The first taxes on cultivated land and on town houses appeared in the Middle Ages [Šíroký, 2003, p. 25–38] and replaced in 1517 with the general tax on property. Independent Czechoslovakia was created in 1918 and the tax reform of 1927 resulted in both a land tax and a domestic (building) tax (Act no. 76/1927 Sb. z. a n., on direct taxes) [Engliš, 1929, p. 142–154; Freudenfeld, Kovanda, 1937, p. 318–406; Pimper, 1936, p. 300–301]. After the communist revolution in 1948, the agriculture land tax was established and the domestic tax was extended to buildings used for business and recreational purposes [Zahálka, 1984, p.143]. In 1957, a local charge on flats and apartments was introduced.

After the so-called Velvet Revolution in 1989, the government established a new tax system which became effective from the beginning of 1993 for the independent Czech Republic. The Real Estate Tax Act (Act no. 338/1992 Sb.) provided for two taxes on real estate: the land tax and the building tax. The building tax included a tax on flats/apartments and a tax on non-residential

premises. In 2014, after the reform of the civil law in the Czech Republic, the title of the 1993 Act was changed to **Immovable Property Tax Act** and the title of the tax to the Immovable Property Tax. Again, this Act provided for two taxes on immovable property: the land tax; and the tax on buildings including houses, flats/apartments and non-residential premises. This Act specifies most of the structural components of the tax, such as the taxpayers, the objects of taxation, the tax base(s) and the basic tax rates. The correction components (i.e. tax exemptions and the power of the municipality to vary the tax rates) are also included, as well as the nature etc. of the system of tax administration. [Radvan, Kranecová, 2019, p. 25–38] The object of taxation is as an immovable property situated only within the territory of the Czech Republic, but not abroad, regardless of the nationality of the taxpayer.

Land Tax

Generally, the **object** of the land tax is land within the territory of the Czech Republic registered in the cadastre (land register). There are several categories of land liable to tax: agricultural land (such as arable land, hop-fields, vineyards, gardens, orchards and permanent grass pastures), commercial forests, ponds used for fish-farming, built-up areas and courtyards, development land, flat structures (e.g. parking lots), and other areas (playing grounds, natural swimming pools, cemeteries, etc.). On the other hand, some land is excluded from the object of taxation (there is a negative list of the land tax objects): e.g. land within the ground plan of a building (i.e. land under the building), certain woodland (protected forests and forests of special interest), water-covered areas (except ponds used for commercial fish-farming), land used for State defence, and land owned by the owner of the unit (flat, non-residential premise) where the land is used together with the unit.

The **taxpayer** for the land tax is generally the owner of the property. However, the leaseholder of the land can also in certain circumstances be the

taxpayer (land registered in the pre-digitized cadastre, land managed by the State, land transferred to the Ministry of Finance). If the owner of the land is unknown, the taxpayer is the user of the land.

The list of **exemptions** is very broad and very often there is a condition for the exemption that the land is not used for profit-making purposes. In several cases, a tax return does not have to be filed (land owned by the State, municipalities, regional governments, and diplomatic representatives). The reasons for exemptions are usually public interests, ecological purposes, or reciprocal international treaties. Some land is exempted permanently (land owned by churches, schools and universities, museums, galleries and hospitals, and agricultural land with the exception of gardens only at the discretion of the municipality), other land is exempt only for a limited period:

- 1) Agricultural land for five years following the year when such land was returned to agriculture cultivation;
- 2) Woodlands for 25 years following the year when such lands were returned to forestry use;
- 3) Land affected by a natural disaster for a period up to five years to eliminate consequences of natural disasters (at the discretion of the municipality);
- 4) Land in special industrial zones designated as such by the Government of the Czech Republic up to five years (at the discretion of the municipality).

The **tax base** in the case of land (built-up areas and courtyards, development land, flat struc-

tures etc.) is generally area-based, i.e. per square metre, as ascertained on 1st January of the taxable period. Only in some cases a modified *ad valorem* system is applied:

- 1) For agricultural land the tax base is determined as a multiple of the actual area of the land in square metres and the average price per square metres of the land; the average price is laid down in a decree by the Ministry of Agriculture;
2. For commercial forests and ponds used for fish-farming, setting the tax base, the taxpayer can choose between:
 - a) The price of the land as determined according to the price regulations valid on 1st January of the taxable period, or;
 - b) The actual area in square metres multiplied by 3.80 CZK.

The **tax rate** on agricultural land (arable land, hop-fields, vineyards, gardens, orchards and permanent grass growth) is generally 0.75 percent. Only for permanent grasslands it is lower (0.25 percent) as this land has lower productivity. The same lower tax rate of 0.25 percent is applied for commercial forests and ponds used for fish-farming. For the other types of land, the tax rate is fixed per m²:

- 1) 0.20 CZK for built-up areas and courtyards;
- 2) 2.00 CZK for development land;
- 3) 1.00 CZK for flat structures used for forestry, agriculture or water management;
- 4) 5.00 CZK for flat structures used for industrial production, civil engineering, trans-

Table 1: Location rent

Number of inhabitants / Municipality	Coefficient				
	Basic	Reduced			Increased
< 1,000	1.0	–	–	–	1.4
> 1,000 < 6,000	1.4	–	–	1.0	1.6
> 6,000 < 10,000	1.6	–	1.0	1.4	2.0
> 10,000 < 25,000	2.0	1.0	1.4	1.6	2.5
> 25,000 < 50,000	2.5	1.4	1.6	2.0	3.5
> 50,000 + Františkovy Lázně, Luhačovice, Mariánské Lázně, Poděbrady	3.5	1.6	2.0	2.5	4.5
Prague	4.5	2.0	2.5	3.5	5.0

port, power and other agricultural production, and for other business activities;

- 5) 2.00 CZK for development land has, however this is a basic tax rate and the effective tax rate depends on whether the land is located within a small village or a large city. The basic tax rate is multiplied by a coefficient called location rent based on the number of inhabitants in the municipality set in the act while the municipality can increase or reduce the basic coefficient by a generally binding ordinance (see Table 1).

The final tax liability for taxable properties (excluding arable land, hop-fields, vineyards, orchards and permanent grasslands) can be multiplied by the local coefficient (2, 3, 4 or 5) assessed by a generally binding ordinance. This resolution depends on the municipality.

Building Tax

The **objects** of building tax are buildings used as dwellings, for business purposes, and other buildings and so-called engineering structures (chimneys and towers) if they are situated within the territory of the Czech Republic. The buildings must be connected to the land with fixed foundations. Apartment block buildings (buildings with flats and non-residential premises individually registered in the cadastre), in respect of which the tax is payable on the individual apartments/flats and associated non-residential premises (tax of flats or tax on non-residential premises – see below), are not liable to the building tax.

Generally, the **taxpayer** for the building tax is the owner. If the structure is managed by the Land Fund of the Czech Republic or the Administration of State Material Reserves or transferred to the Ministry of Finance, and it is leased, the tenant pays the building tax. However, this rule does not apply to residential buildings.

As stated for the land tax, there are many reasons and conditions for **tax exemptions** of buildings, pretty much the same as for the land tax.

Thus, there is no need to file the tax return for buildings owned by the State, municipalities, regional governments and diplomatic representatives, nor for buildings used for public passenger transport nor in water management. Most of the exemptions are permanent (buildings owned by churches, schools and universities, museums, galleries and hospitals), only some of them are temporary:

- 1) Cultural monuments for eight years after the year following their reconstruction;
- 2) Buildings affected by a natural disaster for a period up to five years following measures to eliminate the consequences of future natural disasters (at the discretion of a municipality);
- 3) Buildings and structures in special industrial zones designated as such by the Government of the Czech Republic are exempt for up to five years (at the discretion of the municipality).

The **tax base** of the building tax is the same for all buildings. It is defined as the built-up area in square metres as at 1 January of the taxable period.

The application of **tax rate** is rather complicated, as there is always a standard tax rate and additional coefficients.

The standard tax rate for residential buildings is 2 CZK per square metre of built-on area. This rate may be increased by 0.75 CZK per each additional floor above ground level. The standard or increased rate is multiplied by the location rent (see Table 1). The same formula including the same standard tax rate is used for other structures that provide facilities for residential buildings, but only for the area in excess of 16 m².

The standard tax rate for houses and family houses used for family recreation (summer cottages) is 6 CZK per m² of the built-on area. This rate may be increased by a tax rate of 0.75 CZK for each additional floor above ground level. The multiplying so called municipal coefficient of 1.5 may be used, if assessed by a generally binding ordinance. If such houses are located in nation-

Table 2: Building tax rate overview

Object of building tax	Standard tax rate (CZK/m ²)	Increased tax rate (additional floor above-ground)	Multiplied coefficients			Local coefficient
			Location rent	Municipal	National park	
Residential buildings	2	+ 0.75 CZK/m ² *	1.0 – 5.0	–	–	2,3,4 or 5
Other structures that provide facilities for residential buildings (over 16 m ²)	2	+ 0.75 CZK/m ² *	1.0 – 5.0	–	–	2,3,4 or 5
Houses and family houses used for family recreation	6	+ 0.75 CZK/m ² *	–	none / 1.5	2.0	2,3,4 or 5
Other structures that provide facilities for houses and family houses used for family recreation	2	+ 0.75 CZK/m ² *	–	none / 1.5	2.0	2,3,4 or 5
Garages	8	+ 0.75 CZK/m ² *	–	none / 1.5	–	2,3,4 or 5
Structures for business activity – primarily used for agricultural production, forestry and water management	2	+ 0.75 CZK/m ² **	–	none / 1.5	–	2,3,4 or 5
Structures for business activity – industrial production, civil engineering, transport, power and other agricultural production, and other business activity	10	+ 0.75 CZK/m ² **	–	none / 1.5	–	2,3,4 or 5
Other structures	6	+ 0.75 CZK/m ² *	–	–	–	2,3,4 or 5

* If the area of an additional floor above-ground exceeds two-thirds of the built-up area.

** Always.

al parks or first-category protected countryside zones, a further multiplying coefficient of 2.0 is applied. The same formula is being used for other structures that provide facilities for houses and family houses used for family recreation, with the exception of the standard tax rate; this rate is 2 CZK per m² of the built-up area.

The standard tax rate for garages constructed separately from residential buildings is 8 CZK per m² of the surface area covered. This rate may be increased by a tax rate of 0.75 CZK for each additional floor above ground level and then multiplied by a municipal coefficient of 1.5, if assessed by a generally binding ordinance.

The standard tax rate for structures used for business activities depends on the type of business activity: 2 CZK per m² of the built-on land area for structures primarily used for agricultural production, forestry and water management,

or 10 CZK per m² of the built-on land area for structures used for industrial production, civil engineering, transport, power, other agricultural production, and for other business activities. The standard tax rate may be increased by an additional tax rate of 0.75 CZK per each additional floor above ground level, and by the municipal coefficient of 1.5, if assessed by a generally binding ordinance.

The standard tax rate for other structures is 6 CZK per m² of the built-on area. It can be increased by 0.75 CZK per each additional floor above-ground.

For all the structures as defined above, the final tax can be multiplied by the local coefficient at 2, 3, 4 or 5, if assessed by a generally binding ordinance. This resolution is made entirely at the discretion of the municipality.

Tax on Flats

Only flats registered in the cadastre are liable to (are the **object** of) the tax on flats, while the other flats not individually registered in the cadastre are parts of the houses and taxed within the building tax as a residential building.

The **taxpayer** for the tax on flats is the owner. Only if the structure is managed by the Land Fund of the Czech Republic or the Administration of State Material Reserves or transferred to the Ministry of Finance, and it is leased, the tenant pays the building tax.

The list of **tax exemptions** copies the exemption for the building tax mentioned above.

The **tax base** of the tax on flats is the adjusted floor area, which refers to the total floor area of the flat in square metres as at 1 January of the taxable period, multiplied by a coefficient of 1.20 (or 1.22, if there is any land used together with the unit).

The standard **tax rate** for flats is 2 CZK per m² of the adjusted floor area which is then multiplied by the location rent (see Table 1). The final tax rate can be multiplied by the local coefficient of 2, 3, 4 or 5 assessed by a generally binding ordinance (at the discretion of the municipality).

Tax on Non-Residential Premises

The **object** of the tax on non-residential premises are non-residential premises registered in

the cadastre. The other non-residential premises not individually registered in the cadastre are parts of the houses and taxed within the building tax as residential building or structures used for business activities depending on the predominant area.

The **taxpayer** for the tax on non-residential premises is generally the owner and similarly to the tax on flats, only if the structure is managed by the Land Fund of the Czech Republic or the Administration of State Material Reserves or transferred to the Ministry of Finance, and it is leased, the tenant pays the building tax.

The list of **tax exemptions** copies the exemption mentioned above for the building tax and the tax on flats.

The **tax base** of the tax on non-residential premises is the adjusted floor area, which refers to the total floor area of the non-residential property in square metres as at 1 January of the taxable period, multiplied by a coefficient of 1.20 (or 1.22, if there is any land used together with the unit).

The standard **tax rate** for non-residential premises used for business purposes depends on the purpose of the business: 2 CZK per m² of the adjusted floor area for non-residential premises primarily used for agricultural production, forestry and water management, or 10 CZK per m² of the adjusted floor area for non-residential premises used for industrial production, civil engineering, transport, power and other agricultural production, and for other business activi-

Table 3: Tax rates for non-residential premises overview

Object of tax	Standard tax rate (CZK/m ²)	Multiplied coefficients		Local coefficient
		According to number of inhabitants	Municipal	
Non-residential premises – garages	8	–	none / 1.5	2,3,4 or 5
Non-residential premises for business activity – primarily used for agricultural production, forestry and water management	2	–	none / 1.5	2,3,4 or 5
Non-residential premises for business activity – industrial production, civil engineering, transport, power and other agricultural production, and other business activity	10	–	none / 1.5	2,3,4 or 5
Other non-residential premises	2	1.0 – 5.0	–	2,3,4 or 5

ty. These standard rates may be multiplied by the municipal coefficient of 1.5, if assessed by a generally binding ordinance.

The standard tax rate for non-residential premises used as a garage is 8 CZK per m² of the adjusted floor area. This standard rate may be multiplied by the municipal coefficient of 1.5, if assessed by a generally binding ordinance.

The standard tax rate for non-residential premises used for other purposes is 2 CZK per m² of the adjusted floor area and is multiplied by the location rent (see Table 1).

The final tax rate can be multiplied by the local coefficient at 2, 3, 4 or 5 assessed by a generally binding ordinance (at the discretion of the municipality).

Immovable Property Tax Administration

Immovable property tax administration is regulated generally by the Tax Procedure Code (Act no. 280/2009 Sb.) and in specific issues by the Immovable Property Tax Act. I.e. the Immovable Property Tax Act deals not only with the structural components of the tax (substantive legal regulation), but also special administration issues related specifically to the immovable property tax (procedural law). No matter that the immovable property tax revenue goes into the local budgets, it is administered by the Financial Office, which is the State's tax office. The locally competent tax office is the one within whose district the immovable property is situated. The Financial Office collects and maintains information declared on the tax return. This information is then used to verify or update the information in the cadastre operated by the cadastral offices. [Radvan, Kranecová, 2019]

The leading principle not only in the immovable property tax administration is the principle of self-application: the taxpayers have to calculate the tax using the correct tax base and applying the correct tax rate. In the tax return, the taxpayer has to record all relevant information regarding

- 1) The person of the taxpayer;
- 2) The immovable property:
 - a) Type of the immovable property;
 - b) Location of the immovable property;
 - c) Legal relationship of the immovable property to the taxpayer;
 - d) Area of the immovable property in square metres;
 - e) Age of the immovable property;
 - f) Use of the immovable property;
 - g) Any possible exemptions (the tax office has no right to grant exemptions or reliefs within the administration process).

It might be rather complicated for the taxpayer to get all the information about the immovable property, especially the age of structures (buildings, flats and non-residential premises) and surprisingly the area of the buildings, if they are situated on the plot larger than the building itself as this information is not included in the real estate cadastre. The solution is easy: as the principle of material truth must be respected, the taxpayer should measure the real area of the building.

The good consequence for the taxpayer is that the tax return does not have to be filed every year. If there are no changes in the information stated in the tax return that might be influenced by the taxpayer, there is no need to re-file the tax return. I.e. even if the tax rate, the average price of land, the coefficients or even the whole Immovable Property Act are changed or amended, there is no duty to file the new tax return, because these changes cannot be affected by the taxpayer.

If the taxpayer has a duty to file the tax return, it should be filed by 31 January of the taxable period. The taxable period is the calendar year. There is a relevant date defined in the Immovable Property Act: the immovable property tax is assessed according to the situation as at 1st January of the calendar year in which it is assessed. For the tax assessment, it is irrespective if there is a duty to file a tax return or not in particular calendar year.

The tax administrator has a choice of three tax assessment procedures: [Radvan, Kranecová, 2019]

- 1) Implied tax assessment – the assessed tax is the same as the tax stated in the tax return (or based on the same information stated in the last tax return, if there is no obligation to file the tax return in the particular year). In this situation the tax administrator is not obliged to inform the taxpayer about the result of assessment. The last day of the time limit for filling the tax return is considered as the date of the tax assessment and as the date of the delivery of the tax decision;
- 2) Reproach proceedings – if there are some concerns about the correctness, accuracy, supporting evidence or completeness of the tax return, the tax administrator informs the taxpayer about these concerns and requests additional information to be received within (usually) fifteen days. At the end of these proceedings the tax administrator sets the tax base, prescribes the amount of tax and notifies the taxpayer of the tax assessment. The tax is payable within thirty days of delivery of the tax assessment;
- 3) Assessment using ‘other tools’ – if the tax return was not filed in time or within the extended time limit, the tax administrator may determine the tax base and assess the tax according to whatever information is available with no requirement to further contact the taxpayer. The tax administrator notifies the taxpayer of the tax assessment, and the tax is payable within thirty days of delivery of the tax assessment. Under such circumstances the taxpayer cannot appeal both against the tax base and the amount of tax payable.

As all taxpayers should know the exact amount of their immovable property tax in the taxable period, there should be some mean of delivering this information. The amount as delivered by a public notice as a collective list relating to tax liability. The notice is available at the tax office and informs about the possibilities to get concrete information about the tax duty. Just a limited number of taxpayers is aware of this way of delivery

and majority gets the information only by post receiving the postal order stating the amount of tax payable to every taxpayer. The postal order is delivered much later than the deadline for appeals expires, what mean very limited number of appeals concerning the immovable property tax.

Generally the immovable property tax is payable in one instalment by 31st May of the current taxable period if the annual immovable property tax does not exceed 5,000 CZK. If the tax exceeds 5,000 CZK, it is payable in two equal instalments – by 31st May and 30th November. For taxpayers engaged in farming and fish-farming the first instalment is postponed to 31st August. Of course, the immovable property tax can be paid not only by the postal order; all other ways of tax payments (bank transfers, cash payments, checks, etc.) are available.

If the taxpayer falls into arrears, interest is paid (at the basic rate of the Central Bank + 14 percent) on the amount outstanding on the debt for each day up to a period of five years. If the tax is additionally re-assessed by the tax administrator (or by the taxpayer in the tax return), the penalty is 20 percent of the additionally assessed tax. The amount of the interest or penalties is communicated to the tax debtor by means of an assessment order and must be paid within fifteen days after the delivery of the assessment order. [Radvan, Kranecová, 2019]

Problems of the Existing Property Tax Regulation

There are no discussions about the potential abolishment of the immovable property tax; on the other hand, *de lege lata* regulation is not ideal and there are several structural components to be amended. There are some minor issues as the extreme number of exemptions and the list of property currently excluded from taxation. In my opinion, it would be useful to define that all the immovable property is liable to tax and some property is exempted, i.e. there would not be any group of property non-labile to taxation. All the

Table 4: Immovable property tax revenue performance in the Czech Republic

Year	2014	2015	2016
All revenues at national level (in billion CZK)	1.133,825	1.1234,517	1.281,618
Tax revenues at national level (in billion CZK)	952,518	1.002,131	1.071,488
All revenues at regional and local level (in billion CZK)	263,980	440,300	447,200
All tax revenues at regional and local level (in billion CZK)	219,390	226,300	249,500
Immovable property tax revenue (in billion CZK)	9,970	10,334	10,586
Immovable property tax revenue as % of all state revenues	0.879	0.91	0.83
Immovable property tax revenue as % of all regional and local revenues	3.78	2.35	2.37
Immovable property tax revenue as % of tax revenues at regional and local level	4.54	4.56	4.24

Source: Czech Statistical Office (www.czso.cz), 14.3.2019.

Table 5: Revenue importance of immovable property tax revenue

Percentage of GDP		Percentage of Total Revenue		Percentage of Local Revenue
All Property Taxes	Immovable Property Tax	All Property Taxes	Immovable Property Tax	Immovable Property Tax
0,46%	0,21%	2,97%	1,37%	5,21%

Source: Czech Statistical Office (www.czso.cz), 14.3.2019.

exempted property would be included in the tax return stating the reason for the exemption by the taxpayer. We should also narrow the list of exempted property.

Immovable Property Tax Revenue

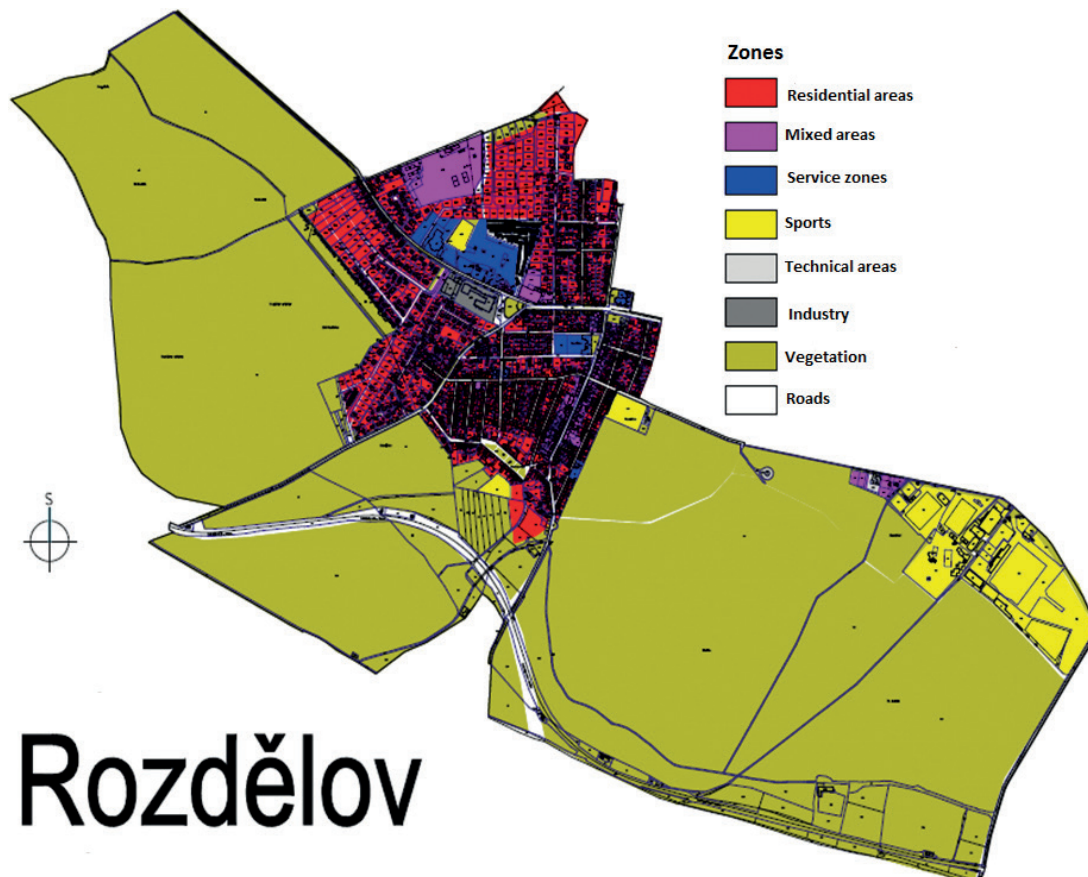
As stated above, the main function of the immovable property tax is to ensure income for municipal budgets. However, the immovable property tax revenue in the Czech Republic is not very significant and, in comparison with other OECD states, it is actually one of the lowest.

One of the possible ways to increase the immovable property tax revenue might be the implementation of *ad valorem* system for assessing the immovable property tax base, as recommended by many international institutions and experts. Nowadays, the immovable property tax base is still determined by means of the unit system (even though there are some minor modifications such as the quality grade of agricultural land and the possibility of expert assessments of commercial forests and ponds). Two draft bills of a new act on immovable property tax were prepared in 2001 and 2003 with the intention of introducing the *ad valorem* system into the tax-

tion of immovable property. However, the Czech Parliament decided not to adopt them. The third one, most detailed and publically discussed was not even subject of discussion within the members of the Parliament. Still it included many aspects, which should be taken into account while preparing any new amendments of the existing act or drafting a new one. This third bill [Radvan, 2012, p. 229–245] applied the *ad valorem* system of taxation only to land in areas, which are or can be built up. It did not deal with the assessment of agricultural land as there was no expected change and the taxation was supposed to continue using the quality grade of soil. Also all buildings and other structures were supposed to be taxed in the old way, based on the unit system.

The value of land should have been determined on the basis of value maps. These maps should have been compiled by municipalities for their own territories as it is expected that municipalities have the best knowledge of the local situation, they know the prices of land and they are able to carry out physical checks. Maps of tax bases (value maps) should include two parts: pictorial and textual. The pictorial part should be based on copies of cadastral maps what should also achieve a correspondence between the legal

Figure 1: Pictorial part of tax base maps – The municipality of Rozdělov



Source: Holmes, 2010.

and factual situations in cadastral maps more effectively. At the pictorial part of value maps, the territory of municipality should be divided into various zones of land and their types. The criteria for zoning are completely up to the municipality: they can use anything, but the best option seems to be the real use of the land (e.g. industrial areas, building plots, commercial zones, etc.) combined with the location (centres, satellites). For example, in the Ministry's examples, the so-called media as the utilities and the available infrastructure were used.

The zones should be colour-coded and should correspond to the actual situation. The borders between zones should be identical with the borders between plots of land. In my opinion, this might be problematic for practice for several reasons. First, there was no period for the re-zoning: the actual situation might change relatively quickly, while

the value map remains unchanged. Second, there are plots of land used for several different purposes: for example, the building plot covers just a small part of the whole plot, or the infrastructure is available only on a small part of the plot.

The pictorial map should also delimit land exempt from taxation. The tax exemptions should be fully within the powers of the municipalities (e.g. sports fields, cemeteries, school premises, etc.). I find this solution useful: the municipalities as the beneficiaries should have the right to influence their immovable property tax revenue and behaviour of locals to regulate or stimulate certain activities, as they have the best knowledge of the local situation. Nowadays, municipalities have only limited rights to influence the immovable property tax exemptions adopting a generally binding ordinance (local by-law) in accordance with the right given in the Immovable

Figure 2: Pictorial part of tax base maps



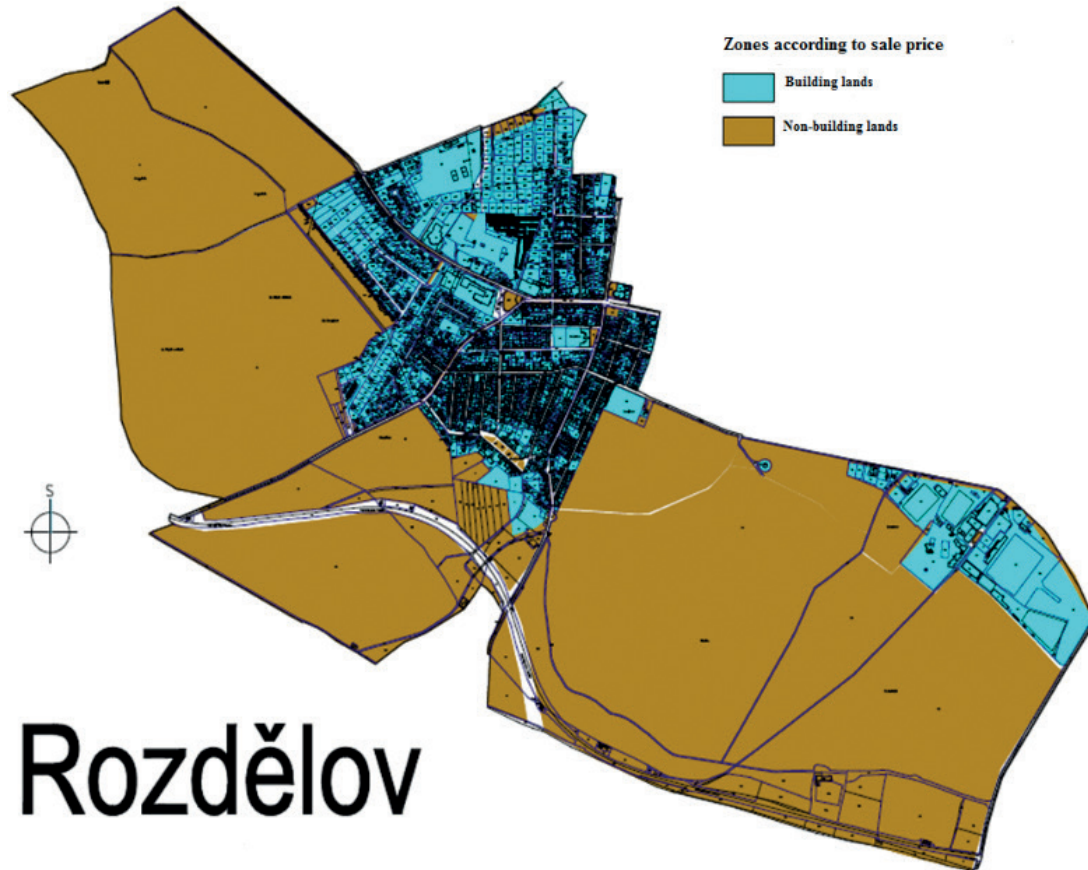
Source: Holmes, 2010.

Property Tax Act. When dealing with the consequences of natural disasters, municipalities may fully or partly (as a percentage) exempt immovable property located within their jurisdiction from the immovable property tax. This exemption is time-limited, and subject to a maximum period of five years. The exemption is effective not only for the year in which the natural disaster occurred and the following five years, but can also include the previous taxable period. This exemption is not very popular given the potential loss of revenue to the municipality and their need to meet the costs of repairing any damage. In addition, it can be difficult to determine which immovable property was affected by the natural disaster (for example, flats on the first floor were damaged, however, flats on the fourth floor undamaged). Various types of agricultural land such as arable land, hop-gardens, vineyards, orchards and land under permanent grass can be exempt-

ed from the immovable property tax by municipalities as a subsidy for their agricultural industry. This exemption need not be applied to land in developed or built-up areas of the municipality. This exemption is infrequently used due to small rural municipalities, which rely primarily on agricultural land for their revenue and thus would be losing a substantial part of their tax base and associated revenue. As an investment incentive, municipalities may exempt immovable property in special industrial zones, designated as such by the Government of the Czech Republic, for a period of up to five years. [Radvan, 2016, p. 74]

The textual part of value maps should contain the lists of individual zones with the lists of parcel numbers of plots of land, specifying the type, use and area of land. The most important is the tax base per square metre of land in each individual zone. The tax base on land should be assessed by multiplying the unit-based tax base (the value

Figure 3: Pictorial part of tax base maps



Source: Holmes, 2010.

of land per square metre as set in the value maps) and the actual area of a specific plot of land.

As mentioned above, the value should be set by municipalities in relation to local conditions. It is a good idea, however, also the weak point of the reform, because the value maps should be approved by municipal councils and issued in the form of municipal by-laws (generally binding ordinances). Under the Czech currently valid legal regulation, there is no remedial instrument for those who think that the municipal generally binding ordinance is unfair. The taxpayer may appeal only against the actual assessment of the immovable property tax but not against the value of land determined by the municipalities. It would be useful to create a new instrument and determine in what ways taxpayers may object to the inadequacy of the tax base before the amount of tax is assessed. The inspiration might be found

in Lithuania, where a public discussion on price maps of land has to be held prior to the approval of such maps [Aleksiene, 2009], or in Great Britain, where the principle of appeal is structured into two stages. The first stage is essentially informal: it is a particular form of an administrative review, under which the objection to the value is discussed between the complainant and the body responsible for the assessment. Only when such a discussion does not result in a satisfactory solution it is possible to file an appeal to an independent tribunal. [Malme, 2009]

The textual part should include the descriptions of any deviations, limitations, exemptions and differences between actual and legal states. I cannot agree with the last point: there should not be any differences between actual and legal states and if there are any, the taxpayer primarily and the state secondarily should change the

legal status. In every case, the immovable property tax should be always assessed according to the actual status.

Generally, there are much more negatives of the proposed reform. The Czech Republic needs a complex reform of property taxation, not just a partial step for some types of land only (taxes on buildings and other structures and agricultural land are to be taxes in the existing ways). The new system would be definitely more costly for municipalities as they have to prepare the value maps. Additional expenses must be compensated by increased incomes. However, there are some specific, mostly historic aspects that block a rise of the immovable property tax. E.g., the number of property-rich but income-poor citizens is relatively high because of inheritance or restitutions. For many years, there was a regulation of rent.

Talking about taxes, the fiscal function usually prevails. In this context, it is quite surprising that the reform was planned as fiscally neutral. Even if the reform assumed additional expenses for both municipalities and tax offices, no higher revenue was expected. This is a political issue, not legal nor economic. If the politicians are not brave enough to increase the immovable property tax (and possibly decrease other taxes) and explain its benefits for the taxpayers, there is no need to deal with any immovable property taxation, not only in the Czech Republic.

Inadequate Possibilities of Municipalities to Influence the Immovable Property Tax

As the municipalities are the exclusive beneficiaries of the immovable property tax revenue, they should have adequate powers to influence the revenue. However, the powers of municipalities are in this aspect very limited and inadequate. As stated above, municipalities have the right to adopt a generally binding ordinance (local by-law) to exempt immovable property affected by natural disasters, certain agricultural land (arable land, hop-fields, vineyards, orchards and permanent grass pastures), and immovable prop-

erty in special industrial zones. In the same way, they can effect a change to those coefficients that influence the tax rate (i.e. the location rent, the municipal coefficient) or the tax itself (i.e. the local coefficient).

The coefficient called location rent is influenced by the number of inhabitants with a permanent residence in the municipality. It is a multiplier applied to the standard tax rate for some types of immovable property (development land, residential buildings, and other structures that provide facilities for residential buildings, flats and non-residential premises not used for running businesses and garages). The basic value of the coefficient is laid down in the Act: there are seven levels of value within the range of 1.0 and 4.5. Municipalities have right to increase the basic coefficient (up by one level) or reduce it (down by three levels). Many Czech municipalities use the location rent.

The municipal coefficient can be applied to other buildings and units where the location rent does not apply (dwelling houses and family houses used for family recreation (summer cottages) and other structures that provide facilities for such property, such as garages, as well as structures used for business activities, non-residential premises used for business activities and as garages). The value of the coefficient is set at 1.5 and it is applied as a multiplier to the standard tax rate. This coefficient is very popular in many municipalities.

From the fiscal point of view, the most important is the opportunity to increase the immovable property tax by the local coefficient. This coefficient increases the immovable property tax for specific immovable property (with the exception of agricultural land) by a factor of either 2, 3, 4, or 5. The local coefficient has a political nature and only 7 percent of municipalities in the Czech Republic are using it.

Tax Administrator

The immovable property tax revenue goes into the local budgets, depending on the location of

the immovable property. However, the immovable property tax is administered by the Financial Office, which is the State's tax office. The locally competent tax office is the one within whose district the immovable property is situated. Many municipalities are willing to become the immovable property tax administrators: they believe they know local situation better than the tax office (and usually they are right) and they want to know who has the tax debts. Mayors argue that if they know the debtors, they might use several instruments to recover the debt (e.g. not issuing building permission etc.).

Even if the arguments above are rational, the Czech legal regulation is more complicated: the local taxes and charges are always administered within the transferred jurisdiction, i.e. by the municipal office (and not by the municipality itself). It means that both the mayor and the city council are not participating in the tax administration at all. Moreover, because of the principle of secrecy, they cannot get any information about the taxpayers and their taxes, about the tax debtors, etc.

The other obstacle to change the state tax office for the municipal office to administer the immovable property tax is the lack of competence of municipal employees. It must be remembered that there are more than 6,200 municipalities in the Czech Republic and many of them are extremely small with a very low number of inhabitants. It is really very difficult and many times even impossible to find any person capable for the tax administration in these small villages.

Method of Tax Law Regulation

The quality of (not only) tax law is *conditio sine qua non* for fair tax administration. It must be taken into account that the tax law has really very specific method of regulation.

Tax law is related to financial law and administrative law by the method of legal regulation used. Based on its characterization according to the criteria for being considered an independent branch of law, administrative law is distinguished

by the application of a type of public law method, which is the administrative law regulation method. This method is based on the effect of public authorities on the recipients of public authority, in particular by means of the norms enforceable by public authorities and contained in normative administrative acts, i.e. by laws and ordinances issued by public authorities authorized in and for the implementation of the law and within the limits stipulated by law (sub-statutory regulations), as well as by means of individual administrative acts – decisions of the public authorities authorized by law to make such decisions in the specific administrative matter. The method applied in financial law is essentially a modified version of the administrative law method, namely with regard to the actions of public administration authorities and in relationships regulated by financial law. Statistics can demonstrate that there is a lower level of applying sub-statutory regulations in financial law regulation than in administrative law; in other words the law gives public administration authorities less space to carry it out. Public administration authorities apply economic instruments to a greater extent in this area to affect recipients (central bank interest rates, mandatory deposit in a state of emergency, etc.). Certain private law elements also modify the administrative law method, such as agreeing on the conditions for use of grant funds, applying the principle of competition in using public funds in public procurement, etc. Certain administrative activities are also delegated to private law entities. [Radvan, 2014]

A similar situation prevails in tax law. Very few sub-statutory regulations exist in this area; the vast majority of legal regulations in the area of tax law take the form of an Act, primarily with regard to such a requirement stipulated in the Constitution (*sensu stricto*) or a similar document (e.g. in the Czech Republic such rule is contained in the Charter of Fundamental Rights and Basic Freedoms, which forms part of the constitutional system (Constitution *sensu largo*) along with the Constitution *sensu stricto*. Of the types of sub-statutory regulations, the most significant in the

Czech Republic are the generally binding ordinances, which municipalities use to “complete” the legal regulation of property taxation and local taxes (fees). This area also contains many economic instruments public administration authorities can use to affect recipients. These instruments generally include, for example, tax credits and other corrective elements, tax holidays, etc. Specific to this area is the very frequent use of private law elements to modify the traditional administrative law method of regulation. As an example, take the options of negotiating taxes, postponing taxes, payment calendars, etc. We can even find typical private law relationships in tax law, such as the relationship of an employer who pays wages (salary) to an employee: their relationship is without doubt a labour law relationship, although the employer is obliged to deduct a personal income tax advance payment as well as insurance premiums and other levies stipulated by law from the employee’s wages and the employee is obliged to permit such conduct. The authority to withhold tax is thus delegated from the state to a private law entity. Many analogous relationships can be found in tax law (a bank withholds tax on interest accrued, a joint stock company withholds tax on dividends, a seller collects VAT from a buyer along with the sale price, etc.). [Radvan, 2014]

What is the most specific to tax law, however, is a principle known as **self-application**. In tax proceedings (unlike in administrative or financial law) the administrative negotiations do not take place between the administrative authority (tax administrator) and (tax) entity, but rather primarily assume the knowledge and orientation of the tax entity in the area of tax law. The taxpayer applies tax law norms to itself by determining the tax base using its own knowledge, uses the relevant tax rate for itself, and applies the corrective elements for itself. The taxpayer then delivers the completed tax return to the tax administrator, which assesses the tax tacitly, i.e. implicitly, provided that it has no reservations regarding the correctness and completeness of such return. In most cases, therefore, there is no interaction at

all between the tax administrator and taxpayer. [Radvan, 2014]

Especially the specifics of self-application (or even self-assessment in case of gambling taxation) are the reasons for the demand of high quality tax law norms. These norms must be clear, understandable, unambiguous, comprehensible and obvious for the non-professional taxpayers as they are those who should interpret them and apply them to pay taxes on time and in the right amount.

Constitutional principles

To ensure the tax law norms are having the characteristics defined above, there are several principles of tax law. There is no taxpayer’s bill of rights in the Czech Republic and principles are included in the constitutional and legal norms. The most important principles are included directly in the Constitution *sensu largo*. One of the fundamental provisions of the Constitution (Art. 2(3) of the Constitution of the Czech Republic) states that “State authority is to serve all citizens and may be asserted only in cases, within the bounds, and in the manner provided for by law.” Similarly the Charter of Fundamental Rights and Basic Freedoms (Art. 2(2) of the Charter of Fundamental Rights and Basic Freedoms) states that “State authority may be asserted only in cases and within the bounds provided for by law and only in the manner prescribed by law.” With regard to the principle of legitimacy, the other principles are very often mentioned, namely the principles of transparency, accessibility and unambiguousness when handling the sources of law, the general prohibition of retroactivity, the requirement of unambiguousness and predictability, legal certainty, the protection of legitimate expectations, the prohibition of excessive formalism, the protection of confidence in law, and the protection of the acquired rights, and the principle of proportionality. [Brychta, 2020] Art. 11(5) of the Charter of Fundamental Rights and Basic Freedoms includes the **principle of legality** (*nullum tributum sine lege* principle): “Taxes and fees shall be levied only on the basis of law.”

The principles applicable for the tax law are included in the international law. According to the Art. 10 of the Constitution of the Czech Republic, ratified and promulgated international treaties are provided with the application priority. This applies e.g. for the European Convention on Human Rights including property protection, fair trial, no punishment without law, respect for private and family life, home and correspondence, freedom of movement, *ne bis in idem* principle, etc. The Czech Republic as the EU Member State is bound by the EU law.

The constitutional and international tax law principles are of course applied in the general tax law principles and in the tax law design and drafting and in the tax procedure. However, these lists are much broader.

General Tax Law Principles

Besides *nullum tributum sine lege* principle, the most important is the **principle of generality** stating that the duty to pay taxes is general and every person has the duty to pay the tax if defined by the act. This principle is to secure the **principles of equity** (non-discrimination) and **justice**. The tax should be adequate to the ability of the taxpayer to pay the tax. This rule is expressed by the **principle of the prohibition of confiscation** and the **principle of pragmatism**. The tax law norms must not be retroactive as it is obvious from the **principle of non-retroactivity**. There are several principles protecting the taxpayer in the application process: the **principle of courts' protection** and the **principle of limited analogy**.

Tax Law Design and Drafting Principles

Many of the above mentioned principles must be taken into account while the tax law is designed and drafted, i.e. principles *nullum tributum sine lege*, generality, equity, justice, prohibition of confiscation, pragmatism, non-retroactivity, etc. The legislator should moreover think

about the **social consensus of taxation** and **economic consequences**, the **protection of sources** (and / or motivation to produce more sources) to be taxed; it is necessary to presume **short-term and long-term consequences** of taxation and tax law norms. In many cases, the tax rates are fixed, which does not correspond with the **inflation** factors. If the legislator increases fixed tax rate in certain periods, it breaks the principle of **fluency of changes**. Taxpayers' reactions might be then tax avoidance, especially concerning taxes on alcohol and tobacco. There are as well external aspects for the new tax regulation: **European and international law** dealing with taxes. As the main function of taxes is the fiscal function, the most important for the State is the **protection of financial interests of the State**.

Tax Procedure Principles

Tax Procedure Principles are defined in the Tax Procedural Code. The primal procedural principle in tax law is the principle of **self-application** generally discussed above. According to this principle, the taxpayer must know if and when to file the tax return, calculate the tax and pay it generally without any cooperation with the tax administrator. The principle of **legality** states that the tax administrator shall proceed in conformity with laws and other generally binding statutory provisions incl. international treaties. The principle of **legitimacy** specifies the same constitutional principle as discussed above; the same applies for the principle of **procedural equity** – all tax subjects have equal rights and duties in the tax proceedings. The principles of **collaboration**, **cooperation** and **proportionality** are connected: all tax subjects have the right and the duty to cooperate with the tax administrator and the tax administrator shall proceed in close collaboration with the tax subjects; the tax administrator shall select only means which cause the least inconvenience to the taxpayers. The tax administrator should **provide adequate instructions** to the taxpayers and be polite as they are the clients (**client approach principle**). The tax procedure

itself should be **effective, quick and economic**, with respect to costs of the taxpayer; all the information available for the tax administrator must be used without asking the taxpayer for it. Concerning the evidence, several principles are to be followed: principle of **discretionary evaluation of evidence**, principle of **material truth**, principle of **limited scope of collecting information**. The principle of **formality** is applied, too. The tax proceedings are never made public (principle of **non-publicity**) and everybody except tax subjects are to maintain confidentiality in respect of everything learned during tax proceedings (principle of **discretion** / confidentiality). The **official language** is Czech. In similar cases there should be no unreasonable differences in the decision (principle of foresee ability / principle of **legitimate expectations**). The tax duty is **non-transferable**. There are many other principles in the tax procedure typical for fair trials like right to be heard, right of defence, equality of arms, right to a fair trial and prohibition of double jeopardy as the right not to be tried twice for the same cause (*ne bis vexari*). There are several more principles to be applied in the tax procedure mentioned in the Administrative Procedure Code.

Conclusions

The immovable property tax is a benefit tax and a good tax [Youngman, 2016]. The hypothesis was confirmed. It is roughly proportional to the cost of the public service benefits received by the taxpayer and it can be seen as a compensation for the broad set of benefits provided by a local government [Walters, 2017, p. 41–47]. However, local taxpayers usually do not know about these benefits and a promotion is needed. A right media seem to be a local TV and radio, the internet and social posters, billboards and other urban accessories, city transport facilities, PR articles, product placement in movies and TV series, promotional items, etc. The strongest marketing platform in today's digital age seems to be social media, so it could be useful to promote

the property tax also through the municipalities own Instagram profile or a Facebook page. Good thing about promotions through social media is also the fact that it is really inexpensive compared to for example billboards. Also, almost every municipality publishes its own local magazine, where they can promote the property tax. It is really easy to clearly summarize the expenses of the municipality for public lighting, building and maintenance of roads, the city police, the fire brigade, the functioning of kindergartens and schools, the construction and maintenance of playgrounds, subsidies to local traffic, waste management, etc. Such activities of the municipality not only make the living more comfortable, but also increase the value of the taxed property. It is more than certain that municipalities are spending more money on these activities than they receive by the property tax revenue; the difference can serve as an argument for introducing one of the factors increasing the property tax, especially the local coefficient. [Radvan, 2017, p. 347–348; Radvan, 2019, p. 16]

The specifics of self-application are the reasons for the demand of high quality tax law norms. These norms must be clear, simple, understandable, unambiguous, comprehensible and obvious for the non-professional taxpayers as they are those who should interpret them and apply them to pay taxes on time and in the right amount. All immovable property tax reforms should contribute to simplification and clarification of legal regulation of immovable property taxation. Because of restitutions issues and number of property-rich but income-poor people, it is necessary to consider introducing certain parameters and limits for the maximum extent of taxation.

The most problematic issue regarding immovable property taxation in the Czech Republic is the low tax revenue. The decision to increase the revenue is a political one. Unfortunately, Czech politicians are not brave enough to take this decision. Without increasing the tax revenue, there is no need to change the existing system of taxation, as all the other methods are more expensive for the tax administration.

The above-mentioned proposal of the immovable property taxation reform changing prevailing unit system for the *ad valorem* system was not the right one. For example, taxation of buildings and other structures and agricultural land was not attached by the reform proposal. The new system would be definitely more costly for municipalities. The issue of appeals against the value of land determined by the municipalities was not solved at all. In addition, the period for the re-zoning was not defined. There are several more minor reasons for not adopting the reform, e.g. the competence of persons participating in the formation of the value maps, particularly in small municipalities, is not adequate. These problems are solvable: value maps could be compiled by designated municipalities or the law could specify the minimum values.

On the other hand, the *ad valorem* system of immovable property taxation would also bring some benefits. The value maps are the cheapest

and the most effective way of assessing the tax base. If there was a reasonable period of re-zoning, the immovable property tax would be more fair and current data would be available also other taxes (tax on acquisition of immovable property, income taxes) and for the purposes of inheritance proceedings, expropriation, etc.

In my opinion, the immediate solution for the Czech Republic is that the unit system (area) tax base should be retained. There should be one maximum tax rate in the legislation for every type of property, and municipalities should have the right to introduce their own specific tax rates below that level. As there are more than 6,250 municipalities in the Czech Republic and many of them are extremely small with a very low number of inhabitants, there should be another rate (standard rate) in the legislation for those municipalities that do not set their own specific tax rates.

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