



CLASH OR COEXISTENCE OF PRINCIPLES OF EFFICIENCY AND EQUITY IN TAXATION IN LIGHT OF THE (EUROPEAN) SOCIAL CONSTITUTIONALISM*

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ABSTRACT

The framers of the Croatian Constitution envisioned the modern Republic of Croatia as a social state founded on the principle of social justice. The Croatian Constitutional Court has further emphasized the importance of this social dimension as an integral part of the broader concept of European social constitutionalism. The idea of social justice, however, does not exist in a theoretical legal vacuum; rather, it is operationalized through various social provisions of the Constitution and a wide array of regulations aimed at their concretization. One of the key manifestations of this constitutional concept is the principle of fairness (equity) in taxation, which represents an emanation of the social state and the principle of social justice in the field of taxation.

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As a constitutional principle, tax equity encompasses both vertical and horizontal equity and implies the establishment of a fair tax system based on the taxpayer's economic capacity. Such an understanding of tax equity presupposes a progressive tax system, which challenges the prevailing economic notion of equity founded on the principle of proportionality. This divergence raises the question: can the constitutional and economic concepts of tax fairness as well as the request for efficiency in taxation be reconciled?

The paper argues that such reconciliation is indeed possible. The constitutional principle of tax equity requires the progressivity of the tax system as a whole, but it does not mandate that every individual tax or tax rate be progressive. Nor does it require the exclusive use of progressive tax rates, allowing the legislator to employ alternative mechanisms to mitigate the regressive effects of certain taxes and to achieve overall system progressivity. This approach affords the legislator a wide margin of appreciation in designing tax policy and does not exclude the economic understanding of tax equity based on proportionality. In this context, compliance with constitutional principles of taxation is subject to restrained constitutional review.

The following research is conducted using methods of legal analysis, including both the textual interpretation of the constitutional text, as well as the legal argumentation adopted in the practice of the Croatian Constitutional Court. Additionally, the analysis of the secondary (scientific) sources is used. This way, the substance of the constitutional principle of tax equity is deduced and brought in connection with the constitutional principles of social state and social justice and then compared with the economic request for achieving efficiency in taxation.

Keywords: Constitutional principles of taxation, Digitalization, Efficiency in taxation, Social justice, Tax equity, Progressivity

1. INTRODUCTION

According to the Constitution,¹ the Republic of Croatia is defined as a social state,² committed to the realization of the principles of social justice as one of the highest values of the constitutional order.³ This commitment to social principles is twofold; on the one hand, it represents a component of historically inherited social values,⁴ while on the other, it expresses the belonging of the Croatian constitutional identity to the broader circle of European social states, that is, to the concept of European social constitutionalism⁵ (despite the fact that, in the context

¹ Constitution of the Republic of Croatia, Official Gazette, No. 56/90, 135/97, 113/00, 28/01, 76/10, 5/14 – Decision of the Constitutional Court No. SuP-O-1/2014 of 14 January 2014.

² Article 1 Paragraph 1 of the Constitution of the Republic of Croatia.

³ Article 3 of the Constitution of the Republic of Croatia.

⁴ See Kuzelj, V.; Erent-Sunko, Z.; Javorić Barić, *Socijalne vrijednosti hrvatskog društva i legitimacija post-socijalističkog poretka*, in: Nastase, C. A., Monda, A.; Dias, R. (eds.), *International Scientific Conference – EMAN 2024: Vol 8. Conference Proceedings*, Association of Economists and Managers of the Balkans, Belgrade, 2024, pp. 643–656.

⁵ See O'Cinneide, C., *The Present Limits and Future Potential of European Social Constitutionalism*, in: Young, K. G. (ed.) *The Future of Economic and Social Rights*, Cambridge University Press, Cambridge, 2019, pp. 324–352.

of the European Union, it is at present possible to speak of the existence of a so-called social deficit,⁶ which stands in opposition to the social component of certain Member States national constitutions, such as that of Croatia⁷). In this sense, the Constitutional Court of the Republic of Croatia has already, in its decision concerning the so-called crisis tax,⁸ emphasized the following: “The social state is a constitutive element of the European constitutional identity, as confirmed by the Constitution of the Republic of Croatia. It belongs to the group of so-called socially conscious constitutions.”⁹

In this (social) light, the constitutional provisions concerning the fundamental determinants of the Croatian tax system must also be read. Namely, it was precisely in the context of taxation, in the aforementioned decision on the crisis tax, that the first extensive interpretation of the social component of the Croatian Constitution was given, together with its connection to tax principles as elements intended to serve the realization of the Croatian social state.¹⁰ Accordingly, the following analysis seeks to highlight the connection between the constitutional concept of the social state, the principle of social justice, and the fundamental principles of taxation. At the same time, as an added value of this paper, an effort is made to highlight the complexity of the relationship between the economic understanding of fairness based on the idea of proportionality of the tax burden and the efficiency of administration of adopted tax forms (in the sense of achieving fiscal effect, i.e. the revenue-raising function of the tax system) and the constitu-

⁶ See e.g. Weatherill, S., *Use and Abuse of the EU's Charter of Fundamental Rights: On the Improper Veneration of 'Freedom of Contract'*, *Judgment of the Court of 18 July 2013: Case C-426/11 Mark Alemo-Herron and Others v Parkwood Leisure Ltd*, *European Review of Contract Law*, Vol. 10, No. 1, 2014, pp. 167–182; Garben, S., *The Constitutional (Im)balance between 'the Market' and 'the Social' in the European Union*, *European Constitutional Law Review*, Vol. 13, No. 1, 2017, pp. 23–61; Garben, S., *Balancing Social and Economic Fundamental Rights in the EU Legal Order*, *European Labour Law Journal*, Vol. 11, No. 4, 2020, pp. 364–390; Kuzelj, V., *Zaštita socijalne jezgre ustava država članica Europske unije od snižavanja razine socijalne zaštite pod utjecajem ordoliberalnog usmjerenja europske integracije*, *Političke perspektive*, Vol. 15, No. 2, 2025, pp. 55–79.

⁷ See e.g. Kuzelj, V.; Horvat Vuković, A., *Apoteoza socijalne države: ustavno-identitetska ukorijenjenost socijalne pravde u Republici Hrvatskoj*, *Politička misao*, Vol. 59, No. 1, 2022, pp. 75–99.

⁸ Constitutional Court of the Republic of Croatia, Decision and Ruling No. U-IP-3820/2009 U-IP-3826/2009 and others, of 17 November 2009.

⁹ *Ibid.*, para 13.1.

¹⁰ Unfortunately, it follows from the analysis of the Constitutional Courts' reasoning on the meaning of the concept of the welfare state and the principle of social justice, in relation to individual social rights guaranteed by the Croatian Constitution, that it interprets the above-mentioned umbrella concepts (welfare state and social justice) separately from the components that should give them content (individual social rights, e.g. constitutional principles of taxation). See Miloš, M.; Kuzelj, V., *Ostvarenje i zaštita ustavnog ideala porezne pravednosti u svjetlu zahtjeva socijalne države*, *Zbornik radova Pravnog fakulteta u Splitu*, Vol. 58, No. 4, 2021, pp. 1101–1120.

tional commitment to the social role of taxation as the primary principle of the Croatian tax system (as a whole).

In this regard, the paper employs methods of legal analysis and case-law analysis, accompanied by a review of secondary (scientific and professional) sources. Additionally, at certain points, reference is made to comparative examples, used as models for interpreting tax principles within the Croatian context.

2. THE POLITICAL AND LEGAL NATURE OF CONSTITUTIONAL PRINCIPLES OF TAXATION

The adoption of tax legislation, as well as the assessment and collection of taxes, has often been marked by the stigma of posing a danger to human rights, initially (historically) as an emanation of the unrestrained will of the ruler (in accordance with Bodin's conception of sovereignty as a form of authority that recognizes and acknowledges nothing above itself except God: "...unlike a sovereign prince who is answerable only to God"¹¹). In contemporary context, however, these matters are understood as an expression of the will of a perceived sovereign people (the *demos*), articulated through its representatives seated in the legislative branch — a conception that, in fact, affirms the central creed of the American Revolution, *No taxation without representation*, understood as a prohibition against adopting tax measures without the consent of the people manifested through the will of their representatives in the legislative body.¹² The accuracy of this assertion is confirmed primarily by two facts. The first fact is historical in nature and concerns the organic interconnectedness between the development of the taxing (and, in a broader sense, fiscal) powers of the legislative branch and the evolution of parliamentarism, most clearly visible in the struggle for parliamentary prerogatives in English constitutional history.¹³ At this point, it is also necessary to pose the question of whether such authority pertains exclusively to the representation of citizens assembled in the legislative body, or whether it also encompasses representative institutions at lower levels of government?¹⁴

The second fact concerns the question of competences for decision-making in matters of taxation (and, in a broader sense, fiscal policy), which in a comparative

¹¹ See Bodin, J., *On Sovereignty: Four Chapters from The Six Books of the Commonwealth*, Cambridge University Press, Cambridge, 2010, p. 4.

¹² Edrey, Y. M., *Taxation and Human Rights*, European Tax Studies, No. 2, 2014, p. 6.

¹³ See e.g. Marelja, M., Kuzelj, V., *Evolucija fiskalnoga suvereniteta u engleskoj: od sredstva ograničenja vladara do prerogativa zakonodavne vlasti*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Vol. 41, No. 2, 2020, pp. 509–529.

¹⁴ See e.g. Bulgarelli, A., *Representation And The Power Of Local Government To Levy Taxes*, European Tax Studies, No. 2, 2014, pp. 62–66.

perspective is most clearly manifested in the exclusion of the entire corpus of fiscal legislation from the reach of the wider populace through instruments of direct democracy (primarily referenda). In the practice of the Croatian Constitutional Court, this principle has been interpreted through the protection of the exclusive powers of representative-democratic bodies with respect to budgetary (and therefore necessarily also tax) matters.¹⁵ In this way, somewhat paradoxically yet practically necessarily, tax (and, in a broader sense, fiscal) legislation – as an expression of the will of the sovereign people, translated through the sublimated popular will embodied in the national representative assembly (the legislative body) – is shielded by constitutional mechanisms from the volatility, impulsiveness, and susceptibility of the *demos* to the “siren song” of populist solutions, and is thereby placed within the exclusive sphere of competence of the representative component of democracy.

At first glance, one might conclude that the logical consequence of such exclusive prerogatives of representative bodies is that constitutional courts, as the ultimate guardians of human rights and fundamental freedoms¹⁶ as well as of the separation of powers,¹⁷ are likewise precluded from reviewing the conformity of tax legislation with the constitutional document. Yet this is only partially the case. Although tax legislation is not subject to constitutional review in terms of its expediency or justification, it may nevertheless be (and indeed is) subjected to constitutional scrutiny, as confirmed by the Constitutional Court of the Republic of Croatia in the case regarding the constitutionality of the so-called *crisis tax*.¹⁸ Accordingly, in contemporary constitutional thought it has become widely accepted that the

¹⁵ See e.g. Kuzelj, V., *Zabrana referenduma o proračunskim pitanjima u hrvatskoj i poredbenoj perspektivi, Hrvatska i komparativna javna uprava*, Vol. 22, No. 2, 2022, pp. 331–354.

¹⁶ See e.g. Šarin, D., *Ustavni sud Republike Hrvatske kao institucionalni zaštitnik ljudskih prava i temeljnih sloboda*, Zbornik radova Pravnog fakultet u Splitu, Vol. 52, No. 3, 2015, pp. 755–784.

¹⁷ For a more detailed discussion of the position of the Croatian Constitutional Court within the constitutional architecture and division of powers, see Šarin, D., *Položaj Ustavnog suda Republike Hrvatske s motrišta diobe vlasti i ustavne garancije njegove neovisnosti*, Zbornik Pravnog fakulteta u Zagrebu, Vol. 62, No. 5-6, 2012, pp. 1379–1412.

¹⁸ This was a special, time-limited tax introduced by the Act on the Special Tax on Wages, Pensions and Other Income (Official Gazette No. 94/09), and the Act on the Special Tax on Income from Self-Employment and Other Incomes (Official Gazette No. 119/09). For a more detailed discussion of the (non-)social effects of the crisis tax and the assessment of its constitutionality before the Croatian Constitutional Court, see Cindori, S.; Kuzelj, V., *Socijalni aspekt kriznoga poreza: fiskalni instrument ili devijacija poreznog sustava?*, Ekonomska misao i praksa, Vol. 27, No. 2, 2018, pp. 479–502. For the Constitutional Court’s own understanding of its role in reviewing the constitutionality of tax legislation, see Constitutional Court of the Republic of Croatia, *op. cit.*, note 8, para 10. For a more detailed discussion of the constitutionality review of tax legislation in the Republic of Croatia, see Arlović, M., *Ustavnosudska kontrola poreznih zakona u Republici Hrvatskoj*, in: *Porezno pravo i ustavno sudstvo*, Constitutional Court of the Bosnia and Herzegovina, Sarajevo, 2018, pp. 89–127.

mere authorization by citizens, transferred to the legislative branch as an expression of the collective will of the sovereign people, is insufficient for any particular tax measure to be regarded as just. It is also necessary that the adopted tax legislation conform to certain principles of taxation that have been recognized and entrenched at the constitutional level.¹⁹ It is not sufficient, moreover, that such taxes merely refrain from assuming a *penal* or *confiscatory* character²⁰ (which is a necessary precondition of their constitutionality); it is also required that they be grounded in the principle of fairness (whereas the protection of a minimum content of fairness falls within the jurisdiction of constitutional adjudication, while the higher degrees of fairness of a particular tax measure, or of the tax system as a whole, are determined by citizens through the democratic process of electing their representatives²¹).

From the above said follows that the fundamental principles of taxation are not (exclusively) political in nature, although they are highly political and intrinsically linked to the idea of representative democracy. By their nature they are also legal, at least in the sense of protecting their constitutional minimum from derogation in legislative practice and by the conduct of tax authorities. Namely, at the material level, the jurisdiction of the Constitutional Court encompasses the protection of the minimum content of tax principles guaranteed by the Croatian Constitution, while citizens may express their judgment regarding a higher level of tax justice through democratic elections.²² On the other hand, at the procedural level, the principle of tax justice requires effective protection of taxpayers' rights against unlawful or improper conduct by tax authorities, which falls within the jurisdiction of administrative courts. Only a correctly assessed and collected tax can, after all, be regarded as just. This is particularly important in the context of the development of new technologies, with which the improvement of tax-collection procedures must keep pace (e.g. through the process of digitalization), while at the same time ensuring the protection of taxpayers' rights (e.g. their privacy, personal data, as well as the fundamental principle of fair procedure in matters of taxation).

¹⁹ Edrey, *op. cit.*, note 12, p. 7.

²⁰ See e.g. Martinengo, S., *Reflections on Property Rights and Confiscatory Tax Systems*, European Tax Studies, No. 2, 2014, pp. 58–61.; Cindori, S.; Kuzelj, V., *Inadmissibility of Penal and Confiscatory Taxes*, in: 5th International Multidisciplinary Scientific Conference Social Sciences & Arts SGEM 2018, Conference Proceedings, Volume 5, Issue 1.2, STEF92, Sofia, 2018, pp. 583–590.

²¹ See e.g. Kuzelj, V., *Komplementarnost ustavnopravnih i društvenih odrednica porezne pravednosti u Republici Hrvatskoj*, in: Bevanda, V. (ed.), International Scientific Conference – EMAN 2020: Vol 4. Conference Proceedings, Association of Economists and Managers of the Balkans, Belgrade, 2020, pp. 469–475.

²² *Ibid.*, p. 474.

3. SUBSTANTIVE DIMENSION OF TAX JUSTICE

The Croatian Constitution embraces the idea of tax justice grounded in the principles of economic capacity (the ability-to-pay principle)²³ and in the equality and equity (fairness)²⁴ of the tax system.²⁵ The former principle, understood as an expression of so-called vertical equity in taxation, is widely accepted within the constitutional frameworks of European tax systems and, for example, constitutes a fundamental tax principle in both Italy²⁶ and Spain.²⁷ It is closely connected to the realization of the constitutional concept of the social state²⁸ and the principle of social justice,²⁹ both of which represent shared values of European constitutionalism. As the Croatian Constitutional Court has stated: “The social state is a constitutive element of the European constitutional identity, a fact confirmed by the Constitution of the Republic of Croatia. It belongs to the group of so-called socially conscious constitutions.”³⁰

It is therefore justified, as Arbutina argues, to conclude that the Croatian constitution maker places particular emphasis on the social component of taxation.³¹ Moreover, one may contend that, by employing the concept of the social state and the principle of social justice (which, in the jurisprudence of the Croatian Constitutional Court, have been affirmed as part of the inviolable core of the Constitution; the so-called constitutional identity³²) as vectors, the constitutional

²³ Article 51 Paragraph 1 of the Constitution of the Republic of Croatia.

²⁴ Article 51 Paragraph 2 of the Constitution of the Republic of Croatia.

²⁵ For a more detailed discussion of the constitutional principles of taxation in Croatian legal system and in the practice of the Constitutional Court of the Republic of Croatia, as well as in the broader European context, see e.g. Miloš, M., Kuzelj, V., *op. cit.*, note 10; Žunić Kovačević, N., *Europska dimenzija ustavnih načela u oporezivanju*, Hrvatski časopis za osiguranje, No. 10, 2024, pp. 109–124; Žunić Kovačević, N., *Načelo jednakosti u poreznom pravu i sudskoj praksi nekih zemalja EU*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Vol. 22, No. 2, 2001, pp. 763–789.

²⁶ Article 53 of the Constitution of Italy Available at: [https://constituteproject.org/constitution/Italy_2020], Accessed 6 March 2026; See e.g. Santin, P., *Ability to Pay and Human Rights: A Case-Law Analysis*, European Tax Studies, No. 2, 2014, pp. 67–68.

²⁷ Article 31 Paragraph 1 of the Constitution of Spain, Available at: [https://constituteproject.org/constitution/Spain_2011], Accessed 6 March 2026; See e.g. Gallardo López, L.; Fernández Marín, F., *A Jurisprudential Approach to the Spanish Ability to Pay Principle: Current Issues*, European Tax Studies, No. 12, 2022, pp. 11–12.

²⁸ Article 1 Paragraph 1 of the Constitution of the Republic of Croatia.

²⁹ Article 3 of the Constitution of the Republic of Croatia.

³⁰ Constitutional Court of the Republic of Croatia, Decision and Ruling No. U-IP-3820/2009 U-IP-3826/2009 and others, of 17 November 2009, para 13.1.

³¹ Arbutina, H., *Ustavna i nadnacionalna ograničenja ovlaštenja na oporezivanje*, Zbornik Pravnog fakulteta u Zagrebu, Vol. 62, No. 5-6, 2012, p. 1287.

³² For a more detailed discussion about the concept of so-called constitutional identity, see e.g. Kostadinov, B., *Ustavni identitet*, in: Bačić, A. (ed.), *Dvadeseta obljetnica Ustava Republike Hrvatske*, Croatian Academy of Sciences and Arts, Zagreb, 2011, pp. 305–337.

principles of taxation implicitly confirm their own belonging to the identity of the Croatian Constitution.³³ Additionally, it should be emphasized that the constitutional imperative of fairness in taxation, so understood, is situated at the systemic level, that is, it is to be realized at the level of the tax system as a whole, rather than through an insistence on its equal and uniform application in the design of each individual tax form. Thus, for example, the assessment of tax fairness in the case of direct taxes, primarily the personal income tax³⁴ or the corporate income tax,³⁵ differs significantly from the standard of fairness required in the case of indirect taxes, and especially the value-added tax.³⁶ Their roles within the tax system are, namely, distinct – while one type of tax is fairer, the other is more fiscally productive, and together (at the level of the system as a whole) they may yield a constitutionally

³³ Kuzelj, V.; Kvartuč, D., *Pluralizam ustavnih vrednota: Konstituiranje socijalnog tržišnog gospodarstva u Republici Hrvatskoj*, in: Bevanda, V., Dias, R. (eds.), *International Scientific Conference – EMAN 2021: Vol. 5 Conference Proceedings*, Association of Economists and Managers of the Balkans, Belgrade, 2021, pp. 503–504.

³⁴ It is exactly in the context of personal income taxation that the principle of tax equity has been most heavily debated in the Croatian legal literature. See e.g. Ercsey, Z.; Jerković, E., *Porez na dohodak: odredbe o pravičnosti*, in: Župan, M.; Vinković, M. (eds.), *Suvremeni pravni izazovi: EU – Mađarska – Hrvatska*, Faculty of Law, University of Pécs and Faculty of Law, J.J. Strossmayer University of Osijek, Pécs and Osijek, 2012, pp. 255–274; Perić, R.; Szilovics, C., *Pravednost i jednakost u sustavima poreza na dohodak*, in: Župan, M.; Vinković, M. (eds.), *Suvremeni pravni izazovi: EU – Mađarska – Hrvatska*, Faculty of Law, University of Pécs and Faculty of Law, J.J. Strossmayer University of Osijek, Pécs and Osijek, 2012, pp. 243–254; Perić, R.; Jerković, E., *Personal Income Tax System: Provisions Regarding Fairness and Equality*, in: Kandžija, V.; Kumar, A. (eds.), *Economic Integrations, Competition and Cooperation*, Faculty of Economics, University of Rijeka, Rijeka, 2013, pp. 143–153; Perić, R.; Jerković, E., *Principle of Fairness in Regard to Personal Income Tax*, in: Bacher, U. et al. (eds.), *Interdisciplinary Management Research X*, Faculty of Economics, J.J. Strossmayer University of Osijek and Hochschule Pforzheim University, Opatija, 2014, pp. 821–828; Jerković, E., *Važnost ciljeva i socijalno-političkih načela oporezivanja u funkciji ostvarenja pravednosti prilikom oporezivanja dohotka od nesamostalnog rada i samostalne djelatnosti*, in: *International Scientific Conference – ERAZ 2017: Vol 3. Conference Proceedings*, Association of Economists and Managers of the Balkans, Belgrade, 2017, pp. 217–229; Perić, R.; Konjić, E., *Primjena načela pravednosti u sustavima oporezivanja dohotka*, in: Arbutina, H.; Rogić Lugarčić, T. (eds.), *Spomenica Prof. dr. sc. Juri Šimoviću*, Faculty of Law, University of Zagreb, Zagreb, 2017, pp. 35–43; Kuzelj, V.; Jerković, E.; Perić, R., *Predanost zakonodavca temeljnim (socijalnim) poreznim načelima ustava pri uređenju sustava oporezivanja dohotka u republici hrvatskoj*, *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, Vol. 43, No. 1, 2022, pp. 247–266; Kuzelj, V.; Surla, J.; Milenković, M.; Jurčević, V.; Dunatov, J., *Ustavno načelo oporezivanja u skladu s ekonomskom snagom poreznog obveznika i pozitivni zakonski okvir utvrđivanja stopa poreza na dohodak*, *Pravnik*, Vol. 58, No. 110, 2024, pp. 73–100.

³⁵ See e.g. Jerković, E.; Zlatić, M., *Importance of Socio-political Tax Principles Regarding the Corporate Income Taxation*, *SEE Law Journal*, No. 11, 2023, pp. 35–54.

³⁶ See e.g. Lončarić-Horvat, O., *Socijalna država i posredni porezi*, *Revija za socijalnu politiku*, Vol. 2, No. 2, 1995, pp. 115–121; Šimović, J., *Socijalni učinci poreza na dodanu vrijednost*, *Revija za socijalnu politiku*, Vol. 5, No. 2, 1998, pp. 99–109. The question of tax equity is closely (but not exclusively) connected to the problem of determination of the optimal number of tax rates of the value-added tax. About the latter problem see e.g. Cindori, S.; Pogačić, L., *Problematika utvrđivanja broja i visine stopa poreza na dodanu vrijednost*, *Ekonomika misao i praksa*, Vol. 19, No. 2, 2010, pp. 227–249.

acceptable degree of fairness in taxation (without sacrificing the fiscal interest of securing budgetary revenue, which is the very purpose of taxation).

It should be noted that this social aspect of taxation, as the only one explicitly recognized at the constitutional level, according to the position of the Croatian Constitutional Court, does not necessarily require taxation through the application of a progressive rate. The Constitutional Court comes to this conclusion by drawing a distinction between the provisions of the Croatian Constitution, on the one hand, and those of Spain and Italy, on the other: “The Constitutional Court, namely, is not competent to decide whether ... the legislator ought to have applied a proportional or a progressive tax rate. It could decide on that question only under the assumption that the constitution maker has expressly prescribed that the tax system of the Republic of Croatia must conform to the principle of progressivity, as is the case in certain constitutions of European states. Thus, for example, Article 31 Paragraph 1 of the Constitution of Spain expressly provides that everyone shall contribute to the support of public expenditure in accordance with their economic capacity through a fair tax system based on the principles of equality and progressive taxation, which in no case shall be confiscatory in nature ... Likewise, Article 53 Paragraph 2 of the Constitution of Italy prescribes that the tax system shall be governed by the principle of progressivity.”³⁷ Although it does not require excessive imagination to conclude that the provisions of the Croatian Constitution concerning the principles of taxation, in substance (though not explicitly), correspond to the principle of progressivity,³⁸ which would, at least potentially, require the application of a progressive rate (in the regulation of direct taxes), it follows that the legislature is permitted to achieve progressivity (that is, fairness) in taxation through other instruments of tax policy, and not (exclusively) through the application of progressive tax rates.

Thus, for several decades in the context of income taxation in the Republic of Croatia the pursuit of tax justice has relied more heavily on the redistributive effect of the personal allowance and less on a system of progressive tax rates (the number of which has been gradually reduced,³⁹ so that only two tax rates are currently in force, with their level determined by local self-government units⁴⁰). Nevertheless, recent research has shown that such an attempt to achieve tax justice fails to fulfil its purpose, given that, due to the continuous increase in the amount

³⁷ Constitutional Court of the Republic of Croatia, Decision and Ruling No. U-IP-3820/2009 U-IP-3826/2009 and others, of 17 November 2009, para 15.3.

³⁸ See Kuzelj, V., *op. cit.*, note 21, p. 472.

³⁹ See Kuzelj, V.; Jerković, E.; Perić, T., *op. cit.*, note 34, pp. 255–257.

⁴⁰ For the current system of determining tax rates of personal income tax in the Republic of Croatia, see Kuzelj, V.; Surla, J.; Milenković, M.; Jurčević, V.; Dunatov, J., *op. cit.*, note 34, pp. 91–97.

of the personal allowance and its augmentations (for example, for dependent children or family members, for different degrees of disability or for pensioners), the total amount of the personal allowance for the socially most vulnerable taxpayers exceeds the amount of their taxable income⁴¹). Therefore, (only or at least more likely) by using progressive rate in income taxation both horizontal and vertical equality in taxation can be achieved, and through detailed analyses, solutions should be identified in order to regulate income taxation in a manner that aligns as closely as possible with the principle of tax equity (fairness), given the current circumstances and the present temporal and spatial context. This in turn challenges the prevailing economic notion of equity founded on the principle of proportionality. Namely, the request for proportionality through the use of flat rate in (primarily income) taxation is in big part driven not just by different understanding of equity, but also by the idea of enhancing efficiency of taxation in general. As Milton Friedman, in his seminal work, puts it: “In fact, such a flat rate, even with no change whatsoever in other features of the law, would yield a higher revenue because a larger amount of taxable income would be reported for three reasons: there would be less incentive than now to adopt legal but costly schemes that reduce the amount of taxable income reported (so-called tax avoidance); there would be less incentive to fail to report income that legally should be reported (tax evasion); the removal of the disincentive effects of the present structure of rates would produce a more efficient use of present resources and a higher income.”⁴²

Therefore, the question arises: can this economic notion of equity as proportionality, in connection with the request for efficiency of tax system, be reconciled with the constitutional (social) principles of taxation? Such reconciliation is indeed possible. As it is described above, the constitutional principle of tax equity requires the progressivity of the tax system as a whole, but it does not mandate that every individual tax or tax rate be progressive. Nor does it require the exclusive use of progressive tax rates, allowing the legislator to employ alternative mechanisms to mitigate the regressive effects of certain taxes and to achieve overall system progressivity. This approach affords the legislator a wide margin of appreciation in designing tax policy and does not exclude the economic understanding of tax equity based on proportionality.

From the taxpayer’s point of view, the most important objective is to achieve fairness in taxation, as this has a direct impact on the taxpayer and his economic situ-

⁴¹ See Novinc, M.; Viljevac, V.; Novinc, F., *Povratni porezni kredit kao instrument pravednije porezne politike u Republici Hrvatskoj*, EFZG Working Paper Series, No. 26-02, 2026, pp. 5–8, 16.

⁴² Friedman, M., *Capitalism and Freedom*, The University of Chicago Press, Chicago and London, 2002, p. 175.

ation, while the primary interest and goal of the state is to satisfy the principle of generosity, which will ensure the inflow of funds necessary to meet public needs. People desire fair taxes more than lower taxes. They want everyone to pay their taxes in proportion to their wealth.⁴³

Taxation achieves many objectives, the most obvious of which is, of course, the fiscal one, i.e. securing sufficient revenue to meet public needs. In addition to this goal, taxation can achieve numerous other important objectives aimed at influencing taxpayers' behavior, which can be, and often are, in direct conflict both with one another and with the fiscal objective of taxation, which has historically been by far the most important, and often represented the exclusive purpose of taxation. The growing needs and development of modern society have imposed a need to also achieve certain non-fiscal objectives. Of these, the social objective of taxation is often regarded as the most divergent from the fiscal objective, as it aims to establish a fairer distribution of income and wealth between taxpayers. However, in order to achieve the social aim of taxation, the generosity of the tax itself is inevitably reduced, which results in a reduced capacity to meet the primary (fiscal) objective of taxation.

Namely, tax efficiency refers to collecting as much tax revenue with as few expenses as possible, while tax equity (fairness) refers to the fairer redistribution of income and wealth in society, which necessarily requires more complex tax solutions. Thus, in economic theory, it is often considered impossible to achieve the principles of fairness and efficiency in taxation at the same time, given that "[a]n increase in efficiency must be accompanied by an inevitable loss of equity."⁴⁴ Nevertheless, it should be emphasized that the relationship between these two principles is partly complementary, because they stand in relation to each other as a goal and a mean by which it should be achieved. Namely, the collection of tax revenues in an efficient manner represents the primary goal of taxation in general, while the idea of tax equity (fairness) as a fundamental (in the Croatian context even constitutional) principle of tax system prescribes how this goal should be realized (so that a fair distribution of the tax burden is achieved).

4. THE PROCEDURAL ASPECT OF FAIRNESS IN TAXATION

The above-outlined conclusions largely subsume the considerations relating to the question of material (substantive) equity or fairness in taxation, that is, the

⁴³ Adams, C. W., *Za dobro i zlo: Utjecaj poreza na kretanje civilizacije*, Institute of Public Finance, Zagreb, 2006, p. 405.

⁴⁴ Bejaković, P., *How to Achieve Efficiency and Equity in the Tax System?*, *Revija za socijalnu politiku*, Vol. 27, No. 2, 2020, p. 138.

identification of the core of the constitution maker's requirements concerning the design of the tax system. On the other hand, it must also be noted that a tax that is fair *in abstracto*, even once it is translated into statutory text, adopted, published, and brought into force, means little to nothing if it is not implemented (as is, after all, the case with any other legal norm). It is therefore essential to highlight the integral connection between the concept of material or substantive fairness in taxation and its procedural dimension, which is realized through the correct and consistent application of tax legislation to concrete cases.⁴⁵ The latter dimension is realized primarily through tax procedure and the control of its legality and correctness in the administrative dispute and possibly even the constitutional dispute.⁴⁶ Consequently, only where both the material (substantive) dimension of tax fairness (at the level of the statutory design of the tax system as a whole) and its procedural aspect (in the process of assessment and collection of taxes from taxpayers) are consistently fulfilled can one meaningfully speak of a just tax system.

In this context, it is important to insist on the proper qualification of facts in order to determine whether tax provisions have been potentially (ab)used contrary to their purpose, while at the same time insisting on the lawful and consistent application of tax regulations by tax authorities (guided by the law and the facts, rather than by a desire to fill the budget, that is, to protect the fiscal interests of the state as the tax creditor). A good example of a questionable, or even suspect, approach by tax authorities is found in instances of the design and retroactive application of provisions on the so called piercing of the corporate veil for tax purposes,⁴⁷ as well as in the currently very prominent issue of determining the use

⁴⁵ See e.g. Petrović, T.; Cindori, S., *Prava poreznih obveznika kao ljudska prava: razmatranje procesne i materijalne pravednosti u oporezivanju*, u: Miloš, M.; Kuzelj, V.; Mikac, L.; Cindori, S. (eds.), *Ljudska prava i pitanje identiteta*, ZA-Pravo and Faculty of Law, University of Rijeka, Zagreb and Rijeka, 2022, pp. 221–243.

⁴⁶ See e.g. Kuzelj, V., *The Role of Administrative Adjudication in the Realization of the Constitutional Principle of Tax Equity – A Croatian Perspective*, *Zagrebačka pravna revija*, Vol. 14, No. 1, 2025, pp. 1–29; Kuzelj, V., *Upravnosudska zaštita prava poreznih obveznika – utvrđivanje činjenica relevantnih za oporezivanje u upravnom sporu*, *Zbornik radova Pravnog fakulteta u Splitu*, Vol. 62, No. 1, 2025, pp. 97–121; Žunić Kovačević, N.; Bassegli Gozde, V., *Dokazivanje u poreznim stvarima – porezni postupak i upravni spor*, *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, Vol. 43, No. 3, 2022, pp. 873–896.

⁴⁷ See e.g. Žunić Kovačević, N.; Gadžo, S., *Institut zakonskog poreznog jamstva nakon novele općeg poreznog zakona 2012.: 'proboj pravne osobnosti' trgovačkih društava u slučaju zlorabe prava*, *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, Vol. 34, No. 2, 2013, pp. 635–670; Žunić Kovačević, N.; Gadžo, S., *Zakonsko porezno jamstvo nakon novele OPZ-a: 'Proboj pravne osobnosti' trgovačkih društava u slučaju zlorabe prava*, *Pravo i porezi*, No. 5, 2014, pp. 26–40; Gadžo, S.; Žunić Kovačević, N., *Retroaktivna primjena pravila o proboju pravne osobnosti u poreznim stvarima: analiza upravnosudske i ustavnosudske prakse*, *Zbornik Pravnog fakulteta u Rijeci*, Vol. 40, No. 1, 2019, pp. 345–380; Kuzelj, V., *Neprimjerenost preuzimanja instituta proboja pravne osobnosti trgovačkog društva u porezno pravo*, *Pravo i porezi*, No. 12, 2023, pp. 20–27; Kuzelj, V., *Zaštita od retroaktivne primjene poreznih propisa (zakonsko porezno*

of tax benefits contrary to the purpose of the law through the concealment of an employment relationship (i.e. dependent work) by means of the craft activities subject to lump-sum taxation.⁴⁸ These two examples illustrate situations in which it appears, at least externally, that the tax authorities act selectively and in accordance with the interests of the state as the tax creditor, rather than on the basis of the primacy of facts and the consistent application of the law. In this context, the role of the administrative courts (primarily), and that of the Constitutional Court (subsidiarily), in protecting the rights of taxpayers comes to the fore. Such protection failed to materialize in the context of the tax piercing of the corporate veil, but it has (at least for now) begun to emerge in the context of crafts subject to lump-sum taxation.

It should be emphasized that this is not merely a matter of supervising the legality of the tax administration's conduct in the context of application of individual tax institutes (although the two examples mentioned above illustrate this in a perfect way), but also of preserving legality in the context of contemporary trends and challenges in the work of tax authorities. A good example of the latter is the digitalization of tax authorities conduct and procedures, which carries significant potential for improving the (perception of) fairness of the tax system among citizens, while at the same time poses a challenge for the protection of the fundamental rights of taxpayers.

Within tax administration the principle of fairness in taxation and the process of digitalization are increasingly intertwined in modern public finance systems. Digitalization offers significant potential for enhancing both horizontal and vertical fairness by improving the accuracy, efficiency, and transparency of tax administration. Also, taxpayers' perception of the principle of fairness is largely shaped by their interactions with tax administration. It is assumed that a fair tax system is supported by efficient tax administration staffed by qualified professionals who

jamstvo), *Pravo i porezi*, No. 4, 2024, pp. 46–53; Kuzelj, V., *Porezni proboj pravne osobnosti trgovačkog društva zbog nepodnošenja poreznih prijava*, *Pravo i porezi*, No. 3, 2025, pp. 68–74; Milotić, I., *Proboj odgovornosti za porezne obveze društva (Opći porezni zakon u 2012. i 2024. godini)*, *Pravo i porezi*, No. 3, 2026, pp. 62–68.

⁴⁸ See e.g. Kuzelj, V.; Petrović, T.; Erent-Sunko, Z., *Prikrivanje radnoga odnosa (nesamostalnog rada) institutom paušalnoga obrta: financijskopravne i radnopravne implikacije*, *Pravni vjesnik*, Vol. 38, No. 2, 2022, pp. 55–74; Kuzelj, V., *Paušalni obrt ili radni odnos (nesamostalni rad) – kriteriji procjene u upravnosudskoj praksi*, *Pravo i porezi*, No. 4, 2026, pp. 54–61; Kuzelj, V., *Fingirani paušalni obrt? Kriteriji za procjenu postojanja radnog odnosa (nesamostalnog rada) u poreznom postupku i upravnom sporu*, *IusInfo*, 1 April 2026, Available at: [<https://www.iusinfo.hr/aktualno/u-sredistu/fingirani-pausalni-obrt-kriteriji-za-procjenu-postojanja-radnog-odnosa-nesamostalnog-rada-u-poreznom-postupku-i-upravnom-sporu-68518>], Accessed 12 April 2026.

continuously improve their competencies and maintain a relationship with taxpayers based on respect and transparency. Such institutional characteristics contribute to strengthening trust and increasing the perceived legitimacy of taxation.

Compliance costs incurred by taxpayers, especially those associated with physical visits to tax administration offices, can increase resistance to paying taxes. These costs, both in terms of time and financial resources, can reinforce perceptions of fairness. In this context, the reduction of administrative burdens becomes an important factor in improving voluntary tax compliance. One key approach to addressing these challenges is the digitalization of tax administration. Modern communication between tax administrations and taxpayers is increasingly bi-directional and is no longer limited to traditional channels such as telephone communication or personal visits. Instead, a large number of taxpayers rely on digital communication channels (including online portals, email, and chatbot-based interactions).

Furthermore, the increased use of technology in tax administrations has the potential to significantly improve the quality of services provided to taxpayers and alleviate challenges in tax collection. As digitalization generates large amounts of data, it is crucial to use this data effectively, especially in the context of risk assessment and analysis, data exchange and administrative cooperation. Overall, digital transformation of tax administration plays a key role in reducing compliance costs, improving service efficiency and strengthening taxpayers' perceptions of fairness within the tax system.⁴⁹ If properly designed and implemented, digitalization can serve as a powerful instrument for strengthening the principle of fairness in taxation and increasing taxpayers' trust in the tax system, while at the same time increasing the efficiency and effectiveness of tax administration.

Alongside the undeniable advantages for efficiency and for the perception of fairness within the tax system, digitalization simultaneously carries risks to the fundamental rights of taxpayers (particularly in relation to cybersecurity, the protection of personal and business data, and similar concerns). It is therefore essential that this process be continuously monitored by the expert community, and that the judiciary (primarily the administrative courts) gradually prepares for potential new cases arising in this context.

One must remember that a right to a fair procedure is one of the fundamental principles upon which rests the entire European legal heritage, as it is guaranteed both by the (European) Convention for the Protection of Human Rights and

⁴⁹ See more: Jerković, E., *The Future of Tax Administration: Artificial Intelligence in the Service of a More Efficient Public Administration*, SEE Law Journal, No. 14, 2025, pp. 90–107.

Fundamental Freedoms,⁵⁰ as well as by the Charter of Fundamental Rights of the European Union.⁵¹ It is also guaranteed by the Croatian Constitution.⁵² All three guarantees, although in a different scope, are applicable to the tax matters.⁵³ Therefore, the respect for the taxpayers' procedural rights is not a choice, but an obligation for the tax administration and the (administrative) courts controlling the legality and correctness of its rulings and conduct.

5. CONCLUDING REMARKS

From the foregoing, several theses may be derived, which could also serve as separate subjects for future (independent) research. Namely, the concept of tax fairness is systemic in character, and in several distinct respects.

First, the ideal of equity (fairness) in taxation is closely linked to the realization of the constitutional concept of the social state and the principle of social justice. Second, tax fairness must be assessed at the level of the tax system as a whole, rather than at the level of individual tax forms, given that other legitimate interests also exist (such as the fiscal productivity or ease of collection of a particular tax, relating to the fiscal aspect of taxation, that is, the interest in securing tax revenues – an inefficient tax is *eo ipso* an unjust one). Third, at the procedural level, the assessment and collection of the due tax must be fair, since one cannot meaningfully speak of a just tax system in which statutory tax forms are designed in a fair manner but are not implemented in practice, or are implemented incorrectly and/or selectively.

Fourth, the need for administrative-judicial and, potentially, constitutional-judicial intervention aimed at correcting injustices committed within the (two-tier) tax procedure not only delays the administration of justice but also increases the overall cost of the process, thereby rendering it necessarily socially insensitive and *ipso facto* unjust (poorer taxpayers, fearing increased expenses, will seldom initiate proceedings to protect their rights violated in the tax procedure, and will often lack the legal knowledge required to do so).

The principles of efficiency and fairness in taxation stand in relation to each other as a means to an end. Namely, while the efficient collection of tax revenues represents the very purpose of the tax system, the fair distribution of tax burden

⁵⁰ Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette – International Treaties, No. 6/99, 8/99, 14/02, 1/06, 13/17.

⁵¹ Article 47 of the Charter of Fundamental Rights of the European Union, Official Journal of the European Union, C 202 of 7 June 2016, pp. 389–405.

⁵² Article 29 of the Constitution of the Republic of Croatia.

⁵³ See Kuzelj, V., *The Role of Administrative Adjudication...*, *op. cit.*, note 46, pp. 9–27.

represents the constitution maker's choice of the method to achieve that goal in an acceptable way. Therefore, although usually marked as opposite and noncompatible values, principles of equity (fairness) and efficiency in taxation may actually reinforce one another. Namely, efficient and in today's age digitalized tax administration reduces the costs of tax collection and impacts the taxpayers' perception of the tax system as more fair and just, which is in turn socially desirable. On the other hand, if the taxpayers perceive tax legislation and the procedure of tax assessment and collection as fair, they will less likely challenge it before the (primarily administrative) courts. Only through equitable taxation and fair distribution of income the Republic of Croatia can join its European brethren in honoring the legacy of (European) social constitutionalism.

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