

Specifics of Family Business from Tax Law Perspective with Emphasis on Selected Aspects of Intergenerational Succession – a Case of the Czech Republic

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Abstract: Compared to standard business activities, a family business shows significant specific features derived, among others, from the connection of family members, family life and business activities. At the same time, these entities are traditionally described to be the backbone for the economies being more resistant to unfavourable conditions. In the Czech Republic the family businesses deserve extra attention now because of the first intergenerational succession that is currently taking place. This paper, which is an exploratory study in its nature, aims to identify and systematize the existing rules regulating family business (family crafts and family business corporations), with an emphasis put on the standards regulating family business succession. Key substantive tax acts, procedural rules as contained in the Tax Procedure Code, basic accounting regulation rules and regulation in the area of social and health insurance premiums were under investigation in this respect. The results of the conducted research prove that the Czech law-making body has not established a preferential tax regime for entities meeting the characteristics of a family business as currently defined in the Governmental Resolution of the Czech Republic. Some preferential clauses for family business as such can be, however, found in the Income Tax Act, which increasingly operates with family ties as one of the criteria for achieving certain tax benefits. In the context of the focus and the results presented therein, this paper can be seen and used as a basis for further research in the area of family business, focusing on the transition/transfer of a family business from the perspective of relevant private and public law rules.

Keywords: Czech Republic, Exploratory Study, Family Business, Preferential Tax Regime, Taxes

JEL Classification: K34, K36, L26

INTRODUCTION

The relevance and importance of family business has been confirmed by a number of foreign and domestic studies, which focus, among others, on the specifics of this type of business (see, for instance, Aronoff and Ward, 2011; Dawson and Mussolino, 2014; Odehnalová, 2011; for a bibliometric analysis see Castillo-Arayo et al., 2021). One of them is – not surprisingly – the interconnection of the performance of economic activity (and its objectives) with family life and family ties (Chu, 2011). On the one hand, this fact can be an advantage (Allouche et al., 2008), on the other hand it can cause a number of potential problems and risks that are necessary to be identified and eliminated (Koráb et al., 2008; Petřů, 2018; Kenyon-Rouvinezová and Ward, 2016; Machek, 2017). Considering family business it is worth mentioning that this category of entrepreneurs represents a backbone for economies (Mandl, 2008). The growing social relevance of family business can also be inferred from the growing number of professional publications dealing with this topic.

The Czech Republic recently joined the group of countries that have established a formal definition of a family

business. In the Czech Republic, the definition is established in the Resolution of the Government of the Czech Republic dated 11 May 2020 No. 535 (Vláda ČR, 2020); this definition has already been updated several times (Ministerstvo průmyslu a obchodu, 2022b). Although the establishment of the definition can be seen as very important (ASMP, 2020), it has not been included in an act and it does not represent a term to which special rules (norms) contained in private and/or public law would be related. The establishment of a family business definition is, however, more than welcome since it helps to contribute to better understanding of the functioning of the family business and to carry out a more suitable research for this category of *sui generis* enterprises (for some related aspects see ASMP, 2020). Regarding family business in the Czech Republic it must be stressed that the first intergenerational succession (transfer of the family business to the next generation of family owners) is currently taking place. The succession process is a very challenging and problematic one, as confirmed by existing foreign studies given evidences on a high rate of its failure. In this respect relevant sectoral and geographical specificities shall be taken into account (Stamm and Libinski, 2011). The expert literature, generally speaking, points to the conclusions that family business management and family business succession cannot be approached in a purely technocratic manner. It is caused by the emotional ties and socio-emotional factors (Berrone et al., 2012) associated with the family business.

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Nevertheless, the possibilities and limits as determined by both private and public law rules cannot be ignored: they shall be duly considered. Important rules in the public law sphere are those arising from the tax law which is of crucial importance in terms of the transfer of the family business. Ignoring or omitting the standards established therein can pose a problem in further family business operating, or can burden the transfer process with a sub-optimal tax liability.

The essence of this paper is to map the situation in *de lege lata* regulation in respect of the identification and systematization of the existing special rules in the substantive and procedural tax regulation concerning family business. A special attention is paid to the investigation of the aspects related specifically to the transfer of a family business. The ambition of this paper is to form a basis for further research, not only in relation to potential *de lege ferenda* considerations, but above all as creating a framework for in-depth analyses of the existing rules (including those embodied in private law).

The structure of the paper is as follows. After the section that specifies the materials and methodology, there is a section presenting results of the carried out investigation. Next section provides an assessment of the results obtained, together with the identification of attributes related to the operation and transfer of the family business that should be reviewed/revised in the context of intergenerational succession to achieve a new/better fitting set-up for upcoming owners. A specification of the basic options for a transfer of a family business (*for inter vivos* situations), which can be seen as a starting point for further research while valuating them in term of their advantages and disadvantages, is added as well.

1. MATERIALS AND METHODOLOGY

The goal of this paper is primarily to identify and systematize the rules contained in the substantive and procedural tax regulation contained in the acts which relates to a family business and then to evaluate existing preferential tax regime granted to this group of enterprises. Logic suggests that a number of regulations do not have special provisions for a family business. It should be, however, pointed out that there is no such comprehensive study proving or disproving such a statement, and that, without the investigation carried out, this would be a mere unfounded assumption. This research question/assumption is being tested/verified in this paper. To reach this goal the analysis and synthesis of the rules were realized for below stated acts:

- substantive legal regulation - tax law:
 - Act No. 586/1992 Coll., on Income Taxes, as amended (hereinafter referred to as the Income Tax Act),
 - Act No. 235/2004 Coll., on Value Added Tax, as amended (hereinafter referred to as the Act on VAT),
 - Act No. 16/1993 Coll., on Road Tax, as amended (hereinafter referred to as the Act on Road Tax),
 - Act No. 338/1992 Coll., the Real Estate Tax Act, as amended (hereinafter referred to as the Act on Real Estate Tax);

- procedural legal regulation - tax law:
 - Act No. 280/2009 Coll., the Tax Procedural Code, as amended (hereinafter referred to as the Tax Procedural Code);
- accounting legal regulation:
 - Act No. 563/1991 Coll., on Accounting, as amended (hereinafter referred to as the Act on Accounting),
 - Decree No. 500/2002 Coll., implementing certain provisions of the Act No. 563/1991 Coll., on Accounting, as amended, for accounting units that are entrepreneurs keeping double-entry accounting, as amended (hereinafter referred to as the Decree on Accounting for Entrepreneurs);
- social and health insurance legal regulation:
 - Act No. 589/1992 Coll., on social security contributions, as amended (hereinafter referred to as the Act on Social Security Contributions),
 - Act No. 187/2006 Coll., on sickness insurance, as amended (hereinafter referred to as the Act on Sickness Insurance),
 - Act No. 48/1997 Coll., on public health insurance and on amendments and additions to certain related acts (hereinafter referred to as the Act on Public Health Insurance),
 - Act No. 592/1992 Coll., on general health insurance premiums, as amended (hereinafter referred to as the Act on General Health Insurance Premiums).

The research conducted was based on a qualitative research, the aim of which was generally to improve understanding of the selected social phenomenon (situation) (Disman, 2011; Becker, 2009). In this case, to identify specifics governing family business in tax law, regulations governing social and health insurance premiums and in the field of accounting were investigated. The term “social security insurance“ is comprehended in a broader sense as a system including the components of social insurance and health insurance. The case study and grounded theory (see for instance Hendl, 2008) were the methods applied within the qualitative research conducted. Content analysis of the text was the basic data collection method used for gathering the information. The analysis is based on the legal status as effective as of 01 July 2022, unless otherwise stated in the text.

For the purposes of this article, a family business represents, in accordance with the officially established definition, a family business corporation or family business. The updated definition of a family business as of 20 January 2022 reads as follows (Ministerstvo průmyslu a obchodu, 2022b):

1) A family business corporation is a business corporation in which members of one family directly or indirectly exercise a majority of the voting rights and at least one member of that family is a member of the statutory body of the business corporation; the characteristics of a family business corporation are also met if the sole shareholder of the corporation is

a member of one family who is also a member of the statutory body and at least one other member of the same family is a member of its statutory body, its employee, its proxy or a member of its supervisory board. A business corporation in which the majority of the voting rights are exercised in favour of one family by a foundation or a trustee of a trust, if at least one member of that family is also a member of the statutory body of the foundation or a trustee of the trust, shall also be deemed to be a family business corporation.

2) A family business is a business in which at least two members of one family participate with their work or property and at least one of the members of this family holds a trade or other similar licence or is entitled to do business for another reason.

3) For the purposes of the family business, spouses or partners working together or, with at least one of the spouses or partners, their relatives up to the fourth degree, persons married to spouses or partners up to the third degree, persons related to them in the direct line, or siblings shall be regarded as members of the same family.

The identification, evaluation and analysis of the sub-elements in the law system was based on a taxonomy following the construction element of a tax act (according to Vančurová et al., 2020), namely:

- a) tax subject;
- b) tax object;
- c) tax exemption;
- d) tax base and tax period;
- e) deductions from the tax base;
- f) tax rate;
- g) tax reliefs.

The article covers aspects related to social security regulations which are considered to be of a tax in their nature (OECD, 2016) and accounting regulations as well.

2. RESULTS

2.1. Tax Regulations

In the conditions of the Czech Republic, the main substantive legal regulation for the **taxation of incomes** is the regulation as established in the Income Tax Act. This act represents a code covering both the taxation of the incomes of individuals and legal entities. Considering the issue of taxation of the incomes of individuals one can conclude that - as far as the functioning of family businesses (in this case primarily family craft) is concerned, the legal regulation does not contain specific rules governing family business with some exceptions as specified below:

- In case of gratuitous gift (transfer) to family members and other persons defined by law, a tax-free income is involved (see Sec. 10(3)(c)(1), (3) and (4) of the Income Tax Act); if one accepts also the logical thesis that inheritance is primarily a family

matter, then also the exemption of income for the event of the inheritance represents another specific rule governing (not exclusively) family business (see Sec. 4a(a) of the Income Tax Act).

- There are specific rules for determining the tax base for the event the business is realized in a form of so called “cooperating persons” (see Sec. 13 of the Income Tax Act): for such a case it is possible to distribute certain level of incomes and expenses to specified persons (primarily, but not exclusively, to family members).

To avoid abusing the rules for cooperating persons, the amounts are limited both in absolute and relative figures (see Sec. 13(2) and (4) of the Income Tax Act). Utilisation of this tax optimization measure brings, however, a number of related limitations (e.g. impossibility of reallocation of the tax base in case a flat tax is used or a tax relief for a spouse is applied - see Sec. 35 ba(1)(b) of the Income Tax Act).

To sum it up, the above stated special rules do not represent rules governing (providing a special tax advantage) exclusively a family business. The legal regulation represents rather a legislator’s intention to take account of personal (family) ties and to provide such relations some better treatment compared to the others.

Personal income tax is strictly linked to social and health insurance premiums – namely to partial tax bases from the incomes from employment (see Sec. 6 of the Income Tax Act) and incomes from self-employment (business activities) (see Sec. 7 of the Income Tax Act). The acts covering health and social insurance reflect personal status and situation of individuals (for instance, a childcare is a reason for which the state is the payer of the insurance premiums). Nevertheless, there are no specific rules governing a family business. There is one exception – a special rule related to so called cooperating persons. The cooperating persons, although not being subjects with the obligations as set in the Trade Licensing Act, are persons participating in the social and health insurance premiums system.

From a **corporate income tax perspective**, the predominant form of a business corporation is the form of a Ltd. company (see Český statistický úřad, 2022a; BusinessINFO.cz, 2022). The regulations/rules governing “Ltd.” companies are evidently those of the tax law that seem to have the broadest impact. In relation to corporate taxation, there are a number of rules/standards where reference is made to a family foundation or trust. However, the embedded rules cannot be seen and assessed as the existence of a preferential rule for a family business. Based on a deeper analysis of the existing provisions, one can conclude that these rules/standards represent an anchor of the private law rules in the Income Tax Act. This is relevant from the point of view of legal certainty and the requirement as set under Art. 11(5) of the Bill of Fundamental Rights and Freedoms (which reads as follows, “*Taxes and fees shall be levied only on the basis of law*”). If there is no such an anchor, the legislator would create entities whose income would be outside the scope of the Income Tax Act.

Table 1. Existence of Specific Preferential Rules for a Family Business in Substantive Tax Law.

Construction Element of the Tax	Act Under Investigation and Preferential Rules Existence			
	Income Tax	VAT	Road Tax	Real Estate Tax
Tax subject	no (Sec. 2; Sec. 17; Sec. 38c)	no (Sec. 5 et seq.)	no (Sec. 4)	no (Sec. 3; Sec. 8)
Subject of the tax	no (Sec. 3 et seq.; Sec. 18)	no (Sec. 2; Sec. 2a in conjunction with others)	no (Sec. 2)	no (Sec. 2; Sec. 7)
Tax exemption	partly for taxation of natural persons (Sec. 4; Sec. 4a; Sec. 19; Sec. 19b)	no (exemption with a deduction - Sec. 63 et seq.; exemption without a deduction - Sec. 51 et seq.)	no (Sec. 3)	no (Sec. 4; Sec. 9; Sec. 12d)
Tax base	no (Sec. 5; Sec. 16a; Sec. 20b, Sec. 23 and related)	no (Sec. 36 et seq.)	no (x)	no (Sec. 5; Sec. 10)
Tax year	no (Sec. 16b; Sec. 21a)	no (Sec. 99 and Sec. 99a)	no (Sec. 15)	no (Sec. 12c)
Deductions from the tax base	no (Sec. 15; Sec. 20(8); Sec. 34)	no (x)	no (x)	no (x)
Tax rate	no (Sec. 16; Sec. 21)	no (Sec. 47 et seq.; Annexes 2 et seq. of the Act)	no (Sec. 5 - link to Annex of the Act)	no (Sec. 6; Sec. 11; Sec. 11a)
Tax reliefs	no (Sec. 35; Sec. 35ba - Sec. 35c)	no (x)	No (Sec. 12)	no (x)

Source: Own elaboration using the results of the conducted research.

The common provisions of the Income Tax Act that govern both taxation of individuals and legal entities do not provide specific advantages for family businesses, but there is a rule that undoubtedly deserves special attention. This is the obligation to set transfer prices in accordance with arm's length principle - i.e. to set prices between associated persons in the amounts that would correspond to standard market conditions (see Sec. 23(7) of the Income Tax Act). Associated persons, in relation to whom such an obligation applies, fall into two categories, namely:

- a) Persons associated through capital (connected both directly and indirectly);
- b) Persons associated otherwise (includes five different sub-categories, one of which is *expressis verbis* a category of close persons (see Sec. 22 of Act No. 89/2012 Coll., the Civil Code, as amended)).

All the categories of associated persons can be chargeable to the family business. The first category of entities corresponds to the situation where the family business is taking a place with the use of a holding. Such an arrangement of the entities can be created for a number of reasons (e.g. optimization of production and other processes, achieving synergies, in the case of involvement of a foreign entity to reach the foreign market (domestic entities are better perceived in foreign markets), allocation of a certain type of assets in a special entity). Other types of the association will be involved in family business as well (for more details, see Sec. 23(7)(b)(1) et seq. of the Income Tax Act).

In relation to the regulation contained in the Act on VAT, one must again conclude that this regulation does not contain specific preferential (beneficial) provisions for a family business. On the contrary, the Act on VAT, as well as the Income

Tax Act, introduces certain countermeasures to prevent tax evasion when the entities involved are in a specific relationship (see Sec. 36a (*Tax base in special cases*) of the Act on VAT). This is, however, necessary to ensure that the tax base is adjusted when it is, or could be, distorted as a result of an "extraordinary" relationship between the entities concerned. This VAT clause is a kind of analogy as contained under Sec. 23(7) of the Income Tax Act.

Even the **Act on Road Tax**, which has recently undergone significant changes in favour of taxpayers in connection with efforts to compensate taxpayers for the sharp increase in fuel prices, does not contain special preferential standards for family businesses. As noted above, there are quite frequently enshrined rules that govern/regulate intermingling the personal and business assets in family businesses. This remains valid also to real property. However, the **Act on Real Estate Tax** does not contain specific preferential provisions for family businesses either. On contrary, the buildings used for business purposes are taxed more heavily compared to buildings used for private purposes (for instance a house or an apartment used partly for business will lead in an increase in the amount of tax – for more details see Sec. 11a of the Act on Real Estate Tax).

Table 1 above summarises the results of the research conducted for the tax substantive legislation focused on the identification of the existence of a special (specific) rule for a family business.

To sum it up, one can conclude that in the area of substantive law, the Czech legislator has not, intentionally or unintentionally, created a double-track legal regulation in respect of establishing specific (preferential) rules for family business compared to the categories of "another business".

2.2. Tax Procedural Code

The same conclusion about the absence of the preferential provisions governing family business can be made in relation to the tax procedural regulation - i.e. in relation to the **Tax Procedural Code**. This is not surprising - it is just the procedural law where preferential (not generally applicable) rules give rise (or are capable of giving rise) to discrimination. It is true that the Tax Procedural Code reflects, *inter alia*, the personal status (situation), which is a very sensitive and important issue in relation to family business. These rules, however, are not of the nature to provide specific preferential provisions for family business as such.

From the taxpayers' point of view, the issue of penalties is a very sensitive one. Their imposition can be a serious problem; of course, not only for family business. Regarding the possibility of moderating them which is possible in relation to penalties (see Sec. 259a of the Tax Procedural Code), to penalties for late declaration of a tax (see Sec. 295aa of the Tax Procedural Code) and to the interest on late payment and interest on the amount of the tax paid in the instalments (see Sec. 259b of the Tax Procedural Code), there are no specific provisions establishing a preferential regime for selected types of business entities either. For example, in relation to penalties (Sec. 251 of the Tax Procedural Code) and interest on late payment (see Sec. 252 and related sections of the Tax Procedural Code), moderation is possible. The relevant rules are, however, of a general nature again: they are related to the personal status and situation of a tax-payer. It is true that these aspects can be seen as more relevant in the context of a family business, since the burden imposed upon the family business usually affects the economic situation of the whole family. Detailed rules for the latter stated can be found in the Guidelines issued by the General Financial Directorate D-47 on the remittance of the accessory to taxes (GFR, 2021).

2.3. Accounting Regulations

The Act on Accounting Act is the basic regulation that contains the rules for bookkeeping for both business and non-business entities. It does not contain specific preferential provisions for family businesses either. A natural person performing a family business in a form of a family craft may keep double-entry book-keeping voluntarily (see Sec. 1(2)(f) of the Act on Accounting) or as a result of by law set facts (see Sec. 1(2)(d), (e), (g) and (h) of the Act on Accounting). The idea enshrined in the Act on Accounting when considering preferential rules is based on the following: as the size of an entity increases (assessed through the indicators of net assets, total turnover and number of employees), the number of the obligations of the entity that must be met is increasing. The requirements as set in the Act on Accounting are further elaborated in the Decree on Accounting for Entrepreneurs, which does not provide preferential treatment for the category of family businesses either. The summary of the findings can be seen in Table 2.

One can conclude that the Act on Accounting provides no preferential treatment/conditions for a family business. It just contains less demanding rules for micro and small companies. This conclusion supports also the rules as set in the Decree on Accounting for Entrepreneurs: as the size of the accounting entity increases, its information obligations in-

crease (see Sec. 39 et seq. of the Decree on Accounting for Entrepreneurs). It is worth mentioning that the entity shall also disclose information about transactions that the entity has entered into with a related person and these transactions were not realized at arm's length. The entity shall disclose the amount of those transactions, including the nature of the related person relationship, and other information about those transactions that is necessary to understand the entity's financial position. A related person is a related person within the meaning of international accounting standards. (see Sec. 39a para. 2 of the Decree on Accounting for Entrepreneurs)

3. DISCUSSION - EVALUATION OF THE CURRENT DE LEGE LATA LEGISLATION AND IDENTIFICATION OF KEY ISSUES IN CONNECTION WITH THE SUCCESSION/TRANSFER OF FAMILY BUSINESS

The regulation of family business, including the associated tax issues, is a broadly discussed issue (see, for instance, Hines et al, 2019; Chen et al., 2010; Shin, 2020; Steijvers and Niskanen, 2011; Vincencova et al., 2015). This fact stems from the social relevance of this type of business: family crafts and family business corporations are major employers and producers (Mandl, 2008). The existence of a special legal regulation (even in a form of a special segment of law) is discussed for instance in the neighbouring Slovakia, where considerations aimed at regulating family business (including related considerations for tax law) take a form of significant conceptual changes. One of the leading experts on family business in Slovakia stated on the basis of research carried out in Slovakia that *for the reliable functioning of the family business it is not possible to simply "wrap" the family business into valid legal norms without adapting and harmonising these norms that shall be in line with the "inner essence of the family business"* (Sirotko, 2018). In this context, he pointed to the need to focus, *inter alia*, on the following issues:

- The family as such should become a special subject of the tax law;
- Family members would no longer be liable for tax on the income from the family business;
- The property of the family business should be established by the declaration of the individual family members;
- Ownership of family property would be treated for tax purposes as joint ownership (ownership without shares);
- Business and employment relationships should not exist between family members;
- The family should not be subject to transfer pricing obligations.

Accepting the above stated rules would undoubtedly mean the establishment of a completely new regulation for the "family", or "family business". There are undoubtedly interesting and rational considerations behind the idea stated above in the meaning of the reflection of real economic and social ties. However, in the opinion of the author of the paper, they represent considerations whose introduction would inevitably bear a discriminatory aspect (family vs non-family

Table 2. Existence of Specific Preferential Rules for a Family Business in Act on Accounting.

Part of the Accounting Act	Area Covered	Sections	Existence of a Special Standard for Family Business	Additional Commentary
One	General Provisions	1 - 8	no	An obligation for an individual (entrepreneur) to keep double-entry accounting for the event his/her turnover is at least 25 mil. CZK (Sec. 2 para. 2 letter e).
Two	Scope of accounting, accounting documents, accounting entries and accounting books	9 - 17	no	A possibility to apply a simplified form a double-entry accounting – for a micro or small accounting entity that shall not be audited (Sec. 9 para. 3).
Three	Financial statements	18 - 23b	no	Micro and small accounting entities are, generally speaking, exempted from the obligation to make out a cash-flow statement and a statement on the changes in equity (Sec. 18 para. 2).
Four	Valuation methods	24 - 28	no	Micro accounting entities are exempted, for some cases, from more demanding ways of setting the value (Sec. 27 para. 7).
Five	Inventory of assets and liabilities	29 - 30	no	x
Six	Preservation of accounting records	31 - 32	no	x
Seven	Report on payments to the government of a member state of the European Union or a third country	32a - 32e	no	This duty is generally related to large accounting entities and subject of public interests.
Eight	Disclosure of non-financial information	32f - 32i	no	This duty is related again to large accounting entities, subjects of public interests and certain consolidated accounting entities.
Nine	Common, transitional and final information	33 - 38		x

Source: Own elaboration using the results of the conducted research.

business). The double-track nature of legislation is usually connected with such a potential risk (for related Mason and Knoll, 2012; Court ruling of the Constitutional Court of the Czech Republic of 27 February 2018, Case No. Pl. ÚS 15/17). A concept that introduces specific tax rules for family businesses is, *ceteris paribus*, probably a more correct approach while taking account of the economic reality. In this respect, the issue of the establishment of special legal regulations for a family business seems to be very relevant. On the other hand, given the scale of the issue and the problems involved, this would be a significant intervention in the existing legal system. Considering the current problems and other priorities of the Czech legislator, this cannot be expected, or more exactly, it does not represent a priority to be addressed at present.

When speaking of the *status quo* in legal regulation, it is true that some preferential provisions governing family business can be found in the Income Tax Act. It is again the Income Tax Act which contains specific preferential provisions relating to the personal status of the taxpayer. This is, for example, a tax relief for a spouse who did not reach the income threshold (see Sec. 35ba (1)(b) of the Income Tax Act). The

same can be concluded in relation to the legal regulation contained in the Tax Procedural Code, where tax subjects facing a certain difficult personal situation can reach some benefits (for instance, partial or full waiver of certain penalties, possibility to pay the tax in instalments) compared to the others. This resume remains valid also for the social and health insurance premiums and their regulations. This includes, for example, the definition of situations in which the state is the payer of health insurance or the situations in which the subjects are not subject to the set minimal assessment base.

Nor the legal regulation for the accounting of entrepreneurs contains special provisions/rules for family business. The benefit in the reduction of accounting and reporting obligations is quite rationally based on selected economic indicators: based on the EU regulation (see Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013). This attitude can be assessed as appropriate (or more appropriate) in the light of the non-discrimination criterion. In terms of *de lege ferenda* proposals, the question is therefore whether special treatment and/or support should not be directed more generally towards the category of SMEs, or

micro, small and medium-sized enterprises, which is also typically the case in other countries. A very complicated (if not insurmountable) obstacle is also the need to implement related changes in the private law sphere. A potential problem, which may also play a role, is a certain decline of the family (Kuchařová, 2022; Kuchařová, 2021) connected with a high divorce rate in the Czech Republic (Český statistický úřad, 2022b). Although the author agrees with the above-mentioned idea of creating special legislation for family business, he is of the opinion that such a large-scale change is not possible due to the existing barriers and problems.

3.1. Selected Aspects of the Operation and Transfer of a Family Business with an Emphasis on Intergenerational Exchange – a Background

In the Czech Republic, there is a lack of detailed studies specifically related to family business in the context of tax planning. However, it is clear that family businesses are not and will not be alien to tax planning. The aggressiveness in tax planning seems to be generally influenced by the participation of family members in company management (Steijvers and Niskanen, 2011). Thus, a lower level in aggressive tax planning can be expected in smaller family businesses for which there have been proven a social connection to the close surroundings and a high responsibility to stakeholders (Cruz et al., 2014). A higher social responsibility seems to be related to the efforts to maintain the image of the family business, which is immanently linked to the family name. Family businesses, however, try to take advantage of the

opportunities to achieve tax and related benefits as well (Sánchez-Marín et al., 2010). At the same time, a number of studies demonstrate that family businesses are more sensitive to the risk of agency costs, loss of reputation and thus less willing to apply a more aggressive approach to tax optimization (Chen, 2010). The thesis that family businesses in good economic conditions exhibit a higher rate of *inter vivos* transfer has been confirmed in some studies (for instance see Hines, 2019), with this phenomenon being significantly determined by related tax considerations.

Based on the result of the analysis carried out, one can conclude that family businesses, like other businesses, have the same needs and transactions as non-family businesses, and that the same rules shall be applied to them.

Some higher risk of non-compliance with tax law standards can be assumed for certain categories of family businesses (especially micro and small ones). This will be due to the close link between personal (family) assets and business assets, combined with a low degree of differentiation between these two categories. There is then a risk of omitting (or even ignoring) of tax law rules. The process of intergenerational succession/transfer and its planning themselves that can serve, or should serve, for the revisions of the existing practice and for the setting of more appropriate rules. The table below (see Table 3 below) provides a summary of the selected key factors and their relevance in terms of continuation and value creation for future generations as the family business is seen and understood as the creator and preserver of family wealth (Botero et al, 2015).

Table 3. Selected Relevant Aspects of Family Business and their Importance.

Factor	Relevance	Related Risks (Problems)	Commentary
Choice/change of the legal form of doing business	An element relevant, among other things, from the point of view of: a) tax burden; b) other levies (social security and health insurance premiums); c) obligations and guarantees set for the owners (shareholders); d) possibility of transferring/selling the family business; e) the possibility of paying profit shares; f) the form and size of sanctions for non-compliance with public law norms.	As the size increases, the complexity and complexity of the agenda, determined by, among other, legal regulations, also increases. Incorrectly or inadequately maintained agendas (including accounting) can cause serious problems (risk of sanctions, threat to the reputation of the family business, inability to competently (correctly) determine the value of the business in case of sale or entry of a new investor.	A properly maintained agenda (accounting, tax records, etc.) reduces the risk of sanctions in the future. An appropriately set up form of business, or the creation of a suitable holding structure, allows tax optimization that contributes to the growth of the value of the company (Russo (ed.), 2007), which is a generally valid business objective (Režňáková, 2012).
Internal arrangement of the relationships	Element relevant to: a) labour relations; b) business and other legal relations with family members.	In employment law, it is common for one person (a family member) to take a multiple role (to perform a number of functions) -employee, statutory body, etc. In this respect, it is necessary to point out to the extensive case law of the Courts which regulates (specifies) related issues and which is - in many respects - problematic from the practical point of view.	A higher degree of non-compliance with the arm's length principle can be expected for transactions between a family business and a family member (transactions shall be set in line with the arm's length principle). Transfer pricing tax audits are quite common (Finanční správa ČR, 2014).

Factor	Relevance	Related Risks (Problems)	Commentary
		In the context of commercial law relationships, there is a risk that transactions will be carried out without a proper basis and under conditions that do not correspond to normal market conditions - such a situation contradicts the requirements as set in the tax law.	In the absence of clearly defined rules, it is necessary to establish them (e.g. through the creation of a transfer pricing documentation).
Rules contained in the memorandum of association and other relevant documents	For business corporations, the rules contained in the articles of association are of key importance (appropriately set rules can significantly facilitate, or streamline, the succession process). A specific role is played by the arrangement of relationships not only for <i>inter vivos</i> situations but also for <i>mortis causa</i> cases (the latter should also be taken into account in the association contract rules).	Rules missing for certain situations may cause problems in further functioning of the business (e.g. rules for the possibility of transfer/sale of a share; pre-emption right related to a share of an heir who does not want to participate in the further operation of the family business; setting the way/methods of valuation of a share for the event of its sale, etc.).	There is a risk of a decrease in the value of the company due to the occurrence of the problems in functioning of the business. The rules as embodied in the memorandum of association should be a subject of a revision/correction (valid also for other documents that enshrine the relevant rules) within the planning and realization of the inter-generational succession.

Source: Own elaboration based on the conducted research.

Table 4. Succession in the Family Business (Basic Alternatives) – a Starting Point for Further Research in the Area.

Option	Possible Scenarios
Sale of a family business to a person other than a family member	Profit from the sale of the business - potentially available for "starting" another business and/or providing financial means to the family
Transfer of the family business to a family member	Preserving the management of the family business (managed by family member(s))
	Without maintaining the management of the family business (family business management in the hands of an <i>extranea</i>)
Existence of a specific structure, where the ownership is not transferred directly	Foundation
	Trust Fund
	Foreign holding structure (trust or foundation established abroad)
Entrance of another subject in family business (participation of family members and other persons)	Direct investment (own family with another family or with non-family subject)
	Initial Public Offering

Source: based on (Servus et al., 2018; Ministerstvo průmyslu a obchodu, 2022a).

There must be stressed - while considering tax aspects - that the form of the transfer of the family business is one of the key elements.

3.2. Basic variants of the Transfer of a Family Business (*Inter Vivos* Transaction)

The basic variants of the transfer of a business entity (not just a family business) based on *inter vivos* transactions and based on a consensual expression of the will of the parties of the contract are shown in the Table 4 above.

All of the above-mentioned options have various advantages and disadvantages (including tax ones), which shall not be, however, assessed separately. There are many other aspects that must be taken into consideration and related analyses (for instance the strategy of the (family) business, the impact of the chosen option on further functioning as a family business). Even if the international element is disregarded, a very

complex and demanded task remains. To demonstrate the complexity if one considers just the second option (transfer of the business to the family member(s)), then factors as follow must be taken into account:

- payment (one single amount vs payments in instalments vs donation);
- protection of the transferor (donor) for the event of the gratuitous transfer (the option of involving a trust fund may also offer a certain degree of the protection for selected subjects (it can create a safe solution for a donor);
- the legal form of the transferor and the transferee;
- the extent of the transfer of the ownership.

This short exemplary list demonstrates the complexity of the task, which is all the more difficult because a strong emotional element enters the considerations.

4. CONCLUSION

Family business is undoubtedly a very hot and specific topic. There are a number of reasons for such a conclusion. These entities represent a backbone for economies. Family business shows, among others, a higher resistance to adversity of the external environment – highly demanded and appreciated feature for the current global situation. In the Czech Republic, these entities are currently undergoing or planning to undergo their first intergenerational succession. It is true that not only this process, but also all the processes associated with the management of a family business, cannot be viewed in a purely technocratic way: i.e. from the perspective of existing legal rules and norms. On the other hand, these rules and norms cannot be ignored, as they influence significantly the functioning and efficiency of the family business as such. The relevance and importance of tax rules for these entities cannot be doubted as the existing studies prove.

This article deals with tax rules governing family business in the Czech Republic. Its aim was to identify and systematize the rules contained in the substantive and procedural tax law specifically related to family business and then to evaluate the existing preferential tax regimes provided to family business. In this respect, one can conclude that the Czech legislator has not, intentionally or unintentionally, created a legal double track where different rules would be applied to family businesses compared to non-family ones. It is true that there are fundamental differences between a family trade and a family business corporation. However, this is attributable to the existing differences in the taxation system of individuals and corporations.

Based on the conducted research one can conclude that the Income Tax Act does not contain special rules governing family business. On the other hand, it contains, when considering taxation of individuals, some preferential rules that reflect personal (family) ties and provide some better treatment compared to the same transactions not realized between family related persons. The acts covering health and social insurance that are strictly linked to taxation of incomes of individuals reflect personal status and situation of individuals as well. There are, however, no specific rules governing a family business. From the perspective of corporate income tax, the regulations/rules governing “Ltd.” companies are evidently those of the Income Tax Act that seem to have the broadest impact. Anyway, speaking of the rules for corporate income tax there are no specific/preferential provisions established for a family business. The same conclusion remains valid for the common provisions of the Income Tax Act. On the contrary, there is a provision that sets a duty to apply arm’s length principle for the transactions realized between associated persons (such transactions are quite common in family businesses). The Act on VAT, as well as the Income Tax Act, enshrines similar countermeasures to prevent tax avoidance when the entities involved are in a specific relationship. Neither the Act on VAT provides a specific preferential provision for a family business. This conclusion remains valid also for the Act on Road Tax, as well as for the Act on Real Estate Tax. The same conclusion about the absence of the preferential provisions governing family business remains valid for the basic procedural act – namely Tax

Procedural Code. On the other hand, it is true that also the Tax Procedural Code reflects, *inter alia*, the personal status (situation), which is a important issue in relation to family business. These rules, however, are not of the nature to provide specific preferential provisions for family business. The Act on Accounting and related Decree on Decree on Accounting for Entrepreneurs do not contain specific preferential provisions for family businesses either. The idea enshrined in the Act on Accounting when considering preferential rules is based on the following: as the size of an entity increases, the number of the obligations of the entity that must be met is increasing. The Act on Accounting impose less demanding rules especially for micro and small companies (quite common size of the accounting entity for a family business).

The aim of the paper was to assess *de lege lata* situation in the field of taxation, accounting and social and health insurance regulation. The paper thus created a basis for further research on this socially relevant topic, which family business undoubtedly is. In terms of the further research, it will be desirable to take a deeper look at the tax regimes associated with the transfer of family business for *mortis causa* cases and to analyse in more details the tax regimes associated with the transfer of family business for *inter vivos* situations. This must be analysed in conjunction with the rules and boundaries as set by the relevant rules as embodied in the private law.

CONFLICT OF INTERESTS

The author declares no conflict of interest.

ACKNOWLEDGEMENTS

Author is thankful for the support provided by the Technology Agency of the Czech Republic; the paper is one of the results of the project TL02000434 „Family business: value drivers and value determination in the process of succession“.

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Received: Oct 17, 2022

Revised: Oct 24, 2022

Accepted: Dec 30, 2022

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