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THE CONSTITUTIONAL PRINCIPLE OF LEGAL CERTAINTY IN LITHUANIA: A FEW ISSUES OF TAX LEGISLATION

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Abstract. The structure and purpose of this article is two-fold. Firstly, the article identifies the issue of terminology and content of the two constitutional principles defined by the Constitutional Court of the Republic of Lithuania, namely, the principle of legal certainty and the principle of legal security. Based on the systematic analysis of the jurisprudence of the Constitutional Court of the Republic of Lithuania, this article discloses the content of the principle of legal certainty as it is understood in Lithuanian constitutional doctrine. It then focuses on the specifics of the principle of legal certainty in Lithuanian tax legislation by discussing selected issues of ensuring legal certainty in Lithuanian tax law through separate elements of this principle. Such issues as promulgation of tax legal acts, establishing the procedure for calculating taxes, the requirements of establishing the tax laws in advance, and the related issue of retrospective tax regulation together with possible shift of the constitutional doctrine in this field, are discussed from the perspective of the imperatives of the principle of legal certainty. This leads to the conclusion that, although Lithuania has a solid statutory background for ensuring the functioning of the principle of legal certainty, the real operation of this principle in the field of tax law, together with changes in the evolving tax law, poses a number of challenges.

Keywords: principle of legal certainty, content of the constitutional principle, tax law, lex retro non agit

Introduction

The principle of legal certainty is one of the constitutional principles that measures the 'health of the legal system' (Gribnau, 2013). As the Constitutional Court of the Republic of Lithuania (hereinafter – the Constitutional Court or CC) stated in more than fifty (INFOLEX, n.d.) of its rulings, the principle of legal certainty is a constitutional principle arising from the constitutional principle of the state under the rule of law, the purpose of which is, *inter alia*, to ensure an individual's confidence in a State and in law (CC Rulings of 25 November 2002, 17 November 2003, 15 February 2013, 19 March 2020), and which is of particular importance in determining taxes and how they are calculated (CC Rulings of 15 March 2000, 15 February 2013, 7 December 2016).

The corporate tax legislation of EU Member States, including Lithuania, is currently undergoing major changes related to introducing or amending anti-tax avoidance rules, and implementing EU directives and the BEPS[2] recommendations of the Organisation for Economic Co-operation and Development (OECD). Therefore, while incorporating new regulations into national tax systems, legislators face multiple challenges: to adopt and to promulgate new legal acts strictly under the constitutional requirements set for the tax legislation; to incorporate them in a way whereby the consistency of the tax law system is maintained; and to ensure that the new requirements are clear and understandable by the subjects to whom they are addressed. Lack of legal certainty, especially during legislative changes, could increase taxpayers' mistrust and, consequently, increase the likelihood

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[2] OECD initiative of 15 steps to combat tax base erosion and profit shifting.

that taxes will be not paid in full or in part. Hence, ensuring legal certainty is undoubtedly relevant to the State and to the person, whereas respect for the principle of legal certainty implies respect for the interests and legitimate expectations of individuals, and allows striking the right balance between public and private interest. Legal certainty is equally important to the tax administrator when ensuring adherence to the tax laws: the tax administrator, in line with the taxpayers, must clearly understand what the requirements of the law are (both addressed to the tax administrator and the taxpayer) at the given time.

Due to the abovementioned importance of the principle of legal certainty, especially presently when tax regulation is already quite complex and constantly changing at a rapid rate under the influence of international initiatives, it is purposeful to define the aspects of Lithuanian tax regulation which serve as the guarantees for the proper functioning of the constitutional principle of legal certainty in Lithuania, and the issues which may impact the functioning of it (the *goal*[3] of this research). While achieving this goal the *objectives* of revealing the essential aspects of the principle of legal certainty assigned to it by the doctrine of the Constitutional Court, and disclosing the aspects of Lithuanian tax regulation serving as the guarantees of the principle of legal certainty or being the issues which may impact the functioning of it, are set. Thus, the *research object* of this article is the provisions enshrined in the laws of the Republic of Lithuania with respect to requirements of tax regulation presupposed by the constitutional principle of legal certainty.

In order to complete the objectives and to achieve the goal of this article, the empirical (document analysis) research method was used alongside theoretical research methods. These included: historic, linguistic, systematic, logical (for revealing the aspects of legal certainty through the linguistic equivalents and historical and systematic interrelations with other principles), teleological, alongside the critical method (for revealing the challenges to the principle of legal certainty in tax legislation, also for making generalizations and proposals). With the use of all of the above, the rulings of the Constitutional Court relying on the constitutional imperatives of legal certainty and/or legal clarity, paying additional attention to those related to taxation issues, were analysed, along with the legal acts of the Republic of Lithuania that enshrine requirements for tax legislation. The case-law of the Court of Justice of the European Union (CJEU), alongside Lithuanian and foreign scientific works in the fields related to the research, were relied upon to the extent necessary to achieve the goals of the article.

The topic of legal principles exists in Lithuanian legal scholarly works, however the authors, who deal with the content and problematics of legal principles in general (Kūris, 2001, 2002a, 2002b, 2012), or episodically or more comprehensively touch the issue of the principle of legal certainty (Jarašiūnas, 2006; Žaltauskaitė–Žalimienė, 2012; Samuilytė-Mamontovė, 2016; Pranevičienė & Mikalauskaitė-Šostakienė, 2012; Gedmintaitė, 2016), do not link it to tax law. Some other authors who in fact mention some aspects of legal clarity or legislation in tax law (Puzinskaitė & Klišauskas, 2012, pp. 675–695; Kalašnykas & Deviatnikovaitė, 2007, pp. 44–53; Sinkevičius, 2011b) do not link their research to the principle of legal certainty as such. Only Medelienė & Lukas (2015) investigated one aspect of the application of *vacatio legis* in Lithuanian tax regulation. Neither the principle of legal certainty as it is understood in Lithuanian constitutional jurisprudence nor the issues of it in Lithuanian tax legislation were investigated in the works of foreign authors in view of their international character.

1. Particularity and Problematics of Lithuanian Terminology

At the EU level, the jurisprudence of the CJEU recognizes one general principle of law that *inter alia* requires accuracy, clarity, and predictability of law[4] (in Eng., *principle of legal certainty*). International law research papers in English (e. g. Avila, 2016; Braithwaite, 2002; Craig, 2012; Gribnau, 2013; Pauwels, 2013; Popelier, 2008;

[3] All cases of emphasis in the text of this article, including in the text of the quotations, are added by the author of this article.
[4] For foreign law research papers on the content of this general principle of EU law see the dissertations of A. Samuilytė-Mamontovė and A. Gedmintaitė; for the content of this principle in CJEU case-law see both aforementioned dissertations and the scientific articles by Samuilytė-Mamontovė (2016, pp. 35–42), Žaltauskaitė-Žalimienė (2012, pp. 136–155), and Gedmintaitė (2016, pp. 45–48).

Raitio, 2008, 2011; Tridimas, 2006), CJEU decisions,[5] and the texts of EU legislation[6] in the English language commonly use the English term *the principle of legal certainty* to name this principle. However, in the official translations of EU legal acts and CJEU decisions to the Lithuanian language, it is translated both as *teisinio tikrumo principas* (literal translation from *the principle of legal certainty*)[7] and as *teisinio saugumo principas (the principle of legal security* – a translation taking into account the specifics of the content of principle versus Lithuanian constitutional principle of legal certainty),[8] although both terms used in the Lithuanian texts of the CJEU decisions essentially describe the same general principle of EU law which in the English versions of the CJEU decisions is named as *the principle of legal certainty*. The terms '*the principle of legal certainty*' and '*the principle of legal security*' are used inconsistently in Lithuanian legal scholars' works as well: in some cases, they are used to identify the EU-wide general principle, and in other cases to identify two different principles. This confusion regarding the terminology of the principle of legal certainty makes it complicated to understand which principle is being analysed, and what content is attributed to the principle of legal certainty in each particular case.

The conclusion can then be made that this situation may be due both to linguistic reasons[9] for unequal translation from foreign languages of the name of the same principle mentioned in the EU law and in foreign legal scientific papers; and to the constitutional doctrine formed by the Constitutional Court of Lithuania which distinguishes two separate principles, *principle of legal security* and *principle of legal certainty*, as relatively independent constitutional principles with different, although closely related, content.

Therefore, for the sake of clarity, it is worth emphasizing that this article deals specifically with the constitutional principle of legal certainty, as it is revealed in the constitutional doctrine of the Constitutional Court.

2. Defining the Content of the Constitutional Principle of Legal Certainty

2.1. Triad of Principles

The principle of legal certainty was first mentioned in Constitutional Court jurisprudence on 4 March 1999 in the ruling of the Constitutional Court, in the motivation of the petitioner, where the representative of the petitioner argued that 'the principle of legal certainty demands that subjects of legal relations feel certain as concerns their legal situation', that the principle of legal certainty is 'the element of the concept of a state under the rule of law',

[5] For example, see CJEU Judgement of 15 February 1996, Duff and Others, C-63/93, ECLI:EU:C:1996:51; also CJEU Judgement of 20 June 2020, Mulligan and Others, C-313/99, ECLI:EU:C:2002:386.

[6] For example, see point 74 of the preamble of the Commission Implementing Regulation (EU) 2016/2257 of 14 December 2016, re-imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and produced by Chengdu Sunshine Shoes Co. Ltd, Foshan Nanhai Shyang Yuu Footwear Ltd and Fujian Sunshine Footwear Co. Ltd and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14 (Commission Implementing Regulation (EU) 2016/2257, 2016).

[7] For example, see points 22–24 of the Judgment of the CJEU of 15 July 2004 in Case C-459/02 and point 4 of the preamble of the Commission recommendation (EU) 2018/103 of 20 December 2017 regarding the rule of law in Poland complementary to Recommendations (EU) 2016/1374, (EU) 2017/146 and (EU) 2017/1520: their English texts refer to the general principle of EU law – the principle of legal certainty, and in Lithuanian versions of these documents it is also translated as the principle of legal certainty (in Lith. '*teisinio tikrumo principas*'). (CJEU Judgement of 15 July 2004, Gerekens and Procola, C-459/02, ECLI:EU:C:2004:454; Commission Recommendation (EU) 2018/103, 2017).

[8] For example, CJEU Judgement of 20 May 2003, Consorzio del Prosciutto di Parma and Salumificio S. Rita, C-108/01, ECLI:EU:C:2003:296.

[9] A. Gedmintaitė assumes, that because in French doctrine legal security is enshrined in the French term '*sécurité juridique*', where the word '*sécurité*', translated from French means *security* (in Lith. '*saugumas*'), and in English legal security is associated with the term legal certainty, where the word certainty in Lithuanian mainly means *certitude* (in Lith. '*tikrumas*'), and as these two meanings are not identical in the Lithuanian language, the concepts of both legal certainty and legal security may have been entrenched in Lithuanian jurisprudence in order not to lose any of these meanings (Gedmintaitė, 2016, p. 74).

and pointed out that 'the principle of legal certainty is tightly related to the principle of non-retroactivity of the laws'. In the recital of the Constitutional Court ruling, *the principle of legal certainty*, together with *the principles of clarity and precision of legal regulation in taxes*, was first explicitly mentioned in the ruling of the Constitutional Court of 15 March 2000, underlining that these principles are particularly important in establishing taxes and the procedure for their calculation. Within two years of that, the Constitutional Court referred to the principle of legal certainty as a universally accepted (CC Ruling of 19 September 2000) constitutional principle (CC Ruling of 23 April 2002), arising from the rule of law, which underlies the entire Lithuanian legal system and order.

It should be noted that in the jurisprudence of the Constitutional Court, legal certainty as a constitutional principle, an imperative, or an element of the principle of the state under the rule of law is mentioned and invoked very often. The Constitutional Court referred to the principle of legal certainty in the recitals of approximately 100 (out of more than 400) of its rulings and the references to this principle increase: during 2015 – April 2020, i.e. over roughly 5 years, the principle of legal certainty was relied upon in the recitals of over 25 rulings of the Constitutional Court; whereas during 1993–2014, i.e. in roughly 20 years, over 70 mentions of this kind were found (INFOLEX, n.d.).

However, despite the unambiguous conclusion that legal certainty is an important constitutional principle, it is not easy to identify its content in the jurisprudence of the Constitutional Court. First of all, it is problematic that, although the principle of *legal certainty* is mentioned very often in the jurisprudence of the Constitutional Court, it is usually simply named in the triad of principles, stemming from principle of the state under the rule of law, i.e. together with the constitutional principles (imperatives) of the *protection of legitimate expectations* and *legal security*,[10] and listing a greater or lesser list of the duties of the State or the legislature. These duties are generally implied by these principles, without distinguishing which aspects are to be attributed to a particular principle. On the other hand, if the above-mentioned triad of constitutional principles does not provide a clear answer to the question of what imperatives the principle of legal certainty presupposes, it provides other, no less useful, insights. Firstly, the Constitutional Court submits that the principle of *legal certainty* is the element or sub-principle of the principle of the State under the rule of law, thus, a conditional interdependence of the principles can be established (the principle of legal certainty is an integral part of the State under the rule of law). Secondly, since these three principles are very often mentioned together, it is to be considered that these principles, although closely related, are not identical, but are relatively autonomous and have their own purpose and scope, otherwise it would not make sense to have them all and moreover to mention them together. Moreover, based on E. Kūris who points out that all constitutional principles have the same (supreme) legal force and derivative principles are no less binding than those from which they were derived (Birmontienė et al., 2002), and taking into consideration multiple mentions of the principle of legal certainty in the form of this triad as well as the aforementioned impressive frequency with which this principle is relied upon in the rulings of the Constitutional Court, it must be concluded that the principle of legal certainty is tantamount to other constitutional principles jointly referred to (i.e. principles of legal security and the protection of legitimate expectations,).

2.2. Aspects of Legal Certainty Revealed Through Interrelation with Other Principles

Works of Lithuanian legal science admit the issue that the content neither of the principle of legal security nor of the principle of legal certainty is explicitly disclosed in the constitutional doctrine (Samuilytė-Mamontovė, 2016; Gedmintaitė, 2016; Žaltauskaitė-Žalimienė, 2012). On the other hand, the interrelations between the principles and the manner in which the Constitutional Court refers to them in its constitutional jurisprudence enables the disclosure of some aspects which could be attributed to the content of the principle of legal certainty.

On 12 July 2001, in the ruling of the Constitutional Court – the first in which the court relied on the principle of legal security (the case raised the issue of compliance of legal acts establishing the remuneration of judges with

[10] The Constitutional Court rulings typically use the following triad of constitutional principles: 'protection of legitimate expectations, legal certainty, and legal security'.

the Constitution of the Republic of Lithuania [hereinafter – the Constitution]) – the Constitutional Court listed the essential elements (the imperatives) of the principle of legal security. These included the State's duty to ensure *the certainty of the legal regulation*, to protect the rights and acquired rights of the subjects of legal relations, and to respect legitimate interests and legitimate expectations. In addition, in this ruling the Constitutional Court also distinguished and detailed two aspects of the principle of legal security (like the internal structure of the principle of legal security – *author's note*), which are the starting point for more specific manifestations of the content of the principle of legal certainty. According to the first aspect of the principle of legal security distinguished by the Constitutional Court, the imperative of legal security presupposes mandatory *requirements for the legal regulation itself*. This regulation must be *clear* (an implicit reference to the principle of legal clarity – *author's note*) and harmonized, legal norms must be formulated *precisely*, lower-level legal acts *must not contradict* higher-level legal acts, no legal act may contradict the Constitution (a requirement of hierarchy and systematic regulation – *author's note*), and legal normative acts must be *published* in accordance with the established procedure and must be accessible to all subjects of legal relations (the requirement for publicity and accessibility – *author's note*). Secondly, the Constitutional Court pointed out that the legal security principle also includes requirements related to the *validity of legal regulation:* legal regulation may be altered only in accordance with a pre-established procedure and without violating the principles and norms of the Constitution; it is necessary, *inter alia*, to observe the principle of *lex retro non agit*, in that amendments to the legal regulation cannot deny the legitimate interests and legitimate expectations of a person, and the continuity of jurisprudence must be ensured.[11]

When analysing the ruling of the Constitutional Court of 12 July 2001 via the linguistic method, an obvious linguistic link may be found between the first (previously cited) element of the principle of legal security ('the State's duty to ensure *the certainty of the legal regulation'*) and the principle of legal *certainty*. Analysing the provisions of this ruling of the Constitutional Court by systematic and logical methods (for comparing separate provisions of this ruling and also provisions of this ruling with later constitutional practice), it can be assumed that the requirements of clarity and accuracy of legal norms, coherence of legal regulation, and hierarchy of legal acts, along with the requirement for promulgation of all legal acts (the first aspect of the principle of legal security), correspond to the State's duty to ensure the *certainty of the legal regulation* (the first element, imperative of the principle of legal security). Summing up, it leads to the assumption that the principle of legal certainty is one of the elements of the principle of legal security, which presupposes certain constitutional requirements for the *quality of legal regulation*. Supplementing the aforementioned arguments, it should be noted that sometimes the Constitutional Court attributes the same imperatives to either the principle of legal security or to the principle of legal certainty in different rulings (CC Rulings of 12 July 2001, 25 January 2001, 30 May 2003). Such a situation could also be logically justified if the principle of legal security and principle legal certainty were in a relationship as the principle and its element (sub-principle). However, the Constitutional Court is not explicit on this. In any case, it is undeniable that legal certainty, which is the basis for knowing what the law requires from a person, is a prerequisite for legal security, i.e. legal security is impossible without legal certainty.

Where the principle of legal certainty is invoked in the rulings of the Constitutional Court separately from the principles of legal security and the protection of legitimate expectations, the principle of legal certainty is usually mentioned together with the principle of legal clarity. For example, out of approximately 100 Constitutional Court rulings during the recitals of which the Constitutional Court relied on the constitutional principle/requirement/imperative of legal certainty, nearly 50 rulings also invoked the principle/requirement/imperative of clarity (INFOLEX, n.d.). Historically, this regularity seems to have been already programmed in the ruling of the Constitutional Court of 15 March 2000, where the principle of legal certainty was for the first time explicitly mentioned in the jurisprudence of the Constitutional Court, together with the principle of legal clarity, in underlining that both these principles are particularly important in establishing taxes and the procedure for their calculation. These facts undoubtedly show a particularly close connection

[11] Moreover, in this ruling the Constitutional Court also held that the principle of legal security also determines that effective judicial protection of a persons' rights must be guaranteed if their rights are violated due to the actions or decisions of state authorities.

between these principles, which the Constitutional Court summarizes as 'certain mandatory requirements for legal regulation' presupposed by the principles of legal certainty and legal clarity. This means that legal regulation must be clear and coherent, legal norms must be precisely formulated and unambiguous, legal acts must be published in accordance with the established procedure, and all subjects of legal relations must have access to them (CC Ruling of 30 May 2003). Among other things, the requirements of legal regulation presupposed by the principles of legal certainty and legal clarity are of particular importance in the field of tax law – both in determining the taxes themselves, including their object, tax exemptions, and benefits – and in determining the procedure for entry into force and implementation of tax laws (CC Rulings of 15 March 2000, 16 December 2013, 7 December 2016).

The scholarly literature lists the following aspects presupposed jointly by the imperatives of legal certainty and legal clarity according to the jurisprudence of the Constitutional Court (Gedmintaitė, 2016, p. 71):
- legal regulation must be *clear* and the wording of the legislation must be *precise*, so that subjects of legal relations are able to *direct* their behaviour under the requirements of law (CC Rulings of 13 December 2004, 16 January 2006, 27 March 2009, 6 January 2011);
- the concepts (formulations) related to the implementation of constitutional human rights and their limitation must be *especially clear, defined, and understandable* (CC Ruling of 24 December 2008);
- legal regulation must be *clear and harmonious*, legal norms must be formulated *precisely* and may *not contain ambiguities* (CC Rulings of 30 May 2003, 26 January 2004, 24 December 2008, 22 June 2009, 20 April 2010, 13 May 2010, 20 February 2013, 10 October 2013, 8 May 2014, 11 July 2014, 7 December 2016, 12 April 2018);
- legal regulation must be *clear and coherent* so that it cannot be interpreted differently (CC Rulings of 13 May 2010, 20 February 2013, 30 December 2015);
- legal acts must be *published* in accordance with the established procedure, and all subjects of legal relations must *have access* to them (CC Rulings of 30 May 2003 and 12 April 2018);
- the constitutional imperatives that *only laws which are published are valid* and the *validity of legal acts must be prospective* are an important precondition for legal certainty (CC Rulings of 11 January 2001, 15 February 2013, 2 February 2016, 25 June 2019).

Nevertheless, a systematic analysis of the jurisprudence of the Constitutional Court shows that the following *requirements*[12] to the legislator stemming from the principle of the state under the rule of law should also be added to the above listed requirements for legal regulation presupposed by the imperatives of legal certainty and legal clarity:
- the requirements for the legislator to establish such legal regulation that would *inter alia* provide subjects of legal relations with an opportunity to be aware of what is required of them by law, so that they could direct their behaviour according to the requirements of law. Also, that legal norms should be *established in advance*, the legal regulation laid down in laws and other legal acts should be clear, understandable, and consistent, and legal acts should contain *no provisions simultaneously regulating the same relations in a different manner* (Constitutional Court of the Republic of Lithuania, 2014, pp. 22–23; CC Ruling of 22 December 2011);
- the legal regulation established in laws and other legal acts must be clear, easy to understand, and consistent, and formulations of the legal acts must be explicit, so that subjects of legal relations could direct their behaviour according to the requirements of law. *Consistency and internal harmony of the legal system must be ensured*, and the legal acts may not contain any provisions which at the same time regulate the same relations in a different manner (Constitutional Court of the Republic of Lithuania, 2010, pp. 42, 45; 2014, pp. 30–31; 2017, p. 25; CC Rulings of 29 September 2005, 21 December 2006, 16 December 2013, 7 December 2016).

The above list of the aspects of legal certainty and legal clarity has multiple references to the cases of the Constitutional Court, and this was done purposefully to emphasize that the distinguished imperatives of legal certainty are extremely (and increasingly) relevant in Constitutional Court jurisprudence. They are also

[12] These imperatives are indicated as the requirements of legal certainty according to the publications of the Constitutional Court *Provisions of the Official Constitutional Doctrine of the Constitutional Court of the Republic of Lithuania* (in Lith. – '*Lietuvos Respublikos Konstitucinio Teismo oficialiosios konstitucinės doktrinos nuostatos*').

increasingly referred to in constitutional justice cases on tax issues (for example CC Rulings of 29 June 2012, 15 February 2013, 16 December 2013, as regards these particular cases, see also Sections 3.3 and 3.4 of this article).

It should also be noted that the issue of the relationship between the content of the principle of legal certainty and the principle of legal clarity is similar to the relationship between the content of the principles of legal security and legal certainty. The Constitutional Court simply names the principles of legal certainty and legal clarity and their implied imperatives together and thus, on one hand, shows that these principles are very closely linked but, on the other hand, does not give a clear answer as to how they are related. However, when comparing the aspect of the principle of legal security requiring the ensuring of certainty of the legal regulation,[13] named in the Constitutional Court Ruling of 12 July 2001, with the requirements for the legal regulation which the Constitutional Court attributes generally to the principles of legal certainty and legal clarity in its jurisprudence (as previously revealed in this section), it is obvious that these requirements are essentially the same. Since the principles have two different names, it is assumable that the content of those principles should also differ; otherwise, naming two principles would be redundant. Thus, logically it should follow that the principle of legal clarity is one of the constituent elements of the principle of legal certainty.

In summarizing, in the jurisprudence of the Constitutional Court the constitutional principle of legal certainty in the context of legal clarity is being related not only to requirements of clarity, accuracy, definiteness, and unambiguity of separate legal norms, but also of coherence with and internal harmony of the entire legal system (including tax law as an integral part of it), including the absence of contradictions of legal regulation (both between the laws or between the laws and the implementing acts), and the requirement that legal norms are determined in advance. The purpose of these requirements is to ensure that subjects of legal relations not only *know* but also *understand* what is required of them by law, and would be able to properly guide their behaviour in accordance with the legal requirements.

3. Legal Certainty in Lithuanian Tax Law: A Few Starting Issues

The imperatives of the constitutional principle of legal certainty, revealed in Section 2 of this article, apply to the entire Lithuanian legal system – there are no two principles of legal certainty, one general and another one for tax. However, taking into account the specific purpose of tax law (to ensure public finances in the form of tax collection), the prevailing method of imperative legal regulation, its significance for both the state (state budget revenues are formed from taxes) and the individual (taxes are a mandatory obligation in the form of a gratuitous transfer of part of a person's property to the state), and the consequent need to constantly strike a balance between public and private interests, ensuring the principle of legal certainty in tax law has some specifics when compared to other areas of law. Later in this chapter, several such aspects of ensuring legal certainty in Lithuanian tax law are discussed through separate elements of the principle of legal certainty, briefly (subject to the limitations of the volume of this article) identifying the related issues and possible solutions where applicable. However (or, more precisely – unfortunately), this is by no means all cases, but only those that the author of this article considered necessary to share or, in the author's opinion, that should possibly be addressed first.

3.1. Tax Laws are Established Only by the Seimas

Although the principle of legal certainty as such is not mentioned *expresis verbis* in the Constitution, some aspects of this principle are enshrined directly. One of them, which creates preconditions for taxpayers to be sure about the clear procedure for the adoption of legal acts establishing tax obligations and their legal force, is Part 3 of

[13] The imperative of legal security presupposes the following mandatory requirements for legal regulation: regulation must be clear and coherent; legal norms must be formulated precisely; lower level legal acts must not contradict higher level legal acts and no legal act must contradict the Constitution; and legal normative acts must be published in the established procedure and they must be accessible to all subjects of a legal relationship. (CC Ruling of 12 July 2001)

Article 127 of the Constitution, which establishes that taxes (as well as other contributions to budgets and fees[14]) may be established only by the laws of the Republic of Lithuania, which according to Point 15 of Part 1 of Article 67 of the Constitution may be adopted only by the Seimas of the Republic of Lithuania (hereinafter – the Seimas). This guarantee is repeated in Part 2 of Article 3 of the Law on Tax Administration of the Republic of Lithuania (hereinafter – Law on Tax Administration), which establishes that the relevant tax, the imposition of which falls within the competence of the Republic of Lithuania, may be established by the laws exclusively. As explained by the Constitutional Court, the term 'law' in this context (tax imposition) must be interpreted narrowly, as an act of the legal form of a law adopted by the Seimas (in contrast to the case of publishing of 'laws' where this term is interpreted broadly – see Section 3.2; CC Ruling of 15 March 2000).

However, no Lithuanian legal act answers the question of what is meant by 'imposing a tax', although this answer determines the essential divide between the competences of the Seimas and the Government in the field of tax legislation, the violation of which raises the question of constitutionality. Therefore, when hearing constitutional justice cases regarding the division of competence in the adoption of tax legislation, it is the Constitutional Court that has repeatedly had to look for an answer as to which elements of taxation mean the imposition of tax, and are the exclusive competence of the Seimas. Finally, the official constitutional doctrine of the Constitutional Court has established that *such elements as* the object of tax, subjects of tax relations, rights and obligations thereof, tax amounts (tariffs), payment terms, exceptions and reliefs, and fines and interest on arrears must be established by law exclusively through the adopting of tax laws, while the order of implementation of the laws including the procedure for calculating the specific tax payable may be established not only by laws, but also by legal acts implementing the laws (CC Rulings of 17 November 2003 and 2 September 2004). In this context, the interpretation of the Constitutional Court is relevant, which states that the procedure for calculating tax should be understood to be the actions of 'how one must act and behave so that the taxpayer to be taxed, i.e. that one might calculate as to what tax amount the taxpayer must pay' (CC Ruling of 17 November 2003).

The question arises, then, as to whether the jurisprudence of the Constitutional Court lists an exhaustive list of tax elements that can only be established by law by the Seimas? And can all and any rules governing the calculation of taxes really be imposed otherwise than by law? Let us take, for example, the Law on Corporate Income Tax of the Republic of Lithuania (hereinafter – Law on CIT). Part 1 of Article 11 of the Law on CIT states that 'for the purpose of calculating taxable profits of a Lithuanian entity (...) non-taxable income, allowable deductions, and limited allowable deductions shall be deducted from income'. It is difficult to deny that those provisions govern the procedure for calculating tax, but they are also the principal provisions grounding all of the other provisions of the Law on CIT relating to the calculation of the specific corporate income tax payable. So, hypothetically, would income tax be properly established by law if the Seimas determined the tax object, subject, rate, payment term, and several tax reliefs, and, without establishing any general principles of tax calculation, simply indicated that the tax is calculated in accordance with the procedure established by the Government? It should also be borne in mind that corporate income tax is factually paid on profit, not on income, where profit is always lower than income, and the amount of profit to be taxed depends directly on the amounts allowed to be deducted and the conditions under which deductions are allowed. In other words, in the case of tax on corporate income, the tax burden depends directly not only on the object and rate of the tax, but also on the established principal for calculating taxable profits. In the case of tax on corporate income, a change in the conditions under which one or other of the expenses can be deducted from income (i.e. a change in the procedure for calculating tax on corporate income) can effectively change the tax burden, which in economic consequences to the taxpayer might be equivalent to a change in a tax rate.

Hence, if the purpose of the requirement that taxes be imposed only by the laws is to be a constitutional guarantor for preventing possible attempts to change tax obligations in a simplified manner to the detriment of taxpayers (Kūris, 2012; Sinkevičius, 2011b), then it is logical to conclude that certain principle provisions for the calculation

[14] Except for the right of municipalities to set local fees within the limits and in accordance with the procedure provided by law, as well as to provide tax and fee benefits at the expense of their budget: Part 2 of Article 121 of the Constitution.

of a specific tax should also be determined (and amended) by the laws. All the more so as the Constitutional Court has left an open way to reinterpret its doctrine in this matter – the linguistic construction 'such elements as' being used in the rulings of the Constitutional Court presupposes that the Constitutional Court, while developing its constitutional doctrine in the future, may come to a conclusion on the presence of other, additional essential tax elements that must also be established by the laws (Sinkevičius, 2011a).

However, if the Constitutional Court adheres in future to its developed doctrine, according to which the rules of tax calculation are not an essential tax element, the legislator should - from the perspective of legal certainty, clarity of tax regulation, and the coherence of the tax regulatory system alone - critically assess why, for example, the procedure for calculating the corporate income tax of a Lithuanian entity is established by the law (Chapters III–VI, etc. of the Law on CIT), and the procedure for calculating the corporate income tax of a foreign entity's permanent establishment is established by a Government resolution (Resolution of Government of 5 March 2002 No. 321). Or indeed why one part of the rules restricting the deduction of interest is enshrined in the law (Article 30 [1] of the Law on CIT) and the other part is in a Government resolution (Resolution of Government of 9 December 2003 No. 1575), although both parts of the rules, as to the interpretation of the State Tax Inspectorate, must be applied together (State Tax Inspectorate, 2018).

3.2. Only Promulgated Tax Laws are Valid

The principle of legal certainty requires that legal acts be published in the prescribed manner, and that all persons in legal relations have access to them. In response to this requirement, according to the Constitution, the Seimas, the Government, and other subjects adopting legal acts are *inter alia* bound by the constitutional imperative that only laws that are published shall be valid (Constitution, Part 2 of Article 7, Article 70). In the context of this publicity requirement, the constitutional notion of 'laws' should be construed in an expanding manner, as a notion that includes not only laws but also other legal acts (CC Ruling of 29 October 2003). In this way, the Constitution obliges the legislator to properly follow the legislative procedures and to publish the adopted laws and the legal acts implementing the laws, so that the addressees of legal acts have a real opportunity to find out about the rights granted to them or their established duties. The promulgation of tax legislation is subject to this general regulation.

When implementing the aforementioned provisions of the Constitution, the legal acts adopted by the competent authorities shall be registered[15] in the Register of Legal Acts, the holder and manager of which is the Chancellery of the Seimas of the Republic of Lithuania, no later than the day after their signing, and shall be published in the same Register of Legal Acts (i. e. on its website www.e-tar.lt) immediately after their registration. According to the legal regulation in force in Lithuania, the composition of these two legal facts is considered to be the official promulgation of a legal act (including tax legislation)[16] (Law on Legislative Framework, Article 19). It should be emphasized that the full text of a legal act must be made public with all its integral parts, if any. In addition, the availability of legal acts is ensured by the fact that legal acts are drafted, adopted, and published in the Lithuanian language (Law on Legislative Framework, Article 14).

In accordance with Points 8–9 of the Regulations of the Register of Legal Acts (CC Ruling of 17 December 2013), not only the legal act is registered in the register of legal acts, but also its chronology (date of adoption of the legal act, date of registration in the register, date of publication, date of entry into force, date of amendment or supplementation, date of repeal, date of suspension, expiry date), consolidated versions of the law, which particularly ease the application of legal acts, especially when it is necessary to determine which tax legal act is applicable to previous tax periods.

[15] According to Point 20 of the Regulations of the Register of Legal Acts, a legal act shall be deemed to be registered from the moment when its data is entered in the database of the Register of Legal Acts and an identification code is assigned thereto (Regulations of the Register of Legal Acts).

[16] Territorial planning documents are published in the Register of Territorial Planning Documents of the Republic of Lithuania – this is an exception to the general rule.

As tax laws are duly published in accordance with the aforementioned procedure established by the Law on the Framework of Legislation of the Republic of Lithuania, and the data in the register of legal acts is complete, public, and, as a general rule, available free of charge (Law on Legislative Framework, Part 4 of Article 6; Regulations of the Register of Legal Acts, Points 34, 35), every taxpayer is thus guaranteed a real opportunity to know that a particular tax law or its amendment has been adopted, since when it has been applied, when and how it has been changed, and which rights or obligations the new legal act establishes or changes.

From the point of view of ensuring legal certainty in tax law, it is also necessary to mention that the courts, when adopting decisions in cases of corresponding categories, are bound by their own precedents, and the courts of lower instance are bound by the precedents of the courts of higher instance (CC Ruling of 28 March 2006). In order to ensure the publicity of decisions of higher instance courts and, consequently, the real possibility not only for courts but also for the general public to follow them as one of the sources of law, the Constitutional Court rulings and decisions on interpretation of Constitutional Court rulings are also published in the Register of Legal Acts (Law on Legislative Framework, Article 6; Regulations of the Register of Legal Acts, Point 9). This is also the case for notices of the President of the Constitutional Court regarding the suspension and renewal of the validity of the disputed act; decisions, orders, and rulings of the Supreme Court of Lithuania and the Supreme Administrative Court of Lithuania; and decisions of administrative courts on the legality of normative administrative acts.

In summary, it is considered that the discussed legal regulation in force in the Republic of Lithuania regarding the promulgation of legal acts (*inter alia* tax legal acts) sufficiently ensures that any taxpayer has the opportunity to find detailed information related to the adoption, validity, and amendment of tax legislation and relevant judicial precedents imposing their rights and obligations in one place (on the website of the Register of Legal Acts), in real time, and completely free of charge. In this way, conditions are ensured for taxpayers' awareness of the tax obligations imposed on them by regulatory tax legislation, and thus undoubtedly a significant contribution is made towards ensuring legal certainty in Lithuanian tax law.

3.3. Tax laws should be established in advance

Part 1 of Article 20 of the Law on Legislative Framework lays down the general rule that a normative legal act shall enter into force on the calendar day following its official publication in the Register of Legal Acts, unless the legal act provides for a later date of its entry into force. However, taking into account the specifics, importance, and impact of tax legislation, Part 3 of Article 20 of this law provides for an exception. According to this exception, tax laws (i.e. only laws adopted by the Seimas) establishing new taxes, new tax rates, tax benefits, sanctions for tax violations, or substantially amending the procedure for taxation of a particular tax or the principles of legal regulation and application of taxation, shall enter into force not earlier than six months after the date of official promulgation of the law (*vacatio legis*). These provisions are almost literally repeated in Parts 3 and 4 of Article 3 of the Law on Tax Administration.

At first sight, the six-month deadline certainly seems reasonable and sufficient to familiarize oneself with and prepare for future legislation. However, both aforementioned laws provide for two exceptions to the *vacatio legis* rule, enshrined in Part 3 of Article 20 of the Law on the Legislative Framework and Part 4 of Article 3 of the Tax Administration Law, because of which the postponing of the entry into force of tax laws for at least six months becomes, in reality, no longer the general rule but rather the exception.

The first, the so-called budget approval exception, stipulates that the six-month *vacatio legis* does not apply to the laws amending the tax laws related to the law on the approval of financial indicators of the State budget and municipal budgets of the respective year. There are a number of questions here: firstly, all taxes are, in a sense, budget-related, as they are one of the sources of the budget. In addition, the State budget is approved at the end of each year – does this mean that the State, while planning the budget, can change tax laws at the end of each year with a view to their immediate entry into force? Furthermore, can tax laws be submitted for consideration with the

draft budget, and enter into force without *vacatio legis* even when their amendments do not have a significant impact on the budget?

Unfortunately, neither the Legislative Framework Law nor the Tax Administration Law directly impose any additional conditions or restrictions that would be necessary for the application of this exception (budgetary approval) to the *vacatio legis*. Thus, the Government and the Seimas each year have a formal opportunity to avoid the application of the six-month *vacatio legis* rule by the Government submitting and the Seimas considering and adopting draft tax laws together with the draft state budget for the following year. Such practices are, unfortunately, extremely common. For example, absolutely all draft state budgets of the Republic of Lithuania for 2010–2019 were submitted to the Seimas together with a larger or smaller number of packages of amendments to tax laws, of which in nine out of ten years amendments to direct tax laws were submitted (amendments on taxation of corporate income tax were submitted with the draft state budget in seven years out of ten; amendments on taxation of personal income tax in six years; and amendments on taxation of real estate in one year). In one year, the amendment to the Tax Administration Law was also submitted in such way. Some of these amendments to the law eased tax conditions, while others imposed additional tax obligations and restrictions on taxpayers.

In addition, during the aforementioned ten year period, the trend has emerged that the law on the approval of financial indicators of the state and municipal budgets is approved by the Seimas in the period between 9–22 December, and the tax laws submitted with the draft budget are adopted several days before or on the same day. Thus, in accordance with the current tax legislative practice, the taxpayer has, on average, about 10 days (i.e. the last 10 days of December) to get acquainted with the new tax regulation (i.e. with the final officially published version of the law) adopted when approving the ordinary state budget, and prepare for it. It should be noted that in this aspect even negative certainty is factually formed – it is almost certain that some tax laws will change at the end of the year, although it is unclear which one and to what extent.

In the context of this practice, it is necessary to remember that the Constitutional Court, as early as 15 February 2013, emphasized in the resolution that although the Constitution sets deadlines by which the draft state budget must be prepared and submitted to the Seimas by the Government and approved by the Seimas, this does not mean that the draft state budget (and amendments to tax laws affecting it) must be prepared, submitted, considered, and approved only shortly before the expiry of those time limits.

On the contrary, the draft state budget should be prepared so far in advance that the persons whose legal position is affected by the relevant laws, and in particular in cases where obligations and restrictions are imposed (for example, by imposing new taxes or increasing them), are ensured a real possibility to adapt to the new legal situation. In addition, the Constitutional Court has singled out the criteria when an exception from the *vacatio legis* could be justified – only in the case of special objective circumstances which determine the priority of the public interest and require urgent action (CC Ruling of 15 February 2013).

The second six-month *vacatio legis* exception is the adoption of tax legislation harmonizing Lithuanian national law with EU law. It is obvious that in this case the priority is given to the public interest – ensuring the proper implementation of Lithuania's obligation to harmonize national law with EU law rather than the real possibility for a private person to get acquainted with the new regulation and prepare for it before the regulation enters into force. However, giving priority to the public interest should not mean that the mere fact that an amendment to a law falls within the scope of the exception cancels the application of *vacatio legis* at all, especially if the time-limits for implementing directives are long enough. As in the case of the budget exception, this exception is used on a regular basis, and the legislators seem to understand this *vacatio legis* exception literally as allowing virtually no *vacatio legis* term, regardless of neither the time taken to transpose EU requirements into Lithuanian law nor the extent to which the new tax rules imposed on the persons for whom they are intended are important to the extent that they require preparation.

One of the reasons for this practice of 'avoidance' of *vacatio legis* is considered to be the existing legal regulation,

which does not establish any additional criteria for the application of *vacatio legis* exceptions and does not explicitly oblige legislators to establish a reasonable, albeit shorter, *vacatio legis* in cases where exceptions to the general deferral rule may (not should) be excluded.

With regard to the establishment of tax laws in advance, it is impossible not to mention the principle of *lex retro non agit*, all the more so as the Constitutional Court has repeatedly stated that this principle is a precondition for the principle of legal certainty.

According to the constitutional doctrine developed up until 2012, the Constitutional Court consistently emphasized that the power of legal acts is directed to the future, the retroactive effect of laws and other legal acts is not allowed (*lex retro non agit*) unless the legal act mitigates the position of the subject of legal relations and does not harm interests of other participants to legal relations (*lex benignior retro agit*) and it is not allowed to establish only such legal regulation that would interfere with the already *terminated* legal relations (in taxes this would correspond to situations when the legal regulation of the already expired tax period is changed – *author's note*). However, the cases when amendments to tax legal acts adopted in the course of a tax period were also applied to a part of the taxable period before the amendment was adopted were not recognized by the Constitutional Court as having the backward legal effect, and it was held that such legal acts did not violate the *lex retro non agit* principle and did not deny the legitimate expectations of taxpayers or legal certainty, and therefore did not contradict the Constitution (CC Ruling of 29 November 2007). In 2012–2013, the Constitutional Court examined two cases in which it was mentioned that interference of new legal tax regulation with legal relations that had already begun (but not yet ended) also did not meet the requirements of the principle *lex retro non agit*. For example, in the ruling of 29 June 2012 the Constitutional Court acknowledged that the amendments to the Law on the Reform of the Pension System of the Republic of Lithuania, the date of entry into force of which was set earlier than the date of promulgation, contradicted the Constitution (the principle of *lex retro non agit* was violated). Moreover, the Constitutional Court also stated that when legal regulation intervened in the legal relations related to the calculation and payment of the contribution for the period that had already begun, the backwards legal effect of this regulation was established (CC Ruling of 29 June 2012). In the ruling of 15 February 2013 the Constitutional Court once again held that by establishing tax regulation which interfered with the legal relations on calculation of personal income tax and corporate income tax for the period which has already begun (and not yet ended), the backwards legal effect of the provisions, prohibited by the principle of *lex retro non agit*, was established. However, the relevant amendments to the tax laws were held to be compatible with the Constitution, as they created more favourable conditions for taxpayers (CC Ruling of 15 February 2013).

Thus, although in both cases the interference of legal regulation in the already established relations was not the basis on which the legal act would be declared unconstitutional, the mere statement that the beginning of the factual application of the law (i.e. application of the new tax law to the tax period which started before the new law was adopted) is also important for ensuring *the lex retro non agit* principle, may have extended the protection of this principle. Of course, these are only two rulings and perhaps it is too early to draw comprehensive conclusions on the reinterpretation of constitutional jurisprudence on the functioning of the principle *lex retro non agit* in tax law field. On the other hand, one would not want to believe that the Constitutional Court mentioned the said provisions without having in mind their meaning. It should also be noted that the argument that 'there is no interference with the legal relations that *have started or ended earlier*' was also relied on in a much later decision of the enlarged Chamber of the Supreme Administrative Court of Lithuania of 15 December 2017 (*inter alia* published in *Administrative Jurisprudence* No. 34, 2017), in which the compliance of a non-tax legal act with the Constitution was examined (Decision of the Supreme Administrative Court of Lithuania of 15 December 2017).

It should be noted that businesses plan their costs, financial flows, and adopt strategic decisions based on the legal regulation in force at the start of the financial year. Therefore, any amendments to the legal regulation adopted in the course of the running financial year and having backwards effect directly impacts the amount of tax liability and consequently influences the possibility to properly pay taxes, causing instability or potentially even leading to the closure of business activities. Therefore, if constitutional jurisprudence were to firmly turn to the recognition

of so-called retrospectivity as unconstitutional, it would undoubtedly bring legal certainty to tax relations as well, since in the aspect of the proper enforcement of the tax obligation not only (and not so much) the moment when a tax law or other legal act enters into force is important, but since when, i.e. for which tax period, it shall apply.

3.4. Clarity, Precision, Consistency and Harmony of the Tax System

Part 1 of Article 7 of the Constitution, which establishes that no law or other act contrary to the Constitution is valid; Part 1 of Article 102 of the Constitution, which stipulates that acts of the Seimas must not be in conflict with the Constitution and acts of the President and Government must not contradict the Constitution and the laws; and Article 5 of the Law on Tax Administration, enshrining the principle of the supremacy of international agreements over national tax legislation, all establish the hierarchy of legal acts corresponding to legal certainty due to the coherence, systematicity, and clear interrelation of legal norms.

Article 9 of the Tax Administration Law enshrines the principle of tax clarity applicable to the legal regulation of taxation (the content of a tax obligation, the procedure and grounds for its occurrence, fulfilment and termination must be clearly defined in the tax legislation of the Republic of Lithuania), and Part 5 of Article 3 of the same law states that contradictions or ambiguities in tax legislation shall be interpreted in favour of the taxpayer. The Constitutional Court in its jurisprudence develops that – in the substatutory legal acts establishing the procedure for the implementation of tax laws, thus, including the procedure of calculation of taxes - there may be no legal norms providing for a different legal regulation from that established by law and which would compete with the norms of the law (CC Rulings of 17 November 2003, 2 September 2004, 24 January 2006, 26 May 2015). Although not directly mentioning the principle of legal certainty, Article 3 of the Law on Legislative Framework entrenches that, with a view to creating a uniform, consistent, coherent, and effective legal system, the legislation (hence, the tax legislation as well – *author's note*) shall be guided by the principle of clarity, requiring that legal regulation provided for in legal acts must be logical, consistent, concise, comprehensive, accurate, clear and unambiguous, and by the principle of systematicity, meaning that legal provisions must also be consistent with each other, legal acts of lower legal validity may not contradict legal acts of higher legal validity, and the legal acts implementing the laws must be drawn up and adopted so that they enter into force together with the law or separate provisions thereof which are implemented by these legal acts (Law on Legislative Framework, Points 6–7 of Part 2 of Article 3). The above provisions demonstrate a solid foundation for ensuring the functioning of the principle of legal certainty based on the requirements of clarity, consistency, and internal harmony of the legal system.

Still, in reality the above principles and statements happen to function in different ways. Without expanding on the complexity of the terminology used in tax law, not so much in the literal sense but in the case of multi-storey interconnections, one would like to raise the rhetorical question as to what extent the principles of tax clarity and certainty are required to come to compromise in modern tax law, where various evaluative concepts are introduced. For example, on 16 December 2013 the Constitutional Court in its ruling, based on the imperatives of legal certainty, clarity, and definiteness, held the contradiction of the Law Amending the Law on Excise Duties of the Republic of Lithuania with the Constitution, whereas it has introduced the undefined, unclear, ambiguous, multi-faceted, and broadly interpreted notion 'purposes of health promotion' (in Lith. – '*sveikatinimo reikmės*'). This, as stated by Constitutional Court, allowed for various interpretations of the object of excise (tax) and the exceptions to taxation, thus leading to legal unclarity and uncertainty. It is interesting how the Constitutional Court would, in the context of legal certainty, clarity, and definiteness, assess the construct 'the arrangements shall be regarded as not genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality' enshrined in Part 8 of Article 11 and Part 6 of Article 32 of the Law on CIT? 'Not genuine', 'valid', 'reality' – these concepts are so relative that anyone could understand them differently. Meanwhile, the reality of tax law regulation is that by relying on these 'magic' notions, recently transposed into Lithuanian law from the EU direct tax directives (Council Directive (EU) 2015/121 of 27 January 2015, Article 1; Council Directive (EU) 2016/1164 of 12 July 2016, Article 6), the Lithuanian tax administrator, by inspecting the taxpayer, will assess whether the latter has or has not abused tax law and will determine the tax obligation on that basis. Not to mention that the compelling commercial reasons and economic reality may be completely different from the perspective

of the German or Dutch tax administration.

These are just a selection of aspects where the constitutional principle of legal certainty in tax regulation faces inevitable challenges.

Conclusions

1. The principle of legal certainty is a constitutional principle, arising from the principle of the State under the rule of law and closely related to two other constitutional principles – the principle of legal security and the principle of protection of legitimate expectations. The purpose of all three is to ensure individuals' confidence in the State and in law.

2. Nevertheless, whether we consider the principle of legal certainty a relatively autonomous principle or an element of legal security, when linguistically and systematically analysing the jurisprudence of the Constitutional Court, the requirements for law making - such as publicity of law (establishing legal norms in advance and their promulgation in the prescribed order), clarity, accuracy, unambiguity, certainty of legal regulation, and systematics of law (internal coherence and the absence of contradictions) – could be assigned to the principle of legal certainty, complemented by the principle of legal clarity. These are imperatives designed to ensure that the participants of a legal relationship are aware of the law applicable to them at a given moment, understand what it requires of them, and are able to properly guide their behaviour in accordance with legal requirements.

3. It could be emphasised that Lithuania has a solid constitutional background for ensuring the functioning of the principle of legal certainty. There are also a number of legal obligations, rules, provisions, and even principles that meet the imperatives of the principle of legal certainty in tax legislation enshrined in other laws. However, the real operation of the principle of legal certainty in the field of tax law, together with societal changes in the evolving tax law, poses a number of challenges, ranging from the enshrining of concepts of an evaluative nature, which are completely new to both the tax administrator and the taxpayer, to the periodic amendments of tax legislation at the end of each year, or the last minute tax directive's transposition into national law.

4. Still, it should be noted that the legal regulation in force in the Republic of Lithuania regarding the promulgation of legal acts (*inter alia* tax law) ensures that any taxpayer has the opportunity to find detailed information related to the adoption, validity, and amendment of tax legislation and relevant judicial precedents imposing their rights and obligations in one place (on the website of the Register of Legal Acts), in real time, and completely free of charge. In this way, conditions are ensured for taxpayers' awareness of the tax obligations imposed on them by regulatory tax legislation, and thus undoubtedly a significant contribution to ensuring legal certainty in Lithuanian tax law is made.

5. The current official constitutional doctrine of the Constitutional Court has established that such elements as: the object of tax; subjects of tax relations; rights and obligations thereof; tax amounts (tariffs); payment terms; exceptions and reliefs; and fines and interest on arrears must be established exclusively through adopting the tax laws by the Seimas. Meanwhile, the order of implementation of tax laws, including the procedure for calculating the specific tax payable, may be established not only by the laws, but also by legal acts implementing the laws. Still, the changes in the principle rules for calculating tax can effectively change the tax burden, which in economic consequences to the taxpayer might be equivalent to a change in tax rate. Therefore, from the perspective of ensuring the legal certainty in tax regulation, it might be worth considering that certain principle provisions for the calculation of a specific tax should also be determined (and amended) only by the laws.

6. It is likely that establishment of safeguards for the application of exception from the *vacatio legis* and a clearer turn of the doctrine formed by the Constitutional Court towards recognition of the unconstitutionality of retrospective tax regulation, i.e. interfering with the tax period that has already begun, would discipline the legislator, and would undoubtedly bring more legal certainty to tax regulation and the participants of tax relations.

References

Avila, H. (2016). *Certainty in law*. Springer International Publishing. https://link.springer.com/book/10.1007/978-3-319-33407-3

Birmontienė, T., Jarašiūnas, E., Kūris, E., Maksimaitis, M., Mesonis, G., Normantas, A., Pumputis, A., Vaitiekienė, E., Vidrinskaitė, S., & Žilys, J. (2002). *Lietuvos konstitucinė teisė*. Lietuvos teisės universiteto Leidybos centras.

Braithwaite, J. B. (2002). Rules and principles: A theory of legal certainty. *Australian Journal of Legal Philosophy*, *27*, 47–82. https://doi.org/10.2139/ssrn.329400

Commission Implementing Regulation (EU) 2016/2257 of 14 December 2016 re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and produced by Chengdu Sunshine Shoes Co. Ltd, Foshan Nanhai Shyang Yuu Footwear Ltd and Fujian Sunshine Footwear Co. Ltd and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14. C/2016/8389. OJ L 340I, 15.12.2016, pp. 1–18. EUR-Lex. https://eur-lex.europa.eu/eli/reg_impl/2016/2257/oj

Commission Recommendation (EU) 2018/103 of 20 December 2017 regarding the rule of law in Poland complementary to Recommendations (EU) 2016/1374, (EU) 2017/146 and (EU) 2017/1520. *OJ L 17*, 23.1.2018, pp. 50–64. EUR-Lex. https://eur-lex.europa.eu/legal-content/LT-EN/TXT/?uri=CELEX:32018H0103&from=LT

Constitution of the Republic of Lithuania. (25 October 1992). Register of Legal Acts. https://www.e-tar.lt/portal/lt/legalAct/TAR.47BB952431DA/UwoGawiEom

Constitutional Court of the Republic of Lithuania Decision of 20 April 2010; Case No. 41/2000, 47/2001-08/2003-20/2003-32/2003-38/2003, 7/03-41/03-40/04-46/04-5/05-7/05-17/05, 35/04-37/04-72/06, 38/04-39/04, 06/05-08/05, 09/06-30/06-01/07-30/08, 15/98, 33/03. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta172/content

Constitutional Court of the Republic of Lithuania Ruling of 10 October 2013; Case No. 5/2012. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta98/content

Constitutional Court of the Republic of Lithuania Ruling of 11 January 2001; Case No. 7/99-17/99. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta314/content

Constitutional Court of the Republic of Lithuania Ruling of 11 July 2014 No. KT36-N10/2014; Case No. 16/2014-29/2014. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta24

Constitutional Court of the Republic of Lithuania Ruling of 12 April 2018 No. KT6-N4/2018, Case No. 14/2017. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta1815/content

Constitutional Court of the Republic of Lithuania Ruling of 12 July 2001; Case No. 13/2000-14/2000-20/2000—21/2000-22/2000-25/2000-31/2000-35/2000-39/2000-8/01-31/01. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta327/content

Constitutional Court of the Republic of Lithuania Ruling of 13 December 2004; Case No. 51/01-26/02-19/03-22/03-26/03-27/03. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta275/content

Constitutional Court of the Republic of Lithuania Ruling of 13 May 2010; Case No. 04/08-11/08. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta175/content

Constitutional Court of the Republic of Lithuania Ruling of 15 February 2013; Case No. 28/2009. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta76

Constitutional Court of the Republic of Lithuania Ruling of 15 March 2000; Case No. 22/98. http://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta337

Constitutional Court of the Republic of Lithuania Ruling of 16 December 2013; Case No. 107/2010. http://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta105

Constitutional Court of the Republic of Lithuania Ruling of 16 January 2006; Case No. 7/03-41/03-40/04-46/04-5/05-7/05-17/05. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta193/content

Constitutional Court of the Republic of Lithuania Ruling of 17 November 2003; Case No. 45/01-12/03-15/03-24/03. http://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta290/content

Constitutional Court of the Republic of Lithuania Ruling of 19 March 2020, Case No. 19/2018. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta2098/content

Constitutional Court of the Republic of Lithuania Ruling of 19 September 2000; Case No. 25/99-9/99-35/99. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta345/content

Constitutional Court of the Republic of Lithuania Ruling of 2 February 2016 No. KT6-N3/2016; Case No. 35/2014-55/2014. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta1564/content

Constitutional Court of the Republic of Lithuania Ruling of 2 September 2004; Case No. 53/01. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta271

Constitutional Court of the Republic of Lithuania Ruling of 20 February 2013; Case No. 41/2009. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta77/content

Constitutional Court of the Republic of Lithuania Ruling of 21 December 2006; Case No. 30/03. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta228/content
Constitutional Court of the Republic of Lithuania Ruling of 22 December 2011; Case No. 13/2010-140/2010. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta163/content
Constitutional Court of the Republic of Lithuania Ruling of 22 June 2009; Case No. 16/07-17/07-20/08. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta526/content
Constitutional Court of the Republic of Lithuania Ruling of 23 April 2002; Case No. 27/2000. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta299/content
Constitutional Court of the Republic of Lithuania Ruling of 24 December 2008; Case No. 09/06-30/06-01/07-30/08. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta511/content
Constitutional Court of the Republic of Lithuania Ruling of 24 January 2006; Case No. 11/04. http://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta196
Constitutional Court of the Republic of Lithuania Ruling of 25 January 2001; Case No. 3/99. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta315/content
Constitutional Court of the Republic of Lithuania Ruling of 25 June 2019 No. KT18-N9/2019; Case No. 6/2018. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta1944/content
Constitutional Court of the Republic of Lithuania Ruling of 25 November 2002; Case No. 41/2000. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta312/content
Constitutional Court of the Republic of Lithuania Ruling of 26 January 2004; Case No. 3/02-7/02-29/03. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta250/content
Constitutional Court of the Republic of Lithuania Ruling of 26 May 2015 No. KT16-N10/2015; Case No. 7/2013. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta1441
Constitutional Court of the Republic of Lithuania Ruling of 27 March 2009; Case No. 33/06. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta515/content
Constitutional Court of the Republic of Lithuania Ruling of 28 March 2006; Case No. 33/03. http://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta202/content
Constitutional Court of the Republic of Lithuania Ruling of 29 June 2012; Case No. 39/2009-40/2009-46/2009-48/2009-51/2009-10/2010-23/2010-137/2010-7/2011-38/2011. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta122/content
Constitutional Court of the Republic of Lithuania Ruling of 29 November 2007; Case No. 11/05. http://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta572
Constitutional Court of the Republic of Lithuania Ruling of 29 October 2003; Case No. 1/02. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta289/content
Constitutional Court of the Republic of Lithuania Ruling of 29 September 2005; Case No. 15/02. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta246/content
Constitutional Court of the Republic of Lithuania Ruling of 30 December 2015. No. KT34-N22/2015; Case No. 20/2013-1/2014. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta1540/content
Constitutional Court of the Republic of Lithuania Ruling of 30 May 2003; Case No. 21/2003. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta285/content
Constitutional Court of the Republic of Lithuania Ruling of 4 March 1999; Case No. 24/98. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta352/content
Constitutional Court of the Republic of Lithuania Ruling of 6 January 2011; Case No. 13/2008. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta142/content
Constitutional Court of the Republic of Lithuania Ruling of 7 December 2016 No. KT30-N16/2016; Case No. 5/2016. http://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta1657/content
Constitutional Court of the Republic of Lithuania Ruling of 8 May 2014 No. KT17-N6/2014; Case No. 20/2011-14/2013-15/2013-16/2013. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta20/content
Constitutional Court of the Republic of Lithuania. (2010). *Provisions of the official constitutional doctrine of the Constitutional Court of the Republic of Lithuania: 1993–2009*. Constitutional Court of the Republic of Lithuania. http://www.lrkt.lt/lt/teismo-aktai/oficialioji-konstitucine-doktrina/704
Constitutional Court of the Republic of Lithuania. (2014). *Provisions of the official constitutional doctrine of the Constitutional Court of the Republic of Lithuania*: 2010–2013. Constitutional Court of the Republic of Lithuania. http://www.lrkt.lt/lt/teismo-aktai/oficialioji-konstitucine-doktrina/704
Constitutional Court of the Republic of Lithuania. (2017). *Provisions of the official constitutional doctrine of the Constitutional Court of the Republic of Lithuania*: 2014–2016. Constitutional Court of the Republic of Lithuania. http://www.lrkt.lt/lt/teismo-aktai/oficialioji-konstitucine-doktrina/704

Council Directive (EU) 2015/121 of 27 January 2015 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States. OJ L 21, 28.1.2015, pp. 1–3. EUR-Lex. https://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX:32015L0121
Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market. OJ L 193, 19.7.2016. EUR-Lex. https://eur-lex.europa.eu/eli/dir/2016/1164/oj
Court of Justice of the European Union (CJEU) Decision of 15 February 1996, Fintan Duff, Liam Finlay, Thomas Julian, James Lyons, Catherine Moloney, Michael McCarthy, Patrick McCarthy, James O'Regan, Patrick O'Donovan v. Minister for Agriculture and Food and Attorney General, Case C-63/93, ECLI:EU:C:1996:51. EUR-Lex.
Court of Justice of the European Union (CJEU) Decision of 15 July 2004, Willy Gerekens and Association agricole pour la promotion de la commercialisation laitière Procola v. State of the Grand Duchy of Luxembourg, Case C-459/02, ECLI:EU:C:2004:454. EUR-Lex. https://eur-lex.europa.eu/legal-content/LT/TXT/?qid=1566984613455&uri=CELEX:62002CJ0459
Court of Justice of the European Union (CJEU) Decision of 20 June 2002, Gerard Mulligan and others v. Minister for Agriculture and Food, Ireland ir Attorney General, Case C-313/99, ECLI:EU:C:2002:386. EUR-Lex.
Court of Justice of the European Union (CJEU) Decision of 20 May 2003, Consorzio del Prosciutto di Parma and Salumificio S. Rita SpA v. Asda Stores Ltd and Hygrade Foods Ltd., REFERENCE to the Court by the House of Lords (United Kingdom) for a preliminary ruling, Case C-108/01, ECLI:EU:C:2003:296 EUR-Lex. https://eur-lex.europa.eu/legal-content/LT-EN/TXT/?qid=1566990431875&uri=CELEX:62001CJ0108&from=LT
Craig, P. (2012). *EU administrative law*. Oxford University Press.
Gedmintaitė, A. (2016). *Teisėtų lūkesčių apsaugos principas viešojoje teisėje* [*The principle of the protection of legitimate expectations in public law*; Doctoral dissertation]. Vilnius University. http://www.tf.vu.lt/wp-content/uploads/2016/08/Audrone-Gedminaite_Teisetu-lukesciu-apsaugos-principas-viesojoje-teiseje.pdf
Government of the Republic of Lithuania Resolution of 5 March 2002 No. 321, on approval of the procedure for determining the deductions related to the earning of income through permanent establishments and the procedure for determining the first and last tax periods of the permanent establishment. Register of Legal Acts. https://www.e-tar.lt/portal/lt/legalAct/TAR.4DDB2850DAC5
Government of the Republic of Lithuania Resolution of 9 December 2003 No. 1575 on the approval of rules for the description of income or benefits. Register of Legal Acts. https://www.e-tar.lt/portal/lt/legalAct/TAR.5758DA19CE3D/asr
Gribnau, H. (2013). Legal certainty: A matter of principle. In J. L. M. Gribnau & M. R. T. Pauwels (Eds.), *Retroactivity of tax legislation* (pp. 69–93). European Association of Tax Law Professors; IBFD.
INFOLEX. (n.d.). Data from subsystem Infolex Practice. http://www.infolex.lt/teise/Default.aspx?Id=20#
Jarašiūnas, E. (2006). Keletas konstitucinio teisinės valstybės principo interpretavimo aspektų Lietuvos konstitucinėje jurisprudencijoje [Quelques aspects de l'interprétation de principe constitutionnel d'état de droit dans la jurisprudence constitutionnelle Lituanienne; Some aspects of interpretation of the constitutional principle in Lithuanian constitutional jurisprudence]. *Jurisprudencija*, *84*(6), 16–24.
Kalašnykas, R., & Deviatnikovaitė, I. (2007). Kai kurių bendrųjų Europos Bendrijos teisės principų taikymo ypatumai administruojant viešąjį saugumą [Peculiarities of applying some general European community principles in administration of public security]. *Jurisprudencija*, *94*(4), 44–53.
Kūris, E. (2001). Konstituciniai principai ir Konstitucijos tekstas [Constitutional principles and the text of the Constitution]. *Jurisprudencija*, *23*(15), 46–69.
Kūris, E. (2002a). Konstituciniai principai ir Konstitucijos tekstas (2) [Constitutional principles and the text of the Constitution (2)]. *Jurisprudencija*, *24*(16), 57–70.
Kūris, E. (2002b). Lietuvos Respublikos Konstitucijos principai [The principles of the Constitution of the Republic of Lithuania]. In T. Birmontienė, E. Jarašiūnas, E. Kūris, M. Maksimaitis, G. Mesonis, A. Normantas, A. Pumputis, E. Vaitiekienė, S. Vidrinskaitė, & J. Žilys, *Lietuvos konstitucinė teisė* (pp. 201–272). Lietuvos teisės universiteto Leidybos centras.
Kūris, E. (2012). Konstitucija, teisėkūra ir konstitucinė kontrolė: Retrospekciniai ir metodologiniai svarstymai [Constitution, legislation and constitutional control: Retrospective and methodological considerations]. In *Lietuvos Respublikos Konstitucijos dvidešimtmetis: Patirtis ir iššūkiai*. *Recenzuotų mokslinių straipsnių rinkinys* (pp. 54–91). Druka. https://www.notarurumai.lt/leidiniai
Law on Corporate Income Tax of the Republic of Lithuania No. IX-675 (consolidated version as of 1 January 2020). Register of Legal Acts. https://www.e-tar.lt/portal/lt/legalAct/TAR.A5ACBDA529A9/asr
Law on Legislative Framework of the Republic of Lithuania No. XI-2220 (consolidated version as of 1 April 2020). Register of Legal Acts. https://www.e-tar.lt/portal/lt/legalAct/TAR.B4FA4C56B8D5/asr
Law on Tax Administration of the Republic of Lithuania No. IX-2112 (consolidated version as of 19 March 2020 – 30 June 2020). Register of Legal Acts. https://www.e-tar.lt/portal/lt/legalAct/TAR.3EB34933E485/asr

Medelienė, A., & Lukas, M. (2015). Vacatio legis mokesčių teisėje [Vacatio legis in tax law]. *Teisė*, *94*, 132–148. https://doi.org/10.15388/Teise.2015.94.7353
Pauwels, M. (2013). Retroactive and retrospective tax legislation: A principle-based approach; a theory of 'priority principles of transitional law' and 'the method of the catalogue of circumstances.' In H. Gribnau & M. Pauwels (Eds.), *Retroactivity of tax legislation* (pp. 95–116). ETALP/IBFD.
Popelier, P. (2008). Five paradoxes on legal certainty and the lawmaker. *Legisprudence*, *2*(1), 47–66. https://doi.org/10.1080/17521467.2008.11424673
Pranevičienė, B., & Mikalauskaitė-Šostakienė, K. (2012). Guarantee of principles of legitimate expectations, legal certainty and legal security in the territorial planning process. *Jurisprudencija*, *19*(2), 643–656.
Puzinskaitė, E., & Klišauskas, R. (2012). Mokesčių teisės sistema ir apmokestinimo principai. *Jurisprudencija*, *19*(2), 675–695.
Raitio, J. (2008). Legal certainty, non-retroactivity and periods of limitation in EU law. *Legisprudence*, *2*(1), 1–24.
Raitio, J. (2011). *The principle of legal certainty in EC law*. Kluwer Academic Publishers.
Samuilytė-Mamontovė, A. (2016). *Europos Sąjungos direktyvų veikimas: Teisinio saugumo principo užtikrinimo aspektai [Effect of the European Union directives: Aspects of ensuring the principle of legal certainty]* [Doctoral dissertation, Mykolas Romeris University]. https://repository.mruni.eu/handle/007/14486
Seimas of the Republic of Lithuania Decision of 17 December 2013 No. XII-694 on Approval of the provisions of the Register of Legal Acts. Register of Legal Acts. https://www.e-tar.lt/portal/lt/legalAct/TAR.A2966145E4F5
Sinkevičius, V. (2011a). Konstitucinio Teismo nutarimų įgyvendinimas įstatymų leidyboje [The implementation of rulings of the Constitutional Court in legislation]. *Jurisprudencija*, *18*(2), 497–516.
Sinkevičius, V. (2011b). *Parlamento teisės studijos [Studies of parliamentary law]*. Mykolo Romerio Universitetas. https://ebooks.mruni.eu/product/parlamento-teiss-studijos26719#
State Tax Inspectorate. (21 December 2018). Amendment to the corporate income tax law [Informational notice]. https://www.vmi.lt/cms/documents/10162/8782061/RM-42327/8c297fb5-6dfb-4587-b5a6-5b87e3071055
Supreme Administrative Court of Lithuania Decision of 15 December 2017; Administrative Case No. EI-17-261/2017. http://www.infolex.lt/tp/1556405
Tridimas, T. (2006). *The general principles of EU law*. Oxford University Press.
Žaltauskaitė-Žalimienė, S. (2012). Teisinio saugumo principas ir Lietuvos Respublikos Konstitucija [Principle of legal security and the Constitution of the Republic of Lithuania]. In *Lietuvos Respublikos Konstitucijos dvidešimtmetis: Patirtis ir iššūkiai*. *Recenzuotų mokslinių straipsnių rinkinys* (pp. 136–155). Druka. https://www.notarurumai.lt/leidiniai