Intertwining Lawfulness, Innovation and Transparency in the Era of Uncertainty: The Case of Slovenian Prefilled Informational Calculation of Personal Income Tax

Matej Babšek[1], Polonca Kovač[2]

Abstract:
The regulation of the informational calculation of personal income tax introduced by Slovenia in 2007 is, comparatively speaking, exemplary. The prefilled informational calculation ensures tax transparency, which is an important aspect of democratic government, as well as efficient tax collection. The article examines the regulation of informational calculation under the Tax Procedure Act as well as the relevant statistical data and case law. These show that prefilled informational calculation is an excellent tool contributing to a more accurate assessment of tax and less administrative burden for the tax authority and, above all, the taxpayers. Numerical data suggest that there are very few objections, while the analysis of administrative dispute cases at Slovenian Administrative and Supreme Courts ever since the introduction of prefilled informational calculation reveals a low share of disputes and only marginal problems with certain profiles of taxpayers, such as workers abroad. The article therefore proposes to transplant this approach to the related area of social rights, as such a transparent and efficient system ensures greater satisfaction of all stakeholders in administrative procedures and increases trust in the authorities.

Points for Practitioners: The article addresses practical issues of improving tax and other related public policies, including those related to social security contributions. Therefore, it can inspire practitioners from various countries in charge, for example, of regulatory development at the ministries. An important aspect in such regard is that any critique is based on evidence, i.e. empirical data (in this case, Financial Administration statistics and analysis of case law). The article can be particularly useful for practitioners in tax agencies, as it provides a comprehensive analysis of the development and of the strengths and weaknesses of prefilled personal income tax calculation.

Keywords: tax transparency, administrative procedures, informational calculation of personal income tax, case law, legal transplant

1. Introduction

The rapid technological development and continuous challenges of contemporary society dictate changes in the functioning of public administration that, as a fundamental societal subsystem, ensures the implementation of the tasks of a democratic system. In such context, administrative relations constantly strive for a balance between the interests of the state or other authorities and the interests of individuals. The collision between public and private interests is especially evident in tax relations – a special type of administrative relations that, according to the principle of redistribution, seek to provide sufficient public funds to perform basic state functions which, in turn, meet common societal needs. This means that efficient tax collection is in the public interest (Jerovšek & Kovač, 2008, Pistone, 2020). On the one hand, the tax procedure is a tool for the authorities to collect funds to cover the needs of the state apparatus and is thus an important instrument of the economic and social function of each country, aimed to finance goods that the free market can neither organise nor ensure their accessibility to all population groups (Slovenian Constitutional Court, case UI-297/95, 28 October 1998, cf. Jerovšek, Simič & Škof, 2008). On the other hand, being a special administrative procedure, tax procedure is also a fundamental guarantor of the protection of the rights of the parties in relation to the state, preventing disproportionate and arbitrary state interference with private interests in the tax area. In Slovenia, this is regulated at the highest level by the Constitution of the Republic of Slovenia, especially Articles 146, 147 and 148 providing that the state raises funds for the performance of its duties by means of taxes, that taxes are imposed by law, and that the financing of public spending must be included in the budgets of the state.

The procedural rules for the assessment and recovery of taxes derive – in addition to the General Administrative Procedure Act (GAPA)[3] which applies as *lex generalis* – from basic sector-specific laws. In the case of personal income tax as the main tax on income and property of natural persons, the basic laws are the Personal Income

[1] PhD Student, University of Ljubljana, Faculty of Public Administration, Ljubljana, Slovenia.
[2] Professor, University of Ljubljana, Faculty of Public Administration, Ljubljana, Slovenia.
[3] Official Gazette of RS, No. 80/99 ff.

Tax Act and the Tax Procedure Act.[4] The latter regulates the procedure of personal income tax assessment in Articles 267–351 and defines the prefilled tax return as informational calculation of personal income tax (ICPIT). The ICPIT was introduced in Slovenia in 2007 (applying in full since 2008) as an important means of reducing administrative burden for the parties. Although the ICPIT's contribution to saving taxpayers' time in filling out tax returns has been evident ever since its introduction (Klun, 2009), it has also led to higher costs for the recovery of tax liabilities (Kovač, 2012). However, overall and in a comparative legal perspective, it is indeed cheaper, faster and more transparent (Gallagher & Jacobs, 2009, Thaler & Sunstein, 2009) than the classical procedure of assessing and recovering such types of taxes.

E-supported tax procedures – seen as a mechanism for managing administrative systems in digital public administration – contribute to debureaucratisation, partnerships with all relevant stakeholders, reduction of administrative burden, and lower costs for both taxpayers and the government. As an innovative instrument of government, the ICPIT pursues several goals, among which greater (tax) transparency, which is achieved through a systematic approach leading to greater legal and economic certainty of the entities involved in tax procedures. In the age of constant social changes and economic uncertainty, transparency and (legal) predictability of tax procedures are of key importance for the protection of the public interest when assessing and collecting taxes, while also ensuring equal protection of the rights of the parties (Jerovšek & Kovač, 2008). Given that, in Slovenia, tax procedures represent by far the most numerous administrative cases (approximately 2.8 million annually[5]), any innovative and legally sustainable mechanism is considered an important added value. Taking into account both substantive and procedural dimensions of the principle of lawfulness[6] as one of the fundamental principles in both administrative and tax procedures, including the procedure of recovery of assessed taxes, the purpose of this article is to provide a theoretical and empirical analysis of the regulation of the ICPIT in Slovenia as a tool intertwining lawfulness, innovation, and transparency.

This article and previous analyses rely on the following hypothesis: *The informational calculation of personal income tax is designed so as to provide an efficient and transparent system of collecting personal income tax by combining procedural guarantees and innovative digitalisation approaches*. In addition to facilitating communication between the parties, the ICPIT is intended to ensure faster procedures and enforcement of rights and to increase the level of accuracy of personal income tax calculations, thus contributing to a more efficient implementation of public policies and greater trust in the government. The article analyses the efficiency and suitability of the ICPIT for tax procedures and explores whether this innovative solution can be applied also in other administrative or legal fields. This will be illustrated by the theoretical concept of legal transplant where a legal rule or institution is moved from one legal field or system to another (Mosquera Valderrama, 2004; Husa, 2008).

The article is structured as follows: the introduction, which provides an insight into the topic under consideration, is followed by the chapter on the administrative framework of tax procedure with an emphasis on the principle of transparency. Next is a presentation of the ICPIT and the legal transplant as a mechanism to draw conclusions on the possible introduction of such innovative solutions in other areas as well. This is followed by the presentation of the purpose and type of methodology applied in the article. The central chapter presents the theoretical and empirical analysis of the adequacy of ICPIT. It is followed by the discussion of possible ICPIT transplant to other areas, and the conclusion.

2. Tax procedure as a mechanism for steering between public and private interests

2.1 Administrative framework of tax procedure and its role in the rule of law

Tax procedure is a special administrative procedure for the collection of taxes, including tax calculation or assessment, tax payment or refund, control over tax liabilities, recovery of administrative tax liabilities, and international cooperation in tax matters (Jerovšek & Kovač, 2008, cf Pistone, 2020, Jerovšek, Simič & Škof, 2008). In addition to guaranteeing the rights of the parties, the tax procedure – as a key mechanism for

[4] Both published in the Official Gazette of RS, No. 117/06 ff. For more on the application of the provisions of these laws, which in addition to procedural ones also contain substantive law rules on the assessment and recovery of laws, cf. Jerovšek, Simič & Škof, 2008.

[5] 2019 Annual Report by the Financial Administration of Slovenia (2020).

[6] In such context, Husa (2018, p. 131) sees Bingham's procedural (thin) notion of the rule of law in consistent and stable implementation of laws that are accepted also by the parties and, as such, guarantee the protection of individuals against arbitrary authoritative decisions. The substantive (thick) notion is broader and includes aspects relating to economic and social systems, forms of government, and conceptions of human rights. Thus, the thick notion binds political morality and law together, whereas the thin notion seeks to hold them separate, focusing on procedural aspects and acting apolitically.

regulating (tax) administrative processes – also pursues the economic, social, political and sociological functions of taxes. In pursuit of these many functions, tax systems strive for simplifications that ensure the participation of the parties while reducing the costs for all participants. In addition to greater inflows into the budget, this also enables allocation and redistribution, thus contributing to public finance sustainability, economic neutrality and stability, and ultimately to the development of the tax system. From a legal point of view, this ensures a balanced exercise of the powers of tax authorities to protect the procedural rights of the parties while effectively collecting taxes. By participating in the procedures, the parties better understand the tax system and are more likely to meet their tax liabilities (Pistone, 2020, p. 128ff.).

Given the increasing complexity and scope of such relations, in which authorities – for various purposes – interfere with private natural and legal persons, administrative procedures and their implementation are also changing, mainly in the direction of greater transparency. In the tax area, one can speak of 'three-dimensional protection through tax transparency' (Basaran Yavaslar & Hey, 2019): protection of the state and taxpayers through tax transparency of the taxpayer and third parties; protection of the taxpayer through transparency of the tax authorities; and protection of democracy and the general public through proactive information activities. This is especially important in personal income tax procedures which, according to the reports of the Financial Administration of Slovenia (FARS 2020, 2021), amount to around 1.5 million each year (in the value of EUR 2.1 billion) and present less than 3% of objections. Thus, in 2019, 1,543,609 ICPITs were issued and only 36,727 objections were filed (1,554,991 and 31,698 in in 2020, respectively).

2.2 ICPIT as a legal transplant in the era of digitalisation

Unpredictable social circumstances dictate the use of ever new approaches and innovative mechanisms in public administration. Administrative bodies undergo constant modernisation following the paradigm of Good Public Governance and related digitalisation- and innovation-based concepts. In such context, however, it is necessary to ensure that in their pursuit of the principle of efficiency and in applying modern mechanisms, innovative public administrations do not compromise the principle of the rule of law which, by focusing on the protection of the individual vis-à-vis the administrative apparatus, represents the foundation of legal and administrative activity. In the field of tax procedures, this means that, while striving for effectiveness, the relevant mechanisms must simultaneously ensure the protection of the rights of the parties and provide for clarity, transparency, and speed of procedure.

As a means to reduce administrative burden in taxation, the ICPIT was first introduced in Denmark in 1990, followed by Finland, Australia, Norway, Sweden, Belgium, and others (Klun, 2009, Thaler & Sunstein, 2009, p. 230). In Slovenia, the ICPIT has been used pursuant to the Tax Procedure Act as a tax return prefilled by the tax authority since 2007 (transitionally) and 2008 (fully). The tax authority obtains data to assess tax through the channels determined by sector-specific regulations, in particular data on taxable sources provided by the payers of income, holders of property databases, and banks that make payments. Both the prefilled tax return and its direct enforceability without objection are distinctive added values of the Slovenian ICPIT regulation, which makes Slovenia a frontrunner in this field (Kovač, 2012, cf. Fochmann et al., 2021, Kerr, 2012).

Another comparative advantage of the Slovenian regulation is that although the tax return is compiled by the tax authority, it is legally considered an application made by the party, which enables taxpayers' participation and results in the burden of proof being shared between authorities and parties, in the enforcement of procedural guarantees, and in the correctness of the final decision.[7] ICPIT analyses in Slovenia (Klun, 2009, Kovač, 2012, FARS Annual Report, 2020) show that the mechanism in question actually achieved the planned goals, i.e. contributed to simplification, cost reduction, and greater efficiency of tax procedures, for the authorities and the taxpayers alike. It resulted in greater transparency of tax procedures in terms of finding a fair and administratively feasible balance between public and private interests.

At present, administrative operations are not only subject to digitalisation, but undergo many other processes, as well. Privatisation, deregulation, globalisation, Europeanisation, multilevel governance, stronger influence of the civil society (Kovač 2017/18) are just some of the complex processes that intertwine social, economic, cultural, political, technological and many other aspects. Under their influence, administrative procedures (tax procedures included) converge toward good administration by operating in a distinctly interdisciplinary, systemic and development-oriented manner and establishing partnerships with various stakeholders. The result of the interactions between different administrative and legal systems are legal transplants, i.e. rules, institutions

[7] In this regard, Kerr (2012) mentions tax consciousness as a psychological aspect of the involvement of taxpayers in tax assessment procedures and, consequently, their familiarity with the procedures and co-responsibility for the outcome of the procedure in terms of correct and lawful assessment.

and parts of legal systems identified as examples of model regulation and, as such, transferred from one legal system to another (Mosquera Valderrama, 2004, cf. Jerovšek & Kovač, 2019). This implies the transfer of legal rules, institutions, concepts and structures, which are necessarily culturally, historically and politically conditioned and "path-depending", as their exchange does not take place in a sociological vacuum (Husa, 2018, pp. 129–130). This means that how a legal transplant will work in the new (legal) environment largely depends on the characteristics of the latter, rather than on the characteristics of the legal transplant itself. Internalised systems of beliefs and established patterns of conduct are difficult to change in legal life and are further influenced by the goals and values of the current government, the public-private relationship, and political and economic incentives from other countries. From such perspective and in this specific case, it is essential that the ICPIT as a legal transplant is only one of the mechanisms of the system if it is to achieve the desired effects throughout the entire public administration. However, these effects can only be achieved by intertwining the tax collection system with other government and administrative subsystems that serve to maintain these subsystems and to allocate and redistribute public funds (Kovač, Đulabić & Čičin-Šain, 2017) in other areas of public law. Only a comprehensive and intertwined system of measures relating to the management, organisation and digitalisation of administrative activities, its legal regulation and accompanying socio-psychological aspects, can lead to sustainable development and to good administration and good governance (Kovač, 2017/18, p. 112). This is all the more important when it comes to personal income tax assessment, by far the most numerous administrative procedures in the Slovenian administrative system.

3. Methodological framework: analysis of case law

Although traditional methods of evaluating legal institutions and regulations are still frequently applied in law, mixed research methods – integrating positive aspects of both quantitative and qualitative research – are increasingly gaining ground. An example thereof is the analysis of case law, which has become an established empirical research method in social sciences (Hall & Wright, 2008, p. 64). While the analysis of case law represents the objective aspect of research, other complementary methods – in our case historical, normative and comparative methods – enable the interpretation of existing judicial statistics in a broader societal context. Only in this way the analysis of case law can illuminate the problems stemming from the enforcement of regulations, thus also revealing the gap between publicly – i.e. politically – expressed objectives of a law at the time of its adoption and its subsequent effects in practice. This is important for understanding the regulatory feedback loop, as once individual decisions, with subsequent similar decisions in similar cases, gradually turn into established case law, adding value to the existing (legal) regulation and affecting both legislation and the proceeding of administrative bodies (Karpen & Xanthaki, 2017).

The analysis of the content of court decisions allows us a deeper understanding of the social, political and economic context and is therefore suitable for analysing the broader impact of court decisions on social subsystems and their constant interaction. By enabling the study of interactions in administrative systems which, content-wise, are part of different sector-specific regulations, and considering that the results of these interactions are reflected in changes within individual legal systems (Hall & Wright, 2008, p. 65), it is a particularly suitable method for analysing legal transplants. Moreover, taxation is often subject to innovation and legal transplants (Mosquera Valderrama, 2014), which further justifies the chosen methodological approach to ICPIT analysis. In this article, the analysis of case law is used as a key source for assessing how an individual legal institution – in our case the ICPIT – operates in its home area, i.e. taxes. Thus, it enables to predict, given the knowledge of the wider legal and socio-political environment, how it will operate in another, more or less related (administrative) legal area. It also helps us to extract elements that could be controversial in the implementation of the institution in another area. With appropriate preliminary analysis, these can be mitigated at least to some extent by tailored regulation of the legal transplant in the target area.

Based on the above and taking into account the hypothesis set out in the introduction, the analysis of case law was chosen as the central research method for this article. The analysis covered the decisions of the Supreme Court of the Republic of Slovenia (SC) and the 50 most relevant cases of the Administrative Court of the Republic of Slovenia (AC) concerning ICPIT. This analytical approach was complemented with a statistical analysis of the work of tax authorities between 2008 (immediately after the introduction of the ICPIT in Slovenia) and 2019 (the year for which the latest comprehensive data from the courts are available) or 2020 (FARS reports). In order to understand the broader context of the formation of case law and the interpretation of empirical data on the work of tax authorities, the normative, historical and comparative methods were used in the theoretical part of the article. On this basis, an analysis of the case law on ICPIT was carried out. On the *sodnapraksa.si* website, which is the central Slovenian electronic record of case law, we searched the database for results under "informational calculation of personal income tax" and related terms, with no time limit. As expected, most cases, namely 221, were cases dealt with by the AC. Far fewer were cases handled by the SC –

only 11 directly on ICPIT, three of which modify the 50 most relevant AC decisions. Four additional cases before the SC were excluded as they related to the ICPIT only indirectly.[8] We examined the most important court decisions before the AC and reviewed another 50 recent cases. Among these, we selected those decisions that were most indicative in terms of the purpose and scope of our analysis, with no legally relevant dilemmas. Thus, for further analysis, we had a selection of 47 AC decisions and 11 SC decisions. We examined these in more detail, also by means of statistical indicators previously defined according to the purpose of our research by subject, the legal basis of the dispute, and the type and success of the party (Table 2).

4. Results of statistical and qualitative analysis of case law on informational calculation

In the implementation of the basic functions of the state, the tax area – with its allocative and redistributive role – necessarily integrates with other administrative areas. This integration is backed by all government functions: the legislative, by adopting regulations; the executive, by enforcing them in the administrative system; and the judicial, by controlling administrative operations. The analysis of the current ICPIT regulation and its potential as a legal transplant – especially in similar areas involving beneficiaries' assets and incomes – rests on the results of the analysis of case law (Table 1 and Table 2). The performed analysis of ICPIT cases before the AC and the SC enables to draw conclusions about where and with what adjustments the ICPIT can act as a legal transplant in Slovenian and related (administrative) legal systems.

Table 1: Number of analysed ICPIT cases before the AC and the SC by year (source: SC, 2021)

	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
AC	1	8	7	2	9	5	3	5	2	47 most relevant (of 221 in total)
SC	/	/	1	3	1	1	3	1	1	11 (of which 2 appeals and 9 reviews)

Although the number of relevant cases shown in Table 1 varies over the years (from one to ten cases before the AC and from zero to three cases before the SC), the generally low number of all cases is an indicator of system stability. Overall, ICPITs clearly do not cause major problems. The rare disputes, as shown in Table 2, point to problems of individuals vis-à-vis the authorities that result from their specific circumstances, rather than to systemic issues that would require legislative changes and adjustments.

Table 2: Characteristics of analysed ICPIT cases before the AC and the SC (source: own analysis based on SC data, 2021)

	AC	SC
Subject of dispute	recognition of tax relief (e.g. costs incurred abroad) – over 60%; self-declaration – over 30%	self-declaration and recognition of tax relief – 45%
Parties	workers abroad – 51%; other taxpayers – 34%	cross-border elements – 64%; taxpayers in general – 36%
Basic institutions and/or rights in dispute	costs of procedure, fiction, reopening of procedure, deadlines, prescriptive period, substantial procedural errors	right to be heard, administrative silence, *ne bis in idem*, statute of limitations, application of law by time, access to file, reopening of procedure
Reference to procedural violations	13%	55%
Reference to violations of substantive regulations	Tax Procedure Act and Personal Income Tax Act in 87%, rules, international agreements	Tax Procedure Act and Personal Income Tax Act in combination with the GAPA and the Constitution
Success rate of the parties	28%	50% in appeal, 56% in review

As far as SC cases are concerned, most of them relate to reviews and to a lesser extent (only 2 out of 11 cases) to appeals, which again indicates a relatively suitable systemic regulation of the ICPIT, taking into account the nature and objectives of these procedures. The same conclusion can be drawn from the success rate of the

[8] These cases concerned fee exemption, the probative value of service, environmental inspection matters, or salary compensations under health insurance, and were thus irrelevant for analysis in this article in view of the initial hypothesis.

parties in the procedure: 28% of appeals are granted at first instance, i.e. before the AC, and about half of them at second instance before the SC (either in the review or appeal procedure), which – given the nature of these procedures and their absolute low number – is expected since the SC is the highest instance in regular judicial procedures. Based on the above, we can conclude that the number of disputes concerning tax areas is relatively low at all instances. There are only few disputes challenging erroneously or incompletely established facts, while the majority of (the still relatively few) cases concerns the most complex legal issues. Thus, the tax rules concerning the ICPIT are relatively stable and easily applicable. Looking at the content of the analysed cases, this reflects in the continuity and consistency of court decisions, which according to the principle of the regulatory feedback loop contributes to equality, transparency, and predictability in the tax and wider administrative system (Kovač, Đulabić and Čičin-Šain, 2017, p. 223).

Furthermore, the analysis of case law in terms of the subject matter of dispute shows the importance of the GAPA as *lex generalis*. Although mainly the Tax Procedure Act is challenged before the AC (87%), disputes related to constitutional procedural guarantees either under the Constitution or the GAPA before the SC occur in 55% of the cases (and in only 13% before the AC). In these disputes, the GAPA plays the role of guarantor of the rights of defence, for example the right to be heard, access to the file, and access to and use of legal remedies (Pistone, 2020, pp. 69–93, cf. Avbelj, 2019, Kovač & Kerševan, 2020). Given the fact that most cases before the AC (51%) and SC (64%) dealing with the ICPIT concern workers or residents abroad or at least some international element and that the number of the parties without special personal circumstances (e.g. disability) is relatively low, one can conclude that at system-level, the ICPIT is properly regulated and does not cause significant problems when implemented in administrative practice. The rare dilemmas arise only in specific circumstances. When using the ICPIT as a legal transplant, the legislature should a priori regulate the legal situations involving an international element, thus avoiding difficulties in the implementation of this otherwise innovative institution in administrative practice. This is all the more important in the context of the processes that affect the current functioning and development of modern public administrations, such as globalisation, Europeanisation, multilevel governance, etc., which all mirror in the convergence of public administrations toward a common European administrative space and the goals of good administration and good governance (Kovač, 2017/18). The most relevant decisions of the AC and SC, which affect the unification of case law as well as the conduct of administrative bodies in specific and individual cases, are presented in Table 3. The analysed cases mainly relate to procedural guarantees in the implementation of the ICPIT, which makes the findings particularly useful for transferring this institution to other areas and correct the inadequate provisions in the home and the target area of the legal transplant.

Table 3: AC and SC decisions most relevant for the ICPIT as a legal transplant (source: SC, 2021)

AC decisions	
Application of special provisions with the GAPA	*Ruling II U 391/2016-9, 20. 9. 2017*
Special provisions of the sector-specific law apply complementary with the GAPA, e.g. the reason to reopen the procedure according to Article 89 of the Tax Procedure Act must be consistent with the reasons and deadlines under Article 260 and the following of the GAPA.	
Subsidiary application of the GAPA	*Ruling III U 79/2013, 9. 5. 2014*
Unless otherwise provided by sector-specific law, the ICPIT (as an application) and the objection against the calculation (as a legal remedy) are subject to a subsidiary application of the GAPA; if successful, the party is reimbursed the costs of the procedure.	
Substantial violations of the rules of procedure	*Rulings I U 1867/2010, 19. 4. 2011, II U 174/2011, 3. 11. 2011, III U 53/2018-1, 23. 1. 2020*
Violation of the right to be heard pending the issuing of a decision and discrepancy between the operating part and the statement of reasons constitute substantial procedural errors under Article 237 of the GAPA.	
SC decisions	
Right to be heard	*Decision X Ips 465/2014, 29. 9. 2016*
The basic principles of the GAPA, which represent the concretisation of constitutional and procedural guarantees, are not the subject of subsidiary application under Article 3 of the GAPA, but apply in parallel with the principles of special laws, in this case the Tax Procedure Act. Namely, in special administrative procedures, the GAPA applies in cases not regulated by sector-specific law and the participants must be provided with constitutional procedural guarantees, regardless of the regulation in the special law.	
Administrative silence	*Decision I Up 8/2018, 13. 12. 2017*
Administrative silence under the provisions of the GAPA and the Administrative Dispute Act also applies in tax procedures. Irrespective of the form of the basic application, thus even in the case of an informational calculation, the time limit for resolving the appeal runs from the demonstrated correct filing of the appeal, while the party does not have to prove receipt of the appeal by the second instance body.	

Ne bis in idem and finality	*Decision I Up 227/2014, 2. 10. 2014*
When assessing the merits of two actions filed by the same party against two different administrative acts (here, the costs of procedure relating to the ICPIT and assessment), this does not constitute a situation in which a matter could not be decided in the way it has been decided by a precedent final decision.	
Statute of limitations and application of law by time	*Ruling X Ips 419/2014, 9. 7. 2015*
The provision on the statute of limitation under Article 125 of the Tax Procedure Act is one of the general provisions to which the transitional provision from Article 420 of the Tax Procedure Act does not apply, as it refers only to the application of special provisions of the previous law. As a rule, the law currently in force applies at the time of decision-making. In the case of the statute of limitations, it is a matter of substantive legal institutions that given the superiority of the public interest in administrative matters is characteristic only of the tax area.	
Reopening of procedure	*Ruling X Ips 27/2020, 1. 7. 2020*
The reopening of the personal income tax assessment procedure takes into account the same facts as the procedure for issuing the ICPIT, as the ICPIT is equated with the tax return. In the personal income tax assessment procedure, the ICPIT, against which no objection has been filed, acquires the nature of the tax assessment decision. Moreover, the principle of substantive truth applies in the reopening of procedure, whereby the tax authority is obliged to establish all facts that are relevant for making a correct and lawful decision, while the deadline for submitting returns does not constitute a restriction on taking into account the facts stated in the reopened procedure.	

The analysis of the above court decisions highlights the fundamental function of the tax procedure as protector of human rights and constitutional guarantees, as it enables the protection of individuals from excessive interference in their private sphere by the authorities. Given the fact that the tax is a compulsory, statutory levy collected by the state without the consent of the taxpayers, it is also indispensable to ensure a legally predictable, balanced and proportionate procedure that enables to pursue the principle of efficiency and thus the public interest, as well as lawfulness in the sense of protection of private interests of the taxpayers (Jerovšek & Kovač, 2008). This gives concrete form to the principle of the rule of law in administrative operations, both in its procedural and substantive element (Husa, 2018 pp. 130ff., Cf. Avbelj, 2019, Jerovšek & Kovač, 2019, Kovač & Kerševan, 2020), as the procedure provides to the otherwise subordinate party protection against excessive interference of the state in their private sphere. The development of individual institutions of transparency and the wider rule of law, in this context the ICPIT, is the result of legal development as a key process of transformation of political and legal institutions (Husa, 2018, p. 140).

5. The innovative potential of the ICPIT as a legal transplant in other administrative relations

The tax procedure is a state mechanism enabling fast, efficient and fair assessment and enforcement of tax liabilities. When such funds are collected in the state budget, they are allocated according to the needs and the societal and political consensus, which is provided by procedures in other areas. One of the most important areas for ensuring the fair distribution of tax revenues in accordance with Article 2 of the Constitution on the rule of law and the welfare state is the social welfare system, which provides for the needs of materially disadvantaged individuals. In order for social benefits to reach the beneficiaries as quickly as possible and with the least possible administrative barriers in their implementation, Slovenia proposed in 2017 to introduce informational calculations based on the ICPIT model also in the field of social welfare.[9] The introduction of an informational calculation of certain social rights (more specifically, rights from public funds that are decided for a period of one year, e.g. child benefit, state scholarship, reduced kindergarten fee, snack and lunch subsidies for primary school students) based on the ICPIT model would enable a modern social welfare system and a uniform, fast, professional and efficient way to decide on such rights. It would reduce the burden for both the parties and the employees of social work centres (SWCs), who – as competent administrative bodies and holders of public authority – decide on such rights in the general administrative procedure in accordance with the provisions of the GAPA. The SWCs thus no longer need to conduct special fact-finding procedures, while the parties would not need to re-submit their applications to renew their rights. The legal basis for the informational calculation was provided by the 2017 Act Amending the Exercise of Rights from Public Funds Act.[10] This Act was to apply in the part relating to the informational calculation since 1 January 2019 and in full (for mass informational

[9] The presentation thereof is taken from an explanation of the draft Act Amending the Exercise of Rights from Public Funds Act (ZUPJS-H) provided by the Government of Slovenia (2018).
[10] Official Gazette of RS, No. 75/17; ZUPJS-G.

calculations) since 1 September 2019. However, in 2018, the relevant legal provisions were re-examined and the information system for data gathering and issuance of decisions was tested. It was found that such solution would not meet the declared objectives. The following reasons were reported: the automation of procedures would not be possible within the deadline set by the Act due to extremely complex legislation; data from official records could not be gathered in a way supporting mass informational calculations; if preliminary procedures were not adequately supported by IT, the informational calculation would lose its purpose, while the number of objections against incorrect informational calculations would increase the workload of the SWCs. Based on the above, the 2018 Act Amending the Exercise of Rights from Public Funds Act[11] withdrew the informational calculation of social benefits and postponed it to a time when it would be possible to ensure adequate IT support for the automation of procedures. The 2018 amendment indeed brought some simplifications and automation in the procedures (e.g. extension of rights ex officio, without a renewing the application, provided there have been no changes in the life of the applicant that would affect the amount and the period in which they enjoy a right), but the key novelty – i.e. the introduction of the informational calculation – never came to life. Thus, the rights continue to be decided by SWCs in special fact-finding procedures.

The publicly declared reasons for withdrawing the proposal of informational calculation of social rights can be interpreted as concern for the SWCs, as the informational calculation would likely result in extra workload due to a higher number of objections to incorrect informational calculations. The analysis of the ICPIT in this article, however, does not confirm such. Although the Ministry of Labour, Family, Social Affairs and Equal Opportunities questions the adequacy of IT support to administrative decision-making,[12] there are no substantive arguments provided by the Government that would prevent the introduction of informational calculation in the field of social welfare. Likewise, the argument that such prefilled calculation presents a burden only to the authority issuing it does not hold up. As shown by the analysis of the case law, the fact that the ICPIT is prefilled by the authority does not relieve the parties of their co-responsibility for the accuracy of the data – thus, the informational calculation is a tool with which the authority allows the party to participate (cf. Kerr, 2012, pp. 473ff., Gallagher & Jacobs, 2009, Vaillancourt & Verdonck, 2010). The participation of the parties along with the automation of procedures brings positive results for both the authority and the party. Multi-level control reduces the possibility of errors and ensures the protection of the parties in procedures, eliminates administrative barriers, and simplifies and speeds up the procedures. There is no harm to the public interest as the authority verifies the relevant facts on an ongoing basis, obtaining data from official records and directly from the parties involved in the procedure.

The analysis of the case law on the ICT also highlights the potential that this institution could have as a legal transplant in social welfare procedures, especially in terms of ensuring the participation of the parties. In fact, the inspections carried out by the Administrative Inspectorate (2020) find that a fundamental shortcoming in the procedures in which the SWCs decide on social rights is that they do not (sufficiently) take into account the principle of participation of the parties. The parties are not given the opportunity to comment on the facts and circumstances on which the SWCs base their decisions and are not informed of the outcome of establishing evidence in the procedure. However, with the introduction of the informational calculation – as deriving from previous experience with the ICPIT – one can expect that the parties exercising the rights arising from public funds would be have the opportunity to participate in administrative procedures before the decision becomes enforceable or administratively final, which would contribute to fewer violations of the right to be heard and substantive truth. It follows from the declared goals of the 2018 social benefits reform that one of the basic functions of the informational calculation in the procedures for exercising rights from public funds is to enable the parties to state their facts and circumstances during the procedure and be informed about the outcome of establishing evidence in the procedure. According to the analysis of the case law on the ICPIT, procedural standards provided by the Constitution and the GAPA in these procedures must not be lowered, neither to the level of norms nor to the level of administrative decision-making in concrete and individual procedures. This is further confirmed by the finding that simplifications of procedure do not and cannot replace the exercise of the authorities' legitimate powers, but must, at best, reflect in a reduction of administrative burden for the parties (e.g. the special rules on service in these procedures are primarily intended to facilitate and expedite the procedure for the parties and not to facilitate the work of the authority). Less workload for the authorities is in fact ensured by their lawful, economical and proactive administrative work, e.g. by proper conduct of first-instance procedures, which significantly reduces the use and success of legal remedies. The reasons presented by the Ministry for not implementing the informational calculation in the fields of social rights are therefore unfounded even from this point of view. Moreover, they focus on the wrong participant in the administrative

[11] Official Gazette of RS, No. 77/18, ZUPJS-H.
[12] See explanation to the draft Act Amending the Exercise of Rights from Public Funds Act (ZUPJS-H) (Government of Slovenia, 2018).

process, i.e. the SWCs. Thus, they give priority to the public interest over private interests, even if all the principles of good administration and good governance dictate a focus on the party as a significantly weaker element in any administrative procedure, including tax procedure.

It is also worth pointing out the situations to which the legislature should pay special attention when introducing the informational calculation in the field of social rights. One such situation is when individuals live in one (EU) country and exercise social rights in another country due to work or other life circumstances. In practice, these situations lead to inequality – individuals work and pay taxes in one or more countries and exercise social rights in another. In this context, the various institutions conditioned by the social and socio-cultural environment of an individual country and their regulation need to be interpreted in favour of the weaker party, i.e. taxpayer or applicant for social rights. This can also be concluded based on the analogous interpretation of the institution of self-declaration of the taxpayers (according to the principle of 'tax fairness' arising from Article 14 of the Constitution). In practice, various legal situations are indeed interpreted in favour of the weaker party (e.g. in the case of self-declaration when a taxpayer could not claim tax relief – the court changed this practice and late payers are now sanctioned with default interest rather than unequal treatment in substantially the same situations).

6. Conclusion

Although a decade and a half has passed since the introduction of the prefilled ICPIT, the Slovenian regulation thereof remain a top notch solution even on a global scale. The analysed case law arising from the use of this institution shows that there are no significant systemic dilemmas and problems in its implementation in administrative practice. The initial hypothesis on the suitability of this institution in terms of transparency, equality and predictability can thus be fully confirmed. Moreover, in view of our positive findings, we suggest to transplant such also in the field of social welfare, given the similar characteristics, the connection between the tax and social systems, and the number of such procedures. The analysis of case law shows that the ICPIT ensures adequate protection of the constitutionally protected rights of the parties and is consequently reflected in the substantive and formal legality of the operations of administrative bodies. Any ambiguities in the years since its introduction (e.g. service) have been promptly remedied. The introduction of this institution brings the desired effects for both parties and authorities, as it simplifies and speeds up procedures, reduces administrative burden and barriers, and decreases the cost of assessing and recovering tax. Moreover, the share of lawful and correct decisions and assessments has increased. In this way, the Slovenian tax and wider public administration follows the trends of openness and transparency and broader good public governance. In times of uncertainty, economic crises and rapid social change, only the administrations pursuing such trends can provide sufficiently innovative instruments to ensure fiscal sustainability and simultaneous protection of the public interest and the rights of the parties.

Acknowledgment: This paper is partly a result of the bilateral research project "*The Development of transparency in tax procedures in the EU, Slovenia, and Croatia*" (BI-SI-HR/20-21-010). The authors acknowledge the financial support of the Slovenian Research Agency.

References:

1. Administrative Inspection, Ministry of Public Administration of RS. 2020. Reports, https://www.gov.si/drzavni-organi/organi-v-sestavi/inspektorat-za-javni-sektor/o-inspektoratu-za-javni-sektor/upravna-inspekcija/zapisniki-in-porocila-upravne-inspekcije/ (accessed July 1, 2021).
2. Avbelj, Matej (ed.). 2019. *Komentar Ustave Republike Slovenije*. Nova Gorica: New University.
3. Basaran Yavaslar, Funda, and Johanna Hey (Eds). 2019. *Tax Transparency*. Amsterdam: IBFD.
4. FARS, Financial Administration of RS. 2020. Annual Reports for 2019 and 2020, https://www.gov.si/assets/organi-v-sestavi/FURS/Strateski-dokumenti/Letno-porocilo-Financne-uprave-za-leto-2019.pdf; https://www.gov.si/assets/organi-v-sestavi/FURS/Strateski-dokumenti/Letno-porocilo-Financne-uprave-za-leto-2020.pdf (accessed June 1, 2021).
5. Fochmann, Martin, Frank, Hechtner, Tobias Kölle, and Michael Overesch. 2021. Combating Overreporting of Deductions in Tax Returns: Prefilling and Restricting the Deductibility of Expenditures. Journal of Business Economics, https://ssrn.com/abstract=3613568 (accessed June 15, 2021).
6. Gallagher, Mark, and Arturo Jacobs. 2009. Lowering Taxpayer Compliance Costs. Developing Alternatives 1: 65–72, https://www.researchgate.net/publication/292411271_Lowering_Taxpayer_Compliance_Costs (accessed June 25, 2021).
7. Government of Slovenia. 2018. *Predlog zakona o spremembah in dopolnitvah Zakona o uveljavljanju pravic iz javnih sredstev (ZUPJS-H) [Draft Act Amending the Exercise of Rights from Public Funds Act*],

https://www.racunovodstvo.net/zakonodaja/predpis/11576/predlog-zakona-o-spremembah-in-dopolnitvi-zakona-o-uveljavljanju-pravic-iz-javnih-sredstev-zupjs-h (accessed July 1, 2021).
8. Hall, Mark. A., and Ronald F. Wright. 2008. Systematic content analysis of judicial opinions. California Law Review 1: 63–122.
9. Husa, Jaakko. 2018. Developing Legal System, Legal Transplants, and Path Dependence: Reflections on the Rule of Law. The Chinese Journal of Comparative Law 2: 129–50.
10. IOTA 2008. Pre-Filled and Electronic Income Tax Returns (2008). https://www.iota-tax.org/system/files/iota_report_-_pfeitr.pdf (accessed June 1, 2021).
11. Jerovšek, Tone, and Polonca Kovač. 2008. *Posebni upravni postopki*. Ljubljana: Faculty of Public Administration.
12. Jerovšek, Tone, Ivo Simič, and Bojan Škof (Eds). 2008. *Zakon o davčnem postopku s komentarjem*. Maribor; Ljubljana: Davčni izobraževalni inštitut; Davčno finančni raziskovalni inštitut.
13. Jerovšek, Tone, and Polonca Kovač. 2019. *Upravni postopek in upravni spor*. Ljubljana: Faculty of Public Administration.
14. Karpen, Ulrich, and Helen Xanthaki (Eds). 2017. *Legislation in Europe*. Oxford, Portland, Oregon: Hart.
15. Kerr, Jason. 22012. Tax Return Simplification: Risk Key Engagement, a Return to Risk. eJournal of Tax Research 10: 465–82.
16. Klun, Maja. 2009. Pre-filled income tax returns: Reducing compliance costs for personal income taxpayers in Slovenia. Financial Theory and Practice 2: 219–33.
17. Kovač, Polonca. 2012. Selected Slovenian Tax Procedure Act's Simplifications and Their Implementation. Podjetje in delo 2: 395–416.
18. Kovač, Polonca. 2017/18. Innovative administrative procedural law: mission impossible? The NISPAcee journal 2: 93–117.
19. Kovač, Polonca, Vedran Đulabić, and Nevia Čičin-Šain. 2017. Removal of administrative barriers through the recent procedural simplifications in Slovenia and Croatia. Danube 4: 207–28.
20. Kovač, Polonca, and Erik Kerševan (Eds). 2020. *Zakon o splošnem upravnem postopku s komentarjem*. Ljubljana: Official Gazette of RS and Faculty of Law.
21. Mosquera Valderrama, Irma Johanna. 2004. Legal transplants and comparative law. International Law Journal 1: 261–76.
22. Pistone, Pasquale (ed.). 2020. *Tax Procedures*. Amsterdam: IBFD.
23. Thaler, Richard T., and Cass R. Sunstein. 2009. *Nudge. Improving Decisions about Health, Wealth and Happiness*. London: Penguin.
24. TPA, Tax Procedure Act (ZDavP-2, Zakon o davčnem postopku). Official Gazette of RS, No 117/06 and amendments, http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703 (accessed June 1, 2021).
25. Vaillancourt, Francois, and Magali Verdonck. 2010. Pre-completed personal income tax returns in Belgium and Québec. Proceedings, Annual Conference. National Tax Association: 188–92.