CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE REPUBLIC

HEADNOTES

Should the legislature impose upon the taxpayer compliance with rules they selected for the specific accounting and taxation period upon commencement of this period, the legislature themselves must under the circumstances of a rule-of law state equally respect those rules for such a period and not modify those without serious reasons to do so to the disadvantage of the taxpayer who in the course of such an accounting and taxation period acts with reliance on the law. At the same time it must be emphasised that equally the different evaluation of legal facts decisive for the calculation of the tax and tax burden cannot be based solely on the type of the accounting system used by the taxpayer for their bookkeeping.

VERDICT

of the Plenum of the Constitutional Court consisting of the Chairman of the Constitutional Court, Pavel Rychetský, and the Judges Stanislav Balík, František Duchoň, Vlasta Formánková, Vojen Güttler, Ivana Janů, Vladimír Kůrka, Dagmar Lastovecká, Jiří Mucha, Jan Musil, Jiří Nykodým, Miloslav Výborný, Eliška Wagnerová and Michaela Židlická dated July 12 2011, file no. Pl. ÚS 9/08 in the matter of the petition of the Regional Court in Brno with JUDr. Jaroslava Skoumalová, the Chairman of its 31 Ca Chamber acting on behalf of the aforesaid Court seeking to have abolished the provisions of Article V, point 1 sentence two of the Act No. 260/2002 Coll. by which Act No. 191/1999 Coll., on Measures Related to Import, Export and Re-Export of Goods violating certain intellectual property rights and on amendments of certain other Acts in the wording of the Act No. 121/2000 Coll., Act No. 586/1992 Coll., on Income Tax in the wording of the latest regulations, Act No. 593/1992 Coll., on Reserves for Ascertainment of the Income Tax Base in the wording of the latest regulations and Act No. 569/1991 Coll., on the Land Fund of the Czech Republic in the wording of the latest regulations with the Chamber of Deputies of the Parliament of the Czech Republic and the Senate of the Parliament of the Czech Republic acting in the capacity of the parties to the proceedings (the Judgment was declared under number 236/2011 Coll.).

Provision of Article V point 1 sentence two of Act No. 260/2002 Coll. by which Act No. 191/1999 Coll., on Measures Related to Import, Export and Re-Export of Goods Violating Certain Intellectual Property Rights and on Amendments of Certain Other Acts in the wording of Act No. 121/2000 Coll., Act No. 586/1992 Coll., on Income Tax in the wording of the latest regulations, Act No. 593/1992 Coll., on Reserves for Ascertainment of the Income Tax Base in the wording of the latest regulations and Act No. 569/1991 Coll., on Land Fund of the Czech Republic in the wording of the latest regulations as amended, is abolished as of the day of the declaration of this judgment in the Collection of Laws.

REASONING

I.
Summary of the Petition

1. On February 29, 2008 the petition of the Regional Court of Brno (hereafter only as "the Regional Court") seeking to have abolished the provisions of the second sentence of point 1 of Article V of Act No. 260/2002 Coll., by which Act No. 191/1999 Coll., on Measures Related to

Import, Export and Re-Export of Goods Violating Certain Intellectual Property Rights and on Amendments of Certain Other Acts in the wording of Act No. 121/2000 Coll., Act No. 586/1992 Coll., on Income Tax in the wording of the latest regulations, Act No. 593/1992 Coll., on Reserves for Ascertainment of the Income Tax Base in the wording of the latest regulations and Act No. 569/1991 Coll., on the Land Fund of the Czech Republic in the wording of the latest regulations are amended was delivered to the Constitutional Court. The Regional Court states in its petition that an action is pending before it by which the plaintiff is seeking to have the decision of the Tax Directorate in Brno II dated December 5, 2005 ref. no. 3181/05/FŘ 110-0107 as well as the preceding decisions of the Financial Office of Brno II dated December 9, 2005 ref. no. 178259/04289913/9780 by which income tax for the fiscal period of the year 2002 in the amount of 87,028 Czech Crowns was assessed upon the plaintiff. By the decision contested by the plaintiff both the defendant and the administrative body of the first instance assessed the tax to the plaintiff on the basis of the application of Article IV and Article V point 1 of the Act No. 260/2002 Coll., by which the Act No. 586/1992 Coll., on Income Tax was amended. Within the proceedings before the Regional Court the administrative body acting in the capacity of the defendant adopted a standpoint (see No. 1 45 and 46 of the Court File file no. 31 Ca 27/2006), stating that as a body of executive authority it was not entitled to assess compliance of the regulation of subordinate legal effect with the law, neither was it entitled to assess the compliance of the law with the constitutional order although this was requested by the plaintiff within the administrative proceedings. The administrative body acting in the capacity of the defendant lacks the standing to file a petition with the Constitutional Court seeking to have the Act or its provisions annulled and the law disallowed both the defendant and the first instance tax administrator to adopt any other procedure when assessing Article V sentence two of Act no. 260/2002 Coll. since the interpretation of the concerned provision is unambiguous.

2. Equally the Regional Court in the matter tested before it arrived at the conclusion that the contested provision of Article V point 1 sentence 2 confers true retroactivity by which physical persons trading securities within single-entry bookkeeping were significantly disadvantaged. It referred to the Judgment dated March 12, 20002 file no. Pl. ÚS 33/01 (see below) in which in an analogous case the Constitutional Court arrived at the conclusion that retroactive application of tax regulation was unconstitutional. Thus the Regional Court stayed the proceedings on the action in line with § 48 para. 1 letter a) of the Code of Administrative Procedure and pursuant to Article 95 para. 2 of the Constitution of the Czech Republic (hereafter only as "the Constitution") it filed a petition seeking to have the constitutional conformity of Article V point 1 sentence two of Act No. 260/2002 Coll. assessed.

II.
Opinions of the Parties to the Proceedings

3. The opinion of the Chamber of Deputies of the Parliament of the Czech Republic was expressed by its Chairman Ing. Miloslav Vlček; he limited the opinion to a mere description of the procedure in which the Bill proposing the Act No. 260/2002 Coll. was discussed. He noted that the Bill (Chamber of Deputies III. electoral term, Publication. 1267) was submitted by the government solely as an amendment of Act No. 191/1999 Coll. Within the second reading on April 23, 2002 the contested provision was put forward as an amendatory proposal by the deputy Antonín Macháček. The Bill was approved on May 2, 2002 by 162 votes out of 168 present deputies. The Chairman of the Chamber of Deputies failed to address the nature of the amendatory proposal concerning the issues of import, export, and re-export of goods violating certain intellectual property rights.

4. MUDr. Přemysl Sobotka expressed the opinion on behalf of the Senate of the Parliament of the Czech Republic. He stated that the Bill of the concerned Act was referred to the Senate on May 7, 2002. Having discussed the Bill in the committees the Senate at its meeting on May 24, 2002 adopted a resolution in which it expressed a will not to deal with the concerned Bill. 51 of the 54

senators present voted in favour of the Bill. The Chairman of the Senate demonstrated those facts by the relevant documentation from the meeting of the bodies of the Senate.

III.
Formal Prerequisites of Bill´s Consideration and Constitutionality of the Legislative Procedure

5. The Constitutional Court arrived at the conclusion that formally the petition complies with the requirements of Article 95 para. 2 of the Constitution and with § 64 para. 3 of Act No. 182/1993 Coll., on the Constitutional Court in the wording of its latest amendments (hereafter only as "Act on the Constitutional Court"). In the proceedings on annulment of legal provision it is an obligation of the Constitutional Court to firstly test whether the concerned regulation was issued in a constitutionally subscribed manner (§ 68 para. 2 of the Act on the Constitutional Court). The petition of the Regional Court is concerned with an Act that is to be applied directly while dealing with a pending matter, that is when adjudicating on administrative action pending before the Regional Court under file no. 31 Ca 27/2006, while subsequent course of action of the petitioner in the concerned proceedings is dependent on the review (review of constitutionality of the contested provision of Act No. 260/2002 Coll. The Petition was submitted by an eligible petitioner.

6. The contested provision of the Act No. 260/2002 Coll. (as well as the Act as a whole) were voted for by the constitutionally subscribed number of members of the Chamber of Deputies while the constitutionally subscribed number of members of the Senate expressed their will to not address the Bill (see articles 3 and 4). The Act was signed by the President of the Czech Republic on June 11, 2002 and the Act was declared in the Collection of Laws dated June 28, 2002 under number 260/2002. The contested provision was not modified. Thus the petition is admissible. With reference to this the Constitutional Court feels it necessary to note that it did not consider it necessary to deal with the question of the nature of the amendatory proposal to the Bill by the member of Chamber of Deputies, Deputy Antonín Macháček, who at the 49th meeting of the Chamber of Deputies on April 24, 2002 "added" the amendatory proposal modifying the government Bill by which Act No. 191/1999 Sb., on Measures Related to Import, Export and Re-Export of Goods violating certain intellectual property rights and on amendments of certain other Acts in the wording of the Act No. 121/2000 Coll., is amended. The Court points to its conclusions in matters of assessment of so called rider at which it had arrived in its judgments file no. Pl. ÚS 77/06 dated February 15., 2007 (Judgment 30/44 Collection of Judgment 349; 37/2007 Coll.) and mainly file no. Pl. ÚS 55/10 dated March 1, 2011 (Judgment 27/60 Collection of Judgments 279; 80/2011 Coll.), par. 105, when it took regard not only of the fact that this aspect does not appear in the petition by the Regional Court as the core one but also in association with the mentioned adjudication also of the fact that the petition is concerned only with part of Act No. 260/2002 Coll., enacted at a significantly remote moment of time.

7. Equally it was necessary to take regard to the fact that the petition of the Regional Court although directed against the amending and not against the amended act [regarding this see the adjudication namely within the judgment file no. Pl. ÚS 5/96 dated October 8, 1996 (Judgment 98/6 Collection of Judgments 203; 286/1996 Coll.), Resolution Pl. ÚS 25/2000 dated August 15, 2000 (Resolution 27/19 Collection of Judgments 271) and judgment file no. Pl. ÚS 21/01 dated February 12, 2002 (Judgment 14/25 Collection of Judgments 97; 95/2002 Coll.)]. The contested provision of Article V point 1 sentence 2 is a provision on the amended provisions of Act No. 586/1992 Coll., on Income Tax in the wording of the latest regulations, Act No. 593/1992 Coll., on Reserves for Ascertainment of the Income Tax Base in the wording of the latest regulations coming into force. Such provision has an independent meaning unlike the provision of the Act on Income Tax [namely provisions of § 24 para. 2 letters r) and w)] amended by Act No. 260/2002 Coll., that are not the subject of the judicial review in the instant proceedings. Thus, it was equally unnecessary to assess the modifications of the provisions of the Income Tax Act since the Regional Court shall assess the matter in line with the legal status as subject to the petition. Thus the petition in this respect is admissible.

8. As the fact that the reviewed legal issues as well as all circumstances of the case were sufficiently clear from the documentary evidence the Constitutional Court disposed of the oral hearing pursuant to § 44 para. 2 of the Act on the Constitutional Court as no further clarification of the matter could have been anticipated and all of the parties to the proceedings expressed their consent accordingly.

IV.
Assessment of the Constitutionality of the Provision the Petition is Concerned with

9. On these grounds after reviewing the contested provisions of Article V point 1 sentence two the Constitutional Court arrived at the conclusion that the petition is grounded. The contested provisions as such read as follows:

"Article. V

Transitional Provisions

1. Existing legal provisions apply to tax obligations for years 1993 to 2001. Provisions of Article IV will be used for the first time for the taxable period of the year 2002."

As already stated above only the second sentence of this provision is contested since as a result of this sentence the amendment of the Income Tax Act is to be applied as early as for the taxable period of the year 2002 although pursuant to Article IX of Act No. 260/2002 Coll. the Act shall enter into force as of September 1, 2002. As a result of those inter-temporal provisions for the taxable period of the year 2002 the bodies of tax administration were obliged to apply in the concerned proceedings before the regional court the following provisions of § 24 para. 2 of the Income Tax Act in the wording of Article IV of Act No. 260/2002 Coll. IV. The provisions (not subject to the review) read as follows:

"10. In § 24 para. 2 letter r) reads:

"r) the value of security at the point of sale recorded in the accounts in compliance with the special legal regulation 20) on the day of its sale with the exemption defined under letters w) and ze),".

13. In § 24 para. 2 letter w) reads:

"w) the acquisition price of the share that is not evaluated in compliance with the special legal regulation 20) by actual value, the acquisition price of the stake in a limited liability company or a limited liability partnership or a co-operative up to the extent of the income from the sale of such share or such a stake."."

10. When undertaking a specific test of constitutionality of laws the Constitutional Court cannot test the actual subject matter of the administrative action proceedings since that would amount to an interference with the independence of the exercise of judicial power of the general courts (here within the administrative justice). The Court's role in the tested matter is to assess whether the application of the provisions of § 24 para. 2 letters r) and w) of the In come Tax Act No. 260/2002 Coll., is - from the point of the taxpayer - of retroactive nature as the plaintiff had been stating since the commencement of the administrative proceedings (proceedings of administrative challenge) as, moreover, in this specific case both the tax administration body acting in the capacity of the defendant and the regional court had conformed to the statement or whether the provision is of apparent retroactivity nature when such retroactivity may also under certain circumstances be deemed to represent an unconstitutional procedure of the legislature.

11. The Constitutional Court notes that the concerned provisions of the amendment of the Income Tax Act (also in association to the Act No. 563/1991 Coll., on Accounting in its current wording) consequently mean that in virtue of § 24 of the Income Tax Act (in the wording decisive for the taxable period of the year 2002) the expenses (costs) incurred to achieve, secure and maintain taxable income to ascertain the tax base (§ 24 para. 1) is deemed to include the value of the Security upon sale recorded in the accounts in compliance with the special legal regulation (that means the Act on Accounting) on the day of its sale with the exemption defined under letters w) and ze) of para. 2. That means that the provisions of § 24 para. 2 letter w) following from the acquisition price of shares and not from their actual value must be applied to those who use single-entry bookkeeping. This is as pursuant to § 15 para. 6 of the Act on Accounting in the wording applicable at the material time (currently the provision has been annuled) the provisions of § 7, 14, 27 and 28 of the Act on Accounting do not apply to the accounting units using single-entry bookkeeping. Since § 27 of the Act on Accounting stipulated which of the individual components of assets and liabilities for instant evaluation pursuant to § 24 para. 2 Letter b) are evaluated by the actual value which meant that the units using single-entry accounting (in the instant case the plaintiff in the matter pending before the regional court under file no. 31 Ca 27/2006) may not apply such a manner of evaluation. The decisive factor for such units was to be the acquisition price of the share and not its actual value. In the instance the shares were sold for a price lower than the acquisition price the difference could not be recognised as a loss for the purposes of taxation for the taxable period of the year 2002 pursuant to § 24 para. 1 of the Income Tax Act since in the virtue of § 24 para. 2 letter w) such circumstance amounted to an exemption from provision § 24 para. 2 letter r) pursuant to which on the contrary an expense was represented also by the value of the security "recorded in the accounts upon sales in compliance with the special legal provision on the day of its sale" while the special legal regulation was to be understood as the above-listed provisions of the Act on Accounting. Regarding this it must be emphasized that this was not only reflected by the profit and loss statement of the units using single-entry bookkeeping but also by their further liabilities for payment (e.g. payment of the social security insurance and health insurance).

12. The Constitutional Court considers it necessary to point out that the concerned legal provisions came into force as late as in the course of the year 2002 specifically on September 1, 2002 and it was to be applicable even for the taxable period of the year 2002. Substantial from the point of view of possible assessment of the constitutionality of the application of apparent retroactivity (for more detail see sections 14 and 16) is yet another circumstance. Substantial from the point of view of assessment of the constitutionality of the procedure of the legislature in the instant matter in relation to the position of the payer of the income tax using single-entry bookkeeping is provision § 9 para. 4 of the Accounting Act in the wording applicable for the year 2002. Pursuant to the aforementioned provision the transition from single-entry bookkeeping to double-entry bookkeeping is obligatory should the accounting unit fail to meet the conditions stipulated by para. 2 or 3 for single-entry bookkeeping accounting while the fulfilment of the conditions stipulated pursuant to sections 2 and 3 is assessed for the immediately preceding accounting period. Simultaneously it applied that "The transitions pursuant to the previous sentences are possible solely by the first day of the accountancy period following the accountancy period in which the accounting unit finds out the relevant facts." With reference to this § 23 para. 10 of the Income Tax stipulated that determination of the tax base is based on the accounting maintained in compliance with special legal regulation that is namely in accordance with the above-mentioned provision § 9 of the Income Tax Act and thus it follows that during the year 2002 or in any additional year it was not possible to calculate the tax base using double-entry bookkeeping and through that to compensate the profits and losses from sale of securities in a cumulative manner as it had been possible before. In other words in the taxable period of the year 2002 the accounting unit using single-entry bookkeeping had no opportunity to respond to the unexpected amendment of the Income Tax Act. Should it be lawfully possible to undertake the transition from the simplified and full-extent accounting solely by the first day of the accounting period, such taxpayer had no possibility to adjust his/her accounting by the additionally set conditions in course of the year 2002. Moreover, such an amendment was hidden in the Act with an entirely different subject matter of

the amendment. Pursuant to § 1 para. 1 of Act No. 191/1999 Sb., in the wording of the Act No. 260/2002 Sb., this Act mainly amends the conditions under which the measures of the Custom Office against the persons who own, hold, store or sell goods which violate intellectual property rights in the entire territory of the European community just as in the domestic market protection are taken.

13. Pursuant to Article 1 para. 1 of the Constitution it is a duty of the state bodies to proceed in compliance with the requirements imposed upon a rule-of-law state when deciding on the legal status of an individual. Those requirements include the requirement pursuant to which the state may request both from physical and legal persons such conduct the rules of which are stipulated and declared in advance. Any other procedure - unless there are exceptionally serious reasons behind it - means breach of the principle of legal certainty and protection or reliance on law as follows from Article 1 of the Constitution. In the instant case no such reason was found and had not even been formulated in the course of the law-making procedure. The amendatory proposal containing the contested provision was "read" without any relevant law-related reasons being provided. Such procedure of the legislature represents an interference with protection of the right to own property pursuant to Article 11 para. 1 in association with Article 11 para. 5 of the Charter of Fundamental Rights and Freedoms (hereafter only as "The Charter"). Simultaneously such procedure is a discriminatory one as it lacks any reasoning behind the differentiation between the accounting units using single-entry bookkeeping (unable to assess the shares by their actual value and thus unable to account for any potential loss for taxation purposes) and accounting units using double-entry bookkeeping. Thus the legislature simultaneously breached the requirement of the equality of the content and protection of the right to own property of each owner pursuant to Article 11 para. 1 and at the same time gave rise to inequality in conditions of the right to engage in commercial and economic activity pursuant to Article 26 Section 1 of the Charter by which Article 4 para. 3 of the Charter was breached.

14. Regarding the legal status of the tax payer in the instant case it must be noted that the Constitutional Court did not find full analogy from the point of view of the factual background with the circumstances of the situation which the Court assessed in the case of the retroactive provision of Article III point 1 of the Act No. 210/1997 Coll., amending and complementing the Act No.586/1992 Coll., on Income Tax in its latest wording. Judgment file no. Pl. ÚS 33/01, which the Regional Court refers to, was concerned with a stipulation of a new duty the taxpayer could not have anticipated at the time of commencement of the taxation period. In the instant matter the legal status of the income tax payer was interfered with (and he was thus disadvantaged) while the taxpayer was unable to accommodate for such an interference with the legal qualification of his/her legal actions as he/she would have had to do so before the accounting and taxation period for the year 2002 firmly stipulated by law. However, regarding assessment of the matter from the point of constitutional law what may be applied to the concerned matter are the conclusions arrived at by the Constitutional Court in the quoted judgment file no. Pl. ÚS 33/01 dated March 12, 2002 (Judgment 28/25 Collection of Judgments 215, 221 and 225; 145/2002 Coll.) and repeatedly confirmed when stipulating the rules for the procedure of the legislature when resolving the timing related to the conflict of the old and the new legislation in the judgment file no. Pl. ÚS 53/10 dated April 19, 2011 (Judgment 75/61 Collection of Judgment 137; 119/2011 Coll.) see paragraphs 114 to 149. This legal opinion had to be applied by the Constitutional Court also in the concerned matter. The concept of taxation policy is thus a matter of the state that determines the extent of the tax burden imposed upon the taxpayer and equally determines how the obligations of the taxpayer in association with the verification of the correct tax assessment will be regulated. Such pursuit and the response to the changing conditions were documented by the development of the legislation contained within § 23 and 24 of the Income Tax Act in its amendments from the years 1993 to 2002. Even in this possible extent of the discretion of the legislature it is, however, the duty of the legislature to respect the rules following from the content of the principle of a rule-of-law state (Article 1 para. 1 of the Constitution), as well as from the associated constitutionally guaranteed rights and freedoms in the given area, that is mainly from Article 11 para. 1 and 5 and Article 26 of the Charter. Equally it is necessary to emphasise the requirement of the compliance with the rules

of due law-making process the breach of which (here reading the amendatory proposal without due linkage to the government bill amending the Act No. 191/1999 Coll., on Measures Related to Import, Export and Re-Export of Goods violating certain intellectual property rights and on amendments of certain other Acts) lets the unconstitutional amendment come into existence. In connection to this the Constitutional Court must emphasise that the question of reliance on law does not lie solely in the legislature not enacting laws which modify the effects of the legal actions of their addressees but also in the reliance on the fact that such addressees shall be protected from the potentially excessive conduct of the legislature by established case law of the Constitutional Court. This namely applies to the concerned matter when the contested provision of Law No. 260/2002 Coll. was enacted instantly after the Constitutional Court deemed a similar procedure to be unconstitutional.

15. Finally the Constitutional Court focused on the statement of the petitioner alleging retroactivity of the contested legislation. The contested provision was approved on May 24, 2002 and it entered into effect on June 28, 2002 and came into effect on September 1, 2002 while the contested provision was to be applicable for the taxable period of the year 2002. The matter is concerned with enactment of legislation in the course of the taxation period and its application within the same period. In such a case the retroactive nature is not an unambiguous one; comparative reference is made to the case law of the Federal Constitutional Court of Germany [for instance decision dated December 19, 1961 BVerfGE volume 13, page 261; dated May 14, 1986 file no. 2 BvL 2/83, BVerfGE volume 72, pg. 200] Such a procedure with no additional aspects is not assessed by the Constitutional Court as true retroactivity. While true retroactivity of legal norms is only very scarcely admissible, the instances of apparent retroactivity are perceived by both the adjudication practices and the theory as principally permissible (mainly in the area of tax law) while the latter type of retroactivity shall only be impermissible in exceptional circumstances. Apparent retroactivity in the tax law making sphere with regards to the role of this area of law is thus permissible whenever it is necessary in order to achieve the objective pursued by the law and when a conclusion can be arrived at that when on the whole examining the ratio of the "loss" of reliance on law and the importance and urgency of the amendment of the law the boundary resistance was maintained. [compare in detail Judgment file no. Pl. ÚS 53/10 dated April 19, 2011 (see above, par. 144-149].

16. In the instant matter, however, the Constitutional Court finds that such reasons for an exceptional conclusion on constitutional impermissibility of the apparent retroactivity are given. Such impermissibility is based on the conclusion that the contested provisions are of discriminatory nature, which in itself would be sufficient to have the contested provision annuled. In the instant case the legislature failed to prove that substantial grounds existed for the legislature's stipulation that solely the accounting units using double-entry bookkeeping may treat the loss resulting from sale of shares as loss for purposes of taxation. The rules of § 27 para. 2 of the Act on Accounting determining what is to be perceived as the actual value of securities (market value, evaluation by a qualified assessment or expert report unless the market value is available or if such market value insufficiently represents the actual value or assessment pursuant to special regulations when the rules on determining the market value or on determination via an expert report cannot be followed) were to apply solely to those accounting units using double-entry book keeping. Contrary to this the units using single-entry bookkeeping were to be regulated in the future (even as early as in the taxation period of the year 2002) by the regulations of § 24 para. 2 letter w) amended by the Act No. 260/2002 Coll. when the acquisition price (a so called historical price) or the acquisition price of the share in a limited liability company or in a limited liability partnership or a co-operative up to the extent of the income from the sale of such share or such stake were used as basis for determining the actual price of securities. In this case the legislature excluded in a retrospective manner that those accounting units were able to account for a sale of securities resulting in a loss. Until then the taxpayers using single-entry bookkeeping were able to anticipate that their legal actions (trading securities) would enable them to treat the loss from the sales of securities in the period of three following years pursuant to § 23 para. 1 of the Income Tax Act as a loss. As a result of the contested provisions each individual loss from the sale of securities or shares became non-

deductible from the point of taxation and equally it was no longer possible when selling more shares within one taxation period to compensate for both the losses and the profits in a cumulative manner pursuant to § 24 of the Income Tax Act. This conclusion affirms the procedure of both the tax and court proceedings in the matter at the core of the Constitutional Court adjudication and indicates that no other interpretation of the concerned provisions than the one of constitutional non-conformity is possible. Thus the procedure of the legislature in the adjudicated matter must be considered as breach of the legitimate reliance on the law of the taxpayer in law since it is necessary to take regard to other aspects of non-constitutionality of the concerned provisions (points 14 and 15). Should the legislature impose upon the taxpayer compliance with rules they selected for the specific accounting and taxation period upon commencement of this period (here using a specific system of bookkeeping, submission of the income tax return form based on the accounting in the accounting system selected beforehand and lack of possibility to submit an amended tax return during tax inspection as it followed from the Accounting Act, Income Tax Act and Act on Administration of Taxes and Fees in the wording material for the year 2002 and from the relevant application regulations published accordingly) the legislature themselves must under the circumstances of a rule-of law state equally respect those rules for such a period and not modify those without serious reasons to do so to the disadvantage of the taxpayer who in the course of such an accounting and taxation period acts with reliance on the law. The legislature thus must respect this peculiarity of tax law with respect to the nature of difficulties in accounting and tax collection eventually caused by different evaluation of the nature of the relevant facts for the purposes of taxation in the course of a fiscal year and taxation period. At the same time it must be emphasised that equally the different evaluation of legal facts decisive for the calculation of the tax and tax burden cannot be based solely on the type of the accounting system used by the taxpayer for their bookkeeping.

17. Thus the Constitutional Court granted the application of the Regional Court and pursuant to § 70 para. 1 of the Act on Constitutional Court annuled Article V para. 1 sentence two. In accordance with the provision § 44 para. 2 of the Act on the Constitutional Court and with the consent of parties to the proceedings the decision was issued without an oral hearing.