

CASE STUDY

Practical Issues in Tax Proceedings in the Czech Republic

Tereza Čejková, * Nikol Nevečeřalová**

* Tereza Čejková, student of Faculty of Law, Masaryk University, Czech Republic. The author specializes in financial law, especially tax law. (e-mail: 421880@mail.muni.cz; ter.cejkova@gmail.com)

** Nikol Nevečeřalová, Mgr. Bc., student of Faculty of Law, Masaryk University, Czech Republic. The author specializes in financial law, especially tax law. (e-mail: 431305@mail.muni.cz; nevenikol@seznam.cz)

Abstract: This contribution deals with practical problems of entities obligated to a tax and of tax administrators. If the collection of taxes and fees is essential to finance the running of the state and its authorities and organizational units, it is necessary to make this process as simple as possible, the least demanding and demotivating. In this paper, the authors will examine in terms of legality and real necessity, and then there may be other legislation ways proposed.

Keywords: tax proceedings; tax administration; administrative burden

1. Introduction

State is defined by spatial and social determinations; this community represents relations formed between persons living in the given territory, between which relations are established. But relations between the state as a legal entity also arise, and these are established primarily in dependence on ensuring the functioning and survival of the system of that state.

From the nature of state-based theory, the state is in a dominant or supreme position in these relations. It enforces its position in creating and enforcing laws and other legal regulations imposing obligations (and giving rights) to citizens and certain persons living in his territory. There may be situations where the legislator is so urgently trying to dictate what and how it should be done that the original idea of relieving the being is transformed into something truncated, formalized, enforced, overlapping in some inefficient bureaucracy. In the context of this article, we will focus primarily on the obligations imposed on legislators by taxpayers. We are talking mainly about the practical procedures involved.

Just like any natural or legal person, the state needs funds too. The state is an entity that has the duty not only to secure itself (as is the main idea for natural and legal persons), but also to secure goods that are destined for use and consumption by its citizens. The theory divides the property into private and public, in the context of the outlined issue, we

will be interested in a public good that is provided free of charge, because consumers cannot be excluded from consumption, because incompatibility with consumption is a basic feature of public goods. To these goods and to cover the extra costs of the emerging state, the legislator created an apparatus to obtain resources that he redistributes according to the concept prevailing in the state, however, all countries will be a common way of selecting funds in the tax law.

Tax law gives a number of institutes, which in practice causes unnecessary complications for both the taxpayer and the tax administrator. It is often an issue that would be technically easy to solve. These will be further described by a descriptive method and interpretation, an analysis of the legal text will then assess compliance with the law, and through induction their own ideas and possible suggestions will be given for solutions.

2. Forms Used in the Tax Proceedings

The Tax Code regulates the procedure, rights and obligations of the tax administration, taxpayers and third parties. This is a procedural rule which defines the legal framework in which the tax administrator moves in tax administration.

Thus, as we recalled earlier, the costs of the emerging states are covered by the mass of funds generated by taxes, fees, duties and other charges. I mention now some problems with collecting and managing taxes, and those relating to the tax return forms. Each taxpayer has an obligation to require filing a tax return, etc. Submission is evaluated by actual content and is the act of a tax entity/tax payer which goes to the hands of the tax administrator.

Such submissions may be made in writing or electronically, i.e. if the data box is established, the tax entity (even the tax administrator) is obliged to communicate via the data box.

Nevertheless, the legislator tried to make life easier for the tax payer and to create a counterpart through which the tax return must be filed, so the tax entity cannot file a tax return just like, for example, in a Word document, so the submission of the data message must be made in the format and structure published by the tax administrator so as to meet the effects of tax administration.

In a specific case, it was a situation where the taxpayer electronically filed tax returns for value added tax, as required under the law and in the.pdf format but should be submitted in the.xml format

Why in the.xml format? Simply because it was set by the tax administration D-349.¹ Which is a sub-statutory normative act and the only way the executive power in the abstract rules of conduct indeterminate number of persons.

In the tax administrator's cassation complaint, he argued that the court did not deal with the nature of the defect that can be both formal and substantive. The court overlooked the obligation imposed by law and that the data message must be made in the prescribed format (.xml) in order to make the electronic submission negotiable.²

The subject was challenged by the capacity of the hearing, as the pdf format did not suffer from any defect, as did the effects of filing. According to the NSS "in general, filing is

effective against administrators and has effects for tax administration from the moment when the filing it comes to the sphere of tax administration”.³ In the conclusion of the NSS, he stated that the submission in pdf format was eligible for discussion and therefore was submitted effectively.

Because the tax administrator was able to work with this format and the subject submission in.pdf format, the tax administrator could not find the taxpayer by an ineffective procedure according to Section 74 (3) of Act no. 280/2009 Coll., on the Code of Tax Procedure. The NSS did not consider filing with the.pdf file according to the current tax regulations, so it is necessary to transform the conclusion of the NSS into the effective wording.

In 2015 there was a change in the tax order and a new Section 72 (4)⁴ was introduced, which states that the person filing the filing pursuant to Section 72 (1) has the obligation to submit the data report submitted only in the format and structure of the publication of the tax administrator, i.e. format xml.

“If this did not happen and the submitter makes an electronic submission in an inappropriate format, it will depend in practice on whether this ‘inappropriateness’ will cause the technical data transfer to be impossible (i.e. the data message will not be delivered to the recipient at all) or not. In the first case, such filing cannot be considered as a submission at all. The tax administrator does not actually know about it, so he cannot react to this fact. In the latter case, it is necessary to distinguish whether the outgoing message is legible or not. If it is unreadable, the tax administrator can determine who it is coming from, and the petitioner asks for the removal of defects. The same holds true if the data message is legible (the tax administrator is able to open the file in the given format). There will be a defect in the form that renders it ineligible for discussion.”⁵

The requirement to the tax payer is to submit the tax return properly and in a mannerly time and, of course, in an appropriate form. It is possible to convert almost any document into the.pdf format, so it seems quite exaggerated to request only.xml form. However, the request is clear, and if the submission will not be in format xml, it will have consequences. Why does the tax administrator require xml compliance? I suppose, this is because of the workability and system facilities of the state administration.

Administration of the Waste Fee in Case of Children

In a broader sense, tax proceedings also include process of setting and collecting fees. Those are categorized as local, administrative and court. They differ from the tax in their function – they are usually a payment for a service provided by a public administrative body. There has long been a problem in the Czech Republic with the collection of a local charge for the operation of the collection, transport, sorting, use and disposal of communal waste, the subject of which is also children.

The Local Taxation Act defines a person obligated to pay this tax as a person who has a permanent residence in the municipality or is staying there in fact for a longer time. It does not consider the age of the taxpayer at all. In the past this has been causing problems for children whose parents have not been able to meet their obligations arising from

parental responsibility. Such children were usually unable to pay the debt, and their repayment was postponed to their maturity when it was many times higher.

It has concluded that a law imposing an obligation on a person who has no possibility of influencing its emergence without the help of another person cannot fulfil it and cannot objectively secure the funds to pay the fee due to other legal restrictions is unconstitutional.

Even before the judgment was issued, this procedure had an effect on the regulation of this charge. Since the debt could not be effectively enforced after reaching the age of majority, and then the debt was too high, the amendment of 2015 to this law introduced a new institute – the so-called payment transfer obligation.

Its nature lies in the fact that, if the fee is not paid until the due date, the obligation of the payment by the legal guardian is passed to him/her. If both parents are legal representatives, they are jointly responsible – i.e. the administrator of the fee can decide which of them will be responsible for the payment of his own liability, or he will split it fairly between both parents. Debt is matched by the adults and the child remains with no debt.

This provision certainly deserves a positive assessment. However, it is possible to raise criticism on the very moment of transfer of the duty. The legislator seems to have forgotten that taxpayers are “only humans” and that their payment obligations are often fulfilled at the last minute.

It is possible that in practice there will be a situation where a child’s representative sends a payment marked as a charge for a mandatory child on the due date. The amount will appear on the manager account until the next day. At this point, however, the payment obligation has already been transferred to the child’s representative. The child is thus overpaid, while the legal guardian is in delay.

The Code of Tax Procedure allows you to use the overpayment to pay a different tax, even before its due date. In the case of fees, however, this option is not yet specified, besides, the child may not have other tax debts. Even if that was the case, the child’s representative is still a debtor, so the situation is still not solved.

This apparent minority thus brings considerable administrative burden and the need for increased attention on behalf of the taxpayers’ representatives. This is a task that goes beyond the usual duties of a taxpayer who is also not sufficiently informed about this matter of fact.

The situation would be easily resolved if the legislator had to adjust the payment obligation in such cases in such a way that the liable person had to pay the fee on the due date, i.e. to send the relevant amount to the administrator’s account, thus replacing the requirement that the charge on the due date be paid.

3. Conclusion

We have mentioned the two most common cases where there is a totally unnecessary excessive administrative burden in administering taxes and charges, both on the taxpayer’s side and on the tax administrator. There are more situations in which disproportionate demands are made.

It is clear that the fulfilment of the duties of all those involved in the administration of taxes and fees can be very complicated and can cause adverse consequences. Laws regulating tax and fee systems are among the most frequently revised ones, making them more complex.

We are convinced that if the collection of taxes is essential to finance the running of the state and its authorities, the process of selecting and related activities must be as smooth and as motivating as possible for taxpayers.

References

- 1 Since 1. 1. 2016 instruction D-349 is replaced by instruction GFŘ-D-24. www.financnisprava.cz/assets/cs/prilohy/d-zakony/Pokyn_MF_6.pdf (accessed 5 May 2018)
- 2 Supreme Administrative Court: 2 Afs 25/2015
- 3 Supreme Administrative Court: 2 Afs 25/2015
- 4 Act no. 280/2009 Coll., on the Code of Tax Procedure Tax Code, as amended.
- 5 Josef Baxa. a coll. *The Code of Tax Procedure*. Commentary, part I, 390– 391 (Prague, Wolters Kluwer ČR, 2011). The Local Taxation Act defines a person liable to pay this tax as a person who has a permanent residence in the municipality or is in fact staying there. It does not take into account the age of the taxpayer. This has in the past been causing problems for children whose parents have not been able to meet their responsibilities arising from parental responsibility. Such children were usually unable to pay the debt, and their repayment was postponed to their maturity, when it was many times higher.