

ECOLOGICAL FISCAL REFORM

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Abstrakt

Práce se zabývá koncepcí ekologické daňové reformy (EDR). Představuje nedávný krok směrem k tomuto konceptu představovaný třemi nově zavedenými druhy daní - daní ze zemního plynu, daní z pevných paliv a daní z elektrické energie. K zavedení těchto daní byla Česká republika vázána směrnicí evropské rady 2003/96/EC, přičemž tento legislativní krok má být prvním stupněm k celkové fiskální změně daňové soustavy k tzv. ekologické daňové reformě. Text představuje základní myšlenku EDR a analyzuje zmíněné nové druhy daní. Uzavírá poukazem na současné jednání a formy návrhů EDR na půdě EU.

Klíčová slova

Ekologická daňová reforma, daň ze zemního plynu, daň z pevných paliv, daň z elektřiny, strategie 20/20/20

Abstract

The paper concerns ecological fiscal reform and its contemporary form presented by three new taxes recently adopted into Czech legal system. Those are tax on natural and other gases, tax on solid fuels and tax on electricity, which are based on the Council Directive 2003/96/EC. These taxes are shortly analysed regarding its content and form. Then is generally summarised the idea of complex ecological fiscal reform.

Key words

Ecological fiscal reform, tax on electricity, tax on solid fuels, tax on natural and other gases, strategy 20/20/20

Recently the Czech legal system was changed by the legislative act number 261/2007 Sb. This act is called "*the act on stabilisation of the public budget*" and has changed many different acts and branches of law. I want to mention one of those that didn't change the existing

legislation but constituted a new one.

Those are the parts 45-47 of this act that concern the so called ecological fiscal reform.

This change is closely connected to the European legislation, particularly the Council Directive 2003/96/EC of 27 October 2003, restructuring the Community framework for the taxation of energy products and electricity. This directive obligates member states to transform their fiscal system into a form specified by this directive and entered into force on the day of its publication. For new member states, such as the Czech Republic, there was a transition period until the 31.12.2007.

So the Czech legislation implemented this directive and by 1 January 2008 provisions of this directive are forceable through the above mentioned act on stabilisation of the public budget.

This norm established three new forms of taxation:

- Tax on natural gas and other gases
- Tax on fossil fuels
- Tax on electricity

Taxes on fossil fuels and electricity were entirely new and had not been in the Czech legal system before. On the other hand, the tax on natural gas was a part of the former consumption tax and is now established as a separate tax.

All member states have to respect the full list of commodities (stated in the article 2¹ of the Directive) as well as the minimum rates of taxation applied on them. (The directive requires only a minimum compulsory rate of taxation and every particular state can afterwards set a

1 Council Directive 2003/96/EC: Article 2

1. For the purposes of this Directive, the term "energy products" shall apply to products:

- (a) falling within CN codes 1507 to 1518, if these are intended for use as heating fuel or motor fuel;
- (b) falling within CN codes 2701, 2702 and 2704 to 2715;
- (c) falling within CN codes 2901 and 2902;
- (d) falling within CN code 2905 11 00, which are not of synthetic origin, if these are intended for use as heating fuel or motor fuel;
- (e) falling within CN code 3403;
- (f) falling within CN code 3811;
- (g) falling within CN code 3817;
- (h) falling within CN code 3824 90 99 if these are intended for use as heating fuel or motor fuel.

2. This Directive shall also apply to:

Electricity falling within CN code 2716.

higher level, although e.g. the Czech Republic surprisingly stays at the minimum level.) This especially relates to leaded and unleaded fuel, gas, oil, liquid gas, paraffin oil, brown and black coal and electricity.

As stated above, the Act separated these commodities into three groups:

1) Tax on natural gas and other gases

Subject to this tax is consumption by the final consumer, so reselling among traders is not affected by the tax. Aside from this general obligation there are many important exceptions. The tax is not applied to the highly energetically demanding operations such as:

- Mineralogical processes
- Metallurgical processes
- Production of electricity etc.

These industry processes are exempt from taxation. This can be understood from the point of view of businesses for whom this would mean higher costs. But from the point of view of the object and purpose of the directive, the very purpose of the norm – that is the decrease in the level of pollution – cannot be fully accomplished, because the largest producers of pollutants are exempt from the tax. On the other hand, we have to see this in the context of the global market where higher costs implied by the tax would create a disadvantage, compared to businesses from the countries with lower environmental standards. In this light, these European energetic companies might fail, the production itself would be delocalized and the level of pollution as a whole would increase.

Still we can see it as an unfair persecution of ordinary citizens against the privilege of large businesses. It might also seem that this instrument does not motivate businesses in these industries towards a more effective and environmentally harmless approach to energy resources. The question is whether different form of protection of these energetically demanding industries shouldn't be used. E.g. lower taxation, which won't be destructive for the industry but will be motivating to develop new, less demanding and cleaner technologies and will be more equal towards ordinary citizens.

In numbers this new tax should increase the price for consumers by 4,2 % and should bring 1,8 billion of Czech crowns to the national treasury in 2008.

The two other taxes have also a similar content and form.

In short, the tax on solid fuels covers mainly black and brown coal and other hydrocarbons and its rate is calculated per gigajoules of burned heat (currently 8,50 Czech crowns per one gigajoule). The tax is also paid when the commodity is consumed and traders are not obliged to do so if they do not consume it. Exemptions from this general rule are again very important. Highly demanding processes (metallurgical and mineralogical industry) are excluded from taxation, and very important in its impact to the environment is an exclusion of electricity production, because thermal power stations, which are also excluded from this tax, have significant impact in terms of production of CO₂ (carbon dioxide) and other contaminants.. We can object to this solid fuels tax in the same way as in the case of the gas tax: while small producers are taxed, the big ones are not.

The fiscal effect of this tax is predicted as 9,1% increase in the price in comparison with the year 2005 and it should bring 1,7 billion of crowns to the national treasury in 2008.

The last of the so called environmental taxes is the electricity tax. This tax has a similar structure to other two. Taxation is applied on consumption and not on traders. The exemptions are important because all environmentally harmless forms of electricity production are excluded here. This covers the following:

- electricity produced by the use of solar, wind or geothermal energy
- electricity produced in hydraulic power plants
- electricity produced by the use of biomass or of biomass products
- electricity produced by the use of methane in closed mines or by the use of fuel elements

Also certain kinds of environmental consumption of electricity are excluded from taxation, such as the railway, tram, and trolley-bus transport. The predicted fiscal effect is 1% increase in electricity price and 1,1 billion of crowns to the national treasury.

The content of these new taxes as a whole is simply adopted from the EU directive and represents the consensus of EU countries on this topic. The Czech Republic had to transpose them in such a way that would not lead to too strong political tensions.

Another question is the form in which the new legislation was adopted and publicised. Usually a new form of legislation is carried out by a new separate normative act. This is a usual procedure based on the principle of a legally consistent state and on the certainty and

transparency of the legal order.

However, a different method was applied in this particular case. These three new taxes were incorporated into a huge conglomerate of other paragraphs, thematically very wide – from Value Added Tax, through social insurance, payment of medical care, to income tax.

This norm as a whole is changing the existing legislation, rather than establishing a new one. So the question is whether it shouldn't have been executed through thematically precise laws rather than by adopting one extensive, summary act. The question is even less obvious regarding three new taxes. The fact these taxes are incorporated and not adopted separately is outrageous.

According to chief of the Czech Constitutional Court: parts concerning environmental taxes are separate tax laws and there is a doubt about the way they were adopted – whether it is in accord with Article 52 of the Czech Constitution and with the Code of Law Act².

This new environmental tax legislation should be a part of a complex environmental fiscal reform intended by the European Council. Next steps should concern income tax reform and transportation tax³.

This intended project is a part of negotiations carried out by the European Council in March 2007 and of the strategy 20/20/20, based on these negotiations and developed by the European Commission and published as Green Paper on market-based instruments for environment and related policy purposes⁴. The objective of this strategy is to decrease the emissions of greenhouse gases and especially CO₂ by 20% compared to its 1990 level, to increase level of renewable energy resources to 20% and to increase the energetic efficiency in Europe by 20%. This proposal was presented in March 2008 by the chairman of the European Commission, José Manuel Barrosa, and it is based on the European long-term strategy of decreasing environmental impacts in the EU. This ambitious plan has to have its impact on the fiscal sphere, primary in form of taxes, charges and tradable permit systems.

Among the instruments leading towards the objective of this plan is also a complex environmental fiscal reform. This is supposed to be in its general form based on shifting taxation from taxation on work to taxation on consumption, thereby changing the structure of taxation, which would be focused not on income tax of natural and legal persons, as it had been until now, but on relocating taxation to indirect taxes, such as VAT, energy taxes and

2 Statement of the chief of Czech Constitutional Court Pavel Rychetský made in decision: Pl. ÚS 24/07 published as č. 88/2008 Sb.

3 Cp. <http://www.env.cz/AIS/web.nsf/pages/strategie>

4 Cp. <http://eur-lex.europa.eu/COMMonth.do?year=2007&month=03>

taxes and charges on environmentally harmful activities. This type of taxation would take into account processes and products with high consumption of energy and resources and thus with stronger impact on the environment. Producers of such commodities should be more motivated to use processes that are energetically more efficient and demand less resources. Among other instruments which should help to reach the objective of the 20/20/20 plan (or some other type of environmental change plan) are trading of CO₂ emission permits and the extension of regulated polluters from stationary object to transport. Yet the negotiation and convivance of this 20/20/20 strategy is planned to be carried out during the Czech presidency in 2009⁵. So the ability of the Czech government to lead discussions and negotiations in relation to this topic could have a significant impact. Positions of individual European countries vary and also the opinion of the Czech government is quite sceptic. Anyway, the discussions on this topic (apart from the Lisbon treaty) will be quite challenging and it could show the ability of the Czech politics to deal with matters on the European level.

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5 Cp. [http://www.env.cz/AIS/web-pub.nsf/\\$pid/MZPMCFO1XFS6](http://www.env.cz/AIS/web-pub.nsf/$pid/MZPMCFO1XFS6)