EXTENSIVENESS OF ENCROACHMENT AS AN OBSTACLE TO TECHNOLOGICAL PROGRESS IN TAX ADMINISTRATION

NADMĚRNOST ZÁSAHU JAKO PŘEKÁŽKA TECHNOLOGICKÉHO POKROKU PŘI SPRÁVĚ DANÍ

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ABSTRACT

The electronization of public administration and the incorporation of technological progress is a goal that the Czech Republic tends to pursue across the political sphere and the public. Tax administration should not be an exception in this area, yet the full electronification of processes has not yet been achieved. Is the reason for this development a restrained approach by the legislator or a lack of flexibility by the tax administrator who fails to adapt to technological progress? This is what these paper aims to answer. The authors examine several tools reflecting technological progress that have been implemented by the legislator in the legislative framework or by the tax administrator through its innovative approach in practice. These tools were chosen in relation to the course of the tax proceedings – the initiation of the proceedings through the tax claim, the communication between the tax administrator and the taxpayer during the proceedings, and last but not least, the evidentiary situation decisive for the tax assessment. By analysing the legal framework and, in particular, the current available case law, the authors conclude that while the legislator generally tends to electronicise the processes, their practical impact on streamlining and simplifying the processes is, however, questionable and, as a result, favours mainly tax subjects in practice.

ABSTRAKT

Elektronizace veřejné správy a inkorporování technologického pokroku je cílem, ke kterému Česká republika inklinuje napříč politickou sférou i veřejností. Správa daní by v této oblasti neměla být výjimkou, přesto je k úplné elektronizaci procesů zatím nedošlo. Je příčinou tohoto vývoje zdrženlivý přístup zákonodárce nebo nedostatečná flexibilita správce daně, který se nedokáže přizpůsobit technologickému pokroku? Na to si klade za cíl odpovědět tento příspěvek. Autoři podrobili zkoumání několik nástrojů reflektujících technologický pokrok, které byly implementovány zákonodárcem do legislativního rámce nebo správcem daně jeho inovativním přístupem do praxe. Tyto nástroje byly zvoleny v návaznosti na průběh daňového řízení – zahájení řízení prostřednictvím daňového tvrzení, komunikace správce daně a daňového subjektu v průběhu řízení, a v neposlední řadě důkazní situace rozhodující pro stanovení daně. Analýzou právního rámce, a především aktuální dostupné judikatury dospěli autoři k závěru, že zatímco zákonodárce v obecné rovině inklinuje k elektronizaci procesů, jejich praktický dopad na zefektivnění a zjednodušení procesů je diskutabilní a ve svém důsledku v praxi zvýhodňuje především daňové subjekty.

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I. INTRODUCTION

The electronization of public administration is a goal set by countless European countries.[3] The aim is to make processes more efficient, save costs and reduce administrative burdens. The Czech Republic is no exception in this respect, as the commitment to electronize public administration, and thus also tax administration, is included in strategic documents[4] and government declarations.[5] In spite of this, these steps are being taken gradually, and there is still a long way to go towards full electronification in the Czech Republic. Is the reason for this development a restrained approach by the legislator or a lack of flexibility on the part of the tax administrator, who is unable to adapt to technological progress? The following paper aims to answer this question, among others.

The drive toward electronization is not only a domestic priority but a broader trend observed across developed economies. Digital transformation in tax administration is generally associated with increased transparency, faster processing times, and a reduction in human error. Automated systems enable tax authorities to identify discrepancies more efficiently and streamline communication with taxpayers, ultimately leading to greater compliance and improved revenue collection. At the same time, electronic solutions reduce the costs associated with paper-based administration, minimizing the burden on both public institutions and businesses. However, the success of such initiatives depends on the legislative framework, the adaptability of public authorities, and the willingness of taxpayers to embrace new technological tools.

The article is based on the hypothesis that the implementation of technological progress in the tax administration in the Czech Republic brings simplification and increase in the efficiency of tax processes on the part of the tax administrator and taxpayers. To this aim, the authors ask the following research questions: 1) What legislative instruments have been adopted in the Czech Republic in recent years for the purpose of computerisation of tax administration? 2) How do tax administrators adapt to new technological possibilities and what obstacles exist in this adaptation? 3) What is the role of the case law of administrative courts in the process of computerisation of tax administration and its practical application?

This paper examines the legal framework of technological progress in tax administration, focusing on the legislative changes introduced to support the electronization of tax processes in the Czech Republic. The analysis considers not only the legislation itself but also the practical challenges that arise in its application, affecting both tax authorities and taxpayers. Special attention is given to issues highlighted in case law and their impact on the functioning of the tax system.

II. METHODOLOGY

In order to confirm or refute the hypothesis that incorporating technological advances into tax administration brings desirable benefits such as simplification and process improvements for both tax administrators and taxpayers, it is first necessary to analyse the specific legislative instruments that reflect technological advances. To this end, two types of instruments are

[3] HESAMI, S., JENKINS, H. AND JENKINS, G.P.: Digital Transformation of Tax Administration and Compliance: A Systematic Literature Review on E-Invoicing and Prefilled Returns. Digital Government: Research and Practice, 2024, Vol. 5, No. 313, pp. 1-20. https://doi.org/10.1145/3643687. KOT, S., ŠTEFKO, R., DOBROVIČ, J., RAJNOHA, R. and VÁCHAL, J. The Main Performance and Effectiveness Factors of Sustainable Financial Administration Reform Using Multidimensional Statistical Tools. Sustainability, 2019. Vol. 11, No. 13, pp. 1-21. https://doi.org/10.3390/su11133609.

[4] MINISTRY OF THE INTERIOR OF THE CZECH REPUBLIC: Klientsky orientovaná veřejná správa 2030. Praha: Ministry of the interior of the Czech Republic, 2019.

[5] GOVERNMENT OF THE CZECH REPUBLIC: Programové prohlášení Vlády ČR z ledna 2022, ve znění revize 3/2023. Praha: Government of the Czech Republic, 2023. Available from: https://vlada.gov.cz/cz/programove-prohlaseni-vlady-193547/.

identified: 1) new legislative instruments that have brought electronicisation to the tax administration process, 2) current procedural instruments that have been used by the tax administrator in the context of new technological possibilities.

The methodological approach is systematically structured to correspond with the phases of tax proceedings and to ensure a logical progression of the analysis. The authors first address the initiation of the proceedings through the filing of a tax return. The article then focuses on the course of the proceedings, which is primarily determined by communication between the tax administrator and the taxpayer. Communication is an aspect that permeates the entire tax process and affects all written documentation, including audit procedures. The final phase of the tax proceedings is represented by the tax assessment, which cannot take place without the evidentiary process. This part will analyze two key tools introduced to enhance the tax administrator's ability to gather and evaluate evidence effectively. Each of these tools and legislative measures will be critically examined in terms of their practical impact on tax administration.

A comprehensive analysis will be conducted by combining theoretical tax law perspectives with an assessment of practical implementation. This will include an evaluation of case law from administrative courts that have dealt with issues related to electronicization in tax administration. The goal of this paper is to determine whether the Czech Republic is progressing effectively in the electronicization of tax administration and whether these changes support the primary objective of tax administration—accurately identifying and determining tax obligations.

At the same time, the paper will test the hypothesis that the implementation of technological progress in the tax administration in the Czech Republic results in the simplification and increased efficiency of tax processes for both tax administrators and taxpayers. The evaluation of this hypothesis will be based on an analysis of specific legislative instruments, the practical procedures employed by tax authorities, and their impact on administrative practice, including a critical assessment of the relevant case law of administrative courts.

Regarding the state of literature in the Czech Republic on the application of new technologies in tax administration, it is unfortunate to note that the scientific community pays almost no attention to this topic. In the Czech context, two scientific papers have appeared in the past on the topic of electronicisation and digitalisation in tax administration. Kerndlová[6] dealt with technological advances in the field of taxation in the pandemic era and Tuláček,[7] in his monograph, focuses on the development of the implementation of electronicisation in tax legislation, especially in relation to the right to protection of personal data of tax subjects in the context of EU law. The text further elaborates and cites available literature, rather more general and often foreign. It is impossible to use experience or theoretical backgrounds from other countries as the practice in the Czech Republic has to follow specific and unique national regulations and national jurisprudence.

Thus, the theoretical knowledge that exists so far tends to focus on the legislative state of digitalisation in tax administration in general terms but does not address specific practical problems that affect tax procedures. The specific focus of this paper is therefore highly innovative and the authors believe that the text could become a springboard for further research in this area, not only in the Czech Republic but also in other countries where similar tax processes are applied.

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6 KERNDLOVÁ, P.: Digitalizace a elektronizace správy daní během pandemie koronaviru v České republice, In: MÁLEK O., TULÁČEK M. (eds). Správa daní. Soubor statí z odborné konference konané na Právnické fakultě Univerzity Karlovy dne 6. října 2023. Online. Praha: Univerzita Karlova, Právnická fakulta, 2023. https://doi.org/10.14712/9788076300361.

7 TULÁČEK, M.: Elektronizace správy daní: právní aspekty. Praha: Leges, 2020. ISBN 978-80-7502-434-3.

III. INITIATION OF PROCEEDINGS

The Tax Code, as the basic procedural regulation for tax administration in the Czech Republic, allows the initiation of proceedings on tax liability ex officio or on the basis of a submission by the tax subject. Although there are countless other proceedings, such as registration proceedings or proceedings for allowing an instalment plan during tax administration, the most common type of proceedings is undoubtedly tax proceedings. The tax proceedings are then followed by other sub-proceedings, both at the level of the claim and at the level of the payment. The objective of each of these phases stems from the general objective of tax administration, which in the Czech Republic is defined directly by law. The Tax Code states that the objective of tax administration is to ascertain and determine the tax and to ensure its payment. Thus, in proceedings conducted at the level of assessment, the tax administrator concentrates on ensuring that the tax is identified and assessed. Proceedings at the payment level are conducted with a view to securing payment of the tax determined in the assessment proceedings. Even so, it is not a requirement that both procedures must exist in order to secure the objective of tax administration as a whole. While the existence of the payment procedure is a prerequisite for the existence of the enforcement procedure, that is not the case. This is because, ideally, the tax assessed should also be paid by the taxpayer. Thus, payment proceedings in which the tax authorities would enforce payment of the tax assessed are merely an alternative, not a necessary consequence.

From the above brief summary of the procedural framework of tax administration in the Czech Republic, it can be concluded that the most common, but at the same time the most important procedure carried out by the tax administrator is the tax assessment procedure. It is normally initiated on the basis of a tax claim. Indeed, the Tax Code itself provides that the tax claim submitted by the taxpayer is the basis for the correct determination and assessment of tax. This construction is a manifestation of the principle of the so-called self-application, under which the tax subject is obliged to calculate its tax liability and to claim it in the tax return.[8] Of course, the tax administration has other mechanisms at its disposal to initiate tax assessment proceedings ex officio in the event that the taxpayer fails to comply with its obligation to submit a tax claim. Still, these are beyond the scope of this article.

The tax claim can be considered an absolutely essential act in tax proceedings. It can take many forms, depending on the type of tax involved. The most common is the tax return, whether in the form of a regular, supplementary, or amended return. However, a tax claim in the form of a report or a statement can also be encountered. Apart from the different types of tax returns, there are also different rules relating to their filing. These rules can be divided into three areas defining the conditions that must be met in order for a tax return to be filed without defects. Failure to comply with some of these conditions generally results in penalties being imposed or, where appropriate, in the ineligibility of such a tax return to initiate assessment proceedings. These are: 1) the time limit for filing the tax claim, 2) the mandatory form of the tax claim, 3) the manner of filing the tax claim.

1. Deadline for filing a tax claim

The legal regulation of time limits for filing tax claims is fragmented across tax legislation. While the most general time limits are set out in the Tax Code, which thus functions as lex generalis, special time limits may be set out in individual, mainly substantive tax laws as lex specialis. Ultimately, each tax has its own time limits, which may be further modified depending on various factors. An example is income tax. In the case of personal and corporate income tax with a tax period of one calendar year, the basic deadline for filing the tax return is

[8] RADVAN, M.: Czech Tax Law. 4. ed. Brno: Masaryk University, 2020. 114 p. Textbook, no. 550. ISBN 978-80-210-9673-8. pp. 13-14.

1 April of the following calendar year. The Tax Code stipulates that the tax return must be filed within 3 months after the end of the tax year. If an individual or legal entity files its tax return electronically, the deadline for filing the return is 4 months after the end of the tax year. In the most common case, where the tax year is a calendar year, the deadline for filing the tax return is 1 May of the year following the end of the tax year. If the services of a tax adviser or lawyer are used to file a corporate or personal income tax return, or if the taxpayer is required by other legislation to have its accounts audited, the deadline is extended by law until 1 July. For information purposes only, it may be added that the deadline for payment of the related tax is then the same date.

The above-mentioned construct of triple staggering the time limit for filing a tax claim is relatively new. More precisely, the Tax Code has envisaged the diversification of deadlines since its inception, when, through the possibility of filing a tax return within the extended deadline by a tax advisor or attorney, it clearly prioritized the option of preparation by a professional because of the presumption of ensuring a higher quality of the facts alleged.[9] And, perhaps also taking into account the fact that many tax advisers may be overloaded during the tax filing period, it has extended the period when it is realistically possible to file tax returns (after the accounts have been closed). It is only from 2021 that a variation has been incorporated into the law whereby the basic period will be extended by one month as a result of the option to file tax claims electronically. The legislator explicitly states in the explanatory memorandum that the newly introduced rule "*encourages and favours electronic filing*" and is introduced "*for the purpose of encouraging the electronic filing of tax returns as well as for the purpose of providing certain advantages to those who already use this form of communication*".[10] The legislator has thus deliberately legalised a better position for those taxpayers who use electronic means of communication, thereby implicitly exerting pressure for electronic tax administration to become widespread again.

2. Tax claim as a form submission

The second area of conditions attached to the filing of a tax claim is the requirement to comply with the statutory form. The law stipulates that a tax claim can only be filed on a form in the Czech Republic. This obligation is generally imposed on all taxpayers, regardless of who makes the tax return.

In the case of paper filings, such a way means a form issued by the Ministry of Finance by virtue of a decree as a subordinate legal regulation. The alternative is a printed statement from a printer with the same parameters as those set out in the form. This means that, even if the submission contains all the elements and details prescribed by the Ministry of Finance, if these are not in the same layout as on the published form, such a tax claim will be considered defective. If the taxpayer fails to remove such defect upon the tax administrator's request, the tax assessment procedure shall not be initiated. The reason for this obligation can be seen in the simplification of the processing of large volumes of data of the same nature. In the case of a uniform breakdown of the data, the tax administration is better able to process it by machine, which is a key parameter for the proper assessment of the tax in the shortest possible time. Thus, even in this condition, a positive trend can be detected, tending towards the need to use modern technology. At the same time, the uniform structure, which presupposes a uniform style of completion, guarantees a uniform approach to the processing of the submission, which, in

[9] ŠIMEK, K.: § 136 DŘ, In: Baxa, J. et al.: Daňový řád. Komentář, II. díl. Praha: Wolters Kluwer, 2011, p. 820.

[10] CHAMBER OF DEPUTIES OF THE PARLIAMENT OF THE CZECH REPUBLIC: Sněmovní tisk 841/0. Návrh zákona včetně důvodové zprávy. Praha: Chamber of Deputies of the Parliament of the Czech Republic, 2020.

effect, erases any qualitative differences between the wording and language skills of individual submitters.[11]

Despite the fact that the option of filing a tax claim on a paper form is still maintained for specific groups, the option of filing a tax claim electronically is increasingly preferred (by tax subjects but also by the legislator). Who is legally obliged to file tax claims electronically is a condition that will be discussed in more detail below. However, it should already be noted in this section that the electronic filing method is also reflected in the specifics of the form on which the tax claim is filed. In fact, the law stipulates that form filings, which include tax claims, must be made in the format and structure published by the tax administrator in the case of electronic filing. In effect, the visual result of filing a tax claim on a form made by means of a paper form is the same as when the tax claim is made electronically in the prescribed format and structure. However, it is clear that from a technical point of view, it is not only the visualisation of the specimen that cannot be disclosed in electronic filing but the technical parameters of such specimen. And these represent the condition of the obligation to comply with the correct format and structure of the submission.

The format (or shape) of a data message refers to the way in which the data is stored in a computer file so that it can later be accessed by anyone with compatible computer software (e.g., formats: html, doc, xml, xls, pdf, doc, jpg, rtf). At present, the format of the tax return is determined by means of decrees of the Ministry of Finance, the only format approved by law being the 'xml' format. However, it should be added that the current legislative situation is the result of a necessary reaction to the case law of the Supreme Administrative Court. Against the background of a substantively different dispute, the Supreme Administrative Court rejected the previously used option, where the tax administrator merely published the format on its website, as bordering on the constitutional principle according to which obligations should be imposed only by law or within its limits by means of subordinate generally binding normative acts.[12] At the end of 2019, the plenum of the Constitutional Court stated[13] that nothing could be objected to the institution of a prescribed form in terms of constitutionality, but "*if the completion of the form is imposed as an obligation, its content must be determined by legal regulation. In the case of a form whose form is not prescribed by statute or by subordinate legislation, abstract review of the constitutionality of the obligations imposed is not possible*." From 2021, therefore, the possibility (oddly not an obligation) of establishing a mandatory format for the form of the form to be filed electronically has been incorporated by means of a decree of the Ministry of Finance, which, in the opinion of the authors, is correctly used in practice.

However, that was not all the Supreme Administrative Court intervened in the issue of the format of tax claims in the case of electronic filing with this judgment. The merits of the dispute were the possibility to file a tax claim electronically in the "pdf" format. The Court held that although this format is not approved by law, it does not prevent the tax administrator from assessing the tax. Even in this format, the necessary data in the required structure is provided. Although the court acknowledged that the desired machine processing of the data is suppressed by the 'pdf' format, it cannot be concluded that the determination of the tax is completely prevented, and therefore, the ineffectiveness of such a tax claim cannot be the consequence. The legislature also responded to this conclusion. Under the current legislation, if a taxpayer fails to comply with the format of a tax claim as laid down in the Ordinance (typically by using the "pdf" format), the tax administrator will invite the taxpayer to remove the defect. If the defect is not removed, the tax claim will be processed as standard despite the defective format; however, a fine of CZK 1,000 will be imposed on the taxpayer. However, this will not result in

[11] ŠIMEK, K.: § 72 DŘ, In: Baxa, J. et al.: Daňový řád. Komentář, I. díl. Praha: Wolters Kluwer, 2011, p. 427.
[12] Judgment of the Supreme Administrative Court of 3 January 2018, Case no. 2 Afs 25/2015 - 38.
[13] Constitutional Court ruling of 12 November 2019, Case no. Pl. ÚS 19/17.

the filing being ineffective. In this case, the fine has not only an incentive function to comply with the prescribed format but also a reparation function, as it represents compensation for the tax administration's difficulty in processing the tax return. Nevertheless, it must be stated that the primary objective of technological progress of automated processing of tax return data has been suppressed since, in the case of a 'pdf', the data must be manually transcribed into the tax authorities' system, which is no different from the paper-based method of filing.

The second category causing considerable problems in practice is the already mentioned structure of the form submission. The Supreme Administrative Court states[14] that the concept of the structure of the form submission is understood as "*the arrangement of the content, i.e., the data that the payer is obliged to provide. The rules determining the structure are intended to ensure that the data message is structured internally in such a way that it can be processed automatically by the tax administrator's technical means. Failure to comply with a rule on how to fill in an item is not an error of content but of structure*". For example, the rules for filling in items state that only numbers, not letters, may be entered in a certain item (e.g., numbers, not words, must be entered in the VAT number field). A breach of such a rule is a breach of the structure of the submission, and the tax administrator addresses this defect by means of a notice to remedy the defects addressed to the taxpayer. If the defect in the structure is not corrected, a fine of CZK 1,000 is imposed.

This legislative step also has the clear objective of computerisation and the possibility of automated data processing. However, in practice, there have already been cases where even blatant non-compliance with the prescribed rules has been protected by the courts. An example is a tax claim in which the taxpayer entered ten zeros in the field of his children's birth number, which is the unique identifier of each natural person. While the court did not dispute[15] that the birth number in question was obviously invalid, the court held that the requirement to comply with the structure of the field was met. The taxpayer complied with the rule to fill in the field with numbers and the required number of "ten." Therefore, it was not appropriate to require the taxpayer to remedy the defect in the structure and to impose a penalty on it. The fact that it was impossible to process the data in an automated manner in that way was not taken into account by the Court.

3. Method of filing a tax claim

It has already been outlined in connection with form filing that a tax claim can be filed in two ways, either in paper form or electronically. The tax return in paper form can be sent to the tax authorities by post or handed over in person at the office of the tax authorities. However, the group of taxpayers who can take advantage of the option to file a tax return in paper form is gradually narrowing, and, on the contrary, the group of taxpayers who must file a tax return electronically is growing. This approach is a clear reflection of the political representation's efforts, reflected in legislative actions, to make tax administration as widely electronic as possible. This should have the desired effect of speeding up processes, reducing the administrative burden, streamlining control mechanisms, and ultimately saving costs for the state and taxpayers.

The groups affected by the obligation to file tax claims electronically are not directly determined by the tax regulations. The Tax Code provides that the obligation to file electronically is for those tax entities that have a data box established by law and those that are required by law to have their financial statements audited.[16] The range of obliged entities is thus

[14] Judgment of the Supreme Administrative Court of 31 January 2023, Case no. 2 Afs 395/2020 - 55.
[15] Judgment of the Regional Court in Ostrava of 23 May 2024, Case no. 25 Af 37/2022 - 61.
[16] DUŠEK, J.: Data Boxes as a Part of the Strategic Concept of Computerization of Public Administration in the Czech Republic. Administrative Sciences, 2023, Vol. 13, No. 6, pp. 1-18. https://doi.org/10.3390/admsci13060154.

defined by other laws. In this respect, two major milestones can be detected when the obligation to file tax claims electronically was substantially extended. First of all, in 2015, the obligation to submit form submissions was introduced for the first time in the Tax Code, precisely in relation to whether the tax entity has a data box established by law. At the time, this included legal entities and selected professional groups of individuals, such as attorneys or tax advisors. Another fundamental change came on 1 January 2023, when data boxes were also established for non-business legal entities (e.g., associations or churches) and, above all, for entrepreneurs, i.e., self-employed individuals.[17] Given the mechanism of linking the establishment of a data box with the obligations imposed by the Tax Code, the range of those who are now required to submit tax claims electronically has, therefore, been significantly expanded.

For a significant number of sole traders, the obligation to file tax claims exclusively electronically was a major novelty and often a problem after many years of using only the paper form. The second major stage in the expansion of the obligation to file tax claims electronically was thus associated with a significantly benevolent approach by the tax authorities. In 2023, the Financial Administration of the Czech Republic withdrew from imposing fines on such persons for non-compliance with the established electronic filing method and, on the contrary, focused its activities on informal communication towards tax subjects, including an educational element so that the tax subject would correct this defect himself. According to the authors, such an approach balances on the borderline between the principle of helpfulness on the one hand and the principle of legality on the other. In the event of non-compliance with the prescribed electronic filing method, the legally approved consequence is an official request by the tax administration to remedy the defect. If the request is not complied with, a fine of CZK 1,000 is imposed. Although it seems appropriate to reflect the basic principles of tax administration promoting a client-oriented approach towards the public, it can be argued that this attitude may also weaken the motivation of taxpayers to respect their statutory obligations, knowing that there is no element of repression. At the same time, such an attitude slows down the desired progress in the area of computerisation in tax administration.

The authors believe that increasing citizens' interest in filing tax returns electronically can be achieved in other ways. It would be a significant advantage if the electronic filing method ensured that the system would automatically provide the necessary data for citizens and they would only have to confirm it. It should be added that this benefit is partly available today, but it is limited to the identification data of the tax subject and the relevant tax authority. The data on income, tax allowances and other important information affecting tax liability are not available to citizens. It is hard to imagine that taxpayers would not take advantage of such a simplification of the process. Inspiration can be found in Estonia, where citizens' tax returns are automatically filed digitally. Already in 2012, when this option was implemented, 94% of residents made use of it.[18]

IV. THE COURSE OF THE TAX PROCEEDINGS AND THE METHOD OF COMMUNICATION BETWEEN THE PARTIES

It is only in the second phase of tax assessment that the power element represented by the tax administrator comes into play. The tax authority either confirms the tax claimed by the

[17] DLUBALOVÁ, K.: Ministerstvo vnitra zřídilo od ledna přes 2 miliony datových schránek. Přihlašovací údaje lze získat i dodatečně. Praha: Ministry of the interior of the Czech Republic, 2023. Available from: https://www.mvcr.cz/clanek/ministerstvo-vnitra-zridilo-od-ledna-pres-2-miliony-datovych-schranek-prihlasovaci-udaje-lze-ziskat-i-dodatecne.aspx.

[18] OUNAPUU, E. Model of e-government: Estonian experience. In: STANKOVSKI, V. and PETCU, D. (eds.). Workshop information, message from the chairs, papers by authors. 4th International Workshop on Software Services – WOSS 4 in conjunction with The 1st International Conference on CLoud Assisted ServiceS – CLASS 2012, Bled, Slovenia, 25 October 2012. Ljubljana: Fakulteta za gradbeništvo in geodezijo, Komisija za informatiko, knjižničarstvo in založništvo, 2012. ISBN 978-961-6884-06-8.

taxpayer and assesses the tax in accordance with the tax assessed in the tax claim or initiates a control procedure if it has more or less concrete doubts about the tax claimed by the taxpayer. The procedural framework for these procedures is determined by the Tax Code and may take various forms. It is beyond the scope of this contribution to specify them, but there is a link that runs through all the procedures or acts in the tax procedure. This is the communication between the tax administrator and the taxpayer. As oral meetings are increasingly being abandoned in the age of technological advances, written communication plays a key role. Again, this takes the form of either electronic communication or paper communication, the choice of which is not random on the part of the tax administration. The rules on service, which are laid down in the Tax Code, are decisive. Although service of process may appear to be a minor and straightforward matter, in practice, this sub-procedural step often becomes quite crucial in determining whether the tax administrator's action is lawful or unlawful and may influence the further course of the tax proceedings. Very simply, service of process can affect the conclusion as to whether the tax assessment by the tax administrator was lawful.

The Tax Code explicitly favours the service of documents in oral proceedings and electronically. The intention of the legislator was quite clear. Where possible, the tax administrator is to eliminate the time and resources spent in connection with service. Although this solution appears to be significantly progressive, it should be added that the basic rule is further modified by other special rules. The service of documents through a postal service provider has not yet been abandoned. This is a consequence of the fact that there are still groups of tax subjects who are not legally obliged to have a data box (although they can), so the tax administrator has no right to force these persons to use electronic means of communication.

A data box is an electronic communication tool used for the secure exchange of documents between citizens, businesses, and state institutions in the Czech Republic. It allows sending and receiving official documents without the need to visit the tax administrator in person. Data boxes are secure and provide the same legal consequences as the delivery of traditional documents. A data box can be set up on request or compulsorily for those persons so designated by law. It has already been described above that the number of persons who have a data box compulsorily by law is growing. Currently, these persons are all legal entities registered in the public register, selected professional groups of natural persons (lawyers, tax advisors, experts, court interpreters, etc.), natural persons engaged in business registered in the public register, and public authorities. Given that the existence of a data box is a determining factor for electronic delivery in tax administration (as well as for the obligation to file tax claims electronically), it is clear that a positive trend can be detected in this respect, corresponding to the modernisation and computerisation of tax administration.

However, even delivering via data mailbox is not as simple as it first appears. There are many types of data boxes. Nowadays, there are 15 types of data boxes, which are established by law and, therefore, play a role in the correct delivery of tax administration. First of all, there is a type of data box specifically designed for public authorities only. There are also two types of data boxes for legal persons, namely for a legal person in the role of a public authority (e.g., a public company as an insolvency administrator) and a legal person registered in the public register. For natural persons, however, the list expands considerably, as they are responsible for the remaining 12 types of data boxes. It is superfluous to list them, but it can be summarised that a large number of them are linked to a particular professional affiliation (lawyer, architect, expert, etc.). At the same time, there is a general data box for natural persons who are not selected professional groups with a special type of data box.

The practical problem of serving a natural person via data boxes can be demonstrated by an example. It is not forbidden for a natural person to have more than one type of data box, on the contrary. A lawyer who is also an insolvency trustee will have two data boxes. The Czech legal

order does not prohibit the concurrence of these professions. If this lawyer also has a hobby in photography and takes photographs of weddings for a fee in his free time, he will obtain a data box of an entrepreneurial natural person by registering in the Trade Register in connection with this activity. At the same time, it is not excluded that he will apply for an "ordinary" data box of a natural person. This imaginary lawyer, therefore, has four types of data boxes at the same time. While he may use any of them to communicate with the tax administrator, the tax administrator may not choose as he pleases. The Supreme Court has interpreted that "*if an individual has more than one data mailbox, the written copy of the decision, other acts and other documents must be served on the data mailbox that corresponds to the nature of the document to be served*".[19] It follows that the tax administrator must always consider the nature of the document to be served and select the appropriate data box accordingly if more than one is offered. Otherwise, it runs the risk of being held liable for a defect in service, which would mean that the document was never served.

On the basis of the above conclusion of the court, if an imaginary lawyer with four different mailboxes was acting on behalf of a taxpayer on the basis of a power of attorney during a tax control, the tax control report and the subsequent tax payment notice would have to be delivered to the lawyer's mailbox. If the tax administrator were to deliver those documents to the data mailbox of an individual, he would be guilty of a defect that could ultimately make the tax assessment unlawful. However, this legal construction may be understood, according to the authors, as the fact that it is really only a legal construction has been completely overlooked. The imaginary lawyer in question is still only one and the same individual. In reality, it is not four entities, as the construction of the data boxes shows. If it were not served electronically but by post, it is conceivable that this lawyer would have the same registered address for all kinds of activities. The addresses of the registered office would thus be identical and the documents sent by the tax authorities would be dropped in one mailbox. However, in terms of the division of data boxes, such a lawyer would have to have four mailboxes, with the tax authorities always hitting the right one, which seems rather absurd.

However, it is necessary to add that there is also a rule "in favour of the tax administrator", which can fix the wrong choice of the data box. In fact, if the person concerned is actually acquainted with the document to be served, the document is deemed to have been "materially" served. The tax administrator is obliged to prove actual acquaintance. This is most often inferred from the fact that the addressee of the document takes subsequent steps within the necessary time limits (e.g., lodges an appeal), thereby implicitly declaring that he or she has become acquainted with the document served. It can therefore be concluded that, despite the support of digitisation efforts, the situation is not simple for the tax administrator and, although the existence of a data box represents a significant relief for taxpayers, it is rather another procedural issue for the tax administrator to resolve on the way to a correct and lawful tax assessment.

The previously mentioned Estonia, which uses digital identities of its citizens not only to communicate with state authorities, has taken a much simpler approach. The Estonian ID card serves as both an identity card and a travel document within the European Union. In addition to its physical use, the card is also used as proof of identity when using online services. This card is guaranteed and issued by the Estonian government. It allows you to digitally sign documents, do online banking, encrypt documents, as well as set up and manage a company in Estonia and file its tax returns online. It can be added that E-tax was introduced in Estonia already in 2000.[20] In recent years, the possibility for foreigners to receive this ID-card has even

[19] Decision of the Supreme Administrative Court of 5 January 2017, Case No. Plsn 1/2015.

[20] PALGINÕMM, M. Diffusion of the Estonian ID-card and Its Electronic Usage: Explaining the Success Story. Master's Thesis, Ragnar Nurkse School of Innovation and Governance, Tallinn University of technology, Tallinn, 2016.

been extended.[21] Compared to the Czech Republic, a fundamental difference can be detected in the fact that the Estonian ID-card functions as an authentication tool and a means of communication at the same time, whereas in the Czech Republic these tools are separated, and citizens are offered countless variants. This may look pro-client at first sight, in practice it tends to create additional problems, as described above.

V. CONCLUSION OF TAX PROCEDURE AND DETERMINATION OF THE TAX BASED ON EVIDENCE

If the tax administrator does not have any doubts about the correctness of the tax assessed by the tax subject, it may determine the tax without further action. Otherwise, it shall initiate a control procedure in which it shall verify the facts decisive for the correct amount of the tax. Evidence is a prerequisite for the correct assessment of the tax in the control procedure. Evidence in tax proceedings is more specific than in other proceedings. The first stage of the burden of proof is based on the principle of self-application. The taxpayer is not only obliged to quantify and assert the tax in the tax claim but must also be able to prove those assertions. The burden of proof shifts to the tax authority only when it has doubts about the evidence provided by the taxpayer. It must then itself produce evidence that refutes the truth and credibility of the evidence provided by the taxpayer. If he bears the burden of proof, the burden of proof shall revert to the taxpayer. The outcome of the proceedings will, therefore, depend to some extent on who has failed to carry the burden of proof. However, it should be added that, in view of the fact that the tax administrator is bound by the main objective of tax administration, which is to ascertain and determine the tax correctly, he is also obliged to take into account evidence in favour of the tax subject.[22]

The tax authorities' taking of evidence is therefore crucial for the determination of tax. The Tax Code provides that „*all documents which can be used as evidence to establish the true state of affairs and to verify the facts relevant to the correct determination and assessment of the tax and which have not been obtained in contravention of the law, including those obtained before the proceedings were initiated*".[23] It is a prerequisite for the use of such evidence that it must be obtained by the tax authorities in accordance with the law. Therefore, it is necessary to use only those institutes known to the law and to comply with the related procedural conditions.

1. CCTV footage provided by the Police of the Czech Republic

The factual basis of the case, in which CCTV footage provided to the Police of the Czech Republic was used for the purposes of the tax proceedings, was the non-recognition of the right to deduct value-added tax on the purchase and use of a vehicle for business purposes. The tax administrator found the logbook submitted by the taxpayer to be unreliable because it started before the taxpayer actually used the vehicle, and the entries in it did not correspond to the actual use of the vehicle according to the data on the vehicle's movements provided by the Police of the Czech Republic. The subject of the dispute between the tax administrator and the taxpayer was the tax administrator's right to request data from the camera records from the Police of the Czech Republic and the subsequent use of this means of evidence to dispute the taxpayer's claims regarding the use of the vehicle for its economic activity. The data on the movement of the motor vehicle were requested by the tax administrator from the Police of the Czech Republic on the basis of a request pursuant to Section 57 of the Tax Code, which allows the tax administrator, inter alia, to obtain data from public authorities that it does not have

[21] SÄRAV, S. and KERIKMÄE, T. E-residency: a cyberdream embodied in a digital identity card? The Future of Law and eTechnologies, 2016, 57-79.

[22] JANDEROVÁ, J.: Rozložení důkazního břemene v daňovém řízení. Acta Iuridica Olomucensia, 2022, Vol. 17, No. 2, pp. 134–149.

[23] § 93 odst. 1 Tax code.

available to it from its official activities. The Police of the Czech Republic provided this data to the tax administrator in connection with information obtained from security camera footage. Thanks to this data, the tax administrator questioned the logbook submitted by the taxpayer because it did not correspond to the situation declared in the logbook.

The judicial review of the legality of this evidence was conducted in two stages. First, the Supreme Administrative Court[24] examined whether the Police of the Czech Republic could have provided the data to another public authority. It was found that the Police Act allows the provision of data if the data are necessary for the performance of the task of the requesting public authority. The tax administration is entitled to request such data on the basis of a request pursuant to Section 57 of the Tax Code. However, the Court interpreted that one of the procedural conditions for the application of such a request by the tax administrator is also the fulfilment of the requirement of the necessity of the data for tax administration. In this case, the Court concluded that "***if the logbook can be challenged in another, the less invasive way that does not require the transmission of information, including personal data, the use of CCTV footage is not necessary***". The court stated that although the use of CCTV footage may have appeared appropriate, this criterion must be distinguished from necessity. The court justified its conclusion on the basis of the concept of the burden of proof in tax proceedings, where, according to the court, less intrusive evidence than CCTV footage was sufficient to prove doubts about the accuracy, conclusiveness, or veracity of the submitted logbook.

The court's conclusion puts the tax administrator in a position where a request under Section 57 of the Tax Code requesting data from other persons and public authorities appears to be a completely inflexible means of obtaining evidence. According to the Court's view, the tax administrator should always classify the means of evidence according to the degree of their necessity. It is true that the tax administrator is not bound by the investigative principle. However, he is bound by the principle of substantive truth and also by the principle of economy. If the tax authority has evidence of substantial probative value, which it has obtained in accordance with the possibilities afforded by the legislation, it seems uneconomic to prolong the tax proceedings by first using evidence of 'weaker probative value'. Moreover, one can imagine a hypothetical situation in which the tax authorities would have obtained the data on the movement of the vehicle in question from the testimony of a witness who looked out of the window every day. Such evidence would undoubtedly be assessed as lawful and, therefore, applicable (the credibility of the witness is another issue). Compared to CCTV footage, however, it is a completely identical interference with the taxpayer's right to privacy. Against the background of the right to privacy, the court's conclusion thus rejected any technological advances that could not only simplify the tax authorities' evidentiary situation and make their control mechanisms more efficient but also help to fulfil the objective of tax administration, which is to detect and assess the correct amount of tax.

2. Electronic record of sales

Electronic sales registration was a legal instrument that went through a very turbulent and challenging journey before finding its place in the Czech tax regulations at the end of 2016.[25] The legislative process of adoption itself was accompanied by considerable obstructions. In 2017, a political party ran in the elections to the Chamber of Deputies of the Parliament of the Czech Republic with the main electoral theme of "A Czech Republic without EET".[26] However,

[24] Judgment of the Supreme Administrative Court of 14 December 2023, Case no. 9 Afs 147/2020-87.

[25] RADVAN, M. and SVOBODOVÁ, T.: Tax Law Reforms in the (In)Context of Covid-19. Studia Iuridica Cassoviensia, 2021, vol. 9, no. 2. pp. 69-84. ISSN 1339–3995. SEMERÁD, P., ROGALEWICZ, V. and BARTÁK, M. Using electronic record of sales to support fair budgetary allocations across Czech municipalities. GeoScape, 2023, Vol. 17, No. 1, pp. 47 – 571. https://doi.org/10.2478/geosc-2023-0004.

[26] TULÁČEK, M.: Elektronizace správy daní: právní aspekty. Praha: Leges, 2020. ISBN 978-80-7502-434-3.

many years of criticism and endless public and political debates resulted in the abolition of the EET becoming a coveted policy goal, which was eventually pushed through against the backdrop of the Covid-19 pandemic.[27] First, the obligation was suspended[28] and then abolished altogether. The considerable costs of setting up the whole system, as well as the fiscal benefits of straightening business relations resulting in higher tax revenues, were not reflected in the process of abolishing this instrument. If the value of the EET from a macroeconomic perspective was not taken into account, it is clear that its contribution as a unique means of proof for the tax administration was completely overlooked. This step cannot be considered systemic and fiscally beneficial. It has been proven that electronic sales registration is an appropriate tool to increase tax discipline and reduce tax evasion. In Italy, for example, the introduction of e-invoicing reduced VAT losses by between €2.2 and €2.6 billion in 2019 compared to 2018.[29]

The tax administration in Czech Republic has thus lost a modern tool corresponding to the trend of digitisation, which allowed the transmission of specific information on commercial transactions carried out in real time. It can, therefore, be concluded that, in the present case, technological progress enabling more efficient tax administration has given way to political objectives.

3. Images from Google Street View and information from available databases

Despite the progressive steps outlined above on the part of the legislator, it is necessary to add, for a comprehensive view of the issue, that the legislator does not always perceive technological progress in such a way as to use it in the context of evidence. Instead, they choose other and simpler (not necessarily fairer) paths leading to tax assessment. A typical example is the determination of the object of taxation of immovable property. Under the current legislation, for the purposes of the real estate tax, the type of land is the type of land registered in the land register, regardless of whether it corresponds to the actual situation. Similarly, the type of use of immovable property (building, flat) means the type of use registered in the Land Registry, regardless of whether it corresponds to the actual state. This construction is in direct contradiction with the principle of substantive truth, and we consider it highly inappropriate.[30] The legislator, who prefers the principle of formal truth, argues in particular that it is administratively, temporally, and financially simple. However, it does not take into account the new technological possibilities that are commonly used in other countries to determine the type and use of immovable property. We are not referring here only to drones or other forms of local surveys but to tools enabling "remote access" to the properties being surveyed, such as terrain maps by Google and other mapping providers, Google Street View, etc.[31] Similarly, if the political representation in the Czech Republic were to find a consensus and the value of immovable property were to be determined as the tax base, market prices of immovable property could be used. The cadastre has this data and, except perhaps for very specific buildings (airports, sports halls, etc.), could be used for mass valuation of real estate.

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[27] RADVAN, M. and SVOBODOVÁ, T.: Tax Law Reforms in the (In)Context of Covid-19. Studia Iuridica Cassoviensia, 2021, vol. 9, no. 2. pp. 69-84. ISSN 1339–3995.

[28] MAŠÁTOVÁ, Z.: Podnikatelé nebudou evidovat tržby do konce roku 2020. Praha: Finanční správa ČR, 2020. Available from: https://www.financnisprava.cz/cs/financni-sprava/media-a-verejnost/tiskove-zpravy/tz-2020/podnikatelenebudou_evidovat_trzby_do_konce_roku_2020-10670.

[29] HEINEMANN, M. and STILLER, W. Digitalization and cross-border tax fraud: evidence from e-invoicing in Italy. International Tax and Public Finance, 2025, Vol. 32, pp. 195–237. https://doi.org/10.1007/s10797-023-09820-x.

[30] RADVAN, M. and T. SVOBODOVÁ. Recurrent Property Tax Control in the Czech Republic. Bialystok Legal Studies. Bialystok: Temida 2, 2023, vol. 28, no. 2, pp. 229-243. ISSN 1689-7404.

[31] RUNDLE, A.G., BADER, M.D.M., RICHARDS, C.A., NECKERMAN, K.M. AND TEITLER, J.O. Using google street view to audit neighborhood environments. American Journal of Preventive Medicine, 2011, Vol. 40, No. 1, pp. 94-100. https://doi.org/10.1016/j.amepre.2010.09.034.

VI. CONCLUSION

Technological advances do not avoid any sector. It is a natural and desirable consequence of the development of society. If used correctly, it allows processes to be made more efficient and costs to be saved. The implementation of adequate tools in legislation is a basic prerequisite for the use of technological progress in the implementation of public administration. A public authority can only be exercised in accordance with the principle of secundum et intra legem and, therefore, without the incorporation of new technological possibilities into legislation, public authorities do not have the space to modernise their processes. As a rule, some legislative intervention is always necessary.

The paper finds that quite a number of legislative interventions in the field of tax administration have been made in the last decade, which aim at the desired modernisation reflecting technological progress. There has been a gradual and substantial expansion of electronic filing of tax claims, underpinned by an appropriate combination of an explicit obligation to file electronically and implicit support in the form of extended filing deadlines. There is also a tendency towards the electronicisation of processes in the area of communication between the tax administration and taxpayers, which can be considered a positive development. Although legislator's efforts to reflect technological progress are more than evident, the desired result of improving the efficiency of processes is questionable. It can be concluded that tax subjects only de facto benefit from the modernisation tendencies implemented in the law. Their possibilities are increased, and if an obligation is already imposed, this is compensated by a corresponding advantage. The situation is reversed on the part of the tax administration. While every change made in the context of efforts to modernise and computerise the tax administration also, at first sight, simplifies and streamlines procedures, the decision-making practice of the courts and the often restrained approach of the General Tax Directorate also subject the latter to additional rules or conditions which are passed on to the first-instance tax administrators. At the same time, the case law of administrative courts plays a key role in the process of electronicization of tax administration. On the one hand, it contributes to legal certainty and the definition of the boundaries of lawful procedure; on the other hand, it often imposes additional requirements that may hinder the effective use of modern tools. As a result, judicial practice has not only an interpretative but also a fundamentally regulatory impact on the practical application of technological innovations in tax administration.

Thus, it can be concluded that the hypothesis has been only partially confirmed because the practical impact of the computerisation efforts in tax administration shows that the desired streamlining and simplification of processes are taking place rather on the side of the tax subject. On the other hand, with the new instruments of technological progress, the tax administrator is exposed to additional procedural issues that it has to resolve in order not to burden its procedure with defects. This is a very difficult discipline, even in view of the rich case-law of the administrative courts.

A separate category are instruments that aim to facilitate the tax administrator's evidentiary situation. These, despite their clear benefit for the possibility of correctly ascertaining and assessing the tax, have not sooner or later found support either with political representation or with the courts. The invasiveness of their intervention in the sphere of the taxpayer is an obstacle that prohibits their use. However, according to the authors, the abolition of electronic sales registration and the de facto impossibility of using CCTV footage as evidence represents a missed opportunity. Both analysed tools are not only capable of more accurately teaching the correct amount of tax but also of encouraging the tax public to behave in a tax-correct manner in tax-law relations. Although it has been shown that the tax administration tries to use the current tools of the legal system in a flexible way with an emphasis on technological progress, it does not find support in its efforts. Thus, it can be concluded that although the tax

administration in the Czech Republic tends to be electronicised and appropriate legislative steps are being taken to this end, the progressive use of the current legal framework in an innovative way to make the tax administration's control mechanisms more efficient is not accepted as desirable.

KEY WORDS
Tax administration, computerisation, tax returns, electronic communication, evidence, data boxes

KLÍČOVÁ SLOVA
Správa daní, elektronizace, daňové přiznání, elektronická komunikace, důkazní prostředky, datové schránky

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