

# **Possible changes of legal regulation of budgetary determination of taxes, charges and other similar financial considerations in the Czech Republic**

## **Introduction**

The legislation of budgetary determination of taxes, charges and other similar financial considerations is a very important political issue. Based on this legislation the revenue from taxes, charges and other similar financial considerations is divided into particular public budgets.

Currently in the Czech Republic there is a debate on changing the budgetary determination of taxes, which should provide more financial resources from shared taxes for smaller municipalities. On the contrary, four largest cities in the Czech Republic (e.g. Prague, Brno, Ostrava, and Pilsen)<sup>1</sup> should worse off.

The aim of this article is not to describe and evaluate this proposal, but to focus on budgetary determination of taxes, charges and other similar financial considerations from theoretical point of view and to suggest possible changes in legislation.

In the first part I focus on taxes, charges and other similar financial considerations briefly. The second part deals with budgetary determination of taxes, charges and other similar financial considerations as an element of tax, charge or other similar financial consideration structure in order to conclude whether the budgetary determination is or is not the element of the structure of tax, charge or other similar financial consideration. The third part is devoted to legislation of budgetary determination of taxes, charges and other similar financial considerations in the legal order of the Czech Republic. After describing and evaluating the legislation, some possible changes of this legislation are suggested. The last part deals with procedural aspects related to budgetary determination of taxes, charges and other similar financial considerations. Also in this part there is a description and evaluation of legislation and changes *de lege ferenda* are proposed as well.

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<sup>1</sup> Vlada.cz [online]. 2012 [cit. 2012-05-23]. Vláda schválila novelu zákona o rozpočtovém určení daní. Available from WWW: <<http://www.vlada.cz/cz/media-centrum/aktualne/vlada-schvalila-novelu-zakona-o-rozpocetovem-urceni-dani-95838/>>.

## 1. Taxes, charges and other similar financial considerations

In the Czech Republic there is, concerning the definition of tax, an elaborated theory, both legal and economical. Currently it is possible to deduce following main characteristics of taxes. Taxes are

- 1) financial considerations (paying tax in non-cash form is not possible),
- 2) legal (taxes can be imposed only pursuant to law),
- 3) involuntary (it is a duty to pay taxes),
- 4) non-refundable (taxes are not returned to taxpayers),
- 5) non-specific (tax payment is not assigned for specific purpose),
- 6) non-equivalent (it absents an immediate consideration by public authority),
- 7) non-sanction (tax is not considered a penalty for failure to fulfill obligations),
- 8) administrated by the state or by other public law entities (public corporations),
- 9) revenue of public budgets.

Based on stated it is possible to create the following general definition of taxes. Taxes are **non-specific, non-refundable, non-equivalent and non-sanction mandatory financial considerations imposed pursuant to law and administrated by the state or by other public law entities which are the revenues of public budgets.**

In contrast, charges can be characterized with following features. Charges are

- 1) financial considerations (paying charge in non-cash form is not possible),
- 2) legal (charges can be imposed only pursuant to law),
- 3) involuntary (it is a duty to pay charges),
- 4) non-refundable (charges are not returned to charges-payers),
- 5) specific (charge payment should be assigned for specific purpose),
- 6) equivalent (immediate consideration by public authority is provided),
- 7) non-sanction (charge is not considered a penalty for failure to fulfill obligations),
- 8) administrated by the state or by other public law entities (public corporations),
- 9) revenue of public budgets.

Based on stated it is possible to create the following general definition of charges. Charges are **specific, non-refundable, equivalent and non-sanction mandatory financial considerations imposed pursuant to law and administrated by the state or by other public law entities which are the revenues of public budgets.**

**Similar financial considerations** are financial considerations which are not termed as tax or charge; however they meet most of foregoing points of tax or charge. Typically these financial considerations are designated as levies, customs, payments, contributions etc.

Every tax, charge or other similar financial consideration is defined by specific **structural elements**. Particular authors state different structural elements and classify them differently. Usually the structure elements are specified only with taxes, not with charges and other financial considerations.

Structural elements of taxes, charges and other financial considerations are difficult to define. However we can imagine them as basic building blocks of any tax, charge or other similar financial consideration; without these this financial considerations would not exist, would not be defined. These elements should include budgetary determination of taxes, charges and other similar financial considerations.

## **2. Budgetary determination as an element of structure of tax, charge or other financial consideration**

The specialized literature discusses budgetary determination of taxes more within passages related to public budgets' revenues, than within passages related to taxes, charges and other similar financial considerations.

**Prague financial law textbook**<sup>2</sup> in the chapter on elements of the legal structure of taxes and charges does not cover budgetary determination, nor in other parts does the book explicitly mention the budgetary determination as an element of the structure of tax, charge or other similar financial consideration. The budgetary determination is covered in chapter on budgetary law. Neither the **Brno-Pilsen financial law textbook**<sup>3</sup> does include the budgetary determination into basic elements of tax technique. The same is true in the case of **Slovak tax law textbook**<sup>4</sup> that provides a wide range of tax elements, but the budgetary determination is not included either.

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<sup>2</sup> BAKEŠ, Milan, Marie KARFÍKOVÁ, Petr KOTÁB a Hana MARKOVÁ. Finanční právo. 5. upravené vydání. Praha: C. H. Beck, 2009, 576 s. ISBN 978-80-7400-801-6.

<sup>3</sup> JÁNOŠÍKOVÁ, Petra, Petr MRKÝVKA, Ivan TOMAŽIČ, Ivan et al. *Finanční a daňové právo*. Plzeň : Aleš Čeněk, 2009. 525 s. ISBN 978-80-7380-155-7.

<sup>4</sup> BABČÁK, Vladimír. *Daňové právo Slovenskej republiky*. Bratislava : EPOS, 2010. s. 638. ISBN 978-80-8057-851-0. s. 146 an.

Economic publication **Public finance**<sup>5</sup> regulates so called tax requirements, but the budgetary determination is not included. The budgetary determination of taxes is briefly discussed in the section on public budgets.

Conversely, **Brno tax law textbook**<sup>6</sup> includes the budgetary determination into structural elements of the tax. Budgetary determination is defined as “*it means to which of public funds (budgets) goes the revenue of tax and whether the whole revenue goes to specified fund or whether funds share the revenue in certain proportion*”.

It is obvious that only one specialized publication explicitly includes the budgetary determination of taxes into elements of tax structure. However I believe that it should be considered as a structural element of tax, charge and other similar financial consideration because without it every tax, charge and other similar financial consideration would lose its meaning. It would be then just determined and collected but it would not happen to be revenue of certain public budget.

The budgetary determination of taxes, charges and other similar financial considerations could be characterized as **determination of public budget that receives the revenue of tax, charge or other similar financial consideration**. It is the essential structure element of any tax, charge or other similar financial consideration.

From a theoretical point of view it can be considered that the budgetary determination of certain tax, charge or other similar financial consideration will be adjusted along with other basic elements of such tax, charge or other similar financial considerations. Another possibility is to adjust the budgetary determination of all taxes, charges or other similar financial considerations in one legal regulation governing the budgetary determination. The third option could be a regulation where the budgetary determination of taxes, charges or other similar financial considerations, which all flow to one budget, will be regulated together with other elements of tax structure of these taxes, charges or other similar financial considerations and the regulation of taxes, charges or other similar financial considerations, which are shared by public budgets, will be included in one separate special law. The combination of above mentioned options could be also possible. The current legislation does not comprise any of above mentioned options. This is a solution which is in my opinion, from theoretical point of view, not the ideal one.

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<sup>5</sup> PEKOVÁ, Jitka. *Veřejné finance : úvod do problematiky*. 4. vyd. Praha : ASPI, 2008. 580 s. ISBN 978-80-7357-358-4. s. 145 an.

<sup>6</sup> RADVAN, Michal, et al. *Finanční právo a finanční správa : Berní právo*. 1. vydání. Brno : Doplněk, Masarykova univerzita, 2008. 509 s. ISBN 978-80-210-4732-7, 978-80-7239-230-8. s. 33.

### 3. Legal regulation of budgetary determination in the legal order of the Czech Republic

Regarding legal regulation of **budgetary determination of taxes** in the legal order of the Czech Republic, this regulation is not incorporated into one legal act. Generally, it could be said that **taxes are revenues of the state budget**; this results from Sec. 6 (1) (a) of the budgetary rules,<sup>7</sup> that provides that “*revenues of the state budget consist of tax revenues including accessory, unless a special law provides otherwise*”. This is a general rule that could be changed by special rules stated in other laws. Cited provision does not refer to taxes only, but also to tax accessory while it refers to the Act on Taxes and Charges Administration,<sup>8</sup> which is already abolished. It should be added that according to the Tax Procedure Code the term tax also includes the tax accessory<sup>9</sup> while the term tax accessory means interests, penalties, fines and cost of the proceedings if they are imposed or if they are based on tax laws. Concerning this case it is, in my opinion, useless to state that the term tax contains accessory. It can be concluded that if the tax should not be considered as the revenue of the state budget, another legal regulation than the budgetary rules<sup>10</sup> must then provide that the tax is the revenue of other budget (budgets). The special legal regulation, that is *lex specialis* to Sec. 6 (1) (a) of the budgetary rules, is the **Act on Budgetary Determination of Taxes**<sup>11</sup>. This Act governs the budgetary determination of value added tax, excise taxes (this is only the excise tax on mineral oils in fact), income tax, real estate tax and road tax<sup>12</sup>, but not in complex, as it governs only the parts concerning the revenues of the taxes which are not revenues of the state budget.

**Real estate tax and road tax** flow to other than the state budget, real estate tax to municipal budgets and road tax to the budget of the State Fund of Transport Infrastructure. For **other taxes** (income tax, value added tax and excise tax on mineral oils) the Act on Budgetary Determination of Taxes provides that only certain part of their revenue goes to other than the state budget.

**Personal income tax** is, for the purpose of its budgetary determination, divided into three groups. The first group is the personal income tax from employment and functional

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<sup>7</sup> Act No. 218/2000 Coll., on Budgetary Rules and amending certain related acts (budgetary rules), as amended.

<sup>8</sup> Specifically, the provisions of Sec. 58 of Act No. 337/1992 Coll., on Taxes and Charges Administration, as amended.

<sup>9</sup> See Sec. 2 (4) of the Tax Procedure Code.

<sup>10</sup> From a theoretical point of view, it cannot be excluded to establish budgetary rules itself, but from a practical standpoint this is factually impossible.

<sup>11</sup> Act No. 243/2000 Coll., on Budgetary Determination of Revenues of some Taxes to local government units and some state funds (the Act on Budgetary Determination of Taxes), as amended.

<sup>12</sup> See Sec. 1 of the Act on Budgetary Determination of Taxes.

benefits paid by employer as a tax payor, except for personal income taxes collected by a special rate deduction. The revenue of this part of personal income tax is divided between the state budget (approx. 69 %), regional budgets (approx. 9 %) and municipal budgets (approx. 22 %), while concerning the municipal budgets the amount of employees in the municipality is taken into consideration as well. The second group is the personal income tax collected by a special rate deduction which is also divided between the state budget (approx. 70 %), regional budgets (approx. 9 %) and municipal budgets (approx. 21 %). The third group comprises personal income tax which is not included in above mentioned two groups. Municipal budgets receive 30 % of revenue of this part of personal income tax; concretely the receiving municipality is the one with permanent residence of certain individual. The remaining part is divided between the state budget (approx. 70 %), regional budgets (approx. 9 %) and municipal budgets (approx. 21 %).

Also the **corporate income tax** is divided between the state budget (approx. 70 %), regional budgets (approx. 9 %) and municipal budgets (approx. 21 %). An exception is the corporate income tax imposed on the certain municipality or region that is the revenue of respective region or municipality with the exception of the difference between the tax assessed or additionally assessed to the municipality by the tax administrator and tax granted or subsequently granted to the municipality and tax accessory.

Concerning **value added tax**, i.e. the most profitable tax in the Czech Republic, the revenue of this tax is shared by the state budget (approx. 70 %), regional budgets (approx. 9 %) and municipal budgets (approx. 21 %). The revenue of excise tax on mineral oils is divided between the state budget (approx. 91 %) and the budget of the State Fund of Transport Infrastructure.

Tax system of the Czech Republic currently contains a total amount of 16 taxes<sup>13</sup> and 12<sup>14</sup> of these 16 taxes are exclusive revenues of one public budget. Concerning these taxes it would be appropriate for the budgetary determination of these taxes to be regulated directly in the law which also regulates the respective tax. For example, the budgetary determination of real estate tax would be regulated in the Act on Real Estate Tax<sup>15</sup>, budgetary determination of road tax would be regulated in the Act on Road Tax<sup>16</sup>, etc. Only 4 taxes in the tax system of the Czech Republic are shared taxes. The specific example of these taxes is the excise tax on mineral oils that is shared by the state budget and by the budget of the State Fund of Transport

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<sup>13</sup> These are 7 direct taxes; value added tax, 5 excise duties and 3 energy taxes.

<sup>14</sup> These are all direct taxes except for income tax, excise taxes except for tax on mineral oils and energy taxes.

<sup>15</sup> Act No. 338/1992 Coll., on Real Estate Tax, as amended.

<sup>16</sup> Act No. 16/1993 Coll., on Road Tax, as amended.

Infrastructure. Other shared taxes are shared by the state budget, municipal budgets and regional budgets, while the legal regulation of budgetary sharing is quite complicated. This is especially because the revenue needs to be divided not only between the state budget, municipal budgets and regional budgets, but also between individual municipal budgets and individual regional budgets. Furthermore, the budgetary determination of personal income tax is also complicated, because revenue of this tax is at first internally divided into particular groups, and then each of these groups is budgetary shared in a different way. For these reasons, it seems to be the best to regulate the budgetary determination of excise tax on mineral oils in the Act on Excise Duties<sup>17</sup>. It would be appropriate to regulate the budgetary determination of remaining shared taxes (i.e. income taxes and value added tax) in a special law regulating the budgetary determination of these taxes. From a theoretical point of view, it would be **a system, in which the budgetary determination of taxes, whose revenue flows into one budget, would be regulated in a law regulating these taxes, and the budgetary determination of taxes, whose revenue is shared by more public budgets, would be regulated in a special law. The only exception would be the budgetary determination of excise tax on mineral oils, which would also be regulated in corresponding tax law, i.e. in the Act on Excise Taxes.**

Regarding the legal regulation of **budgetary determination of charges** in the Czech legal system, this regulation is not unified. Within the Czech legal system, charges can be divided into state charges, local charges and other charges.<sup>18</sup>

The state charges include court charges and administrative charges. **Court charges** are under provision of Sec. 6 (1) (g) of the Budgetary Rules revenues of the state budget. Concerning the **administrative charges**, the situation is more complicated. General provisions of Sec. 6 sub. (1) (g) of the Budgetary Rules provides that the administrative charges are revenues of the state budget. However, not all administrative charges are revenues of the state budget, because there are provisions special to this general provision. Firstly, there are provisions of Sec. 7 sub. (1) (d) and Sec. 8 (1) (d) of the Budgetary Rules of Territorial Budgets<sup>19</sup> which provides that if the municipality or region executes state administration, the revenues of this activity (including revenues of administrative charges) are revenues of the municipal or regional budget. Finally, the provision of Sec. 49a (1) of the Act on the Czech

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<sup>17</sup> Act No. 353/2003 Coll., on Excise Taxes, as amended.

<sup>18</sup> See BAKEŠ, Milan, Marie KARFÍKOVÁ, Petr KOTÁB a Hana MARKOVÁ. Finanční právo. 5. upravené vydání. Praha: C. H. Beck, 2009, 576 s. ISBN 978-80-7400-801-6.

<sup>19</sup> Act No. 250/2000 Coll., on Budgetary Rules of Territorial Budgets, as amended.

National Bank<sup>20</sup> stipulates that the administrative charges for the acts of the Czech National Bank are revenue of the Czech National Bank.

The group of **other charges** includes an inhomogeneous group of financial considerations described as “charges”. Examples include charges under the Water Act, charges associated with the protection of air, time charge for the use of certain types of road, spa charge, etc. Budgetary determination of those other charges is usually regulated in the legislation regulating certain charge. Revenue of these charges is often shared by more public budgets (e.g. regional budget and the budget of the State Environmental Fund, etc.).

As evident, in case of charges several approaches to determining their budgetary determination can be found. There is a general rule for court charges and administrative charges, regulated in the Budgetary Rules, which provide that these charges are revenue of the state budget. In case of administrative charges the general rule is broken in favor of the budgets of municipalities, regions and the Czech National Bank, in laws regulating the budgetary management of municipal budgets, regional budgets and budget of the Czech National Bank. A norm on the budgetary determination of court and administrative charges cannot be found in law regulating these charges. Regarding other charges, the budgetary determination is regulated along with its legal regulation. In my opinion, this fragmented approach is not suitable. **In this case I would consider following rule as an ideal one: The budgetary determination of charges would be regulated along with the legal regulation of corresponding charges in a similar way as by other charges.** This approach would mean that the budgetary determination of court charges would be regulated in the Act on Court Charges<sup>21</sup> and the budgetary determination of administrative charges in the Act on Administrative Charges<sup>22</sup>.

In the Czech Republic, the category of **other similar financial considerations** includes especially levies, customs, payments, contributions. The budgetary determination is usually regulated along with legal regulation of corresponding financial consideration. An example is the levy of lotteries and other similar games or payments under the Mining Act. An exception in this respect is customs, which budgetary determination is provided in Sec. 6 (1) (c) of the Budgetary Rules. This provision stipulates that revenues of proportions of customs, which is under the law of the European Union left to the member states to cover the costs associated with collection of the customs and revenues of sanctions and levies of

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<sup>20</sup> Act No. 6/1993 Coll., on the Czech National Bank, as amended.

<sup>21</sup> Act No. 549/1991 Coll., on Court Charges, as amended.

<sup>22</sup> Act No. 634/2004 Coll., on Administrative Charges, as amended.

execution costs in customs procedure, are revenue of the state budget. The remaining part of the customs revenue creates revenue of the budget of the European Union.

In case of other similar financial considerations it seems that the best solution is **to regulate budgetary determination of particular financial consideration along with its legal regulation**. The system would be the same as in case of charges.

#### **4. Procedural aspects related to budgetary determination**

As already mentioned above, the budgetary determination can be understood as a structural element of any tax, charge or other similar financial consideration. However, it is necessary to distinguish the actual process that occurs in the transfer of revenues of taxes, charges and other similar financial considerations to the relevant public budgets. This issue already belongs to the procedural law as the administration of taxes, charges and other similar financial considerations.

The general legislation governing the administration of taxes, charges and other similar financial considerations, **the Tax Procedure Code**, regulates in Sec. 257 and 258 the transfer of tax revenues<sup>23</sup>. These sections govern the basic rule that if the tax administrator administers taxes, whose revenues belong to other public budget than the one which includes the accounts administrated by the administrator, the administrator will transfer tax revenues in accordance to the budgetary determination and within the terms prescribed by law. This law is **the Act on Budgetary Determination of Taxes**, or more precisely, its Sec. 6 regulating the transfer of tax revenues. Under this provision, the tax administrator transfers tax revenue intended for the recipient at least once a month, if the sum to be transferred is higher than CZK 500, and this rule applies to the so called shared taxes. In case of taxes, which belong exclusively to a budget different from the state budget, the tax administrator transfers tax revenues from those taxes to the recipients within 1 month from the date on which these means were credited on a taxpayer's personal account.

Sec. 6 of the Act on Budgetary Determination of Taxes includes subsection 5, which determines, that by the tax transfers of tax revenues not listed in Sec. 1 of the Act on Budgetary Determination of Taxes, which are intended to recipients under special laws, the tax administrator shall apply mutatis mutandis Sec. 6 of this Act. Sec. 257(1) of the Tax Procedure Code in connection with Sec. 6(5) of the Act on Budgetary Determination of Taxes

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<sup>23</sup> Tax under the Tax Procedure Code means the financial consideration described by law as tax, customs or charge; financial consideration, in case that law stipulates, that it is administered under this law, and financial consideration within divided administration. Tax includes also tax deduction, tax loss or other mean of taxation and the tax accessory.

means that the Tax Procedure Code and Sec. 6 of the Act on Budgetary Determination of Taxes applies to all transfers of any revenues from taxes, charges or other similar financial considerations.

From a theoretical point of view, the situation described above is not ideal. Much clearer and more systematic would be **to comprehensively regulate the general regulation of transfer of revenues from taxes, charges and other similar financial considerations in the Tax Procedure Code only**. This would mean to include the Sec. 6 of the Act on Budgetary Determination of Taxes into the Tax Procedure Code. The particular laws regulating taxes, charges and other similar financial considerations could then include special provisions to these general procedural rules.

## 5. Conclusion

This article deals with legal regulation of the budgetary determination of taxes, charges and other similar financial considerations in the Czech Republic.

The budgetary determination of taxes, charges and other similar financial considerations can be characterized as determination of public budget that receives revenues from tax, charge or other similar financial consideration. It is the essential structural element of any tax, charge or other similar financial consideration.

The budgetary determination of taxes is not regulated uniformly within the Czech legal system. I suggest creating a system in which the budgetary determination of taxes, whose revenue goes into one budget, would be regulated in a law regulating these taxes, and the budgetary determination of taxes, whose revenue is shared by more public budgets, would be regulated by a special law. The only exception would be the budgetary determination of excise tax on mineral oils, which would also be regulated in corresponding tax law, i.e. in the Act on Excises Taxes.

Neither the budgetary determination of charges and other similar financial considerations has a uniform legal regulation. In this case I would consider following rule as ideal: The budgetary determination of charges would be regulated along with the legal regulation of corresponding charges in a similar way as by other charges. Even in case of other similar financial considerations it seems that the best solution is to regulate budgetary determination of particular financial consideration along with its legal regulation.

Regarding the procedural aspects of budgetary determination, I came to the conclusion that much clearer and more systematic would be to regulate the general legislation of transfer of

the tax revenues, revenues from charges and other similar financial considerations comprehensively in the Tax Procedure Code only and the particular acts regulating taxes, charges and other financial considerations would then include special provisions towards to these general procedural rules.

**Summary - Possible changes of legal regulation of budgetary determination of taxes, charges and other similar financial considerations in the Czech Republic:**

The legislation of budgetary determination of taxes, charges and other similar financial considerations is a very important political issue. Based on this legislation the revenue from taxes, charges and other similar financial considerations is divided into particular public budgets. The article deals with the budgetary determination of taxes, charges and other similar financial considerations as a structural element of tax, charge or other similar financial consideration in order to conclude whether the budgetary determination is a structural element of tax, charge or other similar financial consideration or not. The third part is devoted to legislation of budgetary determination of taxes, charges and other similar financial considerations in legal order of the Czech Republic. After describing and evaluating the legislation, some possible changes of this legislation are suggested. Finally the last part deals with procedural aspects related to budgetary determination of taxes, charges and other similar financial considerations. Also in this part there is a description and evaluation of legislation and then changes *de lege ferenda* are proposed as well.

**JUDr. Radim Boháč, Ph.D.**

**Assistant professor and secretary of Department of Financial Law and Financial Sciences**

**School of Law of the Charles University**

**nám. Curieových 7**

**116 40 Praha 1**

**email: [bohac@prf.cuni.cz](mailto:bohac@prf.cuni.cz)**

**[www.radimbohac.cz](http://www.radimbohac.cz)**

**tel.: +420221005530**