

# The Difficulties of Codification of Tax Law in the Czech Republic

doc. JUDr. Radim Boháč, Ph.D.

Department of Financial Law and Financial Science, Faculty of Law, Charles University

## Introduction

This article<sup>1</sup> deals with the possible codification of tax law in the Czech Republic. The aim of this article is to outline, describe, and assess the individual options (variants) that could potentially be carried out in order to codify tax law in the Czech Republic.

In legal theory, the codification is defined as “a concentration of legal regulation of a large specific segment of social relations in an extensive act, a so-called code (codex)”<sup>2</sup>. This article is based on that concept, too.

In order to be able to actually think about the codification of tax law, it is necessary to define the concept of tax law in the first place. Therefore, the first chapter hereof deals with the theoretical concept of tax law in the Czech Republic, and the second one deals with actual positive tax law. A mere idea of what a notion of tax law actually denotes and what legal regulations are currently used in the Czech Republic for a regulation thereof, is enough in order to think about the ways of its possible codification.

The third chapter hereof deals with the possible approaches to the codification of tax law in the Czech Republic. The individual ways to approach the codification are briefly described, and their advantages/disadvantages are assessed. In the end of the article, there is a summary of the previously made assessment.

## 1. Tax law in the Czech Republic from a theoretical point of view<sup>3</sup>

In order to be able to deal with codification of tax law in the Czech Republic, it is necessary to define the term of tax law. Tax law cannot be, however, specified without defining the term tax. Definition of a tax is provided by a number of domestic and foreign

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<sup>1</sup> This text was created as a part of P06 - "Public Law in the Context of Globalization and Europeanization" being realized in 2016 at the Faculty of Law of Charles University in Prague.

<sup>2</sup> KNAPP, Viktor. *Teorie práva*. Praha: Beck/SEVT, 1995. 247 s. ISBN 80-7179-028-1. s. 111-112.

<sup>3</sup> Part of this chapter was already published in BOHÁČ, Radim. Problems arising during creating of positive tax law in the Czech Republic. In: Problems of application of tax law in Central and Eastern European countries. Omsk: Vydavatelství Státní univerzity v Omsku 2013, s. 297-303. ISBN 978-57779-1628-0.

authors, from both a legal and an economic perspective.<sup>4</sup> I personally consider **taxes** as irreversible, involuntary, non-equivalent and non-punitive financial considerations imposed by the act and administered by the state or other persons engaged in public administration which are public revenues of public budgets and which are generally purpose-built, regular, periodical and planned. In the Czech Republic direct taxes (income taxes and property taxes) and indirect taxes (value added tax, excise taxes and energy taxes) are imposed.

In addition to taxes Czech law, however, provides a number of other financial considerations (payments) that are similar to taxes, i.e. which have tax nature. It is necessary to mention especially charges, customs duties and public insurance premiums. **Charges** are irreversible, involuntary, equivalent and non-punitive financial considerations imposed by the act and administered by the state or other persons engaged in public administration which are public revenues of public budgets and which are generally purpose-built, regular, periodical and planned. Charges differ from taxes in equivalence and usually in purposefulness. In the Czech legal order, administrative charges, judicial charges, local charges and other charges can be found.

I consider **customs duty** as irreversible, involuntary, non-equivalent and non-punitive financial consideration imposed by act in connection with the transfer of goods across the customs border which is administered by the state or other persons engaged in public administration, which is public revenue of public budgets, which is lacking the purpose, is regular, periodical and planned. Finally, **public insurance premiums** can be defined as irreversible, involuntary, conditionally equivalent and non-punitive financial considerations imposed by act and administered by the state or other persons engaged in public administration which are public revenues of public budgets and which are generally purpose-built, regular, periodical and planned. Public insurance premiums are characterized by conditional equivalence. At present, the public insurance includes social security insurance premiums and health insurance premiums.

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<sup>4</sup> Comp. BAKEŠ, Milan, KARFÍKOVÁ, Marie, KOTÁB, Petr, MARKOVÁ, Hana a kol. *Finanční právo*. 6. upravené vydání. Praha: C. H. Beck, 2012, 519 pp. ISBN 978-80-7400-440-7. p. 154, KUBÁTOVÁ, Květa. *Daňová teorie a politika*. 5. aktualizované vydání. Praha: Wolters Kluwer ČR, 2010, 276 pp. ISBN 978-80-7357-574-8. p. 15-16 or ETEL, Leonard a Bogumił BRZEZIŃSKI. *System prawa finansowego. Tom III. Prawo daninowe*. Warszawa: Oficyna a Wolters Kluwer business, 2010, 980 pp. ISBN 78-83-264-0175-6. p. 867.

Outside taxes, charges, customs duties and public insurance premiums the legislation governs also other similar financial considerations as contributions, benefits, allowances and grants. Such financial considerations usually meet the characteristics of taxes or charges. Together with the customs duties and public insurance premiums these considerations can be described as the **financial considerations similar to taxes and charges**.

Sometimes, however, charges and other similar financial considerations are referred to as taxes, or tax revenues of public budgets respectively. In this case, we can distinguish taxes in the strict sense and taxes in the broad sense. **Taxes in the strict sense** are such financial considerations that meet the above-mentioned theoretical definition of taxes; **taxes in the broad sense** are such financial considerations that meet the definition of taxes, charges or other similar financial consideration.

**Tax law** is a system of legal rules governing taxes.<sup>5</sup> If there is a tax in the strict sense and a tax in the broad sense, then there is no doubt that tax law in the strict sense and tax law in the broad sense do exist. **Tax law in the strict sense** is a set of legal rules governing taxes and **tax law in the broad sense** is a set of legal rules governing taxes, charges and other similar financial considerations.

## **2. Positive tax law in the Czech Republic (in a broad sense)**

Taxes in the Czech Republic are almost exclusively regulated by **acts**, but also by some ordinances of government and generally binding public notices of the Ministry of Finance, but this is a minimum case. Acts governing taxes can be divided into several groups from different perspectives.

First of all, we can distinguish between **general and special tax acts**. The difference between these two is that the general act applies to all types of taxes in the broad sense, while the special one regulates one type of tax only, even though there are exceptions possible so it can regulate also more than one type. The general tax act in the Czech Republic is the Tax Procedure Code<sup>6</sup>, the other ones are special. So, the Tax Procedure Code is an act that is

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<sup>5</sup> For more details see BAKEŠ, Milan. BOHÁČ, Radim. Daňové právo České republiky v kontextu s právem Evropské unie. In: ŠTURMA, Pavel, TOMÁŠEK, Michal et al. *Nové jevy v právu na počátku 21. století, III. Proměny veřejného práva, kapitola 5 Daňové právo České republiky v kontextu s právem Evropské unie.*, Praha: Karolinum, 2009. 481 pp. ISBN: 978-80-246-1662-9. pp. 250-303.

<sup>6</sup> Tax Procedure Code No. 280/2009 Coll., as amended.

general and this is the reason why this act widely differs from the other ones. The Tax Procedure Code was adopted in 2009 and is effective from 1 January 2011.

Furthermore, we can sort tax acts on acts regulating taxes, acts regulating charges and acts regulating other similar financial considerations. **Acts regulating taxes (in the strict sense)** can be divided into four groups:

- 1) The tax acts that were passed as a part of the tax reform in 1992, effective from 1 January 1993. Namely it is the Income Tax Act<sup>7</sup>, the Real Estate Tax Act<sup>8</sup> and the Road Tax Act<sup>9</sup>.
- 2) The tax acts passed at the turn of the years 2003/2004 that became effective on 1 May 2004, in connection with the fact that the Czech Republic had joined the European Union, i.e. the Value Added Tax Act<sup>10</sup> and the Excise Tax Act<sup>11</sup>.
- 3) The Act on Stabilization of Public Budgets<sup>12</sup> (regulating energy taxes), passed in 2007 and effective from 1 January 2008, in connection with the end of the transitive period during which energy taxes in the Czech Republic did not have to be effective.
- 4) The Real Estate Acquisition Tax, passed in 2013 and effective from 1 January 2014 in connection of recodification of private law in the Czech Republic.

Therefore, there is a rule applicable to taxes in the strict sense, which says that these are regulated by individual acts that do not include any other legal norms. An exception to this rule are energy taxes that are regulated by the Act on Stabilization of Public Budgets, but even with regard to these a future legal regulation that would be contained in an individual act is expected to be adopted. This fact contributes to the clarity of the legal regulation of taxes in a strict sense.

**Legal regulations dealing with charges can be categorized as follows (according to the type of a charge that is regulated thereby):**

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<sup>7</sup> Income Tax Act No. 586/1992 Coll., as amended.

<sup>8</sup> Real Estate Tax Act No. 338/1992 Coll., as amended.

<sup>9</sup> Road Tax Act No. 16/1993 Coll., as amended.

<sup>10</sup> Value Added Tax Act No. 235/2004 Coll., as amended.

<sup>11</sup> Excise Taxes Act No. 353/2003 Coll., as amended.

<sup>12</sup> Act on Stabilization of Public Budgets No. 261/2007 Coll., as amended.

- 1) Act on Administrative Charges<sup>13</sup>, the Annex of which regulates a wide range of administrative charges that are paid either for proceedings or transactions by the administrative bodies,
- 2) Act on Court Charges<sup>14</sup>, the Annex of which regulates a wide range of court charges that are paid either for proceedings or transactions by courts,
- 3) Act on Local Charges<sup>15</sup>, that empowers the municipalities to introduce one (or more) of the eight local charges through adoption of a municipal public binding notice,
- 4) acts regulating other charges (e.g. the Act on Waste that regulates the charge for depositing waste in landfill, or the Act on the Protection of Air that regulates the charge for polluting the air).

Regarding the first three groups, the mentioned acts exclusively regulates charges. For the last category it is, however, typical that the charge is regulated in a legal regulation together with other legal norms that govern the respective area, and there are at least twenty such charges in the Czech legal system. This fact contributes to the lack of clarity of the system of charges and it makes it very hard for the addressees of the legal norms to orientate themselves therein.

Finally, regarding other legal regulations that govern other similar financial considerations, I have to separately mention customs duty and public insurance premiums. Customs duties are rather specific as they are regulated by the legislation of the European Union. However, the Tax Procedure Code is subsidiarily applicable. Even though the public insurance premiums, i.e. social security insurance premiums and health insurance premiums are governed by separate laws,<sup>16</sup> the Tax Procedure Code is not applicable when administering these. This was about to be changed by the implementation of the project of the single collection point, which was, however, later set aside. Regarding other similar financial considerations, the rules that were mentioned in connection with charges are applicable. As well as the other similar financial considerations even these considerations are regulated by the respective act together with other legal norms that are concerned with the respective area.

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<sup>13</sup> Act No. 634/2004 Coll. on Administrative Fees, as amended.

<sup>14</sup> Act No. 549/1991 Coll. on Court Fees, as amended.

<sup>15</sup> Act No. 565/1990 Sb., on Local Fees, as amended.

<sup>16</sup> Act No. 589/1992 Coll., on Social Security Insurance, as amended, and Act No. 592/1992 Coll., on General Health Insurance, as amended.

As an example, it is possible to mention a charge for the face working district and a charge for extracted reverse minerals that are governed by the Mining Act<sup>17</sup>. Moreover, some of the financial considerations are not fully administered within the regime of the Tax Procedure Code but rather in the course of a so-called divided administration (they are imposed under the Administrative Procedure Code and collected and enforced under the Tax Procedure Code).

It implies that the positive tax law in a broad sense is regulated by three different types of legal regulations in the Czech Republic:

- 1) a general act that regulates tax administration (the Tax Procedure Code),
- 2) acts on taxes, which only contain legal regulation of one or more taxes (in a strict sense) or charges, and which contain special rules for administration of such taxes and charges at the same time,
- 3) acts, which govern a specific area and which, among other legal norms, contain specific legal regulation and specific rules for administration of a charge or other financial consideration similar to taxes and charges.

In view of the aforementioned facts, a possible designation of the current state of tax law in the Czech Republic at least as a "partially codified" is debatable. I believe that such designation is not applicable as tax procedure law (tax administration) is not comprehensively regulated by one act either. Rather, it is regulated by a general act, the Tax Procedure Code, and additionally by the individual tax acts that can be characterized as special legal regulations.

In order to think about the possibilities of codification of tax law in the Czech Republic, the state described above has to be viewed as a default one.

### **3. Possible approaches to the codification of tax law in the Czech Republic**

With regard to the aforementioned opinions, it is to be noted that any attempts of the tax law codification will collide with fragmentation of current positive tax law and with the fact that numerous financial considerations of a tax nature are regulated outside of the scope of tax laws together with other legal rules regulating correspondent areas. It needs to be

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<sup>17</sup> Act No. 44/1988 Coll., on the protection and utilization of mineral resources (Mining Act), as amended

further stressed that successful codification is not possible without settling and clarifying basic rules, policies and principles of tax law and its premise is a relative rigidity and constancy of a tax system and structural elements of individual taxes.

Nevertheless, there is a possibility to consider these approaches to the codification of tax law in the Czech Republic:

#### **1) Method of a comprehensive tax law codification**

Method of a comprehensive tax law codification assumes concentration of entire regulation of tax law in a broad sense into one act (tax code). Such code would include not only legal regulation of individual taxes, charges and other similar financial considerations (their essential and other elements), but also legal regulation of administration of these financial considerations.

The result of such tax law codification would be a relatively large legal act. In order to provide basic idea, it can be mentioned, that the Civil Code has approximately 180 thousand words. On the other hand, the most extensive tax laws, such as the Excise Taxes Act (approx. 72 thousand words), Value Added Tax Act (approx. 58 thousand words), Income Tax Act (approx. 57 thousand words), Tax Procedure Code (approx. 41 thousand words) Act on Administrative Charges (approx. 34 thousand words) together have approximately 262 thousand words. If counted all other regulation acts in a broad sense, it can be assumed that the number of words in the tax code would be much higher, apparently more than twice the number of words than words of the Civil Code. The fact that some of the rules could be, as a result of one act regulation, simplified or omitted, does not change this matter at all.

Advantage of such tax code would be its comprehensiveness. Both subject to the tax and administrator would have the certainty that all legal rules relating to taxation are contained in a single piece of legislation. In contrast, basic disadvantage of such tax code would be its complexity, necessity for an amendment thereof and difficulty to maintain and keep all the rules of tax law in such code.

With regard to the current state of objective tax law, the adoption of such tax code is very difficult to imagine, since its actual preparation and approval would require several years of intensive work with an unpredictable result. For its passage, a broad consensus would be needed in the professional and political field.

#### **2) Method of a comprehensive codification of tax procedure law**

As a tax procedure law can be identified the part of the tax law that regulates the tax administration i.e. assessment and payment of taxes. As I have previously stated, general legal

regulation of tax administration is currently contained in the Tax Procedural Code. However, a number of other, specific legal rules concerning the tax administration are included in the individual tax acts, with the Tax Procedural Code being used subsidiarily.

Comprehensive codification of tax procedure law (the tax administration respectively) would cause the concentration of every legal rule regulating the tax administration (both general and particular) into one legal act.

A fundamental disadvantage of this method would be to determine, which specific legal rules are a part of the tax administration and which are not. This can be demonstrated on the due date of the tax. Many authors include the due date of a tax among essential element of a tax,<sup>18</sup> some of them (including me<sup>19</sup>) consider it as an institute of the tax administration. According to the first approach to the due date, its regulation should be placed within the code, according to the second approach, however, not.

Indisputable advantage of this codification of the tax administration would be consistency and comprehensiveness of the tax administration rules contained in one legal act. However substantial disadvantage would be the separation of special rules of tax administration from legal regulation of individual taxes. Special rules without their own legal regulation of individual taxes would appear as isolated an unsystematic. Therefore, I would rather not recommend the adoption of this method.

### **3) Method of a partial tax law codification (regulation and administration of certain taxes)**

Another conceivable method is the regulation of some taxes (in a broad sense) in the tax code and regulation of other taxes through different individual acts. This method does not have the ambition to codify the tax law as a whole, but only a certain thereof. On the other hand, it still expects regulation of the taxes (structural elements of taxes) in particular, together with their administration in one act. This method has an infinite number of

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<sup>18</sup> BAKEŠ, Milan, Marie KARFÍKOVÁ, Petr KOTÁB and Hana MARKOVÁ. *Finanční právo*. 6. upravené vydání. Praha: C. H. Beck, 2012, 519 p. ISBN 978-80-7400-440-7. p. 162 or JÁNOŠÍKOVÁ, Petra, Petr MRKÝVKA, Ivan TOMAŽIČ et al. *Finanční a daňové právo*. Plzeň: Aleš Čeněk, 2009. 525 p. ISBN 978-80-7380-155-7. p. 304.

<sup>19</sup> See also BOHÁČ, Radim. *Daňové příjmy veřejných rozpočtů*. Praha: Wolters Kluwer ČR, 2013, 329 p. ISBN 978-80-7478-045-5. p. 76.



submethods, naturally in order to fulfill the reason of codification of at least certain coherent part of tax law, these three methods are particularly relevant:

- 1) codification of legal regulation and administration of taxes in a strict sense,
- 2) codification of legal regulation and administration of charges,
- 3) codification of legal regulation and administration of taxes in a strict sense and charges.

According to all these submethods, a part of the code should not only be the legal regulation governing structural elements and the administration of taxes and charges (following the selection of a specific submethod), but also general legal act governing the tax administration (the Tax Procedure Act), which would be used in a subsidiary way for the tax administration not governed in the code.

An advantage of this method would be comprehensive and unified legal regulation of most important financial considerations of tax character in one legal act. However, unclarity regarding the criteria that would be decisive in order to consider a particular financial consideration to fall within the scope of the code can be considered to be a disadvantage. The thing is that it is questionable what criteria, i.e. whether the designation of a financial consideration or its material nature, should be made decisive. I would personally choose the material nature under the condition that such consideration is designated as a tax or a charge in the code. This could however cause such code to be harder in order to be politically gotten through.

#### **4) Method of a codification of general rules of law and the tax administration**

The least ambitious method of tax law codification in the Czech Republic is a method of codification of general rules of law and the tax administration. Considering the fact that the code would contain only these general rules of law and administration of individual taxes, suitability of potential designation of this process as a tax law codification is the question.

This method is currently applied only in the area of the tax administration, as the Tax Procedure Code governs general rules of the tax administration. Similar legal legislation for general regulation (structural elements) of individual taxes is missing. Essentially, it would only mean that basic rules on structural elements of taxes would be added to the current Tax Procedure Code. Tax calculation or a budgetary determination of taxes may be used an example of such general rules.

Fundamental disadvantage of this method is the fact that it is in its essence no longer a tax law codification, but merely an expansion of a general legal regulation governing the tax

administration. On the other hand, the introduction of this method would be the easiest one of all aforementioned methods.

## **Conclusion**

The goal of this article is to briefly describe and evaluate different methods, through which the codification of tax law in the Czech Republic could be carried out. In the article, four basic principles of codification in the Czech Republic are mentioned.

First method of a comprehensive tax law codification is the most proper one from the theoretical point of view, however admittedly very difficult to implement. Tax code in this form could contain the entire legal regulation of individual taxes in a broad sense and their administration.

Second conceivable method of a Czech tax law codification is the method of comprehensive codification of tax procedure law. This method would mean the concentration of all legal rules governing the tax administration (both general and particular) into one legal act. In my opinion, this model is not suitable with regard to the separation of special rules of the tax administration from the regulation of individual taxes.

Third method of partial tax law codification assumes both essential legal regulation of some taxes (structural elements of taxes) and also their administration. This method contains number of submethods, however the only methods that are realistic are these of codification of legal regulation and administration of taxes in a strict sense, codification of legal regulation and administration of charges, codification of legal regulation and administration of taxes in a strict sense and charges. The tax procedure code would be a part of this code in every aforementioned case. The tax code that would be formed in accordance with this method could be a contribution to the Czech law because of the concentration of a regulation of most essential taxes or charges and concurrently general legal regulation of the tax administration.

Forth method of a codification of general legal regulation and the tax administration is not in fact a codification in its essence, but rather an expansion of an existing general legal regulation governing tax administration. For this reason, I would not recommend such method, even though its implementation could be the easiest.

Hence, it follows that the third method – the method of partial tax law codification – could be considered as the most appropriate. The remaining question is whether tax law should be codified at all, and whether the benefits of codification would outweigh its drawbacks. It would have to be the subject of thorough studies and analyses.

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## Abstract

The goal of this article is to briefly describe and evaluate different methods, through which the codification of tax law in the Czech Republic could be carried out. In the article, four basic principles of codification in the Czech Republic are mentioned.

The method of partial tax law codification could be considered as the most appropriate. The remaining question is whether tax law should be codified at all, and whether the benefits of codification would outweigh its drawbacks.

## Key words

Codification, Tax Law, Czech Republic