

ECOLOGICAL FISCAL REFORM~~Ecological fiscal reform~~

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Abstrakt

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

Klíčová slova

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

Abstract

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

Key words

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

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

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

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

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

This norm established three new forms of taxation:

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

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

All member states have to respect the full list of commodities (stated in the article 2¹ of the Directive) as well as the minimum rates of taxation applied on them. (The directive requires only a minimum compulsory rate of taxation and every particular state can afterwards set a higher level, ~~but-although~~ e.g. ~~the~~ Czech ~~republic-Republic~~ ~~surprisingly~~ stays ~~surprisingly~~ at the minimum level.) This ~~regards~~-especially ~~relates to~~ leaded and unleaded fuel, gas, oil, liquid gas, paraffin oil, brown and black coal and electricity.

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

1) Tax ~~from-on~~ natural gas and other gases

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

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

These industry processes are exempt from taxation. This can be understood from the point of view of ~~entrepreneurs-businesses~~ for whom this would mean higher costs. But from the point of view of the object and purpose of the directive, -the very purpose of the norm – that is the decrease ~~of-in~~ the level of pollution – cannot be fully accomplished, because ~~these biggest-largest~~ producers of pollutants are exempt ~~forom~~ the tax. On the other hand, we have to see this in the context of the global market where higher costs implied by the tax would create a disadvantage, compared to ~~entrepreneurs-businesses~~ from ~~states-the countries~~ with

1 Council Directive 2003/96/EC: Article 2

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

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

2. This Directive shall also apply to:

Electricity falling within CN code 2716.

lower environmental standards. In this light, these European energetic companies might fail, the production itself would be delocalized and the level of pollution as a whole would increase.

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

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

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

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

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

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

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

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

The content of these new taxes as a whole is simply adopted from the EU directive and represents the consensus of EU countries ~~about-on~~ this topic. The Czech republic Republic had to transpose them in such a way that would not lead so there weren't toto ~~many too strong~~ political tensions ~~about-them~~.

Another question is the form in which ~~it-the new legislation was passed-adopted~~ and ~~was~~ publicised. Usually a new form of legislation is ~~done-carried out~~ by a new separate

normative act. This is a usual procedure based on the principle of a legally consistent state and on the certainty and transparency of the legal order.

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

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

~~By the words of the~~ ~~According to~~ chief of the Czech ~~constitutional-Constitutional~~ ~~court~~ ~~Court~~: parts concerning ~~ecological-environmental~~ taxes are separate ~~tax~~ laws ~~of taxes~~ and there is a doubt about the way ~~of publication~~ ~~they were adopted~~ – whether it is in accord with ~~the~~ ~~a~~Article 52 of ~~the~~ Czech ~~constitution-Constitution~~ and ~~with the act about~~ ~~e~~Code of ~~law~~ ~~Law Act~~².

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

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

~~One part of~~ ~~Among~~ the instruments leading towards the objective of this plan is also ~~a~~ complex environmental fiscal reform. This is supposed to be in its general form based on shifting taxation from taxation ~~of on~~ work to taxation ~~of on~~ consumption, ~~Thereby thereby~~ changing ~~the~~ structure of taxation, which ~~is~~ ~~would be~~ focused not on income taxes of natural and legal persons, as ~~it had been~~ until now, but ~~on~~ ~~relocate-relocating~~ taxation to indirect taxes, ~~such~~ -as VAT (~~value added tax~~), energy taxes and taxes and charges on environmentally harmful activities. This type of taxation would ~~take~~ into account ~~processes and products with high consumption of~~ ~~energetic-energy~~ and resources and thus ~~demanding processes and products~~ with stronger impact ~~to on~~ the environment. ~~So that~~ ~~p~~Producers of ~~these~~ ~~such~~ commodities should be more motivated to use ~~processes that are~~ energetically more efficient ~~processes~~ and ~~demand~~ less resource-~~demanding techniques~~.

~~Among~~ ~~Other~~ ~~other~~ instruments which should ~~serve help~~ to ~~reach~~ the objective of the ~~plan~~ 20/20/20 ~~plan~~ (or some other type of environmental change plan) are ~~the~~ trading of CO₂ emission permits and the extension of regulated polluters from stationary object to transportation.

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

3 [Cp. http://www.env.cz/AIS/web.nsf/pages/strategie](http://www.env.cz/AIS/web.nsf/pages/strategie)

4 [Cp. http://eur-lex.europa.eu/COMMonth.do?year=2007&month=03](http://eur-lex.europa.eu/COMMonth.do?year=2007&month=03)

Yet the negotiation and connivance of this ~~strategy-20/20/20~~ strategy is planned to be ~~made-carried out~~ during the Czech presidency ~~of Czech Republic~~ in 2009⁵. So the ability of the Czech government to lead discussions and negotiations ~~around-in relation to~~ this topic could have a- significant impact. Positions of ~~various-individual~~ European ~~states-countries are quite-different~~ vary and also the opinion of the Czech ~~governmentside~~ is quite sceptic. Anyway, the ~~negotiation-of~~ discussions on this topic (~~away-apart~~ from the Lisbon treaty) will be quite challenging and it could show the ability of the Czech politics ~~in-to~~ dealing things with matters on the European level.

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