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“Surcharges and Penalties in Tax Law"

Czech Republic REPORT

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1 Taxpayer and Third Party Duties

The Act No. 280/2009 Sb., Tax Procedural Code, as amended (hereinafter referred to as Tax Procedural Code), emphasizing constitutional principles set by the Constitution of the Czech Republic and the Charter of Fundamental Rights and Freedoms, defines some basic principles of tax administration which should be met by the tax administrators and the taxpayers. The principles include the rules of legality and legitimacy, the rules of adequacy and effectiveness, the rules of cooperation and collaboration, the rule of logical and contextual evidence evaluation, the rule of substance over form, the rules of secrecy and non-publicity, the rule of foresee ability, the principle of proportionality, and the principle of self-assessment. Following the above mentioned principles the Czech taxpayer is obliged to contribute to a successful tax assessment procedure in the range defined by the Tax Procedural Code. The key goal settled by the Tax Procedural Code is “setting of correct tax obligation”.

There are two types of persons liable to tax:

- Taxpayer – a person whose income, property or acts in law are directly liable to tax;
- Payor – person who has material liability to transfer collected or withheld taxes from the taxpayer to the tax administrator.

However, these definitions are no more the part of Czech law, even both terms are used not only in tax acts very often.

Besides persons liable to tax, there is a group of persons taking part in the tax proceedings (third persons, third party) such as witnesses, persons holding documents, experts, auditors, interpreters, guarantors, bankruptcy trustees, state authorities and local government authorities, skilled consultants, sureties, etc.

The leading principle of self-assessment determines the basic duties of the taxpayers: to submit the tax return and to pay the tax till the end of period set by tax law. These deadlines are set generally in the Tax Procedural Code, specifically by individual tax acts. The duties which the taxpayers must bear in order to secure the correct tax assessment consist particularly of obligation to submit any relevant information to tax officers, to provide them the full accountancy and any accounting document and to guide the accountancy with explanation if appropriate and not to hide any accounting documents. If requested the taxpayer must provide any documents and/or data medium to tax officers. In case the amount of documents or data is large the taxpayer must transform those into a pre-defined electronic form. The taxpayers carry the burden of proof for any fact they claim. The taxpayer must provide a space for tax audit if

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needed, e.g. a room, as well as he is obliged to enable the tax officers to visit any business premises and speak to employees. It might seem that taxpayers’ obligations are wide and the tax officers hold significant power regarding the access to information. However the tax secrecy binding the tax officers is very strong and respected in the Czech Republic.

Third parties must participate in the process of any taxpayer’s tax assessment, if requested by tax officers. Everybody keeping records of persons or things, providing services liable to tax, conducting proceedings in cases where the object is liable to tax, or possessing other information necessary for the tax administration must provide that information upon request of tax officers. Health insurance companies, banks, postal operators, telephone service companies, publishers of periodicals, etc. are obliged to provide free of charge data on their clients, the Supreme Audit Office and other control bodies must transmit the competent tax information to the tax administration bodies.

There is a close exchange of information among tax administrators and the Ministry of Finance under the Act on Combating Money Laundering and Terrorist Financing Act, the Office for Protection of Competition (in respect of public support), courts and prosecutors (in case of criminal proceedings, remedial instruments and maintenance decisions), the Ministry of Labour and Social Affairs and other social security institutions, health insurance companies, the Supreme Audit Office and other control authorities, the Czech Statistical Office, Chamber of Tax Advisors or the Czech Bar Association (disciplinary proceedings), the competent public authority (to discuss the claim under the law on liability for damage caused in tax administration procedure), the Ombudsman, etc.

On the other hand, the professional secrecy in case of tax advisers and lawyers is guaranteed.

1.1 Tax Assessment Procedures

The character of the tax assessment procedures is the same for all the taxes. The assessment principle is based on self-assessment. The taxpayer himself must calculate the tax for his tax return including specifying exemptions, advantages, allowances and deductions. Special approach can be identified in case of tax on immovable property, where it is not necessary to submit the tax return every year. Usually if the tax return was submitted in any of the previous taxable period and there are no changes, the taxpayer does not have this duty. Even if there are changes in the tax rate, in the average price of land, in the coefficients, etc., there is no duty to submit the tax return.
The tax administrator has three possibilities in the tax assessment procedure: 4

1. Implied tax assessment – the assessed tax does not differ from the tax stated in the tax return. In this situation the tax administrator is not obliged to inform the taxpayer about the result of assessment. The last day of the deadline for filling the tax return is considered as the tax assessment day and as the day of the delivery of the tax decision;

2. Reproach proceedings (proceedings to remove doubts) – there are doubts about the correctness, truthfulness, substantiation or completeness of the tax return. In this situation the tax administrator informs the taxpayer about these doubts and calls upon him to give his views or complete the incomplete data, etc. The tax administrator should set an appropriate time limit in his call, not shorter than fifteen days. The tax administrator has more possibilities to assess the tax: it can conduct a tax control or local tax examination, it can hear the witnesses, go through the paper proofs, etc. At the end of these proceedings the tax administrator sets the tax base and prescribes the amount of tax and notifies the taxpayer by the reasoned tax assessment. The tax is payable within fifteen days since tax assessment becomes legally effective;

3. Assessment using “other tools” – if the tax return was not submitted in time (even the tax administrator called to do so) or if the irregularities were not rectified within the deadline stated, the tax administrator may determine the tax base and assess the tax according to whatever materials and information it possess without cooperation with the taxpayer. The tax administrator notifies the taxpayer by the tax assessment. The tax is payable within fifteen days since tax assessment becomes legally effective. In this situation there is no way taxpayer can appeal against the tax base and the tax determined. The taxpayer can object only to the way of assessment procedure (that there were no legal reasons to use assessment using “other tools”) or inadequacy of “other tools”.

1.2 General Duties within Tax Assessment Procedures

The general taxpayers’ duties can be divided into two parts. The first one consists in the burden of claim as the taxpayer is obliged to submit the tax return claiming facts, data and information having been used within the tax self-assessment procedures. The second duty is comprised of

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the burden of proof. If the taxpayer is requested to document any data or information that have been used for self-assessment, he must satisfy the tax officer’s request by any means stated by the law including the examination of witness proposal.

1.3 Duties regarding Clarification, Examination and Supervision Procedures

There are several possibilities for tax administrators to control the correctness of tax returns and other taxpayers’ duties. Primarily, it is a research activity of tax administrators, i.e. the right to search taxpayers and evidence, both before and during the proceedings. Research activities include verification of completeness of taxpayer’s registration, identifying information relating to income, property and other facts relevant for taxes, collecting information and creating information systems, explanations, and local investigations.

Everyone is obliged to file a tax explanation, even if the explanation cannot be used as an evidence.

The tax administrator can conduct a local investigation. Under this procedure the tax administrator searches for an evidence at the most suitable place. The tax administrator may shoot the video or audio records. Tax officers have right of access to land, any operational buildings, rooms and places, including vehicles and shipping containers, the accounting records or other information. They can secure things that might serve as evidence.

The most common is a tax inspection. The objects of tax inspection are tax obligations, claims of the taxpayer, and other circumstances relevant to the tax assessment. The tax administrator has the same rights as in case of local investigation. Moreover, during the tax inspection the taxpayer must provide a suitable place and conditions for the tax inspection, provide the necessary information about the accounting records and other information, submit evidence proving his claims, allow communication with its employees, and not conceal evidence.

The other taxpayers´ duties are connected with reproach proceedings (see above).

From the above mentioned information it is obvious that the burden of evidence is on taxpayer: everything submitted in the tax return must be supported by the evidence. Everything can be used as evidence, either by the tax administrator or by the taxpayer. Nevertheless the most common evidence are paper documents, experts´ opinions, witnesses, etc.

During the tax assessment procedure the assessment time limits are very important. These time limits are prescription periods. The tax may not be assessed after the lapse of 3 years from the end of the time limit for submission the tax return or the time limit for paying the tax, if there
was no duty to submit the tax return. If prior to the expiry of the time limit there is a tax control, a tax return is submitted or there is a call for submitting the tax return, the 3 year period commences to run anew from the day such an act had happened. If during last 12 months of the basic 3 year period there is an additional tax return, a tax assessment, proceedings on remedial instrument or a decision on nullity of the decision, the time limit will be one year longer. Moreover, there are several situations when the time limit does not run (for example there is proceedings at the court). The tax may be assessed no later than 10 years after the end of the time limit for submission the tax return or the time limit for paying the tax, if there was no duty to submit the tax return.

There are two types of remedial instruments in the Tax Procedural Code. Ordinary remedial instruments can be used if the decision is not yet final, extraordinary remedial instruments are used for final decisions. On the other hand, the Tax Procedural Code also divides remedial instruments (sensu lato) into remedial instruments (sensu stricto) and supervisory instruments depending who is allowed to start the remedial proceedings: in case of remedial instruments it is the tax subject, in case of supervisory instruments it should be tax administrator *ex officio*. There are two ordinary remedial instruments (appeal, remonstrance) and one extraordinary remedial instrument (re-opening of tax proceedings). The proceedings will be re-opened if the taxpayer applies or *ex officio* (it means it is also a supervisory instrument). The other supervisory instrument is review proceedings.

If the taxpayer is not satisfied during the tax proceeding, he can file a suit. The first step is bringing the action against the tax administrator's decision to the county administrative court; the remedial instrument is the cassation complaint to the Highest Administrative Court.

It must be mentioned that in criminal investigations the role of the taxpayer and the state (authorities investigating tax crimes) is completely different. Police and state prosecutors carry the burden of evidence and the principle *in dubio pro libertate* must be applied.

### 1.4 Duties regarding Tax Collection

The tax collection procedures follow the principle of self-assessment. The taxpayers have to calculate their tax liability and pay the taxes before the payment deadline (usually the same as for tax return submitting). In case of withholding taxes it is the withholding agent’s (payor’s) duty to calculate and pay the taxes in time. If the taxpayer does not agree with the amount of a withheld tax, he can ask his payor for an explanation within 60 days of tax withholding. The payor must answer in 30 days and if the taxpayer does not agree with the explanation, he can file
a complaint within 30 days from the day when he received the information from the payor. The decision of the tax administrator must be sent to both the taxpayer and the payor and they both may appeal against such decision.

For the tax payment the time limits on tax arrears exaction are very important. These time limits are prescription periods. In general the right to collect and exact tax arrears ends 6 years after the arrears became payable. If prior to the expiry of the time limit an act (like exaction of arrears, lien, deferment of tax, and approval for installments) is undertaken, the 6 year period commences to run anew from the moment this act was undertaken. There are several situations when the time limit does not run (for example during tax exaction). But the arrears may be exacted in a maximum period of 20 years after the arrears became payable.

1.5 Duties regarding Tax Shelter or Tax Schemes

There are not any specific rules or taxpayers’ duties regarding the tax shelter or tax schemes in the Czech Republic like disclosure obligations if a tax shelter was modelled and used. Nevertheless there was a discussion about it as one of the BEPS Action Plan points but it was not incorporated into the Czech tax administration strategy. The stress was put on the transfer pricing and the transfer prices relevant documentation. The first step towards transfer prices audit has been applied since January 2015 since the large companies must create special report on their relationships and business details for the purpose of transfer prices audit.

1.6 Other Duties

N/A for the Czech Republic.

2 Definition and Categorisation of different Types of Surcharges

2.1 Criminal Penalties

There is no special code for tax crimes and criminal penalties. The criminal tax law is covered by the general criminal law defined in Act No. 40/2009 Sb., Criminal Code, as amended.

There are the two main factors of criminal tax acts to be covered by the Criminal Code. To reach the classification of the fraud as the criminal tax act two main conditions must be met. The intentional offences only can be classified the tax criminal acts and the damage must be higher than approx. EUR 2 000. Nevertheless the amount of damage identified as the result of the
previous tax proceedings cannot be just simply overtaken as the amount of damage determining the crime penalties. The criminal penalty relating the tax crimes is typically imprisonment starting from 6 months period up to 10 year period based on the amount of damage. In case of withholding taxes, the sanctions are little bit lower.

The repression function is weakened in practice as the active repentance can be applied in advance, in case of withholding taxes even within the period before the judgment of the criminal court is declared. In that case the court refrains from prosecution. In fact the state prefers additional income received from taxes and relating administrative surgeries over crime penalties application.

There are several additional tax crimes like failure to comply with reporting obligations in tax proceedings, infringements on labels and other subjects to identify the goods, counterfeiting and alteration of objects to identify the goods for tax purposes and objects proving the fulfilment of the obligation to charge, and counterfeiting and alteration of stamps.

It must be emphasized that the principle *ne bis in idem* is not respected; it is possible (and necessary) to impose sanctions both in tax law and criminal law (see closer below).

### 2.2 Administrative Tax Penalties

Both administrative tax penalties and interests are defined in the Tax Procedural Code.\(^5\) In fact, Czech legal regulation does not make any differences between administrative tax penalties and interests; according to guidelines, I have tried to create following five main categories of administrative tax penalties representing a general preventive purpose to ensure tax compliance in order to assure a lawful, timely and equal tax assessment:

1. failure to meet non-pecuniary legal obligation penalties (fine for breach of confidentiality, disciplinary fine, fine for failures to meet non-pecuniary obligations);
2. general non-cooperation penalties (disciplinary fine);
3. late tax return submission penalties (fine for late tax return submission);
4. late payment penalties (late payment interest);
5. incorrectly self-assessed tax penalties (penalty).

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The first category of failure to meet non-pecuniary legal obligation penalties is quite wide. As the principle of secrecy and confidentiality was mentioned above, a person (tax officer, the third party, but not the taxpayer himself in relation to his own case) commits an offense if he violates the obligation of professional secrecy. Such an offense may be fined.

The disciplinary (procedural) fine may be imposed to the person who seriously complicates the negotiations with tax authorities: despite previous warning disturbs order, does not obey an instruction of tax officer, or despite previous warning behaves offensively to tax officer or any other subject involved in tax administration. This penalty can be applied repeatedly if the tax administration rules violation continues.

Fined are the failures to meet general non-pecuniary legal obligation. These files may be imposed to persons who fail to comply with the registration, notification or other reporting obligation, or who fail to comply with the record-keeping obligations established by the tax law or the tax administrator. Respecting the principle of electronic proceedings, the fine is imposed to anybody whose filings are made in other way than electronically, although it was required to do so in an electronic way. If such a behavior (non-electronic filing) seriously complicates tax administration, another higher fine can be imposed.

The breach of principle of cooperation and collaboration can be fined, too. The disciplinary (procedural) fine can be imposed to the person who seriously impedes or obstructs the tax administration (for example without sufficient excuse fails to meet the call of procedural non-pecuniary obligations established by the tax law or the tax administrator). The disciplinary fine can be applied repeatedly if the tax administration rules violation continues.

For late tax return submission the tax administrator must impose a fine. This fine covers taxpayer’s late submitting of tax return or additional tax return and payor’s late submitting of report or billing, no matter if the deadline is set in the tax law or by the tax administrator.

If the tax debtor fails to pay the amount of the tax in time, he is in arrears. In this situation he must pay the late payment interest (interest on arrears) for each day of the delay.

If the tax is additionally assessed by the tax administrator, because tax was incorrectly self-assessed by the taxpayer, the penalty calculated from the amount of additionally assessed tax is applied.

There are many discussions in the Czech Republic concerning ne bis in idem principle and its application in criminal law and tax law at the same time and the same tax proceedings. At the moment, there is no relevant act or court’s finding dealing with this topic. The Highest Court would like to have such a regulation in any act, arguing unsystematic practice of national and
European Courts. In my opinion, it is not necessary to create any new legal norm. Tax is not a sanction. Tax duty (and possible tax sanction) arises from completely other reasons than tax crime. The object of tax is a certain amount of money allocated for the public budget, while the sense of punishment in criminal law is repressive and preventive. It means that criminal sanction and tax are very different and *ne bis in idem* principle is not applicable at all. Moreover, the Tax Procedural Code includes regulation that tax must be assessed even if there is a criminal punishment (longer period for tax assessment).

**2.3 Interests**

As it was set in the guidelines, besides the above mentioned measures interest provisions exist, which represent surcharges in a broader sense. Imposed interests do not represent sanctions. Their purpose is rather to absorb possible liquidity benefits and secure timely payments as well as the real value of tax claims across different time periods.

The interest can be paid by both taxpayers (interest on deferred amount) and tax administrators (interest on refunded overpayment, interest on unauthorized conduct of tax administrator, interest on tax deduction).

At the request of the taxpayer or ex officio the tax administrator may permit postponement of the tax payment or payment distribution in installments. During the period of deferment of tax or approval of installments the taxpayer has an obligation to pay interest on deferred amount.

The taxpayer receives interest on refunded overpayment if the tax administrator does not send overpayment on request within the period set in the tax law or if the overpayment is not returned to the taxpayer in time without necessary official request.

In the event of cancellation, modification or declaration of nullity of the decision assessing the tax due by reason of illegality or maladministration, the taxpayer receives the interest on unauthorized conduct of tax administrator – the interest on the amount that was paid by the taxpayer under this decision or in connection with this decision. This interest is doubled, if the tax was illegally enforced.

If the reproach proceedings regarding the tax return or the additional tax return, which shows that the taxpayer should receive a tax deduction, takes longer than 5 months, the taxpayer has the right for interest on tax deduction.
2.4 Other Surcharges

The only other surcharges – “hidden” sanctions – in the Czech Republic are the execution costs. These costs consist of the compensation costs of tax enforcement, the replacement cost of sales performance and the reimbursement of cash expenses incurred when carrying out tax execution. In case the interest on tax deduction or the interest on unauthorized conduct of tax administrator are not sufficient, the taxpayer can ask the court for the compensation for damage or satisfaction for the non-pecuniary damage caused by the tax administrator by unlawful decision or maladministration tax administration.

3 Catalogue of Attributes of different Surcharges

3.1 Purpose/aim/justification

According to the general legal theory, the purpose of both criminal and administrative tax penalties is generally regulative, protective, preventive, and repressive. The regulative function means the exact legal definition of taxpayer’s responsibility. Legal regulation must protect the interests of the state and the whole society; one of the interests must be the interest on public payments – the interest to collect taxes on behalf of the society. The preventive and the restrictive functions are closely connected: if the prevention failed, it is time for repression. There is no doubt that in tax matters repressive function prevails in case of criminal penalties. In my opinion, talking about administrative tax penalties, the most important should be the preventive function, especially in the area of fines, and the protective function. This function is closely tied with the late payment interest and the penalty. Several surcharges are regulated to cover increased costs of tax administration: the fine for late tax return submission, the fine for failures to meet non-pecuniary obligations, the execution costs. The interest on deferred amount is more price than surcharge.

3.2 Prerequisites

The prerequisites for different types of surcharges were described in previous text. It must be mentioned that usually administrative tax penalties such as late payment interest and penalties are imposed in the first step and only if the damage exceeds certain amount of money, the case can be examined in criminal proceedings.
3.3 **Timely appliance of the surcharge (e.g. immediately, after a certain time period)**

The application of criminal penalties is limited by the upper limit of the term of imprisonment, while imprisonment limits depend on the damage caused by the tax subject: if the damage is more than approx. EUR 2 000, the limit for possible criminal proceedings is 5 years, if the damage is between approx. EUR 2 000 – 20 000, the limit is 10 years, and if the damage exceeds EUR 20 000, the limit is 15 years.

The disciplinary fines may be imposed no later than 1 year from the date when was a conduct. The fine for failures to meet non-pecuniary obligations may be imposed within 3 years from the date when the infringement occurred. In case of all other surcharges, the time limit is the same as the deadline to assess the tax, i.e. 3 years from the end of the time limit for submission the tax return or the time limit for paying the tax, if there was no duty to submit the tax return.

3.4 **Amount of the Surcharge, base on which the Surcharge is applied (e.g. tax amount, certain underlying object) or the duration of imprisonment**

The most common surcharge in criminal proceedings is the imprisonment. The imprisonment limits depends on the damage caused by the taxpayer: if the damage is more than approx. EUR 2 000, the duration of imprisonment is between 6 months and 3 years, if the damage is between approx. EUR 2 000 – 20 000 or the crime was committed by at least two persons, the duration of imprisonment is between 2 and 8 years, and if the damage exceeds EUR 20 000, the duration of imprisonment is between 5 and 10 years. The same damage limits are applied for the crimes committed by payor, but the duration of imprisonment is little bit shorter (up to 3 years, 1 – 5 years, 2 – 8 years). The failure to comply with reporting obligations in tax proceedings means imprisonment up to 2 years (damage not exceeding approx. EUR 2 000) or between 1 and 4 years (greater damage).

The other possible criminal punishment is disqualification measure; it can be imposed only in case of the lowest damage not exceeding approx. EUR 2 000.

Legal person may be punished by abolition, confiscation of property, pecuniary penalty, forfeiture of things, disqualification, ban on the performance of public contracts, prohibition of subsidies, and publication of the judgment.

In case of administrative tax penalties, the surcharges are mostly pecuniary. Maximum amount of the fine for breach of confidentiality is approx. EUR 20 000. The disciplinary fine must not exceed approx. EUR 2 000, but in case of principle of cooperation breach, the limit is approx. EUR 20 000. The same limit is applied for the fines for failures to meet non-pecuniary
obligations. The fine imposed to person whose filings are made in other way than electronically is approx. EUR 80, but if such a behavior (non-electronic filing) seriously complicates tax administration, the fine can be up to approx. EUR 2 000. The fine for late tax return submission is 0,05 % of assessed tax (or tax deduction, or 0,01 % of tax loss) for every day of a delay, but not more than 5 % of assessed tax and not more than approx. EUR 12 000. The same rules are applied on late submitting of report or billing of the payors. The amount of late payment interest shall be the annual repo rate determined by the Czech National Bank increased by 14 percentage points, valid for the first day of each calendar half year. The penalty is 20 % from the additionally assessed tax.

Interests are mostly pecuniary and changeable in time, as they depend on the repo rate determined by the Czech National Bank valid for the first day of each calendar half year. The amount of the interest on deferred amount is the annual repo rate increased by 7 percentage points. The amounts of the interest on refunded overpayment and the interest on unauthorized conduct of tax administrator are the annual repo rate increased by 14 percentage points. The interest on unauthorized conduct of tax administrator is doubled, if the tax was illegally enforced. The amount of the interest on tax deduction is the annual repo rate increased by 1 percentage point.

Within the execution costs the compensation costs of tax enforcement and the replacement cost of sales performance are 2 % of executed amount, but not less than approx. EUR 20 and not more than approx. EUR 20 000.

### 3.5 Maximum limit regarding the surcharge amount or the imprisonment

The maximum limits regarding the surcharge amount or the imprisonment were mentioned above. There are not many such a maximum limits; only in case of the fine for late tax return submission and execution costs the legislator accepted maximum limits.

### 3.6 If the surcharge is depending on fault or not (please name the degree of the personal responsibility)

None of the surcharge depends on fault; they all are of objective characteristics.
3.7 If exemptions from surcharges exist (e.g. due to severity, reasonable justification of the non-compliance or acting in good faith)

The repressive function of criminal sanctions is weakened in practice as the active repentance can be applied in advance, in case of withholding taxes even within the period before the judgment of the criminal court is declared. In that case the court refrains from prosecution.

In tax administration, most of the sanctions are optional, not obligatory. Tax administrator has often discretion: it is up to the administrator whether it imposes a fine and what will be the amount. The only exemptions are the fine for non-electronic filing and the fine for late tax return submission. But this last fine is halved if the taxpayer submits his tax return within 30 days from the lapse of the time limit and this is the only late tax return in a given calendar year.

The taxpayer is entitled to ask the tax administrator for the remission of penalties if the tax has been paid. The tax administrator is not bounded by the application and on the basis of assessing the extent of cooperation of the taxpayer may waive up the 75% of the penalty.

The taxpayer is entitled to ask the tax administrator for the remission of the late payment interest or the interest on deferment amount, if the tax has been paid. The tax administrator may wholly or partially waive these interests.

3.8 Who imposes surcharges/penalties? / Who is in charge (differ between criminal penalties, administrative tax penalties, interests and other surcharges)?

In criminal proceedings, the penalties are imposed by county courts at the first level, and regional courts at the second level. The only cases solved at the first level by regional courts are tax cases with damage exceeding approx. EUR 20,000. The appeal courts are high courts.

There are many tax administrators in the Czech Republic. Most of the taxes are administered by regional Financial (Tax) offices (appeals to the Appeal Financial Directorate). Excise taxes are administered by custom service (Custom offices and the General Custom Directorate). Local charges could be administered by municipal offices, administrative charges are administrated by different administrative bodies, court charges by courts.
3.9 What are the procedures regarding the imposition of administrative tax penalties and criminal penalties. Please also compare those procedures. Are there differences, similarities, links?

Tax administration procedures and criminal procedures totally differ from each other. In criminal preceding the decision can be the judgment or the criminal command, in tax proceedings it is always tax assessment. There are no similarities in these proceedings at all.

4 Surcharges regarding Third Parties

In the area of criminal law third party can fail to comply with reporting obligations in tax proceedings. Such behavior means imprisonment either up to 2 years (damage not exceeding approx. EUR 2 000) or between 1 and 4 years (greater damage).

From the group of administrative tax penalties, third party can get the fine for breach of confidentiality, the disciplinary fine, and the fine for failures to meet non-pecuniary obligations.

5 Legal Protection of the Taxpayer/Third Parties

5.1 Does he/she have recourse to legal actions?

To realize the fundamental principles of equality and proportionality, there are several possibilities for the taxpayers to protect their rights.

Criminal law allows typical ordinary remedial instrument – the appeal with suspensory effects. But it is quite often that the criminal proceeding where the upper limit of the term of imprisonment is less than 5 years is solved in so called simplified proceedings. The result is a criminal order and the subject can use a protest to annul the criminal order and to start common criminal proceedings. The extraordinary remedial instruments in criminal law are the appellate review to the Highest Court, the complaint for violation of the law by the Minister of justice to the Highest Court, and re-opening of criminal proceedings.

Tax law in the Tax Procedural Code allows two types of remedial instruments. Ordinary remedial instruments can be used if the decision is not yet final, extraordinary remedial instruments are used for final decisions. On the other hand, the Tax Procedural Code also divides remedial instruments (sensu lato) into remedial instruments (sensu stricto) and supervisory instruments depending on who is allowed to start the remedial proceedings: in case of remedial instruments it is the tax subject, in case of supervisory instruments it should be tax administrator ex officio.
There are two ordinary remedial instruments that can be used in tax administration: appeal, and remonstrance. The most common ordinary remedial instrument is the appeal. It is usually used in the situations when the taxpayer is not satisfied with the determined tax base and imposed amount of the tax by the tax administrator or with any other decision. An appeal must be submitted within 30 days (in general) of the day after the day of delivery of the decision against which the appeal is made. The remonstrance is a special type of appeal against the central administrative body. It is based on the same principles as a common appeal.

There is just one extraordinary remedial instrument that can be used in tax administration – re-opening of tax proceedings. The proceedings will be re-opened if the taxpayer applies or ex officio (it means, it is also a supervisory instrument) and if there are new important facts or proofs not yet used in former (original) proceedings with an effect for the final decision, or there was some criminal act in the former proceedings such as forged or falsified document, false statement of witness, false expert opinion, or preliminary query was decided differently. An application must be submitted within 6 months from the day when the applicant found out about the grounds for re-opening proceedings and no later than the time limits for tax assessment or tax payment have passed. In other cases the objective term is 3 years after the decision became legally effective. When the re-opening of proceedings is approved (or ordered), it has suspensory effects. It is absolutely new proceedings and a new decision annuls the original decision.

The other supervisory instrument is review proceedings. It is used in the situations when the decision is in conflict with statutory provisions. The review proceedings starts usually ex officio within the control of financial bodies, but even any subject dealing with tax proceedings can suggest this process. Review proceedings can be started no later than the time limits for tax assessment or tax payment have passed. In other cases the objective term is 3 years after the decision became legally effective. When the review proceedings are ordered, it has suspensory effects. Former decision can be changed or abolished in the review proceedings, but if it is with respect to the statutory provisions, the review proceedings will be stopped.

If the taxpayer is not satisfied during the tax proceeding, he can file the suit in front of the (tax, administrative) court. The first step is the action against the tax administrator's decision to the county administrative court; the remedial instrument is the cassation complaint to the Highest Administrative Court.

Constitutional law allows constitutional complaint to protect taxpayer’s right and to realize the fundamental principles of equality and proportionality.
5.2 Which authority or institution has to be addressed by the taxpayer/third party if he/she wants to file an objection?

In criminal proceedings, if the penalties are imposed by county courts at the first level, regional courts are competent at the second level. Cases with damage exceeding approx. EUR 20 000 solved at the first level by regional courts are at the second level decide by high courts.

Most of the remedial instruments in tax proceedings are solved by the Appeal Financial Directorate or by the General Custom Directorate.

In financial judiciary the actions against the tax administrator's decision are decided by county administrative courts, and cassation complaints as remedial instruments are solved by the Highest Administrative Court. Constitutional complaints are solved by the Constitutional Court.

5.3 Do interim measures regarding legal protection exist in your country?

In criminal law, the appeal as an ordinary remedial instrument has suspensory effects. The same rule is applied for the protest to annul the criminal order. All the extraordinary remedial instruments do not mean the suspension.

In tax law, generally no remedial instrument has suspensory effect, with the exception of appeals against the tax assessments. There is no need to provide anything in order to get this kind of interim protection.

5.4 Does protection through advance ruling exist in your country? If yes, what are the prerequisites?

Tax law includes the institute of binding examination. The taxpayer can ask the tax administrator for the binding examination, but only in several exhaustively defined situations. The request is chargeable. The binding examination is valid just for the taxpayer asking for that for 3 years, unless there is an amendment of legal regulation.6

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6 Vide D. Czudek, Editační povinnost - komparace české a polské úpravy (Duty to Edit – Comparation od Czech and Polish Regulation), in Europeanization of the National Law, the Lisbon Treaty and some other Legal Issues – Cofola 2008 pp. 438–447 (Tribun EU 2008).
5.5 Do alternative dispute resolutions or settlements (dealing) regarding surcharges exist in your country (e.g. within tax audits)?

No, there is no legislation like that in the Czech Republic.

5.6 Do other tax law safeguards exist in your country (does a special taxpayer bill of rights exist)? Is the level of tax law safeguards in general higher/lower compared to civil, administrative or criminal rules?

In general, there are no other tax law safeguards in the Czech Republic. The level of tax law safeguards in general is at the same level compared to civil, administrative or criminal rules.

6 Deductibility of Surcharges

Any surcharge (both in criminal and tax law) must not be imposed without law. On the other hand, most of the administrative tax fines are not obligatory. Tax administrator has often discretion: it is up to the administrator whether it imposes a fine and what will be the amount. The only exemptions are the fine for non-electronic filing and the fine for late tax return submission. Other administrative tax penalties and interests are obligatory by law.

The only possibly cumulative sanction is the disciplinary fine. This penalty may be imposed repeatedly, if previously imposed fine did not help and illegal condition persists.

Surcharges are not deductible from the tax base at all.

7 Numbers

“State bodies, legal entities and natural persons are obliged, in the absence of a special statute so providing, to comply with requests from authorities active in criminal proceedings without undue delay and free of charge. State bodies are also obliged to notify immediately the prosecutor or police the facts indicating that a crime was committed.”\(^7\)

“In 2013, the authorities active in criminal proceedings were handed over a total of 1,194 complaints. That is 517 less than in the previous year and it is also the smallest number of incentives from the year 2009. The total damage at incentives amounted CZK 4.562 billion in 2013, which is less by CZK 4.885 billion than in 2012 and, again, it is the lowest amount from

2009. The described situation shall be attributed to quick action of the tax administrator, who thanks to securing orders and control-seizing actions succeeds in identification and elimination of tax evasions yet before the tax return submission, thus in the preparation phase of the crime “Evasion of taxes, fees and other similar mandatory payments”. However, the preparation of “Evasion of taxes, fees and other similar mandatory payments” has not been punishable since 2010. Introducing the punishability of that would give the Financial Administration of the Czech Republic an effective tool against tax evasions.”

Table 1 – Development of the number of incentives handed over to authorities active in criminal proceedings

<table>
<thead>
<tr>
<th>Number of cases per year</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax evasion</td>
<td>1267</td>
<td>1510</td>
<td>1325</td>
<td>1555</td>
<td>1095</td>
</tr>
<tr>
<td>Other criminal offence</td>
<td>31</td>
<td>108</td>
<td>107</td>
<td>156</td>
<td>99</td>
</tr>
<tr>
<td>TOTAL</td>
<td>1298</td>
<td>1618</td>
<td>1432</td>
<td>1711</td>
<td>1194</td>
</tr>
</tbody>
</table>


Table 2 – Development of the amount in CZK (millions) of incentives handed over to authorities active in criminal proceedings

<table>
<thead>
<tr>
<th>Amount in CZK million per year</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax evasion</td>
<td>11658</td>
<td>6362</td>
<td>6452</td>
<td>9367</td>
<td>4485</td>
</tr>
<tr>
<td>Other criminal offence</td>
<td>12</td>
<td>27</td>
<td>351</td>
<td>80</td>
<td>77</td>
</tr>
<tr>
<td>TOTAL</td>
<td>11670</td>
<td>6389</td>
<td>6803</td>
<td>9447</td>
<td>4562</td>
</tr>
</tbody>
</table>


There is not any consolidated statistics of the result of criminal proceedings regarding surcharges available. Nevertheless there is an annual report of the number of closed tax criminal cases and their results based on the statistics of courts for 2009 and 2010 as described in Table 3.

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Table 3 - Numbers of tax criminal cases ended in 2009 and 2010 and their results based on the statistics of courts

<table>
<thead>
<tr>
<th>Tax criminal acts ended</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of closed cases</td>
<td>499</td>
<td>863</td>
</tr>
<tr>
<td>Convicted persons</td>
<td>441</td>
<td>448</td>
</tr>
<tr>
<td>Main sanction applied:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>prison sentence</td>
<td>40</td>
<td>48</td>
</tr>
<tr>
<td>suspended sentence</td>
<td>357</td>
<td>368</td>
</tr>
<tr>
<td>community work</td>
<td>9</td>
<td>5</td>
</tr>
<tr>
<td>additional fine</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>other</td>
<td>0</td>
<td>4</td>
</tr>
</tbody>
</table>


As can be seen in the above mentioned Table 3 the amount of solved cases is relatively lower compared to cases handed over from the tax administration. Moreover the number of number of persons sent to prison is relatively low compared to persons punished by suspected sentence.

The overview amount in CZK millions of sanctions imposed can be found in the following table.

Table 3 – Surcharges applied by tax administration in previous years in CZK millions

<table>
<thead>
<tr>
<th>Year</th>
<th>Total amount of surcharges in CZK millions</th>
<th>Enforcement costs</th>
<th>Penalties for any non-compliance reason</th>
<th>Late payment interests</th>
<th>Administration Tax Penalties</th>
<th>Late tax return submission penalties</th>
<th>Interests</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>17370</td>
<td>180</td>
<td>1</td>
<td>15097</td>
<td>1697</td>
<td>263</td>
<td>132</td>
</tr>
<tr>
<td>2012</td>
<td>16479</td>
<td>190</td>
<td>1</td>
<td>13832</td>
<td>2034</td>
<td>339</td>
<td>83</td>
</tr>
<tr>
<td>2011</td>
<td>13435</td>
<td>155</td>
<td>4</td>
<td>10822</td>
<td>2246</td>
<td>152</td>
<td>56</td>
</tr>
<tr>
<td>2010</td>
<td>12406</td>
<td>172</td>
<td>9</td>
<td>8365</td>
<td>3792</td>
<td>42</td>
<td>26</td>
</tr>
<tr>
<td>2009</td>
<td>12724</td>
<td>148</td>
<td>8</td>
<td>7067</td>
<td>5364</td>
<td>43</td>
<td>94</td>
</tr>
</tbody>
</table>


The highest amount of surcharges is created by the interest for late payment every year.
The share of surcharges applied by tax administration on total tax obligation of taxpayers is estimated about 2.5 percent in the long term based on the analysis of surcharges within the period 2006-2010.\(^9\)

Hereinafter is mentioned the report on numbers of actions started by the subjects against the final decisions of tax administration, the numbers of cases and their results are mentioned in Table 4.

Table 4 – Number of cases started by the taxpayers against the tax administration decision

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number of cases initiated by taxpayers</th>
<th>Court’s decision</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Refused</td>
<td>Amount in CZK thousands</td>
<td>Supported</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Number</td>
<td>Number</td>
<td></td>
</tr>
<tr>
<td>2013</td>
<td>2769</td>
<td>745</td>
<td>4239226</td>
<td>170</td>
</tr>
<tr>
<td>2012</td>
<td>1789</td>
<td>579</td>
<td>989714</td>
<td>179</td>
</tr>
<tr>
<td>2011</td>
<td>1112</td>
<td>476</td>
<td>4076142</td>
<td>230</td>
</tr>
<tr>
<td>2010</td>
<td>882</td>
<td>521</td>
<td>937143</td>
<td>304</td>
</tr>
<tr>
<td>2009</td>
<td>738</td>
<td>447</td>
<td>1453563</td>
<td>489</td>
</tr>
</tbody>
</table>


8 Effectiveness

There is no any study regularly checking the correlation and / or regression between the surcharges (or their types) and behavior of taxpayers in the Czech Republic. Nevertheless the study of the World Bank shows\(^{10}\) that the tax environment in the Czech Republic is highly incompetent compared to other states and the rate of collected additional requested taxes and

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surcharges was between 6-10 percent of the total sum of delinquent taxes and surcharges in the long term.\textsuperscript{11}

These facts can be arguments for anticipation of low tax morality in the Czech Republic. This anticipation can be supported by the study realized by EC\textsuperscript{12} estimating the amount of the grey economy at the level of 19 percent in the Czech Republic which is close to the average of the EU and can be understood as positive information. Moreover it must be considered that the Czech Republic is one of the few states not taxing the prostitution or having some law frame for it at least. On the other side the study realized by the Reckon Company\textsuperscript{13} declares the VAT Tax Gap of the Czech Republic above average at the level of 18 percent. Moreover another study realized in the Czech Republic estimates the VAT Tax Gap in the Czech Republic about 30 percent.\textsuperscript{14}

Based on the above mentioned facts it can be said that the system of penalties and surcharges in the Czech Republic, combined with the incompetent tax environment, is not such effective as it should be.

Considering the principle of active repentance in relation to criminal penalties as mentioned above it can be summarized that the effectiveness of criminal penalties is highly weak.

There is an institute which used to be called incorrectly as a “tax amnesty” by some foreigner tax professionals. It is not the correct mark for the issue but in practice it means that the above mentioned penalty of twenty percent from the additionally assessed tax can be avoided in case you voluntarily disclose your previously received income before the tax administration can recognize your fault. The others tax administration surcharges for taxes late payment etc., as described in previous part of article, are relatively low compared to penalty of twenty percent, which decreases the effectiveness of the tax penalties and surcharges system. On the other side

\footnotesize
theoretically it is a motivation factor for taxpayers’ voluntary discourse in times of increased tax administration activity.

There is a unique study searching the reason of low success of collecting the delinquent taxes and the study based on detail correlation and regression analyses identifies one striking factor. The effectiveness of tax enforcement is statistically highly dependant on the period between tax fraud identification, submitting the information to the enforcement department and beginning of the tax enforcement by the tax authority. Every week means loses of millions CZK of taxes in some cases. The Czech tax administration has recognized the problem and it has implemented an instrument enabling to block the assets related to the suspicious business preliminary classified as tax fraud valid since January 2011. In fact the arrangements are applied only to VAT cases and the raw estimated amount of the applied instruments can be about three hundred cases in 2014.