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ПРАВОВЫЕ ПРОБЛЕМЫ ПРИМЕНЕНИЯ ИНСТИТУТА ПРЕДСТАВИТЕЛЬСТВА В НАЛОГОВЫХ ОТНОШЕНИЯХ НАПРИМЕРЕ РЕСПУБЛИКИ БЕЛАРУСЬ

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THE OTHER PUBLIC FINANCIAL FUNDS OUTSIDE THE STATE BUDGET IN THE SLOVAK REPUBLIC

▪

DRAFT OF ACT ON THE MANAGEMENT AND CONTROL OF PUBLIC FINANCES

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SHARES IN THE REVENUE FROM INCOME TAXES AS INCOME OF LOCAL SELF-GOVERNMENT UNITS IN POLAND

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VAT CONTROL STATEMENT & ELECTRONIC RECORD OF SALES

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DOES PARTICIPATORY BUDGETING BELONG TO DEMOCRACY OR BUREAUCRACY? CASE STUDY OF BIALYSTOK (POLAND)

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REPORT ON THE XIV INTERNATIONAL SCIENTIFIC CONFERENCE "TAX LAW AND ITS POSSIBILITIES OF PREVENTION OF TAX EVASION AND TAX FRAUDS"

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REPORT ON THE INTERNATIONAL CONFERENCE "INTERDISCIPLINARY PROBLEMS OF CORRUPTION"

▪

THE SCIENTIFIC ACTIVITY OF THE FACULTY OF LAW AT THE UNIVERSITY OF BIALYSTOK ASSOCIATED WITH THE COUNTRIES OF CENTRAL AND EASTERN EUROPE

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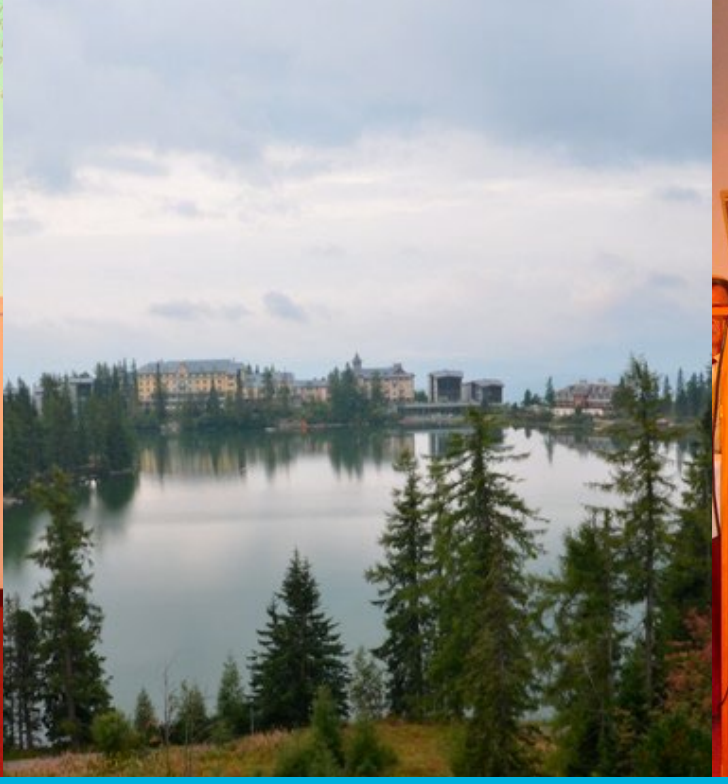


XIV INTERNATIONAL SCIENTIFIC CONFERENCE
"TAX LAW AND ITS POSSIBILITIES OF PREVENTION OF TAX EVASION AND TAX FRAUDS"
(14-16 September 2015, Štrbské Pleso, Slovak Republic)




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Dear Readers

It is a great pleasure to introduce you to the new issue of the Annual Center Review. The Annual Center Review, as a joint project of the Association Information and Organization Center for the Research on the Public Finances and Tax Law in the Countries of Central and Eastern Europe, as well as the Faculty of Law at the University of Bialystok, will present academic accomplishments of the Association Center and the Faculty in the area of research on the issues concerning finances of the countries in this part of Europe. It is very important that in this issue you can find articles by both professors and young representatives of this academic field.

As I am taking over the function of the Chief Editor I would like to warmly thank to my predecessor Dominika Jocz, M.A., for her engagement in perfecting our Review. It is owing to her work that Annual Center Review fulfils international standards and from 2015 is on the list of scored scientific journals of the Ministry of Science and Higher Education with 4 points for publication.

Promoting current financial and tax law problems of the Countries of Central and Eastern Europe, in this issue we are publishing scientific elaborations of authors from Belarus, Poland, the Czech Republic and Slovakia. You may learn from them about, e.g. public funds in Slovakia, specificity of shares in revenues from income tax as an income of local government units in Poland or about legal institutions established to fight against legal fraud in VAT in the Czech Republic. We explain among others the basis assumptions of the bill of control system and internal audit of public finances reform currently vividly discussed in Czech Republic. We also recommend the paper entitled "Does Participatory Budgeting Belong to Democracy or Bureaucracy? Case study of Bialystok (Poland)". Besides texts in English there is also one text published in Russian concerning legal problems of representation institute application in the tax relations on the Republic of Belarus example. In Annual Center Review we also publish information about current initiatives taken by the Center and the Faculty of Law in Bialystok. In this issue there are two Meeting Minutes from international conferences, the first one being from a conference organised by Pavol Jozef Šafárik University in Košice, the Faculty of Law, Department of Financial Law and Tax Law and the "Center" on the subject of "Tax law and its possibilities of prevention of tax evasion and tax frauds" (Štrbské Pleso, Slovakia) and the second one from a conference organised by the Research Club of Financial Law at the Faculty of Law at the University of Bialystok on "Interdisciplinary problems of corruption" (Bialystok, Poland). In this issue we are also publishing information about initiatives in the area of contacts between the Countries of Central and Eastern Europe taken by the Faculty of Law at the University in Bialystok. We also present information on the initiatives undertaken by the Faculty of Law at the University of Bialystok, concerning Central and Eastern Europe.

It is my great pleasure to inform you that we have launched a webpage of the Annual Center Review www.ciob.pl, subpage: ACR, where all the information from the Editorial Board as well as subsequent issues of the journal will be published. I invite you to become familiar with the editorial requirements which will be strictly obeyed in the subsequent issues as well as to send in texts of research papers in English or Russian.

Looking forward to fruitful cooperation I wish you pleasant reading.

Ewa Lotko

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ПРАВОВЫЕ ПРОБЛЕМЫ ПРИМЕНЕНИЯ ИНСТИТУТА ПРЕДСТАВИТЕЛЬСТВА В НАЛОГОВЫХ ОТНОШЕНИЯХ НАПРИМЕРЕ РЕСПУБЛИКИ БЕЛАРУСЬ

LEGAL PROBLEMS OF REPRESENTATION INSTITUTE APPLICATION IN THE TAX RELATIONS ON THE REPUBLIC OF BELARUS EXAMPLE

Введение

В условиях формирования и становления налоговой системы, когда налоговые обязательства должны исполняться своевременно и в полном объёме, важную роль играет институт представительства в налоговом праве. Актуальность исследования данного института обусловлена тем, что разработанный в гражданском праве институт представительства рассматривает все его особенности, однако, в налоговом праве он приобретает самостоятельное значение, поскольку обладает рядом характерных признаков, связанных с властным характером налоговых правоотношений, в связи с чем, его роль в налоговом праве нельзя недооценивать.

Институт представительства появился в гражданском праве, чуть позже – в гражданско-процессуальном праве. Публичная природа налоговых правоотношений предусматривает наличие двух «сторон» (властной и обязанной), которые могут быть представлены несколькими субъектами. Налоговые органы реализуют правовые обязанности в пределах установленной компетенции, без чего фактически невозможно выполнение ни одной из видовых обязанностей налогоплательщика. Налогоплательщики в таком случае являются обобщающей категорией и могут быть представлены физическими и юридическими лицами — налогоплательщиками, а также в установленных законодательством случаях их представителями, налоговыми агентами и т.п. Действующее налоговое законодательство не даёт определения термину «налоговое представительство», а лишь закрепляет две формы представительства: законное и уполномоченное.

При решении многих налоговых вопросов налогоплательщик не всегда может решить их самостоятельно, например: в случае отдаленности от налогового органа, незнания или не понимания налогового законодательства и т.д.

В Республике Беларусь, наряду со всеми преимуществами данного института, налоговое представительство не достаточно широко распространено и урегулировано, в связи с этим, требуется дополнительное изучение данной области, разработка направлений совершенствования деятельности в рамках налогового представительства.

Основная часть

В условиях изменившихся отношений собственности, закрепления права на свободное использование своих способностей и имущества для предпринимательской и иной не запрещённой законом экономической деятельности без постоянного или эпизодического обращения к институту представительства стала немыслима деятельность большинства индивидуальных предпринимателей и юридических лиц.[1]

На наличие двух сторон в налоговых правоотношениях указывает также Ю.А. Артемьева. Так, она отмечает, что публичная природа налоговых правоотношений предусматривает наличие двух «сторон» (властной и обязанной), которые могут быть представлены несколькими субъектами. Налоговые органы реализуют правовые обязанности в пределах установленной компетенции, без чего фактически невозможно выполнение ни одной из видовых обязанностей налогоплательщика. Налогоплательщики в таком случае являются обобщающей категорией и могут быть представлены физическими и юридическими лицами – налогоплательщиками, а также в установленных законодательством случаях их представителями, налоговыми агентами и т.п.[2]

Налоговое представительство имеет существенные отличия от гражданско-правового, поскольку направленность метода регулирования не позволяет поставить знак равенства между императивным и диспозитивным представительством. Налоговое представительство регулирует выполнение первоочередного долга налогоплательщика (уплату налогов и сборов). Оно базируется на отношениях власти и подчинения, которое обеспечивается властными, императивными методами в отличие от гражданско-правового представительства, имеющего диспозитивный характер. Налоговое законодательство основывается на посылке, что главной обязанностью налогоплательщика является своевременная и полная уплата налогов и сборов. При этом налогоплательщик может принимать участие в подобных отношениях как непосредственно, так и через представителей. Второй путь используется, когда налогоплательщик не может исполнять налоговые обязанности (не достиг определенного возраста) или выполнение обязанностей затруднено (в связи с удаленностью налогоплательщика и т.д.).[3]

Особенности налогового представительства заключаются в специфическом субъектном составе. Последний предусматривает возникновение и регулирование отношений между тремя лицами, а именно: лицом, которого представляют (налогоплательщиком); лицом, которое представляет – представителем (законным, уполномоченным); третьим лицом, в роли которого выступают налоговые органы или другой орган, осуществляющий контроль за своевременным и полным поступлением налогов и сборов в соответствующие централизованные денежные фонды.

Точное и полное исполнение налогового долга в данном случае подтверждается процессуально документальным оформлением. Как правило, процессуальные документы выполняют функцию юридического факта, обусловливающего основания возникновения, изменения или прекращения конкретных процессуальных правоотношений.[4]

В своем исследовании Г.И Карбушев указывает, что весь процесс выполнения налогового долга при налоговом представительстве сопровождается составлением большого количества процессуальных документов. Двойная природа документирования проявляется в том, что, с одной стороны, оно является итогом действий по реализацию налоговой обязанности на определенной стадии, с другой – средством динамики налогово-процессуальных правоотношений, то есть основанием для осуществления действий на выполнение налогового долга в пределах следующей стадии. Так, взятие на налоговый учет налогоплательщика

и плательщика сборов и получение соответствующего документа выступает юридическим фактом для возникновения процессуального правоотношения в пределах следующей стадии – уплаты налога или, если для этого нет оснований – представления налоговой отчетности.[5]

Процесс реализации налоговой обязанности состоит из трех стадий: выполнение долга по налоговому учету, выполнение долга по уплате налога и выполнение долга по налоговой отчетности. Предложенное деление стадий полностью отражает логику построения налоговой обязанности и динамику правоотношений.

Критериями разграничения стадий выполнения налогового долга является:

1) цель,
2) временные границы,
3) содержание (совокупность процессуальных действий),
4) субъектный состав,
5) процессуальное и документальное оформление.[6]

Рассмотрим участие представителей налогоплательщиков на протяжении этих стадий выполнения долга налогоплательщиком. В налоговых спорах представителями налогоплательщиков являются налоговые представители. Выступая как обязанный субъект, юридическое лицо может быть как отдельным участником правоотношений – плательщиком налога, так и налоговым представитель.

По мнению В.М. Фокина, налоговый представитель (налоговый агент) – это юридическое или физическое лицо, на которое, согласно акту налогового законодательства, возлагаются обязанности по исчислению, удержанию и перечислению в соответствующий бюджет налогов за плательщика налога. В случае неудержания налога, который подлежит удержанию и перечислению в бюджет налоговым агентом, обязанность плательщика налога по уплате налога считается невыполненной, то есть именно плательщик налога является должником перед бюджетом. В соответствии с налоговым законодательством юридическое лицо является налоговым агентом по налогу на доходы физических лиц и акцизного сбора.[7]

Специфика налогово-правового статуса юридического лица, выступающего в роли налогового агента, проявляется в том, что налоговый агент выступает представителем государства, реализуя часть государственного суверенитета, а именно – права государства взыскивать налоги. В целом, соглашаясь с этим, нужно подчеркнуть, что налоговый агент является ответственным за полноту начисления, содержания и уплаты в бюджет налога.

Причем, если налоговый агент не осуществляет начисление, содержание или уплату (перечисление) суммы налога, ответственность за погашение суммы налогового обязательства или налогового долга, который возникает в результате таких действий, возлагается на такого налогового агента. НК РФ в императивном порядке установил обязанность налогового агента по удержанию налога с дохода физических лиц без согласия самого налогового агента. Поэтому это является определенной правовой обязанностью налогового агента.[8]

Таким образом, статус налогового агента характеризует триада его основных обязанностей:

1) обязанность по начислению налога (по определению налога, по исчислению объема налогового обязательства плательщика исходя из базы налогообложения, действующих ставок налога и предоставленных плательщику налога налоговых льгот),
2) обязанность по удержанию начисленной суммы налога (выражается в удержании налоговым агентом выплаты плательщику части принадлежащего ему дохода, равной сумме исчисленного налогового обязательства),
3) обязательство по внесению удержанной суммы налога в бюджет соответствующего уровня.[9]

Немаловажным является также обязанность налогового агента по ведению налогового учета и предоставлению налоговой отчетности. Она носит своего рода обеспечительный характер. На налоговых агентов возложена ответственность за надлежащее выполнение указанных обязанностей. Надлежащий характер выполнения проявляется в правильном начислении, полном удержании налога, а также в своевременном и полном его перечислении в доход государства.

Ю.А. Артемьева указывает, что особенностью налогового процесса является синтетический характер взаимодействия большинства налоговых процедур с основными материальными (регулятивными и деликтными) налоговыми правоотношениями, на реализацию которых они направлены. Так, налоговые агенты, с одной стороны, являются субъектами сложного налогового обязательства типа «плательщик налога; налоговый агент; бюджет», с другой они являются и участниками процедур, которые обеспечивают его реализацию. Правовой статус их близок к статусу налогоплательщиков, но не тождественен ему. Основные различия выявляются на этапе добровольного выполнения налогового долга в связи с их участием в таких налоговых операциях как определение налогового обязательства. Налоговый агент выполняет роль своеобразного посредника между государством и налогоплательщиком, является представителем обеих сторон в налоговых правоотношениях: представителем государства, поскольку наделен властными полномочиями относительно налогоплательщика по изъятию части его собственности как налога, сумма которого подлежит перечислению в доход соответствующего бюджета, то есть представляет собой децентрализованный фонд средств государства; представителем плательщика, поскольку перечисляет налог от имени плательщика и за его счет, «лишает» его необходимости рассчитывать сумму налога и предоставлять какую-либо отчетность по налоговым отчислениям от операций, в которых принимают участие налоговые агенты, и несет ответственность за ненадлежащее выполнение своих обязанностей.[10]

Такое особенное место налогового агента в налоговом обязательстве обусловлено необходимостью закрепления соответствующих гарантий защиты прав участников обязательственного налогового правоотношения от нарушений или злоупотреблений других участников, а именно:

а) гарантий для плательщика налога – в случае ненадлежащего выполнения налоговым агентом своих функций во вред такому плательщику – на уровне защиты плательщика налога от злоупотреблений контролирующих органов;

б) гарантий для налогового агента – в случае злоупотреблений со стороны контролирующих органов – на уровне таких гарантий, которые предоставлены законодательством плательщику налога.

Действующее налоговое законодательство является достаточно несовершенным и непоследовательным в вопросах регулирования роли налоговых представителей в процессе налогообложения.

В связи с этим требуется унификация общих положений, которые касаются материальной стороны налоговых правоотношений при участии налоговых представителей, в том числе вопросов с их участием как субъектов в налоговых спорах, а также вопросов, связанных с привлечением последних к юридической ответственности. Наряду с этим требуется унификация процессуальных аспектов, касающихся деятельности налоговых агентов, в частности, определение порядка разрешения споров, одной из сторон в которых является налоговый агент, порядка применения принудительных мер к недобросовестному налоговому агенту и ряд других.

Практические преимущества представительства очевидны - в рамках данного правового института обеспечивается возможность одновременного участия одного и того же лица в различных правоотношениях, совершения нескольких сделок, по которым оно будет считаться субъектом права, в целях наиболее эффективной защиты прав и интересов воспользоваться специальными знаниями и опытом представителей, а также сэкономить время.

В своем исследовании В.Ф. Евтушенко отмечает, что в действующем законодательстве не всегда выдерживается единство терминологии, термин «посредник» зачастую используется в различных значениях, в связи с чем, в экономической и юридической литературе по-прежнему осуществляются попытки подвести одно рассматриваемое понятие под другое или установить их частичное тождество.[11]

Развитие представительства в современных условиях рыночных отношений требует эффективного правового механизма, обеспечивающего четкость и полноту его регулирования. Вместе с тем, как показал анализ нормативно-правовых актов, а также судебной практики по исследуемой проблеме, в гражданском законодательстве о представительстве, есть пробелы

и противоречия, что усложняет его практическое применение. Кроме того, общее развитие цивилистической науки предопределяет необходимость в уточнении и систематизации имеющихся теоретических положений о представительстве, ведь несмотря на значительное число трудов, в которых рассматриваются те или иные аспекты представительства, до сих пор нет единства подходов относительно понятия представительства; большое количество вопросов вызывает определение юридической сущности представительства, его места в системе институтов гражданского права.[12]

В связи с тем, что реализация представителем своих полномочий затрагивает интересы как представляемого, так и третьих лиц, особую значимость приобретает проблема определения правового статуса представителя, сущности его полномочий, а также соотношения воли и волеизъявления в отношениях представительства, что позволит наиболее эффективно защитить права и законные интересы указанных субъектов. Множество проблем, возникающих в данной сфере на современном этапе, остаются неисследованными либо дискуссионными, законодательная база о представительстве также недостаточно разработана и требует совершенствования. Между тем, представительство является весьма эффективным средством в механизме решения проблемы защиты прав и интересов граждан и юридических лиц.

Представительство как правовая категория появилось несколько веков назад. Прежде чем этот институт права приобрел определенную законодательством форму, он прошел длительный путь развития.[13]

Под представительством понимается совершение одним лицом, представителем, в пределах имеющихся у него полномочий сделок и иных юридически значимых действий от имени и в интересах другого лица, представляемого. Сделка, совершаемая представителем на основании его полномочий, непосредственно создаёт, изменяет и прекращает гражданские права и обязанности представляемого. Сделка может быть совершена представителем в любой форме, установленной законом для сделок данного рода.

Граждане, также как и юридические лица, имеют возможность совершать сделки или другие юридические действия через представителя. Ведь существуют ситуации, когда лицо не может быть стороной правоотношения в силу различных причин. И тогда возникает потребность в совершении кем-либо за него юридических действий. В этом, безусловно, нуждаются, прежде всего, те, кто в силу возраста или состояния психики относится к категории недееспособных лиц, за которыми вообще не признается юридически значимая воля. Такие лица могут стать самостоятельными участниками гражданского оборота лишь тогда, когда кто-либо будет действовать за них. Очень важную функцию выполняет представительство в суде. Представительство в суде - это деятельность одного лица в интересах другого лица, осуществляемая на основании представленных ему полномочии в суде от имени представляемого в целях получения наиболее благоприятного решения, а также для оказания представляемому помощи в реализации своих прав, предотвращения их нарушения в процессе и оказания суду содействия в отправлении правосудия по гражданским делам.

К услугам представителя прибегают:

1. В случае полного или частичного отсутствия дееспособности.
2. В конкретных жизненных ситуациях (болезнь, командировка, занятость).
3. Ради использования специального опыта и знаний представителя.
4. Ради экономии времени и средств.
5. Для реализации свои субъективных прав и чёткого исполнения обязанностей.[14]

Выделяют два основных вида представительства:

– законное;
– уполномоченное.

Первый вид представительства возникает в случаях, когда лицо полностью или частично лишено дееспособности, а представительство направлено на восполнение данного недостатка. Такое представительство защищает, прежде всего, интересы несовершеннолетних и людей, страдающих психическими недугами. Названные представляемые не вправе назначать или определять полномочия представителей, точно так же как не вправе отменять полномочия представителей в каких-либо действиях.

Так, по мнению И.Н. Галушиной, добровольное представительство осуществляется по воле

представляемого. Главной особенностью такого представительства является то, что личность и полномочия представителей определяют сами представляемые. Стандартный путь установления полномочий - выдача доверенности. Представляемые вправе воздействовать на деятельность своего представителя и могут прекратить её в любой момент путем отмены доверенности. Возникает представительство в силу полномочия, основанного на доверенности, указании закона или акте уполномоченного государственного органа или органа местного самоуправления.[15]

Следует отметить мнение Г.М. Гура, в соответствии с которым, законодательство устанавливает определенные требования к субъектам, которые являются представителями, а также к лицам, являющимся представляемыми. Требования эти зависят в значительной степени от личности субъекта и его правосубъектности, а также - от вида представительства.

По нашему мнению, необходимо обратить особое внимание на положения в части того, что лицо, выдавшее доверенность и впоследствии отменившее ее, обязано известить об отмене лицо, которому доверенность выдана, а также известных ему третьих лиц, для представительства перед которыми дана доверенность. Права и обязанности, возникшие в результате действий лица, которому выдана доверенность, до того как это лицо узнало или должно было узнать о ее прекращении, сохраняют силу для выдавшего доверенность и его правопреемников в отношении третьих лиц. Это правило не применяется, если третье лицо знало или должно было знать, что действие доверенности прекратилось.

Полагаем, что данное положение необходимо законодательно закрепить. Так, налогоплательщик должен уведомить налоговый орган о прекращении представительства уполномоченным лицом. В противном случае, если уполномоченный представитель налогоплательщика совершит налоговое правонарушение после прекращения действия полномочия и налоговый орган не будет уведомлен о его прекращении, то налогоплательщик будет нести ответственность.

Необходимо также отметить, что НК не содержит ограничений объема прав и обязанностей, которые могут быть реализованы уполномоченными представителями налогоплательщика. Следовательно, представитель налогоплательщика может пользоваться всеми правами и исполнять все обязанности, установленные НК.[16]

Выводы

Из всего вышеизложенного следует, что:

- налоговое представительство необходимо определить как –юридические действия, совершаемые налоговым представителем, полномочия которого должны быть документально подтверждены, от имени представляемого субъекта в пределах его полномочий, которые создают, изменяют или прекращают налоговые права и обязанности представляемого;
- налоговое представительство имеет существенные отличия от гражданско-правового, поскольку направленность метода регулирования не позволяет поставить знак равенства между императивным и диспозитивным представительством. Налоговое представительство регулирует выполнение первоочередного долга налогоплательщика.

Представительство в налоговых правоотношениях имеет специфический субъектный состав – возникновение и регулирование отношений между тремя лицами, а именно: лицом, которого представляют (налогоплательщиком); лицом, которое представляет – представителем (законным, уполномоченным); третьим лицом, в роли которого выступают налоговые органы или другой орган, осуществляющий контроль за своевременным и полным поступлением налогов и сборов в соответствующие централизованные денежные фонды.

Практические преимущества представительства очевидны - в рамках данного правового института обеспечивается возможность одновременного участия одного и того же лица в различных правоотношениях, совершения нескольких сделок, по которым оно будет считаться субъектом права, в целях наиболее эффективной защиты прав и интересов воспользоваться специальными знаниями и опытом представителей, а также сэкономить время.

Выполнение налогового долга составляет определенный процесс – систему последовательно

осуществляемых действий, содержащую ряд стадий, которые изменяют друг друга, и конкретные действия по их реализацию.

Полагаем необходимым закрепить порядок указанных действий на законодательном уровне посредством принятия в установленном порядке положения о налоговом представительстве. Данное положение сможет закрепить и систематизировать материальные и процессуальные нормы налогового представительства, содержащиеся в различных нормативных актах (Налоговый кодекс Республики Беларусь, Гражданский кодекс Республики Беларусь и др.).

В связи с тем, что реализация представителем своих полномочий затрагивает интересы как представляемого, так и третьих лиц, особую значимость приобретает проблема определения правового статуса представителя, сущности его полномочий, а также соотношения воли и волеизъявления в отношениях представительства, что позволит наиболее эффективно защитить права и законные интересы указанных субъектов. Поэтому, важно также в данном правовом акте закрепить права, обязанности и ответственность налогового представителя.

Кроме того, законодательное закрепление положений о порядке осуществления представительства в налоговых органах значительно упростит данную процедуру посредством наличия установленной точной регламентации действий представителя, налогоплательщика и налогового органа.

Аннотация

В статье рассматриваются проблемы связанные с реализацией налогового представительства. В Республике Беларусь, наряду со всеми преимуществами данного института, налоговое представительство не достаточно широко распространено.Автором исследованы нормативные правовые акты, регламентирующие отношения в области осуществления налогового представительства. На основе комплексного, системного анализа теоретических и практических аспектов института налогового представительства как целостного правового института выявлены тенденции, перспективы и особенности его разваития в современных условиях. В статье сформулировать выводы, предложения и рекомендации по дальнейшему совершенствованию налогового законодательства. Доказано,что налоговое представительство необходимо определить как – юридические действия, совершаемые налоговым представителем, полномочия которого должны быть документально подтверждены, от имени представляемого субъекта в пределах его полномочий, которые создают, изменяют или прекращают налоговые права и обязанности представляемого.

- налоговое представительство имеет существенные отличия от гражданско-правового, поскольку направленность метода регулирования не позволяет поставить знак равенства между императивным и диспозитивным представительством. Налоговое представительство регулирует выполнение первоочередного долга налогоплательщика. Сделан вывод о том, что представительство в налоговых правоотношениях имеет специфический субъектный состав – возникновение и регулирование отношений между тремя лицами, а именно: лицом, которого представляют (налогоплательщиком); лицом, которое представляет – представителем (законным, уполномоченным); третьим лицом, в роли которого выступают налоговые органы или другой орган, осуществляющий контроль за своевременным и полным поступлением налогов и сборов в соответствующие централизованные денежные фонды.

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THE OTHER PUBLIC FINANCIAL FUNDS OUTSIDE THE STATE BUDGET IN THE SLOVAK REPUBLIC*

Introductory notes

The law became an integral part of the social and political changes realised in Slovakia after 1989. The law as a normative system of society has to express the value of social relations, which regulates by itself. From this point of view, law is by itself an important social value, presented expressively in conditions of a social and ecologically oriented market economy system[1] in the form of organisation, existence, realisation and development of regulated social relations.

The creation of the conditions for the realisation of the market economy in Slovakia after november 1989 is connected with a remarkable development in social relations involving the development in legal relations as well. The quality of developing legal relations was influenced (and is still under the strong influence) by many circumstances which are in our opinion reflection of the following:

1. the current development of scientific knowledge about law,
2. internal dynamics of the legal order accompanied by frequent changes of law,
3. the quality level of the creation, realisation and application of law,
4. the current state of legal conscience of society.

The dynamics of changes in the field of creation and realisation of legal relations was inevitably demonstrated in relation to Slovak financial law and in relation with those branches of law by which a content coherence of its social relations regulation could be found. Financial law in Slovakia went in the period of the last twenty five years through significant changes. Without any doubts, we could in this respect claim that financial law belongs to the most dynamic branches of the Slovak legal order.

Dynamics as a feature characterising the current position of financial law in Slovak legal order is needed to apply not only in the finance law making process – the application and the realisation of law – but mainly to introduce new instruments of financial law and institutions of financial law into financial practice.

After 1989, many new financial instruments and institutions in financial practice started to apply, respectively their framework went through a significant modification, extension and transformation into a particular new system. The above-mentioned circumstances refer to a very specific field of legal relations in financial law which are represented by the system of the other public financial funds outside the state budget in Slovakia.

Three centers of public needs financing in Slovak Republic

At the turn of the 17th and 18th century, at the time of the first formation of the state budget, the principle of entireness of state budget was emphasized as one of the basic principles of organisational construction of the budgetary system. At that time the state budget was the only document about public finance that fully represented the idea of the only financial ("monetary") fund of state. During historical development this requirement modified was in the sense that there were the most important receipts and expenditures involved in the state budget. In relation with

the above-mentioned, the conditions for formation of the other financial funds outside the state budget were created, which played an important role in state expenditures (in broader sense public expenditures) financing. Despite this tendency, the state budget is still considered as the preferential (priority) centre of state needs financing in general.

An extended area for formation of financial funds outside the state budget in conditions of the Slovak Republic is considered an indisputable fact which leads to the following conclusions:

1. there is a qualifying necessity of change of the state budget as an only and sole centre of financing state (public) needs to the **first (piority) centre of financing** state needs,
2. the state budget **is already not** the sole centre of financing state needs,
3. alongside the state budget arose in a short historical period in the Slovak Republic **at least one other** centre of financing state needs.

The Constitution of the Slovak Republic (hereinafter "SR") enables[2] the SR to establish state purpose funds ("štátne účelové fondy") involved in the state budget by a legal act. In this respect, the Slovak Constitution enables indirectly to create a **second centre of financing** of state needs in Slovakia as well, which is represented by the system of existing state purpose funds.

Moreover, taking into account the rather considerable expansion of the creation of the other public financial funds which are outside the state budget and which can not be considered as state purpose funds pursuant to Constitution of SR and related legal acts at the same time, we could think not just about the second centre of financing of state needs, but even about **the third centre** of financing of state needs. This centre is represented by the system of the other public financial funds which (apart from the fact that the Constitution does not take into account the possibility of their creation and even does not prohibit them) significantly differ from the system of state purpose funds. Therefore it would not be consistent to identify them with the above-mentioned system of state purpose funds. Common features regarding the creation, use, management rules and even legal terms are typical only for state purpose funds. Despite this fact there is a possibility to identify some characteristic features which are common for all public financial funds (for both state purpose funds and the other public financial funds in Slovakia). Their characteristics are described by the fact that both of them are **financial funds outside the state budget** which ***do possess legal personality.*** Apart from the above-mentioned facts, these funds are already represented by the following characteristics:

- their creation consists of specific, mostly earmarked (purposeful) sources;
- they are created for the purpose of financing specific tasks, mostly in the field where elasticity and flexibility of their creation and financing connected with them is required;
- they are established by a legal act (law);
- part of their sources consists of financial sources from the state budget, respectively from another public budget;
- their management is subject of public control in accordance with special regulations;
- they have their own internal organisational structure stated by law, respectively by statutes or by-laws;
- they belong to legal rules from public law, mostly to legal rules from the field of financial law.

In this place it would be convenient to focus at least minimally on the definition aspects of the term "financial ("monetary") fund", as is usually described in Slovak or Czech law books. The concept "fund" has an ambiguous meaning, which means that it covers a broad content of understanding as evidenced by the fact that the word "fund" is derived from latin expression "fundus" which provides various interpretation options, as for example a base, an inventory or a ground (bottom) etc.

In relation with the definition of the concept "public fund", many authors refer mostly to the Dictionary of Public Law from 1927, where it is stated that "Public funds are autonomous, by purpose of public administration devoted property"[3]. Younger law books focus rather on the fact that fund is an expression of allocation of financial or material resources (or in some cases both of them) creating a certain complex file for a particularly defined purpose[4].

In our point of view, the financial (monetary) fund is a specific form of allocation of financial resources to a particular, relatively autonomous unit regulated by law and which is for a defined purpose[5]. A different characteristic

is offered by some Czech authors according to whom funds are particularly decentralised administrative units subordinated to government or parliament or existing units directly controlled by government or indirectly controlled by representatives of government in the organisational structure of a particular fund. Funds have therefore a varied rate of independence based on their legal form and statute (by-law)[6].

As a result of the above, public financial funds (apart from the state budget, municipal budgets, andn possibly extrabudgetary financial funds of self-government which we do not deal with in this article) create a particular system. This system may be divided into two separate parts which are represented by:

1. the state purpose funds system and
2. the other public financial funds system.

Some authors also distinguish between extrabudgetary financial funds in a different way, taking into account their task in a system of public budgets. From this point of view, they distinguish mainly between two groups:

a) funds which provide resources *on non-market principles*. They involve extrabudgetary purpose funds (from public law) and privatization funds in this group,
b) funds (government institutions) *for support of business activities*. These funds use their resources for the creation of preferential conditions by finance lending of selected entrepreneurs in the corporate sector[7].

We are convinced that the criterion of non-market principles for the classification of funds is questionable. Even justification of inclusion of privatization funds in the first group of funds may be disputable. Authors refer to the fact that privatization funds may assume some expenses which integrally belong to public budgets – with reference to financial practice in the Czech republic. At the same time they deny their inclusion into the system of public funds because of their specific scope of activities and because of amount of profits from privatization, even if while they classify funds into two groups they emphasize their task in the system of public funds.

Significantly, a different classification is offered by other authors of financial law science. According to the purpose of the fund they divide funds into the following basic groups:

1. state purpose funds,
2. extrabudgetary funds of a specific kind,
3. non-market funds,
4. security funds,
5. support government institutions of entrepreneurs activities with participating resources from the state budget,
6. funds of local government.[8]

Both state purpose funds and the other public financial funds are created "at the state level" with their public-law nature. Because of their differences among themselves in many areas would not be consistent to involve them into one compact system. Taking into account both groups of financial funds with their relatively autonomous position in the system of public finance, we suggest to focus our attention here (accordingly with the title of our article) to the system of the other public financial funds.

The system of the other public financial funds

The other public financial funds (outside state purpose funds) create a very important part of the mechanism of public finance. These funds are (the same way as in the case of state purpose funds) constituted by law in order to finance specific tasks.

Characteristic features of these funds are that:

- they present a very diversified and heterogeneous group of financial funds,
- they present non-state funds regulated mostly by public law,
- the funds have legal personality and are registered in the commercial (business) register,
- these funds are not established on the basis of article 58 par. 3 Constitution of SR (as in the case of state purpose funds) or neither under the budgetary law rules[9]. From this point of view in connection with them, the above-mentioned provisions do not apply,
- the management of financial resources of these funds, the method of their creation and their use are regulated by specific legal acts (laws) and statutes of these funds.

Within the system of the other public financial funds may be distiguished:

1. **privatization funds**,
2. **funds of public institutions**,
3. **other funds**.

Ad 1)

Privatization funds may be generally considered as sui generis funds because of their specific features from the perspective of financial law. Typical for them is the fact that they are not just classic financial funds but rather mixed funds of a property-financial nature. Privatization funds became in Slovakia a specific instrument of privatization of national assets and rights with respect to the specificities of these funds (and the size of the revenue from privatization). These funds are, however, not considered as state purpose funds under the Constitution of SR or the budgetary law rules. On the other hand, there is the fact that privatization funds may assume certain expenditures organically included to public budgets. Their existence is not just a peculiarity of SR[10].

Among privatization funds in Slovakia are included:

- Slovak National Property Fund (hereinafter referred to as "FNM SR") and
- Slovak Land Fund.

FNM SR was established under zákon č. 253/1991 Zb.[11] Its legal status and legal relations are governed by zákon č. 92/1991 Zb.[12]

FNM SR is a legal entity established by law which shall be registered in the commercial register and which operates activities in the public interest.

FNM SR draws up a budget which is approved by the National Council of SR. Its revenues and expenses are not included in the state budget.

Fund's assets consist primarily of privatized assets transferred to the fund from the profit from the participation of the fund in the business activities of companies (in which businesses the fund is involved), the proceeds from the sale of shares or units in other than joint stock companies, shares or equity shares which were not the object of a privatization decision and which were incurred by the fund (as a shareholder), assets transferred to the fund as a result of withdrawal of contract in accordance with the law, securities incurred by the fund from individuals etc.

Slovak Land Fund was established in 1991 by law[13] as a legal entity incorporated to the commercial (business) register. The Land Fund is, however, not set up for business activities and operates similarly as FNM SR in the public interest.

The Land Fund manages its activities according to the budget of revenues and expenditures approved by the Government of SR. The budget of the Slovak Land Fund is not part of the state budget.

The Land Fund may not accept credit or loans or may not enter into credit or loan relationships as a guarantor.

To provide financing for its activities, the Land Fund constitutes the *social fund*, *the reproduction fund*, *the reserve fund* and *the special purpose fund.*

The social fund is created on the basis of a legal act on the social fund[14]. The social fund is created by the employer in the extent and under conditions laid down by law.

The reproduction fund is created from the depreciation of tangible and intangible assets relating to the operating activities of the Land Fund and the distribution of its profit. Sources of the reproduction fund may be used for the acquisition of tangible and intangible assets relating to the operating activities of the Land Fund.

The reserve fund is created from the division of profit of Land Fund. The sources in the reserve fund may be used for the financing of the expenditures incurred from time differences between incomes and expenditures of Land Fund and expenditures which exceed the projected budget of the Land Fund and the other expenses purposefully approved by the government of SR within the profit division of the Land Fund.

Special purpose fund is created from proceeds of the sale of privatized assets and incomes from the sale of land whose owner is unknown as well. The financial resources which were dedicated to the fund may be used only in accordance with special regulations.

Ad 2)

Under the rules governed by the norms of financial law are included issues of financial management of public institutions as well. In the recent past this was part of the financial regulation undeservedly neglected, and thus remained out of the interest of the community of financial law. Subjects of financial relations are thus excluding the state, self-government, their budgetary and contributory organizations, various other public bodies such as the Social Insurance Agency, public universities etc. The common feature of these legal entities is primarily the fact that legal acts (laws) constitute them as **public institutions**.

Public institutions are entitled to establish funds and several of them are directly in their name title designated with the word "fund".

Public institutions have significant privileges in financial relations, particularly with regard to the fact that they receive and treat a significant proportion of financial resources with its public nature, i. e. with public funds. Finance of public institutions as a relatively separate component of public finance constitutes financial relationships concerning their financial management, particularly in relation with the development and use of financial (monetary) funds as well as with budgetary funds and the other public financial funds.

In respect of the legislation on financial management of public institutions, it may be stated that public institutions are regulated by legal acts by which or on the basis of which particular public institutions were established. It is therefore primarily the specific provisions which enshrine their legal status, organizational structure, roles etc. In addition to that, however, the area of financial management of public institutions is subject to a number of other adjustments of financial law and tax law such as the accounting law, etc. Moreover, in matters concerning the property dispositions of public institutions, there is a special legal act (law) on the management of the property of public institutions[15], which may be considered as a lex generalis in relation to the other specific legal acts governing the status and role of various public institutions.

The legal act on the management of the property of public institutions refers to a disposal of the assets of a public institution which, for the purposes of the above-mentioned legal act, means a legal entity:

a) established by a special legal act as a public institution or a public establishment (such as the Slovak Insurance Agency, Slovak Matica etc.),
b) established under a special legal act (for example a public university).

Funds of public institutions are part of public finance in the context of finance of public institutions. These institutions are created pursuant to slovak legislation, predominantly directly by the legal act having the authority to establish financial funds. It is therefore quite genuine that we include their funds to the system of the other public financial funds.

The legal status of public institutions is regulated by special legal acts which govern at the same time the creation and the use of their financial funds. The best known subjects from this area are the Social Insurance Agency, Radio and Television Slovakia, public universities, art funds, the Slovak Audiovisual Fund, the Slovak National Accreditation Service, the News Agency of SR etc.

Social Insurance Agency was established by the law on social insurance to perform social insurance. Currently the legal status of the Social Insurance Agency is represented by the legal act on social insurance[16].

The Social Insurance Agency draws up *a budget* consisting of:

- *The sickness fund*;
- *Basic old-age insurance fund*;
- *Basic disability insurance fund;*
- *Basic accident insurance fund*;
- *Basic fund of guarantee insurance*;
- *Basic unemployment insurance fund*;
- *Solidarity reserve fund* and
- *Trust fund.*

The amount of premium of sickness insurance, basic old-age insurance, basic disability insurance, basic accident insurance, basic guarantee insurance, basic unemployment insurance and the amount of premium to the Solidarity reserve fund, means that the ***premium*** *(insurance)* is determined by a percentage rate of the salary base made in the relevant period, which varies depending on the particular

fund and depending on the specific person (insured, employers, state etc.).

Health insurance benefits, pension insurance, accident insurance, guarantee insurance and unemployment insurance are provided from the particular funds of the Social Insurance Agency, under the conditions laid down in the act on social insurance.

Radio and Television of Slovakia (hereinafter referred to as "**RTVS**") is a public institution drawing up the budget of revenues and expenditures for the calendar year and managing it. Its legal status, mission, tasks and activities, its bodies and the management and financing of RTVS is regulated by the Law on Radio and Television of Slovakia[17].

RTVS is in the meaning of above-mentioned act a public, national, independent, informational, cultural and educational institution which provides public service broadcasting. RTVS is a legal person registered in the commercial register, which performs its business activities through the branches which are Slovak Radio and Slovak Television in particular. Those branches are self-managing internal organizational units without legal personality.

The basis of the management of RTVS is the budget of revenues and expenditures for the calendar year which RTVS draws up and manages. RTVS is financed mainly by public funds. The financial resources which RTVS handles may be used only for the purposes of the act and only in the necessary extent. RTVS may not use the public resources for its business activities. If RTVS does perform business, business costs have to be covered from the revenues from business activities. When this condition is not satisfied, the business activities of RTVS have to be terminated and the incurred loss may be covered from the reserve fund.

For the disposal of the assets of this institution apply legal rules of law on RTVS and the law on management of property of public institutions. Regarding the disposal of public resources, RTVS is bound by the law on RTVS and by the law on budgetary rules.

The financial resources and the property of RTVS may not be used for the financing of political parties or political groups or in favour of a candidate for elective office. Real estate, movable property or financial resources, however, may be used for the purposes of a partnership agreement, but only in the case that the agreed purpose of the partnership is related to its main business activities.

RTVS income includes mainly:

a) a subsidy from the state budget provided annually under the state budget law to cover the cost of providing public services in the field of broadcasting in an amount equal to 0.142% of the gross domestic product of the Slovak Republic for the calendar year preceding the calendar year for which the subsidy is provided. If this amount is less than EUR 90 million, from the state budget will be provided the amount of EUR 90 million,
b) income from broadcast media commercial communication,
c) sponsorship fulfillment for the direct or indirect programmes financing,
d) income from the lease and sale of property of RTVS,
e) income from deposits in a bank or branch of a foreign bank and from financial investments,
f) donations from individuals and legal entities that are not sponsorship payments,
g) inheritance in favor of RTVS,
h) grants from individuals and legal persons to perform the tasks in the public interest that are not sponsorship payments,
i) other income.

RTVS financial resources (funds) are held in bank accounts or a branch of foreign bank accounts. If RTVS becomes a client of the State Treasury, its funds are governed by the act on the State Treasury.

RTVS constitutes a ***reserve fund***. The reserve fund ***is created*** from profit:

- from its core activities after taxation;
- from entrepreneurial activities after taxation.

The reserve fund may be used **in the following order** for:

- reimbursement of loss of its core activity;
- reimbursement of loss of its business activities.

Public universities create under the act of universities ("higher education act")[18] a number of financial funds, especially *the reserve fund*, *the reproduction fund*, *the scholarship fund*, *the fund to support students with special needs* and *funds under special regulations* (for example *the social fund*)[19].

Financial funds of a public university (excluding funds created by special regulations) are created from the positive overall profit result of the public university, further from donations, inheritance and income from them, if the act of higher education does not provide otherwise. The targeted financial donations may be used only in accordance with their intended purpose. If the financial resources of the fund are kept in a separate account under special regulations, the state of the fund increases the credit interest and foreign exchange gains and reduces the expenses related to account management and foreign exchange losses.

The total profit of the public university means an accountable sum of its profit in the scope of its main activity and profit from its business activities after taxation.

The reserve fund is created by a public university from not less than 40% of its profit. The reserve fund is used by a public university to compensate the losses from the previous year and to cover accumulated losses from previous years, if such a loss is recognized. Only financial resources in the reserve fund may be used for the compensation of these losses.

If the public university does not recognise the loss from the previous year and accumulated losses from previous years, financial resources may be used through its budget and for complementation of the other financial funds of the public university.

The reproduction fund is in addition to the above-mentioned funds, created from the following:

a) from depreciation of fixed tangible assets and intangible assets in the depreciation plan (excluding assets acquired from subsidies intended for the acquisition of fixed tangible assets),
b) from the net book value of fixed tangible assets and intangible assets with its physical liquidation (excluding assets acquired from subsidies intended for the acquisition of fixed tangible assets),
c) from the net book value of sold fixed tangible and intangible assets (excluding assets acquired from subsidies intended for the acquisition of fixed tangible assets),
d) from the difference in the proceeds from the sale of fixed tangible assets and intangible assets and the sum of the net book value and costs incurred in connection with the sale in the case of the sale for a price higher than the sum of the net book value of sold assets and costs incurred in connection with the sale and,
e) from the financial resources of the other subjects (entities) under concluded partnership contracts (agreements) for the acquisition of fixed tangible assets and intangible assets.

The reproduction fund is used for the acquisition of fixed tangible assets and intangible assets including its technical evaluation, for providing resources under concluded partnership contracts for the acquisition of fixed tangible assets and intangible assets and for the repayment of loans used for the acquisition of fixed tangible assets and intangible assets or its technical evaluation.

The scholarship fund is in addition to the above created from part of the proceeds from tuition fees and from part of the subsidies for the social support of students designated for social scholarships and stipends. The scholarship fund is used for providing scholarships and loans for students.

The fund to support students with special needs may be used for financial assurance of adequate study conditions of the students with special needs with regard to their specific needs.

Art funds are divided into *Literary Fund*, *Music Fund* and *Fine Arts Fund*. In the meaning of the legal act on art funds[20], art funds are national cultural public institutions. The main mission of the art funds is to systematically and objectively promote creative literary, scientific and artistic activities.

The financial base of the management of art funds are contributions of beneficiaries of author´s fees and remunerations of reproductive artists, contributions for allowances for the use of free works, contributions of users of works etc.

In addition to contributions, there are other financial resources created by income from business activities with their own property, donations, grants, sponsorship, from heritage income as well as income from foundations.

The funds perform their particular mission by creating material conditions for the creation of new works and

performances of authors, by providing scholarships, prestigious awards, travel allowances, loans for support creative activities and other forms of support, by establishing and using corporate profits and purpose-built facilities (for example asylums).

Audiovisual Fund was established as a public institution for the promotion and development of audiovisual culture and industry[20]. The fund is a legal entity based in Bratislava.

The fund **revenues** consist of the following:

a) contributions to the fund,
b) contributions from the state budget,
c) interest on deposits in banks or branches of foreign banks,
d) interest on loans granted by the resources of the fund,
e) contractual penalties for the unauthorized use or retention of resources of the fund,
f) administrative fees,
g) donations and voluntary contributions,
h) other income.

In the financial area the fund performs administration and control of selected contributions. In addition to this, the fund **provides** financial resources:

- to authors and producers of Slovak audiovisual works;
- for the innovation and development of technical infrastructure for the production and distribution of audiovisual works and to conduct public cultural events in the area of audiovisual culture;
- for the propagation and presentation of audiovisual works.

The Audiovisual Fund also provides scholarships for individuals who with their creativity or research contribute to the development of the audiovisual industry and audiovisual culture in Slovakia and keeps the records of Slovak audiovisual works and the persons to whom were provided financial resources.

The Fund also provides financial resources for support of audiovisual production, in particular:

- the creation, development, preparation and production of Slovak audiovisual works, as well as feature films, documentaries and animated Slovak cinematographic works;
- post-productions and distributions of Slovak audiovisual works and distribution of audiovisual works;
- festivals and other cultural activities of entities operating in the audiovisual and cinema industry in the Slovak Republic and the presentation and promotion of Slovak audiovisual works;
- the publication and distribution of periodical and non-periodical publications in audiovisual and cinema industry etc.

The basic forms in which the fund provides financial resources are:

1. ***subsidies***. Subsidies for production of an audiovisual work may be granted up to 50% of the production budget of an audiovisual work, exceptionally may be financed up to 90% of the budget, in the case of the audiovisual work which is a low-budget audiovisual work or difficult audiovisual work,
2. ***loans*** (with a maturity of more than five years) or
3. ***scholarships***. Scholarships are provided only to individuals for the development of creativity, education and research in the field of audiovisual culture and film art. The scholarship is an earmarked non-repayable financial support which is paid once or several times during a specified period of time under the contract.

There is no legal right for providing financial resources from the fund.

Slovak National Accreditation Service (hereinafter referred to as "SNAS") is a public institution[22] and a legal person established in Bratislava which manages its own financial resources based on its budget of revenues and expenditures for the particular calendar year.

SNAS income includes mainly:

a) payments for accreditation services provided by the Slovak National Accreditation Service,
b) other income received in accordance with the generally binding legal regulations.

In addition to that, the income of the SNAS involves either a contribution from the state budget to ensure accreditation in new areas or other non self-financing activities whose performance arises from a special regulation.

SNAS expenses include:

a) expenditures on salaries and compensations of employees,
b) costs of materials, energy and services related to business activities of the SNAS,
c) compensations of travel expenses of supervisory board members pursuant to a special regulation,
d) contributions connected with membership in international and regional organizations of associated accreditation bodies.

Apart from its *budget*, the SNAS constitutes *the reserve fund* and *the fund of investment and development*.

The reserve fund is created from a positive management profit recognized in the annual financial statement approved by the supervisors board and by the certified auditor for the year in which the positive profit was achieved, amounting to at least 3% of the positive profit recognized in the annual financial statements until reaching a height less than an average total annual cost for the previous three years.

The reserve fund is used to cover losses from SNAS activities, to pay unsecured ordinary budget needs, including labour costs and to cover the other incidental expenses.

The fund of investments and development of the SNAS is created from the positive profit recognized in the annual financial statement approved by the supervisors board and by the certified auditor with reduced contribution to the reserve fund for the year in which the positive management result is achieved.

The fund of investments and development of the SNAS is used for the acquisition of tangible and intangible assets, for the acquisition and development of human resources, for the innovation and development of working practices and the other activities focused on investment and development of the SNAS.

The News Agency of the Slovak Republic (hereinafter referred to as "TASR") is a public, national, independent informational institution providing a public service in the field of news services. TASR is a legal person registered in the commercial register.

TASR draws up a budget consisting of revenues and expenditures for the calendar year and manages it. Apart from that, TASR creates a *reserve fund* as well.

The reserve fund is created by TASR from:

a) the profit of its main activities after taxation,
b) the profit of its business activities after taxation.

The reserve fund is used for covering losses from the main activity of TASR and for covering its business losses.

Ad 3)

As regards **the other funds**, there is a group of various funds which are legal persons established by the legal act (law) and which use a designation "fund" in their name title (even if they are not public institutions). Apart from the fact that these funds have legal personality, their legal status is not always entirely clear. All these funds manage their financial resources according to their budget, which is approved by the board of the fund (the governing board of the fund).

The financial resources of funds are held in special bank accounts. In the case of the Deposit Protection Fund, they are financial resources deposited in special accounts at the National Bank of Slovakia, as regards the Investment Guarantee Fund in special accounts at the National Bank of Slovakia or in special accounts at the State Treasury and the financial resources of the Educational Support Fund are held at the State Treasury.

To this group of funds may be particularly included mostly:

a) Educational Support Fund,
b) Deposit Protection Fund,
c) Recycling fund,
d) Investment Guarantee Fund,
e) Fund on development of vocational education and training.

Educational Support Fund[23] was established as a non-state specific fund. Its principal activity is to provide loans for students. The Fund carries out its activities in the public interest. With effect from the 1 January 2013, this fund replaced two other public financial funds - *Student Loan Fund*[24] and *Loan Fund for Beginning Teachers*[25].

The Fund´s resources are:

a) repayments of loans granted by the Fund,
b) interest from financial resources deposited in the State Treasury,
c) interest on loans,
d) penalties for breach of contractual terms,
e) fees and expenses of the Fund under the conditions specified in the loan agreement,
f) subsidies from the state budget,
g) donations and contributions from other persons,
h) financial resources provided by the FNM of SR etc.

The financial resources of the Fund may be used for providing loans and for administration of the Fund.

Deposit Protection Fund[26] collects and manages financial contributions from banks and branches of foreign banks (initial contribution, annual contribution and extraordinary contribution) in order to provide compensation for deposits of individuals deposited in banks. The Fund´s resources are also income from the use of financial resources, loans, repayable financial assistances and subsidies from the state budget in order to support the tasks of the Fund and the system of deposit protection etc. The Fund may request the Investment Guarantee Fund, the National Bank of Slovakia and the other banks for a loan.

The Fund is pursuant to its legal regulation not the state purpose fund. In relation to this Fund (this applies, however, pursuant to a special act to the Investment Guarantee Fund as well) legal regulation states that the Fund is not a state fund under a special legal act (currently under the law on budgetary rules). For clarification of this provision, attention should be drawn to the relationship of the establishment of state purpose funds, which the Slovak Republic may set up under Article 58 par. 3 of the Constitution of SR taking into account the fact that the general regulation of the establishment and management of state purpose funds is involved in the legal act on budgetary rules and the specific regulation is left on the particular act of the existing state purpose fund.

The Fund may create from its financial resources a *special fund for providing compensations for inaccessible bank deposits*. By course of the act for an inaccessible deposit protected by this law provides the Fund in the aggregate to one depositor or to the other entitled person compensation in the amount of inaccessible deposit up to a maximum of EUR 100,000.

The financial resources of the Fund may be used (apart from providing compensations for deposits) for example also for the purchase of government securities maturing within one year from the date of purchase, for instalments of loans and for repayable financial assistances, for covering the costs necessary to ensure the activities of the Fund etc.

Recycling fund[27] was established as a non state purpose fund which collects financial resources from various sources to support the collection, recovery and processing of various types of waste (waste batteries and accumulators, waste oils, used tires, electrical equipments, plastics, paper, glass, vehicles and etc.).

The income sources of the Recycling Fund are:

a) contributions of producers and importers for the production and import of batteries and accumulators, oil, tires, multi-layer combined materials, also for placing EEE on the market for the manufacture and import of plastic, paper, glass, metal containers and vehicles,
b) donations and contributions of domestic and foreign legal entities and individuals,
c) income from contractual penalties,
d) interests on loans granted by the Recycling Fund,
e) revenues from the recovery of unauthorized use or unathorized holding of finacial resources of the Recycling Fund,
f) income from the management of its own property,
g) interest on the financial resources of the Recycling Fund deposited in banks etc.

The financial resources of the Recycling Fund may be used for:

a) payment of capital and operating costs necessary to ensure the collection and recovery of waste and processing of old vehicles,
b) payment of economically justified costs related to transport of some old vehicles, especially in cases when the holder is unknown or does not exist,
c) payment of economically justified costs related to providing parking lot services,
d) payment of expenses related to the Recycling Fund,

e) payment of expenses for the collection of packaging waste and its valuation or recycling,
f) promoting the collection and the recovery of waste,
g) providing information systems to support waste recovery,
h) support focused on research, development, identification and application of new waste recovery technologies.

Investment Guarantee Fund[28] collects financial contributions of securities traders and branches of foreign securities traders, management companies and branches of foreign management companies to provide compensations for inaccessible client assets received by those entities to perform investment services and disposes lawfully with acquired financial resources.

The Fund is a legal entity registered in the commercial register. Pursuant to its regulation act is a Fund and not a state purpose fund under the law on budgetary rules.

The sources of the Fund are the following:

a) contributions of securities traders to the Fund (initial contribution, annual contribution and extraordinary contribution),
b) income from the use of financial resources in the accounts of the Fund including income from the sale of purchased government securities,
c) loans (the Fund may ask for a loan from the Deposit Protection Fund, National Bank of Slovakia, banks or branches of foreign banks) etc.

The Fund´s resources may also be repayable financial assistances and subsidies from state financial assets in the extent and under the conditions provided by the law on budgetary rules and the state budget act.

The Fund may create from its financial resources *a special fund to provide compensation for inaccessible client assets*. The financial resources of the Fund may be used for:

a) purchase of government securities with maturity of three years from the date of purchase,
b) repayment of loans and repayable financial assistances,
c) a loan for Deposit Protection Fund, up to a maximum of 10% of the resources of the Fund,
d) payment of the costs necessary to ensure the activities of the Fund.

Fund on development of vocational education and training[29] was established as a non-state purpose fund which collects financial resources for the support and development of vocational education and training.

The Fund´s sources are:

a) donations and contributions from domestic natural and legal persons, apart from the public authorities and donations and contributions of foreign legal entities and individuals,
b) voluntary contributions from employers and professional organizations,
c) interest on the financial resources of the Fund,
d) penalties for breach of contractual terms, etc.

The financial resources of the Fund may be used only for financing the following:

a) the modernization of material and technical equipment of the secondary vocational schools, practical training centres, school economy, vocational practice centre and medical equipment beyond the established normative,
b) trainings of teachers of vocational subjects, teachers of vocational training and instructors provided by practitioners,
c) management of the fund.

In the quite recent past some other financial funds were involved in this group of public funds, such as the *Anti-Drug Fund*[30], *Fund for support of international trade*[31]etc.

Conclusions

Financial law, with its regulatory mechanism, creates the necessary organisational and legal conditions for the functioning of public financial funds. These public financial funds are generally considered for the positive effects of financial policy of our state, which is expressed by our financial regulation. Such a positive reaction is justified in particular by the flexibility and operability of their creation and their financing. On the other hand, there is, however, an opposite side of their legal regulation which should be pointed to. The number of public financial funds standing outside the state budget (which are in most cases involved to the state bugdet only by financial relations or there is even no connection with the state budget) results in the economy to **atomization** of public finance. This fact leads

to a difficult public control of their creation, in particular regarding their use as well, which is connected with the risk of a possible distortion of overall results of the financial management of the state. This fact is unfortunately neglected in Slovakia, either intentionally or even with a hidden intent.

Abstract

The author of this article focuses on the legal regulation of financial (legal) anchoring of the existence of public financial funds in Slovakia. The author emphasizes that after 1989 many new financial instruments and institutions of financial practice (respectively already existed system of financial institutions) significantly modified, extended and since its sporadic application transformed into a particular system.

The author divides the extra-budgetary public financial funds into two groups, namely *the system of the state purspose funds* and *the system of the other public financial funds* created by various subjects, mainly from the field of public law and partially by subjects from private law. Within these two groups of financial funds, the author focuses on the system of the other public financial funds.

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1. Zákon č. 460/1992 Zb. Ústava Slovenskej Republiky v znení neskorších predpisov.
2. Zákon č. 92/1991 Zb. o podmienkach prevodu majetku štátu na iné osoby v znení neskorších predpisov.
3. Zákon č. 253/1991 Zb. o pôsobnosti orgánov Slovenskej Republiky vo veciach prevodov majetku štátu na iné osoby a o Fonde národného majetku Slovenskej Republiky v znení neskorších predpisov (repealed by zákon č. 60/1994 Z. z.).
4. Zákon č. 330/1991 Zb. o pozemkových úpravách, usporiadaní pozemkového vlastníctva, pozemkových úradoch, pozemkovom fonde a o pozemkových spoločenstvách v znení neskorších predpisov.
5. Zákon č. 13/1993 Z. z. o umeleckých fondoch v znení neskorších predpisov.
6. Zákon č. 189/1993 Z. z. o Fonde detí a mládeže v znení neskorších predpisov and repealed by zákon č. 452/2003 Z. z. o skončení činnosti a spôsobe zániku Fondu detí a mládeže.
7. Zákon č. 152/1994 Z. z. o sociálnom fonde a o zmene a doplnení zákona č. 286/1992 Zb. o daniach z príjmov v znení neskorších predpisov.
8. Zákon č. 118/1996 Z. z. o ochrane vkladov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.
9. Zákon č. 379/1996 Z. z. o Fonde na podporu zahraničného obchodu v znení neskorších predpisov.
10. Zákon č. 381/1996 Z. z. o Protidrogovom fonde v znení neskorších predpisov.
11. Zákon č. 200/1997 Z. z. o Študentskom pôžičkovom fonde v znení neskorších predpisov.
12. Zákon č. 223/2001 Z. z. o odpadoch a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.
13. Zákon č. 566/2001 Z. z. o cenných papieroch a investičných službách a o zmene a doplnení niektorých zákonov (zákon o cenných papieroch) v znení neskorších predpisov.
14. Zákon č. 131/2002 Z. z. o vysokých školách a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.
15. Zákon č. 471/2002 Z. z. o Pôžičkovom fonde pre začínajúcich pedagógov v znení neskoršieho predpisu.
16. Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov.
17. Zákon č. 176/2004 Z. z. o nakladaní s majetkom verejnoprávnych inštitúcií a o zmene zákona Národnej rady Slovenskej Republiky č. 259/1993 Z. z. o Slovenskej lesníckej komore v znení zákona č. 464/2002 Z. z. v znení neskorších predpisov.
18. Zákon č. 523/2004 Z. z. o rozpočtových pravidlách verejnej správy a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.
19. Zákon č. 128/2005 Z. z. o zrušení Fondu na podporu zahraničného obchodu.
20. Zákon č. 516/2008 Z. z. o Audiovizuálnom fonde a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.

21. Zákon č. 184/2009 Z. z. o odbornom vzdelávaní a príprave a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.
22. Zákon č. 505/2009 Z. z. o akreditácii orgánov posudzovania zhody a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.
23. Zákon č. 532/2010 Z. z. o Rozhlase a televízii Slovenska a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.
24. Zákon č. 121/2011 Z. z. o zrušení Protidrogového fondu.
25. Zákon č. 396/2012 Z. z. o Fonde na podporu vzdelávania v znení neskorších predpisov.

** By the decision of the Editorial Board the last year paper of this Author "The system of state purpose funds in Slovakia" was published in "Annual Center Review" 2014, no. 7, p. 11-21 as well in the yearly "Публичные финансы и налоговое право" 2015, no. 5, p. 5-19. Currently we are publishing second article concerning funds in Slovakia.*

[1] See: čl. 55 ústavného zákona č. 460/1992 Zb. Ústava Slovenskej Republiky v znení neskorších predpisov.

[2] See čl. 58 ods. 3 Ústavy SR.

[3] See: K. Laštovka, Public funds. Password in Dictionary of public law, C.H. Beck, Prague 1927. Similarly: H. Marková, R. Boháč, Budgetary law, Prague 2007, p. 159.

[4] V. Zahálka, Monetary funds as an object of regulation of financial law, Brno 1977, p. 27 and f.

[5] V. Babčák a kol., Financial law in Slovakia and in European Union, EUROKÓDEX, s.r.o., Bratislava 2012, p. 22. Similarly define the concept "financial fund" the other authors as well. Compare for instance. Ľ Grúň, J. Králik, Basics of financial law in Slovakia, MANZ, spol. s r.o., Bratislava 1997, p. 28.

[6] H. Marková, R. Boháč, Budgetary law, C.H. Beck, Prague 2007, p. 159-160.

[7] See more: M. Horčicová, D. Vašková, Extrabudgetary funds and their position in the system of public funds, "Finance and loan" 1994, no. 9 (44), p. 474.

[8] See: P. Jánošíková, P. Mrkývka, I. Tomažič a kol., Financial and tax law, Publisher: Alois Čeněk, s.r.o., Plzeň 2009, p. 139 and f. Similar classification of funds offer as well: H. Marková, R. Boháč, Budgetary law, C.H. Beck, Prague 2007, p. 159 and f.

[9] Zákon č. 523/2004 Z. z. o rozpočtových pravidlách verejnej správy a o zmene a doplnení niektorých zákonov v znení neskorších predpisov. This legal act laid down general principles for the creation and use of state purpose funds.

[10] In the period of 1993 – 2003 there was Fund of children and youth in Slovakia (similarly in Czech Republic) which was created for the takeover of the assets and management of assets of the former youth organization known under the abbreviation SZM. This Fund was established by zákon č. 189/1993 Z. z. o Fonde detí a mládeže v znení neskorších predpisov and repealed by zákon č. 452/2003 Z. z. o skončení činnosti a spôsobe zániku Fondu detí a mládeže.

[11] Zákon č. 253/1991 Zb. o pôsobnosti orgánov Slovenskej Republiky vo veciach prevodov majetku štátu na iné osoby a o Fonde národného majetku Slovenskej Republiky v znení neskorších predpisov (repealed by zákon č. 60/1994 Z. z.). In the Czech Republic this fund existed until the end of 2005.

[12] V. part of zákon č. 92/1991 Zb. o podmienkach prevodu majetku štátu na iné osoby v znení neskorších predpisov.

[13] Zákon č. 330/1991 Zb. o pozemkových úpravách, usporiadaní pozemkového vlastníctva, pozemkových úradoch, pozemkovom fonde a o pozemkových spoločenstvách v znení neskorších predpisov.

[14] Zákon č. 152/1994 Z. z. o sociálnom fonde a o zmene a doplnení zákona č. 286/1992 Zb. o daniach z príjmov v znení neskorších predpisov.

[15] Zákon č. 176/2004 Z. z. o nakladaní s majetkom verejnoprávnych inštitúcií a o zmene zákona Národnej rady Slovenskej Republiky č. 259/1993 Z. z. o Slovenskej lesníckej komore v znení zákona č. 464/2002 Z. z. v znení neskorších predpisov.

[16] Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov.

[17] Zákon č. 532/2010 Z. z. o Rozhlase a televízii Slovenska a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.

[18] Zákon č. 131/2002 Z. z. o vysokých školách a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.

[19] For example pursuant to zákon č. 152/1994 Z. z. o sociálnom fonde a o zmene a doplnení zákona č. 286/1992 Zb. o daniach z príjmov v znení neskorších predpisov.

[20] Zákon č. 13/1993 Z. z. o umeleckých fondoch v znení neskorších predpisov.

[21] Zákon č. 516/2008 Z. z. o Audiovizuálnom fonde a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.

[22] Zákon č. 505/2009 Z. z. o akreditácii orgánov posudzovania zhody a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.

[23] Zákon č. 396/2012 Z. z. o Fonde na podporu vzdelávania v znení neskorších predpisov.

[24] Zákon č. 200/1997 Z. z. o Študentskom pôžičkovom fonde v znení neskorších predpisov. Pursuan to this act was Student Loan Fund a non-state specific fund established for the purpose of providing loans for university students. Fund's resources were mainly financial resources provided by FNM of SR, repayments of loans granted by the Fund, donations and contributions from domestic and foreign legal and natural persons, interests on financial resources of the fund deposited in a bank, interests on loans etc.

[25] Zákon č. 471/2002 Z. z. o Pôžičkovom fonde pre začínajúcich pedagógov v znení neskoršieho predpisu. Fund was established as a non-state specific fund and served for providing loans for beggining teachers who graduated from the university. Fund´s resources were mainly financial resources provided by FNM of SR, repayments of loans granted by the Fund, donations and contributions from domestic and foreign legal and natural persons, interests on financial resources of the Fund deposited in a bank, interests on loans, penalties for breach of contractual terms, subsidies from the state budget etc.

[26] Zákon č. 118/1996 Z. z. o ochrane vkladov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.

[27] Zákon č. 223/2001 Z. z. o odpadoch a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.

[28] Zákon č. 566/2001 Z. z. o cenných papieroch a investičných službách a o zmene a doplnení niektorých zákonov (zákon o cenných papieroch) v znení neskorších predpisov.

[29] Zákon č. 184/2009 Z. z. o odbornom vzdelávaní a príprave a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.

[30] Anti-Drug Fund was established by zákon č. 381/1996 Z. z. o Protidrogovom fonde v znení neskoršieho predpisu as a non-state purpose fund which collects and provides financial resources on drug prevention, the treatment and social reintegration of drug addicts in the public interest. Fund's resources were mainly donations and contributions from domestic and foreign legal or natural persons, interests on financial resources of Fund, contractual penalties for unlawfully used financial resources of Fund, grants from the state budget etc. With effect from the 1. May 2011 was however this Fund cancelled by the law - zákon č. 121/2011 Z. z. o zrušení Protidrogového fondu.

[31] This fund was established by zákon č. 379/1996 Z. z. o Fonde na podporu zahraničného obchodu v znení neskorších predpisov. The Fund was established as a purpose fund which collected financial resources for support of development of the international trade. Sources of the fund were mainly compulsory contributions of domestic exporters and importers, interests of the Fund deposited in the bank, income from its own activities, subsidies from the state budget, the contribution of the FNM of SR, contributions and donations from corporations and individuals, loans etc. The Fund´s financial resources could be used primarily to the partial cover of the costs of domestic exporters and importers in fairs and exhibitions abroad and at home, to cover the costs of promotion of goods abroad, to the costs of domestic organizers and participants of international seminars, symposia, etc., also on loan repayments and payment of interests on them, donations and grants to business trade missions of slovak entrepreneurs abroad etc. The Fund was repealed in 2005 by zákon č. 128/2005 Z. z. o zrušení Fondu na podporu zahraničného obchodu.

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DRAFT OF ACT ON THE MANAGEMENT AND CONTROL OF PUBLIC FINANCES

Introduction

Draft of Act on the Management and Control of Public Finances (hereinafter "the Draft") should replace the existing Act no. 320/2001 Coll., on Financial Control in public administration and amending certain acts (Financial Control Act), as amended. The Draft represents the x-th attempt of reform the system of control and internal audit of public finances in Czech Republic.

In accordance with the Legislative Rules of the Government the Draft with accompanying materials was sent to comment procedure on 22 July 2015 with the date of comments delivery by 25 August 2015. The comment procedure involved over 100 of commenting organization from public sector, including the Union of Towns and Municipalities of the Czech Republic[1] and the Association of local self-governments[2]. From the deadline for applying comments until March 2016 Ministry of finance led meetings and consultations with the commenting organizations. The material has been modified based on comments from the comment procedure. Almost all comments were settled without contradictions. Subsequently the Ministry of Finance realized legislative-technical modifications. The Draft was submitted for consideration of the Government Legislative Council on 12 May 2016. Currently, the Ministry of Finance is incorporating comments of Legislative Council. Further legislative process will continue in the Government and the Parliament. The Act is proposed to be effective from 1st January 2018.

Unifying of management and control system

A key proposed change is the revision of the whole system of management and control of public finances. Currently in approving expenditures or entering into a contract two processes coexist. One process is administrative implemented in organization only to satisfy the requirements of the Act on financial control and the other, real approval process that reflects the needs of each organization. The Draft should unify and simplify these processes. Every public sector organization will be able to set own system to suit it needs, whether it is a ministry, or kindergarten.

One of the objectives that the Draft aims at simplifying the current system of management and control of public revenues and public expenditures, especially with regard to the existence of a large number of small organizations, i.e. the smallest municipalities and subsidized organizations for which it is often existing legislation inapplicable, respectively its application in practice is an unnecessary and unjustified administrative burdens. The Draft does not ensure that control processes will not be formal and will be an effective mean of public finances protection. Adoption of the Draft is only a necessary starting point. A precondition for the successful implementation and realization of a genuine reform of the management and control of public finances is a consistent and active providing methodological support of the Ministry of Finance, namely the Central Harmonization Unit. Function

of the Central Harmonization Unit together with the Draft should create effective system of protection of public finances.

The main changes

In order to simplify the existing system, the Draft introduces a major change in the performance of management and control at the expenditure and revenue operations. The Draft clearly establishes that economic control will be carried out only in operations that the organizations may affect. This adjustment is to eliminate the current practice, when the proofs of control of revenue operations are produced even when it is casual income, which becomes municipal budget revenue without any intervention of the municipality. For example entitled to the income arises from the act.

Furthermore, the Draft allows that in small organizations, economic control can be provided by a person who is not an employee. Today the Financial Control Act strictly provides that the function of budget administrator and main accountant can be performed only by an employee of the municipality. This is inapplicable especially in the smallest villages or kindergartens. It is normal that with regard to the principle of economy, efficiency and effectiveness, the economic agenda is outsourced by a person with Trade Certificate. However, because of the current provisions of the Act on Financial Control, this person must have employment agreement with the municipality.

With regard to practical experience with the performance of management and control in the smallest villages, Ministry of finance does not insist that the operations should be approved by a senior employee in these cases. In the village with unreleased mayor, where a number of activities is provided by unreleased members of municipal council, it is not practical, nor cost-effective to insist that the principal function of the operation should be held by employee, let alone a senior employee. Therefore, the Draft allows the approver function can be held by the deputy mayor or a member of the Control Committee of the council. The reason that the content of the mentioned function is changing significantly by the Draft, it is necessary to change also the terminology. Changing of the terminology is often criticized by the municipalities.

Principles of the Draft

Principles of the Draft are economical, effective and efficient public finance management and control, principle of proportionality and single audit approach.

Definition of economical, efficient and effective management of public finances is already contained in the Act on Financial Control. The Draft clarifies the definition and creates tools for the implementation of these principles in practice. One of these tools is the preliminary assessment of expenditure operations. In terms of legal status it is an entirely new institution, however, many public authorities have already established the institute in the decision-making processes. There can be demonstrated that the objective of the Draft is not to introduce new bureaucratic obligations, but rather its aim is to share the good practice across all public authorities.

Preliminary evaluation of expenditure operations represents control during first phase of decision making. Its object should be to assess the needs to be met through public funding and its variants of satisfaction. For example this may include an assessment of whether the municipality will rent its office or purchase a building for it. Further evaluation of operating costs in the years following the implementation of the investment for a minimum period of sustainability should be an important part of preliminary assessment evaluation. For example these include grant programs to support employment, from which you can pay the cost of repairing of properties. From the beginning, the subsidy seems to be convenient and easy money gained. However, if before applying for a grant municipality do not calculate how much operating costs will increase, the municipality may be unpleasantly surprised.

One of the major problems which the Ministry of Finance had to deal with is the fact that, as the Financial Control Act and the Draft turns out to thousands of organizations of different sizes and with different organizational structures. Addressee is organization such as the Ministry of

Defense as well as the kindergarten set up by municipalities. Therefore, the Draft gives organizations flexibility in determining the value and type of expenditure operations, for which the preliminary assessment will be carried out. It is a manifestation of the principle of proportionality. The principle of proportionality pervades the entire Draft.

One of the other manifestations of principle of proportionality is the criteria for mandatory establishment of internal audit. Today an internal audit must be established by all municipalities over 15,000 populations. In the future, the population has to be only one of the conditions. Another criterion is the size of the budget, for example, the volume of subsidies provided or the number of employees. Internal audit is an important tool to protect public finances. However, to be truly effective, it is essential to be adequately staffed. Therefore, it makes no sense to establish an internal audit unit, where the cost of ensuring its functioning (particularly wages and training costs) are greater than the risks to be treated this way. Internal audit, which is secured by a single worker, whose primary job is to provide a public service, does not have the necessary added value. In practice, for example, the high school teacher who is still at 0.1 time charged with the performance of internal audit. In this case, it is only a formal fulfillment of the provisions of the Act on financial control and, as such, unfounded.

The essential principle of the new legislation should be single Audit principle. The essence of this principle is that the authorities responsible for control and audit shares the results of their activities, these results are so good that they can rely on and therefore it does not control or audit performed again. The purpose is to remove duplicate checks. The Draft creates the necessary prerequisites. Together with the existing information system of the Ministry of Finance this sharing is possible. Obviously methodological assistance, particularly to ensure the required quality of output control and audit authorities, is a necessary.

Conclusions

Finally, it is important to emphasize that the Draft does not interfere with the constitutionally guaranteed rights of municipalities to self-government. The management and control mechanisms and internal audit, that matter contents of the Draft, do not interfere with decision-making powers of local authorities of the municipality, i.e. council and assembly. The Draft sets out the minimum requirements for the preparation of materials for meetings of the council or assembly. Approval of expenditure operations in the economic control process does not bind the council or assembly to make the expenditure or enter into a contract. It remains a sovereign right of self-governing municipal bodies. Defined minimum requirements for the preparation of materials contribute to greater awareness of the institutions that are authorized to make decisions and have the relevant responsibility for their decisions.

Abstract

The article deals with the draft of Act on the Management and Control of Public Finances which is nowadays prepared by Ministry of Finance of Czech Republic. It is an important act of management and control of public budgets. The article presents the positive changes of the public finance management system for the municipalities. In the Czech Republic there are more than 6 000 municipalities. Many of them are too small to have appropriate personal resources to ensure the adequate control of public finance. The draft tries to simplify the system to helps the smallest municipalities and to ensure the minimum level of the public finance protection.

[1] *Union of Towns and Municipalities of the Czech Republic is a voluntary, apolitical and non-governmental organization founded as an interest group of legal entities. Members of the Union are towns and municipalities. The Union associates approximately 2,500 municipalities and towns. They represent more than 70% of the total population of the Czech Republic.*

[2] *Association of local self-governments is a voluntary, apolitical and non-governmental organization founded as an interest group of legal entities. Members of the Union are towns and municipalities. The Union associates approximately 1,100 municipalities and towns.*

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SHARES IN THE REVENUE FROM INCOME TAXES AS INCOME OF LOCAL SELF-GOVERNMENT UNITS IN POLAND

Introduction

In most European countries, revenue from income taxes is divided between the state budget and the budget of local self-government units. The division of public income from income taxes is performed through the institution of a share in the revenue from these taxes or local income taxes, also known as "piggyback taxes". The institution of a share in the revenue from income taxes is used *inter alia* in Austria, Czech Republic, Greece, Spain, Germany, Poland, Portugal, Romania, Slovakia, Slovenia, Hungary and the Baltic states[1]. On the other hand, piggyback taxes are used mostly in Scandinavian countries – Sweden, Norway, Finland and Denmark, as well as Croatia and Italy[2]. Not only income taxes are subject to a division between the state budget and the budgets of local self-government units in European states. Examples include sales taxes in Germany and Spain, the property tax in the United Kingdom, the vehicle tax in Ireland, the inheritance tax in Lithuania and the gambling tax in Latvia[3].

Shares in revenue from income taxes are a substantial part of the income of local self-government units in Poland as well. They comprise 21% of all income, as well as 42% of the own income of communes (*gmina*), counties (*powiat*) and provinces (*województwo*)[4]. Shares in revenue from income taxes are regulated in Polish law by the Act on the Income of Local Self-Government Units of 13 November 2003 (*ustawa z dnia 13 listopada 2003 roku o dochodach jednostek samorządu terytorialnego*)[5]. This Act indicates that shares are income of local self-government units at all levels (Art. 3 par. 2), regulates the allocations of shares (Art. 4 par. 2 & 3, art 5 par. 2 & 3, and Art. 6 par. 2 & 3), the criteria for dividing the shares between local self-government units at various levels (Art. 4 par. 2 & 3, Art. 5 par. 2 & 3, Art. 6 par. 2 & 3, Art. 9, Art. 10, Art. 10a), the procedure for transferring the shares (Art. 12, Art. 12) and interest on the shares (Art. 13). The aim of this article is to present the character of shares in the revenue from income taxes as income of the local self-government units in Poland on the basis of the share classification criteria proposed by H. Blöchliger and O. Petzold.

The article is a continuation of previously published research concerning local self-government units' shares in the revenue from income taxes in Poland[6].

H. Blöchliger and O. Petzold's classification of local self-government units' shares in tax revenue

European states use the term "shares" for different legal constructs of dividing public income from taxes between the state budget and the budgets of local self-government units. H. Blöchliger and O. Petzold, in order to clarify the

meaning of the term, propose the classification of shares according to the following criteria[7]:

1) risk sharing,
2) un-conditionality,
3) formula stability,
4) individual proportionality.

The first criterion – risk sharing – is concerned with whether the local self-government units have shares in the real or planned revenue from a given tax. The second criterion – un-conditionality – indicates whether local self-government units are free to spend the income from shares in taxes however they choose. The third criterion – formula stability – classifies shares based on whether they are given to the local self-government units for an indeterminate time, or whether the formula changes cyclically, e.g. is written yearly into the budget act. The fourth criterion – individual proportionality – is concerned with whether local self-government units have shares in the revenue from taxes proportional to the amount of taxes paid on their territory.

Based on these criteria we may distinguish "strict tax sharing", regular "tax sharing" and "intergovernmental grants"[8]. When all four criteria are fulfilled, a given institution falls under "strict tax sharing". In this case, local self-government units have shares in the real, not planned, revenue from taxes, can freely spend the means acquired in this manner, legal regulation of the shares is stable, and the recipients acquire their due shares proportionally to the revenue from taxes paid in their territory. "Strict tax sharing" first and foremost fulfills a fiscal role and does not equalize the income of local self-government units. Because of this, it is necessary to introduce compensatory mechanisms to the local self-government finance system of a given state in order to correct for the uneven distribution of income. Institutions that fulfill the first three criteria but not the individual proportionality criterion are called regular "tax sharing" institutions. In this case, the shares are distributed centrally, based on legally determined criteria. The amount of income acquired thusly by the local self-government units is therefore not dependent on the amount of taxes paid in their territory. It also means that unlike "strict tax sharing", regular "tax sharing" also plays a compensatory role. However, if one of the first three criteria is not fulfilled, a given institution, despite its name, is not a share, but a transfer from the state budget to the budgets of local self-government units[9].

The presented criteria for classifying shares in tax revenue will allow for an assessment of Polish legal regulations of shares in revenue from income taxes, and for finding an answer to whether Polish shares should be classified as "strict tax sharing", "tax sharing" or transfers in further parts of the article.

Risk sharing criterion

There are two ways of calculating the amount of local self-government shares in revenue from income taxes. This can either be based on the real revenue from a given tax, or from the revenue planned in the state budget[10]. In Poland, since 1990 the real revenue model has been used. Polish communes, counties and provinces have shares in the general amount of personal income tax revenue[11] and the general amount of corporate income tax revenue. In this way, almost 50% of general personal income tax revenue and almost 23% of corporate income tax revenue goes to the budgets of local self-government units.

The risk sharing criterion differentiates shares in revenue from income taxes from state budget transfers to the budgets of local self-government units, which also appear in Poland – the general subsidy and designated subsidies. The values of the general subsidy and designated subsidies that are owed to local self-government units from the state budget are independent from any fluctuations in state budget income and from the risk of not being able to meet the planned income[12]. Their value is based on formulas determined by statute. In contrast, the value of shares owed to local self-government units is based on the real revenue from income taxes. This means that local self-government units also share in the risk of not meeting the planned income from their shares.

Based on the foregoing, it can be stated that Polish local self-government units' shares in income tax revenue fulfill the risk sharing criterion.

Un-conditionality criterion

Local self-government units have discretion in how they spend the resources acquired from their shares in income taxes. This differentiates them from designated subsidies, which are granted for specific purposes[13]. This means that a unit that is granted a designated subsidy must finance a specified task. Not using it for its designated purpose results in sanctions specified in the Public Finances Act[14], the Act on Liability for Infringing Public Finance Discipline[15], the Criminal Code[16] and the Tax Criminal Code[17]. This indicates that Polish local self-government units' shares in income tax revenue fulfill the un-conditionality criterion.

Formula stability criterion

As mentioned above, local self-government units' shares in personal income tax revenue are regulated in the Act on Income of Local self-government units of 13 November 2003. This Act regulates in detail the percentages for distribution, the criteria for dividing revenue among local self-government units at the same level, and the procedure for transferring the shares due. They are granted to local self-government units for an indeterminate time, and their value is not – as a rule – modified yearly. The value of shares due to communes, counties and provinces is determined by Art. 4 par. 2 & 3, Art. 5 par. 2 & 3, and Art. 6 par. 2 & 3 of the Act on Income of Local self-government units. The share in personal income tax from taxpayers living within the borders of a commune due to the communes is 39.34%, subject to the exception set forth in Art. 89 of the Act. The share in corporate income tax from taxpayers domiciled within the borders of the commune due to communes is 6.71%. For counties it is, respectively, 10.25% and 1.40%, and for provinces 1.60% and 14.75%.

The only exception is the aforementioned Article 89 of the Act on Income of Local self-government units, according to which the communes' share in revenue from personal income taxes is modified yearly based on the number of people admitted before January 1, 2004 to nursing homes. This solution is meant to allow for a gradual transition to a new model of financing some social care tasks. Residence in nursing homes during the transitional period is financed from two sources – the share in revenue from personal income taxes and designated subsidies from the state budget. Annually, the designated subsidy is to be decreased, and the share in revenue from personal income tax is to be increased[18]. In accordance with the regulation in Art. 89 of the Act on Income of Local self-government units, in 2015 communes' share in revenue from personal income tax was 37.67%, making it 1.67% lower than the target share (39.34%).

This change in the share percentages is possible due to changes in the scope of tasks that fall under the responsibility of the local self-government units. The rule of providing local self-government units with appropriate shares in public income based on tasks delegated to them results from Art. 167 par. 1 & 4 of the Constitution of the Republic of Poland[19]. During the period in which the Act on Income of Local self-government units has been in effect, the percentage of the provinces' share in the corporate income tax has been changed twice. In the original version of the Act it was 15.90%. On January 1, 2008, it was lowered to 14% as legally guaranteed discounts on bus fares were no longer financed from the provinces' own income[20]. On January 1, 2010, however, it was increased to 14.75% due to the need to finance tasks connected with regional passenger rail transport by provincial governments[21].

This indicates that Polish local self-government units' shares in income tax revenue fulfill the formula stability criterion.

Individual proportionality criterion

Local self-government units in Poland have shares in tax revenue that are proportional to the amount of taxes paid within their borders. When dividing shares among local self-government units of a given level, the decisive factor is residence of a natural person (in respect of shares in personal income tax) and the location of the headquarters

or branch of a juridical person (in respect of shares in corporate income tax).

Art. 4 par. 2, Art. 5 par. 2 and Art 6 par. 2 of the Act on Income of Local self-government units stipulate that communes, counties and provinces have shares in the revenue from personal income tax from taxpayers residing within the borders of these units. In respect of shares in corporate income tax, according to Art. 4 par. 3, Art. 5 par. 3, Art 6 par. 3 and Art. 10 of the Act on Income of Local self-government units, shares are due to the local self-government unit where a taxpayer is headquartered, and in the case of a branch located within the territory of another local self-government unit, part of that income is transferred to the budget of the local self-government unit in whose territory the branch is located, proportionally to the number of people engaged thereby under labour contracts.

The division of revenue from income taxes among local self-government units at a given level in Poland is based on granting these units shares in revenue from taxes paid by the taxpayers domiciled or located within the borders of a given unit. This indicates that Polish local government unit shares in income tax revenue fulfill the individual proportionality criterion.

Conclusions

Legal constructions regarding the division of public income from taxes between the state budget and the budgets of local self-government units that are used in European states can be categorized based on the criteria of 1) risk sharing, 2) un-conditionality, 3) formula stability, 4) individual proportionality. The first criterion – risk sharing – is concerned with whether local self-government units have shares in the real or planned revenue from a given tax. The second criterion – un-conditionality – indicates whether local self-government units are free to spend the income from shares in taxes how they choose. The third criterion – formula stability – classifies shares based on whether they are given to local self-government units for an indeterminate time, or whether the formula changes cyclically, e.g. is written annually into the budget act. The fourth criterion – individual proportionality – is concerned with whether local self-government units have shares in the revenue from taxes proportional to the amount of taxes paid on their territory. If all of these criteria are met, a given institution is classified as "strict tax sharing". Not fulfilling the fourth criterion while fulfilling the first three means that the institution is simply "tax sharing". In turn, if one of the first three criteria is not met, it means that a given institution, despite its name, is not a share, but a transfer from the state budget to the budgets of local self-government units (intergovernmental grant).

Shares of Polish local self-government units in revenue from income taxes can be classified as "strict tax sharing", as they fulfill all four of the above criteria. First, the shares are based on real, and not planned revenue from income taxes. Because of this, local self-government units take on the risk of not meeting the planned revenue. Second, local self-government units can freely spend the means acquired through shares in income taxes. Third, the amount of shares is based on percentages specified in the Act on Income of Local self-government units. Fourth, local self-government units have shares in the revenue from taxes paid by taxpayers domiciled or located within the territory of a given unit.

Abstract

In most European countries, the revenue from income taxes is divided between the state budget and the budget of local self-government units. The division of public income from income taxes is performed *inter alia* through the use of the institution of shares in the revenue from these taxes. European states use the term "shares" for different legal constructs. H. Blöchliger and O. Petzold, in order to clarify the meaning of the term, propose a classification of shares through the criteria of 1) risk sharing, 2) un-conditionality, 3) formula stability, 4) individual proportionality. The aim of this article is to present the character of shares in the revenue from income taxes as income of local self-government units in Poland on the basis of the presented criteria for classifying these shares.

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VAT CONTROL STATEMENT & ELECTRONIC RECORD OF SALES

Introduction

Towards the end of 2013, the European Commission issued "An Action Plan to strengthen the fight against tax fraud and tax evasion" in which the Commission describes some measures that should be taken by Member States to can help reduce tax evasion and improve tax collection. The Commission proposed in particular to improve the existing cooperation between Member States and their tax administrators and to intensify the use of information exchange.

The Commission also proposed to adopt a proposal for the rapid reaction mechanism against VAT fraud, which was already introduced by Council Directive 2013/42/EU of 22 July 2013 and which allows the Commission to very quickly authorize a Member State to adopt derogation measures of a temporary nature in order to deal with cases of sudden and massive fraud with a significant financial impact.[1]

Within the framework of obligations imposed by EU law, the Czech Republic created two conceptual legal institutions in the form of the VAT Control Statement and Electronic Record of Sales. The authors attempt to acquaint readers of this paper at least in the basics of these two innovations introduced in the Czech Republic.

VAT Control Statement

The first of the newly-established legal institutions to help in the fight against tax frauds is the VAT Control Statement. The VAT Control Statement was introduced into Czech law by Act no. 360/2014 Coll., amending Act no. 235/2004 Coll., On Value Added Tax, as amended (hereinafter "the VAT Act"), and other related laws, with some provisions, among others, related to the recently introduced obligation to submit the VAT Control Statement and the withdrawal of the exemption for natural persons from mandatory electronic filing of forms. The obligation to submit the VAT Control Statement applies to selected taxpayers, while meeting statutory requirements from 1st January 2016.

VAT Control Statement is a new legal institution introduced into the VAT Act as a requirement for keeping records relating to tax liability and has been proposed in order to improve tax collection, reduce tax frauds on VAT, and thereby strengthen the position of decent taxpayers.

The VAT Control Statement is generally submitted by taxable persons registered for VAT in the Czech Republic, while it is not clear whether they are a domestic or foreign entity. The obligation to submit the VAT Control Statement is linked to the emergence of one of the following legal facts in the so-called reporting period:

a) domestic taxable supplies or receipt of advance payment,
b) domestic acquisition of goods/services or providing of advance payment,
c) received transactions from which the acquirer is obliged to declare VAT according to article 108 section 1b), c) of the VAT Act,

d) special scheme for investment gold:
   - received Intermediary Service for which VAT is applied according to Article 92 section 5 of the VAT Act;
   - supply of VAT exempt investment gold for which the taxable person registered for VAT is entitled to deduct VAT pursuant to Article 92 section 6 b) and c), or
   - production of investment gold or transformation of gold into investment gold according to Article 92 section 7 of the VAT Act.

The following are not obliged to submit the VAT Control Statement:

a) a person who is not a VAT payer,
b) an identified person,
c) a payer who has not carried out or has accepted no performance during the reporting period (in the reverse charge procedure) or a payer who does not claim any deduction of tax from the received supplies in normal mode,
d) a payer who carries out only exempt taxable supplies without the right of deduction of tax (according to Article 51 of the VAT Act).[2]

Article 101d of the VAT Act also provides that the taxpayer shall state the required data needed for tax administration in the VAT Control Statement. Taxpayers must submit the VAT Control Statement only electronically to the email address of the Mail Room of the tax administrator in question in the format and structure set by the tax administrator.

The deadline for submission of the VAT Control Statement was originally laid down uniformly for all taxpayers – within 25 days after the end of the calendar month. During the legislative process the diversity of the taxable period for VAT was taken into account and therefore we can find a dual deadline for submission of the VAT Control Statement: the legal entity submitting the VAT Control Statements every month (within 25 days after the end of the calendar month), and natural persons within the deadline for submitting the tax return (within 25 days after the end of the month or quarter). The first obligation to submit the VAT Control Statement for monthly VAT payers was on 25th February 2016, and quarterly payers will first submit the VAT Control Statement no later than on 25th April 2016.

In connection with the obligation to submit the VAT Control Statement, before its introduction the high administrative burden on businesses was mentioned. However, as evidenced by data from the first administration, about 87 percent of monthly taxpayers submitted the VAT Control Statement, while only a negligible 1 percent of them did not meet the requirement of the form or structure. Only 5 percent of the mandatory monthly payers who were obliged to submit the VAT Control Statement did not submit it, and they were called on to do so by the tax administrator in accordance with the provisions of Article 101g of the VAT Act.[3]

According to the explanatory report, the VAT Control Statement is another legal institution to combat tax evasion because tax administrators will have quick access to data relating to VAT and can cross-check the data from the VAT Control Statement with that filed in the tax returns. Tax administrators will have certain data from the VAT Control Statement in the time of its filing (if the legal requirements of filing will be fulfilled) which enable it to analyze and identify possible connections of payers. After pairing is done, the tax administrator can theoretically expose the taxpayer who improperly claims the deduction of tax, and after that the tax administrator can focus his inspections on him.[4] However, we can say that given the frequency of submission of the VAT Control Statements, pairing selected data from the VAT Control Statement with that from the tax returns on VAT and pairing the VAT Control Statements with each other will become an effective control mechanism, but on the other hand it will increase the burden of individual workers. So it is questionable whether it will be possible to solve the situation with the VAT Control Statement in the short time limits associated with it.

The VAT Act also provides for a penalty for default obligations provided by law relating to the VAT Control Statement. Currently these are the most frequently discussed penalties provided in Article 101h of the VAT Act, which are implemented very strictly. Recently the Czech Government approved the proposal of the Ministry of Finance to mitigate the impact of these penalties.[5] According to the available version of the draft amendment to the VAT Act[6],

the main proposal is a supplement of tax remission, which will cover penalties arising from the law in a fixed amount of CZK 10 000, CZK 30 000 and CZK 50 000. The tax payer will be entitled to ask the tax administrator for remission of tax within 3 months from the date of legal force of the tax assessment which set the obligation to pay the penalty. The tax administrator may waive this wholly or partly if there has been a failure to submit the VAT Control Statement on grounds that can be justified by the circumstances of the case. There is thus created a similar structure as the tax remission of interest on late payment and interest on the respite amount described in Article 259b of Act no. 280/2009 Coll., The Tax Code, as amended (hereinafter "the Tax Code"). Generally, the institution of remission of accession of a tax is governed by Instructions D-21 to remission of accession of a tax from the General Financial Directorate[7], which sets the justifiable reasons of tax remission, but only in relation to Article 259b of the Tax Code. Since these internal binding notes are issued mainly because of the unification of the decision of the individual tax administrators, the General Financial Directorate will have to take some measures (amend the Instruction or issue a new one) in the case of approval of the amendment.

However, the draft amendment does not approach the proceedings of the remission of the penalty, so the tax administrator will have to proceed under Article 259 et seq. of the Tax Code. These provisions, among others, determine that remedies are not applicable against the decisions on remission of accession of a tax, i.e. appeal against this decision is not allowed and it can be contested only by supervisory measures (e.g. a review of the decision if it was issued contrary to the law).

In addition to the institution of remission, the draft amendment stipulates the possibility of exemption from the obligation to pay a penalty in the amount of CZK 1,000: in a situation where the taxpayer is not in delay with other VAT Control Statements in a given calendar year, the tax administrator may take this into account automatically without the need to submit an application by the taxpayer. In addition, according to the Ministry of Finance's recently introduced temporary provisions, a certain transitional period of tolerance will be created in which penalties in the amount of CZK 1,000 formed before the effectiveness of the proposed amendment will expire.

According to the Ministry of Finance, the proposed amendment to the VAT Act should mitigate the impact of penalties for breach of duties related to the VAT Control Statement to the taxpayer and we can assume that taxpayers will use these institutions extensively in the early months after the effectiveness of the amendment (and taking into account the penalties not only then). There are different opinions about the existence of a duty to submit the VAT Control Statement. One of them is the one that it entails a significant increase of administrative burden on the side of taxpayers; however, from the above-mentioned is shown that the administrative burden grows particularly on the side of tax administrators.

In addition to the legal institution of the VAT Control Statement and its sanctioning consequences, in the Czech Republic the taxpayers waited to see protection of the European Convention for the Protection of Fundamental Human Rights (hereinafter "the Convention") for the sphere of criminal and fiscal offenses.[8] The European Court of Human Rights in the case of Lucky Dev v. Sweden, dated 27th November 2014, application no. 7356/10, spoke in favour of providing "full" protection of Article 4 of Protocol no. 7 to the Convention (hereinafter "the Protocol") of tax entities, to which fell the obligation to pay the penalty under Article 251 of the Tax Code. The European Court of Human Rights, however, did not provide protection only against criminal prosecution of the same offence twice (in tax proceedings and in criminal proceedings), but this decision also brought the possibility for the taxpayers to seek the imposition of lighter penalties for violation of tax laws of a criminal nature. The above-mentioned flows from the fundamental principles which are inherent in the very nature of criminal law[9], which was confirmed by the European Court of Human Rights in its decision in the case Scoppola v. Italy, which was overcame by the findings made in decisions X v. Germany, Le Petit v. the United Kingdom and Zaprianov v. Bulgaria. One of the legal institutions of a criminal nature as well are the penalties embodied in Article 101h paragraph 1 of the VAT Act. According to the explanatory report[10], the purpose of these penalties has a similar character as the penalties set by Article 251 of the Tax Code. In light of the above and on the existence of moderating institutions, we can apply conclusions resulting from the jurisprudence of the above-mentioned to institute these penalties. We can summarize that the planned amendment of the VAT Act will bring the possibility of moderation by reference to the conclusions made by the European Court of Human Rights to taxpayers.

Electronic Record of Sales

The Electronic Record of Sales is an instrument prepared by the Ministry of Finance in the area of transactions in cash, which should ensure a continuous flow of information needed to administer various types of taxes in relation between taxpayers and the tax administration. The current state supports the negotiation of taxpayers seeking to conceal facts relevant to the administration and collection of taxes and distortion of the actual picture of the total tax liability, which is reflected significantly in both the statement of the amount of the total tax liability and the final amount of the tax collection. Such a situation may be considered as undesirable for reasons on the side of effective administration of public finances and those on the side of private (natural or legal) persons.

The Ministry of Finance therefore proposes that the obligation to make the records of set sales should fall significantly on all compulsory subjects carrying out set recorded transactions in the prescribed form. The Ministry wants to set the situation where only the minimum absolute (complete exemption from the regime of record of sales) and procedural (submission to other than the standard regime of record of sales) exceptions are accepted.

Sales would be subjected to electronic records if there are three statutory elements cumulatively fulfilled:

1. sales are made between statutory bodies (subjective element),
2. the sale took place under statutory circumstances (material element),
3. the sale (payment) was conducted in the prescribed manner (formal element).[11]

Czech regulation is not unique in the European area. An institution similar to the Electronic Record of Sales was introduced by neighbouring states too. The Slovak Republic established the obligation to use a special electronic cash register with fiscal memory since 2009[12] and in April 2015 changed its system so that nowadays selected providers of services can continue to use the current electronic cash register, or they can join the "virtual cash register" via the Internet (a similar system to the Czech Electronic Record of Sales). Some similarity can also be found in the forthcoming mechanism of inspection through the institution of the so-called lottery of receipts which is part of the system in the Czech Republic. Because of the possibility of the announcement of the lottery of receipts, the Czech Republic should use the experience of the Slovak Republic, where it was a relatively effective control mechanism after the first announcement, because people have a certain motivation, it was something new, and non-routine. Electronic evidence was also introduced in January 2016 in Austria, where, unlike the Czech Republic, the seller must issue a receipt to the customer and he has an obligation to keep it. Each customer shopping in a store with a cash register must keep the receipt until it goes out of business, where he can be called for submission of the receipt.

Abstract

In the Czech legal order some news related to the fight against tax fraud on value added tax (hereinafter "VAT") appeared at the beginning of 2016. The authors attempted to acquaint readers with two of the most controversial legal institutions – the VAT Control Statement and Electronic Record of Sales. We can enunciate about the VAT Control Statement that it is a legal institution which can portray matching and chaining of VAT taxable supplies in the framework of "value added" to the tax authority. Short-term practice speaks in favour of the suitability of implementation of this legal institution, which is described below. It is necessary to point out that the electronic record of sales is a very debatable topic in the Czech Republic nowadays and after some time we can find out how effective a tool it has become in the fight against tax fraud. Unlike other European countries' systems of electronic record, the Czech one lays fewer obligations on taxable persons registered for VAT and their customers. It can be summarized that in the case of these legal institutions, while theoretically they serve a legitimate objective and laudable purpose , only practice will show whether the administrative burden imposed on tax payers is reasonable and whether the VAT Control Statement and Electronic Record of Sales will become effective legal institutions in the fight against tax fraud.

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[9] *Evropská úmluva o lidských právech: komentář. 1. vyd. Praha: C.H. Beck 2012, s. 846-847.*

[10] *Důvodová zpráva na straně 70 uvádí, že "[t]ato pokuta je koncipována jako sankce vznikající ze zákona (ex lege). Jde o obdobnou konstrukci, kterou lze nalézt u pokuty za opožděné tvrzení daně (§ 250 daňového řádu) či u penále (§ 251 daňového řádu)".*

[11] *Důvodová zpráva k vládnímu návrhu zákona o evidenci tržeb. Poslanecká sněmovna Parlamentu České republiky, sněmovní tisk č. 513 [online]. Accessed at 28.2.2016 Available online at: http://www.psp.cz.*

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DOES PARTICIPATORY BUDGETING BELONG TO DEMOCRACY OR BUREAUCRACY? CASE STUDY OF BIALYSTOK (POLAND)

Introduction

Background

Local governance that – in contrast to the previously dominant concept of local government – includes the citizens and the residents of local communities to decision-making process without limitation of their role (as so far the concept of local government) at most to the choosing their representatives in the local elections. Participatory budgeting (PB) is a part of the concept of public governance which assumes the citizens' participation in the decision-making process. This concept constitutes the extension of the concept of New Public Management which began to dominate in the public administration in the eighties of the previous century as the result of the final collapse of belief in the effectiveness of the Weber's model of bureaucratic administration.

Nowadays, the citizens' activity in Poland is mainly limited to the participation in the elections. Using Tocquivile's words[1] each individual endures being bound, because he sees that it is not a man or a class, but the citizens emerge for a moment from dependency in order to indicate their master, and return to it. There are many men today who accommodate themselves very easily to this type of compromise between administrative despotism and sovereignty of the people, and who think that they deliver that liberty. They will soon become incapable of properly exercising the great and sole privilege of voting remaining them. In consequence, contemporary societies are struggling with *a participation pathology* (i.e. the lack of citizens' conviction that participation can help to solve public problems) and with *a representation pathology* (i.e. the reduced citizens' sense of being represented by those they had elected). This dual pathology can be solved thanks to a *participation by invitation* appearing when public institution officially opens social dialogue and "admits" the presence of citizens in moments of public debate and decision-making[2].

All over the world one of the most successfully implemented instrument of *participation by invitation* is PB, originating from Brazil. It means a year-long decision-making process in which citizens negotiate among themselves and with government officials in organized meetings over the allocation of new capital investment spending on projects[3]. The decisions taken in such a way are incorporated to the local budgets. The introduction of PB to the traditional local budgetary procedure reduces (but does not eliminate until covering all local government expenditures by BP) the discretional decisions of bureaucrats and officials about the allocation of public expenditures.

Even if there are some BP models, distinguished on the basis different practices observation (Sintomer, Herzberg, Rocke 2014), there is no standardized approach to

participatory budgeting (PB) as the instrument strengthening the local democracy. Damgaard and Lewis[4] argue that researches should yield evidence about whether the citizens' participation is over-stretching the concept of accountability, or an essential step to take if the idea of citizen participation is to be taken seriously. Our research constitutes a step in this direction.

Theoretical Framework

Jensen and Meckling's[5] principal-agent theory assumes that politicians (agents) chosen (employed) by the citizens (principal) do not always act in the interests of the latter, but seek to realise their own needs. Damgaard and Lewis[6] basing on the Arnstein's ladder of participation[7] have distinguished five level of participation in accountability. Climbing the consecutive ladder's steps increases the awareness and control of citizens and enables the creation of the civil society. However, what is needed for citizens to start to climb this ladder is to overcame the learning disabilities universal for every organization as distinguished by P. Senge[8]. Overcoming these learning disabilities should enable creation of civil society and climbing the last ladder's participation, i.e. joint ownership. The latter seems to constitute an important factor enhancing the agent's responsibility and reduce the negative effects of lack of the real ownership relation in public sector, as there are in business between shareholders and managers.

The existence of civil society is crucial to ensure the stabilization of the democracy and to limit the authoritarian aspirations. Murray[9] has noticed that the condition of formation of the tendril of the community and in consequence of the civil society is the real possibility and the need of filling functions by this community. The execution of some tasks or services by public institutions is the factor limiting citizens' involvement. For instance, existence of social assistance reduce the citizens' sense of responsibility of helping people in need. Similarly, if the decisions at the local and central level are taken by politicians, the citizens do not see the need of participation in decision-making process. In consequence, the functions' centralization cause the atomization of modern, urban societies. However it does not means that this centralization is indispensably linked with the modernization process, it is rather results from the political choice[10]. The lack of tendrils' community weaken the civil society, essential guarantee for democracy. Thus, we would like that the citizens' active participation in PB was an significant "function" to fulfil, and in consequence an important instrument for shaping the civil society.

Methodology

The paper presents the grounds for the wider project "*Participatory budgeting - success or crisis of local democracy? Comparative legal study*" aiming to explore what factors (dependent and independent from the policy makers) make from BP the instrument strengthening the local democracy and what are the barriers to fully exploit its potential. In other words, the research attempts to answer the question whether PB - in the current legal frameworks and practices – claims to be the institution strengthening the democratization processes or whether it is merely a tool that serves only to create the appearance of participation of wide social groups in the exercise of public bureaucracy.

The scientific area of this paper is the implementation and functioning of the in the city of Bialystok (Poland). This case study is representative example of Polish city being the representative for Poland PB case study. Poland's local government structure in Poland is compositing of three levels: communes (some communes has also the status of a city), departments and regions. There is 16 cities being the regions' capitals, Bialystok in terms of population is on the 11th rank. PB in Poland is relatively new instrument. The first PB was implemented in Poland in 2012 (Sopot), whereas in Bialystok in 2014. Every year the Bialystok local authorities introduce the changes in PB procedure, thus it seem that they try to find the optimal solutions. The amount allocated to PB in Poland are comparable in all local government units and in general do not exceed 1% of local budget. For instance, cities being the regions' capitals (16 in total) in 2016 allocated between 0,17% (Warsaw) and 0,96% (Wroclaw, Lodz, Zielona Gora). In Bialystok it was allocated 0,89 % of local budget.

The scientific problem is be the answer to the following question: does PB can be the instrument of strengthening of the local democracy, or rather it only testifies about the crisis of existing democratic mechanisms. According to the scientific hypothesis, PB can both strengthen democracy (by enhancing citizens' participation, increasing citizen's care about life of the inhabitants of the local community (citizens' accountability) and by the improvement of the allocation of local resources), or on the contrary, may not bring any positive results. Thus the scientific goal of the paper is to examine the factors (dependent and independent on the decision-makers' actions) determining the success of PB, and therefore determination what influences on the strengthening of local democracy thanks to PB and what are the barriers to take advantages of its potential. To this

aim, we propose the theoretical model of the PB strengthening the local democracy.

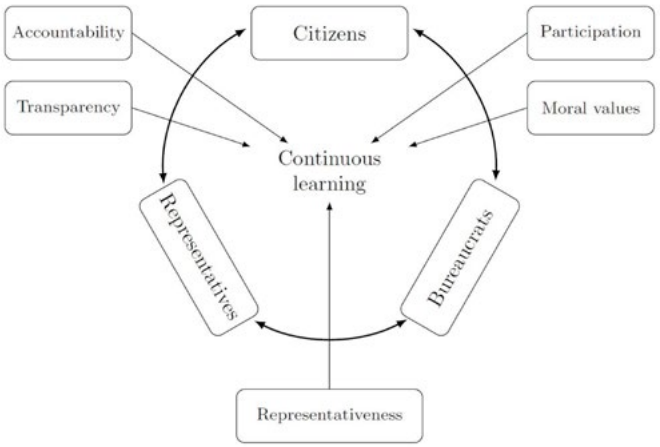
Learning as the Core of the Optimal Model of PB Strengthening the Democracy

Damgaard and Lewis[11] basing on the Arnstein's ladder of participation[12] have distinguished five level of participation in accountability. Climbing the consecutive ladder's steps increases the awareness and control of citizens and enables the creation of the civil society. However, what is needed for citizens to start to climb this ladder is to overcame the learning disabilities universal for every organization as distinguished by P. Senge[13]. Overcoming these learning disabilities should enable climbing the last ladder's participation, i.e. joint ownership. The latter seems to constitute an important factor enhancing the agent's responsibility and reduce the negative effects of lack of the real ownership relation in public sector, as there are in business between shareholders and managers. Consequently, the developed civil society (principal) is capable to motivate politicians (agents) and to make them accountable. The cooperation of the accountable politicians with the employees of public administration, capable to overcome at least partially, their learning disabilities[14] seems necessary to effectively implement the PB.

The PB to strengthen the democracy requires active involvement of three groups of the actors, i.e. citizen (the city's residents), their representatives (the local councillors) and the bureaucrats (the city's president and city hall's employees). The core of the model is the continuous and mutual learning of all three groups. Councillors and public officials learn social needs through information meetings, promotion campaigns and substantive assistance in prepare project proposals. Citizens learn the PB procedures and principles, the local investments realization, they get to know about the public expenditures costs.

The learning process should enhance the representatives', bureaucrats and citizen' accountability moral values, the citizens' representation and participation and the transparency of public spending. The details of the model are presented on the following graph.

Graph 1. The Optimal Model of Participatory Budgeting Strengthening the Democracy



In Bialystok city each PB edition has been in some extend different and, as the councillors suggested, it is crucial to learn from the past ones. After each edition people responsible for the PB procedure should reach out and talk to citizens, councillors and officials in order to gain sufficient knowledge about what went wrong, what we can improve, what should we look out for - a proper evaluation should be conducted and appropriate conclusions should be drawn and implemented. Additionally, the councillors of the opposition party wants that the authorities make every effort to gradually teach local society of participation - to show the citizens that their opinion matters. To achieve that the representative of the opposition suggests that the local authorities - creating BP procedure - should focus on one big, city-wide project and a lot of micro-projects (e.g. building a lamp, repairing a pavement or building a new one etc.) with a visible, displayed information about the nature of the financing. That way people every day will see the "effect" and step by step they will see that their involvement made a change in their environment. And maybe that way they will understand that the more they get involved, the more they can affect the way the public found are being spend and take the responsibility.

Determinants of the Optimal Model of PB - Case Study of Bialystok (Poland)

Accountability

The accountability, the first determinant of our model, can be seen from the point of view of three actors, whereby the behaviour of citizens directly influences the behaviour of others. While it is assumed that the councillors and

politicians bear the responsibility for local issues (as included in their task obligations), the results of the present research disclose that citizens, who acquire a sense of accountability for local issues by participating in BP, complement these two aforementioned groups. Indeed, the very process of promoting and informing about BP triggers the acquirement of social awareness and responsibility of local communities for public (local) affairs.

Our research has shown that up to 45% of the surveyed residents of Bialystok believe that they have no impact on the implementation of public affairs. Surprisingly, the more a public matter is close to a person's place of residence, the lesser the perceived impact in its realization and the lesser the interest in its realization. Consequently, it is difficult to require that the public felt responsible for public affairs. However, there is a contradiction at this stage, because on the one hand we are dealing with a low feeling of necessity to be actively involved in local issues, and on the other hand, the respondents predominantly stated that BP allows for the realization of projects that serve them both personally and collectively, and that the municipality will develop in the areas most needed for the local community. Respondents also came to the conclusion that BP will increase their responsibility for local issues, and that the administrative organs and offices will gain knowledge about the needs of their citizens. Nonetheless, given the citizens' belief about their negligible impact in the implementation of public affairs, one may argue that if BP really granted the citizens an actual impact in local issues, then their impact on these matters should be greater than their influence on the affairs of the state as a whole (through selecting representatives to the central authorities). Consequently, it is difficult to recognize that BP increases the citizens' accountability for public affairs. The representatives of both the ruling party and the opposition one of Bialystok have confirmed the residents' convictions by clearly stressing that the public officials (the mayor and the councillors) bears the accountability for the implementation and development of BP. However, the condition for the existence of civil society is on the one hand the responsibility of the citizens and, on the other hand, the responsibility towards the citizens (principal-agent), which is why the municipal authorities (the politicians) play such an important role by obtaining from the principal, i.e., the citizens, the legitimacy to rule and take political decisions, including decisions about the amount allocated to BP. Nonetheless, for the principal to effectively influence the political decisions, there should a civil society. Therefore, citizens fittingly want that the PB evaluation could be carried out immediately after the completion of the process associated with the implementation of particular projects, or even during the edition, rather than after the completion and settlement of a complete PB edition (in practice, it is usually 2 years). Only then, would there be a response to the difficulties and problems, and the citizens would obtain information about the processes that affect them. Furthermore, the learning of democracy has a chance to bring the most optimal effect, i.e. protection against committing the same mistakes in the next editions.

What is more, as shown by surveys, citizens have no explicit opinion as to whether their interests - in terms of its investments local – are best represented by politicians, administration, or are in a position to ensure their implementation. However, it is interesting to note that the respondents believe that the officials have virtually no influence on the implementation of local investments[15] (i.e. people who actually carry out the greater part of the activities leading to the implementation of local investment (organization of tenders, construction, contracting, etc.). In addition, there is a noticeable lack of responsibility of officials for the work, substantive unpreparedness and poor involvement, and all of this makes the sphere of public administration less respected and trusted.

Participation

What is needed to know about the citizens' participation in Poland it is its context. In general Polish citizens, apart the national and local elections (where the turnout does not exceed 50%) do not have many chances to civil activities. In the contemporary history of Poland, from 1989, there were only four national referendums. Also at the local level, the referendum is not popular as well, e.g. in Bialystok city it was organized only once.

Concerning participation in PB, the number of participants gradually increases. Partially it results from the enhance of citizens' involvement and knowledge, partially from enlargement of the scope of people eligible to vote (currently, even children living in Bialystok and having the parent' consent can take part in). In 2014, the turnout was 14% of Bialystok residents, in 2015 – 16.6%., in 2016 – 17%. However still the low participation constitutes an important PB problem. One of the main reasons are low, if not symbolic, funds allocated to PB (less than 1% of local budget). Some citizens would like to enhance the funds level up to 80%. Some citizens think that they have chosen their representatives that should take more about city' spending. Another say that and so the citizens will not have the influence on public affairs.

On the other hand, there are some changes that positively influence the citizens' participation, i.e. diversified forms of PB promotion, several possible ways of voting (traditional, online), the public officials' assistance in project proposal' preparation. The Bialystok counsellors believe that one of the possible solutions is to *show to citizens a physical participations' result near them, so they can walk every day near that result, see the result and they can realize that if they participate in the BP procedure they can influence on their neighbourhood. After they "learn" to participate in their closest surroundings, maybe they would more consciously take part in civic activities*.

Representativeness

In the democratic countries, the citizens chose their representatives in elections to local and central decision-making bodies to represent their interests hoping to provide the electoral representation that however may provide insufficient. This criticism provided the grounds for the representative bureaucracy theory[16] based on the premise that a diverse bureaucracy will lead to more responsive public policy in the face of lack electoral accountability. The passive representation exists when a bureaucracy's demographic characteristics reflect or mirror the demographic characteristics of the general population. If the passive representation leads to policy outcomes that reflect the interests of all groups represented, it is transformed to the active representation[17]. We consider that this division remains valid also for the participatory representation. The passive participatory representation exists when the PB participants' demographic characteristics reflect or mirror the demographic characteristics of the general population, whereas the active participatory representation leads to policy outcomes that reflect the interests of all groups represented.

The citizens agree that the active participatory representation of excluded groups (e.g. religious, ethnicity, gender, disability, age) is important, however they do not see the solutions promoting it. Some minorities (e.g. the elderly or disable people) having limited access to the information are ignored in PB procedure. *It is difficult to vote the project that is needed only for the small number of people, because the project gathering the more votes wins. Another parking or playground useful for more residents has much more chanced to be voted that the facilities for the disabled people. However sometimes the playgrounds or sport facilities do not fulfil the elderly needs.* Even if in citizens' opinion, the minorities' representativeness seems important, both surveyed councillors doubt ensuring it would be desirable and feasible. *I think this is not a good idea. There are too many categories of such kind of groups - separate budget for women and men, separate budget for dog owners and cat owners ?! In my opinion there is no possibility of selecting all the groups of interests which would have to be ensured. I think it is important and it is needed to implement those BP projects that are accepted by the majority of the citizens.*

The only exception where the active participatory representation can be ensured and what is more accepted concern the territorial minorities e.g. residents of particular city's districts. In Bialystok, this can be achieved thanks to the distinction between the projects general for whole city (250 000 PLN – 1 000 000 PLN) and the projects fulfilling only the needs of a particular district (less than 250 000 PLN). In Bialystok in 2016, 18 general projects and 21 district' projects are realized. For 2017 to ensure the more equal territorial representativeness 70% of PB resources will be equally distributed for each of 28 districts, resting 30% of PB will be designed for general city interest projects. Ensuring the participatory representation (the active and passive one) requires citizens' engagement, whereas the Bialystok's citizens in general do not except the need of taking decisions by themselves. The activity of the majority of them is limited to taking part in local elections. Only 20% of surveyed declared their engagement in PB procedures, referendums and consultation. However such turnout does not enable achievement nor passive neither active participatory representation.

Transparency

One of the most important factors enhancing the process of the strengthening democracy PB learning is the transparency of PB principles and procedures. It depends on the officials' and the politicians' decisions, subsequently influencing the citizens' participation. The analysis of evolution of the BP procedures in Bialystok enables to say that some positive changes were made. The transparency of the process results mainly from the detailed PB evaluation process. The preparation of the evaluation document was preceded by the open meeting with the Bialystok Mayor, the councillors, members of the PB city's team, authors of PB projects and other citizens. As a result of these discussions the new, much more transparent website devoted inclusively to PB (schedule, formularies, procedures) was created. Positively should also be considered the available information about the status of ongoing and finished projects posted on the interactive map enabling to easily find all needed information about the project.

Even if the PB changes should be appreciated positively, there are some important gaps of the whole process. First, it concern the lack of appeals against the committee's decision rejecting BP projects or the lack of explicit procedure criteria (approval of projects, evaluation). Second, under the current state of law, the local authorities are not obliged to follow the will of the citizens expressed in BP. It is not based on current standards and regulations but on a kind of social contract with the local community, declaring that the authority will actually put into force the results of the consultation (implement the selected projects by the locals). Third, the municipal authorities in our legal system are not able to bring an investment from BP found to an end fast enough and it raises questions in the society what usually end with the impression that citizens have been deceived. Fourth, the lack of transparency can be connected to the types of permissible projects. The soft project, financing or particular services (i.e. the flying trainings) for small group of beneficiaries can lead to the anomalies and some people can use them to extort money.

Moreover, there is an unresolved problem of low amount of the expenditure allocated for PB. The higher amount is designated to PB, the higher not only local spending participation (as mentioned above) but also the higher transparency. In consequence, the citizens possess the transparent information about the small part of local spending. The transparency of the local budget as a whole could be ensured via the performance budgeting based on the results indicators. However, the local government units in Poland are not willing to prepare, use for managerial purposes and especially make them available online, that would effectively enhance the transparency of the local spending.

Moral values

Moral values, such as justice, honesty, action in the public interest determine the attitudes and expectations of the citizens towards politicians, who should make optimal decisions[18]. In Poland, society does not trust neither the politicians, nor the bureaucrats, accusing the first for lack of truthfulness, the second for lack of competence. What is interesting, a ruling party representative asked about the moral values that should be the PB foundations, enumerated transparency (mentioned in subsection 3.4.) and fairness, however quickly he added that the question of moral values has really secondary importance because the priority is to increase the activity and the commitment of the local authorities, councillors and the citizens in the BP process. However apparently he has not noticed that the citizens' participation can be enhanced by shaping their attitudes and moral values. The second interlocutor that was asked the same question pointed on the transparency, but also on the need to prepare the ethical code applicable to all PB actors.

The PB procedure in Poland do not result from any central legislation, but from the local regulations, whereas the citizens' not trusting in the good will of the local politicians prefer that that PB principles were regulated by the central parliament act. As the consequence of lack of national legal provisions, the amount of resources allocated to PB is flexible. That is why, the PB promotion by the local politicians is often seen negatively, as the element of their electoral campaign. Moreover, it happens that the bureaucrats asked by citizens to decide about some public expenditure (e.g. the renovation of pavement) refuse, saying that this expenditure can be financed from PB. However the PB funds are very limited and require gathering the majority of votes. On the other hand, let's note that PB can positively influence on the citizens' moral values because some of them start to think and act for the collective interest.

Implications and conclusions

The paper presents the theoretical, optimal model of PB strengthening the democracy basing on the mutual citizens', bureaucrats' and representatives' learning of accountability, participation, transparency, representativeness and moral values. The existence of this model was tested on the case study of the Polish city (Bialystok). Our researches has confirmed that the citizens strongly believe in the idea of PB and would like to change their surroundings with this instrument of local governance. They see the chances to enhance citizens' accountability and participation. However the right to the transparent information, citizens' accountability, participation and representativeness are extremely limited due to the critically low expenditure percentage allowed for PB. Moreover, this positive thinking is enhanced by the politicians and officials who give these chances to participate and to take the decisions. They create the favourable conditions for PB development, such as transparent information about all elements of PB, differentiated forms of voting, an extensive information campaign and the vast scope of people entitled to vote, official consultations with citizens.

In consequence, the main problem concerns the politicians' and officials' attitudes and moral values, particularly the creation of the illusion of providing for citizens the

opportunities of participation and accountability, and in consequence enhancing the democracy, whereas the latter often are symbolic. PB imply the openness and the type of procedure that has been already almost unknown for relations between public administration and citizens in Poland, the country still with the traces of the post-communist reality. The creation of such illusion in some cases can result from more or less conscious manipulation of the representatives and/or the bureaucrats.

In consequence, referring to the research hypothesis the PB in the Bialystok case study, PB do not imply the success of the democracy, but rather only its failure that resulted in seeking the instruments aiming to enhance this democracy. What even worse, such illusion of citizens' participation and accountability can be even dangerous for the democracy. Under the cover of PB, using the illusion of the citizens' participation, it is easier to hide the allocation of the rest of public spending from the unconscious citizens' control. The further studies should concentrate on this danger, especially in the context other foreign experiences.[19]

Abstract

The paper presents the grounds for the wider project "*Participatory budgeting - success or crisis of local democracy? Comparative legal study*, aiming to explore what factors (dependent and independent from the policy makers) make from BP the instrument strengthening the local democracy and what are the barriers to fully exploit its potential. To this aim, we propose the theoretical model of the PB strengthening the local democracy. To test its validity, using the case of one of the Polish cities (Bialystok), we use the mix research method: the desk research, the qualitative and quantitative surveys and the qualitative interviews. The preliminary results have shown that PB do not imply the success of the democracy, but rather only its failure and the illusion of the citizens' participation.

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[11] *B. Damgaard, J.M. Lewis, op. cit.*

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[15] *Only 5% of respondents said that the administration (officials) represents their interests in the implementation of local investments.*

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REPORT ON THE XIV INTERNATIONAL SCIENTIFIC CONFERENCE "TAX LAW AND ITS POSSIBILITIES OF PREVENTION OF TAX EVASION AND TAX FRAUDS"

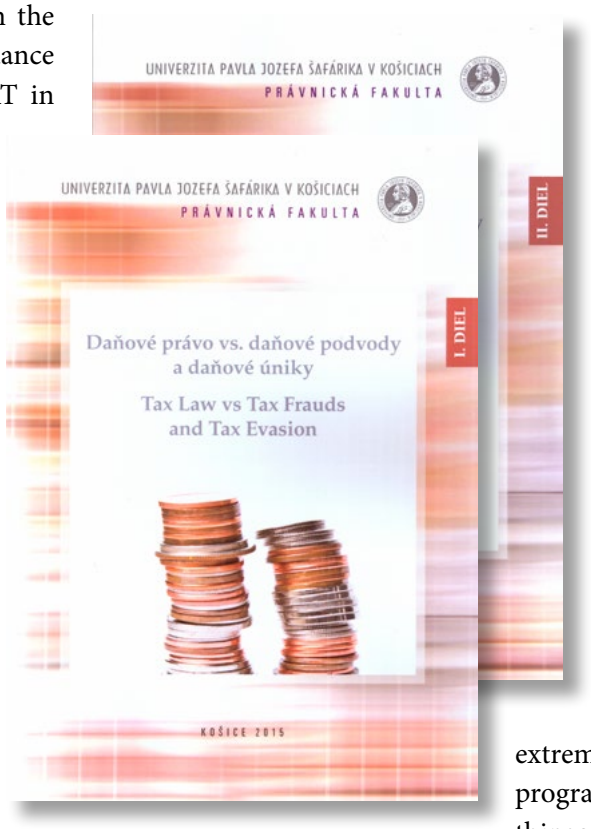
(14-16 September 2015, Štrbské Pleso, Slovak Republic)

The 14th International Scientific Conference devoted to the issue of *Tax Law and its Possibilities of Prevention of Tax Evasion and Tax Frauds* was held on 14-16 September 2015 in Štrbské Pleso in the High Tatras. Previous annual conferences bringing together representatives of the science and practice of public finance of Central and Eastern European countries took place in Bialystok, Brno, Vilnius, Košice, Grodno, Voronezh, Paris, Lviv, Prague, Győr, Bialystok, Omsk and Mikulov.

The co-organizers of the Conference were the Pavol Jozef Šafárik University in Košice, the Faculty of Law, Department of Financial Law and Tax Law and the Center for Information and Research Organization in Public Finance and Tax Law of Central and Eastern Europe Countries established at the Faculty of Law of the University of Bialystok. The conference was prepared by the Conference Organizing Committee composed of the following: Prof. JUDr. Vladimír Babčák, CSc. – Honorary Head of the Committee, Doc. JUDr. Mária Bujňáková, CSc. – Chair of the Committee, JUDr. Anna Románová, PhD – Secretary of the Committee, Ing. Karolína Červená, PhD, JUDr. Karin Prievozníková, PhD, JUDr. Miroslav Štrkolec, PhD, JUDr. Ivana Vojníková, PhD, JUDr. Jozef Sábo, Mgr. František Bonk and Ing. Ladislav Soliar. Approximately 100 representatives of doctrine from several dozen scientific centres from Slovakia, Belarus, the Czech Republic, Poland, Russia and Hungary took part in the conference. The conference proceedings were held in Slovakian, English, Czech, Polish and Russian.

The idea of the conference was to review thought and experience on the possibilities of prevention of tax evasion and tax frauds provided by tax law and related legal disciplines. Conference participants focused on the issue of the smooth functioning of the legal norms of tax law and carried out a review of individual measures to combat tax fraud at the national and European Union level.

The ceremonial opening of the plenary of the 14th Conference was conducted by the Chairman of the Organizing Committee, Prof. JUDr. Vladimír Babčák, CSc. and the Chairman of the Center, Prof. zw. dr hab. Eugeniusz Ruśkowski. The work of the conference participants took place in plenary sessions. The papers presented at the first session touched on issues such as the causes of tax resistance, the opportunities to prevent tax evasion and tax fraud in the Czech Republic, Russian tax avoidance instruments, the structure of VAT in the context of the possibility of escape from the tax, the issue of interpretation of Polish tax law provisions as an instrument of tax evasion and the theory and practice of tax evasion in Belarus. The meeting was chaired by doc. Petr Mrkývka. The future of VAT and the directions of the evolution of this tax in European countries was the next subject of lively discussion among the participants of the session. The topics of papers presented during the second session, which was moderated by Prof. Jan Głuchowski, included such issues as the transformation of tax law in CEE and BRICS countries, tax law of Russia: GAAR, CFC Rules and beneficiary owner, the system of tax law in Russia, the subject of tax fraud and the issue of combating tax fraud in the context of the need to maintain an adequate level of legal certainty.



On the third day of the conference two sessions were held. During the first session, speakers analyzed the problems of detecting tax fraud, tax monitoring as a means of prevention of tax evasion and tax fraud, penal sanctions in Polish tax law, the stability of the tax law, harmful tax competition in a globalized world and the management of the tax gap in the tax on goods and services as an instrument of limiting public debt. The session was chaired by doc. Michal Radvan. The second session of the day, chaired by Prof. Eugeniusz Ruśkowski, considered the issue of tax evasion, tax fraud and its penal consequences, tax security of the state: legal aspects, EU financial transaction tax and its possibility to prevent tax evasion in the financial sector and the obligations of financial Institutions under the tax law as an instrument for the prevention of tax evasion. After each panel, a lively debate was held in which the authors of the various papers had the opportunity to respond to the submitted questions and comments.

The fruit of the 14th International Scientific Conference is a monumental two-volume publication – a conference book devoted to the issues of Tax Law and its Possibilities of Prevention of Tax Evasion and Tax Frauds.

The conference organizers provided the participants the opportunity to participate in an extremely attractive tourist and cultural programme. It included, among other things, a chance to explore the historic region of Spiš, including the UNESCO World Heritage Site – Spiš Castle and the historic town of Levoča.

It was agreed that the 15th Anniversary International Scientific Conference will be held in Bialystok on 25-27 September 2016 and will address the issue of the "The Concept of Tax Codes. The fifteenth year of the Center". The 15th Conference will be co-organized by the Department of Public Finance and Financial Law and the Department of Tax Law of the Faculty of Law, University of Bialystok, with the participation of the Center for Information and Research Organization in Public Finance and Tax Law of Central and Eastern Europe Countries.

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REPORT ON THE INTERNATIONAL CONFERENCE "INTERDISCIPLINARY PROBLEMS OF CORRUPTION"

(16 December 2015, Bialystok, Poland)

On 16 December 2015 was held International Conference: "Interdisciplinary problems of corruption", organized by the Scientific Association of Financial Law at the Faculty of Law, University of Bialystok. The aim of the conference was a scientific debate on corruption. This is not only a scientific problem, but primarily social and political, and therefore, considered to be an appropriate extension of the subject of scientific debate, as it was done, creating an interdisciplinary conference. The conference was held under the auspices of the Dean of the Faculty of Law of the University of Bialystok, Bialystok Mayor, Dean of the District Bar Council in Bialystok, Podlaskie Province Governor, Regional Police Headquarters in Bialystok, the President of the District Court in Bialystok and Publishing Temida 2.

The ceremonial opening of the conference was conducted by Prof. zw. dr hab. Eugeniusz Ruśkowski - tutor of the Scientific Society of Financial Law, who presided over the work of the Scientific Committee, watchful over the organization of the conference. The conference consisted of a main panel of experts, during which the moderator was Ewa Lotko, M.A. a member of the Centre, and two student-doctoral panels. During the panel of experts the first speaker was a specialist in the field of public finance and tax law, Janusz Bonarski, PhD who gave a lecture entitled "The areas of risk and mechanisms of corruption in the tax system". Another expert lecture was the speech of Professor Wojciech Filipkowski titled "Politically Exposed Persons - an instrument against corruption clerical". Then Dean of the District Bar Council Kazimierz Skalimowski referred to the topic "Corruption in the judiciary", subsequently appeared appellate prosecutor Henryk Żochowski with the theme "Problems of corruption related to the EU funds". Expert panel ended the lecture of Emilia-Jurgielewicz Delegacz, PhD: "Prevention of and the fight against on the basis of the government program of anti-corruption for the years 2014-2019".

Great importance gained the presence of practitioners among the speakers who are not representatives of science but are confronted with the phenomenon of corruption at work and have an objective overview of the scale and complexity of the phenomenon. Practice was represented by an officer of the Central Anti-Corruption Bureau and the prosecutor Henry Żochowski discussing hazard areas and activities of the Central Anti-Corruption Bureau, including issues such as conflict of interest, interoperability of services and law enforcement agencies in the field of corruption offenses.

The second part of the conference constituted two student-doctoral panels during which was the exchange of views from various academic institutions including foreign ones. Students and doctoral students from the Jagiellonian University, University of Wroclaw, Adam Mickiewicz University and the University of Cardinal Stefan Wyszynski in Warsaw, Tbilisi State University, Ivane Dżawachiszwili or Vilnius University participated in them. In addition to interesting legal issues associated with the phenomenon of corruption such as public finance law, criminal law and philosophy of law, the speakers referred to the topics from the perspective of, inter alia, political science and history. One paper focused on the analysis of the phenomenon of the ethical dimension. The multidimensionality of the issues under consideration was also through the prism of their harmful effects both in terms of the institutions involved in this infamous phenomenon and in the context of the entire state and society. Students and doctoral students during that panel came to important and concrete proposals that corruption has a negative impact on the entire administrative apparatus, destroying the courage to maintain a high standard of integrity and to convince the public that corrupted governments cause a decrease in respect for legitimate authority. It was noted above that corruption degenerates environment in which operate private companies and it is also worth mentioning that corruption as institutionalized injustice causes jealousy and unjust accusations with which even honest politicians could be blackmailed.

Below are the most interesting topics presented at the student-doctoral panel:

- Patrycja Marczak - "Introduction to the topic of corruption - legal definition under the Act on the CBA, etymology, features a catalog of effects and basic principles of the fight against corruption";
- Adrianna Niegierewicz - "The scope of the notion of performing a public function in the interpretation of the offense of active and passive bribery";
- Magdalena Olchanowska - "Corruption in public procurement in Poland - threats and recommendations for the future";
- Marlena Żukowska - "Custom as a circumstance excluding illegality of accepting gifts by doctors";
- Lash Zarathustra - "Combating and preventing corruption in acts of international law";
- Maciej Letkiewicz - "Power and money - institutional causes of corruption";
- John Durko and Ireneus Rimoit - "Corruption in the public sector - the study of the statistical";
- Maria Górnicka - "Polish regulations on corruption in sport";
- Michael Nowak - "Corruption in Polish football";
- Peter Nasuto - "The phenomenon of corruption in the history on the example of ancient Athens";
- Grzegorz Marciniak - "Pecunia non omelet or financial and personal benefits of corruption in the public sector";
- Patryk Zabrocki - "Responsibility for violation of public finance discipline and corruption in the public finance sector - penalties and the rules of their measurement";
- Valdemar Maskevic and Sylwester Grunt - "Anti-corruption policy of Lithuania - plans and reality";
- Adam Rzetecki - "Anti-Corruption Regulations at the level of local government - characteristics and their significance".

To conclude, corruption is a complex phenomenon and difficult to investigate. Nevertheless, we believe that the diversity of approaches to the problem allowed participants to explore this multi-dimensional topic. We believe that the interdisciplinary organization of the conference gave it an interesting character and ensured gripping discussions. Scientific debate that took place during the conference resulted in the expansion of knowledge and conclusions. Specialists in criminal law the other disciplines agree that the greater the transparency of organizational structures in the country, the more effective enforcement of accountability for crimes of corruption and simplified administrative procedures - the less likely the appearance of corruption. In contrast, complexity, ambiguity and imprecision of tax law are definitely factors that increase the probability of activating more and more corruption.

Our common goal, as the scientific community, is that corruption should be perceived by the public as a real threat to the idea of a law-abiding state. We hope that this conference contributed at least a little to this idea.

We invite you to see the photos from the event on the conference website: www.korupcjakonferencjauwb.pl.

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THE SCIENTIFIC ACTIVITY OF THE FACULTY OF LAW AT THE UNIVERSITY OF BIALYSTOK ASSOCIATED WITH THE COUNTRIES OF CENTRAL AND EASTERN EUROPE

Among scientific activity connected with research conducted by Faculty of Law University of Bialystok in last year the following publications, lectures and participation in international projects can be mentioned.

Professor Katarzyna Bagan-Kurluta and Professor Piotr Fiedorczyk participated as national reporters in conference under the project "Dimension of Evidence in European Civil Procedure" (15th-16th January 2015, Maribor, Slovenia).

Andrzej Jackiewicz, PhD and Artur Olechno, PhD from Department of Constitutional Law participated in conference "Enhancing parliamentary democracy" organized by Chancellery of the President of Latvia (23rd-24th February 2015) assessing the report "Proposal made by Expert Group for Governance Improvement". On 16th October 2015 they participated in International Conference on "Implementation of the Constitution: experience and problems" organized by the Parliament of the Republic of the Lithuania, the Lithuanian Bar Association, the Mykolas Romeris University, the Institute of Constitutional and Administrative Law, the Department of Philosophy of Law and Legal History in Vilnius (Lithuania) with lectures "The Introduction to the Direct Application of the Constitution of the Republic of Poland of 2nd April, 1997" (Andrzej Jackiewicz, PhD) and "Practical Problems of Amendment to the Constitution of Ukraine of 1996" (Artur Olechno, PhD). They also participated in the study visit in Batumi (Georgia) at Shota Rustaveli State University with a lecture on the current issues of constitutional law with particular focus on constitutional judiciary (April, 2016).

Professor Teresa Mróz, Professor Sławomir Presnarowicz, Urszula Drozdowska, PhD and Maciej Pannert, PhD participated in conference "Problems of regulation and law enforcement in view of the development of the information society" organized by Yanka Kupala State University of Grodno (Belarus) on 5th March 2015.

On 2-4 July 2015 in Supraśl took place International Conference "Harmonization of private enforcement antitrust: a Central and Eastern European perspective" organized by the Faculty of Law, University of Bialystok

(the Department of Public Economic Law) and the Center for the Antitrust and Regulatory Study, the University of Warsaw (CARS).

Students from the Yanka Kupala State University of Grodno have participated for the first time in the academic year 2015/2016 in the courses of the German Law School, directed by Professor Ewa Guzik-Makaruk, organized at the Faculty of Law of the University of Bialystok in the cooperation with the Humboldt University of Berlin since 2012. This cooperation will be continued in the academic year 2016/2017.

Between 7-11 November 2015 in Berlin, took place the German-Belarusian-Polish Legal Seminar devoted to issues of the economic law, including the criminal economic law, co-organized by the School of German Law of the Faculty of Law of the University of Bialystok. In this Seminar has participated the students from the faculties of law of three universities: the Humboldt University in Berlin, the Yanka Kupala State University of Grodno and the University of Bialystok. The delegation of the Faculty of Law at the University of Bialystok, led by Professor Emil W. Pływaczewski, has composed of Ewa Kowalewska-Borys, PhD, Marcin Chomiuk (Coordinator of the German Law School), the PhD students: Iga Stansfield, Patryk Theuss and students: Katarzyna Ciągło, Sylwia Andrews, Łukasz Łubiejewski, Małgorzata Żukowska i Krystian Bartnik.

Anna Budnik, PhD participated in conference "State and Civil Society in Central and Eastern Europe Law, Politics, Economy and Society" organized by Gyor Széchenyi István University, in Hungary with the paper "The State and Higher Education in Poland". She also participated in the 4th NISPAcee Annual Conference in Zagreb (Croatia) "Spreading Standards, Building Capacities: European Administrative Space in Progress" with a lecture entitled "When the Government Says *No*. The Right to Privacy as an Exemption from Freedom of Information in Poland" (19th-21st May 2016).

Agnieszka Daniluk, PhD was an expert in project organized by Ministry of Foreign Affairs and "Canadia" Fundation in the implementation of the Act on the connection of communities in Ukraine. She implements a pilot project in the district of Vinnytsia in this regard. As part of the work she participated in four expert visits and two trainings. The effect of these works is the Strategy Development of the Vinnytsia district with leader – Sewerynowka community.

Professor Katarzyna Laskowska released monograph entitled "Criminality in Russia from the perspective of criminology and criminal law", Bialystok 2016, pp. 525.

Alina Miruć, PhD participated in the conferences related to the following book chapters publications (in Polish): "Civil society in uniting Europe (selected issues)" [in:] J. Posłuszny, Z. Czernik, L. Żukowski (eds.), "Internationalization of public administration, Warsaw 2015, "The cooperation of public administration with the society on the example of the Great Britain, Sweden, France and the Czech Republic (selected issues)" [in:] A. Mednis, (ed.) "The mission of the public - community. State. Studies in law and administration". Book dedicated to the memory of Professor Michał Kulesza.




INTERNATIONAL CONFERENCE
"INTERDISCIPLINARY PROBLEMS OF CORRUPTION"
(16 December 2015, Bialystok, Poland)


WYDZIAŁ PRAWA

UWB