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## MANDATORY ELECTRONIC COMMUNICATION WITH A TAX ADMINISTRATOR<sup>1</sup>

### Abstract

The purpose of this text is to present an overview of the evolution of digital communication in tax law and highlight major changes which recently occurred in the process of digitalization regarding the communication between a tax administrator and taxpayers when submitting a tax document. The first part of the article will point out leading elements of digital submissions and provide theoretical and functional perspective on characteristics of electronic communication. The second part of the text aspires to analyse sanctions resulting from breaching rules regarding the mandatory electronic submission of tax documents. This article will then discuss the varieties of sanctions as an outcome of enforcing the tax procedural rules regarding the mandatory electronic document submission.

**Key words:** Tax law, tax procedure, digitalization, electronic tax returns

**JEL Classification:** K34

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## 1. Introduction

Recently, the approach of public authorities to prioritisation of electronization in communication between taxpayer and tax administrator changed with the progress of the modern world's technological advances. Introduction of electronization in tax administration has given rise to many new issues in various aspects of tax administration and not only in electronic communication. This article focuses only on one of the impacts that electronization has on tax administration and that is the issue related to mandatory electronic submission of tax documents to a tax administrator. To begin with, nowadays in Czech Republic, **taxpayers must comply with the rule that requires that the submission of certain tax documents to a tax administrator must be electronic.** Therefore, certain steps in legislation are being taken (e.g. introducing a sanction for the non-compliance of the mandatory electronic submission) and these steps promise to ensure the enforcement of the new electronization-related rules in Czech tax law. Questions emerging from this topic are: what to do with taxpayers who do not comply with the rule requiring the mandatory electronic communication, how to sanction taxpayers who do not comply without making the electronization unpopular among taxpayers and without decreasing the effectiveness in tax procedure. Following chapter briefly summarizes the electronic communication between taxpayers and a tax administrator from the functional perspective starting with the introduction of the latest progress of mandatory electronic communication in the Czech Republic.

## 2. Electronic submission of tax documents

With the recent growth of the modern digital world come innovations which initiate changes in every aspect of tax law. Generally speaking, means of communication in tax law are one of a myriad of things which underwent a considerably big reform especially in the year 2008 when data boxes were introduced in the Czech Republic as the main way of communication with the tax administrator. Until then, the communication in tax procedure dominated paper forms. A data box can be defined as an electronic storage, which serves as a tool for communication among public authorities themselves, and between the public authorities and natural persons or legal persons [Smejkal 2009].

The act that launched the usage of data boxes was Act No. 300/2008 Coll., on the Electronic Acts and Document Conversion. To elaborate, a data box is a tool for an effective and quicker communication between public authorities and businesses or citizens not only in tax law. It substitutes the traditional paper form of submitting and receiving

legal documents, and it operates as an electronic portal to which one can log in with their own user information.

According to the previously mentioned Act, a data box is not mandatory to use when submitting a document to the public authorities in administrative procedures [Electronic Acts and Document Conversion Act, Art. 18]. However, in Czech tax procedure, which is almost entirely regulated by Act No. 280/2009 Coll., Tax code (hereinafter Tax Code), the usage of electronic means of communication is prioritized before others with the purpose of increasing the effectiveness of a tax procedure. The data boxes were merely a voluntary option to communicate with, until the Tax Code introduced a special rule regarding the data boxes in the year 2015. This provision stated that a taxpayer who decided or has been obligated to establish a data box must submit certain tax documents through a data box to a tax administrator [Tax Code, Art. 72(4)].

There are different types of data boxes which are either established voluntarily by a decision of a subject or mandatorily by law. That means that in the Czech Republic a legal person usually enrolled in a Business Register is obligated to have a data box, whereas for instance a natural person, who can also be an entrepreneur, is given a place for decision whether they want to have a data box or not [Electronic Acts and Document Conversion Act, Art. 4, 5]. On the contrary, the usage of data boxes for submitting a document in tax procedure is mandatory for everyone who has a data box, whether it was established voluntarily or obligatorily [Tax Code, Art. 72(4)].

The previous paragraphs of this article briefly introduced data boxes as a relatively new way of electronic communication with public authorities in general, however in Czech tax law, data boxes are not the only means of electronic communication, as there are even more ways how to submit a legal document electronically to a tax administrator which will be explained further on.

The electronic submission of a tax document (usually the one of a tax return) is carried out either through a data box or with the use of an “electronic tax portal”, which serves as an application for communication and electronic management of tax returns and other documents [Guidance of General Financial Directorate on mandatory electronic submission in terms of the Section § 72(4) of the Tax Code: 1]. This application provides tools for filling out a tax return and also serves as a tool for submitting a tax document to a tax administrator [Guidance of General Financial Directorate on mandatory electronic submission in terms of the Section § 72(4) of the Tax Code: 1]. To submit a tax document through this application it is required to use an electronic signature or a user identification

of a data box [Guidance of General Financial Directorate on mandatory electronic submission in terms of the Section § 72(4) of the Tax Code: 2]. The former means that before submitting, a document is signed electronically with an electronic signature which was formerly verified by a certain public authority. The latter case involves the usage of an electronic portal to fill out the tax return, but when submitting, the user will log in with their data box user information and a legal document is hence submitted via data box.

In summary, there are three ways of performing the electronic submission in an accepted form<sup>2</sup> of a tax document to the tax administrator:

- i. via data box,
- ii. with the use of the electronic tax portal which can take the form of submitting through the data box user identification or electronic submission with electronic signature,
- iii. with the use of the electronic tax portal without an electronic signature (this alone is not an accepted form of submission; hence an electronic signature must be submitted within 5 days of submitting a document, otherwise it is an invalid tax act) [Tax Code, Art. 71].

With this being said, in Czech tax law the term “electronic submission of a tax document“ means using a special electronic tax portal or a data box instead of implying the use of more traditional mechanisms such as e-mails which is not an accepted form of submission of a document [Ondrýšek 2016: 245]. Naturally, the communication between a tax subject and a tax administrator through e-mail would be considered a possible way of electronic communication. However, the electronic way of submitting certain documents (tax returns, etc.) is legally defined by a Tax Code as a submission through a data box or through an electronic tax portal. E-mail is however not out of the question, as it is used when submitting tax documents which do not constitute, change, or cancel legal rights and duties (which are usually amendments to a tax return requiring the accepted form of submission) and thus can be submitted via e-mail.

For the sake of completeness, besides the electronic way of communication, there are two others specified in a Tax Code, and these are:

- i. in writing,
- ii. orally,

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<sup>2</sup> Accepted form of submission is a rough translation of the Czech term „kvalifikované podání“ and is necessary when submitting a tax return and similar documents (submissions). On the contrary, for example amendments and such can be submitted also through e-mail which is not considered an accepted form of submission.

- iii. via data message (its specific ways explained above) [Tax Code, Art. 71(1)].

The tax documents which are meant to be submitted in these accepted forms (in writing, electronically, orally) are usually a tax return and other related important documents such as VAT control statements, reports, and tax register applications. These documents have notable impact on tax procedure as they constitute, change, or cancel legal rights and duties [Ondrýsek 2016: 242, see also: Response of the Tax Authority to Press Release of the Taxpayers Union]. As mentioned in the beginning of this article, a mandatory electronic submission of tax documents, which include, among others, tax returns or registration forms, is required, when a tax subject uses a data box or is mandated to an audit [Tax Code, Art. 72(4)]. Otherwise it can be submitted in writing. Then there are other documents such as amendments to a tax return which can be submitted in any form (e.g., e-mail).

Also, regardless of these cases, a VAT tax return must be submitted electronically in every case even when a data box has not been established. This specific rule results from Act No. 235/2004 Coll., Value added tax statute (hereinafter VAT Act) [VAT Act, Art. 101a(4)].

### **3. Sanctions for Noncompliance of an Electronic Submission**

Tax penalties in the Czech Tax Code can be divided into many categories. One of the main ways of division is to distinguish the type of sanctions which penalizes the breach of solely monetary obligations regarding the payment or evaluation of a tax (e.g. fine for late tax return submission or late payment) [Novotná 2019: 232]. The other category are the penalties for the breach of non-monetary duties (e.g. a penalty for non-compliance to submit a tax document electronically) [Novotná 2019: 232].

The fundamental idea of a tax regulation of data boxes aims to adopt electronic communication and to prioritize a quicker and more effective way of submitting tax documents. The Tax Code states that it is necessary to use a data box when submitting a tax document for those taxpayers who have had data boxes established, so the way of submitting a tax return must be electronic. A noncompliance of a mandatory electronic submission rule is followed by a sanction from the second category mentioned above [Tax Code, Art. 247a], not only for the support of the electronic submission of documents in the future but also for a necessity of a sanction as the negative consequence following a breaching of a rule and thus ensuring enforcement of law.

The first approach to sanctioning taxpayers when not submitting electronically was an instant penalty [Tax Code, Art. 247a] for non-compliance of mandatory electronic

submission but only in cases when the type of the submitted document was on the list of tax documents considered without defects [Guidance of General Financial Directorate on mandatory electronic submission in terms of the Section § 72(4) of the Tax Code: 13]<sup>3</sup>. These would be accepted in paper form but the penalty was imposed too. Paper submission of the type of tax documents not on the list was not sanctioned but the tax administrator would notice a taxpayer to correct the form. When the taxpayer did not correct the wrong form, the submission was invalid. A taxpayer with established data box who delivered a e.g. tax return in writing, was imposed a fine which ensured the maximum use of electronic communication and also is sometimes considered as a “payment for costlier administration” [Rozeňnal 2019: 425]. This monetary sanction was set from the year 2015 in the Tax Code for not submitting certain tax documents electronically [Tax Code, Art. 247a]. There was no place for administrative discretion as this penalty originated ex lege upon law breaching, and the amount of the penalty was fixed and stated by the law [Tax Code, Art. 247a]. In summary, if a taxpayer with an established data box submitted a paper tax return on the list mentioned previously, a tax administrator then declared a fine to the taxpayer without prior notice to correct their tax return, other type of documents not on the list were just invalid.

A case which was brought to the Supreme Administrative Court of the Czech Republic changed this approach. It indirectly answered the question which is - does non-compliance of a mandatory electronic submission causes the invalidity of a tax act? In this case, it was determined that the format<sup>4</sup> (e.g., PDF, XLM) is not relevant and a tax administrator is obligated to accept every electronic form of a tax document, as long as it is readable and processable [Supreme Administrative Court of the Czech Republic, 9 Afs 383/2018 – 40, Section 30]. Which could imply that a tax administrator when deciding a validity of a tax act should prioritize its content rather than its form. The thing is that a tax administrator usually prefers an XLM document [Supreme Administrative Court of the Czech Republic, 9 Afs 383/2018 – 40, Section 24]. The reason behind this is, that an XLM document is easily processed to an information system, whereas other formats (such as PDF) burden the tax administrator to manually transfer the information (similar as with paper form).

Submission in the wrong format thus does not contribute to the effectiveness of tax administration, when speaking about the processing of information from submitted documents, despite it being the electronic way of submission. From this fact some authors

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<sup>3</sup> The List of Tax Documents Considered without Defects even when not Submitted Electronically.

<sup>4</sup> The word „form” means the way of submission of a document (i.e. paper or electronic form). The word „Format” then implies „the structure of a file that tells a program how to display its contents” (i.e. PDF, XML) [File format, online].

imply that that is exactly the reason why should such defect be considered as major and cause invalidity on its own [Rozeňnal 2019]. That would be supported by the argument that the teleological interpretation clearly suggests, that the legislation aims to implement mandatory electronic submission which is necessary to be prioritized [Rozeňnal 2019]<sup>5</sup>. But the argument of the court was that when there is a defect in the format of a document (for example the document is in a PDF format), according to the law, a tax administrator shall not send a notice to correct it, but he should accept it [Supreme Administrative Court of the Czech Republic, 9 Afs 383/2018 – 40, Section 27]. It is because such defect is not major and does not cause the impossibility of processing the document [Supreme Administrative Court of the Czech Republic, 9 Afs 383/2018 – 40, Section 27]. The same should apply to cases when there is a tax document submitted in writing but should have been submitted electronically<sup>6</sup>. The wrong format or form is not such a major defect which would cause the tax document to be invalid, thus a notice to correct was not possible. To sum up, this notice normally serves as an alert to a taxpayer to correct major defects of the submitted document in order to be valid [Tax Code, Art. 74(3)]. So if the defect lies in non-compliance of a mandatory electronic submission, in this case, the tax administrator shall not notify the taxpayer to correct the document, but will accept the originally submitted document in writing because such defect is not major and thus notice cannot be sent [Supreme Administrative Court of the Czech Republic, 9 Afs 383/2018 – 40, Section 27]. Nevertheless, this does not change the fact that the taxpayer shall be fined<sup>7</sup>.

The thing is that when there is a minor defect, a tax administrator cannot send to a notice to correct the submitted tax document as it is only for the cases with major defects [Tax Code, Art. 74(1)]. It is necessary to firstly point out that in Czech tax law there are two types of defects [The Explanatory Memorandum on Act No. 283/2020 Coll., which changes the Act No. 280/2009 Coll., Tax Code, as amended, and other relevant Acts]. One that is not major and does not cause the impossibility of processing a tax document by a tax administrator [The Explanatory Memorandum on Act No. 283/2020 Coll., which changes the Act No. 280/2009 Coll., Tax Code, as amended, and other relevant Acts]. The other type of defect is major and if left uncorrected, renders the tax document invalid [The

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<sup>5</sup> I am convinced that prior legislation was aiming to consider it a defect with invalidity as a consequence, when there is a provision which states that wrong form is not a defect only in certain documents which are listed on the internet (i.e. documents not listed should be invalid if in wrong form [§ 74(4) Tax Code]. That is practically everything besides VAT documents.

<sup>6</sup> It is still processable by a tax administrator. A tax administrator shall not notify the taxpayer but accept it also in written form.

<sup>7</sup> Recently, the tax authorities do not impose this fine because the taxpayer has no chance to correct it after prior notice which cannot be sent [Guidance of General Financial Directorate on mandatory electronic submission in terms of the Section § 72(4) of the Tax Code: 13].

Explanatory Memorandum on Act No. 283/2020 Coll., which changes the Act No. 280/2009 Coll., Tax Code, as amended, and other relevant Acts]. The defect in wrong form or format is considered a minor defect, as long as the document is readable and processable, the tax administrator will accept it [The Explanatory Memorandum on Act No. 283/2020 Coll., which changes the Act No. 280/2009 Coll., Tax Code, as amended, and other relevant Acts].

As this penalty was in specific cases imposed without the chance to correct the defect and also notices could not be sent to correct the wrong form, therefore, the amendment to a Tax Code changed the aspects of this penalty for the year 2021 [The Explanatory Memorandum on Act No. 283/2020 Coll., which changes the Act No. 280/2009 Coll., Tax Code, as amended, and other relevant Acts]. The change relates to a necessary prior notice from a tax administrator before fining them, confronting the taxpayer, and giving them a possibility to correct the original submission of a tax document to electronic submission according to law even if the defect is not considered major. Hence, only after that notice, the previously mentioned penalty will be declared and only if the taxpayer does not amend the defects. The penalty amount will also be decreased by half. There will be no list dividing the type of documents and every wrong form will be alerted to be corrected by a notice. That does not mean however that the wrong form will be considered a major defect, but instead the Tax Code will state that the previously mentioned notice will serve as an alert to a taxpayer to correct major defects and also the wrong form [The Explanatory Memorandum on Act No. 283/2020 Coll., which changes the Act No. 280/2009 Coll., Tax Code, as amended, and other relevant Acts]. That ensures that when the tax document stays uncorrected in wrong form even after a notice from a tax administrator, the tax document will still be valid. However, there will be a penalty, as mentioned previously, which will enforce liability to submit a document electronically.

To summarize, from the year 2021, the non-compliance of mandatory electronic submission will be characterized as follows:

- wrong form (i.e. paper form) does not cause invalidity of a tax document,
- is a minor defect
- is fined only after the taxpayer does not correct the wrong form after a notice from a tax administrator
- the amount of a penalty will be decreased by half.

Furthermore, the electronic submission of tax documents related to VAT has a special rule and the previously mentioned monetary sanction shall not affect a taxpayer who is liable to

submit a VAT document electronically but fails to do so [Guidance of General Financial Directorate on mandatory electronic submission in terms of the Section § 72(4) of the Tax Code: 2]. The Tax Code is put aside by a special rule in the VAT statute which states that a submission of a document related to VAT is accepted only in electronic form otherwise the tax act is invalid [VAT Act, Art. 101a(4)]. If a taxpayer submits a VAT return in writing, a tax administrator will notify the taxpayer to submit a tax return electronically again. If they do not comply the tax administrator will stop the tax procedure which is a negative outcome which could be perceived as a type of sanction. That means in VAT cases the defect which lies in wrong form is major and causes invalidity.

To sum up, if a taxpayer has a data box or is mandated to an audit and the submission is not electronic, until now, the penalty was declared in some cases immediately upon breaching the mandatory electronic submission rule without a possible correction by a taxpayer [The List of Tax Documents Considered without Defects even when not Submitted Electronically]. Now the amendment of the Tax Code, effective as of 2021, provides a taxpayer with a possibility of correction based on a notice by a tax administrator, that informs the taxpayer of defects [The Explanatory Memorandum on Act No. 283/2020 Coll., which changes the Act No. 280/2009 Coll., Tax Code, as amended, and other relevant Acts]. Only then, if it is not corrected, a penalty will be declared and in significantly decreased amount [The Explanatory Memorandum on Act No. 283/2020 Coll., which changes the Act No. 280/2009 Coll., Tax Code, as amended, and other relevant Acts]. Needless to say, a tax procedure should be effective and quick, and it is reasonable that a document which is readable and submitted in one of the accepted forms should be valid. One disadvantage of this is, that even though the taxpayer will be fined, accepting an incorrect form (paper form) might not benefit the process of prioritizing digitalization in tax law.

With that being said, in Czech tax law there are two negative outcomes which could follow the breaching of the rule regarding mandatory electronic submission. One is to fine a taxpayer with a penalty (practiced with minor defects). The other negative consequence is that a tax document with a major defect is not going to be a valid legal act and a tax procedure will not continue. The question is that is an incorrect form a major defect only if the law specifically states so? Or is the wrong form or format major defect on its own, causing the invalidity of a tax document which is implied in the purpose of the provision itself and that is to maximize electronic processing of submitted documents? That is the case of VAT related documents when it is stated that a wrong form of a VAT document causes the invalidity of a legal act and thus is considered a major defect. But are there

really such differences in defects if it lies in wrong form but occurs in different types of taxes?

Also, with the process of digitalization in tax law being relatively new, the approach in Czech Republic to law violation is not necessarily repressive. Taxpayers who comply with the rules and submit a tax document electronically can be granted immunity to other rules such as – extension of a term to submit a tax return, receive an overpayment sooner than those who submit in a wrong form, etc. [Overview of the Most Important Changes in the Area of the Ministry of Finance for the year 2020]. This motivational approach is best described by the word “promotion”, rather than “enforcement”, which enhances the non-repressive nature of the encouragement of using digital tools by taxpayers [Tuláček 2020: 57]. Which approach is the most effective is, however, an issue related more to psychology, sociology, and economics, rather than law [Tuláček 2020: 57]. In either way, *“the promotion or enforcement of the compliance of tax duties should maximize the effectiveness of tax evaluation in the right amount and simultaneously it should minimize the administrative costs for the tax administrator and also for the taxpayer”* [Tuláček 2020: 61]<sup>8</sup>.

However, there was an amendment [Act No. 283/2020 Coll., which changes the Act No. 280/2009 Coll., Tax Code, as amended, and other relevant Acts], mentioned in previous paragraphs, which will ensure a major change in the process of accepting a tax document, which has a defect, either in form (electronic or written) or format (PDF, XML), effective as of 2021. If a tax document will not be submitted electronically (and should be), a tax administrator will be obligated to send a notice even if a defect lies in form or format [The Explanatory Memorandum on Act No. 283/2020 Coll., which changes the Act No. 280/2009 Coll., Tax Code, as amended, and other relevant Acts]. Only after that notice, a penalty can be declared [The Explanatory Memorandum on Act No. 283/2020 Coll., which changes the Act No. 280/2009 Coll., Tax Code, as amended, and other relevant Acts]. That does not change anything about the wrong format or form to be a major defect, but the amendment ensures that a notice to rectify defects shall also be sent in cases when there is a noncompliance of mandatory electronic submission [Tax Code, Art. 74, effective as of 2020]. Still if not corrected, the tax act will be valid.

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<sup>8</sup> It may be argued, that the sanction for the non-compliance of mandatory electronic submission could be harsh for those taxpayer which are unable to use electronic tool for valid reasons (e.g. no internet access, deficient technological skills) [Tuláček, 2020: 172]. This could be solved by adding a valid reason to a provision in law statute, which would grand some taxpayers the immunity from sanctions. In Austrian law, there is similar provision, which narrows the obligation to file electronically, if the taxpayer is unable to do so [Surcharges and penalties in tax law, Chapter 12 Austria, 177].

A major defect lies in form and format only when regarding VAT documents. That is because a VAT statute states that only an electronic form is a valid legal act and the Tax Code rule about minor defects if put aside.

#### 4. Conclusion

The process of digitalization in tax procedure regarding an electronic submission of tax documents came a long way to settle in the minds of taxpayers. Public tax authorities still struggle with taxpayers who do not comply with the rule stating a mandatory tax submission in the cases when a taxpayer has a data box or with VAT documents. Sanctions also changed over time. Not only the conditions of fining a taxpayer changed when a notice will precede a fine (until now they were fined immediately after not submitting a document electronically) also, the acceptance of a wrong form (paper form) is a sign that the tax procedure is still not fully digitalized in this way and focuses more on the content rather than on a medium. The Supreme Administrative Court of the Czech Republic in previously mentioned case also decided (accordingly to law) in favour of minimizing the negative impacts of noncompliance of the mandatory electronic submission rule as it was stated that such defect is not causing the invalidity of a tax document. That decision however is the image of law statutes that are effective as now.

Still there is a big step in supporting digitalization in communication with tax authorities in VAT documents as the amendments to a Tax Code, effective as of 2016, consider the wrong form and format a major defect which is followed by invalidity of a tax document. In Czech Republic, the approach to the sanctioning the breaching of rules regarding digitalization in tax procedure is a division of defects of a tax act into minor or major. It is still unclear exactly what turn things will take in the future and according to my opinion one of the ways in which the government should contribute to clarity and simplicity in tax laws is to unite all types of tax documents and their defects in form or format either as a minor, which shall be fined, or major, which shall result in invalidity and thus unify the sanctioning of digitalization rules. From the year 2020 the Tax Code still will not cause invalidity when in wrong form or format and the argument from the explanatory memorandum is, that the wrong format or form document is still processable. But so are VAT documents which however will not get such pass. I am inclined towards the invalidity

as a consequence, in all types of taxes which would be after prior notice to correct the wrong form<sup>9</sup>.

Other than a monetary sanction or negative outcomes, such as invalidity of a tax document, the public tax authorities tend to prioritize electronic communication and enforce mandatory electronic submissions in a way in which they also provide positive outcomes, such as benefits in tax procedure, which are the advantages in tax procedure and do not necessarily relate with digitalization. The electronic submission is also supported in a way that will make the submission user-friendly, when the government launches a portal which should be very similar to internet banking, providing taxpayers with a complete overview of which taxes are due or have already been submitted.

It seems that Czech law tends to minimize sanctions related to digitalization as it chooses positive outcomes and benefits or launching a user-friendly tax portal rather than fining a taxpayer with monetary sanctions. This could very well raise awareness and popularity among taxpayers about the digitalization and its advantages but that is a hypothesis yet to be answered.

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<sup>9</sup> I am even able to imagine all this without a monetary sanction for non-compliance of mandatory electronic submission (with the invalidity as a consequence) as this would cause the document being not submitted thus there would be other sanctions imposed – e.g. late payment fine.

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