

## Electronic Revenue Registry in the Czech Republic

MICHAL RADVAN & JIŘÍ KAPPEL

**Abstract** In the Czech Republic there is an on-going debate and for the last year also legislative work on a Revenue Registry Act. This article introduces the system of revenue registry which should be applied in the Czech Republic, critically analyses fundamental provisions of the draft bill and summarizes advantages and disadvantages of the regulation and its strength, weaknesses, opportunities and threats. Article deals with a hypothesis that implementation of revenue registry will fulfil the goals of the proposed regulation i.e. new source of data for tax administration, restriction of grey economy, more efficient tax collection, especially of income tax and VAT and also elimination of market inequalities in the Czech economy.

**KEYWORDS:** • electronic revenue registry • tax law • tax • Czech Republic

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## **1 Introduction**

In the Czech Republic there is an on-going debate and for the last year also legislative work on a Revenue Registry Act (RRA). The draft bill (Chamber of Deputies, 2015, <http://...>) is recently (November 2015) in the last stage of bill passing in the Chamber of Deputies of the Parliament. The first reason for introduction of revenue registry is a lack of instruments of the Tax Administration to fight tax evasions. The Ministry of finance assumes that in 2012 incomes of 162 billion CZK were not reported (Chamber of Deputies, 2015, *Závěrečná...*). The second reason is the elimination of unfair competition based on gain of undue advantage by not paying the value added tax (VAT) and income tax. Third is restriction of a grey economy and fourth more efficient tax collection (Chamber of Deputies, 2015, *Návrh zákona...*). The system of revenue register in the Czech Republic is founded on several principles which distinguish it from other systems based on cash register or other systems of electronic evidences. The revenue registry is based on principles of electronisation, on-line access of tax administrator to information, the possibility of voluntary public involvement into oversight and open hardware and software solution (Chamber of Deputies, 2015, *Návrh zákona...: 15*).

The goal of this text is an introduction of the RRA which should be applied in the Czech Republic, critical analysis of fundamental provisions of the draft bill and summary of advantages and disadvantages of the regulation and its strength, weaknesses, opportunities and threats. We work with a hypothesis that implementation of revenue registry will fulfil the goals of the proposed regulation, i.e. new source of data for tax administration, restriction of grey economy, more efficient tax collection, especially of income tax and VAT and also evening out market inequalities in the Czech economy. We partly follow up on Radvan's article (Radvan, 2013), which deals with an obligation to issue a receipt. Methods applied are: primarily description to introduce the situation *de lege lata* and the draft bill, analysis for critical evaluation of the draft bill and partly we also use comparison (with Croatian model) and finally a synthesis thanks to which we can present our conclusions and confirm or disprove the hypothesis.

## **2 Administrative Law Regulation of Issuing Receipts**

For many years not only in the Czech Republic the customers meet during purchase of goods or provision of service with a question whether they wish to issue a receipt. The negative answer usually means that the goods or services are cheaper because the business entity will not pay the income tax and if it is a VAT payer then neither VAT (Radvan, 2013).

The obligation of business entity to issue a document about purchase of goods or a service is governed by Trade Licensing Act (§ 31/14). Obligation to issue the document does not apply automatically, but only when the customer asks for a

receipt. In such a case the document has to identify legal form of the entity, name or name and surname, personal identification number, date of the purchase of goods or service, the kind of goods or service and price. This benevolent legal regulation did not apply always in the past. During summer in 2005, particularly from July 1st to September 18th were business entities obligated to issue a document about purchase of goods or provision of service every time the price was higher than 50 CZK (about 2 EUR).<sup>1</sup> This obligation was cancelled by law No. 358/2005 Coll., about providing state guarantee for security of a loan provided by company EUROFIMA. It was a typical rider to the bill that was proposed by Committee for economy, agriculture and transport of the Czech Senate (Senate, 2012). The Committee referent, senator Balabán, in this regard stated that *“we all have realized that thanks to the regulation there are problems such as impossibility of purchase of goods for price over CZK 50 through food, cigarette and other automats. This problem is so enormous that even government realized how problematic this part of the act is; it was said that the government proposed to redress it by repealing this part of the act ... even though we consider riders unsystematic we have decided to solve this situation by proposal of this measure ... If everything goes well it could be possible that this act comes into effect during September”* (Senate, 2005). Based on this statement, there was a discussion in the Senate about constitutionality of riders. Senator Kubera for example said: *“The government also prepared a bill which deals with a matter of prostitution. But there will be serious problem, there is not any service provided by prostitute which costs less than CZK 50. It means that these “girls” will need to issue a receipt or have a cash register on their backs. And you all probably understand that having a cash register on E55 is no fun.”* (Senate, 2005). The general obligation to automatically issue the document about purchase of goods or provision of service to the customer does not exist; it is only up to the customer to request the document.

Similarly according to the Consumer Protection Act (§ 16/1) the seller is obligated to issue a receipt only at the customer’s request, indicating the date of purchase of goods or provision of service, the kind of good or service and a price the good was sold for or a price the service was provided for. The seller also notes the identification data containing name and surname of the seller or the company name or the trade name, personal identification number unless a special law states otherwise. The obligation to issue the document according to Trade Licencing Act and Consumer protection Act can be met by one document.

It is necessary to add that from July 1st, 2005 to December 31th, 2007 there was an obligation of sellers to register individual payments through the cash register with fiscal memory and to issue and give the customer a cash receipt or sales slip. These sellers were retail sellers and entrepreneurs in catering services according to Trade Licencing Act. Certain ways of payment (peddlers, street sales and sales through vending machines) were excluded. The exception was applied also for sale of securities, public transportation tickets, prepaid cell phone cards, daily

press and periodicals and other goods if the price was lower than CZK 50 (cca EUR 2). These payments could be recorded in simplified regime as a one daily payment for all payments made that day.<sup>2</sup> This obligation was cancelled by the Budget Stabilization Act.

The seller is also obligated to keep records about price of the sold goods,<sup>3</sup> however this has no direct impact on the customer. According to effective administrative law regulation it is only up to the customer whether he requests the document about purchasing of goods or provision of service. The customer should be aware of this right especially in connection with eventual claims, return of goods etc.

### **3 Financial and Tax Law Regulation of Tax Document Issuing**

The Accounting Act does not deal with tax documents but with accounting documents. Accounting documents are conclusive records which must contain, inter alia, identification of the accounting document, the content of accounting transaction and its participants, a sum of money or information on the price per unit of measurement and the amount, the time of realized transaction and a signature of the person who is responsible for the particular accounting transaction and a signature of the person responsible for posting. An entity who is a subject to Accounting Act can use as accounting documents especially tax documents. On a base of a directly applicable EU regulation and in accordance with national law<sup>4</sup> are stock exchange listed corporations obligated to use International Accounting Standards governed by EU law for accounting and financial statements.

The regulation of tax documents is customized by the VAT Act. The taxpayer is obligated to issue a tax document in 15 days from the day of taxable supply.<sup>5</sup> The tax documents are in particular regular tax documents, simplified tax documents, summary tax documents, repayment schedule, payment schedule etc. The obligation to issue tax document, payment receipt, payment schedule etc. is general, meanwhile to issue simplified tax document is the taxpayer obligated upon request at the moment of taxable supply or immediately after accepting the payment, if the payment precedes the moment of taxable supply. The issuing of simplified tax documents is very common and goes on de facto whenever the taxpayer carry out the taxable supply by cash remuneration, by card or cheque. The tax documents are also issued when the taxpayer provides services through electronic instruments and the providing is conditioned by payment and when the payment is made by bank transfer.

The only condition is the maximum amount for taxable transactions which, including value added tax does not exceed 10,000 CZK (about 400 EUR). Simplified tax receipt cannot be issued for the sale of goods which are subject to excise duty on alcohol and tobacco products, but at others than fixed prices for the final consumer. So that even in a case of purchase of tobacco products at the price

shown on the duty stamp or the purchase of alcohol in retail a simplified tax document can be issued.

Natural persons who are not subjects pursuant to the Accounting Act can instead of bookkeeping keep so called tax records; i.e. simplified records, which are regulated by the Income Tax Act (§ 7b). By the tax records is understood evidence for the purpose of calculating the taxable income and actual income tax. The tax record has to include information about property, debts, incomes and expenses. It is also possible to find other evidence obligations through the Accounting Act such as obligation to keep income evidence and evidence of claims the lump sum expenses are applied.

According to the Tax Code (§ 97) there is a special record-keeping obligation of the taxpayer who makes cash payments as a part of a business or self-employment. The tax administrator is in justified cases authorized to impose an obligation upon taxpayer to keep special records on the condition that such action is necessary for proper detection and determination of tax.

Similarly as in the case of administrative law regulation and in the case of financial and tax law regulations there is an automatic obligation of a seller (taxpayer) to issue a tax document. If the taxable supply is not higher than 10,000 CZK issue of a simplified tax document is often an exception rather than a rule. The customer should however be aware of their rights and require the document.

#### **4 Practical Implication of de Lege Lata Regulation**

From the above mentioned is apparent that the customer has to require the document about purchase of goods or provision of service from the seller by himself. But the customer either does not know it or he does not require the document in order to get goods or services cheaper than with the document.

The seller who does not issue the document also arguably does not record the income into his taxable income and therefore he does not tax part of this income. According to current personal income tax rate the seller can save 15 %, respectively 22 % and in the case of corporate income tax the saving is 19 %. The seller can also save on value added tax. So every seller can afford "to offer a discount to the customer", and customer tends to accept this offer (Radvan, 2013).

Lower price is one of the reasons why the customer accepts this bargain. The second reason is a fact that the customer does not need a document to set his own tax obligation. A natural person – employee does not have according to current regulation any opportunity to use his real expenses for a reduction of the tax base or tax duty.

De lege ferenda there are several options available in foreign jurisdictions; the cost of commuting into employment, purchase of clothing, shoes etc. could be included

into real expenses. In most cases natural persons – entrepreneurs do not need to record expenses because they can apply generous lump-sum expenses.

According to the Income Tax Act there is an option to apply lump sum expenses instead of real expenses. This applies to those who have personal income from business, another self-employment or in limited cases to entities with other income.<sup>6</sup> The most benevolent were legislators in the case of income from business and another self-employment; they allowed taxpayers to apply lump-sum expenses in the amount of:

- 80 % of income from agriculture, forestry and water management and income from craft business activities;
- 60 % of income from other skilled trades;
- 30 % of income from rental of business property;
- 40 % of other income from self-employment;

From the above mentioned amounts are derived lump-sum expenses of rental income (30 %) and other agricultural income (80 %). The taxpayer is logically obligated to record income even if he applies lump-sum expenses.

There are not any doubts that the application of lump-sum expenses can be very effective and for taxpayers also useful. If there is a tax inspection, it is focused on income and not on expenses. Tax administration is undoubtedly easier and cheaper. However, inappropriately high lump-sum expenses cause problems. In the following chart is outlined the development of lump-sum expenses from the effectiveness of the Income Tax Act (1993), we can clearly see that the amount of lump-sum expenses is increasing:

Type of income	Till 2004	2005-2008	2009	2010	From 2011
Agriculture, forestry and water management income	50 %	80 %	80 %	80 %	80 %
Crafty skilled trades income	25 %	60 %	80 %	80 %	80 %
Other skilled trades income	25 %	40 %	60 %	40 %	60 %
Other business income	25 %	40 %	60 %	40 %	40 %
Intellectual property income	30 %	40 %	60 %	40 %	40 %
Other income	25 %	40 %	60 %	40 %	40 %
Rent/lease income	20 %	30 %	30 %	30 %	30 %

Chart 1: Lump-sum expenses (Boháč, 2010)

The explanatory memorandum to the Income Tax Act says that the main purposes of lump-sum expenses are practical aspects and administrative simplification, rather than providing tax relief (Boháč, 2010). This might have been true in 2004 but later the lump-sum expenses became more political than economic issue. Today are the lump-sum expenses for many taxpayers primarily tax relief. As a problem we also see different levels of lump-sum expenses for various types of

income. As an example and with a certain simplification; a mason does not usually have any real expenses; he builds from material that was provided by the investor, he uses masonry tools which are not very expensive and can be used for a long time, he has to buy work clothes and he probably uses car for commuting. On the other hand an owner of a restaurant has to pay rents, wages, he has to buy goods etc. Its margin according to experience from the author's surroundings is about 20 %. In this case the lump-sum expenses are set correctly, meanwhile a mason saves a lot of money because taxes paid by him are unfairly low. We could name also other similar professions such as car mechanics, chimney sweeps, plumbers etc.

Even partial and in most cases completely marginal changes adopted during the last years did not bring a change. On the contrary; benefits arising from the implementation of lump-sum expenses lead to another problem which is known as "Svarcsytem" (i.e. misclassification of employees as independent contractors). It brings benefits to "employees" as well as "employers" in the form of tax savings, as well as the payment of social security and health insurance.

## **5 The Necessity of de Lege Ferenda Regulation**

It is obvious that issue of a document is rather rare than common in the Czech Republic and it is not even required by law. Even though we are in the area of administrative, financial and tax law (Radvan, 2014), the imperative standards anticipated by the regulation are not implemented. Nevertheless dispositive character of financial law norm is one characteristic of modification of financial law regulation. So that, it is entirely up to the customer whether he requests issue of the document. In practise there is no reason to request issue of the document (apart from civil law aspects; return of goods, complaint etc.) because without the document the goods or services are cheaper. What is more, employees do not need the document to define their tax obligation; the tax law does not provide employees with any benefit. Also self-employees do not need the document because they can according to tax law apply generous lump-sum expenses.

## **6 The Draft of Revenues Register Act**

The Council of European Union in its recommendation for the Czech Republic for 2015 pointed out the need to fight tax evasion (European Commission, 2015). The Czech Republic has prioritized this recommendation and revenue registry is one of the measures that should prevent fiscal losses. Currently the Czech legal system does not allow the Tax Administration to gather and analyse data in the real time. Therefore oversight is executed only ex post and by analysing reported documents which is less effective and more expensive. Consequently lack of effective oversight significantly decreases amount of fiscal income and by that prevents the government to finance investments, public services and administration (Chamber of Deputies, 2015, *Návrh zákona...*: 19). However obligations imposed by

regulation mentioned in parts 2-3 of this article are extended only in terms of form and mode.

As was said above, the main goal of revenue registry is an improvement in acquiring information used for tax collection. Other goals are reduction of grey economy, more effective tax collection and balancing current market inequalities (Chamber of Deputies, 2015, *Návrh zákona...*: 15). Drafters of RRA were almost exclusively inspired in the Republic of Croatia and its Cash Transaction Fiscalization Act (also Fiscal law) which is in power since 2013. However in the Czech Republic similar measure (RRA) was introduced with several differences (Hornochová, 2015). In this part of the article are summarized major characteristics of proposed regulation, confronted differences with the Croatian Fiscal law, provisions critically evaluated and potential weaknesses indicated.

At the beginning bill drafters were choosing the form of realisation between three foreign models of fiscalization - Slovak, Hungarian and Croatian. The Slovak model is essentially classic offline system of cash registers as it was once (see above) implemented in the Czech Republic. A disadvantage of this system is that it does not allow the tax administrator to oversight cash transactions continuously and thus it does not allow effective tax administration. Another disadvantage is also higher cost of certified cash register. However Slovak government as well as others moves to e-government – it has newly introduced optional virtual cash register for certain subjects. The Hungarian model combines offline cash registers with fiscal control unit which comprises of SIM card through which data are sent to the Tax Administration every thirty minutes. The advantage of this system is that data are sent periodically and it is provided with many safety fuses. On the other hand it is more costly and complicated than other systems. The Croatian model eliminates disadvantages of both above-mentioned systems. It provides the Tax Administration with continuous online flow of data so that ex post change of these data is limited. The obligations imposed could be fulfilled via commercially available hardware and upgraded software or simple applications. These are the reasons why the Croatian model was chosen for fiscalization of cash transactions in the Czech Republic (Chamber of Deputies, 2015, *Závěrečná...*: 45 and further). Croatian Fiscal law was evaluated by EC as „*highly relevant measure to fight tax evasion and fraud and improve tax collection...*“ (European Commission, 2014). Therefore the Croatian model addresses precisely needs of the bill drafters and Czech financial administration *largo sensu*.

Considering the more effective tax collection goal it is important to reveal what effect Croatian Fiscal Law has on the amount of reported revenues. Academic articles claim that the sector of catering reported 40 %, business sector 14 % and lawyers almost 5% annual increase in sales in 2013. This effect cannot be connected with the economic growth because GDP decreased by 1 % in 2013. We also consider important criterion the public support, which states that 93% of Croatian public support the Fiscal Law (Tot, Detelj, 2014). As the Croatian



minister of finance Lalovec said, reported income of self-employed individuals increased by 35 % according to tax returns for income tax in 2013 (Lalovac, 2015). On the other hand it is necessary to understand that the above mentioned positive changes could be caused by other factors even though we consider the criterion of reported revenues more reliable than theoretical tax obligations or actual tax income.

One of the other declared goals of the draft bill is reduction of grey economy.<sup>7</sup> Schneider estimates that in 2014 was the average size of shadow economy in EU 18, 6 % of GDP. The Czech Republic is surprisingly below the average of shadow economy with 15, 3 % of GDP meanwhile the shadow economy in Croatia is almost two times larger – 28 % of GDP (Schneider, Raczkowski, Mróz, 2015). It is a disputable whether an application of measure similar to the Fiscal law in the Czech Republic will have the same impact as in Croatia considering the size of shadow economy is significantly smaller. Czech Supreme Audit office (SAO) reckons that VAT gap caused by illegal economy is only 7 billion CZK. Another 42 billion CZK gap is caused by accounting distortion and tax avoidance of the business entities and that shall remain unaffected by the RRA (NKÚ, 2014). The estimations of SAO and Schneider raise serious doubts about the possibility of fulfilment of this goal. On the other hand (bearing in mind subjectivity of this argument) the authors meet with attempts to carry out transactions illegally on daily basis.

Another goal of the new legislation is to even out market inequalities, because the business subjects can gain relative competitive advantage by withholding income and not fulfilling their tax obligations against those who fulfil them. Unfortunately it is difficult to quantify market equality and competition, therefore this goal is evaluated in the context of particular provisions.

The object of revenue registry is a cash transaction of taxpayer which meets three following legal characteristics:

- Subjective characteristic means that the payment is an income of income tax payer (both legal and natural entities).
- Formal characteristic requires that the cash transaction is made by banknotes or coins, cards, cheques, bills of exchange, vouchers, alternative currencies etc. Payments via bank transfers, collections, letters of credit nor any similar payment methods are not subjects to revenue registry.
- Material characteristic is fulfilled if the qualified income originates from business, it is not sporadic or subject to flat-rate tax and recipient is an income tax payer. Annulments and alterations are registered as transactions with negative value.<sup>8</sup>

In this part of the draft there are provisions almost verbatim adopted from the Fiscal law. Registered transaction is widely defined and we consider that

beneficial because in the past narrow definitions were bypassed – e.g. restriction on cash transactions. The legal certainty is strengthened by link to the subjects of income tax and in the institute of binding opinion, which is specially adapted for the purposes of the bill. In a case that subject is not certain whether he receives payments under revenue registry he can ask for the binding opinion and the Tax Administration define whether the payment is to be registered and if so, whether standard or simplified procedure applies.<sup>9</sup>

The law specifies several absolute exceptions which are founded on the more stringent regulation and obligations that certain subjects are required to comply with. Other exemptions are based on the absence of need to impose obligations to fulfil the purpose of the law. The first mentioned exempt subjects with public licences e.g. on financial and energetic market. The second listed exemptions deal with incomes of public service, government and similar corporations that have not any reason to breach their reporting obligations. There is also an exemption until the tax identification number (TIN) is assigned and ten days after that. Government also has authority to issue an ordinance which may contain other exemptions justified by disabling or hindering effective or efficient execution of business activity if obligations are imposed, providing that these exemptions shall not threaten purpose of revenue registry.<sup>10</sup>

We positively perceive relatively small number of exemptions and their justification, but we warn against an arbitrary increase in their number and range. This should be done carefully and with understanding that otherwise could be effect of revenue registry undermined, compliance expenses rise and potential for tax evasion and avoidance can expand. To similar result came discussion that took place during “Právnícký podzim” at the Faculty of Law, Charles University in Prague. Boháč concluded that exemptions do not breach the equity principle if they are well-founded, proportional and rational (Januš, 2015). During same discussion the question of exemption of advocates was raised. Representatives of the Bar Association argued that revenue registry could endanger data and privacy of their clients. Those concerns were not found relevant, because the scope of data required by revenue registry is not for that purpose sufficient. We also do not deem security breaches and information leaks as likely simply because those cases do not occur in Czech Tax Administration. Moreover, after implementation of the Fiscal law Croatian lawyers reported revenues annually higher by 5 %, which can suggest that advocates are acting on selfish motives.

After the taxpayer finds out that his incomes are object of revenue registry he has to be aware when his actual obligation to register cash transactions applies (see transitional provisions and temporarily excluded revenues). Before that he shall request and obtain authentication data which serve as a login into web of the Tax Administration. Then he has to file information about his business premises. Following that the Tax Administration shall issue taxpayer his certificate which he is requested to sing his cash transactions with.<sup>11</sup> There are several differences from

the Fiscal law. The certificate is issued free of charge which could be understood as a measure to lower cost of the system and therefore eliminating another obstacle for small businesses. On the other hand the certificate in Croatia cost only 40 EUR per 5 years. Second difference is a lack of specification of required data about business premises in RRA compared to Article 19 of the Fiscal law. We believe that Croatian approach strengthens legal certainty and that information such as business hours, address and type of business activity could improve effectivity of tax administration.

Subject who performs registered transaction in standard procedure has two major obligations. Firstly he is required to send an electronic XML message with prescribed particulars. This obligation is to be fulfilled automatically by software of his cash register or computer. Second major obligation is to issue a receipt for a customer who is however not required to take it. Therefore term issue has to be interpreted as giving the customer opportunity to take the receipt.<sup>12</sup>

In contrast with the Fiscal law RRA does not contain obligation of the buyer to take and keep issued receipt after leaving the business premises. The Fiscal law also grants authority to the Tax Administration to request displaying of the issued receipt.<sup>13</sup> In our opinion, this is one of the major weaknesses of Czech RRA, because this obligation (if enforced) effectively prevents tax evasion based on agreement between buyer and seller to conduct transaction without VAT. Other type of tax fraud that could be prevented by this instrument is based on reusing of receipts that were not taken by buyers.

Receipt issued and electronic message sent to the Tax Administration must contain TIN, and identification of business premises and cash register, number of receipt, date and time of issue, total amount, security code, information whether standard or simplified procedure is applied and also other information required for VAT purposes. Scope of data required by revenue registry is not significantly larger than a scope required by other regulation discussed above. Electronic message is also required to contain signature code of the subject. After afore mentioned data are delivered to the Tax Administration a fiscal code is issued and sent back to the subject. This code proves that the transaction was registered by the Tax Administration.<sup>14</sup> The limit response time between attempt to send the data to the Tax Administration and receiving the fiscal code must be set in order to prevent delaying business activity. The draft bill contains provisions allowing issuing a receipt without the fiscal code when limit (minimum of two seconds) of response time is breached.<sup>15</sup>

When the limit response time is breached, special error procedure is used. This breach could be caused e.g. by technical failure of cash register, unstable internet connection or temporal unavailability of web of the Tax Administration. In these cases is connection not established and fiscal code cannot be issued and sent to subjects register. Therefore on receipt is not fiscal code, but only signature code.

Subject is required to send electronic message about all performed transactions as soon as possible, but at latest in 48 hours since connection is re-established.<sup>16</sup>

It is likely that there will be conflict of interests between a need to issue a receipt to customer as soon as possible and a duty of subject to set the limit response time in order to register the transaction. As for the limit response time, it could be set by the discretion of the subject with only two restrictions. Firstly, limit response time shall not be shorter than two seconds (compared to four seconds in the Fiscal law). Secondly, the subject is forbidden to set the limit response time which mars the purpose of the revenue registry. On the other hand we do not believe that special error procedure will be used regularly, because electronic message itself is according to deputy minister Hornochová only 8 kB large (Otázky Václava Moravce, 2015). In our opinion special error procedure effectively refutes fears based on idea of immediate sanction for every failure to register transactions.

Procedural exception from standard is simplified procedure which allows subjects to issue receipt without fiscal code and register the transaction in five following days.<sup>17</sup> There could be found one of the most important advantages of the Czech draft, because even simplified procedure is concluded electronically. Unlike in RRA, in the Fiscal law are transactions in simplified procedure registered in the certified bound receipt book. From this perspective the Czech regulation is obviously a leap forward.

The act prescribes which transactions can be registered by simplified procedure. Apart from that government is authorized to issue an ordinance in which other exceptions are specified. Also the material criterion can be used and the Tax Administration can upon request of the subject grant individual exception.<sup>18</sup> Similar effect can also be obtained by binding opinion. However we believe that afore mentioned exceptions should be granted only when disproportionate, irrational or unreasonable consequences of strict application of the law threaten.

Yet another requirement that subjects have to fulfil is displaying the notice informing customers of an obligation to register transactions and issue receipts.<sup>19</sup> To our mind this obligation does not burden subjects in any way, because similar notices have to be display in relation to selling alcohol or tobacco. It is also a duty which can be easily overseen and enforced. Moreover it motivates the customer to check whether a receipt is issued with fiscal code.

Subject of the revenue registry has not only obligations, but also rights. One of them is to receive upon request data sent to the web of Tax Administration.<sup>20</sup> This provision may provide new resource of data for an analysis and management of his business.

Oversight of compliance with obligations imposed by RRA is conducted in two ways which differ from each other in overseeing subject.

- a) Oversight by public authorities: according to the act has general authority the Tax Administration and authority to oversight of fulfilling obligations also has the Customs Administration. Those authorities can carry out test purchases that can be described as a factual procedure during which they inspect whether the subject displays the notice, registers the transaction via electronic message and issues the receipt with the fiscal code. Test purchase is a procedure subsidiarily pursuant to the Tax Code. Afore mentioned authorities have competence to spend public resources, however the act stipulates that if nature of the contract allows authorities can withdraw from it.<sup>21</sup> We consider institute of test purchase an effective instrument that allows administration to perform inspection of wide range of subjects. Nonetheless there are situations for which is test purchase unsuitable. First of those is situation when goods or services are spent or lose their value by conducting the transaction itself, e.g. plumbing services or assembly of furniture. Others are simply too expensive to justify use of test purchase. Last type of transactions in which is the test purchase futile are unregistered transaction that are initiated by the customer.

Afore mentioned Tax code is in relation to RRA used subsidiarily - meaning that authorities may use other procedures of Tax Code in order to oversee. Other public authorities are required to cooperate with tax administrators, hereby is meant e.g. the Czech Trade Inspection which can execute its primary authority in subject's premises and reveal breach of duty imposed by RRA. Such a breach has to be reported to the Tax Administration.<sup>22</sup> These provisions confer number of oversight instruments to relevant authorities, however range of instruments is not as nearly wide as in Croatia, because the Fiscal law also regulates cash transaction between fiscalization subjects and cashier maximum. With that is connected business bank account in which must subject transfer cash over cashier maximum.<sup>23</sup> The Croatian Tax Administration can therefore analyse and compare databases of registered transactions and deposits on bank accounts. In contrast with the Fiscal law, RRA does not allow such an effective online analysis, because the Czech Tax Administration has to ask banks for cooperation in every individual case. Unfortunately not even Croatian analysis by using connected databases of registers and accounts cannot uncover subject who conduct their business without any license or registry.

- b) Public oversight: important role in oversight of compliance with obligations can also play customers. Apart from a traditional institute of suggestions are there introduced two new. First of them is verification of the receipt via SMS.<sup>24</sup> It is perhaps pity that customers do not have more possibilities than only SMS. The Fiscal law allows in Article 27 verification via web-inquiry. What we believe could be even more

popular is verification via QR code. There is another weakness, thanks to an amendment in the Chamber of Deputies verification message does not contain information whether is transaction registered in standard or simplified procedure. We believe that an absence of the fiscal code without this information may cause chaos among customers. Second new institute is receipt lottery in which can customers take part by sending fiscal codes or even receipts itself via both mail and web. Prize pool shall be paid from state budget and lottery organized by the Ministry of Finance. This instrument enables public as well as the Tax Administration to verify authenticity and completeness of receipts, bill drafters also intended receipt lottery as a source of new data.<sup>25</sup> Slovakia has a positive experience with this institute because it caused increased tax collection by 7 or 8 billion EUR from September 2013 till March 2014. Slovak government estimates that this increase was the highest in small and medium businesses (Pfeiffer, Ursprung-Steindl, 2015). Therefore we believe that both receipt lottery and test purchase can be an effective oversight instrument.

There are several offenses that could be sanctioned pursuant to RRA. Sanction has to be individualized by gravity of caused consequences, public harmfulness, motive and other aggravating or mitigating consequences. When imposing sanctions the Tax Code or the Offense Act is subsidiarily used and the sanctions are imposed by the Tax Administration. There is also a possibility to liberate or exculpate oneself, if it is proven that every effort to prevent the breach of the RRA has been made. The Act also states that offences can be pursued only in one-year subjective and three-year objective preclusive period.<sup>26</sup>

Natural person not engaged in business that severely aggravates or mars registry of revenues shall be fined not more than 500 thousand CZK. However the fine is not limited from below and does not have to be imposed at all – the Offense Act also allows imposing reprimand.<sup>27</sup> The offense is constituted only when behaviour is serious enough, e.g. making fraudulent software.

Administrative delict can be committed only by natural or legal person engaged in business. General rule states that all of afore mentioned subjects who severely aggravate or mar registry of revenues commit the delict. Special rules apply to the subjects that have an obligation to register revenues and fail to comply with obligations to send an electronic message or issuing a receipt. Afore mentioned subjects shall be fined. Two other administrative delicts are based on failure to display a notice or careless handling with authentication data or certificate and responsible subjects shall be fined not more than 50 thousand CZK.<sup>28</sup>

As a sanction ultima ratio the Act establishes injunctions - sealing the premises or banning the subject from conducting business activity. Those measures shall be imposed only when there is an exceptional breach of law e.g. systematic ignorance

or circumvention of imposed obligations. The Act prescribes that these measure are enforced till subjects prove that the breach has ceased and authorities decide so.<sup>29</sup>

It is debatable whether aforementioned sanctions are proportionate and whether obligations can be effectively enforced. Unlike RRA, The Fiscal law fines are limited also from below. Otherwise are the sanction similar, however we have to consider that exchange rate is 3.5 HRK/CZK. The Fiscal law also allows punishment of customer who fails his duty to keep a receipt after leaving premises and to present it upon request of the Tax Administration. It also allows punishment of responsible persons in breaching legal entity.<sup>30</sup> We believe that regardless of domestic criticism are sanctions introduced by RRA proportionate and moreover authorities have discretion to take into consideration specific circumstances of a case.

Controversial obligation of customer to keep a receipt has not been implemented in RRA. Janovec agrees with this approach, because *“a supervision over this obligating is practically unrealistic and a customer cannot be blamed that e.g. he does not have enough time to wait for a receipt”* (Janovec, 2015). This argument is problematic because it firstly ignores preventive function of the obligation, secondly a waiting for receipt will last only several seconds (see limit response time) and thirdly this obligation is one of very few possibilities to punish an agreement between a subject and a customer on not registering the transaction. In the end we believe that it is necessary to mention public criticism of injunctions which is based on argument that business activity could be banned at the whim will of the Tax Administration. This criticism is using misleading argumentation, apart from the fact that the injunctions are basically temporary they are to be imposed only for the most severe transgressions.

The RRA is accompanied by the draft bill of Act on Amendments of Certain Other Acts which brings significant changes in three other Acts. Into Income Tax Act on is added provision which introduces 5000 CZK tax credit for subjects who register their transactions pursuant to RRA for the first time.<sup>31</sup> By this amendment the bill drafters reacted on criticism of business chambers and associations who argued that revenue registry costs may endanger small businesses. We agree that this measure partly refutes that argument, however it does not deal with situation when small business needs more cash registers. On the other hand purchase of this device may be under certain conditions applied as real expenses and therefore deducted from the tax base.

The most significant amendment affects the Act on VAT, because on catering services will be newly applied 15 % tax rate in contrast with current 21 % rate. However this change does not include accessory services or those including serving alcohol or tobacco products.<sup>32</sup> Explanatory memorandum states that this measure mitigates negative consequences of revenue registry caused by enforcement of tax duties. The bill drafters assume that RRA could cause 20 %

increase in prices and potential unemployment in catering industry. This argument is clearly futile because lowering the rate means the prices should increase by 15 % which can have devastating effects nonetheless. There is also information from businesses that they are planning to increase prices by 20 % regardless of the amendment of the Act on VAT (Gabal, 2015). Ad absurdum it also sends a clear message to other industries that those who do not pay taxes will have the VAT rate lowered. With argumentation of the drafters refuted we believe that this amendment is caused only by political pressure.

Last significant amendment of other Act is decreasing an administrative fee for the binding opinion on 1000 CZK.<sup>33</sup> We believe that this change is well-reasoned and clearly beneficial, because this institute improves legal certainty.

The most important change undertook RRA in Chamber of Deputies, where deputy Klačka proposed postponement of legal effect of the regulation for several industries. The Fiscal law came into effect gradually in three phases which was also in the original RRA. However after the change the regulation comes into effect on the first day of the eighth month after its publication in Collection of Acts and it shall be effective only for catering services and accommodation. Then, after three months, retail and wholesale shall be included. After another year the revenue registry is prescribed for the rest of businesses apart from traditional crafts and e.g. wood, textile, paper or cosmetic industry, because on those shall the Act apply after another three months.<sup>34</sup> That means that if the Act is published in January 2016 the last category will register transactions pursuant to revenue registry in spring 2018. It is worthy of notice that in autumn 2017 general elections take place. Therefore we cannot be certain that revenue registry will in the end apply for the last category of subjects. Taking into consideration that this change was proposed by the deputy of minor government party we conclude that reasons are chiefly political and this change is focused on potential electorate. We also find this approach in conflict with legal principle of equity among subjects.

## **7 Conclusion**

In this article we examined existing legal regulation of issuing documents and the government draft of Revenue Registry Act which is now in the last stage of passing in the Chamber of Deputies.

The main goal of introduced draft bill is to gain new information relevant for tax administration. Compared to the regulation *de lege lata*, the RRA brings variety of instruments. As the most important we consider database of registered data itself. These data shall be sent to the Tax Administration by obligated subjects. Therefore we consider this goal fulfilled. On the other hand the extent of required information by the Croatian Fiscal law is considerably wider.

Second goal which has been set is restriction of grey economy. Also in this case we presume that this goal can be fulfilled by the regulation. The regulation brings the Tax Administration new instruments to oversee compliance with obligations of



the subjects. A question which is not answered to our satisfaction is the recent size of Czech grey economy and its potential for reduction. In this respect it seems that the estimation of the Ministry of Finance is in comparison with the data of SAO at least questionable. Moreover the size of grey economy in the Republic of Croatia and the Czech Republic is diametrically different; therefore the absolutely same effect cannot be expected. It is even possible to challenge the used quantification by VAT gap.

The third goal of the regulation is to eliminate market inequalities which are caused by unfair competition advantage based upon tax evasion. This goal can be potentially fulfilled but only if the obligations set by RRA were strictly enforced. The draft bill itself grants competent authorities instruments which allow that, but the question is to what extent they will be able to use them.

The last goal set by the bill drafters is more efficient tax collection. In our opinion there could be progress because revenue registry can repressively as well as preventively affect the obligated subjects. The implementation of RRA can result in increase of VAT and income tax revenue as was shown above, but the long term effect is conditional upon consistent oversight and enforcement. What data from SAO also proved is a fact that most of the VAT gap is caused by business tax planning and avoidance. In our opinion, preventing that would be even more important step than revenue registry from fiscal point of view.

We believe that there are several weaknesses in the draft bill. Firstly, not all instruments were taken from the Fiscal Law therefore we cannot expect same results. For example, it will not be possible to monitor balance in cash register and the transfer into predetermined account. This and other problems might cause higher administrative expenses of the Tax Administration because it will not be able to continuously analyse cash flow through inter-connected databases. Another significant missing factor is the obligation of customer to take and keep a receipt. This could stimulate customer's awareness of the necessity to register the revenue and to issue a receipt (or document). Other problem of revenue registry is an inability to test purchase certain types of goods or services. We also see as a problem which cannot revenue registry prevent in a situation when the tax evasion is suggested by the customer itself. Last but not the least problem of revenue registry is unsystematic coming into the effect, respectively temporary exclusions of certain industries, which is also justifiably criticized (Januš, 2015).

Therefore the hypothesis that the implementation of revenue registry fulfils goals of the regulation, i. e. new source of data for tax administration, restriction of grey economy, more efficient tax collection, especially of income tax and VAT and also elimination of market inequalities in the Czech economy was confirmed only partly.

Although we found that revenue registry could be beneficial, it cannot solve the true source of tax evasion which we believe is an ignorance or negligence to fiscal needs of the state. Those needs are in fact essential aspects our society cannot exist without – such as public services or functional state.

Strengths	Weaknesses
On-line source of information Increased awareness of the need to pay taxes Minor entry costs	Negative public perception Permanent postponement of act efficiency Absence of several important instruments of the Fiscal law
Opportunities	Threats
Potential to increase extent of required data and to create interconnected databases Additional services for subjects	Threat to damage economy Potential inability of authorities to utilize provided instruments

Chart 2: SWOT Analysis

In the future, it would be beneficial to utilize the potential which RRA provides by collecting data. These data could be analysed by the subjects as well as by administration in order to make business and tax collection more effective. Because of the above mentioned it would be useful to widen the range of provided information such as identification of person or employee who registered the payment (operator in the Fiscal law), or kind of good or service which was provided.

Future of the bill is recently (November 2015) uncertain. The parliamentary opposition obstructs the third reading of the bill in the Chamber of Deputies. Nevertheless, Government holds firm majority and we do not doubt that the bill will be passed. However every obstruction delays RRA coming into effect.

#### Notes

<sup>1</sup> See § 31/17 Trade Licensing Act, effective till 18 September, 2005.

<sup>2</sup> See Act no. 215/2005 Sb.

<sup>3</sup> See § 11 Act no. 529/1990 Sb.

<sup>4</sup> Regulation (EC) No 1606/2002, § 19a Accounting Act.

<sup>5</sup> See § 26/1 VAT Act.

<sup>6</sup> See §§ 7, 9, and 10 Income Tax Act.

<sup>7</sup> Although the bill drafters referred to Schneider, it is debatable what exactly they meant because Schneider makes clear distinction between shadow (illegal) and grey (semi-legal tax planning) economy. Unfortunately in the Explanatory Memorandum those two terms are used promiscue.

<sup>8</sup> See §§ 3, 5, 7, 8, and 9 RRA. See also Chamber of Deputies, 2015, *Návrh zákona...*: 35-38.

<sup>9</sup> See § 32 RRA.

<sup>10</sup> See § 12 RRA. See also Chamber of Deputies, 2015, *Návrh zákona ...*: 41-46.

<sup>11</sup> See §§ 13-17 RRA. See also Chamber of Deputies, 2015, *Návrh zákona ...*: 46-49.

<sup>12</sup> See § 18 RRA. See also Chamber of Deputies, 2015, *Návrh zákona ...*: 49-50.

<sup>13</sup> See Art. 26 Fiscal Law

<sup>14</sup> See § 19 RRA. See also Chamber of Deputies, 2015, *Návrh zákona ...*: 52.

<sup>15</sup> See §§ 20-21 18 RRA. See also Chamber of Deputies, 2015, *Návrh zákona ...*: 52-53.

<sup>16</sup> See § 22 RRA. See also Chamber of Deputies, 2015, *Návrh zákona ...*: 53.

<sup>17</sup> See § 23 RRA.

<sup>18</sup> See § 10-11 RRA. See also Chamber of Deputies, 2015, *Návrh zákona ...*: 40-41.

<sup>19</sup> See § 25 RRA.

<sup>20</sup> See § 26 RRA.

<sup>21</sup> See § 24, and 33 RRA. See also Chamber of Deputies, 2015, *Návrh zákona ...*: 54-57.

See also §§ 5/3, 7/2, 78, and § 80 Tax Code.

<sup>22</sup> See § 33-34 RRA. See also Chamber of Deputies, 2015, *Návrh zákona ...*: 18, 64.

<sup>23</sup> See Art. 28-29 Fiscal Law.

<sup>24</sup> See § 27 RRA. See also Chamber of Deputies, 2015, *Návrh zákona ...*: 58-25.

<sup>25</sup> See § 35 RRA. See also Chamber of Deputies, 2015, *Návrh zákona ...*: 18, 64-65.

<sup>26</sup> See § 30 RRA.

<sup>27</sup> See § 28 RRA. See also Chamber of Deputies, 2015, *Návrh zákona ...*: 58-59.

<sup>28</sup> See § 29 RRA. See also Chamber of Deputies, 2015, *Návrh zákona ...*: 59-60.

<sup>29</sup> See § 31 RRA. See also Chamber of Deputies, 2015, *Návrh zákona ...*: 62-63.

<sup>30</sup> See Art. 34-35 Fiscal law.

<sup>31</sup> See Art. I Změnového zákona. See also Chamber of Deputies, 2015, *Návrh změnového...*:5.

<sup>32</sup> See Art. II Změnového zákona. See also Chamber of Deputies, 2015, *Návrh změnového...*:6 and 19

<sup>33</sup> See Art. III Změnového zákona

<sup>34</sup> § 7 RRA. See also Chamber of Deputies, 2015b: 2.

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