

Taxes on Communal Waste in the Czech Republic, Poland and Slovakia

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ABSTRACT Waste management at the municipal level in almost all European countries is financed by local taxes, usually by special charges, sometimes by the property tax. This article deals with these possibilities. The main goal of this paper is to confirm or refute the hypothesis that there should be one local tax (charge) and its revenue should be used for communal waste management. To achieve this goal, a critical analysis of existing legal regulation of taxes and/or charges on communal waste and a comparison of existing tax / charge schemes concerning communal waste in the Czech Republic, Slovakia, and Poland is used. Synthesis of the gained knowledge especially in the area of taxpayers, correction components and rates allows introducing the optimal system of legal regulation of communal waste taxation.

KEYWORDS: • communal waste • tax • charge • Poland • Slovakia • Czech Republic

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1 Introduction

One of the tasks of municipalities is to provide services for its inhabitants. The portfolio of these services should be rather wide so that these inhabitants are satisfied and want to stay living at the territory of the municipality. All inhabitants are willing to have a connection to the infrastructure (gas, water, sewerage, electricity). This infrastructure is in many cities owned by the municipality itself, and the users are expected to pay charges or better prices for these services. In other countries (incl. the Czech Republic), the infrastructure is owned by private companies (even often owned by the municipality), and users pay regular price. Other services provided by the municipality like constructions and maintenance of pavements and roads, public lighting, playgrounds, kindergartens and schools, public transportation, etc. are “for free”. At least according to the opinion of major population. But municipality must have enough money to cover the expenses. The most common financial source is then property tax.

And how is communal waste management financed? Should it be funded via property tax? The answer is not general, not only in the Czech Republic. There can be a special public payment for the waste management, or it is possible to increase the property tax and not to collect any payment for the communal waste. Of course, it is possible to use money from the centrally collected taxes (PIT and CIT, VAT) or state dotations, too. But at this moment it is not possible to talk about local taxes and usually communal waste management is financed from the local taxes revenue.

The main goal of this article is to confirm or refute the hypothesis that there should be one local tax (charge) and its revenue should be used for communal waste management. To achieve this goal, several scientific methods are to be used: critical analyses of existing legal regulation of taxes and/or charges on communal waste, comparison of existing tax / charge schemes concerning communal waste in the Czech Republic, Slovakia, and Poland, and if there are more options, comparison of these individual taxes and charges, and synthesis of the gained knowledge to confirm or refute the hypothesis and introduce the optimal system of legal regulation of communal waste taxation.

The level of existing scientific literature dealing with this issue is rather limited: there are several textbooks on tax law in national languages describing communal waste taxation (Mastalski, 2015; Babčák, 2010; Radvan, 2008), and a few articles in conference proceedings (Radvan, 2013), but they are very descriptive, too. Moreover, the Polish regulation is quite new and there is a limited number of publications dealing with this topic at all (for example Popławski, 2012; Popławski, 2013). Scientific articles in prestigious journals are rather focused on the economic perspectives, but not legal (for example Mikušová, Nemeč,

Soukopová, 2014; Soukopová, Vaceková, 2015; Nemeč, Soukopová, Mikušová, 2015).

2 Types of Taxes on Communal Waste

Talking about taxes *sensu largo*, we can distinguish between taxes *sensu stricto* and charges. The tax *sensu stricto* means an obligatory amount defined by an act with a laid down rate which is more or less regularly collected from the incomes of economic subjects to the public budgets on the irrecoverable principle. On the other hand, the charge is an obligatory irrecoverable amount defined by an act and collected by the State or other public corporations for certain legal acts. In contrast to taxes, this amount is irregular (*ad hoc*) and the charge payor is eligible to ask for some consideration. To tell the truth, the difference between “tax” and “charge” is really more theoretical than practical. For example in a lot of municipalities the “dog charge” is in fact the “dog tax”: the holders of dogs (the taxpayers) do not get any plastic bags for the excrements, municipality does not install waste baskets, does not clean pedestrians and roads, etc. On the other hand, the “road tax” is rather “road charge” because the whole revenue must be invested by the State Fund of Transport Infrastructure to modernization of existing roads and building new ones.

In all the compared countries, there is a constitutional principle (rule) that taxes (*sensu largo*; used in this way in the following text) can be imposed only by acts, not just by ordinances of municipalities or ministries. While in Poland this principle is set directly in the Polish Constitution (art. 217) and in Slovakia in the Slovakian Constitution (art. 59/2), in the Czech Republic the principle *nullum tributum sine lege* is included in the Charter of Fundamental Rights and Freedoms (art. 11/5), what is the part of the Czech Constitution *sensu largo*, together with the constitution *sensu stricto*.

In Poland and in Slovakia, there is just one possible tax *sensu largo* connected with communal waste. In both countries this public payment is called charge on waste; in Slovakia specifically on communal waste. The Polish charge is regulated by the Act on Maintaining Cleanliness and Order in Municipalities, in Slovakia the legal regulation could be found in the Act on Local Taxes and Local Fees for Municipal Waste and Minor Construction Waste. We can conclude that in both countries (similar to most of the European countries, with the exemption of Sweden and Netherlands – Taxes in Europe Database) the charges on communal waste are local taxes according to the definition that the local tax is a financial levy, determined to municipal budget that can be influenced (talking about tax base, tax rates or one of the correction elements) by the municipality; it is not crucial whether the taxpayer obtains from the municipality any consideration or if it is a regular or a single levy – local taxes include both the tax *sensu stricto* and the charge (Radvan, 2013). For both Polish and Slovak municipalities the charges

on communal waste are obligatory, i.e. municipalities do not have any discretion to decide whether they want to collect this charge or not, they must collect the charge and in the bylaws they have to set special conditions, especially the charge rates. This practice was confirmed even by the decision of the Polish constitutional Court.¹

From this point of view, the situation in the Czech Republic is very different. The Czech law includes three possibilities for the municipalities to collect money to provide communal waste management. Approximately 80 % of municipalities are using charge on the operation of the system for picking, collection, transport, sorting, recovery and disposal of municipal waste as a local charge, i.e. local charge (tax) on communal waste (hereinafter “local charge”), regulated by the Local Tax Act. Charge on communal waste according to the Waste Act (as well local tax according to above mentioned characteristics, hereinafter “waste act charge”) is being used in 19 % of municipalities and the rest prefers contract between municipality and the persons producing communal waste or has no charge on communal waste at all (Drahovzal, 2009).² And in fact, there is the fourth possibility: not to collect anything. A very low number of municipalities (Teplice, Nová Paka) are not collecting any sources from the inhabitants for waste management (Drahovzal, 2009). Such a solution could be economically clever: while any charge on communal waste must be administered (and payed) by the municipality itself, other taxes are administered by the central tax offices. For example in case of immovable property tax, the municipality has several options to increase the basic tax rate and tax itself (even five times more than the legal regulation sets), and there are several municipalities not collecting any charges on communal waste and their waste management is financed from the increased property tax. The contract system is not very clever solution, especially if we take into account existing opinions of experts working with Ombudsman’s office (Matějková, Pešková, Kubíková, Svobodová, 2010: 75) and courts³ that it is not possible to combine the above mentioned three types of communal waste taxation. If we accept these opinions, it would mean that the contract system is completely obsolete, as according to the civil law principles there is a freedom to enter into contract. And for sure there will never be a situation in which all the inhabitants of a particular municipality enter into a communal waste management contract with the municipality. Conversely, the combination of local charge or waste act charge seems to be very effective solution to force people to behave more ecologically: those who want to sort the waste could sign the contract, while the others will pay the charge according to general bylaws applicable on the rest of the population in the municipality. In this situation, the charge on communal waste could have not only fiscal function, but regulative and stimulation effects, too. Of course, the combination of the local charge and the waste act charge is not possible because of different structural components. Both charges have their pros and cons, as described in following chapter.

3 Taxpayers

The legislators have many options to set forth who shall pay the waste tax / charge, i.e. who the taxpayers will be. The Slovakian waste charge is very similar to Czech local charge as it is paid by each natural person with a permanent or temporary residence at the territory of the municipality.⁴ Such a solution would be quite clever on the condition that people are really living and producing their waste at the territory of the municipality where they officially and formally reside. But in practice it is not true, because of personal (work, school, hospital, etc.) or official reasons (jail, etc.). That is why both the Czech and Slovak laws increase the list of taxpayers: in the Czech Republic the charge is paid also by all natural persons who own a building designated for individual recreation, an apartment or a house, where does not live any person paying the charge, i.e. the tax shall also be paid for rented houses and apartments, and for cottages and other buildings for individual recreation, even just as an amount equivalent to the fee for one natural person. In Slovakia, the charge must be paid by the user of any flat, house, garden, orchard, vineyard, and permanent grass growth as well (Babčák, 2010: 327). Additionally the Slovakian charge shall be paid by the legal persons and entrepreneurs, too, while in the Czech Republic these subjects producing waste are obliged to enter into the contract with any company providing the garbage collection. The Polish regulation is the strictest one: the duty to pay the charge applies to all the owners, tenants or users of real estate at the territory of the municipality, and it can be collected from the owners of other structures, where the waste is produced, if municipality sets so in bylaw (Popławski, 2012; Popławski, 2013; Klatka). Czech waste act charge is similar to the Polish charge: the taxpayer is every person producing communal waste.

According to the Slovakian regulation, municipal bylaw may set that the charge is collected by the payor – the owner of the real estate. In this situation, the payor is the guarantor of the tax. Even there is a possibility to make a contract between the taxpayer and the payor that the charge will be paid to the municipality directly by the taxpayer, the payor is still the guarantor and if the taxpayer does not fulfil his/her tax obligation, the guarantor will be asked to pay the charge. The Czech regulation of local charge is fairer: it only offers to pay the charge for all or selected taxpayers living in same household by one person (announcing the names and other data to the municipality), but if this person pays only for him/herself, the other persons are responsible for their tax debts (Radvan, 2012: 127). The Polish municipalities have a right to set a special rate of the charge for the household (Popławski, 2013; Klatka).

One of the most problematic issues concerning taxes in general is the tax duty of children. Neither the Polish nor the Slovak regulations solve this topic. The general Czech tax regulation in the Tax Code does not deal with this issue, too. But because of many problems especially with the waste charges (Radvan, 2012:

113-114), the Local Charges Act sets that if there are any tax arrears of the underage taxpayer who has not acquired full legal capacity, the charge obligation passes to the legal representative or the guardian of the taxpayer.

To conclude the taxpayer issues, the most problematic situation seems to be in the Czech Republic. As there are two possible charges on communal waste, it is up to the municipality to choose the better one according to the local conditions. That is why the capital city of Prague chose the waste act charge, because there are many individuals working there, but they have permanent residence in some other municipality. The main problem in charge administration in Prague is to find the payers – persons producing communal waste. On the other hand, the second largest city, Brno, has chosen local charge, because it is very easy to find all the taxpayers thanks to existing public registries of individuals and real estate. But in practise, it may happen that an individual must pay twice (this person has a permanent residence in Brno but actually lives, works and produces waste in Prague) or does not pay at all (if s/he has a permanent residence in Prague and lives in Brno). From this points of view the Polish and the Slovakian regulation is fairer: it is paid for the produced communal waste. If fairness is to be achieved in the Czech Republic, then only in case of local charge the municipality can guarantee exemptions from taxation in bylaw (for example if the taxpayer prove s/he paid the charge in other municipality, he is exempted to pay at the municipality of his/her residence). Of course, the solution could be found in the Parliament, if the Czech Republic adopts just one possibility of communal waste taxation. Such a solution would unify not only the subject of tax, but other related issues (responsibility of underage persons for their tax debts, even this rule should be set in the general Tax Code because of other taxes like property taxes or income taxes), too.

4 Correction Components

By looking at the compared regulations, the most general is the Slovakian one as the municipality can reduce or waive the charge in the bylaw or during the tax proceedings and there are no other conditions set in the act (Babčák, 2010: 328). On the other hand, Czech municipalities using the waste act charge have no possibilities for corrections. In case of the Czech local charge, the basic list of exemptions is set in the act. Children placed in social facilities and persons placed in homes for people with disabilities, homes for the elderly, and sheltered housing are exempted from taxation. Moreover, the municipality has a right to set more exemptions in the bylaw. The most common are exemptions for persons living long-term abroad, in prison, or in the hospital for the chronically ill. Such exemptions are clever as these people are not producing the waste at the territory of the municipality. Much more problematic from this point of view are exemption for underage persons. During the tax proceedings, it is possible to waive the local charge.

Neither in Slovakia nor in the Czech Republic the regulative function of waste charges is taken into serious account. There are just a few municipalities exempting at least partly from the waste charge those who are sorting their waste. Of course such an exemption is complicating the charge administration, but as an economic and ecological tool it is very useful (Radvan, 2012: 119-120). The Polish legislator was aware of this fact and the only compared regulation with the lower rates for those sorting the waste is the Polish one, even Klatka states that the costs of sorted waste management are higher (Klatka).

5 Rates

The constructions of the charge calculation could be quite easy. This is the position of Slovakia and the Czech Republic. In Slovakia, the quantity or daily rates are used, depending on the usage of quantitative collection in the municipality. The act sets minimal and maximal rates (0,0033 – 0,0531 EUR/litter of waste or 0,0066 – 0,1659 EUR/kg of waste, or 0,0006 – 0,1059 EUR/day); the concrete rates are set in bylaws (Babčák, 2010: 328). The Czech Local Charges Act sets only maximal rates. The local charge rate has two parts: the first one is 250 CZK for a person per year at maximum, the second one must respect real expenses of the municipality in the area of municipal garbage and can be 750 CZK for a person per year at maximum. It means 1000 CZK for a person per year at maximum. The municipality must account for expenses for one person and the concrete rate for a calendar year in the bylaw. The Czech waste act charge does not have any maximal rate and it is up to the municipality what the concrete rate in the bylaw for the calendar year is.

The Polish regulation is extremely complicated (Popławski, 2012; Klatka). Each municipality must adopt its bylaw setting the method of charging and charge rates. There are three possible methods for the real estate where people are living: number of persons living in the real estate, the quantity of used water, or the area of the real estate. Each method has pros and cons, for example it is not possible to verify the real number of persons living in the real estate (similar to the Czech waste act charge), some of the water used might have been for irrigation, there is no relation between the area of real estate and the quantity of waste, etc.). If nobody is living in the real estate, the tax base is the number of dustbins. The rates are influenced by the number of inhabitants of the municipality, the quantity of waste, the cost of waste management, and seasonality of waste production. The maximal charge rates are 2 % of the average monthly disposable income (for the method using the number of persons), 0,7 % of average monthly disposable income for m³ of water consumed, 0,08 % of average monthly disposable income for m² of real estate, or 5,6 % of average monthly disposable income for the household. If the waste is not sorted, the maximal rates are doubled.

The conditions of payments (when to pay, how to pay, etc.) must be set in all cases (all compared states and all compared charges) in the bylaw. Even the taxable period is formally one calendar year in all countries and charges, the real tax period is month in Poland and the Czech Republic, and one day in Slovakia.

6 Conclusion

Effective system of waste taxation is *conditio sine qua non* for effective waste management at the municipal level as in all the compared countries and in all European countries the municipality (or state in small countries) is the owner of the communal waste. Not to collect any waste tax *sensu largo* seems to be economic clever solution if there is any possibility for the municipality to replace it with some other revenues, for example with multiplying coefficients for the centrally collected property tax in the Czech Republic, or with the shares of centrally collected taxes (PIT, CIT, or VAT). But communal waste management is one of the tasks of local self-government and it should be financed from local sources, moreover if there are any legal possibilities to influence the tax according to the level of waste sorting. People are motivated to be more ecological. In this moment, it is possible to think about a contract system, but according to the civil law principles there is a freedom to enter into contract and municipality has no power to force all the inhabitants or persons producing communal waste (incl. children) to enter into the contract. The contract system could be used as a supplement to general communal waste taxation system: for example the ones who sort the waste are exempted from general taxation regulated by law and bylaw.

All the systems compared in Poland, Slovakia and the Czech Republic have their pros and cons. The same conclusion applies for all three systems in the Czech Republic. Because it is legally possible to pay twice or not at all for the communal waste in this country, one of the conclusions of this article is that it is reasonable to have only one system of communal waste taxation. And it should be obligatory public payment with minimal rates (like in Slovakia) according to the arguments in previous paragraph. The taxpayer should be identified according to his/her permanent residence as it is the only instrument assuring that each person producing communal waste pays just ones. I believe that it is not a fair system especially if people can live somewhere else, but for the tax administrators this is the only effective way to find the taxpayer because of existing registries. Second payments in other municipalities (because of summer houses, rented apartments and houses, running business) are not excluded. The responsibility of underage persons for their tax debts should be set in the general Tax Codes because of other taxes like property taxes or income taxes, not only for the waste taxation.

The number of correction components should be minimized as each correction component means higher administrative costs. Of course it is good to motivate

people to behave more ecologically, to sort the waste to respect regulative and stimulation function of taxes. But referring to the principles of effectiveness and economy in tax administration, the way is not to adopt correction components in taxes (especially if the taxes are quite low) but to create favorable conditions other than a tax like installation of containers for recycling close to home, information campaign about the suitability of waste sorting and sorting options, etc.).

According to the above mentioned arguments, the hypothesis stated in the introduction that there should be one local tax (charge) and its revenue should be used for communal waste management was confirmed.

Notes

¹ See the decision of the Polish Constitutional Court no. K 17/12.

² Czech Ministry of Finance does not have any statistics concerning these ratios.

³ See the decision of the Czech Highest Administrative Court no. 2 Afs 107/2007-168.

⁴ See the decision of the Czech Highest Administrative Court no. 5 Afs 175/2006-116.

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