

Municipalities and Gambling Taxation in the Czech Republic

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Abstract Hazard is often is considered to be socially undesirable phenomena. Municipalities are the most important regulators of this business. Generally, municipalities have two possibilities how to reduce the negative effects of the gambling business run at their territories: they can prohibit the gambling at all or they can heavily tax the gambling business to minimize all the negative impacts of the hazard. The main goal of this article is to confirm or refute the hypothesis that the new regulation protects the interests of Czech municipalities in the area of hazard. It is obvious that gambling tax is an effective tool (not only) for local self-government and it is a new local tax in the Czech Republic as it fulfills all the conditions I have defined for a local tax.

Keywords: • gambling • tax • gambling tax • local tax • Czech Republic

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1 Introduction

Gambling business is always connected with socially undesirable phenomena, such as an addiction of players, their debts and executions, followed by the disintegration of families, and high rate of crime. It has an impact on the whole society and the state, of course, but in my opinion, the municipalities are the first on the row to face these problems and to solve them. In general, municipalities have two possibilities how to reduce the negative effects of the gambling business run at their territories: firstly, they can prohibit the gambling at all, especially gambling machines as these are the most dangerous for addicted players. But the national law must allow such a possibility for the municipalities. Secondly, they can heavily tax the gambling business to minimize all the negative impacts of the hazard. On January 1, 2017, a new law of hazard came into force in the Czech Republic. The general gambling regulation is connected with the new law on gambling taxation, too.

The main purpose of this article is to confirm or refute the hypothesis that the new regulation protects the interests of Czech municipalities in the area of hazard. To achieve this goal, several scientific methods are to be used. Firstly, it is necessary (at least shortly) to analyze (and to a certain extent describe) the new legal regulation of gambling (Act. no. 186/2016 Sb., Gambling Act) with regard to the powers of municipalities to regulate the hazard at their territories. The next necessary step is to analyze the new Gambling Tax Act (Act no. 187/2016 Sb.). In both cases, there is no scientific literature dealing with these issues. Secondly, the comparison of gambling taxation valid until the end of 2016 and the new regulation must be done to achieve the aim of the text. It will be necessary to compare the revenues, too. At the end, finishing my research, the synthesis of the gained knowledge will be used to confirm or refute the hypothesis and summarize pros and cons of the new regulation. The article is presented mostly descriptively, as legal science is a descriptive one.

There is really no scientific literature dealing with the new regulation of hazard and gambling taxation in the Czech Republic. The only article by Děrgel (Děrgel, 2016) is only descriptive and not scientific. The textbooks on tax law are not describing gambling taxation at all because the word "tax" was not officially used for the public payments on hazard (see below). I have written a chapter in the book on local charges on gambling machines in 2012 (Radvan, 2012). The only source is the explanatory report to the Gambling Tax Act (Ministry of Finance, 2016). Even Lex Localis journal has never published any article focused on gambling taxation or gambling legal regulation. What is a little bit surprising, as the municipalities have to solve primarily all the negative aspects of hazard and they are at least partial beneficiaries of the gambling taxes, if they are imposed by the state acts.

2 Gambling and Municipality

As the municipalities are the ones who have to deal with the negative aspects of gambling, the law allows them to influence the local conditions for the gambling business. The most important power is that they can issue a generally binding ordinance that several types of gambling (bingo, technical game – gambling machines, live game and small tournament) may be operated only in places and at times set in the ordinance, or to determine in which locations and at what time the operation of such lotteries and other similar games is prohibited, or completely disable the operation of such lotteries and other games throughout the municipality. Moreover, to operate bingo, technical games and live games, it is necessary to get the permission for game space. Such permission is issued by the municipal office. The abovementioned regulation is fully sufficient for all municipalities to effectively regulate/fight with hazard at their territory.

3 History of Gambling Taxation in the Czech Republic

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. In practical use, however, the difference between “tax” and “charge” is really more theoretical than practical. For example, in many 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, the municipality does not install waste baskets, nor clean pedestrians precinct 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 the modernization of existing roads and building new ones (Radvan, 2016: 515).

Taxes *sensu largo* include more than taxes and charges (fees), for example levies, tolls, tributes, etc. It is quite difficult to translate all these terms from any national language to English, but in my opinion, all public payments have either tax or charge character depending on the above-mentioned criteria.

For all public payments, 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 or in Slovakia this principle is set directly in the Constitution (art. 217 of Polish Constitution, art. 59/2 of Slovak Constitution), 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* (Radvan, 2016: 515).

As the legislation concerning the gambling taxation has undergone major changes in 2012, it is necessary to describe a valid legal status before 2012 and from 2012 onwards.

2.1 Regulation before 2012

Prior to January 1, 2012 the gambling taxation was regulated by several different not always tax *stricto sensu* or even *sensu largo* instruments:

1. Payment of part of the proceeds for publicly beneficial purposes was regulated by the Act no. 202/1990 Sb., on Lotteries and other Similar Games, as amended (hereinafter the "Lottery Act"). The payment was calculated from the difference between the incomes of the operator consisting of all stakes bet on all operated lotteries and other similar games (exempted from corporate income tax), and winnings paid to players, administrative fees, local charges and levy on state oversight. The rate was the progressive percentage of 6 – 20 %. The lottery operator could send the payment to anyone (ie. including persons of private law) for the social, health, sports, environmental, cultural or otherwise publicly beneficial purposes. It means the payment was not the revenue of any public budget and it was not administered by any official tax (*sensu largo*) administrator. The regulation made it easy for tax evasion; many times the wife or any other related person of the operator's manager run the foundation, and most of the revenues from payment was used for her/his salary.
2. Levy on state oversight was regulated by the Lottery Act. The tax base was the difference between gambling incomes and winnings paid to players. The rate was the linear percentage of 1 %. The whole revenue was the income of the state budget.
3. Administrative charges were regulated by the Act no. 634/2004 Sb., on Administrative Charges, as amended. Some charges were collected in case of the permission issue or changes in existing permissions. The rates of these charges were fixed. Other charges were collected annually from the difference between bet stakes and winnings paid to players. The rates were percentage, with the maximum fixed amount. The beneficiary was the state of the municipal budget, depending on who had issued the permission.
4. Local charge on operated gambling machines and other technical game facilities permitted by the Ministry of Finance regulated by the Act no. 565/1990 Sb., on Local Charges, as amended. The charge on operated gambling machines was added to the list of local charges by the Act No. 305/1997 Sb., effective from January 1, 1998. Gambling machines were defined in the Lottery Act as mechanical gambling machines or similar facilities permitted by the Ministry of Finance (till August 1998) or as compact, functionally indivisible and program-controlled technical facilities

with remote control only for one player (from September 1998). The charge was named “charge on operated gambling machines” (i.e. winning game slots), while the object of taxation was defined just as “every permitted game slot”. This meant that legally the objects of taxation were game slots permitted (by municipal offices, regional offices or the Ministry of Finance), both winning and non-winning, and both operated and not operated. In fact, the charges were collected only for permitted, winning and operated gambling machines (game slots). That was, in my opinion, the right way because the regulative and protective functions of the charges must always be remembered, i.e., not only their fiscal effects. Since the beginning of the 21st century, the classic game slots are successively being replaced by interactive video-lottery terminals. There have been a lot of discussions whether the object of taxation referred to in the relevant act as “every permitted game slot” (see above) also includes such terminals. In my opinion, the definition did cover such terminals. However, the Senator Jaroslav Kubera, a member of Senate of the Czech Republic, decided to make the legal regulation more precise. Without any consultation with the Ministry of Finance, he submitted an amendment during the legislative process in the Senate: the amendment no. 183/2010 Sb. to the Act on Support for Sports changed the name of the charge to “the charge on operated gambling machines and other technical game facilities permitted by the Ministry of Finance according to other legal regulation” and amended the object of taxation into “a permitted game slot or other technical game facility permitted by the Ministry of Finance”. This regulation came into force on June 16, 2010 and caused many problems. It was really difficult to interpret the term “technical game facility”, especially with regard to interactive video-lottery terminals. It was not obvious whether the “other technical game facility” is just the central unit (server) connected to all the end-user terminals (i.e., single machines where people bet) or both central unit and every end-user terminal. The Ministry of Finance published a methodological communication setting that technical facilities with terminals used for the operation of betting games are technical game facilities in both forms, i.e. as the central units with local control units as well as the individual end-user terminals (interactive video-lottery terminals). One of the arguments is that it is necessary to receive permission not only for the central unit but also for every end-user terminal (Ministry of Finance, 2010). In June 2011 the Ministry of Finance somewhat modified its methodological communication. Now, the communication states that other technical game facility is a technical game facility different from a game slot, defined in Section 17(1) of the Lottery Act, which is functionally indivisible and is used to realize lotteries or similar games in the sense of Section 1(1) of the Lottery Act from the beginning of the process to its end. A technical game facility is not constituted by merely a sub-component of a functional unit that does not allow the game from the beginning to the end. Consequently, a single central lottery system (server) cannot be charged, and the same holds for a single

interactive video-lottery terminal, as they separately do not allow the game. It is only the interactive video-lottery terminals connected to a central lottery unit that are able to realize the game from the beginning to the end and are, consequently, subject to the charge (Ministry of Finance, 2011). The argumentation of the Ministry was supported by the finding of the Constitutional Court (Constitutional Court, 2010). After the amendment, the object of charge was defined in a different way than the title. In my opinion, as for game slots the objects of taxation were only operated gambling machines (i.e. only winning game slots) permitted by municipal offices, regional offices or the Ministry of Finance. Not operated and non-winning game slots do not constitute any social or moral threat and there was no need for the charge with its either regulative or protective function. On the other hand, unpermitted gambling machines could cause problems, but they could not be charged; the penalty for the running of an unpermitted gambling machine usually equaled the amount of unpaid charge. The same practice (because of identical reasons) should have been applied to other technical game facilities, so that chargeable technical game facilities were operated other winning technical game facilities permitted by the Ministry of Finance. The opinion of the Ministry of Finance was somewhat different; experts working at the Ministry (Jirásková, Šneberková, 2012) also considered the non-operated other technical game facilities as an object of charging. Boháč extended the group further by adding the non-winning other technical game facilities (Boháč, 2010: 598). In my opinion, this approach was not fair since it did not respect one of the oldest and most important legal principle: the principle of equity; even the Constitutional Court in the above-mentioned finding said that there is no essential difference between the game slot and the interactive video-lottery terminal. The tax (charge) rate was constructed in a very special way because the act provided for not only the maximum rate (CZK 5,000) but also the minimum rate of CZK 1,000, both applicable for a period of three months. It depended only on the municipality if it wanted to collect the charge, what was the charge and if it provided any exemptions. The tax administrator was the relevant municipal office. The municipality received the whole charge revenue. (Radvan, 2012)

2.2 Regulation between 2012 – 2016

On January 1, 2012, the act no. 458/2011 Sb., on changes in the acts related to the establishment of a single collection point and on other changes in tax and insurance acts came into force. It cancelled the exemption of stakes bet on all operated lotteries and other similar games from corporate income tax and it set just two administrative charges on lotteries: CZK 5,000 for the permit request, and CZK 3,000 for the permit modification. The payment of part of the proceeds for publicly beneficial purposes, the levy on state oversight and the local charge on operated gambling machines and other technical game facilities permitted by the Ministry of Finance were cancelled. Especially local charge on gambling

machines was very difficult for the administration on the level of municipal offices. It must be remembered that all other local charges of small amounts are mostly paid by local natural persons (dog charge, communal waste charge, tourist charges, charge on using public places, etc.), while the charge on gambling machines was paid by rich international legal entities with well-educated and experienced attorneys and compared to the other charges it was much higher amount. Moreover, in the Czech Republic there are more than 6,200 municipalities and for example in the smallest one live only two inhabitants. More than half of all municipalities are not able to administer any charge or tax as there is no person with adequate competencies to do so. In many cases these small municipalities did not collect any local charge as they are not able to prepare a municipal ordinance setting the details of local charge/s.

These reasons led to the fact, that legislator decided to replace existing charge on gambling machines (and levy on state oversight) with a levy on lotteries and other similar games. This levy was regulated by the Lottery Act. The taxpayer was the operator of the lottery or other similar game, ie. legal entity seated in the territory of the Czech Republic with the permission to an operation of lottery or other similar game. Generally, the levy base was the amount by which the aggregate of stakes exceeds the total winnings paid (the in-out principle) and the tax rate was the linear percentage of 20 %. Since January 1, 2014 it was possible to apply for the relief on the partial levies on lotteries and odds betting in the amount equivalent to the value of cash donations made by the taxpayer in the taxable period to the Czech Olympic Committee for the purpose of physical education and sports, up to 25 % of the respective partial levy. In fact, it was partially a step back to the previous payment of part of the proceeds for publicly beneficial purposes, but this time limited only for the Czech Olympic Committee. The revenue was divided into the state budget (70 %) and the municipal budget (30 %).

The partial levy on gambling machines and other technical game facilities (technical games) was constructed in a little bit different way. The partial levy base was the sum of the proportional part (the amount by which the aggregate of stakes exceeds the total winnings paid) and the fixed part (the number of days on which each machine or facility was permitted). The levy rate was 20 % from the proportional part of the levy base and CZK 55 per each day and gambling machine/game facility (ie. approx. CZK 20,000 per year). The revenue was divided into the state budget (20 %) and the municipal budget (80 % distributed according to the number of gambling machines and game facilities in the municipality).

The paid levy on lotteries and other similar games was a tax-deductible expense for the corporate income tax. The taxable period was the calendar year, but the levy was paid in three advance payments and the fourth part together with the levy return. The levy was fully administered by the Financial Administration of the Czech Republic, ie. by the general tax offices.

3 De Lege Lata Regulation of Gambling Taxation

Most of the problematic issues connected with the gambling taxation were solved in the amendment effective since 2012. There was a regular taxation of the operators of lotteries and other similar games by the corporate income tax and by the value added tax, there were additional administrative charges for permissions and changes in permissions, and there was an additional sector tax (called levy), as the gambling is generally more dangerous for the society than the other business activities, it raises the need for increased spending to prevent and protect players, etc., and gambling business provides profits generally higher than other types of business. On the other hand, there are still some aspects to be improved. Especially the title of the public payment (tax *sensu largo*) – the levy – is misleading. At the beginning of the subchapter on the history of gambling taxation, it was pointed out that there are just two possible public payments according to their character: tax or charge/fee. The levy on lotteries and other similar games is definitely the tax – a regularly collected amount from the incomes of economic subjects to the public budgets on the irrecoverable principle without any consideration and with non-specific purposes.

It is great that legislator is aware of this theoretical approach and the new gambling tax came into force on January 1, 2017, replacing existing levy on lotteries and other similar games, and regulated in the special Gambling Tax Act. Compared to the former levy on lotteries and other similar games, there are not many amendments, but they are extremely important. For example, the group of taxpayers was increased by those domestic and foreign entities that are operating lotteries without any permission or at least announcement. Small raffles (up to the CZK 100,000) are no more the object of taxation; these small raffles are mostly organized by schools, municipalities, foundations and other non-profit entities and there is no social dangerousness. As there are more and more internet (online) games, it is necessary to regulate them more in detail. The only taxed internet games are those for the domestic players – persons registered or paid the deposit having the permanent residence in the territory of the Czech Republic. I believe that this will cause a lot of problems. Firstly, how to recognize such a web page? There are several probable indicators like the web page is in Czech language, it is possible to use Czech currency and Czech banks, the advertisement uses popular Czech sportsman or celebrity, etc. But still even none of these indicators is fulfilled and the web page is really not focused on Czech players, if one Czech resident plays there, the operator becomes the Czech taxpayer. The other problem is connected with persons not having a permanent residence in the territory of the Czech Republic, but staying there because of studies or treatment in the hospital, and playing online hazard games. In this situation, the operator is not the taxpayer, but how can he know anything about the players' permanent residence? It would be interesting to observe the practice. The last relevant amendment was the abolishment of the relief in the amount equivalent to the value of cash donations made by the taxpayer in the taxable period to the Czech Olympic Committee for

the purpose of physical education and sports. As the Office for the Protection of Competition stated, such a relief could be considered as the state aid incompatible with the EU internal market: the aid is selective and the Czech Olympic Committee may be favored compared with other subjects.

Besides these amendments, there is a new administrative charge for the permission of gaming place regulated by the Administrative Charges Act. The tax rate is CZK 4,000 for the permission and CZK 2,500 for the changes in the existing permission.

Summarizing de lege lata regulation of gambling taxation, the taxpayers are legal entities operating hazard games, no matter if they have the permission or not or if they announced their business or not (depending on the Gambling Act). The object of taxation is the operating of hazard games in the territory of the Czech Republic. There are several partial tax bases, but always constructed as the amount by which the aggregate of stakes exceeds the total winnings paid, with different rates:

- a) from lotteries – 23 % (30 % at the Ministry's draft),
- b) from odds betting – 23 % (25 % at the Ministry's draft),
- c) from totalizator games – 23 % (25 % at the Ministry's draft),
- d) from bingos – 23 % (30 % at the Ministry's draft),
- e) from technical games (gambling machines) – 30 % (35 % at the Ministry's draft),
- f) from live games – 23 % (30 % at the Ministry's draft),
- g) from raffles – 23 % (25 % at the Ministry's draft),
- h) from small tournaments – 23 % (25 % at the Ministry's draft).

There is a minimal partial tax from technical games: CZK 9,200 for each permitted gambling machine.

The taxable period is a quarter of the calendar year. The tax administrator is the tax office. In case of gambling tax, the Czech Republic tries to use so called self-assessment of tax for the first time generally, ie. there is no individual legal act of the tax office when assessing the tax. The tax is assessed ex lege according to the tax return; if there is no tax return, the assessed tax is zero. The tax return must be filed within 25 days after the end of the taxable period.

Generally, 70 % of the gambling tax revenue is the income of the state budget and 30 % receive municipal budgets. In case of partial tax from technical games the state budget receives 35 %, while the municipalities 65 % (40 % : 60 % according to the Ministry's draft). The revenue for individual municipality depends on the ratio of the permitted gambling machines in the territory of the municipality and the total number of permitted gambling machines in the Czech Republic. It is important to mention that in this case (and only in this case), only permitted gambling machines are taken into account, while generally all gambling machines incl. not permitted ones are liable to tax.

4 Fiscal Effect for Municipalities

In 2014 the total revenue from the levy on lotteries and other similar games was approx. CZK 7,4 billion. This amount, after the deduction of the relief (amount equivalent to the value of cash donations made by the taxpayer in the taxable period to the Czech Olympic Committee for the purpose of physical education and sports, up to 25 %) was divided into the state budget and the municipal budget in proportion 70 % : 30 %. In case of the partial levy on gambling machines and other technical game facilities the proportion was 20 % : 80 %.

Table 1: Budget destination – Levy on lotteries and other similar games – 2014

Game	Proportion state : municipalities	Total (CZK)	State (CZK)	Municipalities (CZK)
Technical game – Proportional part	20:80	4,055,352,623	811,070,525	3,244,282,098
Technical game – Fixed part	20:80	1,124,200,000	224,840,000	899,360,000
Other lotteries and similar games	70:30	2,220,080,289	1,554,056,202	666,024,087
Total revenue		7,399,632,911	2,589,966,727	4,809,666,185
Total revenue after relief (revenue for public budgets)		6,955,632,911	2,279,166,727	4,676,466,185

(Ministry of Finance, 2016: 21-22)

Concerning the gambling tax effective since 2017, the draft of the Ministry of Finance was changed in the Parliament in two ways in respect to the budget destination and possible revenues: the partial tax rates were lowered and the proportion of state and municipal budgets in case of technical games was changed from 40:60 to 35:65 in behalf of municipal budgets. These are the new numbers.

Table 2: Budget destination – Gambling tax – 2017

Game	Proportion state : municipalities	Total (CZK)	State (CZK)	Municipalities (CZK)
Technical game	35:65	4,967,806,963	1,589,698,228	3,378,108,735
Other games	70:30	4,057,652,001	2,840,356,401	1,217,295,600
Total revenue		9,025,458,966	4,430,054,630	4,595,404,336
Compared to 2014		+2,069,826,055	+2,150,887,903	-81,061,849

(Ministry of Finance, 2016: 22)

As it is obvious, in 2017 the state budget should receive additional CZK 1,9 – 2,3 billion, while in case of municipal budget no significant changes are expected.

This outcome was planned at the very beginning when Ministry of Finance started working on the draft bill, and the changes in the legislative process by the Parliament do not connote any fiscal effects for the municipal budgets.

5 Conclusion

The municipalities are the ones and may be the most important regulators of the hazard business. Generally, municipalities have two possibilities how to reduce the negative effects of the gambling business run at their territories: they can prohibit the gambling at all or they can heavily tax the gambling business to minimize all the negative impacts of the hazard. The main goal of this article was to confirm or refute the hypothesis that the new regulation protects the interests of Czech municipalities in the area of hazard. According to the above-mentioned arguments, the hypothesis was confirmed. Both old and new regulation (effective since January 2017) of hazard gives adequate powers to the municipalities to fight with gambling as they can really completely prohibit all the gambling machines at their territory. The new Gambling Tax Act is with no doubts an effective step: the levy is finally called tax, there is a better definition of taxpayers and the tax must be paid even in case of illegal hazard, the irrational tax relief “to support sport” was finally abolished, there are efforts to tax online hazard and it will be interesting to see the effectiveness of this attempt, etc. Concerning the revenues, there are more or less the same for the municipalities, while state budget receives additional approx. CZK 2,1 billion.

It is obvious that gambling tax is an effective tool (not only) for local self-government and it is a new local tax in the Czech Republic as it fulfills all the conditions I have defined for a local tax: a public payment, determined (at least partially) 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 payment – local taxes include both the tax *sensu stricto* and the charge (Radvan, 2013: 475).

Moreover, there are two aspects connected with the new regulation important for the science of tax law in the Czech Republic. Gambling tax is a first tax that could be called a sector tax. In my opinion, the sector tax is an additional tax (besides income tax) on business generally more dangerous for the society than the other business activities raising the need for increased spending to prevent its negative aspects, while this kind of business provides profits generally higher than other types of business activities. The next possible sector tax seems to be the banking tax or tax on financial transactions. The second new aspect is the institute of self-assessment: there is no individual legal act of the tax office when assessing the tax; the tax is assessed *ex lege* according to the tax return and if there is no tax return, the assessed tax is zero. I do believe that we can expect such a kind of tax

assessment for all taxes collected in the Czech Republic in the near future as it is an effective tool to save time and money in the tax administration.

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