

# Declaration of Tax Information in Constitutional Court Cases in the Czech Republic

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**Abstract:** This contribution is focused on the trend to demand various declaration of taxable persons via specific forms issued based only on the wide and vague authorisation of the Ministry of Finance of the Czech Republic. The aim of this paper is to familiarise readers with the relevant Czech regulation and case law of the Czech Constitutional Court and to provide conclusions evaluating this case law and legislation. The beginning of this paper is devoted to respective provisions of the Tax Procedure Code, Charter of Fundamental Rights and Freedoms, Act on VAT and Act on Transactions evidence. Then, the part dealing with the development of the Constitutional Court approach evaluating the practice of the tax administration follows. Finally, the author provides his conclusions estimating future development in this issue. Scientific methods used in this paper are analysis, induction, deduction and description. The aim of the contribution is therefore the evaluation how the recent case law will affect the current legislation and what steps should be made by the Czech Parliament.

**Keywords:** tax law; form; registered books of invoices return; electronic sales records

## 1. Introduction

Tax evasion and illegitimate tax avoidance is the modern phenomenon of tax law and overall public regulation. They represent a huge problem affecting all of us since they have not been located just in the territory of one jurisdiction but increasingly across countries globally and also in the European Union. Therefore, it is more difficult to fight them without the joint effort of the international community.

For this reason, international organizations like OECD, the European Union etc. identify the approaches how to tackle tax evasion or illegitimate tax avoidance successfully and effectively. Based on these approaches, member states are often obliged to implement the harmonised regulation usually affecting indirect taxes. However, member states of the

European Union are entitled to adopt legislative measures mostly of the administrative character to tackle tax evasion even in the harmonised fields of indirect taxation.<sup>1</sup> This fact manifests itself by the different measures tackling tax evasion across member states, therefore the international cooperation in tax matters is the important instrument of the global attitude following the decrease of tax evasion and tax avoidance.<sup>2</sup> Still, the basic and the most useful instrument is the declaration obligation of the taxpayer usually by different types of forms.

The Czech authorisation of the Ministry of Finance to create tax forms is vague. That is why this contribution is devoted to two specific instruments adopted in the Czech Republic with the aim to tackle tax evasion and the review of the respective legal regulation by the Czech Constitutional Court. It is because these two particular instruments (registered books of invoices return and electronic sales records) could serve as a model example of the Czech Constitutional Court assessment giving interesting opinions, which could be applied generally on taxation in the Czech Republic and can affect the future development of the declaration obligations of tax payers there.

The aim of this paper is to provide its reader with the basic information about the relevant Czech legislation, to familiarise the reader with two cases of the Czech Constitutional Court and finally, to point out the relevant thesis important for the future. The used scientific methods are analysis, induction, deduction and description.

## **2. The Basics of Relevant Tax Regulation**

The general practice in the Czech Republic is to submit any tax declaration on the form devoted to the respective tax field. However, as it was mentioned before, the Czech legislation regulates the authorisation of the Ministry of Finance really vaguely. According to section 72 par. 1 of the Act No. 280/2009 Coll., Tax Procedure Code, any application for the tax registration, notification of the change of the registered data and any tax declaration shall be submitted only by the form of the Ministry of Finance or on the printed output from the computer printer with the same data, content and order of data as the respective form has. Nevertheless, no legal rule except section 72 par. 2 of the Tax Procedure Code prescribes the content of form issued by the Ministry of Finance in tax matters. The only limitation of the Ministry of Finance is the purpose of the administration of taxes<sup>3</sup> and the constitutional basis of the tax regulation.

### **2.1. The constitutional level of the tax regulation**

The constitutional level of the tax regulation is represented in Article 11 par. 5 of the Charter of Fundamental Rights and Freedoms; taxes and levies shall be imposed pursuant to the act.<sup>4</sup> From a grammatical perspective, such laconic and very general provision entitles the legislative body with the broad authority to regulate the tax system so far as the legislative body abide the form of the primary law in form of an act according to which the tax is imposed. Still, the public authorities are not entitled to impose taxes of any kind even

if the law abides the form of the act since taxes represent the legitimate infringement of the constitutionally protected property rights.<sup>5</sup> Firstly, every intention of the legislative body to impose a new tax shall be supported by objective and rational arguments and criteria.<sup>6</sup> Then, the legislative body must abide the reservation of the law in the form of an act in tax matters.

It does not necessary mean, the it is forbidden to regulate tax matters by the secondary legislation of the ministries and other central administrative offices in the Czech Republic. For the assessment of such reservation, the Czech Constitutional Court established the rule, that the act shall contain all constitutive elements of the particular tax.<sup>7</sup> Consequently, according to the Czech Constitutional Court, every constitutive element of the tax obligation must be regulated by the act and therefore, it is prohibited to allow the executive power to regulate such constitutive elements by the implementing secondary law. Otherwise, the executive power will be entitled to construct the tax system independently of the will of the legislative body. Therefore, if the secondary legislation does not regulate the constitutive element of the tax obligation, it is in accordance with the constitutional level of the tax regulation. As it is added by this court, *“in order to adopt the constitutionally conform tax regulation, this regulation must be based on the act. Other substantive conditions are not prescribed by constitutional law”*.<sup>8</sup>

However, the reservation of the law in the form of act is not applicable just on the regulation of the substantive attributes of the imposition of the tax obligation but also on the complex regulation of the procedure how the respective tax shall be collected in the prescribed amount and time.<sup>9</sup> Based on this argument, the evaluation of the constitutional conformity should also take place in case of all procedural actions of the tax administrators and all rights and obligations of persons affected by the tax administration. Now, it is clear that the field of the automatised and incidental declaration of data relevant to the tax administration is subjected to the constitutional review of the respective law.

## 2.2. A brief insight into the registered books of invoices return regulation

Since the 1<sup>st</sup> of January 2016, the taxpayers of VAT have been obliged to submit registered books of invoices return if they carry out or accept taxable transactions defined by law.<sup>10</sup> Regarding the legal nature of this obligation, it is the tax declaration in the sense defined by the Tax Procedure Code.<sup>11</sup> It is evident that the purpose of this instrument is to create a better and greater evidence about taxable transactions by the tax administrators in the Czech Republic with the aim to tackle tax evasion and illegitimate tax avoidance easier. Based on the data collected by Czech tax authorities by the registered books of invoices returns, they should be capable to identify weak spots within the distribution chain and to reveal respective fraudsters committing VAT evasion because they enable matching of taxable transactions between suppliers and purchasers regulated by VAT legislation through the reported data to tax authorities.<sup>12</sup>

Back to the applicable regulation, the Act on VAT regulates this instrument by sections 101c to 101k. Nowadays, the regulation of section 101d par. 1 and 101g par. 5 of the Act on VAT was amended due to the repeal of the original provisions by the Czech

Constitutional Court.<sup>13</sup> These provisions regulate the following elements of the obligation to submit the registered books of invoices return:

- When is the taxpayer obliged to submit the registered books of invoices return?
- What shall be declared in the registered books of invoices return?
- What are the terms for the submission of the registered books of invoices return?
- How can the registered books of invoices return be corrected or submitted after the deadline?
- What is the procedure if the registered books of invoices return is not submitted by the taxpayer?
- What sanctions can be imposed for the breach of the obligation to submit the registered books of invoices return?
- What is the deadline for the imposition of the above-mentioned sanctions?
- When shall the taxpayer not be penalised by the penalty for the late submission of the registered books of invoices return?
- How to ask for the remission of the penalty for the late submission of the registered books of invoices return?

However, the analysis of this instrument is not the objective of this contribution, therefore only the relevant provisions of section 101d par. 1, 101d and 101g par. 5 of the Act on VAT will be briefly mentioned later in the passage devoted to the relevant Czech Constitutional Court finding.

### **2.3. A brief insight into the electronic sales records**

The second most important instrument helping the Czech tax authorities to tackle tax evasion is the instrument called electronic sales records. The adoption of this instrument's regulation initiated even more political and marketing campaign<sup>14</sup> than the adoption of the registered books of invoices return because until the adoption of the Act No. 112/2016 Coll., on transactions evidence (hereinafter: "Act on ESR"), no continual obligation of taxpayers to provide the tax authorities with the information about sales on real time basis had existed in the Czech Republic. Due to this fact, the tax authorities had to count mainly on the incidental tax inspections reviewing the possible tax evasion when the recipient paid the price for the taxable transaction by cash.<sup>15</sup> The remedy of this unsuitable state of the often-uninformed tax authorities should be represented by the electronic sales records.

The philosophy of the electronic sales records is that every transaction made in cash or in a similar way by the businessman of any kind shall be immediately reported to the tax authority and the tax authority should provide him the unique code for the unambiguous identification of the receipt in return. Finally, the businessman shall provide his client with the receipt containing such unique code.<sup>16</sup> The legal nature of this instrument is quite similar to the general evidence duty of every taxpayer according to section 97 of the Tax Procedure Code, however, such evidence duty does not bind the taxpayer to provide the information about every transaction to the tax authorities immediately and to keep it in a prescribed form.<sup>17</sup>

It could be generalised that the obligation of electronic sales records covers the payment in cash or in a similar form if they form the part of the income of the businessman.<sup>18</sup> The correct fulfilment of this obligation is capable to be considered an effective instrument in the field of the fight against business to customer tax evasion<sup>19</sup> and therefore it can lead to the rise in the revenue of personal and corporate income tax and also of VAT. That is why I consider this instrument very needy, because there is no better way how to tackle the shadow economy VAT fraud which is based on the avoidance of the taxpayer registration duty to VAT, when he reaches the prescribed threshold of his turnover.<sup>20</sup> Again, the analysis of this instrument is not the objective of this contribution, therefore, only the relevant provisions affected by the case law of the Czech Constitutional Court will be briefly mentioned later in the corresponding passage.

### 3. Constitutional Court decisions in case of registered books of invoices return

At the end of the year 2016, we were witnesses of the judicial review of the registered books of invoices return regulation by the Czech Constitutional Court. In this case, the petitioners brought the action against the whole regulation of the registered books of invoices return. Their reasons for this action was a supposed infringement of the constitutional right for privacy, breach of the reservation of law in the form of act pursuant to Article 11 par. 5 of the Charter of Fundamental Rights and Freedoms, infringement of the fair trial regulation and disproportionality between the interference of the fundamental rights of tax payers and adopted legal measure.<sup>21</sup>

As a result, the Constitutional Court did not abolish the whole reviewed regulation but just a few sections of the Act on VAT. In particular, it abolished section 101d par. 1 of the Act on VAT which stated that the taxpayer is obliged to declare prescribed data necessary for the tax administration in the registered books of invoices return and section 101g par. 5 of the Act on VAT which regulated the date when the call of the tax authority for the correction or completion of the registered books of invoices return is effective. However, for the purposes of the aim of this contribution, the finding and argumentation of the Constitutional Court devoted just to section 101d par. 1 of the Act on VAT is relevant.

The problem of the original section 101d par. 1 of the Act on VAT was the designation of the data which should be declared by the registered books of invoices return because this specific tax return must be submitted only in the structure and by the form published by the tax administration. In fact, this regulation authorised the tax administration to determine the scope of the data provided by taxpayers to appropriate tax authorities based on its own discretion due to the lack of the precise determination of the provided data by the Act on VAT.

Hence, such legal construction is not something new in the Czech legal order. We can meet this principle in the submission of applications related to public registries like business register, commercial register, etc. Considering all circumstances, we can still find some distinctions in the legislative approach. In these cases, the legal obligation of the liable

entity is specified in the secondary legislation where it is stated what data should be provided by the respective form.<sup>22</sup> Therefore, the legal obligation of the liable entity is specified by the secondary legislation upon the prior authorisation by the act in accordance with Article 4 par. 1 of the Charter of Fundamental Rights and Freedoms and the form prepared by the competent authority that only unifies the format of submissions made to a public authority. It is clear that such intergrade of the legal regulation was missing in case of the registered books of invoices return.

The reason for this is obvious and lies in the general legal regulation of the tax declarations by the Tax Procedure Code and existing legislative praxis in tax matters. According to section 135 par. 1 of the Tax Procedure Code, every taxpayer is obliged to submit a tax declaration if it is prescribed by law or if he is called to do so by the tax authority. In the tax declaration, the taxpayer is obliged to calculate his tax obligation alone and to declare all prescribed data and other circumstances relevant for the tax administration. Now returning to the information mentioned above, every tax declaration must be submitted by the form created by the Ministry of Finance pursuant to section 72 par. 1 of the Tax Procedure Code. Probably, nobody is surprised that the intermezzo in the form of the secondary legislation prescribing data asked by the form for the tax declaration is missing again. All things considered, no secondary legislation prescribing the requirements and definitions of the scope of data required by tax declarations exists in the Czech Republic.

Most of the tax professionals anticipated the denial of the action by the Constitutional Court but finally, almost everyone was astonished by the argumentation of this court interpreting the reservation of law in form of an act from the point of view of tax declarations. Although the whole regulation of the registered books of invoices return was considered by the Constitutional Court proportional, this court ruled that some provisions might contradict the constitutional order of the Czech Republic.<sup>23</sup> This indicated contradiction concerned the original text of section 101d par. 1 of the Act on VAT and its discrepancy with Article 4 par. 1 of the Charter of Fundamental Rights and Freedoms, pursuant to which duties may be imposed only on the basis and within the bounds of law and only while respecting the fundamental rights and freedoms. The provision of section 101d par. 1 of the Act on VAT imposed the obligation to provide tax authorities with the prescribed data necessary for the tax administration by the registered books of invoices return, but it did not define the scope of prescribed data and let them be defined by the electronic form of the Ministry of Finance. From this perspective, such form represented the specific kind of the secondary legislation which impose concrete obligations to an indeterminate group of persons (VAT taxpayers).<sup>24</sup> Thus, it was the Ministry of Finance as a central office performing executive power of the state which was authorised to exercise the legislative power, which should be executed by the Parliament.

Summarising its opinion, the Constitutional Court concluded that the act shall define at least the scope of data which must be declared by taxpayers. Even so, it does not mean that it is not possible to authorise the Ministry of Finance to adopt a secondary regulation to determine the particular data required by the registered books of invoices return, but in this case, the Ministry of Finance has to do so in the form of legislation.<sup>25</sup> It is clear, that in the case, when the registered books of invoices return was based on the same principle as every kind of tax declaration which requires the provision of the data by taxpayers without

the specification of the scope of data by the legislation but instead by the form created by the Ministry of Finance, such practice is in contradiction to this finding of the Constitutional Court. It is striking that there is no attempt to take into account this opinion of the Constitutional Court in the Czech Republic currently. Even so, it is capable to affect every tax declaration form used by the Czech tax administration.<sup>26</sup> However, it is still questionable if the Constitutional Court follows this opinion in case of other tax declarations like tax returns, which are the necessary precondition for the functioning of the tax system in the Czech Republic, or if this opinion is not generally applicable. Although I did not expect such a decision, I would like to emphasise the necessity to build the legal system also as predictable to recipients of law since the state has the power to collect taxes, levies and similar payments with public characteristics. When the legality of such basic instrument of tax law could be affected by the case law of the Constitutional Court due to the contradiction with the reservation of law in the form of an act, I am expecting an adoption of appropriate measures preserving the function of the tax system by the state. Unfortunately, this is not the case in the Czech Republic.

#### **4. The Constitutional Court Decision of the Case of Electronic Sales Records**

One year later, the decision of the case of the judicial overview of the electronic sales records was made. The respective action was brought before the Constitutional Court by a group of 41 members of the Chamber of Deputies and the unlawfulness was seen in the breach of the procedural rules regulating the adoption of law in the form of act. Further argumentation concerning the unconstitutionality of some provisions of the Act on ESR was based on the allegation that such provisions represent the unconstitutional disproportional infringement of the fundamental right to do business, the right to own property and the right for privacy.<sup>27</sup> For the purpose of this contribution, I do not consider the analysis of the legislative procedure relevant for the possible future of declarative obligations of taxpayers, therefore the following part is devoted to the review of the Act on ESR from the perspective of the breach of the right to do business and the right to own property, respectively the right for privacy.

First of all, it must be highlighted that the Act on ESR did not constitute any new tax obligation which had not existed before the adoption of this act. For this reason, the task of the Constitutional Court was to assess, whether this new form of the evidential obligation of taxpayers is unreasonably burdensome or not.<sup>28</sup> Secondly, the constitutional right to do business belongs by its nature into the group of economic, social and cultural rights regulated by the Charter of Fundamental Rights and Freedoms. Why is this aspect so important? The Constitutional Court emphasises that the economic, social and cultural rights stated under Article 41 par. 1 of the Charter of Fundamental Rights and Freedoms are not directly applicable in the same way as the fundamental human rights and political rights, therefore there exists only a limited scope of the constitutional review of the adopted legislation in such fields.<sup>29</sup> Therefore, the compliance of the Act on ESR was assessed based

on the application of the test of rationality, not the test of proportionality as happened in case of the registered books of invoices return review.

The test of rationality consists of the four following steps:<sup>30</sup>

1. the definition of the essential content of the concerned law;
2. the evaluation whether this essential content of the concerned law is affected by adopted legislation;
3. the assessment whether the adopted legislation follows a legitimate aim;
4. the consideration whether the adopted measures are rational.<sup>31</sup>

Considering the second step of the rationality test, the essential content of the concerned law will be affected only when the state power adopts unreasonable obstacles of public nature affecting the free choice and exercise of the permitted activities by persons owning necessary prerequisites for such activities.<sup>32</sup> All things considered, the Constitutional Court concluded that the essential content of the right to do business is not affected by the adopted regulation of the electronic sales records.<sup>33</sup> Then, during the assessment of the legitimate aim of adopted measures, the Constitutional Court agreed with the Czech Government that the electronic sales records supplements the already existing system imposing on taxpayers the obligation to declare the tax relevant information, tries to equalise the market environment and promotes the effectivity of the tax administration in all segments of the market regardless the size of the taxpayer.<sup>34</sup> Finally, the Constitutional Court proceeded to the fourth step of the test of rationality when it concluded that the current state of the knowledge does not provide comparable alternatives to the electronic sales records which constitutes a lower burden for taxpayers.<sup>35</sup> Summing up, the Constitutional Court did not find any part of the Act on ESR in contradiction to the basic right to do business as it is granted by the Charter of Fundamental Rights and Freedoms.

However, a different approach and conclusion was implemented by the Constitutional Court assessing the conformity of the electronic sales records from the perspective of the right for privacy. Due to the fact that the right for privacy represents a fundamental human right, such assessment of the constitutional conformity must be based on the application of the three-phased proportionality test consisting of:<sup>36</sup>

1. test of the capability of adopted measures to reach the objective pursued;
2. test whether the adopted measures are the gentlest if there is a plurality of the adoptable measures;
3. assessments whether the negatives do not overshadow observed positive effects of the adopted measures.

At the beginning of the assessment, the Constitutional Court referred to the already applied test of rationality in this case which provides the conclusion for the first and second phase of the proportionality test (i.e. the electronic sales records are capable to achieve the observed objective and this measure is the gentlest to the comparable alternatives).<sup>37</sup> Concerning the third phase of the proportionality test, this court started with the general declaration that the electronic sales records regulation does not constitute the disproportional breach of the right for personal privacy,<sup>38</sup> however, particular provisions of the Act on ESR do.



The first affected provision relevant for the aim of this paper is section 5 letter b) of the Act on ESR according to which the cashless payment made pursuant to the order of the payer via the payee, who is obliged to record the respective sale,<sup>39</sup> shall also be recorded. For sure, there is no doubt that records of cashless payments improve the effectiveness of the electronic sales records, however, the court warned that such payments are potentially traceable. Therefore, the system of electronic sales records should provide taxpayers with the option to decide not to be subjected to this regulation to minimalise the risk of the potential vulnerability of their autonomous sphere of privacy.<sup>40</sup> As it could be derived from the previous case law of the Constitutional Court, the situation when the state disposes of the large scope of information without the necessity of their collection is not in accordance with the constitutional law.<sup>41</sup> This opinion is important because the Tax Procedure Code had already been regulating instruments for the collection of the information about cashless payments provided usually by payment institutions. Therefore, in case the technological development or other eventuality will cause a factual inability of tax authorities to trace the cashless payment, then the legislative body will have a space for an adoption of an appropriate legislative measure.<sup>42</sup> I cannot admit anything against such an approach since it is foreseeable from the settled case law of the Constitutional Court, moreover, when it is constantly reminded by this court that the unique position of the state in the human society does not allow to adopt any kind of measure even if it is a most effective one considering the pursued aim.<sup>43</sup>

The second provision, which was abolished by the Constitutional Court, was section 20 par. 1 letter b) of the Act on ESR stating that one information noted on the receipt about the registered sale delivered to the payer is the tax identification number of the payee. The tax identification number is created from the code “CZ” and from the general identifier<sup>44</sup> which is, in case of natural persons, the personal number. Applying the first phase of the proportionality test, it is true, that it could be derived from the current case law of the Czech Supreme Administrative Court and the processing of the personal number by public authorities is used to secure the fastest possible and most effective processing and searching for data because the personal number appears in several registries and electronic databases.<sup>45</sup> However, this personal data is quite important in the Czech Republic and the regulation grants it the higher protection by the specific Act on evidence of residents and personal numbers. On the other hand, this specific law does not forbid the application of the general protection of the personal data regulated by the Act No. 101/2000 Coll., on personal data protection and newly by the GDPR. And that is why the usage of the tax identification number by the electronic sales records did not pass the second and third phase of the proportionality test. The Act on ESR defines extra identifiers as the security code of the taxable person, signature code of the taxable person and fiscal identification code used by the electronic sales records granting the sufficient identification of the sale and the payee.<sup>46</sup> It is clear that the electronic sales records are using the specific identifiers which do not directly invade into the autonomous zone of the taxable person, therefore, there is no legitimate reason to print also the tax identification number consisting also from the personal number of natural persons to every issued receipt and to expose the taxable person to a hardly limited risk of a malfeasance of this really fragile personal data.<sup>47</sup> From these reasons, the law requiring the issuing of the receipt containing also the personal

number is the unconstitutional breach of the right for privacy protecting humans from an illegal gathering, publication and other misuse of the personal data.<sup>48</sup> Finally, it does not matter that such personal data could be publicly traceable, for example from the collection of documents held by Commercial registries or Cadastral registries.

The last group of provisions abolished by the Constitutional Court was dealing with the authorisation of the Ministry of Finance to adopt the secondary regulation in particular matters related to the constitutive elements of the electronic sales records. However, the Constitutional Court provided the same thesis as it had done before in the case devoted to the review of the registered books of invoices return and the reservation of law in the form of act as it was described above in this paper. Therefore, it is useless to analyse this part of the finding for further conclusions.

## 5. Conclusion

Tax law is exposed to the swirl of issues it has to deal with in Europe, for example the application of the *non bis in dem* principle and the fight against tax evasion and illegitimate tax avoidance. In the Czech Republic, it is also a question, what administrative obligations could be used to tackle tax evasion and simultaneously be in accordance with the constitutional order. It is clear that the basic administrative obligations of taxable persons are the declarative one. However, with the promotion of digitalisation and the acceleration of the activity of human society, there is a perceptible tendency to automatise the collection of the data related to tax administration. At the same time, the adoption of respective measures imposing the specific obligations on taxpayers must be in accordance with the constitutional order and sometimes it could be quite difficult for the legislative body to find the right balance between the interference into the protected basic or fundamental rights of the individual and the effective legal regulation.

Historically, the Constitutional Court dealt with two cases regarding the newly adopted declarative obligations of taxable persons. The first reviewed legislation regulated the registered books of invoices return and the findings of the Constitutional Court provided us with valuable guidelines how the reservation of law in the form of act must be interpreted. It stated that it is not possible to authorise only the Ministry of Finance generally by an act to issue the obligatory form used to declare required important tax information when no legislation is provided for the definition of the scope of the information required by the form. Such conclusion is even more burdensome when no tax legislation had been prescribing the scope of the required information by any declaration of the taxable person before the delivery of the above mentioned Constitutional Court's decision and now, only the Act on VAT prescribes which information can be required by the registered books of invoices return after its adjustment. Such state of the regulation is unbearable from the perspective of the case law of the Constitutional Court. It must be thereto concluded that any form which shall be used to declare tax relevant data and circumstances by taxable persons must be created based on the legislative definition of the scope of the required information and it is highest time to take the Constitutional Court's decision into consideration by the Parliament.

Also, the second analysed case dealing with the issue of the electronic sales records provided us important information how the tax declaration of the tax relevant information should look like. Nowadays, tax authorities must dispose with the effective instruments helping to reveal the disguised tax evasion. Therefore, it is legitimate to adopt measures with the nature of the automatised collection of the tax relevant data. However, such automatised mechanism of the collection of the tax relevant data could collect only those that cannot be collected by tax authorities by the already existing instrument. Even so, such instrument is not the most effective one. Secondly, the tax declarations and tax receipts or invoices shall contain the less personal data as possible with the stress on the specific vulnerable one like the personal number. On the other hand, I do not deduce the conclusion like some other tax law professionals<sup>49</sup> that the opinion of the Constitutional Court prohibits the usage of the personal number by all administrative forms and its publication in the publicly accessible registries and databases. Contrary to that, according to my opinion, the usage or publication of the personal number is not *en bloc* prohibited, but there is a requirement that the provision of the data on the administrative form or its publication in the publicly accessible source of information must be legitimate. I believe, the Constitutional Court emphasises that the form can require the personal number in the case that this personal identifier is necessary for the correct identification of the person since the law does not provide alternatives how to identify him. So far as the Act on ESR regulated other three identifiers of the recorded sale securing its correct identification, it was not legitimate to demand other identifiers of the taxable person with the special protected status, such as the personal number. All things considered, my opinion is, that the form used for the declaration of the tax relevant data could demand the statement of the personal data, however, the future of the tax identification number assigned to natural persons is at the edge of its existence.

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- 22 Compare the provision of § 21 Act No. 304/2013 Coll., on public registries of legal and natural persons. This secondary law represents Statute No. 323/2013 Coll., on requirement of forms for submission in case of registration, change or abolition of data in public registries.
- 23 Article 68, Constitutional Court, Pl. ÚS 32/15.
- 24 Article 69, Constitutional Court, Pl. ÚS 32/15.
- 25 Article 70, Constitutional Court, Pl. ÚS 32/15.
- 26 Except the registered books of invoices return which regulation was amended by the amendment to the Act on VAT.
- 27 Article 5 and 7, Constitutional Court, Pl. ÚS 26/16.
- 28 Article 67, Constitutional Court, Pl. ÚS 26/16.

- 29 Article 185, Constitutional Court, Pl. ÚS 83/06.
- 30 Zdeněk Červínek, Standardy přezkumu ústavnosti v judikatuře Ústavního soudu, 21–29, in *Jurisprudence*, no. 4 (2015).
- 31 It does not necessarily mean that such measures must be best, most appropriate or the wisest.
- 32 Article 28, Constitutional Court, Pl. ÚS 11/08.
- 33 Article 72, Constitutional Court, Pl. ÚS 26/16.
- 34 Article 78, Constitutional Court, Pl. ÚS 26/16.
- 35 Article 79, Constitutional Court, Pl. ÚS 26/16.
- 36 Červínek, *supra n.* 33, at 21–29.
- 37 Article 87, Constitutional Court, Pl. ÚS 26/16.
- 38 Article 93, Constitutional Court, Pl. ÚS 26/16.
- 39 E.g. the payment by credit or debit card.
- 40 Article 96, Constitutional Court, Pl. ÚS 26/16.
- 41 Compare Constitutional Court, Pl. ÚS 24/10.
- 42 Article 96, Constitutional Court, Pl. ÚS 26/16.
- 43 Different opinion is provided e.g. by Radim Boháč. Compare Boháč, *supra n.* 21.
- 44 Pursuant to section 130 par. 2 of the Tax Procedure Code.
- 45 Compare Supreme Administrative Court, 1 As 36/2008-77.
- 46 Pursuant to section 19 and 20 of the Act on VAT.
- 47 Article 100, Constitutional Court, Pl. ÚS 26/16.
- 48 Article 101, Constitutional Court, Pl. ÚS 26/16.
- 49 Boháč, *supra n.* 21.