

Na základě zákona č. 106/1999 Sb., o svobodném přístupu k informacím Vás žádám o poskytnutí následujících fotokopíí dokumentů (nejlépe v pdf formátu):

- žádost České republiky z roku 2009 směřující k zavedení přenesené daňové povinnosti (DPH) na pohonné hmoty (benzin a naftu) k Evropské komisi
- odpověď Evropské komise se zamítavým stanoviskem vč. zdůvodnění

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V Praze dne 13.5.2014

Č. j.: MF-33425/2014/21/414IK

Věc: Odpověď na žádost o poskytnutí informace podle zákona č. 106/1999 Sb., o svobodném přístupu k informacím, ve znění pozdějších předpisů

Na Ministerstvo financí bylo dne 29. března 2014 doručeno Vaše podání se žádostí o poskytnutí informací podle zákona č. 106/1999 Sb., o svobodném přístupu k informacím, ve znění pozdějších předpisů. Požádal jste o poskytnutí kopií následujících dokumentů:

- "- žádost České republiky z roku 2009 směřující k zavedení přenesené daňové povinnosti (DPH) na pohonné hmoty (benzin a naftu) k Evropské komisi
- odpověď Evropské komise se zamítavým stanoviskem vč. zdůvodnění".

Požadované kopie výše uvedených dokumentů Vám zasílám v příloze tohoto dopisu.

KOPIE PRO SPIS

Ministry of Finance of the Czech Republic

Ing. Blanka Mattauschová

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Prague, 14 May 2010

Ref. No.: 18/45503/2010 – 181

Mr. Rolf Diemer
Head of Unit
European Commission
DG TAXUD
Indirect Taxation and Tax administration
VAT and other turnover taxes
1049 Brussels

Subject: Request for a reverse charge derogation under Article 495 of the VAT Directive as regards the supply of petrol and diesel.

Dear Mr. Diemer,

Thank you for your letter of 6 April 2010 concerning our request. In regard to your questions I can provide you with the following answers.

How the fraud works

The most common type of fraud relating to petrol and diesel is missing trader fraudulent mechanism, where the output VAT in respect of the supplies is not being paid or not being paid fully to the tax authorities, while input VAT based on VAT invoiced is being reclaimed by the customers. In practise this fraud can be combined with fraud by means of fictitious invoices in some of the links in the fraudulent chain.

These mechanisms involve both intra-Community and domestic supplies. As regards domestic supplies, VAT loss is not limited only to the suppliers' margin from their transactions. This is due to the specific character of these commodities, which can be sold in bulk during a short period of time.

At first a potential fraudster performs legal business activities, he stocks up on goods, partly actually and/or partly fictitiously, and he deducts input VAT. Afterwards he sells the goods in huge bulk during short time, charges VAT and goes missing or bankrupt without paying tax to the tax authorities. The fraudulent mechanism is usually sophisticated and complicated, committed within organized criminal structures. It is very difficult both for the tax administrations and for the financial police to reveal the signs of possible fraud in advance.

Regarding the estimates of not revealed evasion stated in the table in our request, the values are based on the following case. A customer holds an invoice which complies with all formalities. There is a strong suspicion that the fraud has been committed but, despite thorough evidence procedure, such fraud seems to be nearly impossible to prove.

Whether the fraud involves excise duties

VAT loss usually does not encompass excise duty loss, mainly because of the different collection of those taxes. Furthermore, the fraudulent transactions are usually carried out under duty-suspension arrangements, so they are not connected to the time of chargeability of excise duty.

On the other hand, some cases of excise duty losses were detected in connection with intra-Community transactions, mainly in relation to illegal transport of goods to the Czech Republic. Some other cases were detected when an honest registered trader sells his business to a fraudulent customer without knowing that he intends to commit the tax fraud. Such fraudster then goes missing or bankrupt without paying any tax liability, i.e. both VAT and excise duty.

Conventional anti-fraud measures introduced

The Czech Tax Administration has already established a wide range of conventional measures in connection to this type of fraud in recent years. Systematic tax audits of the traders with these commodities are carried out, coordinated by Central Financial and Taxes Directorate and accompanied by intensive searching activities aimed to the revealing frauds and securing the evidence.

The Czech Tax Administration is working in close cooperation with the main representatives of petrol and diesel market and with the Customs Administration. It gained access into their databases and other information systems which is very helpful in detecting the possible fraudsters. The Financial Analytical Unit of the Ministry of Finance is integrated in the process as well, mainly in the field of examinations of particular cases and in the field of detecting of the cases of money laundering.

Special detailed reporting obligations have been imposed on the traders in connection with the sales and purchases of these commodities. The petrol stations are obliged to keep records of the daily prices since one of the indications of the fraud is unusually low price of the goods.

However, some measures, such as denying the right of deduction to an acquirer, are very difficult to apply in this area because it is usually almost impossible to prove the intention of fraud so there is very little chance to apply this kind of jurisprudence.

Intended reporting obligations in connection to the reverse charge

The reporting obligations imposed on the supplier and the purchaser in case of application of the reverse-charge mechanism would be of a similar structure as recapitulative statement for intra-Community supplies.

Both the supplier and acquirer would be obliged to keep records of each supply carried out or received, including the name and the VAT identification number of the supplier/acquirer and the type, amount and value of the goods supplied/purchased. They would have to submit a regular statement for each of VAT return periods setting out the information about all the transactions carried out during the relevant tax period.

Czech Tax Administration is also going to improve the functions of the ADIS (Automated Tax Information System) to allow the automated control of all the transactions subject to the domestic reverse-charge mechanism.

Other intended anti-fraud measures

The Czech Republic, besides the reverse-charge mechanism itself, is also going to introduce other measures to prevent the fraud in this sector.

The proposed law on fuel will establish a special register of traders with these commodities. A specialised tax office is planned to be established by 2012, focusing on the traders with petrol and diesel to increase the effectiveness of the tax control mechanisms.

The Czech Republic also intends to adopt a joint and several liability measures from 2011. Unlike the earlier times, there is a strong support both from the business and the politicians to adopt any anti-fraud measures.

Intended measures to prevent the VAT loss moving to the retail level

In order to prevent VAT loss moving to the retailers, the Czech Republic intends to establish the register of all the retailers with fuel (all the petrol stations), on which the special reporting obligations will be imposed.

These reporting obligations will include all the purchases and sales of petrol or diesel, accompanied by the obligation to install special meters at tanks of the petrol stations measuring the inputs and outputs, and the daily prices of the sales.

Other serious aspects of the matter under consideration

You have mentioned in your letter that the amount of VAT loss related to frauds in petrol and diesel represented only a small value in comparison with the total VAT gap in the Czech Republic. In this context I would like to highlight that the revenue loss is not the only part of the problem.

The fraudulent activities significantly threaten fair competition in this sector. Goods connected to the fraudulent transactions can be sold much cheaper and, since particularly price sensitive customers are typical of this sector, as stated also in your letter, the honest

traders are under a strong pressure either to join to the fraudulent activities by buying goods from fraudsters or to leave the market.

Furthermore, such a distortion of competition is not limited only to the Czech Republic, but it is also extended to the neighbouring Member States. In the border areas there are seen many customers from other Member States buying petrol or diesel because of lower prices.

The honest traders of the market, including the Community of Operators of Petrol Stations and the most important authorized warehousekeeper CEPRO, strongly called for introducing the reverse-charge mechanism. They would appreciate any measures to tackle this fraud, despite the increase of the administrative burden.

I hope that information provided is sufficient enough. I would like to emphasize that this is a matter of great importance for the Czech Republic due to the serious threat of the fair competition. I would of course be happy to deal with any additional question you have.

Yours sincerely,



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
VAT and other turnover taxes

Brussels,
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Blanka Mattauschova
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118 10 Prague 1
Czech Republic

Dear Ms Mattauschova,

Subject: Request for a reverse charge derogation under Article 395 of the VAT Directive as regards the supply of petrol and diesel.

Thank you for your letter of 12 February 2010 concerning the above matter. In order to examine your request I would at this stage require some more information.

From your letter it is not entirely clear how the fraud works within the VAT system. Any business buying in petrol or diesel as a wholesaler or as a retailer of petrol or diesel in the Czech Republic will be charged VAT on their purchases. Should that taxable person choose to go missing without paying over the VAT collected on their onward sale they would also lose any right to deduct the VAT they paid on their petrol or diesel purchases. Thus, the VAT loss would appear limited to the VAT on the margin between the sales and purchases, which is probably quite small as regards these products.

In order to maximise the amount of tax evaded, a typical 'missing trader fraud' involves an intra-Community acquisition of goods, and the business going missing in the chain is the one making that acquisition and not paying to the Treasury the VAT he charges on his onward supply. The goods may be sold domestically (often at a reduced price) or, as in the case of 'carousel fraud', be supplied on to a business in another Member State. In this way, the resulting VAT loss to the Treasury is the full amount of the VAT on the onward sale since the goods are effectively acquired VAT free (the VAT to be deducted on the purchase is matched by the VAT payable on the intra-Community acquisition).

Therefore, could you please clarify in more detail how the fraud works. For instance, is it based on a typical missing trader fraud involving cross border supplies, or based on a business making purely domestic supplies and purchases? Is the VAT loss the margin between the sales and purchases of petrol or diesel, or are other VAT losses involved?

Petrol and diesel are also goods subject to excise duty and for which the excise duty to be collected is far greater than the VAT amount. Excise duties will be paid by businesses authorised to deal in petrol and diesel and as such will be well regulated. Therefore, it is hard to imagine the VAT fraud would involve these businesses going missing or becoming bankrupt. Nevertheless, does the VAT fraud also encompass unpaid excise duty or is it limited to petrol and diesel which is already duty paid?

As regards the control measures put in place to counter this missing trader fraud you state that the conventional measures alone are insufficient. However, the jurisprudence in this area, for instance Kittel (C-439/04), does provide means by which Member States can deny the right of deduction to a business acquiring goods from a supplier that does not pay over the VAT should the purchaser know or should have known they were involved in a fraudulent transaction. Have such measures been taken to make purchasers jointly and severally liable for unpaid VAT debts of their suppliers and if so were they successful? If not what are the specific problems in this approach to tackling the fraud as regards petrol and diesel?

The figures provided clearly indicate a growing fraud problem in the sector of petrol and diesel products. In 2006 the fraud resulted in EUR 53 million of lost VAT revenue, rising to EUR 125 million in 2008. Despite these significant levels, in terms of uncollected VAT, the amounts remain small. Taking the study on the VAT gap done for the Commission by Reckon, uncollected VAT in the Czech Republic in 2006 amounted to EUR 1 675 million. The fraud in petrol and diesel in 2006 thus only accounted for 3% of the VAT loss or 0.7% of actual VAT receipts. Even taking into account the increase in fraud in 2008, the fraud in petrol and diesel still only represented 7% of total VAT losses (based on 2006 figures for VAT losses). Moreover, the figures used are based on estimates in large part. The "estimates of not revealed evasion" contribute generally about half of the VAT losses mentioned. An explanation of how these estimates are arrived at would be useful.

In addition a reverse charge for petrol and diesel would have to be shown to be effectively controlled. There is clearly a danger for these consumable products that a retailer, purchasing petrol and diesel VAT free, would not accurately declare the VAT on his sales. This is particularly so as payments would be more likely in cash, unlike for instance the mobile phone market where purchases tend to be a higher value and one-off. As well consumers are particularly price sensitive as regards petrol and diesel.

Thus any retailer that could reduce his price by not paying the VAT in full to the Treasury on all sales would be at a competitive advantage. This may even affect competition with retailers in neighbouring Member States. Whilst you write that reporting obligations on the supplier and purchaser would be introduced to restrict the abuse of the reverse charge mechanism could you please explain in more detail those reporting obligations and whether any other additional measures would be introduced?

For the Commission to come forward with a proposal for a derogation the request must be well founded and the derogation proportionate. At this stage it has in our view not yet been established how the fraud works, whether it involves excise duties, whether all conventional measures to tackle the fraud have been exhausted and what are the detailed measures to be put in place to prevent the VAT loss moving to the retail level.

Therefore, I would be grateful if you could supply information regarding the points raised to allow a more in depth analysis of the derogation request.

Rolf Diemer
Head of Unit

Cc.: Messrs Wiedow, Pillet, Wilkinson

KOPIE PRO SPIS

Ministry of Finance of the Czech R

Ky.
18/17287/2010

Mr Rolf Diemer
DG TAXUD
European Commission
1049 Brussels
Belgium

12 February 2010
Our Ref. : 18/17287/2010

Dear Mr Diemer

Request for authorisation of derogation under Article 395 of Directive 2006/112/EC

The Czech Republic applies for the authorisation to introduce a special measure derogating from Article 193 of the VAT Directive as regards the use of a reverse charge mechanism for domestic supplies of petrol and diesel.

1.

In recent years an alarming increase of fraudulent activity in petrol and diesel market has been observed, despite efforts to tackle the problem.

The most common type of tax evasion concerning these commodities is missing trader fraud, where a VAT registered supplier charges VAT and subsequently goes missing or bankrupt without declaring and/or paying tax to the relevant tax authorities while leaving a customer with a valid invoice for VAT deduction.

Such fraud is often sophisticated and combined with other possible fraud mechanisms involving numerous fraudsters. It has a serious impact not only on the revenue loss due to unpaid VAT liabilities and fraudulent VAT repayment claims; it also distorts fair competition by enabling the fraudulent traders to sell goods at low prices which gives them an advantage in comparison with the honest traders.

The conventional methods of the anti-fraud strategy, however comprehensive they are, appear not to be sufficient enough. The Czech tax administration has developed and exploited the range measures and instruments, including for example post-registration checks carried out by local tax offices, a specific risk analysis system of VAT returns or the verification of input repayment claims in selected suspect cases, but tax evasion has increased nevertheless.

2.

The following table shows that there has been consistent increase in levels of VAT evasion in the petrol and diesel market between 2006 and 2008.

VAT evasion concerning petrol and diesel (CZK mil)

	2006	2007	2008
Additional VAT imposed by tax authorities	210.5	836.2	1,658.0
VAT declared but not paid	428.0	57.4	123.6
Estimates of not revealed evasion	721.9	1,135.6	1,398.9
Total evasion	1,360.4	2,029.2	3,180.5

3.

The Czech Republic is deeply concerned about the increasing VAT evasion and the fraudsters' concentration on the petrol and diesel market. It takes the view that the tax evasion can be conclusively defeated only by removing the opportunity for missing trader fraud in petrol and diesel. This would be enabled by applying the reverse charge mechanism targeted on this sector.

4.

The Czech Republic would like to introduce the reverse charge mechanism as follows:

The mechanism would be applicable to supplies of petrol and diesel made in the Czech Republic to VAT registered taxable persons.

For the purposes of simplification a threshold of 1,500 litres would be set. Supplies below the threshold would not be subject to the reverse charge. This would limit the application of the mechanism only to the wholesalers and retailers and so alleviate potential difficulties for common final customers. The natural threshold expressed in litres would be applied in order to avoid artificial lowering of the value of the supplies. The threshold would be calculated on an invoice basis.

At the same time, the reporting obligations both on the suppliers and the customers of the goods subject to the reverse charge would be introduced in order to enable cross-checking of the data. This would restrict potential abuse of the measure.

The number of taxable persons affected by the measure would be relatively small – only about 1,400 VAT registered taxable persons declare the whole-sale or retail trade with fuel as a prevailing business activity.

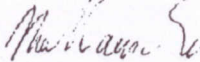
5.

Similar derogations in relation to Article 193 of the VAT Directive have been granted to other Member States. Their experience shows that the targeted reverse charge enables to reduce fraud patterns similar to those the Czech Republic faces.

In the Explanatory Memorandum of its proposal COM(2009) 511, the Commission announced to be willing to examine the possibility of allowing the application of a targeted reverse charge mechanism by any interested Member State.

The Czech Republic is applying for the authorization of the derogation in order to prevent tax evasion in a targeted sector suffering from high levels of fraud. The Czech Republic believes that the derogation measure is necessary to counter tax evasion and that it complies with the test required by Article 395 of the VAT Directive.

Yours sincerely



Blanka Mattauschova
Director of Indirect Tax Legislation Department