

Windfall tax: issues of its construction in the Czech Republic

Abstract

The thesis deals with a critical analysis of the legal regulation of windfall profits tax in the Czech Republic. Its aim is to analyse whether the windfall profits tax legislation is in line with the constitutional order of the Czech Republic. To this end, it also examines the case law of the highest courts of the Czech Republic and the European Court of Human Rights. The research method used is doctrinal research, based on the analysis of the legal regulation of windfall profits tax, its comparison with other tax legislation, for the purpose of induction and deduction, including possible solutions and *de lege ferenda* proposals.

The internal structure of the thesis is formed systematically into six chapters. The first chapter examines the basic concepts and history of windfall taxes, including the reasons for their existence. Furthermore, the first chapter introduces the classification of windfall profits tax in the tax system of the Czech Republic and presents the theoretical background for the review of the constitutionality of the tax. The second chapter focuses on the legislative process and “wild riders”. The following chapters deal with the design elements of the windfall profits tax. The third chapter therefore analyses the subjects of the tax and the criteria for their income, including the vagueness of the term “decisive activity”. The fourth chapter focuses on the subject matter and the tax base, examining the equity between taxpayers and the possible choking effect. The fifth chapter describes the calculation of the tax, the rate and the tax period. The final sixth chapter looks at the budget determination of the tax and its due date, including the fictitious windfall profits tax.

Four key hypotheses are explored in the thesis, testing constitutionality in terms of (i) the legislative process for legislative riders, (ii) the vagueness of the term “decisive activity”, (iii) the choking effect, and (iv) inequality between taxpayers among themselves. Based on these, the paper then answers the research question: “Can a windfall profits tax be considered unconstitutional?”

The thesis concludes by providing a comprehensive answer to the research question and confirming or refuting the stated hypotheses. It was found that the hypotheses on the tested facts under (i) and (iv) are confirmed, which leads to the conclusion that the windfall profits tax is unconstitutional.

Key words:

windfall profits tax, discrimination, choking effect