Izvirni znastveni članek

Zakon o davčnem postopku v okviru odprave administrativnih ovir - med cilji in prakso

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IZVLEČEK

Zakon o davčnem postopku je ključni predpis za urejanje razmerij med udeleženci postopkov pri pobiranju davkov. Zato je bil v zadnjih letih že večkrat bolj ali manj korenito spremenjen, med drugim v sklopu vladnega programa odprave administrativnih ovir (OAO). Postopki se skušajo poenostaviti, tako za zavezance kot za davčni organ. Avtorica v prispevku obravnava nekaj izbranih institutov, ki naj bi bili uvedeni s tem ciljem, denimo odmera dohodnine z informativnim izračunom, navadno vročanje, zavezujoča informacija itd. Prek statističnih podatkov o pogostnosti uporabe teh (novih) institutov v letih 2006, 2007 in 2008 avtorica preverja, ali oziroma do katere mere zastavljeni cilji sprememb regulacije davčnega postopka v praksi dosegajo cilj. Ugotavlja, da kljub nekaj izjemam večina obravnavanih institutov res pomeni realizacijo programa OAO.

Ključne besede: davčni postopek, zakon, odprava administrativnih ovir.

JEL: H20, K40, D73

1. Presek davčnega postopka in odprave administrativnih ovir

Namen prispevka je obravnavati, ali in v katerih elementih je sprejem oziroma noveliranje zakonov o davčnem postopku v sklopu programa odprave administrativnih ovir (OAO) v zadnjih nekaj letih v praksi doseglo zastavljeni cilj. V ta namen smo izbrali nekaj institutov, ki so v več gradivih (predvsem v predlogu ZDavP-2[1]

1 Dostopno na spletnih straneh Slovenija jutri, EVA: 2006-1611-0024 (gradivo za prvo obravnavo, jesen 2006). Tudi v Poročevalec Državnega zbora RS, št. 99/06 (20. 9. 2006).

in v dokumentih o Strategiji razvoja Slovenije) opredeljeni kot OAO, nato pa primerjali podatke Davčne uprave RS (DURS) o realizaciji teh institutov po statističnih podatkih.[2]

Davčni postopek je posebni upravni[3] postopek, v katerem se zagotavlja pobiranje davkov, torej obračun oziroma odmera in plačilo oziroma vračilo davka, nadzor nad davčnimi obveznostmi, izterjava upravnih denarnih obveznosti zavezanih strank ter mednarodno sodelovanje v davčnih zadevah (Jerovšek in Kovač, 2008, splošno Kopp & Ramsauer, 2003). Davčni postopek je urejen z več predpisi. Nekaj procesnih določb vsebujejo sami predpisi o obdavčitvi za posamezne vrste davkov, pretežno se uporablja Zakon o davčnem postopku (tak zakon imamo v Sloveniji od leta 1996, več Šinkovec, 2002, sedaj velja ZDavP-2[4]), podrejeno zakona, ki urejata davčno in carinsko službo, delno Zakon o inšpekcijskem nadzoru (ZIN), Zakon o splošnem upravnem postopku (ZUP[5]) in izvršilni akti navedenih predpisov (o subsidiarnosti splošno Androjna in Kerševan, 2006). Za OAO na strani zavezancev, davčnega organa in nenazadnje drugih sodelujočih subjektov v postopkih (npr. bank, delodajalcev, registrskih institucij, ki posredujejo podatke) je ključen predvsem zakon o davčnem postopku, delno pa tudi ZIN in ZUP. Slednja dva sta (bila) prav tako večkrat predmet novelacij v kontekstu OAO.[6] A vse to k OAO v davčnih

2 Večina podatkov je zbranih iz letnih poročil o delu DURS, ki so objavljeni na spletnih straneh. Pri zbiranju podatkov in njihovi obdelavi so poleg avtorice tega prispevka v okviru predmeta Raziskovalni seminar sodelovale štiri podiplomske študentke Fakultete za upravo. Na tem mestu se zahvaljujem DURS, zlasti A. Kovač Arh in P. Jenku iz Pravne službe Generalnega davčnega urada DURS za sodelovanje pri zbiranju tistih podatkov, ki (še) niso javno dostopni na internetu, pa smo jih ocenili kot relevantne za obravnavo v prispevku navedenih vprašanj.

3 Davčni organi vodijo predvsem upravne postopke, ki pa so se jim v okviru pristojnosti davčne inšpekcije leta 2005 pridružili še hitri postopki o prekršku, če kršitev davčnih predpisov pomeni pravni stan prekrška, leta 2007 pa so se na podlagi ZDavP-2 uvedle tudi davčne preiskave kot *sui generis* postopki (predupravni oziroma predprekrškovni). Upravni postopek je presečišče, ki naj zagotovi, da sta javni in zasebni interes uravnotežena, sorazmerna (o tem Komentar Ustave RS, 2002). Če je narava pravice, obveznosti ali pravne koristi opredeljena kot upravna zadeva, mora upravni postopek zagotoviti, da javni interes ni zaščiten čezmerno in hkrati da zasebni interes ni nadrejen javnemu (načelo varstva pravic strank in javne koristi, 7. člen ZUP).

4 Objavljen v Ur. l. RS št. 117/06, 24/08-ZDDKIS, 125/08-ZDavP-2A, 20/09-ZDoh-2D.

5 Ur. l. RS, št. 80/99, 70/00-ZUP-A, 52/02-ZUP-B, 73/04-ZUP-C, 119/05-ZUP-D, 24/06-UPB2, 105/06-ZUS-1, 126/07-ZUP-E, 65/08-ZUP-F.

6 Npr. izmenjava podatkov kot breme organov, 66. in 139. člen ZUP (Androjna in Kerševan, 2006, str. 303), odprava strokovnega izpita iz upravnega postopka, 31. člen ZUP, preventivni ukrep opozorila, 28. člen ZIN (Pirnat et al., 2004), sprejem vlog izven davčnih uradov in sobotne uradne ure na davčnih uradih (po Uredbi o upravnem poslovanju, gl. uvodna pojasnila v Kovač et al., 2008). Sobotne uradne ure so bile uvedene leta 2007, pri čemer je davčne urade v tem času obiskalo le okoli 0,9 stranke na 1 uslužbenca v letu 2007, a kljub enakim podatkom v letu 2008 obvezne uradne ure niso bile odpravljene vse do leta 2009.

postopkih pripomore zaradi posebnosti in relativno celostne specifične ureditve davčnega postopka (Šinkovec, 2002) prejkone minorno, zato se v nadaljevanju osredotočamo na spreminjanje zakonov o davčnem postopku.

Program OAO se v slovenski javni upravi izvaja že več let (predvsem od leta 2001, ko je bila ustanovljena vladna komisija za OAO, o razvoju programa in nosilcih Josevski, 2008). Cilji in aktivnosti programa se pogosto kažejo tudi v normativnih ukrepih. Pri tem Slovenija praviloma sledi dobrim praksam iz tujine (npr. samoprijava in zavezujoča informacija, več v predlogu ZDavP-2, 2006, in Jerovšek et al., 2008). Na področju davčnega prava se izvaja spremembe, ki so materialnopravne (npr. uvajanje novih olajšav, odprava določenih davkov), kot predvsem procesne, saj se lahko olajša zlasti način uveljavljanja pravic, pravnih koristi in obveznosti zavezancev za davek glede poenostavitev za vse udeležence postopkov (prim. Jerovšek, 2005, Kovač, 2006). Na ta način se med drugim doseže večjo stopnjo prilagodljivosti zavezancev kot nosilcev gospodarske dejavnosti razmeram na trgu, torej njihovo večjo konkurenčno sposobnost. Med novostmi poenostavitve postopkov, kar je bil eden ključnih ciljev OAO pri pripravi sprememb zakonov o davčnem postopku v letih 2004-2009, so nekatere določbe zakonov, ki so očitno zavezancem v korist; hkrati je delo ponekod olajšano tudi davčnim organom, čeprav morda zavezance bremeni (Jerovšek, 2005a, Kovač, 2007). Cilj OAO je v čim večji meri razbremeniti davčni organ in fizične oziroma pravne osebe kot zavezance z administrativnimi opravili, ki povzročajo izgubo časa in dodatne stroške, brez dodane vrednosti, saj gre za opravila, ki se podvajajo ali so nesmiselna za cilj davčnega postopka, tj. pobiranje davkov. Temelj davčne reforme kot celovitejšega sklopa ukrepov znotraj in prek OAO, ki je bila zastavljena predvsem v letih 2006 in 2007, je tako spodbujanje konkurenčnosti nacionalnega gospodarstva ter enovitost sistema v razmerju do zavezancev in družbe kot celote. Davčna reforma skuša udejaniti cilje vladnih reform v smislu spodbujanja podjetništva in konkurenčnosti Slovenije, kot izhajajo iz Lizbonske strategije, Strategije razvoja Slovenije in Programa ukrepov Vlade Republike Slovenije za spodbujanje podjetništva in konkurenčnosti za obdobje 2007-2013 (Vlada, 2008). Zakon o davčnem postopku je bil zato leta 1996 sploh oblikovan in sprejet[7] (prej smo imeli v Sloveniji le nekaj procesnih določb v materialnih zakonih in takojšnjo rabo ZUP) in nadalje večkrat bolj ali manj korenito spreminjan. Tako beležimo več zakonov oziroma novel, ki so podlage za opredelitev več obdobij regulacije davčnega postopka v Sloveniji, kot izhaja iz tabele 1.

7 Ur. l. RS, št. 18/96, 78/96 Skl.US: U-I-376/96, 87/97, 35/98 Odl.US: U-I-376/96-9, 82/98, 91/98, 1/99-ZNIDC, 108/99, 37/01 Odl.US: U-I-18/98-20, 97/01, 31/03 Odl.US: U-I-72/00-15, 33/03 Skl.US: U-I-108/99-14, 105/03 Odl.US: U-I-252/00-12, 16/04 Odl.US: U-I-233/01-14, 42/04 Odl.US: U-I-329/02-7.

Tabela 1: Obdobja in (novele) zakoni(ov) o davčnem postopku

št.	Obdobje	Pravna podlaga	Čas veljave oziroma uporabe[8]
1	Ureditev brez samostojnega zakona o davčnem postopku	Področni zakoni o obdavčitvi in ZUP	Do 31. 12. 1996
2	Ureditev s (prvim slovenskim) samostojnim zakonom o davčnem postopku[9]	ZDavP	1. 1. 1997 – maj 2004/ 1. 1. 2005
3	Ureditev po polnopravni včlanitvi RS v EU – nov (drugi slovenski) zakon	ZDavP-1[10]	1. 1. 2005 – 31. 12. 2006 (del že od maja 2004)
4	Ureditev po ukrepih davčne reforme – novelacija	ZDavP-1B	1. 1. 2006 – 31. 12. 2006
5	Celovita ureditev davčnega postopka v okviru davčne reforme – novi (tretji slovenski) zakon	ZDavP-2	Velja od novembra 2006, uporablja se od 1. 1. 2007 –
6	Noveliranje v okviru gospodarske krize	ZDavP-2A ZDoh-2D	31. 12. 2008 Velja od 14. 3. 2009, uporablja se od januarja 2009.[11]

V nadaljevanju obravnavamo izbrane institute davčnega postopka, ki naj bi bili del programa OAO, po absolutnih podatkih na letno osnovo in trendih uporabe zlasti za leta:

8 Po ZDavP-2 se neveljavni zakoni še uporabljajo, 418. člen ZDavP-2. ZDavP-2 se ne uporablja v zadevah, glede katerih je bilo ob začetku uporabe ZDavP-2, tj. 1. 1. 2007, vloženo redno ali izredno pravno sredstvo v upravnem postopku oziroma upravni spor, tedaj se zadeva konča po ZDavP-1 (UPB2); preko tega pa lahko še celo po prejšnjih zakonih glede na njihove prehodne in končne določbe, če se bo končal upravni postopek oziroma upravni spor s spremembo ali razveljavitvijo davčne odločbe. Toda zaradi enakega varstva pravic (22. člen Ustave, gl. Šturm et al., 2002) se v obnovljenem postopku glede materialnih predpisov uporabi predpis za tisto davčno obdobje, na katero se davčna odločba nanaša (razen če ima ZDavP-2 za zavezanca ugodnejšo materialno določbo, npr. nastop zastaranja, po Jerovšek et al., 2008).

9 Pri tem kaže opozoriti, da je davčni postopek edini med približno 400-500 posebnimi upravnimi postopki, kolikor jih pozna slovenski pravni red, ki je determiniran s posebnim procesnim zakonom, kajti drugi postopki so procesno delno urejeni s specialnimi določbami postopka v materialnih zakonih in z ZUP (Androjna in Kerševan, 2006, Jerovšek in Kovač, 2008).

10 Ur. l. RS, št. 54/04, 57/04-ZDS-1, 109/04 Odl. US: U-I-356/02-14, 128/04 Odl. US U-I-166/03-12, 139/04, 56/05 Skl. US U-I-159/05-4, 96/05-ZRTVS-1, 100/05 Odl. US U-I-159/05-14, 109/05, 21/06 Odl. US: U-I-32/04-10, 21/06-UPB2.

11 Po ZDoh-2D velja, da lahko zavezanec ne glede na 54. člen ZDavP-2 že za leto 2008 uveljavlja znižanje določene davčne osnove s predložitvijo popravka obračuna najpozneje v 30 dneh od uveljavitve novele (torej zakon učinkuje v korist zavezancev glede obdobja in postopkovno za nazaj).

– 2006 uveljavitev ZDavP-1B,
– 2007 in 2008 – uporaba ZDavP-2, ki je (večinoma) prevzel institute ZDavP-1B glede OAO in dodal nove.

2. Pregled rabe izbranih institutov ZDavP-2 v praksi

2.1 Izbor obravnavanih institutov

V zgoraj opisanem smislu v tem prispevku preučujemo le nekatere institute zakonov, pri čemer je treba poudariti, da bi celovita analiza regulacije davčnega postopka in OAO morala vključevati različna pravila, čeprav na prvi pogled ne stremijo k OAO, saj celota norm skupaj večplastno učinkuje na končni izid ne/realizacije reformnih ciljev (Pirnat et al., 2004). Tako med institute ZDavP in hkrati program OAO ne uvrščamo npr. temeljnih načel davčnega postopka, čeprav je nekaj celo po evropski sodni praksi takih (npr. načelo sorazmernosti, gl. Šinkovec, 2002, Kovač, 2006a), ki dokaj neposredno pripomorejo k uveljavitvi ciljev OAO v posamičnih postopkih (nekatera načela so neposredno podlaga za določene institute, npr. načelo gotovosti za zavezujočo informacijo).

OAO regulacija davčnega postopka sploh od leta 2006 dalje zelo upošteva, zlasti ZDavP-2 je nedvomno zakon, ki vsebuje večje število norm, katerih cilj je OAO oziroma poenostavitve (po Predlogu ZDavP-2, 2006, str. 2-14). Proces OAO v ZDavP se sicer uresničuje korakoma; postopno se z novimi zakoni in novelami zakona uvaja čedalje več institutov OAO (gl. tabelo 2). Predstavljeni podatki so tako relevantni kot študija primerov. Zaradi izrecnih navedb predlagatelja zakona[12] o OAO in glede na dostopne podatke DURS smo v ožji izbor vključili sedem institutov (vrstni red po naraščajoči številki člena ZDavP-2):

12 Po Predlogu ZDavP-2, 2006, denimo str. 2 in 14 za odmero dohodnine, str. 9 in 185 za odlog plačila davka, str. 182 glede navadnega vročanja. Obširneje v Jerovšek et al., 2008, pri komentarjih k posameznim določbam, glede predizpolnjene napovedi prim. Klun, 2009 (npr. prva država s predizpolnjeno napovedjo je bila Danska leta 1990).

Tabela 2: Pregled obravnavanih institutov davčnega postopka v sklopu OAO

št.	Institut	Pravne podlage	Čas veljave (2006-2008)
1	Zavezujoča informacija	14. člen ZDavP-2	2007 in 2008
2	Samoprijava	390.a, 390.b člen ZDavP-1 55. in 63., 396., 399. idr. Členi ZDavP-2	2006 2007 in 2008
3	(Navadno) Vročanje	85. člen ZDavP-2	2007 in 2008
4	Odpis, odlog in obročno plačilo davka	36. in 37. člen ZDavP-1 101. in 102. člen ZDavP-2 (novo pa 103. (posebni primeri) in 105. člen (odpis po višini do 1 EUR))	2006 2007 in 2008
5	Davčna preiskava	131. člen ZDavP-2	2007 in 2008
6	Obvestilo o neplačanem davku v izvršbi	128. člen ZDavP-1 (odpravljeno z ZDavP-2)	2006
7	Informativni izračun pri odmeri dohodnine	421. člen ZDavP-2 (predizpolnjena napoved za dohodnino za leto 2006, torej postopki v letu 2007) 267. in nadaljnji členi ZDavP-2 (predhodni informativni izračun)	2007 2008

Pri teh institutih postavljamo hipotezo, da se uporabljajo različno pogosto, vendar pa naj bi trend rabe po statističnih podatkih naraščal, če naj bi bil cilj OAO v praksi dosežen. Pri tem je ponekod upoštevan status zavezancev za davek, v odvisnosti, ali gre za gospodarske subjekte (predvsem pravne osebe in fizične osebe, ki so samostojni nosilci dejavnost), saj je program OAO (na davčnem področju) prednostno usmerjen k dejavnemu poslovanju tistih zavezancev, ki so ključni za delovanje trga, torej gospodarstva.

Sicer ima ZDavP-2 (in že prej ZDavP-1) še vrsto drugih določb v zvezi z OAO. Ključnega pomena je primarnost obračuna kot načina izpolnitve davčne obveznosti (več Jerovšek in Kovač, 2008), Dalje je npr. pomembna določba 50. člena ZDavP-2 o bagatelnem znesku pod 10 evri, ki se sploh ne odmeri, postopek se tu zaključi z

uradnim zaznamkom, saj bi znesek davka ne dosegel povprečnine stroškov vodenja enostavnega davčnega postopka (seveda pa se obveznost prenese v naslednjo obračunsko obdobje). Podobno se ne vrne preveč plačani davek brez zahtevka stranke po 97. členu ZDavP-2 ali uvede postopek izterjave po 149. členu ZDavP-2, če gre za zneske pod 10 EUR. DURS po zakonu ne izterjuje davčnih obveznosti za RTV oziroma članarine zbornicam. Določene so dodatne oblike zavarovanj, jasno je normirano razmerje med oddajo obračuna ali napovedi v roku ali po roku, v postopku se praviloma uporablja kot dokazilo le listine, dokazno breme je pri cenitvi davčne osnove obrnjeno, stroški se obračunavajo po posebej opredeljenem načelu uspeha in sorazmerno, odločba se lahko izda le v obliki štampiljke, kontrola obračunov se lahko izvede ob ugotovljenih odstopanjih z direktnim plačilom razlike, vzpostavljene so povezave med postopki (npr. kontrolni in inšpekcijski, vpliv ugotovitev inšpekcije na obnove postopkov, prim. Šinkovec, 2002), praviloma je omejeno trajanje inšpekcije na 6 mesecev, rok za pritožbo zoper inšpekcijske odločbe je podaljšan na 30 dni od vročitve, dodan je samostojni dolgovni seznam kot podlaga, da se uvede le en izvršilni postopek ob več izvršilnih naslovih, institucionalizirano je mednarodno sodelovanje v davčnih zadevah itd. (več v Jerovšek et al., 2008).

2.2 Zavezujoča informacija

Zavezujočo informacijo izda zavezancu glede bodoče davčne bremenitve glavni davčni oziroma carinski urad, da se zavezanec laže odloči, ali bo predvideni davek kot del stroškov pomenil preveliko breme za posel v primerjavi s pričakovanim dobičkom in torej vanj ne bo šel (Jerovšek et al., 2008). Zavezujoča informacija je bila uvedena 2007 kot izraz načela gotovosti, čeprav je postopkovno zapisana tako, da s kopico rezervnih klavzul močno omeji predvideni pozitivni učinek instituta (npr. kar 6 mesečni rok za izdajo, več Kovač, 2006). Institut naj bi bil aktualen predvsem za pravne osebe, zlasti investicije tujcev glede na vidik pravne varnosti na področju davčne zakonodaje (Predlog ZDavP-2, 2006, str. 168). V praksi se po izkušnjah DURS kaže nerazumevanje namena tega instituta, saj zavezanci neredko na podlagi 14. člena ZDavP-2 dejansko uveljavljajo informacije o že izvedenih poslih oziroma dogodkih ali pa zahtevajo splošno pojasnilo predpisa. Zavezujočo informacijo je namreč treba razumeti kot abstrakten (za še ne nastale pravne položaje) in hkrati posamičen akt (za določenega naslovnika oziroma predmet obdavčitve).

Tabela 3: Podatki o zavezujočih informacijah 2007 in 2008

	2007	2008
Število prejetih zahtevkov za izdajo zavezujoče informacije	14	7
Število izdanih zavezujočih informacij	2*	3*

* Od tega se je v obeh letih ena informacija nanašala na davek na dodano vrednost, preostale pa na davek od dohodka pravnih oseb.

Leta 2007 so d.d. in d.o.o od 14 zahtev podale 11 zahtev., leta 2008 je bilo teh 6 od 7. V obeh letih so d.o.o. vložile 57 % vseh zahtev. Zavezujoča informacija v Sloveniji (še) ni zaživela - še zahteve, ki so vložene, niso niti procesno ustrezne, kronološki trend pogostnosti vlog je negativen. Glede na vrste davkov in status prosilcev pa drži, da so zavezujoče informacije uporabne za večje gospodarske subjekte oziroma posle, pri čemer nekateri razumejo delo davčnega organa napačno kot davčno svetovanje (verjetno zato več zahtev d.o.o. kot denimo d.d.). Glede na podatke o številu zavezancev in poslovnimi subjekti po Poslovnem registru (približno 84.000 pravnih in 78.000 fizičnih oseb) lahko zaključimo, da zavezujoča informacija ne dosega zastavljenih ciljev. Glede na to, da je npr. na Nizozemskem poslovanje prek zavezujočih informacij stvar organizacije davčnega organa in ne *materia legis*, lahko z veliko verjetnostjo sklepamo, da je naš zakon preveč zbirokratiziran.

2.3 Samoprijava

V letu 2006 je bil z ZDavP-1B uveden institut samoprijave, vsebinsko in nomotehnično (z ločitvijo na procesni in kazenski del ter določitvijo sosledja za vrnitvijo v prejšnje stanje) izboljšan z ZDavP-2. Samoprijava je dopustna za pravne in fizične osebe po izteku rokov za oddajo obračuna (in odtegljaja) in napovedi za odmero davka, pri čemer zavezanec dolgovani davek takoj tudi plača (Predlog ZDavP-2, 2006, str. 176). Ta institut naj bi združil koristi za javni interes (davek, ki sicer verjetno ne bi bil pobran) in zavezanca, ki sicer plača davek, zamudne in kazenske obresti, a je prekrškovno ekskulpiran, če poda prijavo, preden davčni organ odkrije prenizko (ali sploh ne) pobrano obveznost (prim. Jerovšek, 2005a). Samoprijava je namreč mogoča do izdaje odmerne odločbe, začetka inšpekcijskega (upravnega)[13] oziroma prekrškovnega ali ka-

13 Samoprijava je po ZDavP-2 dopustna do vročitve sklepa o začetku inšpekcijskega nadzora. Prej je bil sporen trenutek začetka inšpekcijskega postopka, saj je lahko zavezanec vložil samoprijavo v letu 2006 po prejemu obvestila o nadzoru, kar je smiselnost nadzora izničilo

zenskega postopka zoper zavezanca. Samoprijava odraža operacionalizacijo načel materialne resnice in izpolnjevanja davčnih obveznosti (s kombinacijo sankcij po Silvani in Baer, 1997, str. 11, 25), čeprav po mnenju nekaterih posega prek kazenske odgovornosti v ustavni privilegij zoper samoobtožbo, zaradi česar bi morali ZDavP-2 jasneje urediti (Ferlinc, 2009).

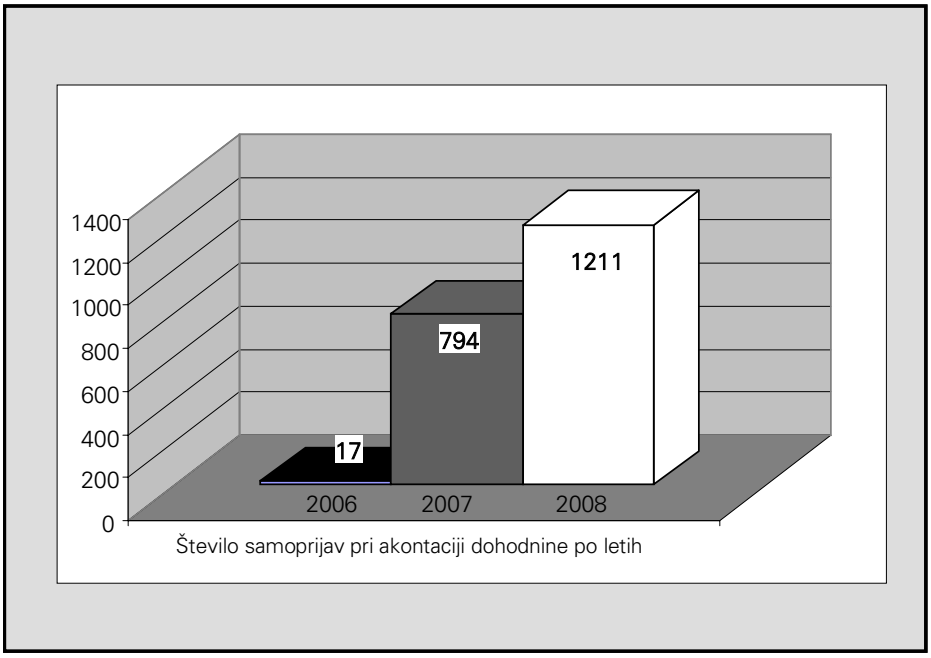
Tabela 4: število in vrednost samoprijav 2006-2008 po vrstah davkov

	2006		2007		2008	
Vrsta davka	Število samoprijav	Vsota dodatno pobranega davka v EUR	Število samoprijav (in trend glede na prejšnje leto)	Vsota dodatno pobranega davka v EUR	Število samoprijav (in trend glede na prejšnje leto)	Vsota dodatno pobranega davka v EUR
Davki in prispevki od dohodkov fizičnih oseb	10	101,202	↑ 368	1,295,468.38	↑ 426	870,372.06
Dohodnina	425	165,957	↑ 3,188	364,478.24	↓ 1,089	163,962.85
Akontacija dohodnine	17	25,914	↑ 794	124,637.00	↑ 1,211	176,689.31
Davek od dohodkov pravnih oseb	31	2,084,645	↑ 161	3,529,711,72	↓ 122	5,495,619.59
DDV	8	381,956	↑ 103	2,094,735.79	↑ 309	1,974,054.74
Druge dajatve	0	0	↑ 3,948	598,654.95	↓ 656	400,183.74
Davek iz kapitala	0	0	0	0.00	↑ 5,239	918,253.60
Izvajanje mednarodnih pogodb	0	0	0	0.00	↑ 1	488.45
SKUPAJ	491	2,759,674	8,562	8,007,686.44	9,053	9,999,624.34

(prim. Jerovšek et al., 2008). V sklopu temeljnih načel ZDavP-2 davčni uradi zavezance lahko (ni pa obvezno) telefonsko oziroma z navadnim e-sporočilom obveščajo o predvidenih nadzorih, s čimer (zakonito) pospešijo prijave in zmanjšujejo potrebne inšpekcije.

Po številu samoprijav prevladuje v letu 2006 dohodnina, leta 2007 druge dajatve (od tega predvsem članarine (3.948), nadalje davek na promet nepremičnin, davek na dediščine itd.), leta 2008 davek iz kapitala (predvsem iz naslova obresti (4.022 od 5.239)), na novo mednarodne izterjave, pri čemer je znesek pričakovano nesorazmeren s številom prijav, saj so določeni davki po naravi izdatnejši. Tako je največ donosa na podlagi samoprijav v vseh letih pripisati davku od dohodka pravnih oseb s povečanjem z dobrih 2 mio EUR leta 2006 na že skoraj 5,5 mio EUR dve leti kasneje. Tako število samoprijav kot zneski pobranih dajatev iz tega naslova se v letih 2006-2008 po vseh kazalnikih nedvomno povečujejo, spreminja pa se struktura le-teh. Zavezanci očitno potrebujejo čas za posvojitev zakonskih novosti, kar izkazuje denimo izreden porast števila samoprijav iz leta 2006 (nekaj manj kot 500) v 2007 (že kar prek 8.500), podobno npr. ugotovimo s parcialnim področjem akontacij dohodnin pri s.p. (v letih 2006-2008 s 17 na 794 in 1.211):

Graf 1: Število samoprijav 2006-2008 pri akontaciji dohodnine



Po drugi strani pri določenih davkih število samoprijav upada, kar je pri dohodnini (za skoraj trikrat iz leta 2007 v 2008) zagotovo kombiniran rezultat uvedbe predhodne kontrole in informativnega izračuna kot predizpolnjene napovedi, podobno velja za druge dajatve. Glede na nove vire je očitno, da je v prihodnje

pričakovati še nadaljnjo stabilizacijo števila in strukture samoprijav po vrstah davkov.

Sešteto so zavezanci zaradi samoprijav plačali v treh letih skoraj 21 mio EUR. Tej vsoti bi bilo treba za izračun koristi instituta prišteti najmanj še stroške neuvedenih inšpekcijskih pregledov, zato kaže institut kot tak ohraniti, kvečjemu minorno nomotehnično izboljšati. Nemogoče pa je izmeriti pozitiven učinek stopnje večanja davčne kulture, ki se nedvomno prek prostovoljnega izpolnjevanja obveznosti občutno zvišuje.

2.4 Navadno vročanje

ZDavP-2 je v letu 2007 uvedel za razliko od 87. člena ZUP le navadno vročanje (glede na ZUP zaradi fikcije vročitve nekoliko prilagojeno) za večino pisanj v davčnem postopku z deklariranim ciljem prihranka stroškov davčnega organa za osebno vročanje. Kljub mogočim zadržkom o neustavnosti ureditve ZDavP-2 v razmerju do ZUP (o tem Kovač, 2008) so podatki za DURS tako vspodbudni, da potekajo v letu 2009 priprave na še večji obseg veljave določb o navadnem vročanju kot sedaj.[14] Tako izračun datuma plačila v grobem pomeni seštevek kronoloških dogodkov: odprava izvršilnega naslova, 20 dni za nastop fikcije vročitve in še 30 dni od vročitve za izvršljivost, torej plačilo davka (splošni paricijski rok). Povezano je treba upoštevati vrstni red poplačil (po vrstnem redu dospelosti za davke, navedene na plačilnem instrumentu). Fikcija vročitve je sicer pomembna enako kot za rok plačila in izvršbo za uveljavljanje pravnih sredstev, zato je DURS za bolj nesporen izračun datuma valute uvedla oznako datuma odprave na ovojnici (pri centralno tiskanih odločbah in odpremi v tranšah natisne datum kar zunanji izvajalec).

Da ugotovimo prihranek iz naslova spremembe osebnega v navadno vročanje, smo primerjali število izdanih odločb za dohodnino (prek 1,1 mio letno), nadomestilo za uporabo stavbnega zemljišča (cca 0,7 mio letno), davek od premoženja, davek iz premoženja, obresti, in kapital v letu 2006 pred uporabo ZDavP-2 in v letih 2007 in 2008. Število odločb je skoraj enako (dobre 2

14 Zakon določa: »Vse odločbe in sklepi ter drugi dokumenti, od katerih vročitve začne teči rok, razen odločb, sklepov in drugih dokumentov, ki se izdajo v postopku davčnega nadzora in v postopku davčne izvršbe, se vročajo z navadno vročitvijo. Šteje se, da je vročitev opravljena 20. dan od dneva odprave ...« Z ZDavP-2A je bila konec leta 2008 navadna vročitev nekoliko omejena, saj je bilo uvedeno obvezno osebno vročanje tudi za odločbe o obročnem plačilu davka, ne le za akte v nadzornih in izvršilnih postopkih.

mio letno), razlika v stroških za vročanje pa na tej osnovi kar cca 2-3 mio EUR na letni osnovi:

Tabela 5: Stroški vročanja in prihranki zaradi navadnega vročanja 2006-2008

leto	Število odpremljenih odločb za dohodnino, NUSZ	Cena navadne vročitve po pisanju(po ceniku pošte)	Skupni stroški vročanja ob navadni vročitvi	Cena osebne vročitve (po ceniku pošte)	Skupni stroški vročanja ob osebni vročitvi	Prihranek DURS zaradi razlike med stroški za osebno in navadno vročanje
2006	2,124,866	0.24	509,967*	1.73	3,676,018	3,166,051*
2007	2,012,670	0.25	503,167	1.78	3,582,552*	3,079,385
2008	2,013,327	0.26	523,465	1.83	3,684,388*	3,160,923

*Izračun, kako bi bilo, če bi bila normativna ureditev nasprotna.

Te prihranke nekoliko zmanjšuje strošek posredovanja aktov, ki jih je vendar treba vročiti osebno po 85. členu ZDavP-2, ker zavezanec v roku za plačilo po fiktivni vročitvi obveznosti ni poravnal (ali pisanja ni prejel ali pa si je zavestno tako podaljšal čas izpolnitve obveznosti brez sankcije). Podatki, koliko je tovrstnih zadev, se ne spremljajo, ocena po izkušnjah v praksi se giblje med 5 do 10 % zadev. OECD ugotavlja, da je zavezancev, ki so pri neizpolnjevanju obveznosti benevoletni, ok. 70 % (na Danskem 67 %, po Klun, 2009), torej je nedvoumno, da je navedeni delež prihranka opazno manjši. O tem neposredno pričajo predvsem pristojni v izvršilnih zadevah, saj se je obseg izterjav izredno

povečal v letu 2009 v primerjavi s predhodnimi leti, ko se izvršilni naslovi še niso vročali navadno (empirični podatki sicer še niso zbrani za letno osnovo). Kakorkoli, pri 2.013.327 izdanih odločbah za leto 2008 bi tako stroški vročanja znesli za navadno vročitev 523.465 EUR, dodatno pa še 1.105.317 EUR, torej skupaj (le?) 2.055.606 EUR. Kot vidimo, je vsota prihranka še vedno bistvena, sploh ker se s tem denarjem ne zajeda pobrani davek za stroške režije, v primerjavi s stroški izvršilnih postopkov pa vendar prejkone primerjava koristi in stroškov pokaže negativen izid.

2.5 Odpis, odlog oziroma obročno plačilo davka

ZDavP-1B je v primerjavi z osnovnim besedilom zakona podaljšal obdobje odložitve oziroma obročnega plačevanja davka z enega na dve leti, pri čemer zakon dopušča diskrecijsko odpis, odlog ali obroke za fizične osebe zaradi ogroženosti preživljanja zavezanca in njegovih vzdrževanih družinskih članov in po drugi strani odlog oziroma obroke za pravne osebe oziroma s.p. ter druge fizične osebe kot nosilce dejavnosti iz razloga večje gospodarske škode, ki bi nastala zaradi plačila v roku (Jerovšek et al., 2008). Odlog oziroma obroki pa ne morejo biti odobreni za akontacije, odtegljaj in določene davke, kar je sicer tehnično sporno, saj se mešata merili določitve izjem po vrstah davkov in načinih izpolnitve obveznosti (tako Kovač, 2006, podobno Hren, 2009, drugače Predlog ZDavP-2, 2006, str. 185). ZDavP-2 je nadalje prinesel pomembnejše novosti v smislu OAO, kot je poseben primer odloga oziroma obročnega plačila, če zavezanec predloži instrument zavarovanja oziroma dovoli vknjižbo zastavne pravice v registru, vendar zaradi odsotnosti meril le do 12 mesecev (103. člen). Nadalje bo fizična oseba, ki ne opravlja dejavnosti, lahko brez presojanja pogojev in meril po 101. členu ZDavP-2 zaprosila za tri mesečne obroke brez zavarovanja. Za čas odloga oziroma obročnega plačila sicer tečejo obresti, a le po medbančni obrestni meri za ročnost enega leta s ciljem ohranjanja realne vrednosti dolga (Jerovšek in Kovač, 2008). Vse opisane spremembe naj bi prispevale k večjemu izpolnjevanju obveznosti v skladu z načelom zakonitosti, kar naj bi vodilo tudi v manj izvršilnih postopkov in predvsem manj negativnih posledic za življenje in poslovanje zavezancev. Podatki DURS za leta 2004-2008 te domneve ne potrjujejo, saj kljub ugodnejšim pogojem s spremembo zakonodaje v obravnavanem obdobju iz posredovanih podatkov ni zaznati posebnega povečanja vlog zavezancev za odpis.

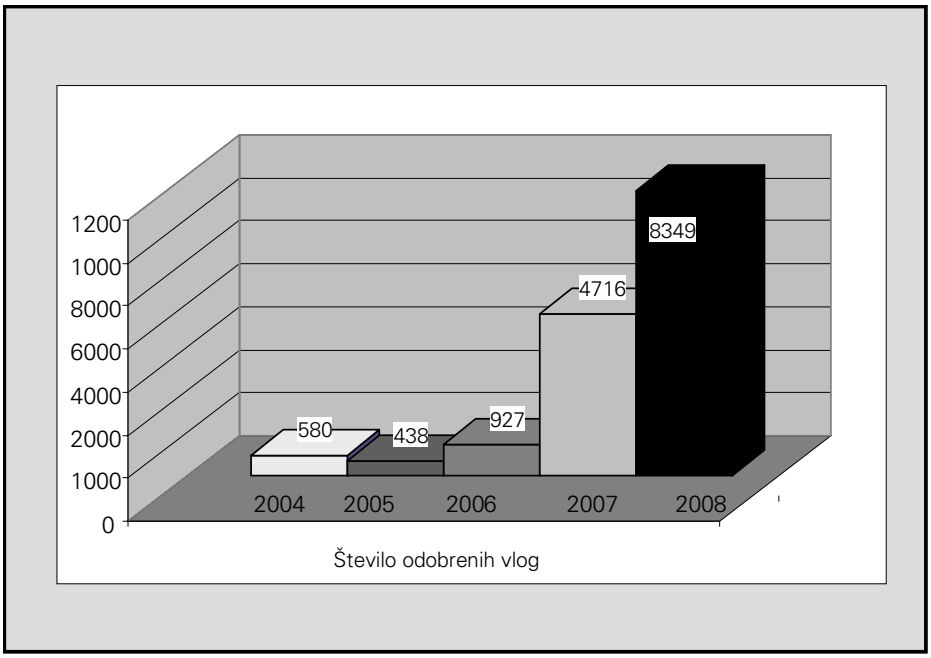
Tabela 6: Število odpisov, odlogov in obročnih plačil 2004-2008

	2004	2005	2006	2007	2008
Število pozitivno rešenih zahtev	Število	Število/ trend in indeks na leto poprej	Število/ trend in indeks na leto poprej	Število/ trend in indeks na leto poprej	Število/ trend in indeks na leto poprej
Odpis	3,065	3,282 ↑ 1.07	3,274 → 0.998	1.816 ↓ 0.55	1,710 ↓ 0.94
Odlog	288	231 ↓ 0.80	948 ↑ 4.10	819 ↓ 0.86	494* ↓ 0.60
Obročno plačilo	580	438 ↓ 0.76	927 ↑ 2.12	4,716 ↑ 5.09 (4,005 dohodnina)	8,349 ↑ 1.77 (7,314 dohodnina)

*Pozitivno rešenih 494 zahtev izmed skupaj 1181 vloženih. To pomeni cca 10 mio EUR (prim. z 1.120 mio EUR plačanega davka od dohodka v letu 2007, po Hren, 2009).

Iz tabele je razvidno, da je institut obročnega plačila med zadevnimi instituti najbolj aktualen, sploh v letih 2007 in 2008, kar sovpada z gospodarsko krizo, (prim. graf 2), medtem ko odpis in odlog opazno upadata (z izrednim porastom odlogov in obročnih plačil leta 2006, ki jih kaže pripisati daljšemu obdobju po ZDavP-1B). Po vrstah davkov je v celotnem obdobju najbolj prisotna dohodnina (tudi socialni prispevki, davek od prometa proizvodov in storitev ter NUSZ). Dohodnina prevladuje predvsem pri odpisu (pravnim osebam ta praviloma ni dopusten) in pri obročnem plačilu v zadnjih dveh letih od uporabe ZDavP-2.

Graf 2: Število odobrenih zahtev za obročno plačilo davka 2004-2008

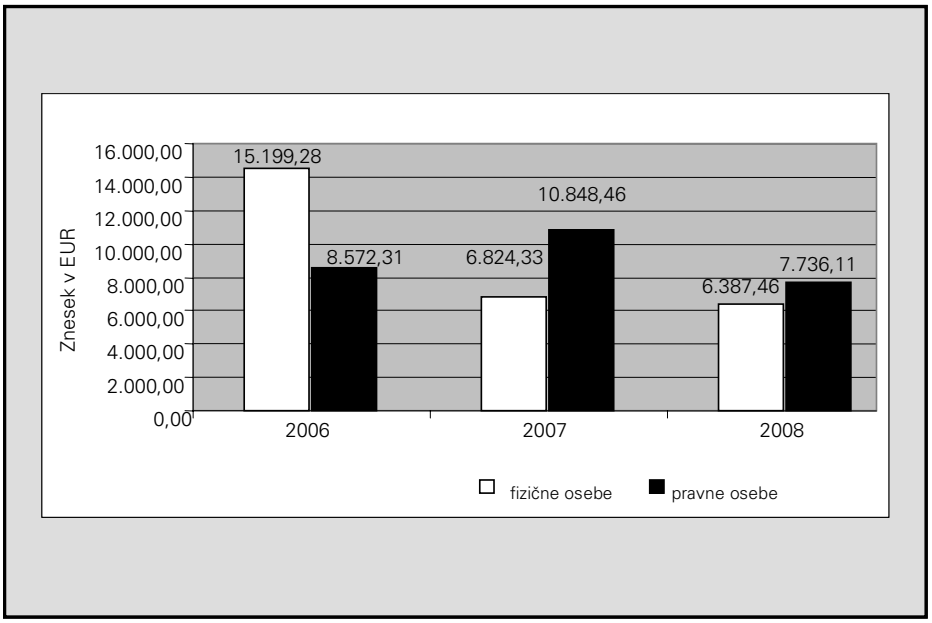


Porast obročnega plačevanja lahko brez dvoma pripišemo drugemu odstavku 103. člena ZDavP-2, ki se je izkazal kot izredno aktualen v obstoječi družbeni situaciji. To velja za vse obravnavane institute v luči iskanja skupnih interesov zavezancev (socialna zmožnost ob davčni obveznosti) in davčnega organa (prednost prostovoljne izpolnitve, da ni potreb po prisilnem nadzoru in izterjavi). Skupaj je bilo v letu 2008 namreč odpisanih za cca 4,2 mio EUR davkov, odloženih za cca 10 mio EUR in določenih za obročno plačilo za kar približno 31,5 mio EUR (leto prej gre za cca 7 mio (odpis), 6 mio (odlog) in 17 mio (obroki) EUR). Ugotovimo lahko, da je zakonodajalec podal roko zavezancem (žal) glede na globalno krizo celo predčasno. To potrjujejo podatki za leto 2009 (skoraj 50 % porast, v le prvih dveh mesecih prejetih 1300 zahtev za obročno plačevanje v primerjavi s cca 850 isto obdobje lani, po Hren, 2009). Ob pričakovani omilitvi krize bo institut še vedno potreben, zato naj se ohrani, morda celo poenostavi način uveljavljanja, če ne samih pogojev po 101. in 102. členu ZDavP-2.

Po uradni dolžnosti se meseca februarja od leta 2007 nadalje odpiše davčna obveznost po posamezni vrsti davka, ki konec koledarskega leta znaša manj kot 1 EUR (105. člen ZDavP-2), saj tako vrednost davka ne dosega niti 5 %

povprečnih stroškov postopka izvršbe (prim. Jerovšek, 2005). Institut odpisa oziroma saldacije se kaže kot pozitiven tudi za preglednost davčnih evidenc, sploh upoštevaje objektivni element teže dolga (upoštevan v ZDavP-2 npr. tudi pri določitvi zavezancev za nadzor, prim. Jerovšek et al., 2008). Slednje je očitno predvsem ob naslednjih podatkih v letih od 2006 do 2008:.

Graf 3: Odpis davka po višini neplačanega dolga glede na status zavezancev 2006-2008



Z odpisovanjem v plačilo dospelega bagatelnega zneska davka davčnemu organu ni treba voditi knjigovodstva za številne davčne zavezance, katerih dolg je v predhodnem letu zapadel v plačilo in ne preseže 1 EUR. Omenjeni institut nedvomno zasleduje ukrepe odprave administrativnih ovir predvsem za davčni organ in zavezance, čeprav določeno izgubo trpi skupni proračun. A ta izguba je v primerjavi s stroški vodenja evidenc, postopkov odmer, nadzorov in zlasti izterjav zanemarljiva, zato je predmetni institut *de lege ferenda* (ob predhodnih izračunih posledic) smiselno prek dviga cenzusa do 10 EUR (glede na analogijo *intra legem*) celo še bolj aktualizirati, zlasti ker pomaga izrazito socialno šibkim zavezancem.

2.6 Davčna preiskava

Davčna preiskava pomeni za zakon o davčnem postopku v letu 2007 nov institut (prej le v zakonu o davčni službi), s katerim se skuša davčnemu organu omogočiti nadzor nad praviloma večjimi nepravilnostmi oz. skupinami oseb, ki delujejo v transnacionalnih strukturah (Predlog ZDavP-2, 2006, str. 190), torej ko metode klasičnega inšpekcijskega nadzora odpovedo. Gre za neke vrste predupravni postopek, kajti če se razlogi za sum izkažejo za utemeljene, se začne inšpekcijski postopek in dokazi iz preiskave se v tem postopku uporabijo, zato se OAO pri tem institutu kaže v smeri večje učinkovitosti davčnega organa, nenazadnje pa zaščitenih poslovnih partnerjev obravnavanega zavezanca, sam zavezanec pa je varovan predvsem prek določb ZIN in ZUP (Androjna in Kerševan, 2006). Institut je lahko sistemsko sporen (Kovač, 2006). Kljub funkciji pregona se namreč zavezancu sklep o začetku in predmetu preiskave sploh ne vroči, ima le vlogo internega akta davčnega organa v razmerju do inšpektorja-preiskovalca; zavezanec ima možnost izjaviti se (samo) ob uvedbi inšpekcijskega postopka (prim. Šinkovec, 2002).

Iz zbranih podatkov (graf 4) je razvidno, da se je institut v praksi uveljavil že v letu 2007 (skupaj 358 prijav in 224 zaključenih inšpekcijskih pregledov na podlagi ugotovitev preiskav) in enako 2008 (397 prijav in 188 inšpekcijskih pregledov, tu manjši upad - indeks 0,84 glede na leto 2007). Po načinu prijave prevladuje delež anonimnih prijav, cca 60-70 %.[15]

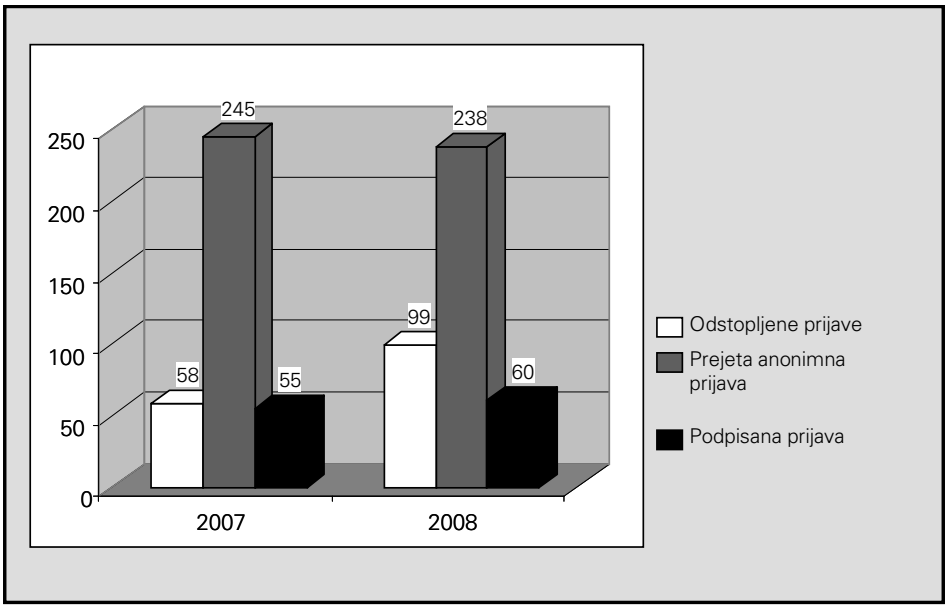
Po poročilu DURS za leto 2007 je bilo delovanje pristojnega preiskovalno-analitskega oddelka usmerjeno predvsem v odkrivanje davčnih goljufij s področja prometa z naftnimi derivati (odkritih 29 t. i. *missing trade* družb[16] in motornimi vozili (12 preiskav), posojilništva (15 preiskav) in gostinstva. Največkrat je prijavitelj fizična oseba, v letu 2008 prevladuje kot zaposleni pri delodajalcu, ki ga prijavlja v zvezi z delom na črno (zlasti v gradbeništvu), dvigi gotovine odgovornih oseb pri pravnih osebah in neizdajanjem računov. Med prijavljenimi prevladujejo po pričakovanju glede na večjo vrednost dolgov po vrsti davkov pravne

15 Poleg teh prijav deluje od aprila 2007 24-urna brezplačna telefonska linija, prek katere ljudje precej vlagajo prijave (leta 2007 kar 606, leta 2008 še 23 % več), a je uporabnih, ki bi vodile k pobranemu davku, komaj 12-15 % (90 od 606 oziroma 93 od 744).

16 V mesecu aprilu 2008 je zaživela za odkrivanje in pregon teh oseb aplikacija »Rdeča pika«, ki je bila uvedena na podlagi ugotovitve, da se kot »missing trader-ji« pojavljajo vedno iste osebe. S pomočjo aplikacije delajo inšpektorji in preiskovalci ter referenti na področju registracije DDV; v sistem je bilo po poročilu DURS za leto 2008 na dan 30. 6. 2008 vnesenih 452 zavezancev.

osebe, teh je bilo leta 2008 179, torej 45 %, skupaj s s.p. kot gospodarskimi subjekti pa 73 % (še 111 s.p. od skupaj 397 prijavljenih).

Graf 4: Število prijav za davčne preiskave po načinu prejema 2007 in 2008



Skupni izplen zaključenih inšpekcijskih pregledov na podlagi preiskav je bil leta 2007 skoraj 18,5 mio EUR (skoraj 7 mio EUR DDV) in leta 2008 cca 9,28 mio EUR. Izračun pokaže, da je povprečni donos končanega inšpekcijskega postopka cca 67.300 EUR (v letu 2008 sicer upad na indeks 0,6 glede na leto poprej). Temu gre prišteti še prihodek proračuna zaradi določenih prekrškovnih glob.

2.7 Obvestilo o neplačanem davku v izvršbi

Zakonodajalec je s ciljem prijaznosti (o tem kritično Jerovšek, 2005) uvedel v ZDavP-1 institut obvestila o neplačanem davku kot procesno predpostavko za začetek izvršbe. Dolžnik je imel od poziva (poslanega z osebno vročitvijo) 8 dnevni rok za plačilo dolga, da se izterjava ni uvedla. V praksi je to pomenilo velik strošek za državo (tako zaradi administriranja kot nepriliva dolgovanih davkov, ker izvršba še ni bila niti začeta), zavezancu pa je omogočalo učinkovito

zavlačevanje izvršbe (vse do 73 dni po izračunu Jerovška, prav tam). Zato je bil 128. člen že leta 2006 z novelo ZDavP-1B spremenjen in sicer se je v sklopu OAO odpravila določba, ki je določala osebno vročanje obvestila.

ZDavP-2 je zaradi OAO v celoti črtal določila o obvestilu o neplačanem davku, pri čemer se pojavlja vprašanje, ali je bil ta ukrep glede na pobrani znesek davkov na podlagi obvestil res (zgolj) administrativna ovira. Davčni organi ugotavljajo nasprotno, zato kljub neposredno neobstoječi pravni podlagi v ZDavP-2 zaradi v praksi ugotovljenega deleža bolj ali manj benevolentnih zavezancev, ki morda zavlačujejo plačilo, ne pa za ceno izvršbe, še vedno pošiljajo dolžnikom obvestila, še sploh zaradi navadnega vročanja po 85. členu ZDavP-2. Pri tem so trendi rasti še bolj ugodni po znesku plačanega kot samem številu postopkov (podatki po letnih poročilih DURS).[17]

Tabela 7: Število obvestil o neplačanem davku pred izvršbo in znesek plačil 2005-2008

	2005	2006 / trend na leto poprej	2007 / trend na leto poprej	2008 / trend na leto poprej
Število obvestil	349,213	437,355 ↑ 1.25	307,468 ↓ 0.70	333,473 ↑ 1.08
Znesek plačanega po obvestilu v EUR	*705,846,269	*986,614,355 ↑ 1.40	570,252,913 ↓ 0.58	690,279,812 ↑ 1.21

*Temu znesku je treba odšteti stroške osebnega vročanja (v letu 2006 gre po tarifi 1,73 EUR na pošiljko za skupaj 651.659 EUR razlike med stroški osebnega in navadnega vročanja obvestil).

Primer obvestila o neplačanem dolgu je zanimiv, ker nam osvetli več razsežnosti normiranja davčnega postopka in delovanja DURS. Prvič, davčni

17 Dodatno je nekaj izplena iz naslova vrstnega reda poplačil, saj se zavezancem obračunava dolgove po datumu prispetja, za preostali dolg pa se ne vroča ponovno (osebno), ampak se zavezanca obvesti in pozove k plačilu. Če zavezanec po prejetem obvestilu davčnemu organu potrdi, da je odločbo prejel oziroma bo obveznost plačal, se šteje, da je odločbo prejel. V prid ohranitve instituta govori tudi dejstvo, da je pošiljanje obvestila smotrno predvsem v primerih, ko gre za manjše davčne dolgove, saj bi uvedba takojšnje izvršbe za dolžnika pomenila dodatne stroške izterjave (20 evrov) in stroške banke (cca 35 evrov).

organ lahko deluje sploh v smislu varstva pravic zavezancev in ob hkratni neogroženosti javne koristi neposredno po temeljnih načelih, ne le na podlagi eksplicitnih pravil. Dalje, nekatera pravila, ki so se na prvi pogled, celo po enotnem mnenju stroke, kazala kot tipična administrativna ovira, prinašajo zelo koristne učinke že v finančni izdatnosti, kaj šele v zadovoljstvu v postopek vpletenih udeležencev. Sprememba zakonodaje je tako v letih 2006 in 2007 vplivala predvsem na znižanje stroškov pošiljanja obvestil, ne pa na izumrtje instituta. Tretjič, vsako pravilo je treba pri izvajanju in ocenjevanju, ali gre za administrativno oviro, gledati ob součinkovanju celega zakona in načina dela organa.

2.8 Informativni izračun pri odmeri dohodnine

V okviru odprave administrativnih ovir naj bi v praktičnem smislu največji doprinos novega ZDavP-2 predstavljal princip odmere dohodnine prek predhodnega informativnega izračuna z mešano naravo napovedi (ta kot predizpolnjena poslana po 421. členu ZDavP-2 že leta 2007 do 30. 4. 2007) in odločbe (od leta 2008 dalje), če ni vloženega ugovora (267. in nadaljnji členi ZDavP-2, (prim. Jerovšek, 2005a, Predlog ZDavP-2, 2006, str. 14). ZDavP-2 določa, da za dohodnino 2007 in nadaljnje, torej postopke od leta 2008 naprej, davčni organ s predhodno notranjo kontrolo na podlagi podatkov izplačevalcev oziroma registrov premoženja (ti pošljejo podatke do 31. 1. za preteklo leto) pripravi informativni izračun dohodnine do 31. 5., ki se šteje za napoved (zaradi zagotovitve skladnosti s splošnim delom zakona, predvsem pa prevzema odgovornosti zavezanca za resničnost, pravilnost in popolnost podatkov) in hkrati za osnutek odmerne odločbe, ki s potekom roka za ugovor, če ni vložen, postane izvršilni naslov. Če je vložen ugovor, se izda odmerna odločba do oktobra, prav tako odločba sledi vloženi napovedi do 30. 6. za preteklo leto, če zavezanec ni prejel informativnega izračuna, pa je stvarno legitimiran kot zavezanec.

Za leto 2007 je bilo vloženih le cca 34.000 napovedi neposredno od zavezancev, za leto 2008 pa 33.838 v primerjavi z 1.276.860 v letu 2005 oziroma 1.135.422 v letu 2006 (v vseh teh letih pa DURS beleži skupno od cca 1,012 do 1,275 mio aktov s pravno naravo odločbe). Opisana rešitev prinaša koristi tako za zavezance, ki so praviloma odvezani priprave napovedi, če izplačevalci pošljejo DURS pravilne podatke, kot davčne organe, saj se je naknadna kontrola na prvi stopnji prevesila v predhodno, a je bistveno manj ugovorov in zlasti pritožb (enako po podatkih OECD pri predizpolnjenih napovedih, Kovač, 2006a, Klun, 2009), rok plačila (ali vračila) pa prejkone bolj zgoden. O slednjem priča podatek, da je že

pred iztekom roka za pripravo izračuna, konkretno na dan 6. 5. za dohodnino za prejšnje leto v letih 2008 in 2009 postalo izvršilni naslov kar prek 470.000 informativnih izračunov. Torej predvidoma cca 46 % vseh dohodninskih zavezancev plača obveznost (oziroma prejme vračilo) že v juniju, medtem ko so se prve odločbe v letih 2005 in 2006 izdale konec maja ali še celo v drugi polovici junija. Poleg navedenega je pomembno ugotoviti, da je DURS zaradi vnosa napovedi v ustrezne aplikacije in še naknadne kontrole vsako leto do leta 2006 zaposloval tudi študente, zato ob sedanji organizaciji dela ta dodatna organizacija in stroški v veliki meri odpadejo. Same uradne osebe na DURS se lahko (bolj) posvetijo vsebinskemu nadzoru na račun odpada operativnih vnosov. Dodatno so prihranki zaradi navadnega vročanja informativnih izračunov.

Glede na podatek letnega poročila DURS za leto 2007 je bil delež vloženih ugovorov zoper informativne izračune kar več kot tri četrtine, tj. 76,64 %, v letu 2007 pretežno posledica »napak« zavezancev samih, ker niso pravočasno posredovali DURS podatka o vzdrževanih članih, da bi se olajšava obračunala po zahtevi staršev. Sicer je v prvi tranši izdanih izračunov (oziroma leta 2007 predizpolnjenih napovedi), teh na dan 31. 3. prek pol milijona, ugovore vložilo v letu 2007 le 7,3 %, leta 2008 pa celo (verjetno na osnovi izkušenj s prijavo vzdrževanih članov v letu 2007) zgolj 4,3 % zavezancev (22.408 od skupaj 518.973). Trend je torej v skladu s cilji instituta in opazno pozitiven po letih 2007-2008. Davčni organ se je izkazal kot učinkovit servis, sam institut predhodnega informativnega izračuna pa z nadgradnjo izvršilnega naslova in ne le pravno naravo predizpolnjene napovedi predstavlja slovensko regulacijo dohodninskega postopka kot eno najmodernejših in najučinkovitejših na svetu (prim. Kopp, 2003, Klun, 2009).

3. Sklepi

Sklepno lahko ugotovimo, da večina obravnavanih institutov, urejenih na novo s sklicem na program OAO v zakonu, ki ureja davčni postopek, od leta 2006 in 2007 naprej, dejansko dosega zastavljene cilje, torej poenostavljene postopke za zavezance in davčni organ. Navedeno je mogoče argumentirati s podatki o pogostnosti rabe institutov in izračuni prihrankov, vendar je treba dodati, da realizacija ciljev ne velja za vse institute. Tako na področju davčnega postopka kot širše pri normiranju v sklopu OAO se neredko le delno upošteva, da mora biti operacionalizacija načela usmerjenosti k uporabniku zaradi načel ekonomičnosti in učinkovitosti javne uprave omejena z izkazanimi potrebami (in

ne le željami) strank in poprejšnjo diferencirano analizo zmožnosti organa oziroma javne uprave kot celote.

Še pomembnejše je spoznanje, da uporabljeni podatki niso edini relevantni za zbirno oceno. Posamična pravila predpisov učinkujejo namreč večplastno, isto- ali nasprotnosmerno, zato se predvideni pozitivni učinki lahko celo sinergično povečujejo (tako npr. pri navadnem vročanju informativnih izračunov) ali pa se izničijo. Celo nekatere odpravljene obveznosti udeležencev postopkov (npr. obveščanje dolžnikov pred uvedbo izvršbe) so zato vredne premisleka, ali jih ne bi zaradi ugotovljenih pozitivnih koristi znova vpeljali v veljavno ureditev. Večino obravnavanih institutov, predvsem sistem obračunavanja dohodnine, navadno vročanje in posebne primere odpisa, odloga oziroma obročnega plačevanja davka, pa lahko ocenimo kot ustrezne družbeni realnosti in stremljenju k modernizaciji slovenske javne uprave.

Dr. Polona Kovač je zaključila doktorski študij l. 2005 na Pravni fakulteti v Ljubljani. V letu 2001 se je polno zaposlila na Fakulteti za upravo, kjer je danes kot docentka za področje javne uprave nosilka več predmetov na prvi in drugi stopnji, sodeluje pa tudi z več drugimi fakultetami. Vse od konca devetdesetih let stalno izvaja različne seminarje in delavnice ter predstavlja in objavlja prispevke na domačih in mednarodnih konferencah. Zadnja leta deluje tudi kot ocenjevalka in razsodnica v okviru postopka podelitve Priznanja RS za poslovno odličnost, evalvatorka v postopkih evalvacije kakovosti visokošolskih programov oz. zavodov, članica senata Fakultete za upravo, članica vladnega strateškega sveta za javni sektor in predsednica Uradniškega sveta.

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Original scientific article

Tax Procedure Law within the Reduction of Administrative Burdens – between Goals and Praxis

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ABSTRACT

The Tax Procedure Act (TPA; Slovenian ZDavP) is the key law regulating relations among the participants in tax collection procedures. Therefore, it has been more or less thoroughly changed several times in recent years, also within the government's programme of reduction of administrative burdens (RAB; Slovenian OAO). Procedures are being attempted to be simplified for both taxpayers and tax authorities. The paper explores a selection of institutes introduced to this end, such as tax assessment through a provisional specification, service by regular mail, advance rulings, etc. The author considers statistical data on how frequently those (new) institutes were used in 2006, 2007 and 2008 to establish whether, or how much, goals of the regulatory change in the tax procedure are actually being achieved in praxis. It is found that notwithstanding some exceptions, the majority of the considered institutes do amount to a realisation of the RAB programme.

Key words: tax procedure, law, reduction of administrative burdens.

JEL: H20, K40, D73

1. Overview of the tax procedure and the reduction of administrative burdens

The paper aims to consider whether, and in what elements, the adoption or amendment of tax procedure legislation carried out within the programme of reducing administrative burdens in recent years has actually reached the set goal. We have therefore selected some institutes defined in several materials

(primarily in Predlog ZDavP-2[1] and documents relating to Slovenia's development strategy) as RAB, and went on to compare statistical data recorded by the Tax Administration of the Republic of Slovenia (TARS; Slovenian DURS) on the realisation of those institutes.[2]

The tax procedure is a special administrative[3] procedure ensuring tax collection, i.e. the statement or assessment and payment or refund of taxes, control of tax liabilities, enforcement, and international cooperation in tax matters (Jerovšek & Kovač, 2008; general overview in Kopp & Ramsauer, 2003). The tax procedure is regulated by several laws. Some procedural provisions are included in the laws on particular tax types themselves; mainly the Tax Procedure Act is applied (having existed in Slovenia since 1996; more in Šinkovec, 2002; currently the TPA-2[4] is in force); subsidiarily, the tax administration and customs service laws, respectively, apply, as well as, partly, the Inspection Act (IA; Slovenian ZIN), the General Administrative Procedure Act (GAPA; Slovenian ZUP),[5] and implementing regulations of those laws (general overview of subsidiarity in Androjna & Kerševan, 2006). For the RAB as it relates to both taxpayers and tax authorities as well as others involved in tax proceedings (like banks, employers, registry institutions providing data), the key law is the Tax Procedure Act and, partly, the IA and the GAPA. The latter two have also been amended several times within the RAB.[6] However,

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1 Draft Tax Procedure Act-2; available at the website Slovenija jutri, EVA: 2006-1611-0024 (material for first reading, autumn 2006), and in Poročevalec Državnega zbora RS, no. 99/06 (20 September 2006).

2 Most of this data has been taken from the TARS annual work reports available at its website. Four graduate students helped the author collect and process the data within the Research Seminar course of the Faculty of Administration. I wish to express my gratitude to the TARS, particularly A. Kovač Arh and P. Jenko from the Legal Service of its General Tax Office, for their aid in collecting the data not (yet) publicly available online but judged as relevant for a consideration of the issues the paper is concerned with.

3 Tax authorities mainly conduct administrative proceedings, to which, however, expedited minor offence proceedings were added in 2005 within the tax inspection body's competences if a tax violation is legally classified as a minor offence, while tax investigations as *sui generis* (pre-administrative, or pre–minor-offence) proceedings were also introduced, by the TPA-2, in 2007. The administrative procedure is a point where the public and individual interests meet and are to be kept balanced and proportional (see commentary to Slovenian Constitution, Šturm et al., 2002). If a right, obligation or legal entitlement is defined as administrative in nature, the administrative procedure has to ensure that neither a public interest is excessively protected nor an individual interest has precedence (principle of protection of client rights and the public interest, Art. 7 of the General Administrative Procedure Act).

4 Published in Ur. l. RS (Official Gazette of the Republic of Slovenia), nos. 117/06, 24/08-ZDDKIS, 125/08-ZDavP-2A, 20/09-ZDoh-2D.

5 Ur. l. RS, nos. 80/99, 70/00-ZUP-A, 52/02-ZUP-B, 73/04-ZUP-C, 119/05-ZUP-D, 24/06-UPB2, 105/06-ZUS-1, 126/07-ZUP-E, 65/08-ZUP-F.

6 E.g.: data exchange required from the authorities, GAPA Arts. 66 & 139 (Androjna & Kerševan, 2006, p. 303); abolition of the professional competence exam on the administrative procedure, GAPA Art. 31; the preventive measure of a warning, IA Art. 28 (Pirnat et al., 2004); reception of applications outside tax offices, and Saturday office hours of tax offices

the tax procedure having a specific nature and a relatively comprehensive specific regulation (Šinkovec, 2002), all this likely only contributes to the RAB in tax proceedings to a minor extent, therefore the paper focuses on how the Tax Procedure Act has gradually been changed. A RAB programme has been carried out in Slovenian public administration for several years (especially since 2001 when the government established a committee for RAB; details on the development of the programme in Josevski, 2008). RAB-related goals and activities frequently involve regulatory measures, where Slovenia generally pursues good foreign practices (e.g. voluntary disclosure and advance ruling; more in Predlog ZDavP-2, 2006, and Jerovšek et al., 2008). As regards tax law, it has undergone change that is both substantive (e.g. new deductions, abolition of certain taxes) and, primarily, procedural in nature, since especially the way in which taxpayers' rights, obligations, and legal entitlements are realised can be made easier by simplifications for all involved (cf. Jerovšek, 2005, Kovač, 2006). Among other things, this makes taxpayers, as vital elements of the economy, better adaptable to market circumstances, and thus competitive. Some of the new arrangements aimed at procedural simplification – a key RAB goal in changing the tax procedure law in 2004-2009 – are clearly advantageous for taxpayers, while in other cases work is made easier for tax authorities although perhaps burdening the taxpayers (Jerovšek, 2005a, Kovač, 2007). The goal of RAB is to maximally disburden tax authorities and tax-paying individuals and corporations of time-consuming and costly administrative tasks bringing no added value because being doubled or not contributing to the objective of the tax procedure, i.e. the collection of tax. The tax reform, as a fairly comprehensive set of RAB-related measures mainly started in 2006 and 2007, has thus fundamentally been aimed at promoting competitiveness of the national economy and the system's integrity in relation to taxpayers and the society at large. It has pursued the general reform goals of promoting entrepreneurship and competitiveness of Slovenia as following from the Lisbon strategy, Slovenia's development strategy, and the Programme of measures of the Republic of Slovenia for the promotion of entrepreneurship and competitiveness for 2007-2013 (the Government, 2008). This is why a Tax Procedure Act indeed was drafted and passed[7] in 1996 (Slovenia priorly only having had some procedural provisions in substantive laws and an immediate use of the GAPA) and thereafter more or less

(under the Decree on administrative operations; see introductory notes in Kovač et al., 2008). Saturday office hours were introduced in 2007; although tax offices were visited by no more than approx. 0.9 client per 1 employee during this time in both 2007 and 2008, this requirement was only abolished in 2009.

7 Ur. l. RS, nos. 18/96, 78/96 Skl.US: U-I-376/96, 87/97, 35/98 Odl.US: U-I-376/96-9, 82/98, 91/98, 1/99-ZNIDC, 108/99, 37/01 Odl.US: U-I-18/98-20, 97/01, 31/03 Odl.US: U-I-72/00-15, 33/03 Skl.US: U-I-108/99-14, 105/03 Odl.US: U-I-252/00-12, 16/04 Odl.US: U-I-233/01-14, 42/04 Odl.US: U-I-329/02-7.

thoroughly changed several times. Thus there have been several laws and amending laws on whose basis several distinct periods of regulation of the tax procedure in Slovenia may be defined, as follows from Table 1.

Table 1: Tax procedure periods and (new or amending) laws

No.	Period	Legal basis	Time of being in force or applied[8]
1	Arrangement with no separate tax procedure law	Sector-specific taxation laws and the GAPA	Until 31 December 1996
2	Arrangement with a (first Slovenian) separate tax procedure law[9]	TPA	1 January 1997 - May 2004 / 1 January 2005
3	Arrangement after Slovenia's becoming a full EU member – a new (second Slovenian) law	TPA-1[10]	1 January 2005 - 31 December 2006 (partly already since May 2004)
4	Arrangement after tax reform measures – amending law	TPA-1B	1 January 2006 - 31 December 2006
5	A comprehensive arrangement of the tax procedure within the tax reform – a new (third Slovenian) law	TPA-2	In force since November 2006, applying since 1 January 2007
6	Amendments made within the economic crisis	TPA-2A PITA (Personal Income Tax Act; Slovenian ZDoh)-2D	Since 31 December 2008 In force since 14 March 2009, applying since January 2009[11]

8 Under the TPA-2 (Art. 418), laws not in force anymore are still applied for administrative matters/cases with regard to which an ordinary or extraordinary legal remedy had been filed when the TPA-2 began to apply, i.e. on 1 January 2007. In such cases the matter is concluded in accordance with the TPA-1 and, through this, possibly even in accordance with transitional and final provisions of still earlier laws if an administrative proceeding or dispute concludes with a modification or annulment of a tax decision. For the purpose of equal protection of rights (Art. 22 of the Constitution, see Šturm et al., 2002), however, the law applied in regard to substantive rules in a reopened proceeding is the one for that tax period to which the tax decision relates (except if a substantive provision of the TPA-2 is more favourable for the taxpayer, e.g. regarding the length of the period of limitation; according to Jerovšek et al., 2008).

9 It is appropriate to point out here that the tax procedure is the only one of the approximately 400-500 special administrative procedures of the Slovenian legal order that is regulated by a special procedural law, other procedures being partly provided for by special procedural provisions of substantive laws and by the GAPA (Androjna & Kerševan, 2006, Jerovšek & Kovač, 2008).

10 Ur. l. RS, nos. 54/04, 57/04-ZDS-1, 109/04 Odl. US: U-I-356/02-14, 128/04 Odl. US U-I-166/03-12, 139/04, 56/05 Skl. US U-I-159/05-4, 96/05-ZRTVS-1, 100/05 Odl. US U-I-159/05-14, 109/05, 21/06 Odl. US: U-I-32/04-10, 21/06-UPB2.

11 Under the PITA-2D, taxpayers have been allowed, regardless of Art. 54 of the PITA-2, to already apply for a reduction of their tax base for 2008 by submitting a correction of their tax statement within 30 days from when the amending law began to apply (the Act thus having had a retroactive temporal and procedural effect to taxpayers' benefit).

In the following sections we consider selected tax procedure institutes supposedly a part of the RAB programme, by absolute data for respective years and use trends, especially for the years:

- 2006 application of TPA-1B,
- 2007-2008 – application of TPA-2, which (mainly) took over TPA-1B institutes regarding the RAB, adding new ones.

2. Overview of use of selected TPA-2 institutes in praxis

2.1 Selection of considered institutes

In line with what we say in the introduction, the paper only considers certain legislative institutes, while it needs to be stressed that a comprehensive analysis of the tax procedure regulation and the RAB should involve different rules including those not relating to the RAB at first glance, as the totality of norms collectively results, in a complex manner, in the final outcome of non/realisation of reform goals (Pirnat et al., 2004). TPA institutes forming a part of the RAB programme are thus not deemed to include, say, fundamental principles of the tax procedure, although some (e.g. the principle of proportionality; see Šinkovec, 2002, Kovač, 2006a), even according to European case law, fairly directly contribute to a realisation of RAB goals in particular proceedings (while some are a direct basis for certain institutes, e.g. the principle of certainty for advance ruling).

In regulating the tax procedure, particularly since 2006, the RAB has played a major role, especially the TAP-2 clearly comprising a considerable number of norms aimed at RAB, or simplification (according to Predlog ZDavP-2, 2006, pp. 2-14). To be true, the RAB process is being realised in tax procedure law step by step; increasingly more RAB institutes are being introduced by new Acts and amending Acts (see Table 2). The data presented is thus relevant as a study of cases. Based on explicit statements on the RAB by the authors of the Draft TPA-2[12] and the available TARS data, seven institutes have

12 As regards, for example, personal income tax assessment (Predlog ZDavP-2, 2006, pp. 2 & 14), deferred payment of tax (ibid., pp. 9 & 185), service by regular mail (ibid., p. 182). Details in Jerovšek et al., 2008, commentaries to particular provisions; for the pre-filled personal income tax return cf. Klun, 2009 (e.g. the first country with a pre-filled return was Denmark in 1990).

finally been selected (given in the order of the article(s) of the TPA-2 regulating them):

Table 2: Overview of considered RAB-related tax procedure institutes

No.	Institute	Legal bases	Time of application (2006-2008)
1	Advance ruling	TPA-2 Art. 14	2007-2008
2	Voluntary disclosure	TPA-1 Arts. 390.a & 390.b TPA-2 Art. 55, & Arts. 63, 396, 399, and others	2006 2007-2008
3	Service (by regular mail)	TPA-2 Art. 85	2007-2008
4	Cancellation, deferral, and phased payment of tax due	TPA-1 Arts. 36 & 37 TPA-2 Arts. 101 & 102; and, newly, Arts. 103 (special cases) & 105 (cancellation of amounts of up to EUR 1)	2006 2007-2008
5	Tax investigation	TPA-2 Art. 131	2007-2008
6	Notice of tax arrears to be enforced	TPA-1 Art. 128 (abolished by TPA-2)	2006
7	Provisional specification in the assessment of personal income tax	TPA-2 Art. 421 (pre-filled personal income tax return for 2006, i.e. proceedings of 2007) TPA-2 Arts. 267 ff. (preliminary provisional specification)	2007 2008

Regarding these institutes, our hypothesis is that they are used with unequal frequency, but their statistical use trend should be upward if the RAB goal is to be achieved in praxis. In some cases taxpayer status is taken into account with a focus on economic operators (primarily legal entities as well as natural persons registered as autonomous economic operators), as in taxation, the RAB programme places a priority on active operation of the taxpayers vital for how the market, i.e. the economy, functions.

In addition, the TPA-2 (as well as the prior TPA-1) has a number of other provisions relating to RAB. Of key importance is the primary status of self-assessment through a tax statement as a mode of settling the tax liability (more in Jerovšek & Kovač, 2008). A further important provision, for example, is that of Art. 50 regarding petty amounts of less than ten euros that are not assessed at all; here the proceeding is closed with an official note, as the assessed tax would not have amounted to the average costs of conducting the simple tax procedure (naturally, however, the liability is carried over into the next accounting period). Similarly, an overpaid tax is not refunded without the taxpayer's request (under Art. 97) and an enforcement proceeding is not initiated (under Art. 149) if these are amounts of less than EUR 10. Under applicable legislation, the TARS does not enforce tax liabilities for the national broadcasting service or chamber membership fees. Additional acceptable securities are provided for; the relation between submitting a tax return before or after the deadline is clearly set out; generally only documents are used as evidence in a proceeding; the burden of proof in assessing the tax base is reversed; costs of a proceeding are born according to a special clearly defined principle of success, and proportionally; a decision can only be issued in the form of a stamp; in case of non-matching figures, verification of a tax statement may be exerted by a direct payment of the difference; connections among proceedings are provided for (e.g. between verification and inspection procedures, or findings of inspections resulting in the reopening of particular proceedings; cf. Šinkovec, 2002); duration of inspection is generally limited to 6 months; time limit for filing a complaint against an inspection decision is extended to 30 days from service; a separate debt list is added as a basis for initiating a single enforcement procedure relating to several documents permitting enforcement; international cooperation in tax affairs is institutionalised, etc. (more in Jerovšek et al., 2008).

2.2 Advance ruling

An advance ruling (or, literally, "binding information") is issued to a taxpayer by the main tax or customs office with regard to a future taxation to facilitate the decision of whether the expected tax, as a part of expenses compared to the expected profit, is an acceptable burden for a business transaction to be undertaken (Jerovšek et al., 2008). Advance rulings were introduced in 2007 as an application of the principle of certainty, although in terms of procedure, a range of reservation clauses strongly limits the planned positive effect of the institute (e.g. the time limit for the issue being no less than 6 months; more in Kovač, 2006). The institute is supposed to be primarily relevant for legal entities, especially foreign investors, with regard to the actual application of tax legislation (Predlog ZDavP-2, 2006, p. 168). According to the TARS, the purpose of this institute has been largely misunderstood in practice, as it is not uncommon that under Art. 14 of the TPA-2, taxpayers in fact request information on transactions or events already implemented or apply for a general explication of the law. Contrary to this, an advance ruling is conceived of as an act that is abstract (relating to legal situations not yet existing) and at the same time individual (relating to a specific addressee or object of taxation).

Table 3: Data on advance rulings, 2007 and 2008

	2007	2008
Number of requests for an advance ruling	14	7
Number of issued advance rulings	2*	3*

* In both years one ruling related to value added tax and the rest to corporate income tax.

11 of the 14 requests in 2007, and 6 of the 7 in 2008, were submitted by a PLC or LTD. LTDs submitted 57% of all requests in both years. Advance rulings have not (yet) began to function in Slovenia – even requests that are submitted are not even procedurally adequate, and their chronological frequency trend has been negative. However, as regards the type of tax and applicants' status, advance rulings do seem to be relevant for rather large corporations or transactions, with some of them misinterpreting the tax authority's

work as tax consulting service (this is probably why more requests were submitted by LTDs than PLCs, for instance). Given the number of taxable economic operators according to the Business Register (approx. 84,000 legal entities and 78,000 individuals), we may conclude that the advance ruling is not achieving the set goals. In view of the fact that in the Netherlands, for example, the provision of advance rulings is a matter of how a tax authority is organised rather than *materia legis*, it is likely right to conclude that the Slovenian law is too bureaucratised in this respect.

2.3 Voluntary disclosure

The institute of voluntary disclosure (literally "self-report") was introduced in 2006 by the TPA-1B, and improved in substance and form (by a separation into a procedural and penal part and a determination of the sequence after reinstatement) by the TPA-2. Voluntary disclosure is admissible for corporations and individuals after the deadline for submitting a tax (or withholding tax) return has expired, with the taxpayer immediately paying the tax owed (Predlog ZDavP-2, 2006, p. 176). This institute is supposed to result in positive effects for both the public interest (with tax being collected that otherwise would probably not have been) and the taxpayer, who/which does pay the tax as well as late-payment and penal interest, but is not prosecuted if submitting the disclosure before non-compliance is detected by the tax authority (cf. Jerovšek, 2005a) – voluntary disclosure only being possible until a tax assessment decision has been issued or an inspection (administrative)[13] or minor-offence or criminal proceeding against the taxpayer has started. The institute is a practical application of the principles of substantive truth and settlement of tax liabilities (through a combination of sanctions according to Silvani & Baer, 1997, pp. 11, 25), although according to some authors, it interferes, through penal liability, with the constitutional privilege against self-incrimination, so that the TPA-2 ought to be more clearly formulated (Ferlinc, 2009).

[13] Under the TPA-2, voluntary disclosure is admissible until the decision on the start of inspection has been served. Priorly, it was disputable at what moment inspection started, since the taxpayer was allowed to submit a voluntary disclosure in 2006 after receiving the notice of an inspection proceeding, which destructed the very purpose of inspection (cf. Jerovšek et al., 2008). Within the fundamental principles of the TPA-2, tax offices may (while not being obliged to) notify taxpayers of planned inspections by telephone or an ordinary e-message to (legally) promote disclosures and decrease the inspections needed.

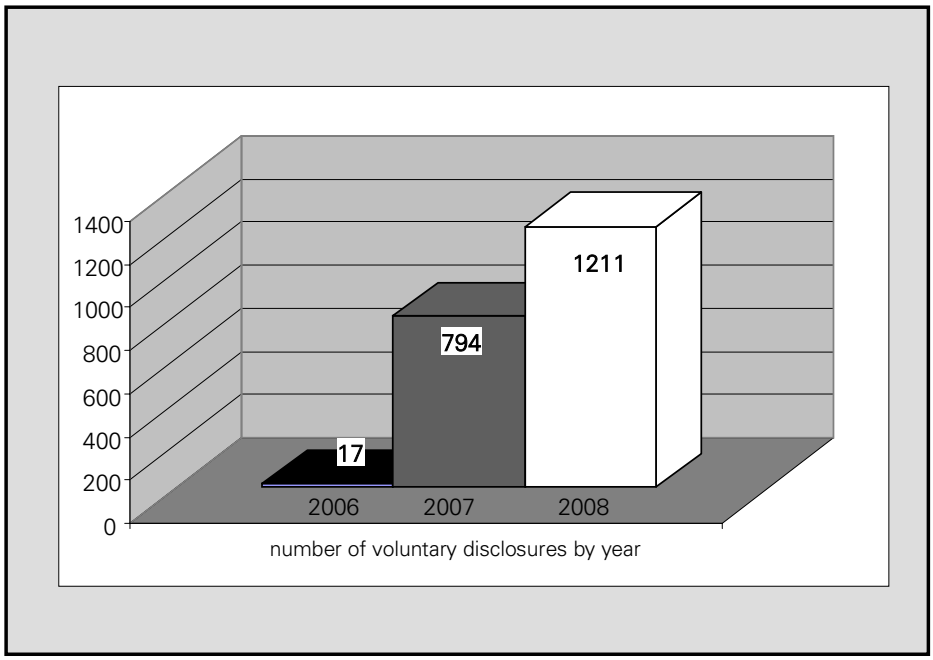
Table 4: Number and value of voluntary disclosures by type of tax, 2006-2008

	2006		2007		2008	
Type of tax	Number of voluntary disclosures	Amount of additionally collected tax in EUR	Number of voluntary disclosures (and trend over the year before)	Amount of additionally collected tax in EUR	Number of voluntary disclosures (and trend over the year before)	Amount of additionally collected tax in EUR
Individual income taxes and contributions	10	101,202	↑ 368	1,295,468.38	↑ 426	870,372.06
Personal income tax	425	165,957	↑ 3,188	364,478.24	↓ 1,089	163,962.85
Personal income tax prepayment	17	25,914	↑ 794	124,637.00	↑ 1,211	176,689.31
Corporate income tax	31	2,084,645	↑ 161	3,529,711,72	↓ 122	5,495,619.59
VAT	8	381,956	↑ 103	2,094,735.79	↑ 309	1,974,054.74
Other duties	0	0	↑ 3,948	598,654.95	↓ 656	400,183.74
Tax from capital gains	0	0	0	0.00	↑ 5,239	918,253.60
Performance of international treaties	0	0	0	0.00	↑ 1	488.45
TOTAL	491	2,759,674	8,562	8,007,686.44	9,053	9,999,624.34

As regards the type of tax, voluntary disclosures were the most numerous in personal income tax in 2006, other duties (primarily membership fees – 3,948 –, followed by tax on the disposal of real property, inheritance tax, etc.) in 2007, and tax from capital gains (primarily from interest – 4,022 out of 5,239) and, newly, international enforcements in 2008; the amount collected being, as expected, disproportional with the number of disclosures, as certain taxes, by

nature, are more voluminous than others. The most substantive yield from voluntary disclosures in all years is thus attributable to corporate income tax, having increased from approx. EUR 2 million in 2006 to 5.5 million two years later. According to all indicators, both the number of voluntary disclosures and the amount of duties collected on their basis were definitely increasing in 2006-2008, but their structure is changing. Taxpayers evidently need time to process new legislative arrangements, which, for example, is reflected in the remarkable increase in voluntary disclosures from 2006 (around 500) to 2007 (already over 8,500); a similar observation applies, for instance, for the sub-segment of sole trader personal income tax prepayments (from 17 to 794 and to 1,211 in 2006-2008):

Figure 1: Number of voluntary disclosures relating to personal income tax prepayment, 2006-2008



On the other hand, in certain taxes voluntary disclosures are decreasing in number, which in the case of personal income tax (by almost three times from 2007 to 2008) is definitely the combined result of the newly introduced preliminary data verification followed by a provisional tax specification as a pre-filled tax return; a similar observation applies for other duties. Given the new

sources it is clear that a further stabilisation of the number of voluntary disclosures and their structure by tax type is to be expected in the future.

In total, nearly 21 million euros were collected in three years on account of voluntary disclosures. To quantify the institute's benefits, at least the costs of non-initiated inspections should be added to this amount, indicating that this institute as such is to be preserved, though perhaps slightly technically improved. It is impossible, however, to measure out the positive effect of the significantly higher level of tax culture undoubtedly ensuing when liabilities are settled voluntarily.

2.4 Service by regular mail

Unlike Art. 87 of the GAPA, the TPA-2 introduced in 2007 service by regular mail (slightly adapted with regard to the GAPA because of the fiction of effected service) as sufficient for most written communications in the tax procedure with a declared goal of savings made on account of the costs of delivery to addressee only. Despite the possible reserve as to such arrangement being non-constitutional in relation to the GAPA (see Kovač, 2008), the data is so encouraging for the TARS that preparations are taking place in 2009 for an even broader application of the institute.[14] The calculated payment date thus roughly equals the sum of chronologic events: dispatch of the relevant act, 20 days for start of fiction of effected service, and a further 30 days from the service for enforceability, i.e. the payment of tax (general time limit for voluntary performance). Here the order of payments needs to be taken into account (by the order of becoming due for taxes specified on the payment instrument). Fiction of effected service, however, is just as important for filing legal remedies as it is for the payment deadline and enforcement, and the TARS, with a view to a more undisputable calculation of the relevant date, has therefore started to indicate the date of dispatch on the envelope (if these are centrally printed decisions or a dispatch in instalments, it is simply the outsourced contractor that prints the date).

14 The Act provides: "All decisions and orders and other documents from whose service a time limit begins to run except for decisions, orders and other documents issued in a tax control or tax enforcement proceeding, shall be served by regular mail. Service shall be deemed effected on the 20th day from the day of dispatch …" Service by regular mail was slightly limited at the end of 2008 by the TPA-2A, under which delivery to addressee only is also mandatory for decisions on phased payment of tax.

To quantify savings resulting from the shift from delivery to addressee only to regular mail delivery, we have compared the decisions issued for personal income tax (over 1.1 million annually), residential land use fee (approx. 0.7 million annually), tax on the disposal of real property, and income tax from property, interest, and capital gains in 2006 (i.e. when the TPA-2 had not yet applied), and in 2007 and 2008. The number of decisions has largely remained the same (about 2 million annually), while the difference in the costs of their service has been no less than approx. 2-3 million euros annually:

Table 5: Costs of service, and savings on account of service by regular mail, 2006-2008 in EUR

Year	Number of dispatched decisions for selected taxes	Applicable price of regular mail delivery per letter *(in euro)*	Total costs of service by regular mail *(in euro)*	Applicable price of delivery to addressee only *(in euro)*	Total costs of service by delivery to addressee only *(in euro)*	Savings on account of lower costs of delivery by regular mail as compared to delivery to addressee only *(in euro)*
2006	2,124,866	0.24	509,967*	1.73	3,676,018	3,166,051*
2007	2,012,670	0.25	503,167	1.78	3,582,552*	3,079,385
2008	2,013,327	0.26	523,465	1.83	3,684,388*	3,160,923

*Figure calculated for the case such service had been required by law.

These savings are somewhat reduced by the cost of serving acts that nevertheless have to be delivered to addressee only under Art. 85 of the TPA-2 because the taxpayer has not settled the liability in due time after the fictional service (because either not having received the letter or having thus deliberately extended the time in which the liability can be settled without sanctions).

The number of such cases is not monitored, but the assessment based on practical experience is somewhere around 5-10% of cases. OECD finds that taxpayers whose non-compliance is non-deliberate account for approx. 70% (67% in Denmark; according to Klun, 2009) so that the specified amount of savings is evidently notably smaller in reality. This is directly confirmed primarily by the competent enforcement staff asserting that enforcements have enormously increased in number in 2009 over the years when the relevant documents had not yet been delivered by regular mail (while empirical data on an annual basis has not yet been collected). Anyhow, in the 2,013,327 decisions issued for 2008, the costs of service would thus be EUR 523,465 for service by regular mail plus an additional EUR 1,105,317, i.e. (only?) EUR 2,055,606 in total. As we can see, the amount of savings is still considerable, especially as administrative costs are not being covered on account of collected tax with this money; still, compared with costs of enforcement proceedings, a benefit-cost comparison most likely yields a negative result.

2.5 Cancellation, deferral, and phased payment of tax due

Compared to the basic text of the Act, the TPA-1B extended the term of deferred or phased payment of a tax due from one to two years, allowing a cancellation, deferral, or phased payment to be granted by discretion to individuals facing a threat to their and their dependants' subsistence or, on the other hand, a deferral or instalments for legal entities or sole traders or other natural persons engaged in a registered activity if major economic damage would occur in case of timely payment (Jerovšek et al., 2008). However, a deferral or instalments cannot be granted for prepayments, tax withdrawals and certain taxes which, indeed, is technically arguable, as criteria of types of taxes and modes of meeting the obligation are being mixed in defining exceptions (according to Kovač, 2006; similarly according to Hren, 2009; differently according to Predlog ZDavP-2, 2006, p. 185). The TPA-2 brought further significant new arrangements relating to the RAB, such as the special case of deferred or phased payment if a taxpayer submits a security or gives assent to the entry of a lien in the register but, because no criteria are required to be met, only for up to 12 months (Art. 103). Further, a natural person not engaged in a registered activity is entitled to apply for three monthly instalments without having to submit a security or meet the conditions and criteria laid down in Art. 101. Although interest runs during the term of deferred or phased pay-

ment, it is only at the interbank interest rate for loans up to one year in order to preserve the real value of the debt (Jerovšek & Kovač, 2008). All those changes have been envisaged to result in more obligations met in accordance with the principle of legality, and therefore in fewer enforcement proceedings and, primarily, fewer negative outcomes for taxpayers on the personal and business levels. The TARS data for 2004-2008, however, does not substantiate this assumption, indicating no particular increase in taxpayer applications for cancellation despite increasingly more favourable legislative conditions.

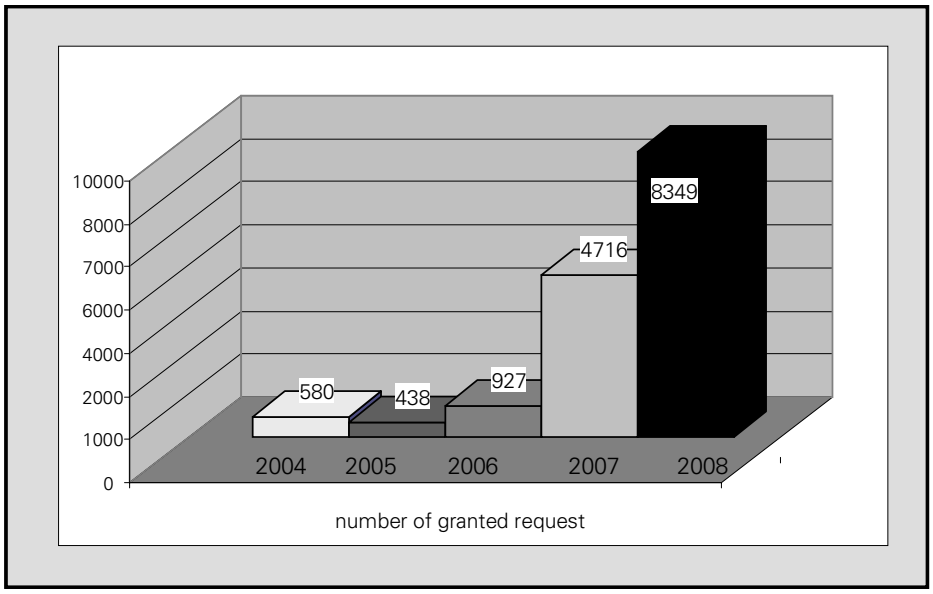
Table 6: Number of cancellations, deferrals, and phased payments, 2004-2008

	2004	2005	2006	2007	2008
Number of approved requests	Number	Number, and trend and index over the year before	Number, and trend and index over the year before	Number, and trend and index over the year before	Number, and trend and index over the year before
Cancellation	3,065	3,282 ↑ 1.07	3,274 → 0.998	1.816 ↓ 0.55	1,710 ↓ 0.94
Deferral	288	231 ↓ 0.80	948 ↑ 4.10	819 ↓ 0.86	494* ↓ 0.60
Phased payment	580	438 ↓ 0.76	927 ↑ 2.12	4,716 ↑ 5.09 (4,005 personal income tax)	8,349 ↑ 1.77 (7,314 personal income tax)

* 494 out of 1181 filed requests approved. This amounts to approx. 10 million euros (cf. to 1,120 million euros of collected income tax in 2007; according to Hren, 2009).

It is clear from the table that phased payment is the most currently relevant institute, especially in 2007-2008 as the time marked by an economic crisis (cf. Figure 2), while cancellation and deferral have been notably decreasing (with a remarkable increase of deferrals and phased payments in 2006, attributable to the longer term under the TPA-1B). As for the type of tax, personal income tax has been the most present one throughout the period (as well as social security contributions, general sales tax, and residential land use fee). Personal income tax has predominated primarily in cancellation (generally non-admissible for legal entities) and phased payment in the past two years since the TPA-2 began to apply.

Figure 2: Number of granted requests for phased payment of tax, 2004-2008

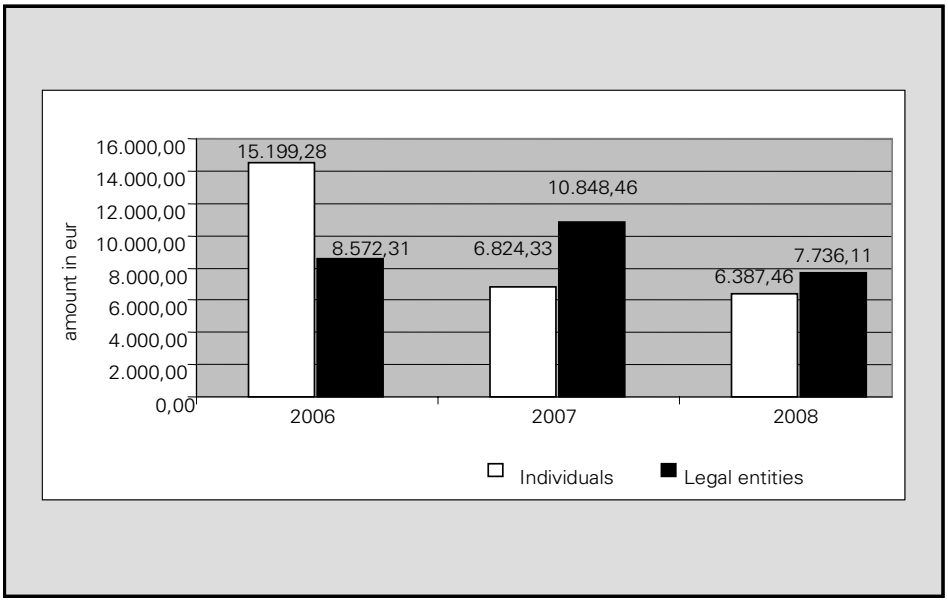


The increase in phased payment is undoubtedly attributable to the second paragraph of Art. 103 of the TPA-2, which has proved to be exceptionally currently relevant in the present social situation. This is true for all considered institutes in the light of seeking shared interests of taxpayers (social capability despite a tax liability) and tax authorities (preference of voluntary performance to avoid the need for compulsory control and enforcement). More precisely, there were approx. 4.2 million euros of cancelled taxes, 10 million euros of deferred taxes, and no less than 31.5 million euros of taxes to be paid in instalments granted in 2008 (the figures for the preceding year being approx. 7

(cancellation), 6 (deferral) and 17 (instalments) million euros). We can conclude that the legislator reached out to taxpayers (regretfully) in view of the global crisis even before due time. This is reflected in data for 2009, indicating an almost 50% increase in requests for a phased payment, totalling 1,300 in only the first two months compared to approx. 850 requests submitted in the corresponding period of last year (according to Hren, 2009). When the crisis expectedly eases, the institute will still be needed and should therefore be preserved; perhaps even the procedure of realising it, if not the very conditions under Arts. 101 and 102 of the TPA-2, might be simplified.

Further, from 2007 on, a tax liability by particular tax type having totalled less than EUR 1 at the end of the calendar year is automatically cancelled in February (TPA-2 Art. 105), as such liability does not even amount to 5% of the average enforcement proceeding costs (cf. Jerovšek, 2005). The institute of cancellation, or account balancing, is proving to also contribute to the transparency of tax records, especially if the objective element of a debt's weight is taken into account (as it is under the TPA-2, e.g. also in the determination of persons liable to control; cf. Jerovšek et al., 2008). This is evident primarily if considering the folowing data: from year 2006 to 2008

Figure 3: Tax cancelled on account of the amount owed with regard to taxpayer status, 2006-2008 in EUR



By cancelling petty amounts of tax due, tax authorities do not have to keep records for numerous taxpayers whose debt of less than EUR 1 had became due in the preceding year. This institute definitely pursues measures of reducing administrative burdens primarily for tax authorities and taxpayers, although the common budget suffers a certain loss. This loss, however, is negligible compared to the costs of record-keeping and assessment, control and, especially, enforcement proceedings, therefore it is sensible, *de lege ferenda*, to make the said institute even more currently relevant (upon priorly calculating the consequences) by raising the census to up to 10 euros (with regard to the *intra legem* analogy), especially because it aids socially very weak taxpayers.

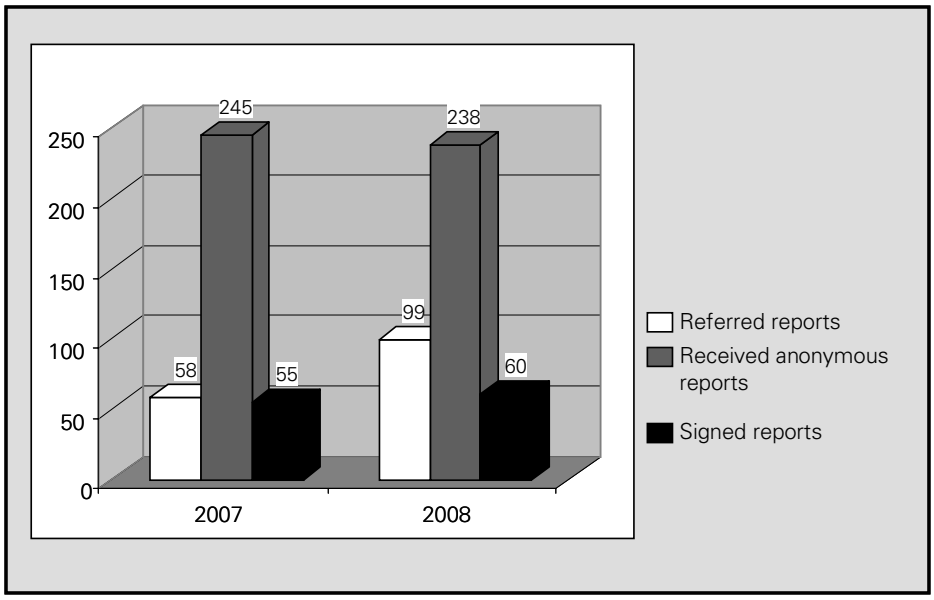
2.6 Tax investigation

Tax investigation is an institute newly introduced into the tax procedure law in 2007 (priorly only in the tax administration law), as an attempt to enable tax authorities to exert control over what generally are major violations or groups of persons active in transnational structures (Predlog ZDavP-2, 2006, p. 190), i.e. when traditional inspection methods fail. It is a type of pre-administrative procedure, as in case that suspicion proves to be grounded, an inspection proceeding starts and evidence from the investigation is used in this proceeding, the RAB aspect of the institute seeming to be tax authorities' greater efficiency and, ultimately, protected business partners of the taxpayer concerned, while the taxpayers themselves are primarily protected through the IA and the GAPA (Androjna & Kerševan, 2006). The institute may be disputable in terms of the system (Kovač, 2006), as despite the prosecutory function involved, the decision on the start and object of investigation is not even served on the taxpayer but only has the role of the tax authority's internal act in relation to the inspector-investigator, while the taxpayer (only) has the chance to give a statement when/if an inspection proceeding is initiated (cf. Šinkovec, 2002).

The collected data clearly indicates (Figure 4) that the institute already became established in practice in 2007 (with a total of 358 reports, and 224 inspections conducted on the basis of what was found in investigations), and equally in 2008 (397 reports and 188 inspections;

a minor decrease here – index 0.84 over 2007). By report mode, anonymous reports predominate, accounting for approx. 60-70%.[15]

Figure 4: Number of reports for a tax investigation by receipt mode, 2007 and 2008



According to the TARS report for 2007, activities of the competent investigation and analysis department were mainly focused on detecting tax frauds in the sales of oil derivatives (29 so-called missing trade companies[16] detected) and motor vehicles (12 investigations), loan industry (15 investigations), and pub and restaurant industry. The report is most frequently made by a natural person, in 2008 mainly an employee reporting their employer in relation to illegal work (especially in construction), cash withdrawals by legal entities' responsible persons, and the non-issue of invoices. As expected in view of the higher value of their debts by tax types, legal persons predominate among

15 In addition to those reports, a 24-hour free telephone line has been available since April 2007, through which a considerable number of reports are made (606 in 2007, and a further 23% more in 2008), of which, however, only 12-15% (90 out of 606, or 93 out of 744) are useful ones resulting in a collected tax.

16 The application "Red Dot" was launched in April 2009 for the detection and prosecution of those persons, based on the finding that certain persons keep appearing as "missing traders". It is used in the work of inspectors, investigators, and clerks covering VAT registration; according to the TARS 2008 report, 452 taxpayers had been entered into the system by 30 June 2008.

those reported; in 2008, there were 179, i.e. 45%, or, together with sole traders, 73% (another 111 of sole traders out of the 397 reported).

In total, inspections conducted on the basis of investigations yielded approx. 18.5 million (VAT approx. 7 million) euros in 2007, and approx. 9.28 million euros in 2008. The calculated average yield of a concluded inspection proceeding is approx. 67,300 euros (with the index, however, having decreased to 0.6 in 2008 over the year before). Moreover, budget revenue from certain minor offence fines is to be added to this.

2.7 Notice of tax arrears to be enforced

With the purpose of friendliness (critically discussed in Jerovšek, 2005), the legislator introduced through the TPA-1 the notice of tax arrears as a condition for beginning an enforcement proceeding. The debtor had an 8-day time limit from the notice (delivered to addressee only) to pay the debt to avoid the initiation of enforcement. In praxis, this was very costly for the state (due to both administrative work and the non-realised inflow of outstanding taxes, with enforcement not having even started yet), while enabling the taxpayer to efficiently delay enforcement (for up to 73 days, as calculated by Jerovšek, ibid.). Therefore, Art. 128 was already amended in 2006 by the TPA-1B which, within RAB, no more required that the notice should be delivered to addressee only (cf. Predlog ZdavP-1B, 2005).

For RAB purposes, provisions on the notice of tax arrears were cancelled in full by the TPA-2; here, however, the question arises of whether this institute, given the amount of taxes collected on its basis, indeed (only) was an administrative burden. Tax authorities find the opposite, and on account of the practically established share of more or less compliant taxpayers that may delay payment but not at the cost of enforcement they, despite the lack of any direct legal basis in the TPA-2, keep sending notices to debtors, especially so because of regular mail service under Art. 85 of the TPA-2. Here growth trends are even more favourable by the collected amount than the number of proceedings itself (data taken from the TARS annual reports).[17]

17 Additionally, there is some yield on account of the order of payments, since a taxpayer's debts are stated in accordance with the date of becoming due while a statement for a remaining debt is not served (to addressee only) again but the taxpayer is notified thereof and required to make the payment. If they thereafter confirm that they have received the relevant decision and/or that they will comply with it, it is deemed that the decision has been received. A further fact speaking in favour of preserving the institute is that it is primarily sensible

Table 7: Number of delivered notices of tax arrears to be enforced, and amount of payments made, 2005-2008

	2005	2006 / trend over the year before	2007 / trend over the year before	2008 / trend over the year before
Number of notices	349,213	437,355 ↑ 1.25	307,468 ↓ 0.70	333,473 ↑ 1.08
Amount paid after the notice in EUR	*705,846,269	*986,614,355 ↑ 1.40	570,252,913 ↓ 0.58	690,279,812 ↑ 1.21

*This amount has to be reduced by costs of delivery to addressee only (in 2006, the difference in costs between such delivery (EUR 1.73 per notice) and regular mail delivery totalled EUR 651,659).

The case of notice of arrears is interesting because it sheds light on several dimensions of legal regulation of the tax procedure and functioning of the TARS. First, tax authorities can function – especially to protect taxpayers' rights while not endangering the public interest – directly by the fundamental principles rather than only by explicit rules. Further, some rules that, even in the unanimous opinion of expert scholars, seemed to be a typical administrative burden at first glance in fact bring very positive effects, even in the financial volume, let alone in the accommodation of all involved. Legislative change of 2006 and 2007 thus primarily resulted in reduced costs of mailing the notices but not an extinction of the institute. Third, in the implementation of rules and the assessment of whether they are administrative burdens, each should be regarded in the context of the combined effect of an entire law and an authority's work organisation.

to dispatch a notice in cases of minor tax arrears, as immediate enforcement would entail additional enforcement and bank (20 and approx. 35, respectively) costs for the debtor.

2.8 Provisional specification in the assessment of personal income tax

As regards reduction of administrative burdens, the greatest contribution of the new TPA-2, in practical terms, is supposedly the principle of assessing personal income tax through a preliminary provisional specification with a mixed nature of a statement (which, as a pre-filled return, was already sent – by 30 April, under Art. 421 of the TPA-2 – in 2007) and an administrative decision (since 2008), provided that no protest is filed (TPA-2 Arts. 267 ff.; cf. Jerovšek, 2005a, Predlog ZDavP-2, 2006, p. 14). The TPA-2 provides that from 2008 on the tax authority, based on a preliminary internal verification of data for the past year that income payers and/or property registers submit by 31 January, prepares by 31 May a provisional personal income tax specification, which has the status of both a statement (to ensure harmony with the general part of the law and, primarily, that the taxpayer assumes responsibility for the truthfulness, correctness and completeness of the data) and a draft assessment decision which, upon the expiry of the time limit for a protest, if the latter is not filed, becomes a document permitting enforcement. If a protest is filed, an assessment decision is issued by October, and a decision also ensues if a return is filed by 30 June because a certain taxable person had not received a provisional specification.

There were only approx. 43,000 personal income tax returns filed directly by taxpayers for 2007, and 33,838 for 2008, as compared to 1,276,860 in 2005, or 1,135,422 in 2006 (with the TARS recording a total of approx. 1.012-1.275 million acts with the legal nature of an administrative decision in all those years). The described solution is advantageous to both taxpayers, who are generally relieved of preparing a return if their payers send correct data to the TARS, and tax authorities, since first-instance posterior verification has turned into a preliminary one while there are substantially fewer protests and, especially, complaints (the same according to the OECD data on pre-filled returns; Kovač, 2006a, Klun, 2009), and the payment (or refund) deadline is very likely earlier. In 2008 and 2009, for example, no less than approx. 470,000 provisional specifications for the year before became enforceable on 6 May, i.e. even before the deadline for preparing the specification. It is thus expected that approx. 46% of all personal income taxpayers already pay their liability (or are refunded) in June, while in 2005 and 2006 the first decisions were issued late in May or even in the second half of June. Further, it is important to note that each year until 2006, the TARS also employed students for entering income tax returns into the

appropriate software and exercising posterior verification, which has for the most part ceased within the present organisation. Tax officers themselves are able to concentrate (more) on the substantive aspect of control rather than operational entries. Additional savings occur because provisional specifications are served by regular mail.

According to the TARS 2007 annual report data, the predominant share of protests filed against provisional specifications – no less than three-quarters, i.e. 76.64% – in 2007 resulted from taxpayers' own "mistakes" of not having submitted on time data on their dependants so that the deduction would be specified by the TARS in accordance with the parents' request. In relation to the first instalment of issued specifications (or pre-filled returns in 2007; totalling over half a million on 31 March), only 7.3% of taxpayers filed a protest in 2007, and even only 4.3% (22,408 out of the total of 518,973) in 2008 (probably because having gained experience with reporting their dependants in 2007). The trend has thus been in line with the institute's goals, and notably positive in 2007-2008. The tax authority has proved an efficient servicing institution while the institute of preliminary provisional specification itself, with its legal status of a document permitting enforcement rather than just a pre-filled return, characterises the regulation of the personal income tax procedure in Slovenia as one of the most modern and efficient in the world (cf. Kopp, 2003, Klun, 2009).

3. Conclusions

In summary it may be concluded that the majority of the considered institutes incorporated into the tax procedure law in 2006 or 2007 for RAB purposes, do realise the set goals, i.e. simplified procedures for taxpayers and tax authorities. This can be confirmed by the recorded frequency of their use as well as the calculated savings, but it needs to be added that it does not apply for all the institutes. As regards both the tax procedure and, more broadly, regulation within the RAB, it is quite commonly not fully taken into account that operationalisation of the user focus principle – because of the principles of economy and efficiency of public administration – must be limited by the demonstrated needs (and not only wishes) of clients, and a preliminary differentiated analysis of capacities of an authority and the public administration in general.

Even more important is the realisation that the data employed is not the only relevant one for a cumulative evaluation, as individual regulatory rules produce complex combined effects working either in the same or opposed directions, so that their projected positive effects may even synergically intensify each other (like in the service of provisional specifications by regular mail), or they cancel each other out. Even some abolished obligations of those involved in proceedings (e.g. notification of debtors before enforcement is initiated) are therefore worthy of consideration whether, on account of their established positive effects, they might be reintroduced into the applicable system. The majority of the considered institutes – primarily the system of stating personal income tax, service by regular mail, and special cases of cancellation, deferral or phased payment of tax due –, on the other hand, may be assessed as suited to the social reality and the ambition to modernise the Slovenian public administration.

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