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PRACTICAL EXPERIENCE AND THE SIGNIFICANCE OF THE SETTLEMENT TAX IN HUNGARY

Abstract

The study deals with the theoretical and practical issues of settlement taxes as a special type of local taxes. The settlement tax is a unique type of local tax introduced in 2015, which can be levied on anything that is not subject to any other public or local tax. Municipalities, therefore, have a relatively large margin of discretion in setting the settlement tax. Within the framework of the present research, the significance of this type of tax within the Hungarian municipalities was examined from both a regulatory-theoretical and a practical perspective. It can be concluded that while from a theoretical-regulatory point of view a workable model for the implementation of this type of tax has emerged, the fiscal significance of this tax and its practical application is less popular. This study evaluates and analyses the period since the introduction of the settlement tax in the Hungarian legal system.

Keywords: local taxes, system of local taxes, settlement tax, Hungary

Introduction

For the existence and operation of the state and local governments, adequate financial resources and assets are needed, which can be used to perform state and local government tasks (public tasks), but also to set up and operate the necessary organizational system. The resources needed to achieve this and the expenditure financed from these resources must be organized, planned, and monitored, and this requires a complex system. Today, most sources and authors refer to this system as public finance, or, because of its somewhat different content in Anglo-Saxon law and economics, it is referred to by a separate name, 'public finance', which is often also translated as public finances.

From a structural point of view, the current Article 3 of the Act CXCV of 2011 on public finances [https://net.jogtar.hu/jogszabaly?docid=a1100195.tv, access 30 May 2022] only recognizes two subsystems, the central and the local government subsystems. The first includes the State, the central budgetary body, the public body which is classified by law as part of the central subsystem of public finances, and the public budgetary body managed by this public body. The local government sub-system comprises the local self-government, the local national minority self-government, and the national national national minority self-government, the association established under Act CLXXXIX of 2011 on Local Self-Governments of Hungary [https://net.jogtar.

hu/jogszabaly?docid=a1100189.tv, access 30 May 2022] and Act CLXXIX of 2011 on the Rights of Nationalities [https://net.jogtar.hu/jogszabaly?docid=a1100179.tv, access 30 May 2022], the association of local governments for territorial development established under the Act XXI of 1996 on spatial development and planning [https://net.jogtar.hu/jogszabaly?docid=99600021.tv, access 30 May 2022], the regional development council[1] and the budgetary bodies administered by the bodies of the local government sub-system. Thus, social security funds and earmarked public funds are now elements of the central sub-system of public finances.

From an economic point of view, the functional approach can be described by the now classic and well-known triad of allocation, stabilization, and redistribution, based on the works of Musgrave R. According to these, these are three rather separate, albeit interrelated, functions that require different solutions [Musgrave 1959, pp. 6-8, 38-41] The allocative function provides allocable resources for the provision by the state of public needs that are for some reason unmet by the market. The redistributive function of public finances is the redistribution of resources and income using the potential of income taxation, consumption-related taxes, and state subsidies. The stabilization function of public finances is aimed at improving the country's economy, promoting growth, and achieving and maintaining equilibrium, primarily through economic and fiscal policy instruments [Bende-Szabó 2003, pp. 76-78].

Theories of the local level of public finance are based on Charles Tiebout's "A Pure Theory of Local Expenditures" (1956) and Wallece E. Oates' "The Theory of Public Finance in a Federal System" (1968). Among other things, Tiebout formulated the necessity of an economically efficient analysis of public goods; while Oates, examining the stabilizing, redistributive, and allocative functions of local government, concluded that the provision of local activities and the supply of local public needs are among the functions of local government. Differences in redistributive programs or in the level of satisfaction of public needs may result in population migration or immigration [Blankart, Borck 2004, pp. 443-444].

Current Budgetary Challenges for Local Governments

The data published by the Hungarian State Treasury for March 2021 [http://www.allamkincstar.gov.hu/hu/koltsegvetesi-informaciok/koltsegvetes_merleg_1/222/, access 30 May 2022] show how each taxpayer group shares in the public charges that are considered revenues of the central budget. According to these data, in March 2021, central budget revenues amounted to HUF 1,324,835 million. Of this, HUF 147,235 million came from contributions from business entities and HUF 233,307 million from the general public. From these figures, it can be calculated that the 11.11% burden on business entities is offset by the 17.61% contribution of the population. The balance of HUF 549,295 million in consumption-related taxes cannot be ignored, where the payers of these taxes (except for registration tax) are business entities, but the tax burden passed on is borne more by individuals.

If we look at this aspect of the distribution of the tax burden among local government taxes, we find that according to the data of the Hungarian Central Statistical Office [https://www.ksh.hu/stadat_files/gdp/hu/gdp0022.htm, access 30 May 2022], in 2019 the revenues of local governments in Hungary from taxes amounted to HUF 1,006,066 million, of which HUF 171,195 million was other taxes on production (business tax), another HUF 181,689 million was taxes on land, buildings or other structures and HUF 19,224 million was taxes on the use of fixed assets (motor vehicle tax). These figures, in turn, show a relative proportionality with central taxes, but it is more than likely that, in addition to business tax, businesses also bear the bulk of the building tax.

The relatively stable situation outlined above has been disrupted by the introduction of the COVID-19 virus into Hungary in spring 2020 and the series of measures taken in relation to it. Government Decree No. 535/2020 (XII. 1.) on local tax measures necessary to mitigate the impact of the coronavirus pandemic on the national economy [http://www.kozlonyok.hu/nkonline/index.php?menuindex=200&pageindex=kozltart&ev=2020&szam=265, access 30 May 2022], still in force at the time of writing, stipulated that the rates of local taxes and settlement taxes could not be increased in the 2021 tax year, that tax exemptions existing in 2020 must be guaranteed in 2021 and that municipal governments are not entitled to introduce new local taxes and municipal taxes for 2021.

1 So called *térségi fejlesztési tanács.*

Since 2013, 40% (previously 100%) of the revenue from the motor vehicle tax (as a devolved central tax), which can only be classified as a local tax in terms of the use to which it is put, has been paid to local authorities. As part of the governmental epidemic action plan, this 40% was diverted from the local budgets by the government in 2020 [http://www.kozlonyok.hu/nkonline/index.php?menuindex=200&pageindex=kozltart&ev=2020&szam=66, access 30 May 2022], resulting in the transfer of some HUF 34.4 billion, HUF 87 billion for the whole budget year in 2021, and HUF 90.5 billion in 2022 as operating revenue to the Epidemic Control Fund [https://koronavirus.gov.hu/cikkek/megjelent-jarvany-ellen-vedekezesi-alaprol-es-gazdasagvedelmi-alaprol-szolo-rendelet, access 30 May 2022].

The measure affecting the budgets of municipalities is the imposition of a solidarity contribution depending on the per capita business tax capacity of a municipality with a per capita business tax capacity of over HUF 34,000 in 2020 and HUF 22,000 from 2021. This solidarity contribution is not an institution introduced in the context of an epidemic, but the increase from 0.55% to 0.65%, and the introduction of a gross calculation method instead of the previously applied reduced basis of assessment, which is modified by the introduction of a gross calculation method, has increased the burden on local authorities.

Municipalities may also be forced for other reasons to redesign their tax revenues and introduce a settlement tax. Article 1 of Act LIX of 2020 on Special Economic Zones and the Amendment of Certain Related Acts [https://njt.hu/jogszabaly/2020-59-00-00, access 30 May 2022, https://magyarkozlony.hu/dokumentumok/0f3e5ec670c02ca736f3dc2b01e65c4857f8cd77/letoltes, access 30 May 2022] authorizes the Government to declare the location of investments of major national economic importance - except for the capital and the areas of cities with county rights - as special economic zones by decree. Under the Act, there are several reasons for reclassification. The most specific condition is that the case concerned must be a new investment or expansion with a cost of at least HUF 5 billion. However, the other two conditions for reclassification are less specific but easily met: they must be aimed at avoiding massive job losses or creating new jobs, and they must demonstrate an economic impact on a significant part of the county's territory.

One of the consequences of this is that, with the entry into force of the relevant government decree, the area will become the property of the county municipality of the county in which the special economic zone is located, and from this and pursuant to Article 1 (1) paragraph 1 of Act C of 1990 on Local Taxes [https://net.jogtar.hu/jogszabaly?docid=99000100.tv, access 30 May 2022] (hereinafter as Local Taxes Act), the county municipality's representative body may levy local taxes on the area and the buildings and economic activities carried out there. The second consequence could be that local authorities could become disinterested in planned investments in their area, as they would not be interested in supporting investments of up to HUF 5 billion, as the area could be reclassified, resulting in the loss of business tax revenue from the area.

With regard to local taxes, it can be stated that the constitutional principles of taxation and the rules of the functioning of the economy must be taken into account in the same way as in the case of central taxes. Decisions on local taxes have economic and social consequences and effects, not legal ones. If neighboring or surrounding municipalities offer the same or almost the same economic environment as the municipality in question, the introduction of local and settlement taxes may lead to adverse economic consequences for the municipality in question, even if revenues temporarily increase. Businesses or workers who are not linked to a municipality may easily change their place of residence or establishment as a result of the introduction of new taxes or the increase in existing taxes. This in turn leads to a reduction in the number of taxpayers and hence in tax revenues. A further consequence is that the reduction in tax revenue may also lead to a reduction in the quality and quantity of services provided by the municipality, which in turn may lead to an increase in the willingness of residents and businesses to relocate, which in turn reduces tax revenue. Of course, local businesses can assess what new niche markets and business opportunities the reduction in local government services can offer them, and if they take advantage of this, the range and quality of public services may not decrease and may even increase. It is also worth noting that a deterioration (and of course improvement) in the level of public services may have an impact on parliamentary and local elections. At the same time, local authorities may decide to reduce or even abolish some of their taxes for economic, political, social, or other reasons. This phenomenon can easily be compared to the international tax competition between states, a kind of 'settlement tax competition'. The reduction or abolition of taxes can be a way of giving a municipality an advantage over other municipalities in the area, by encouraging businesses to relocate and residents to immigrate, thus creating a prosperous local environment. But the risks of tax reductions and abolition are also easy to identify. Local government revenues will fall[2] and this may again be accompanied (even temporarily) by a decline in public services, triggering a renewed trend for businesses and residents to move away. The situation may be different for municipalities that are not in competition with each other. This may be due to the greater distance, the different sizes of the settlements, the resulting differences in the quantity and quality of services, or even the different cultural communities and standards. The absence or limited competition may also result in greater freedom of choice for local authorities, in the sense that they do not have to fear that businesses and residents will move away from them if new taxes are introduced, or tax rates are raised. Moreover, the lack of competition may also lead to a relative 'impoverishment' of the municipalities concerned, in particular, because they will not have an interest in planning or deciding to raise new revenue in a situation where their funding seems adequate. This situation could easily lead to political and electoral stability and security, in addition to economic stability [Stiglitz 2000, pp. 675-677].

Regulatory Issues of Settlement Taxes

When there is a division of responsibilities between the central and local subsystems of public finances, and this involves a division of power between the revenue-raising and expenditure-setting powers, we can talk of fiscal federalism. The consequence of this for local government budget revenue is that fiscal federalism, also known as decentralization, involves the sharing of taxing powers. This sharing cannot be unlimited or, if you like, absolute, as unlimitedness could cause severe fiscal and other systemic (e.g. emigration) disruptions to the country's economy. This limitation is also present in the case of local taxes in Hungary, which is characterized by the authorization granted by the central law and the restriction that goes with it, i.e. local governments may only introduce local taxes as defined by the Local Taxes Act [Vigvári 2002, pp. 163-170].

2 Temporary difficulties and could, of course, be financed by short- or long-term loans taken out by municipalities, provided that they are not restricted by public regulations.

Pursuant to the authorization granted of the Local Taxes Act, a local government may, by decree, introduce in its jurisdiction a settlement tax or settlement taxes that are not prohibited by any other law, provided that the subject of the settlement tax is not subject to a public tax regulated by law [Local Taxes Act, § 1/A (1)]. This authorization is called the open-list version of the local tax assessment, since the local government may introduce any tax that does not contravene the limits set by the Local Taxes Act. (In contrast to the previous closed-list local tax assessment system, which only allowed local governments to introduce local taxes specified in the Local Taxes Act.) [Kecső 2016, pp. 19-25] We have also seen that few local governments, relative to the number of local governments, have made use of the legislative authorization granted by the Local Taxes Act. In the following section, I will examine the practice of judicial review and judicial review of the legality of the ordinances adopted.

Pursuant to the Local Taxes Act, the power of local governments to decide on the type and amount of local taxes in the context of the management of local public affairs under Section 32 (1) (h) of the Fundamental Law [https://net.jogtar.hu/jogszabaly?docid=a1100425.atv, access 30 May 2022], gives the power to the local (municipal, city, metropolitan and district) self-government and the body of representatives of the county self-government (hereinafter collectively referred to as the "self-government") to introduce local taxes by decree in the area of jurisdiction of the self-government and, with the exception of the county self-government, to introduce local taxes.

The right to impose taxes is vested in the district municipality in the case of the capital city in the case of building tax, land tax, a local tax on individuals and tourism tax, and in the case of local business tax in the case of the capital municipality, and the capital municipality may also introduce taxes that would otherwise be the responsibility of the district municipality if the representative body of the district municipality concerned gives its prior consent to this annually before the tax year, and the metropolitan municipality is entitled to introduce the tax which the district municipality may introduce in respect of the area directly administered by the metropolitan municipality.

The categories and types of local taxes are defined in detail in the Local Taxes Act, so local taxes can be property taxes, which include building taxes and land taxes. There may be taxes of a municipal nature, which currently include only the settlement tax on individuals and the tourist tax, and last but certainly not least, local business tax is defined in the Local Taxes Act.

In the case of settlement taxes, however, no such type of requirement can be found. Pursuant to § 1/A section (1) of the Local Taxes Act, the local government of a municipality may introduce by decree in its jurisdiction such settlement taxes and settlement taxes that are not prohibited by other laws. In fact, a municipal government may impose a settlement tax on any taxable subject, provided that it is not subject to a public tax already regulated by law. Settlement taxes may not be levied by the State, by municipalities, by organizations, or, in view of their capacity as such, by entrepreneurs.

The municipal tax authority is responsible for the settlement tax. In procedural matters relating to the settlement tax, the provisions of Act CL of 2017 on Tax Procedure [https://net.jogtar.hu/jogszabaly?docid=a1700150.tv, access 30 May 2022] shall apply, with the exception that the local government may also introduce a settlement tax as a self-assessed tax. The revenue from the settlement tax is the revenue of the local government levying it, which may be used for development purposes and for financing social benefits falling within the competence of the body of representatives of the local government.

Thus, the rules of the Local Taxes Act provide local governments with considerable regulatory autonomy and freedom in the area of settlement taxes.

Settlement Tax in Numbers

According to the State Audit Office of Hungary's current analysis for 2021, 99.3% of municipalities introduced some form of local tax in 2019 (only 22 municipalities did not do so) [https://www.asz.hu/storage/files/files/elemzesek/2021/helyi_onkormanyzatok_adoztatasi_tevekenysege_20210323.pdf, access 30 May 2022], and almost one-third of municipalities' budget revenues came from local taxes [SAO analysis 2021, p. 5]. The most important local tax is the local business tax, which was introduced by 91.2% of municipalities [SAO analysis 2021, p. 12]. The local business tax accounted for 78.3% of the total tax revenue of local governments in 2019 [SAO analysis 2021, p. 12] (although 90% of the total business tax revenue came from only 8.5% of local governments, mainly from the capital and its districts and the cities with county status). Land tax was introduced by 16.2% of local governments and building tax by almost one-third of local governments, mainly larger municipalities. settlement taxes on individuals were popular among smaller municipalities, with almost three-quarters of municipalities introducing them. A quarter of municipalities opted to introduce a tourist tax, mainly in the more tourist-oriented municipalities.

According to the national statement prepared by the State Audit Office, as summarized in the table below, settlement taxes account for only a very small share of municipal revenues.

Tax name		**Amount of tax revenue (in current prices, million HUF)**				
		Year 2015	**Year 2016**	**Year 2017**	**Year 2018**	**Year 2019**
Local taxes	Building tax	*111963*	*117521*	*123130*	*126277*	*127594*
	Land tax	*19102*	*22112*	*24018*	*23165*	*24095*
	Local tax for private individuals	*13451*	*14589*	*14765*	*14621*	*14566*
	Tourist tax	*10475*	*11676*	*13602*	*14863*	*16249*
	Local business tax	*584380*	*608982*	*638731*	*711276*	*788308*
	Total local taxes	***739371***	***774880***	***814246***	***890202***	***970812***
Settlement tax	Income type settlement tax	*14*	*5*	*6*	*0*	*0*
	Property type settlement tax	*217*	*269*	*273*	*281*	*224*
	Other types of settlement tax	*227*	*743*	*816*	*534*	*453*
	Total settlement taxes	***458***	***1017***	***1095***	***815***	***677***

Table 1.: Local tax and settlement tax revenues of local governments in Hungary (2015-2019); average HUF to EUR exchange rate in 2021: 364,95 HUF to 1 EUR. [http://www.mnbkozeparfolyam.hu/arfolyam-2021.html, access 30 May 2022] Source: own ed. [https://www.ksh.hu/stadat_files/gdp/hu/gdp0028.html, access 30 May 2022].

In concrete HUF amounts: in 2015, 458 million HUF, in 2016 1017 million HUF, in 2017 1095 million HUF, in 2018 815 million HUF, and in 2019 677 million HUF were collected from settlement taxes for the benefit of local governments. In percentage terms, this means that settlement taxes accounted for 0.06% of municipal revenues in 2015, 0.12% in 2016, 0.13% in 2017, 0.09% in 2018 and 0.07% in 2019. We can therefore observe a doubling of municipalities' revenue from settlement taxes in the year following its introduction, followed by a year of stagnation and then a decrease. These figures, therefore, show that municipalities have looked for other sources of revenue rather than applying settlement taxes [https://www.ksh.hu/stadat_files/gdp/hu/gdp0028.html, access 30 May 2022].

If we look at the table in more detail and further classify the settlement taxes, we can see that municipalities had a stable revenue of HUF 220-280 million from property-type settlement taxes between 2015 and 2019. From income type settlement taxes, the municipalities generated only HUF 14 million in 2015, but by 2018 this amount had dropped to zero. From other types of settlement taxes (mainly capital tax on property assets and other property taxes), the municipalities generated HUF 227 million in the year of introduction, which increased to HUF 816 million in 2017 and then dropped to HUF 453 million in 2019. As can be seen from the data, municipalities have effectively abandoned the concept of income-type settlement taxes and have instead introduced property-type settlement taxes; however, as noted above, overall municipal tax revenues have started to decline after a short period of increase [https://www.ksh.hu/stadat_files/gdp/hu/gdp0028.html, access 30 May 2022].

According to the statistics of the State Audit Office of Hungary, as of 1 January 2018, municipalities applied settlement taxes in a total of 96 of Hungary's 3178 settlements (including the capital and its districts). This represented 3.02% of all municipalities in Hungary at that time, a 3% share that has not changed significantly since then. In comparison, 910 municipalities applied building taxes, 513 municipalities applied land taxes, 2304 municipalities applied settlement taxes on individuals, 859 municipalities applied tourism taxes and 2852 municipalities applied local business taxes in 2018. This represents 28.63% of the municipalities in Hungary for building tax; 16.1% for land tax; 72.5% for settlement tax on individuals; 27.03% for tourism tax; and 89.74% for local business tax. The share of settlement taxes is thus far outweighed by the share of other local taxes. Even the next type of local tax with the lowest number of municipalities, the land tax, has been introduced in five times as many municipalities as the settlement tax [https://hakka.allamkincstar.gov.hu/,access 30 May 2022].

Conclusions

Under § 1/A of the Local Taxes Act effective from 1 January 2015, the municipal government may introduce in its jurisdiction by decree such settlement taxes and settlement taxes that are not prohibited by other laws.

The figures showed that a very small proportion of local governments in Hungary, only 3% on average per year, applied settlement taxes, preferring to look for other sources of revenue. In other words, after the initial enthusiasm (2015-2016), there has been a stagnation in the number of settlement tax ordinances today.

As regards the taxable subject, the municipalities have primarily decided to introduce a special type of land tax (levied on land, which is otherwise not taxed); which is primarily tax based on the area (ha, m^2), with a smaller share based on profitability (ad valorem taxation). In addition, there are some other special tax categories (e.g. vehicles, works of art, tall buildings).

The tax situation of municipalities was also significantly influenced by the epidemiological and emergency regulatory environment, as at the time of the study there was a legal prohibition on raising local and settlement taxes, introducing new local taxes, settlement taxes, and municipalities were obliged to maintain tax exemptions and tax reliefs under existing tax ordinances.

Overall, it can be said that the expectations of the settlement tax, especially in terms of increasing municipal revenues and increasing municipal autonomy, have not been met to a high degree. Unfortunately, this has resulted - despite the regulatory creativity of the settlement tax - in the introduction of only one localized and not very significant type of the system of local taxes in Hungary.

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