

THE TAXATION OF POSSESSION OF REAL ESTATE IN POLAND

General Remarks

There is a duty to pay a property tax for real estate in Poland. It can be one of the three following dues: the real estate tax, agricultural tax or forest tax¹. These taxes perform an important role in the activity of municipality. Some facts introduced below can confirm it.

Firstly, these taxes en bloc supply budgets of communes. Thereby they determine the important source of income of these units². This refers especially to the real estate tax, because incomes from the agricultural tax or the forest tax are comparatively not large.

Secondly, the communes, thank to these benefits, can lead the local tax policy³. This is connected with the possibility of formation of the height of tax rates or introducing the tax exemptions and tax allowances. It has a direct influence on the height of the charge imposed on subjects working in the given commune. This influences especially those who are in business. As a rule, they are burdened with higher taxes. Suitable tax policy, which is realized by precepting bodies, first of all, in the real estate tax, can stimulate economic activity in municipalities. Tax policy can also efficiently diminish the business activity. It can influence the decision to choose another place for business, wherein taxes imposed on seisin in law of real estate will be lower, and where better preferences are admitted.

1 See L. Eteł (editor), *Prawo podatkowe*, Warsaw 2005, page 39 and next.

2 See M. Popławski (ed.), *Stanowienie i stosowanie prawa podatkowego w gminach*, Białystok 2007, p. 59 and next, where one introduced the role of tax revenues in budgets of the municipalities.

3 See E. Ruśkowski, *Orzecznictwo sądów administracyjnych jako czynnik kształtowania samorządowej polityki podatkowej*, (in:) *The jubilee-book of Prof. Andrzej Kabat*, Olsztyn 2004.

The Relation between Real Estate Tax, Agricultural Tax and Forest Tax

There isn't one tax connected with the seisin in law with real estate in Poland. There are three separate, supplementary taxes. However, there can be only one of these dues bounded with the given real estate. Otherwise, we would deal with double taxation. As a consequence, settling, e.g. agricultural tax, as a proper one to be levied in the given case, eliminates the possibility of burdening this real estate with other property tax (forest or real estate tax).

The Object of Taxation

Real estate tax burdens structures, buildings and grounds which are not embraced by agricultural tax or forest tax. Arable lands are liable to agricultural tax only and forests are taxed with forest tax. It means that building structures (buildings and structures) are embraced by a real estate tax, while grounds, depending on their character, by one of the three above-mentioned taxes.

A definition of the building, introduced in the Act on Local Taxes, provides that it is a building structure which is permanently connected with the ground, possesses walls, foundations and the roof⁴. The taxed structures are building structures which are not building or the accessory buildings. As examples of suchlike objects one can point technical networks (telecommunication network, water conduits and sewerages, other conduit systems, energy distribution structures, etc.), reservoirs, antenna masts, etc. As contrasted with buildings, the structures are taxed only when commercially used. Buildings, on the other hand, will be taxable regardless of their character (habitable or commercially used).

A record in the register of property decides about the character of grounds. It is binding both for the taxpayers and tax authorities. Sometimes real estate tax can be levied on arable lands and forest. This will take place in the case of the factual seizure of these grounds on the economic activity other than agricultural. If so, it will be necessary to pay real estate tax. It can occur if there is a gravel pit commercially used on the arable land. Real estate tax should be imposed in spite of the fact that there are no changes concerning the character of that ground in the register of property.

The Taxpayers

In the real estate tax, agricultural tax and forest tax, the legislator introduced very similar rules denominative of the taxpayer. These can be all subjects, aside

4 See L. Etel, *Podatek od nieruchomości, rolnej, leśnej*, Warsaw 2005, p. 34 and next.

from their legal status, such as: natural persons, corporate bodies and organizational entities. There will be a duty levied on them if they will have at their disposal properties on the ground of a definite valid title. It can be ownership or perpetual usufruct⁵. It can be also the contract or other act, on the ground, where one subject becomes a possessor of real estate (for example the tack, hires, the commodate). However, a bailee of real estates (the tenant, the user, etc.) will be a taxpayer only when the contract refers to the property of the State Treasury or units of the territorial self-government. It means that the transfer of possession of private property is not effective with the passage of the tax duty on the possessor. In such a case, the owner is still the taxpayer.

The legislator foresees that in some cases a taxpayer will be the subject which has no valid title. With such a situation we deal in the case of the existence of the autonomous possessor and in the possession of real estates of the State Treasury or units of the territorial autonomy without the valid title.

The Tax Base

The tax base for buildings or their parts is determined by their usable area expressed in square meters. These data can be fixed based on the physical quantity survey of the area of the building along the internal length of walls. The quantity survey is made by the taxpayer who shows the usable area in the tax return.

The tax base for the structures determines their amortization value. It can be used when the object is redeemed. In other event, the tax base is the trading value fixed by the taxpayer after the regard of the state and the degree of the waste of the structure.

The tax base for grounds is expressed in meters (when taxed with real estate tax) or hectares (when taxed with an agricultural tax or forest tax). The legislator foresaw two exceptions from this rule. First one refers to the taxations of grounds under lakes, where the area to the taxation is fixed in hectares. The second exception appears in the agricultural tax, where arable lands of the area greater than 1 hectare are taxed after their count on the number of conversion hectares. To do so, one should take into consideration, besides the physical area, also the agricultural value (the usefulness) of the grounds and the district of location. It means that in some cases 1 hectare of ground, depending on higher indicated criteria, can determine 1,8 or 0,6 the conversion hectare.

5 Perpetual usufruct is a contract where the ground owned by State Treasury or units of the territorial self-government is delivered into the prolonged use to the given subject.

To settle the area of grounds one should take data from the register of property kept for the specific district.

Rules of Establishing the Rates

Municipalities, where the taxable real estates are located, decide about the height of the rates in the real estate tax, agricultural tax and forest tax. However, the influence on this element of a tax structure is realized in a different manner. In the real estate tax the commune council is obliged to qualify the height of rates. Rates defined by the commune council cannot exceed maximum rates, yearly valorized for the level of the inflation.

In the agricultural and in forest tax they depend on yearly qualified prices of rye (agricultural tax) and wood (the forest tax). The commune council can set down prices of these goods to decrease these taxes.

The Moment of Coming into Being and Extinction of a Tax Liability

Tax liability in the real estate tax, agricultural and forest tax comes into being from the first day of the month following the month wherein appeared circumstance based on which this duty comes into being. It means that a tax liability will be borne by the subject who purchased the ground or the building from the next month after purchasing the real estate. The exception refers to newly built buildings or structures. In this case tax liability comes into being only from the beginning of the year following the year wherein the construction of the mentioned objects was finished or wherein one began to use the building or its parts before their final finish.

Tax liability becomes extinct at the end of the month wherein the circumstance, based on which this duty existed went out (e.g. the sale of real estate, getting rid of possession of real estate).

Time Limits and Payment Rules

The taxpayer of the real estate tax, agricultural tax and forest tax who is a natural person is obliged to pay the tax in installments in time limits: to the 15th day of March, 15th day of May, 15th day of September and 15th day of November of the taxable year. This duty is executable, however, only after delivery of a tax decision to the taxpayer. This results from the fact that in these cases tax debt comes into being only as the result of delivering of the tax decision.

Wojt (burmistrz, city president)⁶ is an entitled subject to pass these decisions. The base to fix this act should be the tax return filled in by the taxpayer, in which one should indicate all data indispensable to the taxation. Taxpayers, being natural persons, have been obliged to deliver these forms termly in 14 days, since the day of coming into being of the circumstances determining the tax liability.

Taxpayers that are of corporate bodies or organizational units are obliged to pay real estate tax, calculated individually by them, in the tax return, without the call. They ought to pay tax monthly, on account of the budget of proper municipalities, termly to the 15th day of each month. Agricultural tax is an exception payable by these subjects in four installments.

Tax Allowances and Tax Exemptions

The catalogue of preferences referring to local taxes imposed on the seisin in law of real estates is quite complex. They can be dichotomized for tax allowances and tax exemptions. Tax allowances appear only in the agricultural tax (e.g. the abatement of a tax in connection with investment expenses) or in forest tax (cutting down a price of wood). Tax allowances do not appear in the real estate tax.

Tax exemptions occur in all three taxes. They can arise out of Finance Acts or tax resolutions introduced by the parish councils. Nowadays the following cases are exempted from the real estate tax: the railway infrastructure and grounds occupied under it, buildings or their parts with the forest activity, buildings or their parts used exclusively for the agricultural activity, real estate occupied for the needs of associations for the activity among children and young people within the range of education, museums, schools, colleges, places of employment of disabled people.

In the agricultural tax, the following cases are exempted: grounds of the poor class (qualities), grounds of farms on which one ceased the farming production, grounds acquired for the purpose of increasing or the creation of a new farm. Forests with the stand aged to 40 years and forests inscribed individually to the register of monuments are exempted from the forest tax.

The commune council can introduce additional exemptions in tax resolutions⁷. Municipalities often take advantage of this possibility to exempt buildings and grounds of farmers who are retired, communal real estate not delivered into the possession to other subjects, or buildings used for charity or cultural–educational aims.

6 *Wojt, burmistrz*, city president are offices of the same level of heads of municipal authorities. Their different names depend generally on the rural, urban–rural or urban character of a municipality.

7 See L. Etel, M. Popławski, R. Dowgier, *Gminny poradnik podatkowy*, Volume I, Warsaw 2005, p. 68 and next.

Conclusions

There are several elements one should focus on in terms of taxes imposed on the seisin in law of real estate in Poland.

Firstly, these benefits determine en bloc the income of the budget of the municipalities.

Secondly, elements of these tax structures characterize far going resemblances. It can make the reform of the taxation of seisin in law of real estate easy. The final aim should be the introduction of an ad valorem tax.

Thirdly, the municipality, as the beneficiary, has a possibility to form some elements of tax structure. This refers to possibilities of assessing rates and introducing tax exemptions and tax allowances.

Streszczenie

Niniejszy artykuł jest poświęcony przedstawieniu zasad opodatkowania władania nieruchomościami w Polsce. W pierwszej kolejności przedstawiono relację między podatkiem od nieruchomości, podatkiem rolnym i leśnym, które mają zastosowanie do opodatkowania gruntów. Następnie opisano te świadczenia przez pryzmat analizy ich podstawowych elementów konstrukcyjnych między innymi: podmiot opodatkowania, przedmiot opodatkowania, podstawa opodatkowania, stawki podatkowe oraz zwolnienia podatkowe. W konkluzji tego opracowania zwrócono uwagę na kilka cech charakterystycznych dla ww. podatków. Wskazano, iż świadczenia te stanowią w całości dochód budżetu gmin. Podkreślono, iż elementy konstrukcji tych podatków cechują daleko idące podobieństwa. Ułatwić to może reformę opodatkowania władania nieruchomości poprzez wprowadzenie jednego podatku *ad valorem*. Zwrócono także uwagę, iż gmina, jako beneficjent, ma możliwość kształtowania, niektórych elementów konstrukcji podatkowych. Dotyczy to przede wszystkim możliwości ustalenia wysokości stawek podatkowych oraz wprowadzania zwolnień i ulg podatkowych.