

MICHAL RADVAN

## PROPERTY TAXATION IN EUROPE

*C.H. Beck, Prague 2007, 390 pages*

A book by Michal Radvan titled “Property taxation in Europe” was published in Prague by the C.H.Beck publishing house last year. The organization of the book can be considered as typical for this type of work: the author discusses the structure of the various property taxes in the Czech legal system and compares them with their counterparts that are in force in other European countries.

The author defines property taxes as levies on property (the real estate tax and the tax on means of transportation) and on non-commercial transactions involving property (estate tax, donation tax, real estate sales tax). A similar classification of property taxes can be found in the Polish tax law science.

The author strives to demonstrate the need for and the directions of a reform of the Czech property tax system. In doing so, he tries to answer the following questions:

- Do property taxes constitute a second (double) taxation of income?
- Are property taxes an effective way to provide income for public institutions?
- Are property taxes “just”?
- Does real estate taxation based on the surface area of land or buildings still guarantee, in the modern world, efficiency of the tax or should it be replaced by taxation based on the value of real estate?

The discussion is preceded by a description of how property levies evolved in the Czech Republic and the roots of the current laws constitute a starting point for the analysis and assessment of the present property tax model.

The issues related to real estate taxes occupy the most prominent place in the discussions presented in the book. The author rightfully considers the real estate tax as the most important (with respect to the national government’s revenue) of all the property taxes. The author’s analysis of the provisions of the Czech law on real

estate tax leads him to the conclusion that this tax, in certain situations, constitutes a third stage of taxation imposed on income, next to the income tax and the real estate sales tax. This situation does not mean that it is unnecessary to have a separate tax on real estate (which was the solution adopted, for example, in Belgium), due to the fact that this tax constitutes a source of revenue for the local government on the commune level. If real estate tax was incorporated into income tax, the local government would be deprived of a part of its constant and certain revenue which is easy to collect and virtually impossible to evade.

Assuming that the real estate tax is a vital and necessary element of the tax system, the author considers the proper method to define the basis for the tax. He evaluates the following two options:

- a tax based on units of measurement (e.g. on surface area),
- a tax based on the value of an object.

In the Czech Republic, the same as in Poland, no “ad valorem” real estate tax, that is one based on the value of property, has been introduced so far. The book highlights some differences between the Czech real estate tax system and the systems adopted in other countries:

- 1) The Czech local government has lower autonomy compared to local governments in the countries of Western Europe.
- 2) The Czech tax is linked to the person (the taxpayer) and not to the object (real estate),
- 3) the value of real estate is shown in a computer system (a national database) which makes participation of experts in tax proceedings unnecessary.
- 4) The value assumed as the basis for “ad valorem” taxation is also used for the purpose of other taxes (e.g. the civil law action tax).
- 5) Introduction of an “ad valorem” tax results in an increase of the value of the real estate tax and the population (consisting mostly of natural persons) is not ready to accept this increased tax burden related to owning real estate.
- 6) In some European countries, real estate tax can be considered as cost for the purpose of calculating personal income tax.

Considering the above, one can conclude that the Czech laws concerning the real estate tax are much different from those adopted in other European countries. The author sees the need to implement the “ad valorem” principle and considers the market value of real estate as the most appropriate basis for taxation.

The Czech Ministry of Finance is already working on a project of reform of the real estate tax. The main tenet of this reform is a change of the taxation base

from surface area to market value for both the real estate tax and other taxes on transactions involving real estate. Property values will be determined by communes in their respective territories. The tax rates will be between 0.05% and 0.5%. The project will only concern taxation of land and the principles for taxation of buildings and premises will remain unchanged. The author proposes that other taxes (those on buildings and premises) should also be included in the planned reform and sees the need to provide to the real estate owners the possibility to question (in the course of an administrative process) the value of their property determined by the commune.

The Czech estate tax is very similar to its counterparts in other countries and, unlike the Anglo-Saxon models, it is linked to persons as it burdens the persons who acquire an inheritance (and not the mass of the succession). The tax rates are dependent on the degree of kinship between the acquirer and the deceased person; the closer the kinship – the lower the rates. For that purpose, the acquirers have been divided into three groups. Members of the first tax group (spouses, descendants, and ascendants) are exempted from the tax. Members of the second and third tax group are entitled to certain amounts of deductions.

The author finds two key problems with the application of this tax: the cost of the fiscal administration (incommensurate with the amounts of tax collected) and the requirement to determine the value of the real estate in a tax proceeding in each case. In the latter case, a large improvement could be achieved by implementing an official real estate database that would include information on real estate values (and could be used also for the purpose of the “ad valorem” real estate tax).

The problems with the Czech gift tax are very similar. Besides gifts in the strict sense of this word, this tax also covers “other similar property enlargements,” but the statute does not define these and only judicial decisions provide a guidance as to how to interpret this term.

A unique problem concerning the gift tax is the phenomenon of widespread evasion of this tax. With the exception of real estate, means of transportation, money deposited in bank accounts, copyrights, etc., transactions involving other goods are very rarely disclosed to tax authorities.

The Polish counterpart of the Czech real estate sales tax is the civil law action tax. It can be said that Poland has surpassed its southern neighbor in the area of taxation of sales contracts with a property tax. In the Czech Republic, it is still the seller of real estate who pays the tax, even though in real transactions parties try to agree otherwise. On 1 January 2007, the Polish legislator accepted the actual situation and made the buyer responsible for paying the tax. What remains unrealized both in the Czech Republic and in Poland is the implementation of a real estate register that would include information on the value of real estate for the purpose of taxation, including the aforementioned sales tax.

Of all the property taxes, the only tax whose amount should be dependent on factors other than value is the tax on means of transportation. What is unique to this tax is that it is based on the need to compensate for the damage to the road infrastructure and to the natural environment caused by motor vehicles. Consequently, the tax rate should reflect the theoretical damage caused by a vehicle, instead of being proportional to its value. In that respect, the Czech tax system is very similar to the Polish system: the rate of the tax on means of transportation (the amount) depends on the weight of the vehicle and the number of axes (trucks, buses, etc.) or on the engine capacity (passenger cars, which are no longer subject to taxation in Poland).

Apart from the standard property taxes, the book also discusses the remaining property levies that resemble taxes. As it turns out these are similar to levies existing in the Polish tax system:

- a fee on dog ownership (until the end of 2007 it had been defined in Poland as a tax on dog ownership),
- a fee on the increase of the value of real estate caused by public projects, such as connecting the property to a water and sewage system (which in Poland is commonly called a planning rent),
- fees for using radios and television sets (a counterpart of the Polish subscription fees).

Contrary to their names, these levies are not related to any benefit provided by public law entities. Their existence proves the fact that “smuggling” into the legal system of taxes which are called fees in order to avoid public protests is ubiquitous in Europe.

After reading the book, one can come to several key conclusions. As mentioned above, the Czech laws on property taxes are similar to those present in Poland, concerning both taxes on possession of real estate (with surface area as the taxation base) as well as other property (the tax on means of transportation) and taxes on an extraordinary enlargement of property (the estate and gift tax). The same as in Poland, efforts to introduce a real estate tax based on the value of property have encountered resistance on the part of the society, mainly due to the fear of excessive increase of fiscal burdens. Last but not least, it turns out that property taxes are the only ones that so far have not undergone a thorough reform. While in the 1990s a reform of taxation of transactions and income was implemented, the property levies have not been reformed because, for reasons presented in the book, they are considered to be the most difficult. The oldest acts of substantive tax law are the statutes on property taxes as they date back to the 1980s or the early 1990s.

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