

TAX SUBSIDIES FOR ENTREPRENEURS IN CASE OF PROPERTY TAX

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ABSTRACT

In Polish tax law, real estate is subject to taxation. Property tax rates depend not only on the type of property but also on the taxable person. Thus, as far as persons conducting business activity are concerned, real estate in their possession is taxed at a higher rate than that of natural persons. The amount of the tax payable annually may exceed the income of the trader concerned, since it does not depend on the taxable person's financial situation (as is the case with other taxes, e.g. personal income tax). Due to this fact, a catalog of tax reliefs and exemptions, i.e. the so-called tax subsidies, as well as the possibility of spreading the tax in instalments and deferring its payment date is an important role in real estate tax. The state, including municipalities, may create this form of aid, as long as it does not conflict with the provisions of the Act on State Aid and similar provisions in force in the European Union, which are designed to observe free competition in the market. The purpose of this Article is to indicate what are the current forms of assistance to entrepreneurs on the example of property tax.

Key words: tax system, tax subsidies, tax rates, property tax, state aid, doing business

INTRODUCTION

The real estate tax has been functioning in the Polish legislation since 1991. It is one of the oldest regulations among all other taxes. Such a situation may indicate that the provisions on property tax do not give much doubt and are not the subject of abuses which could lead to a reduction in municipal budgets or an excessive burden on taxpayers. The veracity of this thesis can be verified by confronting the number of tax cases in the administrative courts concerning property tax. From the Central Database of Administrative Courts' Rulings we learn that the number of disputes that concerned property tax over the last 10 years amounted to 10561 cases. When we

look at the number of cases, it turns out that these regulations are not as obvious and indisputable as it would seem. One of the biggest tax problems in real estate tax concerns all exemptions and reliefs, which are mainly regulated in Article 7 of the Local Taxes and Fees Act (Journal of Laws of 2019 item 1170). This article will focus on these regulations concerning allowances and exemptions, but in a narrow circle, this issue has been raised only in the context of entrepreneurs who, with their help, can somehow improve their financial situation by applying the so-called tax optimization.

The selective provision of financial benefits to a given company or group of companies, accompanied by the creation of a financial burden on the

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part of public finances, is referred to as public aid (Judgment of the Court in the case T-55/99). This burden may occur in the form of spending public funds on enterprises or reducing the public law burden on enterprises. In the second case, it is primarily about tax exemptions and remissions – i.e. tax subsidies and deferrals of public levies (Podsiadło 2016).

The above mentioned forms of public aid granted to entrepreneurs are connected with the tax system, which is defined as the entirety of taxes existing in a given place and time. Moreover, the system should form a uniform whole in both legal and economic terms (Pahl 2017). According to the statutory definition, a tax is a public, gratuitous, compulsory and non-returnable financial benefit to the State Treasury, voivodeship, county or municipality, resulting from the Tax Act (Pahl 2017).

Already from the above definition it can be concluded that taxes play a special role in the state budget economy, both as far as the State Treasury and local government budgets are concerned. The origin of taxes can be combined with the development of state structures and the emergence of a centralized redistribution of public funds (Chojna-Duch and Litwińczyk 2009)

Depending on what kind of tax we are discussing (be it a state or local tax) it can perform many functions in the economy. This is mainly due to the fact that taxes cover almost every natural and legal person. Because of this, taxes, and through them the state, easily influence the shape and condition of the economy (Jaszczyński 2017).

The oldest function common to all taxes is the fiscal function, which stipulates that taxes are to provide the state and local governments with income in such an amount that all public expenditure can be covered. Naturally, as the economy develops, the fiscal function of taxes increases. In the current state of tax law, the amount of tax burden, it is necessary to apply tax reliefs and exemptions in certain sectors in order to stimulate their operation and not to burden them with a tax liability beyond measure. Fiscal function of taxes, is very visible in local taxes (Cieslukowski 2012).

Of particular importance, given this aspect is the property tax regulated by the Local Taxes and Fees

Act (Journal of Laws of 2019 item 1170). It brings the greatest tax revenue to local budgets. However, this is not a rule, as municipalities with a high degree of industrialisation receive relatively high influence compared to rural municipalities. This is largely due to the proper classification of land in the land register and tax revenue on buildings and structures related to business activity. The rate of this tax differs significantly when it comes to corporate and personal taxation, when it comes to entrepreneurs it is several times higher. In doing so, it is important whether it is a municipality or a rural (Pahl 2017). Therefore, it can be concluded that land and buildings occupied in connection with business activity are of the greatest importance in the income of municipalities (Tab. 1).

The table above shows that in the structure of real estate taxation, the largest share of revenue was recorded from the taxation of buildings, especially as regards taxes collected in municipalities, where they jointly accounted for 54.55% of income.

However, as far as land taxation is concerned, it is not difficult to notice that the most significant are the revenues from the taxation of land related to business activity, as they constitute 10.65% of the revenues from the property tax for all municipalities (from 13.4% in rural-type municipalities to 8.12% in cities with district rights), i.e. 59% of the total revenues from land taxation. Similarly as in the case of land, the highest share in the revenue from the taxation of buildings is represented by the revenue from the taxation of buildings related to business activity amounting to 38.48% of the revenue from the property tax for all municipalities (from 45.94% in urban municipalities to 26.86% in rural type municipalities), i.e. 82.1% of the total revenue from the taxation of buildings.

In conclusion, on the basis of the table above, it is possible to establish the truth of the thesis according to which the proceeds from the taxation of immovable property held by the entrepreneur represent a significant percentage of the municipality's income.

Therefore, this Article will discuss the provisions of tax law in the field of property tax, namely the provisions enabling the trader to apply tax exemptions and allowances, as well as the possibility of deferring

Table 1. The structure of the 2018 real estate tax revenues related to the taxation of land and buildings intended for business activity is presented in percentages

Type of subject matter of taxation	Total municipalities [%]	Cities with district rights [%]	Municipalities [%]	Rural communities [%]	Urban rural municipalities [%]
Land related to running a business activity regardless of the method of qualification in the land and building register	10,65	8,12	10,07	13,40	12,52
Total other land*	7,39	5,02	6,84	10,16	8,93
Buildings connected with conducting business activity and residential buildings or parts thereof occupied for conducting business activity**	38,52	44,48	46,02	26,90	34,97
Other buildings***	8,35	7,69	8,53	8,8	8,88
Buildings	35,08	34,69	28,55	40,73	34,70

Explanations:

* including land under lakes, occupied for retention bodies or hydroelectric power plants, others, including those seized for the conduct of public benefit activities for a fee by non-built-up public benefit organizations covered by the revitalization area;

** including land seized for the conduct of business in the field of marketing of certified seed;

*** including those relating to the provision of health services within the meaning of the provisions on medical activities, seized by the providers of those services and seized for the performance of public benefit activities for a fee by public benefit organizations

Source: Own elaboration on the basis of Bieniaszewska et al. (2019) – parts A and B of the report

the payment of the tax. In particular, the author will indicate how much real estate tax reliefs and exemptions are possible to operate as public aid to entrepreneurs, as well as what new regulations have been introduced in connection with the Covid-19 pandemic. The purpose of this Article is therefore to identify the possibilities available to a trader who wishes, first, to optimise the rate of property tax and, secondly, what forms of State aid he can use in this regard. It should be noted, however, that although tax optimization¹ may have negative associations with many people, it is absolutely not tax evasion. The goal of tax optimization is “intelligent application of regulations”, which in effect will lead to a reduction in the tax burden. This is the so-called “tax intelligence” (Iwin-Garzyńska 2016).

¹ Tax optimisation is not a legal concept. However, it is carried out by the taxable person in the exercise of his powers, which is why it is referred to as „the right of the taxable person to shape the amount of the tax liability” (Werner 2013).

TAX ON REAL ESTATE OWNED BY THE ENTREPRENEUR – GENERAL ISSUES

Real estate tax has been functioning in the Polish legal system since 1991, which makes it one of the oldest regulations among all taxes. It is regulated by the Local Taxes and Fees Act (Journal of Laws of 2019 item 1170) hereinafter l.t.f.a. According to art. 1 a sec. 1 point 3 of the said Act, the real estate tax covers, among others, land, buildings and structures connected with conducting business activity, i.e. land, buildings and structures owned by the entrepreneur or another entity conducting business activity, subject to sec. 2a, which states what does not fall into this category.

It is also worth pointing out how to understand business activity. In this context, the l.t.f.a. Act refers us to the Act of 6 March 2018 – The Law of Entrepreneurs (Journal of Laws 2019 item 1292) hereinafter l.e. According to the wording of the provision of Article 3 l.e.: “economic activity is an organized gainful activity, performed on its own behalf and in a continuous manner”. As far as the definition of an entrepreneur is concerned, which is equally

important from the point of view of this article, it is a natural person, a legal person or an organizational unit which is not a legal person, to which a separate act grants legal capacity, performing economic activity, as well as entrepreneurs are considered to be partners of a civil partnership within the scope of their economic activity.

Interestingly, among the many definitions in the l.t.f.a., we don't find a definition of real estate that seems to be crucial when we're talking about property tax. It would therefore be appropriate here to refer to Article 46 of the Civil Code (Journal of Laws of 2019 item 1145), which states that "real estate shall be parts of the earth's surface constituting a separate object of ownership (land), as well as buildings permanently connected with the land or parts of such buildings if, under special provisions, they constitute a separate object of ownership from the land". At first glance, however, it is clear that this definition has nothing to do with the subject of real estate tax under the l.t.f.a. Act. It is therefore necessary to refer to another law, in this case Building Law (Journal of Laws of 2020 item 471) to which the l.t.f.a. refers anyway, the definition of real estate includes land, buildings or parts of buildings, structures or parts of buildings related to business activity.

Formally, real estate tax should be included in property type taxes (Kosikowski and Ruśkowski 2003). Although in some situations it exhibits the characteristics of income tax (derives from actual or presumed income in the course of its creation in a preliminary manner) or consumer (when the subject of the tax is a residential building or a recreational plot) (Hanusz 2009). Its object is a specific part of the taxpayer's assets. It can also be pointed out that in a certain sense this tribute has features of income tax, because the real estate tax rates vary, depending on, among other things, whether the property is related to business activity. Unfortunately, in this case, it does not matter whether the property yields revenues from its economic use. In this tax, what matters is the potential revenue opportunity alone, not the actual revenue generation (Grabowicz 2014).

The basis for taxation is the land indicated above (also the one underneath the building), buildings or parts of buildings and structures or parts of structures related to business activity. Depending on which of these elements we are dealing with, we will apply a different measure for the tax base. In the case of land, it will be the area, in the case of buildings or their parts, the usable area expressed in m², while for the last category, i.e. for structures or their parts connected with conducting business activity, it will be the value referred to in the income tax regulations, determined as at 1 January of the tax year, constituting the basis for calculating depreciation in that year, not less depreciation write-offs, and in the case of fully depreciated structures – their value as at 1 January of the year in which the last depreciation was made (Krajewska et al. 2016).

For the purposes of this article, the author will describe only those tax rates that are related to running a business activity. The following rates are also the maximum rates according to the announcement of the Minister of Finance of 24 July 2019 on the upper limits of specific taxes and local fees for 2020. For land connected with running a business activity, regardless of the method of qualification in the land and building register, the maximum rate is 0.95 PLN from 1 m² of area, from buildings or their parts – 23.90 from 1 m² of usable area.

As indicated above, these rates are as high as possible to determine the. It is the duty of the Commune Council to determine each year by way of a resolution the amount of real estate tax rates within the limits indicated in the above mentioned announcement. Importantly, the property tax for a given tax year is determined by decision of the tax authority competent for the location of the subject matter of taxation (Dowgier and Etel 2013). It is worth noting that with such high real estate tax rates, within a dozen or so years the entrepreneur will pay the tax authority the tax corresponding to 100% of the value of real estate acquisition.

Therefore, the recognition of a land, building or structure as being related to business activity is

important for the amount of real estate tax burden. This tax is based on the solution that taxed objects related (and sometimes seized) to business activity are taxed at a rate many times higher than real estate not related to such activity. Interestingly, in the case of a building, it is even required to be occupied for business activity so that it can be taxed with this tax. At this point it is worth mentioning that this state of affairs has been taking place since January 1, 2016, when the Act of June 25, 2015 amended Article 1a, paragraph 2 and 2a l.t.f.a (Morawski and Banasik 2018).

According to the explanatory memorandum to the draft law, the legislator intended to clarify the concept of „technical considerations” on which the taxation of real estate belonging to the entrepreneur was dependent. In fact, this clarification consisted in removing this concept, which has resulted in such a simplification that regardless of whether or not the building acquired by the entrepreneur is suitable for business. Finally, it should be noted that the exception provided for in Article 1a(2a)(3) of the l.t.f.a. is an illusion, since its scope does not correspond in any way to that of facilities which the taxable person cannot use for various reasons (Morawski and Banasik 2018).

THE PROVISIONS OF COMMUNITY LAW ON STATE AID TO UNDERTAKINGS

Such high tax rates often exceed the financial capacity of entrepreneurs. In order to maintain their existence, it becomes necessary to provide assistance from the State, i.e. to apply the so-called state aid. EU competition law, due to the negative effects of public aid on competition on the market, has introduced a general ban on public aid. Art. 107 ust. 1 The Treaty on the Functioning of the European Union (Official Journal UE, C 83, 30.03.2010) (hereinafter TFUE) stipulates that: “Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the

internal market”. The prohibition formulated in this way is interpreted broadly. Although EU law does not define the concept of “state aid”, it has been assumed in the jurisprudence that it is any benefit obtained by an enterprise from public authorities, either through obtaining funds or exempting, even partially, from financial obligations (Craig and Búrca 2003).

State aid within the meaning of Article 107(1) TFEU confers an economic advantage on certain undertakings or the production of certain goods to the exclusion of others. A measure cannot be considered as State aid where it does not confer any advantage on the entity to which it is addressed (CJEU judgment in Case T-55/99, paragraph 40). State aid can therefore be defined as the selective granting of a financial advantage to a given undertaking or group of undertakings, accompanied by the creation of a financial burden on public finances. This burden may be in the form of public spending on companies or reducing the public law burden on companies. In the first case, it will be aid granted through active support instruments such as grants, interest rate subsidies on bank loans, refunds, soft loans and conditional waivers, guarantees and loan guarantees. In the second case, it will be aid granted through tax exemptions and write-offs (tax subsidies), the conversion of the company’s debts into capital or the postponement of the payment of certain public subsidies.

Bearing in mind the above-mentioned EU regulations, in 2018 the Polish legislator amended the Act of 30 April 2004 (Journal of Laws of 2018 item 362) on proceedings in matters concerning public aid by adjusting to the European Union regulations concerning information submitted by entities applying for public aid, specified in Commission Regulation (EU) No. 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid and Commission Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty. The amendment of the Polish Act adjusts the nomenclature and references contained therein to the binding provisions

of EU law, i.e. TFEU, Council Regulation (EU) No 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid, Council Regulation (EU) No 2015/1589 of 13 July 2015. laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union and Commission Regulation (EU) No 2015/2282 of 21 April 2004 implementing Council Regulation (EU) No 2015/1589 laying down detailed rules for the application of Article 108 TFEU.

In the case of property tax, the material scope has been significantly reduced as the legislator has provided for a wide range of properties that can benefit from the exemption. However, it should be pointed out as a shortcoming of this regulation that the exemption system has not been regulated in a uniform manner. It is possible to indicate a group of exemptions, which refers to other laws, including regulations granting exemptions for doing business in special economic zones. In principle, however, the tax exemption may result from the law itself (*ex lege*), or may be the result of the exercise of discretionary power by authorised bodies examining applications from individual entrepreneurs (administrative recognition). The types of these exemptions and tax reliefs constitute a form of public aid for an entrepreneur called collectively tax subsidies (Krajewska et al. 2016).

We can therefore speak of two groups of tax subsidies. The first type is the various general tax exemptions and reliefs which arise directly from the provisions of substantive tax law (*ex lege*). The second type of tax subsidies, in turn, are the profits contained in the provisions of formal tax law, which grant taxpayers (and thus also entrepreneurs) the right to apply for abandonment of collection, postponement of the payment deadline, or spreading the payment of the tax due in instalments, or for redemption of arrears or interest – which is in line with the powers of tax authorities under the Act of 29 August 1997 – Tax Ordinance (Journal of Laws of 2019 item 900).

The scale of aid granted to entrepreneurs in the form of reductions and exemptions is shown in the

Table 2, which contains data on the structure of real estate tax exemptions under the municipal council resolutions in 2018.

Table 2. The structure of real estate tax exemptions under the resolution of the municipal council in 2018, presented as a percentage

Type of subject matter of taxation	Total municipalities [%]
Land related to business activities, regardless of how it is classified in the land and building register	5.23
Other land*	9.29
Business buildings and residential buildings or parts thereof occupied for business activities	20.51
Other buildings** structures	16.03 48.94

Explanations:

* includes land under lakes, occupied for storage reservoirs or hydroelectric power stations, others, including those occupied for the conduct of paid statutory public benefit activities by public benefit organizations, not developed within the revitalization area;

** includes buildings: residential buildings, associated with the provision of health services within the meaning of the legislation on medical activities, occupied by providers of such services, others, including those occupied for the conduct of paid statutory public benefit activities by public benefit organizations

Source: own study based on Bieniaszewska et al. (2019) parts A and B of the report

Taking into account the table above, it can be seen that in the structure of the redundancies under the resolutions of the municipal councils, the largest number of redundancies for buildings is made. As a result, municipalities are losing income, which represents almost half of the total amount of redundancies – 48.94%. Of the total amount of exemptions, as many as 74.85% are exemptions for tax subjects related to or occupied for business activities.

At this point it should be stressed that all cases of formulating tax reliefs and exemptions constitute an exception to the principle of tax universality contained in Article 84 of the Polish Constitution. Also in the

legislation of the European Union countries there is a departure from formulating general reliefs and exemptions for entrepreneurs in the material tax law (Jurkowska 2001). According to Article 107 TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market. The Community legislator, in Article 107(2) TFEU, indicates which aid is compatible with the internal market and in Article 107(3) TFEU, which aid may be declared compatible with the internal market. Among other things, due to the fulfilment of the conditions set out in Article 107(2) and 107(3) TFEU, there is a specific type of aid that can be authorised subject to low value (so-called *de minimis* aid). This type of aid may be a form of granting relief from the payment of tax liabilities to the entrepreneur, on the basis of Article 67a and Article 67b of the Tax Ordinance.

A different kind of aid has now developed due to the COVID-19 pandemic, as some entrepreneurs have suffered huge financial losses due to the measures taken to reduce the spread. As a result, the Polish Government has taken steps to cushion the negative effects of the pandemic on business finances. This was the signing, on 31 March 2020, of the Act amending the Act on special arrangements for the prevention, prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them and certain other acts, the so-called second anti-crisis shield. One of the options provided for in the aforementioned law is to provide the Municipal Council with the competence to exempt from tax land, buildings and structures used for business activities. In addition, the municipal council may also adopt a resolution to extend the deadlines for payment of property tax instalments, payable in April, May and June 2020, but no longer than 30 September 2020. Both support may concern groups of entrepreneurs indicated by the municipality, whose financial situation deteriorated as a result

of the coronavirus epidemic, i.e. their liquidity deteriorated due to negative economic consequences due to COVID-19. However, for such an exemption to take place, a resolution of the municipal council is necessary, which means that it will be up to the local authorities to decide whether they will introduce such exemptions and how they will determine the criteria for the deterioration of financial liquidity (Kubicka-Żach 2020). The exemption resulting from such a resolution constitutes public aid to remedy a serious disturbance in the economy of a Member State, which is granted in accordance with point 3.1 of the European Commission Communication: Temporary Framework for State aid measures to support the economy in the context of the ongoing COVID-19 epidemic (2020/C 91 I/01) (Official Journal of the European Union C 91I of 20.03.2020).

The Ministry of Finance, in a letter sent on 10 April 2020 to the provincial governors and presidents of the Regional Chamber of Accounts, stresses that the new competence regulations for municipalities are characterised by a significant degree of generalisation. This is intended to allow municipalities to make independent decisions on the application and scope of support for entrepreneurs, in accordance with their own fiscal policy adapted to the local situation (Horbaczewski 2020).

The Ministry also recommends that it should be guided by a purposeful interpretation and, at the same time, by the need to provide local government units with own income at an appropriate level. The only criterion is that these are entrepreneurs whose liquidity has deteriorated due to the negative economic consequences of COVID-19. In order to benefit from the exemption, the municipality may not require the taxpayer to submit an application for exemption. As the Ministry of Finance explains, it is necessary to take into account the provisions of the Act of 12 January 1991 on local taxes and charges, which impose an obligation on the taxpayer to submit information (natural persons) or to correct declarations (legal persons) in the event of an event occurring during the year which affects the amount of taxation in that year, as well as those which impose

an obligation on the tax authority in such a situation to change the decision which established the tax (Kamiński 2020).

A circumstance corresponding to this description is precisely the fact that the property tax exemption is being used. Therefore, if the taxpayer meets the conditions specified in the resolution of the municipal council, he does not submit an application for the application of the exemption, but only submits information on real estate tax or corrects the declaration for this tax. The regulations which are the basis for introducing these forms of aid by the municipality entered into force on 31 March 2020. With this date, the municipalities were granted the right to introduce the above tax preferences. The realistically commented foot-relief applied from 1 April 2020. If the municipality, within its discretion, decides to introduce tax exemptions after that date, it may give the resolution retroactive effect (Kamiński 2020).

In addition to the provisions explicitly indicating the application of state aid, in the form of reliefs and exemptions, important assistance to entrepreneurs also brings with it favourable case-law of the courts, which, with such complex rules as exist in tax law, is cardinally important. An important example of such a line of judgement favourable to entrepreneurs is the issue which resulted from Article 1a(1)(3) of the l.t.f.a., which indicates that buildings related to the conduct of business activity are deemed to be those owned by the entrepreneur or another entity conducting business activity, with the exception of residential buildings and land related to those buildings, as well as land referred to in Article 5(1)(1)(b) of the l.t.f.a., unless the subject matter of taxation is not and cannot be used to conduct that activity for technical reasons.

It follows from the above definition that the criterion determining the application of the highest rate is the mere fact that the entrepreneur owns the building. It is not necessary to actually use the building for business purposes. A building which is not used at all and which is owned by the entrepreneur is also subject to property tax at the highest rate. It should be pointed out that until recently, the Administrative

Courts were of the opinion that even if only one of the co-owners is engaged in business activity, all are liable to pay the tax at the highest rates (judgment of the Provincial Administrative Court in Olsztyn of 28 October 2004, I SA/Ol, 317/04). However, this stance was criticised by the Constitutional Court in its judgment of 12 December 2017, Ref. SK 13/15, which indicated that Article 1a Section 1 point 3 in connection with Article 5 Section 1 point 1(a) of the Act of 12 January 1991 on Local Taxes and Fees, understood in such a way that a sufficient premise for classifying the land subject to real estate tax as land related to business activity is the pursuit of business activity by a natural person who is its co-owner, is inconsistent with Article 2 in connection with Article 64 Section 1 and 2 and Article 84 in connection with Article 32 Section 1 of the Constitution of the Republic of Poland. In the justification of the judgment, the Constitutional Tribunal stated that the contested regulation has too broad a scope of application, even taking into account the exclusions referred to in the last sentence of Article 1a, paragraph 1, point 3 l.t.f.a. In the opinion of the Constitutional Tribunal, the mere pursuit of economic activity by a natural person is not important for taxation of land with the tax rate on land related to the pursuit of economic activity (referred to in Article 5, paragraph 1, point 1, letter a of the l.t.f.a.). In view of the ratio of the application of the increased rate, which is the potential for obtaining revenue from the use of the land in question, it is necessary to establish the actual use of the taxed land of which a natural person carrying out an economic activity remains a co-owner. Omitting this criterion leads to a differentiation between holders of land which has no connection with the exercise of an economic activity. Taxpayers (natural persons) in a similar situation (owners of land not related to business activities) pay property tax at different rates. In the opinion of the Court, this differentiation has no constitutional justification in relation to persons holding land not related to business activity. A similar position has also been presented by some Administrative Courts. Voivodship Administrative Court in Rzeszów in the

judgment of 14 August 2017, file no. I SA/Rz 296/17. A more precise interpretation of the provisions was made by the Voivodship Administrative Court (WSA) in Szczecin in its judgment of 7 September 2017, file no. I SA/Sz 521/17, in which it stated that in the case of natural persons conducting economic activity, the choice of the appropriate rate of real estate tax should be preceded by determining which real estate is related to the activity of the taxpayer – entrepreneur, and which belongs to his personal property, i.e. not related to economic activity.

The position described above is important from the point of view of business taxation. What is crucial in the ruling is not only that the Constitutional Tribunal recognised the unconstitutionality of the provisions in the case where one of the spouses is engaged in business activity and the other is not, but it is equally important that the authority, before issuing a dimensional decision, should examine the facts of the case in order to conclude that the land or other property in question is actually used in the taxpayer's business activity. The mere fact of owning real estate cannot in this case be a condition exaggerating its economic use in the entrepreneurial activity.

CONCLUSIONS

The income from real estate tax, as an income that feeds the entire municipal budget, enables local government bodies to carry out the tasks set by the legislator, which is a very important source of income for municipalities. The tables presented in this article show that the largest share in this income are the taxes levied on land and buildings owned by the entrepreneur, i.e. those properties connected with carrying out economic activity. It can therefore be concluded that the application of any tax subsidy and the possibility of deferring the payment of the tax only takes place in particularly justified cases, i.e. those which determine the continued existence of the entrepreneur concerned. Moreover, the expenses incurred by entrepreneurs as a result of their tax obligations are as financially significant for them as in the case of municipalities. Frequently, tax deferrals

or write-offs can cause entrepreneurs to get out of financial trouble. For this reason, one cannot deny the legitimacy of using this form of assistance to an entrepreneur. At the same time, it is important to remember the principles of fair competition. Therefore, any subsidies or other assistance to entrepreneurs should comply with the provisions of the Act on State Aid and EU regulations, which prohibit the provision of such financial assistance to an entrepreneur that distorts or threatens to distort competition by favouring certain enterprises.

Nevertheless, the use of such assistance, as well as the right of municipalities to differentiate tax rates or introduce exemptions, gives them the opportunity to influence local development, such as attracting external investors, stimulating entrepreneurship and thus solving difficult problems in the local labour market. It is therefore very important for local authorities to have a proper property tax policy. Property tax is also an instrument used to stimulate entrepreneurship, as can be seen from the municipalities setting tax rates below the maximum rates. This does not mean that they can be described as low and entrepreneurs do not try to find ways to reduce this levy. The problem of a significant link between tax law and construction law, namely the smoothness of the boundary between the definitions of a building and a structure, still remains. A good example is, for example, the need to tax buildings on their historical value (initial value), which does not take account of depreciation write-offs made by the taxpayer. Such a solution does not encourage entrepreneurs to modernise their property, because the regulations in their current form favour this property of the entrepreneur, which is old and has a low initial value. According to the author, running a cadastral tax could contribute to solving this problem.

When concluding, tax rules do not have to be very strict and absolute. It can be considered that precisely if the tax system were more transparent and at the same time allowed the entrepreneur to benefit from a lower rate of property tax, this would be more beneficial to the economy and the state budget. At present, the ambiguity of the regulations under discussion

and the problems of interpretation associated with this lead to numerous legal proceedings. These, in turn, involve a significant commitment of time and money that could be used by the entrepreneur for investment purposes. In the long term, this could be linked to the development of such an entrepreneur and, consequently, to the regional and national economy, and could therefore also affect the income of the municipal and state budget.

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