

Adam Kałużny

a summary of the doctoral dissertation

Taxation of the infrastructure with real estate tax

The dissertation presents discussion over tax treatment of the different types of infrastructure, based on the Polish real estate tax regulation. In particular, it compares different approaches to the commented issue presented by the representatives of jurisprudence, Polish administrative courts and tax authorities. The dissertation includes also comparison of the Polish tax regulations and the provisions of the selected other European countries. The mentioned analysis is a basis for the reflection on the quality of the Polish real estate tax regulation regarding infrastructure. Subsequently, the commented analysis is also a source of the ideas for certain solutions (of legislative and legal interpretation nature) which may possibly help in proper understanding of the binding provisions of the Polish real estate tax system regarding infrastructure. Dissertation is divided into eight chapters, which present crucial issues related to the taxation of the infrastructure with real estate tax.

Chapter I includes description of the understanding of the term "infrastructure" for the purposes of the dissertation. Subsequently in this chapter the author explains the role of the infrastructure in the modern economy and presents how important from the state point of view is to support it also with application of tax system. In particular, the chapter presents why the legislator should construct a balanced tax system, which not only treat the infrastructure as a source of budget income but also should take into consideration two other important roles of tax, i.e. to stimulate development and redistribute resources. Finally, the author describes the main sources on which the dissertation is based and point out the main goals of the further analysis.

Chapter II describes the crucial elements of Polish system of the real estate tax. The author presents how the tax subject, tax basis and the taxpayer are determined in the real estate tax provisions. In particular this part of the dissertations introduce the terms of ground, building and structure, which are most important and most problematic from the perspective of tax treatment of the infrastructure. Subsequently in detailed analysis the author presents the main issues concerning specificity of determination of the tax basis for different tax subjects and application of the proper tax rate. Each of the above mentioned problems is presented in the light of the main topic of the dissertation which is the tax treatment of the infrastructure.

Chapter III is dedicated to the problem of application of definitions from the non-tax acts for the tax purposes. The commented issue is very significant from the perspective of the Polish real estate tax because the provisions of the Act on local tax and charges includes definitions that are directly connected with the definitions included in the Building Law. The analysis presented in the chapter is based on the reflection regarding standards of tax law legislation included in the Polish Constitution. Moreover, the author describes the main theses developed by the Polish jurisprudence regarding legal aspects of connection between provisions that belongs to different branches of law, with particular emphasis on the tax law problems. The chapter refers not only to the definitions of building and structure, but also to the number of other references to other acts included in the provisions of the Act on local tax and charges. Finally, the author presents main interpretation problems regarding definitions present in the jurisdiction of the Polish administrative courts.

Chapter IV presents a catalogue of different legislative solutions that are applicable to the taxation of infrastructure based on the provisions of the Act on local tax and charges. Firstly, the author describes the types of infrastructure (in particular the transport infrastructure) that are out of the scope of the Polish real estate tax or are tax exempted. Secondly, the chapter includes descriptions of the infrastructure that are generally taxed on the general rules (with no application of specific tax exemption), however may benefit from some specific provisions regarding settlement of tax basis (as the telecommunication infrastructure which benefits from the provisions which excludes form the taxation cables located in the cable ducting). The author presents evolution of the particular provisions over the last 25 years, analyze the justifications of the consecutive law amendments and try to figure out the reasons why there are significant differences in tax treatment of different kinds of infrastructure. Finally, the chapter presents the role of local tax law in creation of real estate taxation system of infrastructure, in particular connected with decreased tax rates and exemptions provided by the provisions of resolutions of the communes' councils.

Chapter V could be recognized as a supplement to Chapter IV because it presents tax controversies which arise with regard to different types of infrastructure on the basis of the binding provisions of Polish tax law, described previously in Chapter IV. Particular parts of the chapter presents standpoints presented in jurisprudence and jurisdiction connected with real estate tax treatment of internal roads, railway sidings, harbors, airports, transformer stations, telecommunication base transceiver stations and water supply infrastructure. In particular the

author describes the doubts regarding understanding of the provisions of Act on local tax and charges which are effect of inaccurate definitions and references to other acts of law.

Chapter VI present the issue of tax preferences for the infrastructure provided by the Polish tax law provisions from the perspective of the European law regulating public aid in the EU. First part of the chapter includes description of general rules that determine if given tax allowance (decreased tax rate or tax exemption) should be treated as prohibited public aid, or it is possible to include it in the catalogue of allowed forms of public aid. Subsequently the author presents how this general rules regarding public aid affected the creation of the Polish tax law provisions, in particular Act on local tax and charges and the local tax law (created by given communes). The chapter presents the problems that the lawmaking authorities are facing having in mind the general prohibition for the public aid within the EU. Moreover the author try to evaluate the arguments according to which given real estate tax allowances for the infrastructure should or should not be qualified as a prohibited public aid.

The purpose of the Chapter VII is to look at the problem of real estate taxation of the infrastructure from a wider perspective, taking into consideration relevant provisions of the other than Polish tax systems. The countries included in the comparison are Russia, Czech Republic and France. The Russian system of real estate taxation of infrastructure seems to be in many aspects similar to Polish, however due to the fact that Russia is not EU member state, it is not influenced by the European public aid regulations. Real estate tax system of Poland's closest neighbor in the EU – Czech Republic, generally seems to be comparable to the Polish real estate tax regulation in the area of construction of tax, however the tax rates are significantly lower so it affects infrastructure much less than real estate tax in Poland. Finally, the real estate taxation of the infrastructure in France is a part of much more complex and complicated tax system as those in the Central Europe. Accordingly, from the Polish tax perspective it is important to compare local regulations with provisions operating in the higher developed economy.

The last Chapter VIII is dedicated to identification of main problems connected with taxation of infrastructure with the real estate tax and to formulate a proposal for solutions, which may help to avoid or minimize the identified problems in the future. The author identified the following crucial issues which should be considered as the weak points of the system of real estate taxation of infrastructure: diversification of the legislator's approach to various types of infrastructure, dubious quality of the legislation, problems on the side of the communes in creation and application of local tax law provisions. The proposed actions are to generally

harmonize the approach do different types of infrastructure, implement certain solutions in order to improve quality of legislation in future and finally to clarify the Polish regulations in order to exclude doubts regarding compliance with EU public aid rules which should help the communes with creation of proper local tax law provisions.

9.04.2019

Adam Matyja