SOME ISSUE OF PROPERTY TAXATION: LAW AND ECONOMICS ASSPECTS

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Summary

The notion of property constitutes one of the most ambiguous categories, differently defined and interpreted depending on a given field of science. Analyzing legal provisions of the EU countries which regulate the issues of tax accounting and tax law, we may determine the general properties of elements of property. These are: ability to generate future economic benefits, reference to transactions or other events realized in the past and remaining under control of the managing unit, which allows to enter them into the accounting system of a given entity.

Keywords: property, tax law, legal system, assets.

The notion of property

Taking into account legal provisions of accounting, there are two categories of property (asset) elements: fixed assets and current assets. We can also classify property (assets) using other criteria.

The difference between current assets and fixed assets is important for the possible establishment of the tax collection point for the taxes whose taxation base is related to the subject resource. It seems that potential application of property-related tribute requires for the object of taxation to be easily identifiable, thus demonstrating certain regularity of its taxation. The review of the existing models of property tax shows that as far as tributes imposing burden on real estate are concerned, there is the primacy of building or land

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real estate over other types of property. It seems essential that the material property and intangible and legal values, as essential production factors of an enterprise, should constitute the main elements of the fixed assets structure.

Table 1 Types of property (assets) elements according to accounting regulations

Period of use criterion	fixed assets current assets
Liquidity criterion	non-liquid liquid
Criteria of nature and function	tangible intangible financial material

Source: own elaboration

To describe the real estate, the basic element of property, we should not only use the presentation of various ways of defining the notion of real estate by the lawmakers, but also take into account their features (Table 2).

Table 2 Features of real estate

Physical	Economic	Legal
Immovability Durability Variety	Rarity Location Interrelationship Capital consumption Ability to satisfy particular needs Ability to generate economic benefits	Legal definition Legal structure of Land and Mortgage Register Records – state collection of real estates Special requirements for trading real estate Legal ratification of professions related to real estate Legal norms related to real estate economy of the state and self-government

Source: own work.

Analyzing legal aspects concerning real estate in the EU countries we may differentiate four elements which need to be taken into account when considering the forms and structures of property taxation. First of all, it is the immovability of real estate in time and space. The value of the real estate largely depends on the attractiveness of its location and the type of its use. Secondly, variety, manifested in the fact that there no two identical real estates. The factors that differentiate real estate are especially its area, shape, type of development, allocation in the spatial development plan, soil conditions, water conditions, utilities, neighborhood. That explains why there might be considerable differences between similar, but hardly comparable real estates. Thirdly – capital and time consumption with reference to industrial developed real estate. Limited financial resources allocated for purchasing the real estate depend on the investor's own resources and availability of external (foreign) finance. The indicated difficulties related to such investment are compensated by the long-term nature of the real estate enjoyed by the owner. A general rule states also that large capital consumption of the real estate usually results in its increasing value. Fourthly, the ability to satisfy particular needs, which means that entrepreneurs are able to generate economic benefits. Each type of real estate has certain functions attached to it. In case of residential real estate – this may be economic, education, cultural, religious activity that can be run there. With reference to undeveloped real estate – conducting trading activities (the marketplace), services (parking lots), agricultural activity (arable land) and forest activity (forest land). Another consequence of possessing a real estate and the right to use it is the ability to generate measurable benefits. The type of benefit depends on the way of using the real estate.

Property as a subject of taxation

The concept of property has never been defined in the Polish law system. In its wide sense, it is understood as total assets and liabilities belonging to a particular entity. Such definition of property is opposed to its narrow term denoting the estate which entails only assets. In the latter definition, debts do not belong to property, but lower its economic value. Also in economics the property is understood exclusively as a sum of assets – property resources controlled by an individual and possessing reliably defined value. These assets are divided into fixed assets, composed of elements that are permanently engaged in a given unit, and current assets, composed of elements which constantly traded. In this understanding of property, liabilities are treated as means of its origin, and when we juxtapose them with assets, we will obtain a balance sheet[3]. In the legal sense, in the doctrine of civil law property has rather narrow meaning. This can be seen in the interpretation of the Civil Code provisions which use the concept of property – for example Article 863, 871, 875 concerning joint property of partners. The provision of Article 863 is absolutely binding and regulates the legal and material effects of gathering property on the basis of articles of association of a partnership. The regulation determining the regime of joint property of partners is applicable when such property is collected.

[3] L.Etel, G.Liszewski, Podatki majątkowe w Polsce – wybrane problemy, Kancelaria Sejmu, Biuro Studiów i Ekspertyz, Report No 202, Warszawa 2002, p. 5.

Property taxes

Property taxes (on specified items of property), comprise all taxes related to the ownership rights. From the perspective of the relationship between the tax burden and the taxpayer carrying it, we may differentiate direct and indirect taxes. A direct tax is when there is a precisely defined relationship between tax burden (type of tax, its amount, payment mode) and the taxpayer bearing it directly. Thus we have a relationship between the payment of the tax and direct carrying its burden by the taxpayer. So we have a convergence between the formal and material burden. Direct taxes burden the taxpayer in a way that is closely related to their income or property situation. Direct taxes comprise income taxes and property taxes. Direct taxes, especially property taxes are considered to be non-transferrable[4], which is not the case, therefore the criteria of the unity of a taxpayer and tax burden is not coherent[5]. We should assume therefore – taking into account the criterion of a relationship of the subject with attributable features – that direct taxes are those which are precisely related to permanent and non-transferrable features of a taxpayer or measures of economic activity ascribed to him through the ownership rights (income and property)[6].

Property taxation has both economic and legal aspects. In the economic aspect, a property tax is the one whose source is the taxpayer's property. If property taxes are paid from obtained income, then they are nominal. If the source from which the tax is paid is the property, that we have real property taxes. Property taxes may burden both the property of individuals and business entities (subject of taxation criterion). We may also single out property taxes which may burden: possession of property, purchase or sale of property and increased value of property. Moreover, the taxation may cover the whole property or its particular elements. A property tax in its normative aspect is a tax which, through the elements of a legal construction (subject and base of taxation) is tied to property[7].

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[4] More on transferability and advantages and disadvantages of direct taxes in : G .Szczodrowski, Polski system podatkowy, PWN, Warszawa 2007, pp. 24-26.

[5] F.Grądalski, Wstęp do teorii opodatkowania, SGH, Warszawa 2004, p., 105.

[6] More in: A.B. Atkinson, Optimal Taxation and the Direct versus Indirect Tax Controversy, "Canadian Journal of Economics", 1977, vol. 6., pp. 590-606.

[7] A.Gomułowicz, J.Małecki, Podatki i prawo podatkowe, LexisNexis, Warszawa 2004, pp. 140-141.

The legal taxonomy of property taxes

"Immovable property" generally encompasses both "real property" and "real estate," terms that have different technical meaning but that often are used synonymously. Real property refers to the rights, interests and benefits connected with real estate, which is the physical piece of land and any structures on that land. Land, in turn, can have the same meaning as real estate. Much of the literature on national property tax systems speaks generally of "property taxes." Particularly when considering property tax revenues, it can be important to distinguish among the various kinds of taxes on property. The International Monetary Fund (IMF) and the Organisation for Economic Co-operation and Development (OECD) have developed largely complementary schemes for classifying taxes, which they use in presenting revenue statistics. Taxes on property include: (1) recurrent (annual) taxes on real (*immovable*) property, (2) recurrent taxes on net wealth, (3) taxes on estates, inheritances, and gifts, (4) taxes on financial and capital transactions (including real property transfers), (5) other non-recurrent taxes, and (6) other recurrent taxes on property (including taxes on movable property such as vehicles and machinery and equipment). Many countries do not have a uniform national property tax system. Several have separate land and building taxes. Several essentially let local governments tailor their systems to local conditions[8].

Immovable property taxes are suited to local governments because it is clear which government is entitled to the tax revenue from immovable property, and such property cannot flee the tax collector. Local government services are often provided to properties or their owners and occupants. The tax captures for local government some of the increases in the value of land that are partially created by public expenditures. A dedicated source of revenue promotes local autonomy. The visibility of property taxes focuses attention on the overall quality of governance and promotes accountability. Information on land, buildings, and market prices collected in the course of administering taxes on immovable property becomes part of a valuable pool of information that has numerous governmental and private uses. If up-to-date and publicly available, this information can facilitate orderly real property markets. Despite their advantages – or perhaps because of some of them – property taxes often are underutilized sources of revenue. A common, but disputed complaint about the property tax is that it is inherently regressive, although poorly administered property taxes tend to be regressive.

[8] Property Tax Regimes in Europe, The Global Urban Economic Dialogue Series, United Nations Human Settlements Programme, Nairobi 2013, p. 1.

People schooled in income and consumption tax administration can fail to appreciate the relative advantages of a wealth tax. They focus on high administrative costs and low yields, overlooking the comparative high compliance costs associated with income and consumption taxes. Valuers schooled in traditional single-property valuation methods disdain assessors and the mass valuation methods used in property taxation. The unpopularity of property taxes, coupled with opposition from taxpayers who benefit from entrenched inequities encourages "legislative neglect."[9]

Property taxes have various legal classifications. Analyzing legislature of the EU and OECD countries, we may differentiate four classification groups of property taxes:

1) Taxes on possessing property (managing property). Depending on the valid tax system these may be taxes on the total value of property belonging to a given economic entity (moveable and immoveable property, cash, bank deposits, etc.), or – more frequently – on its selected elements. In the Polish tax system, the taxes belonging to this group are: tax on real estate, land tax, forest tax and tax on means of transport.
2) Taxes on the increment (taking over) of property. The taxation object here is the obtaining of an object or property rights by means of purchase, donation or inheritance. Here we classify tax on inheritance and donations.
3) Taxes on the growth of value of the possessed property. They are used when this growth can be attributed to reasons not associated with the owner. An example here can be a betterment levy (fee) and re-zoning fee, paid by real estate owners due to the fact that their properties gained in value as a result of providing services and utilities, geodetic division of land, changes to local spatial development plan, etc.
4) Taxes on transformation of property substance. These are taxes paid in case of the sale or exchange of things or property rights into other things or property rights. In Poland, they are present as tax on civil law activity (Polish abbreviation – PCC).

The legal analysis of the structure and features of property taxes allows us to put forward the following classification criteria:

1. The legal and economic process of generating and using income (the object criterion).
2. Specification of the object of taxation (economic criterion).

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[9] Slack E., The Property Tax – in theory and Practice. Institute on Municipal Finance and Governance, Munk School of Global Affairs, University of Toronto, "IMFG Municipal Finance and Governance" No 2/2011, p. 2-3.

3. The relationship between normatively determined elements of the taxation technique (source, object, subject of tax) and the actual state (criteria of allocation of financial resources coming from taxes).
4. The method of quantifying the taxation base.

Recurrent taxes on immovable property

Traditional land and property taxation – commonly referred to as property taxation – is based on the "combined assessed value of land, buildings and improvements thereon."[10] This is the most widely used form of taxation and this is what they mean when a typical mayor and public finance official talk about land and property tax. However, this is not the only form of taxation associated with land. For example, various jurisdictions have over the years attempted to restrict taxes to ownership of land and put forward various justifications for doing so. When taxation is restricted to land or higher tax rates are imposed on land rather than buildings or improvements, then taxation takes the form of land value taxation (also called site value rating)[11].

Land value taxation (LVT), also known as recurrent property taxation, is often considered fair and progressive. As such, LVT claims to enhance efficiency of the use of land-based taxation in general and may discourage land and real estate speculation. The land value taxation in its pure form intends to let the landowners bear the full cost of the taxation with limited possibility to shift the cost to users (renters). In principle, land value approach does not enforce density and the timing for developing a parcel of land. Land value taxation advocates often argue for a single local land tax, at the expense of other factors of production (e.g. capital and labor). In so doing, land value taxation supports the abolition or reduction of taxation revenues (fees, rates, charges) from income, development, sales, various municipal services, building values, corporate profit etc. Further, LVT tends to decrease the dependency of local government on 'central' government revenue.

Despite these arguments, land value capture and taxation has limited uptake and traction due to various challenges including legal and administrative issues (reforms needed to abolish other prevailing taxation systems and finding the appropriate institutional arrangements from local to central government role in land-based taxation), assessment methods (how to design and implement a fair valuation method and rolls – by area / site, income, value increment, etc.- and its increments). Another variant of LVT argues for a modified land value taxation that supports a split-rate taxation system

[10] See more: Connelan O., *Land Value Taxation in Britain: Experience and Opportunities*, LILP, Cambridge 2004, Massachusetts.

[11] *Innovative Land and Property Taxation*, (ed.) Remy Sietchiping, United Nations Human Settlements Programme (UN-HABITAT), Nairobi, p. 4.

whereby the tax receipts separate the value or tax rate of land from the improvements on land. However, pure single land tax does not exist and "in those jurisdictions where land value taxation has been tried, it has typically taken the form of a two-rate tax, not a pure land value tax."[12] In practice, many countries have adopted some forms of LVT along with property and other taxation and revenue sources (income, sale, increment, improvement, etc.). Property taxation is broadly concerned with raising revenue on structures and improvements over land.

Although this table focuses on recurrent taxes on immovable property, a few words about recurrent taxes on net wealth and taxes on real estate transfers (a tax on the transfer of wealth) are appropriate. Rudnick and Gordon[13] addressed both kinds, the latter being viewed as taxes on the transfer of wealth. Despite their conceptual appeal, recurrent taxes on net wealth seem to be in decline, although the pictures presented by revenue statistics and by system descriptions can conflict. However, European countries that make substantial use of recurrent taxes on net wealth include France, Luxembourg (on corporations), Norway, and Switzerland. Iceland has temporarily reintroduced a net wealth tax on residents[14].

Land and property taxes (LPT) as a source of local revenue

The discussion includes the reasons why land and property taxes (LPT) are often an important source of local revenue, what the options are for designing such taxes and what needs to be considered in their implementation. The case is put forward that land and property constitute an important base for mobilizing revenue to meet local needs. Land is immovable. Buildings and other immovable improvements on the land are difficult to hide. Those who benefit most from public investments will likely pay a larger share of the tax. Taxes on land and improvements can capture part of the increased land values that often result from public investments and improved public programs. By giving local authorities autonomous revenues, LPTs can foster improved local accountability and responsiveness. The various types of taxes

[12] See more: Dye R.F. England R.W., *Assessing the theory and practice of land value taxation*, Policy Focus Report of for the Lincoln Institute of Land Policy, 2010, p.12.

[13] Rudnick, R. Gordon, R., *Taxation of Wealth*, Thuronyi, V. (ed.), *Tax Law Design and Drafting,* Washington, 1996, International Monetary Fund. http://www.imf.org/external/pubs/nft/1998/tlaw/ eng/ch10.pdf

[14] See: European Union. (2011) *Taxation Trends in the European Union: Data for the EU Member States, Iceland and Norway*, <http://ec.europa.eu/taxation_customs/taxation/gen_info/economic_analysis/tax_structures/index_en.htm> (accessed 17 December 2011)

applied to land and improvements are described, with an important distinction drawn between those LPTs that represent one-time taxes, fees and charges and the annual LPT that yields on-going revenue. The one-time taxes and fees are applied when something about the land changes, such as ownership or land use. The annual LPT applies to all taxable land. One-time taxes and fees are best used to fund specific projects, whereas the annual LPT can be used to fund continuing services or to underwrite modest debt levels. Four practice and capacity perspectives. To be effective, implementations of LPTs need to be informed by, if not constrained by, four considerations[15].

The LPT system should reflect and be sensitive to the accepted institutions and traditions related to land and property rights. If land is seen as an economic commodity in the local culture, and individual private ownership is accepted, then the incidence of the LPT should fall on land owners, and sanctions should include the government's right to seize and sell the land (eventually) if taxes are not paid. On the other hand, if land is viewed by the local culture as fundamental to achieving basic human rights, or if private ownership is foreign to the culture, then it will likely be more practical to make the occupants of land responsible for paying the tax. In such settings, tax administrators need to be able to use a combination of public exposure, the denial of taxpayer services and the pursuit of other taxpayer assets besides the land if the taxes are not paid. A national taxpayer identification system is of great value in such situations[16].

Conclusions

The design of real estate property tax system is in the last period a subject for debate, attracting attention in the political, social or academic debates. This is due because taxation on real estate property could be[17]:

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[15] See: , R. Gordon, R., *Taxation of Wealth*, Thuronyi, V. (ed.), *Tax Law Design and Drafting,* Washington, 1996, International Monetary Fund. http://www.imf.org/external/pubs/nft/1998/tlaw/ eng/ch10.pdf.

[16] Bahl, R., *Property Tax Reform in Developing and Transition Countries*, Report prepared for the United States Agency for International Development under a contract with Development Alternatives, Inc. under the Fiscal Reform and Economic Governance Task Order, 2009, GEG-I-00-04-00001-00 Task Order No. 07., p. 21-24; Rudnick, R. Gordon, R., *Taxation of Wealth*, Thuronyi, V. (ed.), *Tax Law Design and Drafting,* Washington, 1996, International Monetary Fund. http://www.imf.org/external/pubs/nft/1998/tlaw/ eng/ch10.pdf. See also: *Property Tax Regimes in Europe*, The Global Urban Economic Dialogue Series, United Nations Human Settlements Programme, Nairobi 2013.

[17] See more: Anghel I., Grover R., *Opportunities and constraints on the development of real estate taxation in transitional countries*, 14 th Annual European Real Estate Society,

a) New source of revenues. In a couple of European countries there is an important need to find new financial resources; the fact that real estate taxes are quite low in many countries creates the opportunity for these countries to obtain a convenient not expensive and short term solution.
b) New source of economic growth. There are recent studies which identified taxes on real estate property as some of the least detrimental to GDP. In this context there are couple of voices which sustain the necessity to move the tax intensity from labor taxes (that discourage employment) towards taxes on consumption and property.
c) A source of stability. Taxes on property are recurrent and offer an important advantage of a high stability of tax revenue flow, which facilitates a reliable budgetary planning. This could be an important issue for indebted economies, an attractive feature particularly for highly indebted countries, for which increasing in stability of revenues is very important in achieving good debt financing conditions on the global capital market.
d) A way to avoid future crisis. There are many voices which consider the favorable tax treatment of mortgages as one of the important contributing factors to the housing price bubble that has played an important role in the crisis in several countries. In this context, it is important to ensure a more balanced tax treatment of housing[18].

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[18] See more: Crowe C., Dell'Ariccia G., Igan D., Rabanal P., How *to Deal with Real Estate Booms: Lessons from Country Experiences* , IMF "Working Paper", No 4/2011; Grover R., Anghel I., Pamfil V., *Developing quality training approaches for effective property tax administration*, ERES-ESSEC Education Seminar, Paris, December 2007; Paugam A., *Ad Valorem Property Taxation and Transition Economies*, ECSIN, "Working Paper" No 9/1999. Johansson A, Heady C, Arnold J., Brys B. and Vartia L., *Tax and Economic Growth,* OECD Economics "Department Working Papers", No. 620, OECD Publishing, 2008.

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