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The importance of the principle of tax justice for deciding real-estate tax cases — selected legal issues

DOI 10.5604/01.3001.0015.5833

Abstract:

The subject of the article is an analysis of selected judicial decisions in the field of real estate tax from the perspective of the tax authority. Due to imprecise legal provisions, and sometimes even the lack of specific legal regulations, tax authorities having doubts in relation to taxation of a specific real estate look to judgments of administrative courts based on similar facts and featuring similar points of law. The problem arises when the judgments of the courts begin to diverge. Due to legal gaps, decision-making space and heterogeneity of judicial decisions, it is impossible for the tax authority to interpret a given tax problem unambiguously on the basis of the applicable legislation and court decisions. This may lead to the violation of the principle of tax justice applicable in tax law. The analysis of the court judgments presented in the article will make it possible to discern the essence of individual legal problems faced by taxpayers, tax authorities, and ultimately the courts, and will also enable the reader to make an assessment of the value of individual judgments.

Keywords: taxpayer, real estate, tax authority, real estate tax, jurisprudence

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1. Introduction, hypothesis and methodology

Tax law is fraught with complicated regulation, unclear definitions, if indeed any, numerous cross-references and a hermetic language. The taxpayer often needs assistance from the tax authority due to being unable to comprehend the tax procedures. This is of principal significance in the case of real-estate tax, the rate of which depends on how the tax authority classifies a given property for taxation purposes. Real-estate tax is governed and structured by the Act of 12 January 1991 on Local Taxes and Charges.[2] The Act of 29 August 1997 — Tax Code[3] and the Act of 17 May 1989 — Surveying and Cartographic Law[4] assist with procedural aspects of taxation.

Tax authorities develop multiple doubts when taxing real estate, whenever there is no legal provision to define the method of taxation or there is one but it is unclear and difficult to understand. Decisions of Local-Government Appellate Boards[5] are helpful in such cases; the Boards are a superior authority above the first-instance tax authority (commune chief executive, mayor or municipal president), and they consider and rule on the merits of the tax problem coming up before them for review.[6] Where the Board's decision is not too clear to the first-instance tax authority, the latter could look to literature and court decisions for clues while applying the real-estate tax.

The legal provisions governing real-estate taxation have posed significant interpretative difficulties for many years. So far no legislative amendment has led to any improvement on this front. Hence, the judgments of courts have become the answer needed by the tax authority tasked with the correct application of legal rules to the facts at hand. However well versed in tax regulations applicable to real estate, the quality of which notably varies, tax authorities are taken by surprise not so much by the number of court decisions as the significant heterogeneity of legal views expressed in them (not infrequently quite controversial) with regard to the same tax issues.'Attending the history of taxation has invariably been the question of the "fair" degree of the tax burden. (...) This manifests itself the most clearly in the principles of taxation. (...) In the common view the purpose of the law is to embody justice and to be the expression of it. If the regulations pay no heed to the principle of justice in taxation, they will remain a dry letter void of the quality and dignity of law. The law in general and tax law in particular must be just because

[2] Dz. U. 2019 poz. 1170 ze zm., dalej jako: ustawa o podatkach i opłatach lokalnych.

[3] Dz. U. 2021 poz. 1540 ze zm.

[4] Dz. U. 2020 poz. 2052 ze zm.

[5] Dalej jako: Kolegium lub SKO.

[6] Działanie, organizację i właściwość Samorządowych Kolegiów Odwoławczych określa Ustawa z dnia 12 października
1994 r. o samorządowych kolegiach odwoławczych (Dz. U. 2018 poz. 570 ze zm.).

that is the idea behind it.'[7]

The purpose of this paper is to discuss — in the context of tax authorities' compliance with the principle of justice in taxation — selected provisions of tax law, as well as varying trends in decisions involving real-estate taxation. It will be necessary to embark on an evaluation of the various statutory solutions, along with administrative courts' decisions based on them, from the perspective of the implementation of the principle of tax justice. Due to space constraints, the article deals with three tax issues arising in the practice of real-estate taxation and attracting multiple court judgments. For it would be beyond the realm of possibility to analyse all statutory provisions and court judgments based on them in the area of real-estate taxation from the perspective of the principle of tax justice. Thus, out of all problems the Author focused only on those sparking the most doubts and those having witnessed significant change in the practice over time. The problems discussed herein provide examples of relatively complicated points of law that, not being fully explained by statute, leave interpretative ambiguities.

The research hypothesis of this article asserts that the imprecise legal provisions and divergent court decisions may be leading the tax authorities to violate the principle of tax justice through different taxation of properties situated in different communes or even within the same commune.

The core methods used in order to verify this hypothesis were the legal-dogmatic analysis of tax law and the empirical method based on the analysis of the decisions of administrative courts in relation to real-estate tax. To a limited extent, the historical method was also used, so as to trace how the understanding of a specific point of tax law by the administrative court evolved over time.

2. Several general remarks on the principle of tax justice

Poland's tax system is based on tax principles. Among the chief of those is the principle of tax justice. 'The principle of tax justice is not merely the literature's call to the legislature and practitioners but also something grounded in Poland's binding legal system.'[8] The principle of tax justice derives from the principle of social justice, for which the source is Article 2 of the Constitution of the Republic of Poland of 2 April 1997.[9] There exists, however, no legal definition of tax justice. The literature of tax law distinguishes

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[7] T. Wołowiec, *Zasada sprawiedliwości w opodatkowaniu*, [w:] A. Nalepka, A. Ujwara-Gill (red.), *Organizacje komercyjne i niekomercyjne wobec wzmożonej konkurencji oraz wzrastających wymagań konsumentów*, Nowy Sącz 2010, s. 311–312.

[8] Wyrok NSA z dnia 13 stycznia 1994 r., sygn. akt SA/Po 1598/93, Legalis nr 41945. Tak samo: wyrok WSA w Poznaniu z dnia 12 lipca 2005 r., sygn. akt I SA/Po 2065/03, Legalis nr 2208257.

[9] Dalej jako: Konstytucja (Dz. U. 1997 nr 78 poz. 483).

justice in an objective aspect, with a practical dimension to it, given how — in this understanding of it — tax authorities endeavour to follow it while applying the real-estate tax, as well as justice in a subjective aspect that includes the taxpayers' perception of the legal solutions applied by the tax authorities in practice.[10]

The principle of tax justice is composed of the principle of universality (Article 84 of the Constitution) and equality (Article 32(1) read in conjunction with Article 84 of the Constitution) of taxation. The universality of taxation means that all citizens must be taxed as regards real-estate tax provided the criteria for the tax liability to arise are met. The equality of taxation, on the other hand, assumes the same treatment of taxpayers faced with the same sets of facts. This principle is opposed to privilege or unjustified preference in taxation.[11]

The drafters of tax provisions have designed some of them in a way that is less than straightforward and clear. This can lead to legislative gaps and decision-making leeway in the application of tax law, from which violations of the principle of tax justice by tax authorities may arise.[12] To avoid that, tax authorities wanting for certainty as to the correct application of the legal rule to the facts of the case look to the judgments of administrative courts for guidance. Here, one should ask the question whether a tax authority is in a position to offer a clear interpretation of the tax problem at hand on the basis of binding court decisions. It would appear that the answer to this question may be provided following the analysis of the Author's selection of three problems encountered in the practical application of tax law.

3. Examples of possible violations of the principle of tax justice while applying real-estate tax

a) Taxation of a parking slot in the underground garage of a residential building

Along with the emergence of so-called modern architecture in the real-estate market, reflecting the residents' parking needs, tax authorities were faced with the following problem: How to tax a parking slot purchased as a quantified interest in the underground garage of a residential building (a share in its ownership)? Here, it will be necessary for the tax authority to decide whether the parking slot is an appurtenance of the residential premises or a separate estate with its own land-and-mortgage register file. The latter scenario makes the ownership of the parking slot transferable without the ownership of the residential premises but also entails specific consequences for real-estate taxation.[13]

[10] T. Famulska, *Sprawiedliwość podatkowa*, „Przegląd Podatkowy" 1996, nr 5, s. 3–4 .

[11] B. Brzeziński, *Zasady ogólne prawa podatkowego*, „Toruński Rocznik Podatkowy" 2015, s. 10.

[12] R. Szumlakowski, *Zasada sprawiedliwości podatkowej*, [w:] M. Sadowski (red.), *Acta Erasmiana V*, Wrocław 2013, s. 162.

[13] Wyrok WSA w Warszawie z dnia 15 listopada 2019 r., sygn. akt III SA/Wa 574/19, Legalis nr 2518207.

Very often it is left up to the seller of the residential premises (usually the developer) to decide whether the parking slot is to accrue to the buyer of the apartment as an appurtenant space or as a share in the joint ownership of a separate estate being the underground garage.

In line with Article 3(4a) of the Act on Local Taxes and Charges, the principle of a co-owner's joint-and-several liability for tax owed by other co-owners does not apply to a separate garage hall. If that is the case, the co-owners are each liable to the extent of their respective share in the property.[14] Accordingly, an individual purchasing e.g. a 1/134 share in an underground garage located in a residential building, for example 2880 m^2 in size, will be taxed only for that share, which in that case is 21.49 m^2, even though the physical useful floor of the parking space may differ.

The issue of the taxation of parking spaces in the underground garages of residential buildings has sparked diverging lines of court decisions. Adherents of the application of a higher tax rate, i.e. the same as for other buildings, were of the opinion that a share in separate garage premises situated in a residential building with its own land-and-mortgage register file cannot be taxed at the rate prescribed for residential buildings and parts thereof, since it could not be regarded as residential either functionally or legally.[15] The result was that we had to do with two (co-)ownerships serving different functions and thus attracting different real-estate tax rates.[16] It must be noted that the majority of legal scholars took a similar view.[17]

The other position came down to the assertion that parking spaces in an underground garage located in a residential building ought to be taxed at the rates prescribed for residential buildings and parts of such buildings.[18] Whatever its utility function might be, a

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14 Podkreślić należy, że ustawodawca pominął w tym przepisie komórki lokatorskie, które mogą być nabywane, podobnie jak miejsca postojowe, w ramach udziału w nieruchomości wspólnej, mające odrębną księgę wieczystą i mogące być przedmiotem samodzielnego obrotu.

15 Zob. wyrok WSA w Białymstoku z dnia 16 września 2009 r., sygn. akt I SA/Bk 328/09, Legalis nr 246674; wyrok WSA w Poznaniu z dnia 9 grudnia 2009 r., sygn. akt III SA/Po 768/09, Legalis nr 343544; wyrok WSA w Szczecinie z dnia 6 października 2010 r., sygn. akt I SA/SZ 508/10, Legalis nr 372863; wyrok WSA w Olsztynie z dnia 28 kwietnia 2011 r., sygn. akt I SA/OL 131/11, Legalis nr 379710, wyrok WSA w Bydgoszczy z dnia 28 września 2011 r. sygn. akt I SA/BD 456/11, Legalis nr 446346; wyrok WSA w Warszawie z dnia: 9 grudnia 2010 r. sygn. akt III SA/WA 2114/10, Legalis nr 375248, wyrok WSA w Warszawie z dnia 30 czerwca 2011 r., sygn. akt III SA/Wa 10/11, Legalis nr 365789; wyrok WSA w Warszawie z dnia 13 września 2011 r., sygn. akt III SA/Wa 511/11, Legalis nr 380551.

16 M. Kazek, *Podatek od nieruchomości. Orzecznictwo z komentarzem*, Warszawa 2016, s. 173.

17 Zob. L. Etel, *Podatek od lokali garażowych*, „Finanse Komunalne" 2011 nr 5, s. 33–38; L. Etel, *Opodatkowanie podatkiem od nieruchomości garaży w budynkach mieszkalnych*, „Przegląd Podatków Lokalnych i Finansów Samorządowych" 2009, nr 7–8 (101–102), s. 1, 9–13; G. Dudar, *Opodatkowanie budynków mieszkalnych znajdujących się w posiadaniu przedsiębiorcy – glosa do wyroku NSA z dnia 22 lipca 2009 r. sygn. akt II FSK 460/08*, „Przegląd Podatków Lokalnych i Finansów Samorządowych" 2009, nr 10 (104), s. 1, 4–8.

18 Zob. wyrok WSA w Bydgoszczy z dnia 28 lipca 2009 r., sygn. akt I SA/Bd 346/09, Legalis nr 184090; wyrok WSA w Bydgoszczy z dnia 8 września 2010 r., sygn. akt I SA/Bd 578/10, Legalis nr 873529; wyrok WSA w Warszawie

garage that is separately demarcated within a residential building for property purposes should not be taxed with the tax rate following from Article 5(1)(2)(e) of the Act on Local Taxes and Charges, because the building type was what informed the tax rate.
Moreover, adherents of the second of the two concepts submitted that no provision of the Act gave rise to the application of different tax rates by the tax authority.

Ultimately, the divergence in court decisions was resolved with the Supreme Administrative Court's resolution of seven judges in *II FPS 4/11*, of 27 February 2012, with the following rationale: 'in the light of Article 2(1)(2) and Article 5(1)(2) of the Act of 12 January 1991 on Local Taxes and Charges, a separately owned garage situated in a multi-family residential building is liable to the real-estate tax at the rate prescribed in Article 5(1)(2)(e) of said Act,'[19] and thus the rate for non-residential and not residential buildings.

b) Taxation of a residential building occupied for business activity

Among other examples, the legislature provides for different real-estate tax rates for a building, or part of it, linked to business activity or a residential building or part thereof occupied for business activity. In this paper, we note the terms 'linked to' (non-residential building) and 'occupied for' (residential building) business activity. These are not identical concepts. 'Linked to' has a broader meaning than, 'occupied.'[20] The glossary in the Act on Local Taxes and Charges only defines the 'link'. And so, in line with Article 1a(1)(3) of the Act on Local Taxes and Charges, lands, buildings and structures linked to business activity are lands, buildings and structures in the possession of an entrepreneur or someone else engaged in business activity. This inopportune phrasing has been considered by the Constitutional Court. The latter, in its judgment in *SK 39/19*, of 24 February 2021, held as follows: 'Article 1(a)(1)(3) of the Act on Local Taxes and Charges understood in such a way that the linkage of land or of a building or structure with business activity is decided solely by such land or building or structure being in the possession of an entrepreneur or someone else engaged in business activity is incompatible with Article 64(1) in conjunction with Article 31(3) and Article 84 of the Constitution of the Republic in Poland.'[21] In this regard the aforementioned provisions lost their force with 3 March 2021. Detailed discussion of the judgment and the motives behind the Constitutional Court's decision will not be the subject of this paper due to being a problem that calls for separate, comprehensive treatment.

z dnia 2 września 2011 r., sygn. akt III SA/Wa 795/11, Legalis nr 411845; wyrok NSA z dnia 12 października 2011 r., sygn. akt II FSK 733/10, Legalis nr 443497; wyrok NSA z dnia 12 października 2011 r., sygn. akt II FSK 335/11, Legalis nr 388221; wyrok WSA w Warszawie z dnia 4 listopada 2011 r., sygn. akt III SA/Wa 509/11, Legalis nr 458676.

[19] Legalis nr 439992.

[20] Wyrok NSA z dnia 30 maja 2017 r., sygn. akt II FSK 1014/15, Legalis nr 1627795.

[21] Dz. U. z 2021 poz. 401.

To be able to understand the topic discussed here, it will suffice to explain the term 'linked' (or 'linkage', 'linking', etc.) of a building with business activity following the judgement of the Constitutional Court. Thus, the 'link' must not be construed as narrowly as mere possession by a business party. On the contrary, it must be based on the factual or at least potential use of the property in the conduct of business.[22] Any such potential use should be rationally derived. When conducting an inquiry in this matter, the tax authority must not look for justification in abstract grounds detached from reality. Attesting to the existence of a link may be the fact that the building is entered on a list of fixed assets, write-offs have been made for its depreciation, or the related expenses have been deducted as costs from the taxable basis.[23] Moreover, the tax authority should determine whether the relevant building forms part of the taxpayer's enterprise, or belongs to matrimonial community property, or personal property separate from the taxpayer's business.

In order for the higher tax rate to apply, residential buildings or parts thereof must be occupied for business activity. The Act on Local Taxes and Charges does not narrow down the term, 'occupied.' In judgments of administrative courts one can find remarks that residential buildings or parts thereof are occupied for business activity when activities constituting the conduct of business are performed in their interiors.[24] The business activity in the residential building or part thereof need not necessarily be conducted by the taxpayer; it can be the taxpayer's family member or even tenant.[25] There is no statutory requirement for the taxpayer to be an entrepreneur.[26]

It could happen that a residential building is partially occupied for business activity because some part of it is used as a grocer's or a barber's shop and part as strictly a residential dwelling. The calculation of how much of the building's useful floor is allocated to business activity may be problematic. No such problem exists where the residential building has separate residential and commercial premises. 'Where separate premises have been established in a residential building, the "homogeneous" taxable matter that is the building breaks down into smaller estates — individual premises. The residential building is no longer the taxable estate but such individual premises are. Residential premises should be, together with their appurtenant spaces (garages, among others), taxed at residential rates. Non-residential premises should be taxed according to their

[22] Wyrok WSA w Kielcach z dnia 30 czerwca 2021 r., sygn. akt I SA/Ke 183/21, Legalis nr 2593950.
[23] Wyrok WSA w Opolu z dnia 24 czerwca 2021 r., sygn. akt I SA/Op 169/21, Legalis nr 2592408.
[24] Wyrok WSA w Szczecinie z dnia 22 lipca 2020 r., sygn. akt I SA/Sz 990/19, Legalis nr 2483816.
[25] Wyrok WSA w Warszawie z dnia 26 stycznia 2012 r., sygn. akt III SA/Wa 1673/11, Legalis nr 466115.
[26] Wyrok WSA w Bydgoszczy z dnia 5 grudnia 2018 r., sygn. akt I SA/Bd 609/18, Legalis nr 1862858.

use.'[27] Of course, even when buildings or parts thereof are used for non-residential premises, they remain residential buildings, with only the real-estate tax rate[28] applied by the tax authority being different.

Analysis of court judgments leads to the conclusion that 'occupied' is a more precise criterion than 'linked.' Although a specific trend has evolved among the courts as to the understanding of the term 'occupied for business activity', there are also some judgments of the Supreme Administrative Court (preceding the Constitutional Court's judgment) watering it down. In the Supreme Administrative Court's recent judgments, of 2020, we can find the following claim: 'because in the provision at hand [Article 5(1)(2)(b) of the Act on Local Taxes and Charges — Author] the legislature used the phrase, "occupied for business activity," and not, "in which business activity is conducted." The achievement of the goals of the business activity will not always require "physical" use of the assets by the entrepreneur.'[29] 'For the [real-estate] tax rates are not predicated on the factual (physical) occupation of the residential building or part thereof for the purpose of engaging in business activity in them. What is important is whether they are used in pursuit of the entrepreneur's business objectives. With regard to a natural person engaged in business activity it will be necessary in this respect to determine whether such an individual is using the building or premises for personal purposes or they are used in the conduct of the business activity and necessary to the achievement of its goal.'[30] 'Above all what is to be established in this regard is the type of the activity and the importance of the residential building (or part thereof) to the achievement of the effects of such activity, namely profit. If the entrepreneur cannot achieve the business objective but for the use of the residential building or part thereof, that means they are occupied for the purposes of the entrepreneur's business activity.'[31] The above assertions mark a novel approach in the Supreme Administrative Court to the explanation of the concept of occupation of a residential building for business activity. The question to be asked is whether there is any need for a new understanding of it.

a) Taxation of a residential building used as a care home

When calculating the real-estate tax, the tax authority looks to the records in the land-and-buildings register to determine the classification of the land and the function of the building. The register distinguishes residential and non-residential buildings, the latter

[27] Wyrok WSA w Łodzi z dnia 11 czerwca 2019 r., sygn. akt I SA/Łd 130/19, Legalis nr 1965902.

[28] W. Morawski [w:] W. Morawski (red),. *Podatek od nieruchomości w orzecznictwie sądów administracyjnych. Komentarz. Linie interpretacyjne*, Warszawa 2013, s. 220.

[29] Wyrok NSA z dnia 23 stycznia 2020 r., sygn. akt II FSK 1252/19, Legalis nr 2295279.

[30] Wyrok NSA z dnia 23 stycznia 2020 r., sygn. akt II FSK 2064/19, Legalis nr 2295281.

[31] Wyrok NSA z dnia 23 stycznia 2020 r., sygn. akt II FSK 2483/19, Legalis nr 2529721.

being garages, commercial premises or agricultural buildings. Different types of activity can take place in either a residential or a non-residential building, including the operation of a care home. It is noteworthy that the currently applicable Act on Local Taxes and Charges does not, in principle, distinguish the tax rate on the basis of the type of activity. The one exception is business activity, which attracts a high tax rate, and health-care, which enjoys a preferential rate. In the absence of statutory regulation administrative courts have had to ponder the issue of what rate the tax authority should apply when a residential building is occupied for the operation of a care home.

The administrative courts had first tended to hold that a residential building occupied for the operation of a care home should be taxed at the rate applicable to residential buildings and parts thereof. The courts emphasized the enormous social utility of care homes. For care homes meet multiple important human needs, such as existential needs, care or assistance. In one of its judgments the Supreme Administrative Court took the following view: 'a care home is a unit providing for the basic necessities of life of the lonely and the sick, after whom the family is not inclined or able to care. In a normally functioning family all such needs are met by loved ones. Care homes are where their residents live. In the majority of cases the residence is permanent.'[32] The Voivodeship Administrative Court in Warsaw, in turn, held that a residential building in which social care is provided should be taxed at rates prescribed for residential buildings, except for rooms designated for the provision of health-care.[33]

Over time, the trends in court decisions on the Author's chosen topics have evolved. The courts have decided that a residential building used as a care home is a building used for the purposes of business activity.[34] A taxpayer who is a natural person operating a care home can be entered in the Central Registration and Information on Business (CEiDG). The registration is the foundational moment for the status of an entrepreneur. It must be noted that in the legislature's view the operation of a care home falls under business activity, with Polish Classification of Activities code PKD[35] 87.30.Z: 'residential care activities for the elderly and disabled.' 'Real-estate tax is a tax on assets. The structure of the statutory provisions [of the Act on Local Taxes and Charges — Author] indicates the legislature's belief that assets linked to business activity should be taxed

[32] Wyrok NSA z dnia 3 czerwca 2003 r., sygn. akt SA/Sz 1614/01, Legalis nr 66318.

[33] Wyrok WSA w Warszawie z dnia 16 lutego 2007 r. , sygn. akt III SA/Wa 3771/06, Legalis nr 841090.

[34] Zob. wyrok WSA w Poznaniu z dnia 18 grudnia 2018 r., sygn. akt I SA/Po 677/18, Legalis nr 1867297.

[35] Kod PKD (Polskiej Klasyfikacji Działalności) to pięcioznakowy symbol, określający rodzaj prowadzonej działalności gospodarczej.

more restrictively than assets showing no such link.'[36] Whether the taxpayer's activity brings profit is not considered when determining the real-estate tax rate.[37]

The residential building inhabited by the residents is factually occupied for the purposes of the taxpayer's business activity, the line of business being precisely the operation of a care home. The fact that the building serves as a dwelling is indispensable to its occupation for the purpose of such type of business. The core element of this type of activity is the provision of a dwelling for the residents.[38] The taxpayer enters into for-a-fee contracts with the residents for services provided to them, such as board and lodging, educational and other activities or assistance and care services. The taxpayer's aforementioned activities pursue a specific goal and result linked to business activity. The nature and method of such activities is continual, permanent and sometimes exclusive of any possibility of the use of the building for the housing needs of the taxpayer and his family[39].

According to the currently prevailing line of judgments, none of the rooms in the residential building used as a care home should be taxed at the rate prescribed for so-called medical activity, because for that the taxpayer would need to have the status of a health-care provider and be entered in the Register of Health-Care Providers.

4. Final notes and conclusions

Any tax system ought to be based on the principle of tax justice. Tax justice is the point of departure for detailed legal solutions and the imposition of tax burdens.[40] Unfortunately, the legislature does not always follow this principle. Thus, justice in taxation is a current problem in the practical application of tax law.

Analysis of tax legislation leads to the conclusion that a large number of provisions yield themselves to overly extensive interpretations. Imprecise provisions make things difficult both on the taxpayer's end and for the tax authority. For this reason, there are numerous disputes between taxpayers and tax authorities, resulting not only in appeals to Local-Government Appellate Boards but also an abundance of litigation before Voivodeship Administrative Courts and the Supreme Administrative Court. The number of court judgements is extraordinarily high compared to the number of legal provisions

36 Wyrok WSA w Krakowie z dnia 29 września 2020 r., sygn. akt I SA/Kr 576/20, Legalis nr 251064; wyrok WSA w Poznaniu z dnia 11 lutego 2020 r., sygn. akt I SA/Po 974/19, Legalis nr 2297237.

37 L. Etel, *Podatek od nieruchomości*, Warszawa 2009, s. 107.

38 Wyrok NSA z dnia 17 września 2019 r., sygn. akt II FSK 3360/17, Legalis nr 2247912.

39 Wyrok WSA w Gliwicach z dnia 20 stycznia 2021 r., sygn. akt I SA/Gl 199/20, Legalis nr 2535635.

40 S. Bogacki, T. Wołowiec*, Opodatkowanie dochodów osobistych a zasada sprawiedliwości podatkowej*, „Biuletyn Stowarzyszenia Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego" t. XV, 17 (1) 2020, s. 7.

regulating real-estate tax.[41] That number is, 'comparable to no other tax that has become the subject of judicial inquiry.'[42]

The courts' decisions often voice controversial views, for which reason court authorities lose the certainty of the correctness of their actions in taxing the estate at hand. One example is the most recent judgments of the Supreme Administrative Court concerning the interpretation of the, 'occupation of real estate for business activity.' Considering the previous decision-making homogeneity with regard to the above phrase, the administrative court's sudden U-turn may lead to tax authorities changing the way in which they have so far taxed properties used for business purposes. This may give rise to violations of the principle of tax justice applicable in tax law.

Of course, other settled lines also change. For example judgments from 2003–2007 differ from judgments made in the 2018–2020 period in cases relating to tax authorities' application of different rates of real-estate tax to buildings used as care homes. There can be several possible reasons for this, starting from persuasive arguments raised by the parties, through the nature and importance of the disputes coming up for ruling, to social and community reception. The principle of tax justice may be respected where the courts consider all of the above aspects. The understanding of the notion of justice evolves in time in keeping with economic and social changes.

Divergences in judgments on real-estate tax cases may be resolved thanks to decisions handed down at the higher instance or by judges commanding greater personal authority. If that is the case, justice in taxation is served. And thus, for example, judicial doubts as to the real-estate tax rate applied by tax authorities to parking slots in underground garages of residential buildings were resolved by the Supreme Administrative Court's resolution passed by a panel of seven judges. Article 15(1)(2) of the Act of 30 August 2002 — Law on the System of Administrative Courts[43] tasks the Supreme Administrative Court with passing resolutions to explain such legal provisions as have been applied differently

by different panels of administrative courts. It must be emphasized, however, that differences among tax authorities themselves, as regards applying the real-estate tax, are not sufficient grounds for such a resolution.

Divergence in court decisions is not a mark of the judges' failure but rather the consequence of statutory language leaving too much room for arbitrary interpretations and giving rise to numerous interpretative difficulties, as a result of which the judgments differ.

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[41] L. Etel, *Opodatkowanie nieruchomości. Problemy praktyczne*, Białystok 2001, s. 11.

[42] B. Brzeziński, M. Kalinowski, *Podatek od nieruchomości w orzecznictwie sądów*, Toruń 1994, s. 6.

[43] Dz. U. 2019 poz. 2325 ze zm.

The judgments of courts should only provide assistance in the interpretation of statutory language and not be the basis or fill gaps in statutes. From the perspective of the tax authority, harmonious adjudication by administrative courts would contribute to the reduction of the number of legal problems brought about by statutory language. Naturally, complete harmony is not possible. What is important is for judgments to be correct and proximate, especially in tax cases based on identical or similar sets of facts. Although judgments are not a source of universally applicable law, they are a certain route marker for the tax authority, which, when not knowing how to tax the property, looks to the rationales expounded in court opinions.

Imprecise tax provisions and excessive diversity in court judgments may pose a problem for the tax authority from the perspective of the practical application of the principle of tax justice. The principle of tax justice plays a special role in the relationship between the taxpayer and the tax authority. It shapes the correct attitudes of individuals, as well as society as a whole, toward tax obligations. Where justice is served, social acceptance can be gained for the solutions implemented in real-estate tax law. Taxpayers who receive equal treatment comply more readily and duly with the tax obligations they owe.

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