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# Podatek od nieruchomości pozostających we współwłasności lub współposiadaniu

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## Streszczenie:

W przypadku przedmiotów opodatkowania podatkiem od nieruchomości, które pozostają we współwłasności lub współposiadaniu, ustawodawca ukształtował obowiązek podatkowy w sposób solidarny. Solidarność dłużników jest instytucją recypowaną z prawa cywilnego na grunt prawa podatkowego. W praktyce rozwiązanie to budzi na gruncie podatku od nieruchomości szereg problemów praktycznych. W pewnym zakresie dostrzega je ustawodawca, wprowadzając wyjątki od solidarnego charakteru obowiązku podatkowego. Rozwiązania te należy jednak ocenić jako niewystarczające. Należałoby w tym kontekście postawić zasadnicze pytanie o dalszy sens utrzymywania takiej konstrukcji prawnej. Celem opracowania jest przedstawienie zasad opodatkowania nieruchomości wspólnych, zidentyfikowanie problemów w tym zakresie oraz wskazanie możliwych kierunków zmian.

**Słowa kluczowe:** podatek od nieruchomości, współwłasność, współposiadanie, solidarny obowiązek podatkowy

## Real property tax on co-owned or co-possessed properties

## Abstract:

In case of properties subject to real property tax which are held on the basis of co-ownership title or co-possession, the legislator has imposed a joint and several tax obligation. Debtors solidarity as to the obligation is an institution adopted from the civil law into the tax law. In practice, this solution raises a number of practical problems within the context of real property taxation. To a certain extent, the legislator recognizes them by introducing exceptions to the joint and several nature of the tax obligation. However, these solutions should be assessed as insufficient. In this regard, one should ask a fundamental question about a further rationale for retaining this legal construct. The purpose of this study is to present the rules of taxation of joint properties, to identify problems in this respect and indicate possible directions for changes.

**Keywords:** real property tax, co-ownership, co-possession, joint and several tax obligation

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## 1. Introduction

The literature on the subject emphasizes the autonomous nature of tax law[2]. This distinction takes place not only in relation to other branches classified as public law (e.g. financial or administrative law[3]), but above all with regard to private law. This does not mean, however, that tax law functions completely separately from civil law. In this respect, there may be multi-faceted links, in which one can distinguish the adoption by the legislator for the purposes of tax law of civil law norms, which supplement the original standards and constitute a basis for tax and legal institutions[4]. We are dealing with such a situation, inter alia, in the field of joint and several liability for tax liabilities, which is characteristic of the taxation of land, buildings or structures in co-ownership or co-possession. The acts regulating taxes on the indicated objects of taxation (on real estate, agricultural and forestry) introduce the principle according to which the tax obligation in the above-mentioned cases is joint and several, which implies joint and several liability for the resulting tax liability[5].

In addition to the regulations contained in the acts of the detailed tax law, the reference to the civil concept of the solidarity of debtors and creditors was also included in the provisions of general tax law included in the Act of August 29, 1997 - Tax Ordinance[6]. In section II of this Act, chapter 13 entitled "Joint and several liability" was distinguished. The structure of these provisions is based primarily on a reference to the appropriate application of the provisions of the Civil Code to joint and several liability for tax liabilities[7] for civil law obligations (Art. 91 o.p.).

The general nature of the real estate tax, which in principle is levied on owners or holders of land, buildings and structures, with the simultaneous formation of liability for tax obligations in a joint and several manner, makes this issue very practical. At the same time, a thesis should be made that the extensive use of this type of liability in tax law may raise significant equity concerns, undoubtedly favoring the tax creditor. Against the background of real estate tax, it is noticeable that formulation of the tax obligation, the resulting obligation and the joint and several liability for it, is a principle subject to

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[2] R. Mastalski, *Charakterystyka ogólnego prawa podatkowego,* [in:] *System prawa finansowego,* v. 3 *Prawo daninowe,* ed. L. Etel, Warszawa 2010, p. 343 and the following.
[3] See more e.g. R. Mastalski, *Prawo podatkowe I - część ogólna,* Warszawa 1998, p. 15 and the following.
[4] See more on this issue B. Brzeziński, *Prawo podatkowe a prawo cywilne,* [in:] *Prawo podatkowe. Teoria. Instytucje. Funkcjonowanie,* ed. B. Brzeziński, Toruń 2009, pp. 391-413 and *idem, Związki prawa podatkowego z prawem cywilnym,* [in:] B. Brzeziński, *Prawo podatkowe. Zagadnienia teorii i praktyki,* Toruń 2017, pp. 371-389, as well as *Instytucje prawa cywilnego w konstrukcji prawnej podatków,* ed. M. Goettel, M. Lemonnier, Warszawa 2011.
[5] Cf. Art. 3 par. 1 point 4 of the Act of January 12, 1991 on local taxes and fees (Journal of Laws 2022, item 1452; hereinafter referred to as: u.p.o.l.), Art. 3 par. 5 of the Act of November 15, 1984 on agricultural tax (Journal of Laws of 2020, item 333, as amended; hereinafter referred to as: u.p.r.) and Art. 2 par. 4 of the Act of October 30, 2002 on forest tax (Journal of Laws of 2019, item 888, as amended; hereinafter referred to as: u.p.l.).
[6] Journal of Laws of 2021, item 1540 as amended (hereinafter referred to as: o.p.)
[7] The Act of April 23, 1964 - Civil Code (Journal of Laws of 2020, item 1740, as amended; hereinafter referred to as: k.c.).

exceptions. In the author's opinion, this proves the erosion of this institution and raises the question of the legitimacy of its functioning in its present shape. The aim of the study is to answer the indicated question, which will be possible in the light of the analysis of legal solutions in this area. In addition, the considerations made will allow to indicate possible directions of changes in the scope of the tax burden on real estate taxable objects remaining in co-ownership or co-possession.

## 2. The essence, purpose and legal framework of joint and several liability for real estate tax obligations

Joint and several liability for tax liabilities in real estate tax was related to the situation in which the subject of taxation remains in co-ownership or co-possession. Undoubtedly, these terms should be interpreted using the acquis of civil law. Pursuant to Art. 195 of the Civil Code, the ownership of the same thing may be wholly owned by several people (joint ownership). Thus, it is a descriptive definition of joint ownership, which is a type of property, characterized by the fact that one and the same ownership of the same thing belongs to more than one person[8]. There is a fractional joint ownership or joint ownership (Art. 196 § 1 of the Civil Code).

In turn, according to art. 336 of the Civil Code, the possessor of a thing is both the one who actually owns it as the owner (independent possessor) and the one who actually possesses it as a usufructuary, pledgee, tenant, lessee or person having other right with which there is a certain power over someone else's thing (dependent possessor). One form of possession is co-possession, i.e. a situation in which a certain thing is possessed by more than one person, while co-possession may occur only when the form of possession of each person is identical (all possessors are independent or dependent possessors)[9].

In the case of co-ownership or co-possession of the subject of real estate tax, the principle is joint and several liability for the tax liability. And in this case, it is legitimate to refer to the understanding of this concept resulting from civil law. Although the Act on Local Taxes and Fees regulating property tax does not refer directly to the provisions of the Civil Code that refer to joint and several liability, such a reference is included in Art. 91 of the tax law, which due to its location in the act of general tax law, which is the Tax Ordinance, is always applicable when the provisions of the specific tax law use the concept of joint and several liability. This reference, due to its laconic nature and the

[8] J. Rudnicka, G. Rudnicki, S. Rudnicki, *Kodeks cywilny. Komentarz,* v. 2, *Własność i inne prawa rzeczowe,* ed. J. Gudowski, LEX/el 2016.
[9] J. Gołaczyński, [in:] *System Prawa Prywatnego. Prawo rzeczowe,* v. 4, ed. E. Gniewek, Warszawa 2007, p. 12.

fact that it is not even an appropriate but a direct reference, causes significant practical doubts at the stage of measuring and performing tax liabilities for which the liability has been formed jointly and severally[10].

Moreover, in Art. 92 o.p., certain detailed issues related to the solidarity of creditors relating to spouses who settle accounts jointly with income tax (§ 3-4), as well as the procedure of assessing tax liabilities for which liability is joint and several. Only the last issue is important from the point of view of the deliberations, as there is no solidarity among creditors in the field of real estate tax.

In art. 92 § 1 of o.p., as a rule, if, in accordance with tax laws, taxpayers are jointly and severally liable for tax liabilities arising through the delivery of decisions determining their amount, only those who were served with a decision establishing the amount of tax liability are liable. In turn, in Art. 92 § 2 of o.p., the application of the aforementioned regulation with regard to tax liabilities collected in the form of a total pecuniary liability was excluded[11] - in these cases, the principles of joint and several liability apply upon the delivery of the decision (payment order) to the person to whom a decision is issued pursuant to separate regulations (payment order)[12]. Both of these regulations are directly applicable to real estate tax in cases where it is imposed by a constitutive decision, which is generally the case when the taxpayer is a natural person.

According to Art. 366 of the Civil Code, several debtors may be liable in such a way that the creditor may claim all or part of the benefit from all debtors jointly, from several of them or from each of them separately, and the satisfaction of the creditor by one of the debtors relieves the others (solidarity of debtors). The essence of passive solidarity[13] consists in the fact that each of the debtors is obligated to the creditor to perform the entire payment as if he were the only debtor. The creditor may - at his option - demand the performance of all or part of the benefit from all debtors jointly, from several of them or from each of them separately. However, the creditor is obliged to accept the performance from any of the debtors even if he has requested the

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[10] For example, it concerns such issues as conducting proceedings to determine the amount of tax liability, applying tax reliefs, settling payments and overpayments, or verifying the reasons for interrupting or suspending the limitation period - see more: R. Dowgier, *Komentarz do art. 91,* [in:] G. Liszewski, B. Pahl et al., *Ordynacja podatkowa. Komentarz,* v. 1 *Zobowiązania podatkowe Art. 1-119 zzk,* ed. R. Dowgier, L. Etel, Warszawa 2022, p. 994 and the following.

[11] The total pecuniary obligation provided for in Art. 6c u.p.r. and art. 6a u.p.l. imposed in the payment order, is a liability in two or three taxes (agricultural, forest, real estate) - see more in e.g.. L. Etel, B. Pahl, M. Popławski, *Podatek rolny. Komentarz,* Warszawa 2020, pp. 230-235.

[12] However, in the jurisprudence of administrative courts, one can meet the view that this principle should be considered in terms of a right, not an obligation - see the judgment of the Supreme Administrative Court of 6th of September 2017 (case file reference number II FSK 2213/15), LEX No. 2377998.

[13] Under Art. 92 § 3 of the o.p., active solidarity, referring to creditors, applies only in the scope of personal income tax settled by spouses subject to joint taxation to the sum of the income obtained (Art. 92 § 3 o.p.). Pursuant to Art. 367 of the Civil Code, several creditors may be entitled in such a way that the debtor can pay the entire benefit to the hands of one of them, and by satisfying any of the creditors the debt is terminated towards all (solidarity of creditors).

performance from another debtor. The rights and obligations of the parties to a joint and several liability shall last until the creditor is fully satisfied. In the event of partial satisfaction, they continue to exist only to the extent of the unsatisfied part of the creditor's claim[14].

Shaping the responsibility for the tax liability in a joint and several manner undoubtedly leads to the privileging of the creditor and, which is worth emphasizing, in contrast to civil law, refers not to a contract, but to the unilateral will of the legislator expressed in certain provisions of law[15]. With this type of liability, the tax creditor's chance of effective termination of the tax liability increases significantly, both in the case of voluntary tax payment and its enforcement. This is manifested primarily in two aspects: the right to choose the debtor against whom enforcement will be initiated and the possibility of enforcing the entire obligation against him.

In the case of real estate tax, joint and several liability for the tax liability is related to the situation in which we are dealing with common objects of taxation. It is therefore about cases in which they are co-owned or co-possessed, regardless of the type of joint ownership (fractional or total). Especially with regard to joint ownership in fractional parts, when it is possible to determine the scope of the ownership right, joint and several liability leading to the indivisibility of the debt may raise doubts as to its legitimacy, which will be discussed later in the study. This thesis is based on the fact that although the legislator provides for the joint and several nature of the tax obligation as a rule in real estate tax (Art. 3 par. 4 u.p.o.l.), it also introduces exceptions to this principle (Art. 3 par. 4a-6 u.p.o.l.)[16]. In the author's opinion, these exceptions confirm the doubts related to the legitimacy of such a wide application of joint and several liability in the field of real estate taxation.

## 3. Joint and several liability as a rule in the field of taxable objects remaining in co-ownership or co-possession

According to Art. 3 par. 4 u.p.o.l.

„If the real estate or construction work is joint ownership or is in the possession of two or more entities, it is a separate subject of taxation, and the tax obligation on real estate or construction

[14] *Komentarz do kodeksu cywilnego. Księga trzecia. Zobowiązania,* v. 1, ed. G. Bieniek, Warszawa 2005, p. 95.

[15] See R. Dowgier, *Przyczynek do dyskusji o solidarności w prawie podatkowym,* [in:] *Współczesne problemy prawa podatkowego. Teoria i praktyka,* v. 1, *Księga jubileuszowa dedykowana Profesorowi Bogumiłowi Brzezińskiemu,* ed. J. Głuchowski, Warszawa 2019, p. 110.

[16] These exceptions will be discussed further in the study, and they relate to situations in which: 1) there are commercial premises in the building - multi-space garages, 2) separate ownership of the premises has been established in the building, 3) one of the co-owners or co-possessors benefits from tax exemption or exclusion.

work is jointly and severally applicable to all co-owners or possessors, subject to the provisions of par. 4a-6."

The main effect of the aforementioned regulation is the indivisibility of the tax liability, which is expressed in the fact that taxpayers should show it in full in the submitted declaration or receive a decision, determining the total amount of tax due. In this respect, the type of joint ownership (fractional or total), as well as the possible regulation of the manner of using the common thing (the so-called division for use), are irrelevant[17].

The obligation to submit information on real estate tax by natural persons or a declaration by other categories of taxpayers takes place on the basis of official drafts of these documents specified in the relevant regulation of the Minister of Finance[18]. In the case of information, it may be submitted by up to three co-taxpayers. In turn, the tax declaration is submitted by each of the taxpayers separately. Additionally, it should be emphasized that the legislator has regulated the situation in which the subject of taxation is co-owned or co-possessed by natural persons and legal persons or organizational units without legal personality. Pursuant to Art. 6 par. 11 u.p.o.l., the principle in this case is the settlement of natural persons on the terms applicable to legal persons, i.e. in the submitted declaration.

Correct self-calculation of the full amount of tax in the declaration by the taxpayer with joint and several tax liability allows, pursuant to Art. 366 of the Civil Code, to enforce obligations in whole or in part against him. On the other hand, in the case of taxpayers who submit information for real estate tax, and the amount of this benefit requires the delivery of a constitutive decision to them, such a decision should also indicate the indivisible (full) amount of the liability. Only such a decision will enable the creditor to exercise his rights resulting from joint and several liability for the tax liability.

It should be noted that the indicated rules for settling real estate tax are appropriate both when we are dealing with fractional and total joint ownership. In practice, this may lead to misunderstanding on the part of taxpayers of the situation in which, having only a certain share in the property, they are required to prove in the declaration or receive in the decision of the tax authority the tax determined on the entire property. Such a legal construction (justified by Art.366 of the Civil Code), especially when the co-owners or co-owners do not remain in any family or property relations, may raise doubts as to its

[17] In this respect, one should agree with the legal view expressed, inter alia, in in the judgment of the Supreme Administrative Court of June 26, 2007 (case file ref. no. 1748/06), LEX No. 307625 that even a final court decision on the division of real estate for use (quo ad usum) does not entitle the tax authority to assess the tax separately for each of the co-owners.

[18] Ordinance of the Minister of Finance of May 30, 2019 on draft information on real estate and construction work and real estate tax declarations (Journal of Laws of 2019, item 1104).

rationality. In the author's opinion, it should be considered whether, apart from joint ownership, it makes sense to continue to maintain the joint and several nature of the tax obligation in real estate tax.

The changes in this respect are also supported by practical problems that occur in the measurement and collection of tax on common real estate. Considering the limited scope of this study, it is necessary to point out, first of all, some basic procedural issues.

The problems begin with the correct fulfillment of the obligation to submit a declaration or information. In particular, they result from the above-mentioned rule, according to which changes in the scope of joint ownership may cause a shift from the decision-making tax assessment to self-calculation. As rightly pointed out in the literature on the subject, a natural person does not need to know that a share in joint ownership is acquired by a legal person, which means that they must submit a declaration and calculate the tax on their own. As a consequence, such a person is not able to fulfill their obligations, even with maximum diligence, which can be treated as a violation of the principles of social justice referred to in Art. 2 of the Polish Constitution[19].

It follows from the joint and several nature of the tax obligation in real estate tax that proceedings in these matters should be undertaken and conducted in relation to all co-owners[20]. Also, the decision ending the proceedings must be served on each of them[21]. These rules complicate the tax assessment in particular in situations where one of the co-owners of the property is dead or unknown. Determining or defining the liability in this case is possible only after identifying the taxpayer's heirs, which results in withholding the tax assessment also for other known co-owners or co-possessors of real estate who often want to pay their liability. Moreover, the death of one of the co-taxpayers in the course of proceedings to determine the amount of the tax liability prevents the introduction of heirs in his place at all and raises problems related to who in this situation will be a party to the tax proceedings and what will be the subject of the proceedings[22].

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[19] So T. Brzezicki, W. Morawski, *Komentarz do art. 3,* [in:] J. Wantoch-Rekowski, *Ustawa o podatkach i opłatach lokalnych. Komentarz,* ed. T. Brzezicki, K. Lasiński-Sulecki, W. Morawski, Gdańsk 2013, p. 226.

[20] Cf. Judgment of the Provincial Administrative Court in Warsaw of June 27, 2005 (case file reference number III SA/Wa 338/05), LEX no. 882202.

[21] See judgment of the Provincial Administrative Court in Szczecin of October 18, 2007 (case file reference number I SA/Sz 874/06), LEX no. 394833.

[22] In particular, will they be only living parties, and if so, should the established liability be charged to them in full or to the extent less the deceased person's part? - for more on this problem, see: R. Dowgier, *Komentarz do art. 102,* [in:] G. Liszewski et al., *op. cit.,* pp. 1065-1066.

Another procedural solution that generates, above all, additional costs of proceedings related to the assessment of the tax on joint real estate, is the principle resulting from Art. 3 par. 4 u.p.o.l. according to which they are a separate subject of taxation. This means that they are shown in a separate declaration or tax is determined on them in a separate decision. They cannot be taxed with other exclusive property. Therefore, declarations, information and decisions are multiplied in relation to the same taxpayer.

## 4. Exceptions to joint and several liability for real estate tax obligations

The legislator introduced exceptions from the above-mentioned rules of taxation of joint real estate, which is a solution that breaks the concept of solidarity of the tax obligation. The analysis of these cases, regulated in Art. 3 par. 4a-6 u.p.o.l., leads to the conclusion of a general nature that the legislator's goal was to depart from the solidarity of the tax obligation primarily in cases where we are dealing with joint ownership in fractional parts, so it is quite simple to calculate the tax separately for each of the joint owners. Moreover, the solution introduced in Art. 3 par. 6 u.p.o.l. was aimed at making the taxpayers' rights to benefit from tax exemptions and exclusions more realistic in relation to joint real estate. The mentioned regulations, apart from Art. 3 par. 5[23], were not included in the original text of the Act on Local Taxes and Fees. They were introduced into the legal system at a later date, which allows to formulate a thesis that they were a response to the growing problems related to the taxation of joint real estate.

Among the exceptions to joint and several liability for real estate tax obligations provided for by the Act, Art. 3 sec. 5 u.p.o.l. is of the greatest importance. According to it, if the ownership of the premises has been separated in the building, the tax obligation in the field of real estate tax on the land and on parts of the building constituting common property within the meaning of Art. 3 of the Act of June 24, 1994 on the ownership of premises[24] is incumbent on the owners to the extent corresponding to their share in the common property[25]. As a consequence, the tax on the joint property, which is the land under the building, and parts of the building and equipment that are not used exclusively by the owners of the premises (e.g. corridors, lobbies, outdoor

[23] But this regulation was also significantly modified at the beginning of 2016, when the method of calculating the share in the joint property was changed in it. Until that date, this provision provided that "If the ownership of the premises has been separated, the tax obligation with regard to real estate tax on the land and common parts of the building constituting joint ownership is imposed on the owners of the premises to the extent corresponding to the fractional parts resulting from the ratio of the usable area of the premises to the usable area of the entire building".

[24] Journal of Laws of 2021, item 1048, as amended.

[25] Pursuant to Art. 3 par. 3 of the act "The share of the owner of the premises separated in the common property corresponds to the ratio of the usable area of the premises together with the area of premises belonging to the total usable area of all premises together with the belonging premises".

parking lots), is calculated according to the share in the ownership right, separately for each of the co-owners[26]. In addition, it does not have to be shown in a separate declaration or determined by a separate decision (which results from the exclusion of the application of Art. 3 par. 4 u.p.o.l.) and the principle resulting from Art. 6 par. 11 u.p.o.l., i.e. shift to tax settlement appropriate for legal persons in the case of joint ownership of these entities with natural persons. The consequence of this state of affairs is that the taxpayer who is a natural person receives one assessment decision with tax both on the premises being his exclusive property and on common real estate (according to his share of property).

The second exception, which is also of general application and of great practical importance, relates to co-ownership in fractional parts of commercial premises - multi-space garages, which are located in residential buildings, as long as they constitute a separate object of ownership together with the land. Co-owners of such premises pay tax only on their share, including the share in the land assigned to such premises. Pursuant to an explicit reservation in the analyzed provision, Art. 6 par. 11 of u.p.o.l. is not applied in this case, i.e. analogously to the establishment of separate ownership of premises, natural persons always have their tax calculated by a determining decision, and other entities show it in the declaration. A natural person who has separate premises in a given building and a share in a multi-space garage constituting commercial premises, should receive one decision determining the amount of the tax liability with the total amount of tax in this respect.

The last exclusion from the rules of joint and several liability for real estate tax liabilities relates to a situation where one or more co-owners or co-possessors are tax-exempt or not subject to taxation. There were situations in which the tax authorities demanded payment of the entire tax from a co-taxpayer who was not exempt from tax (e.g. when the exemption was subjective and objective in nature[27]). This practice was questioned by administrative courts, whose rulings were the basis for the amendment to the Act on Local Taxes and Fees[28]. At present, there is no doubt that in such a case the rules on joint and several liability for tax liabilities are not applied, which makes it possible, in the first place, to split this liability according to the share. The tax obligation established in this way will be borne only by those co-owners or co-possessors who are

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[26] P. Banasik, *Podatki i opłaty lokalne. Podatek leśny. Podatek rolny. Komentarz,* Warszawa 2019, p. 131.

[27] See e.g. Art. 7 par. 2 point 2 u.p.o.l., according to which public and non-public organizational units covered by the education system and the authorities running them are exempt from real estate tax, in the scope of real estate used for educational activities.

[28] Cf. e.g. the judgments of the Supreme Administrative Court of: June 27, 2013 (case file reference number II FSK 2096/11, LEX no. 1383087), March 5, 2014 (case file reference number II FSK 748/12, LEX no. 1466567), January 15, 2015 (case file reference number II FSK 3012/12, LEX No. 1595020).

not exempt or are not subject to tax exemption, and if there are two or more of them, their obligation will continue to be joint and several[29].

## 5. Conclusions

Against the background of the above considerations, it should be stated that the principle with exceptions in the field of taxation of real estate in co-ownership or co-possession is joint and several liability for such an obligation. This responsibility is a consequence of the formation of the tax obligation by the legislator in a joint and several manner.

The institution of debtors' solidarity transferred into tax law from civil law regulations has one fundamental goal, which is to put the tax creditor in a privileged position vis-à-vis the debtor. This is how ones should perceive the creditor's right to demand payment of tax in whole or in part from each of the obligated jointly and severally. However, this solution has major disadvantages. First of all, when tax liabilities arise through the delivery of a constitutive decision determining their amount, it generates an obligation on the part of the tax authorities to conduct proceedings with the participation of all co-owners or co-possessors of real estate. This is especially difficult in those cases where the circle of these people is not fully known. Since tax proceedings in the case of joint and several tax obligations must be conducted with the participation of all parties, it is not possible to conduct it even if the tax authority knows 9 out of 10 co-owners and they want to fulfill their obligation.

Also on the side of taxpayers, settling the tax for shared real estate is not easy. First of all, this is due to the heterogeneity of legal solutions in this area, which result in the fact that in the case of some real estate being co-owned or co-possessed, the tax obligation is joint and several, and in some cases it is not.

As a consequence, e.g. on a common plot of land, the taxpayer and his siblings are taxed on the basis of solidarity, and on the common parts of a building in which he has a separate property, they are not. The fact that generally common items must be shown in separate declarations or information does not facilitate the proper performance of the taxpayer's obligations. Therefore, the taxpayer must submit these documents separately for each subject of co-ownership or co-possession, and additionally also for those real estate which are his sole property. In addition, changes in the scope of joint ownership related to the acquisition of shares by legal persons or organizational units without legal personality cause the taxpayer who is a natural person to switch to the

[29] See more on this: R. Dowgier, *Zmiany w zakresie odpowiedzialności solidarnej za zobowiązania podatkowe w podatkach lokalnych,* „Przegląd Podatków Lokalnych i Finansów Samorządowych" 2017, no. 8.

self-calculation technique. This is related not only to the lack of a decision establishing the amount of the liability, but also the liability for failure to pay the tax within the statutory deadline.

In my opinion, the existing exceptions to the joint and several nature of the tax obligation in real estate tax are not sufficient and rather confirm the need for changes in this respect. The rule in taxing common real estate should be the divisibility of the tax liability and, consequently, responsibility for it, according to the shares in the ownership right. At the same time, taking into account the postulates of the doctrine, it can be considered whether introducing the possibility of dividing the tax amount should be an obligation or a right of the tax authority which may or may not use it[30]. In addition, when departing from the joint and several nature of the tax obligation, the regulation according to which land, buildings and structures in co-ownership or co-possession are a separate subject of taxation should be eliminated.

The indicated solutions should be expressed in the regulation, according to which "If the property or building structure is jointly owned or is in the possession of two or more entities, then the tax obligation is imposed on the co-owners or co-possessors to the extent corresponding to their share in the ownership or possession of the property".

Joint and several tax liability should remain only as an exception to the above-mentioned rule in those cases in which it is not possible to define clear criteria for the division of the tax liability and when the relations between the joint owners allow the fulfillment of the disclosure obligations imposed on them. By this I mean co-ownership of total character, in particular related to the joint property of the spouses within the meaning of Art. 31 § 1 of the Act of February 25, 1964 - Family and Guardianship Code[31]. Thus, with this type of joint ownership, in the author's opinion, it is possible to maintain the applicable rule, according to which the tax obligation is joint and several, and the land, buildings and structures covered by it constitute a separate subject of taxation. It would also be reasonable, as in the case of joint settlement of spouses for personal income tax, to introduce, apart from their joint and several liability for the tax liability, also joint and several liability for the reimbursement of overpayment.

In order to unify the rules of real estate taxation, the indicated solutions should also be adopted for the purposes of agricultural and forest tax.

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[30] See L. Etel, R. Dowgier, *Podatki i opłaty lokalne. Czas na zmiany,* Białystok 2013, pp. 119-120.
[31] Journal of Laws of 2020, item 1359.

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