

Challenges of Property Tax in Slovakia

DOI 10.5604/ 01.3001.0015.9856

Abstract:

There are basically two types of real estate-related taxes in Slovakia, namely the property (real estate) tax and the income tax, which is paid under statutory conditions if someone sells a real estate. This article focuses on property tax and its present and future challenges in Slovakia. The author first approaches the legal regulation of property tax in the Act No. 582/2004 Coll. on Local Taxes and Local Fees for Municipal Waste and Minor Construction Waste, and briefly summarizes this regulation with special regard to the role of the municipalities in matters of property tax. Subsequently, the definition of real estate as an object of property tax is highlighted and the role of land registration in property tax matters is pointed out. The problems of errors in the land register and in the administration of the land register are also mentioned here. It concludes with a presentation of the “new” building register, which in future should serve to tax property more fairly according to its value, and the challenges of property tax related to the intended recodification of private law in Slovakia and to the electronic operation of public administration.

Key words: property tax, local tax, real estate, land registry, municipality

1. Introduction

Under Constitution of the Slovak Republic (hereinafter referred to as the “Constitution”), taxes shall be national and local². The Constitution further provides that taxes may be imposed by a law or on the basis of a law³. The Constitution thus empowers the legislator to adopt tax legislation on national and local taxes and on the basis of this constitutional authorization, the legislator adopts tax legislation, such as the Act No. 595/2003 Coll. on Income Tax as amended or the Act No. 582/2004 Coll. on Local Taxes and Local Fees for Municipal Waste and Minor Construction Waste as amended (hereinafter only “Act No. 582/2004 Coll.”).

The tax legislation obviously faces many challenges in a postmodern society and a rapidly changing world. This paper examines approaches to challenges of property tax (“daň z nehnuteľnosti” in Slovak) arising in particular from the concept of real estate as an object of property tax and also from some

¹ Geodesy, Cartography and Cadastre Authority of the Slovak Republic

² Article 59 sec. 1 of the Constitution.

³ Article 59 sec. 2 of the Constitution.

problematic aspects of the registration of real estates and rights to real estates in the land registry. It will also address one of the big challenges of the property tax which is its fairer setting in terms of the value of real estate.

2. The Property Tax

The property tax is one of the local taxes and its legal regulation is contained in the Act No. 582/2004 Coll., which replaced the Act No. 317/1992 Coll. on Property Tax as amended⁴.

The property tax is a form of direct tax and it can be characterized as a payment from a taxpayer flowing into the budget of the municipality, collected for a certain legal fact which is the existence of property in the municipality and a certain relationship of the taxpayer to this property under the conditions and to the extent specified in general binding regulation of the municipality and under the conditions and limits set by the relevant law⁵. The property tax is currently one of the most important sources of income for municipalities,⁶ although it is only an optional tax – under the Act No. 582/2004 Coll., municipality may impose a local tax (including property tax)⁷. Thus, according to this legal regulation, the municipality may impose this tax.

Under the Act No. 582/2004 Coll., there are three types of property tax⁸ that the municipality may impose, and these are

- the land tax,⁹
- the building tax and
- the apartment tax.¹⁰

The types of property tax shows that this tax is closely linked with the concept of real estate in legal sense. In other words, the concept of real estate is crucial in property tax matters. However, the Act No. 582/2004 Coll. does not contain a definition of real estate. The explanatory memorandum to

⁴ The adoption of the Act No. 582/2004 Coll. in 2004 was related to the decentralization of public administration - Kubincová, S.: Vybrané teoretické a aplikačné otázky miestnych daní (Selected Theoretical and Application Issues of Local Taxes). In: Tuláček, J. a kol.: Aktuálne otázky územnej samosprávy v podmienkach Slovenskej republiky. Elektronický zborník vedeckých štúdií. Praha : Leges, 2020, p. 10.

⁵ Sotolář, J.: Zákon o dani z nehnuteľností. Komentár. Košice : SOTAC, s. r. o., 2004, p. 23.

⁶ According to the document "Daňový report Slovenskej republiky 2018" the property tax was the second most important source of income for municipalities – Výškrabka, M., Antalicová, J.: Daňový report Slovenskej republiky 2018, Ministerstvo financií SR – Inštitút finančnej politiky, 2018, p. 27.

⁷ § 2 sec. 1 of the Act No. 582/2004 Coll.

⁸ § 4 of the Act No. 582/2004 Coll.

⁹ The legal regulation of the land tax reflects the fact that in some cases the landowner is unknown.

¹⁰ According to the document „Daňový report Slovenskej republiky 2018“ the most profitable form of the property tax was the building tax - Výškrabka, M., Antalicová, J.: Daňový report Slovenskej republiky 2018, Ministerstvo financií SR – Inštitút finančnej politiky, 2018, p. 27.

Act No. 582/2004 Coll. states that the concept of real estate is not specifically defined in this law and that the concept of real estate is based on the general provisions of the Act No. 40/1964 Coll. Civil Code as amended (hereinafter only "Civil Code"). For property tax purposes, it is therefore necessary to proceed from the concept of real estate in the Civil Code.

The Act No. 582/2004 Coll. regulates in relation to each type of property tax

- the taxpayer,
- the subject of the tax in question,
- the tax base,
- the tax rate and
- the calculation of the tax in question.

The tax period in the case of property tax is the calendar year and the following rules shall apply to the occurrence and cessation of the tax liability:

- the tax liability arises on 1st of January of the tax period following the tax period in which the taxpayer becomes the owner, administrator, tenant or user of the taxable property and expires on 31 December of the tax period in which the taxpayer loses ownership, administration lease or real estate use,
- if the taxpayer becomes the owner, administrator, tenant or user of the property on 1st of January of the current tax period, the tax liability arises on this day.¹¹

The property tax is administered by the municipality where the real estate is located¹² – for the determination of the tax administrator according to the place where the real estate is located, the information in land registry is of fundamental importance.¹³ The municipality, as the tax administrator, has the right to adjust the amount of property tax by a generally binding regulation and also to exempt the types of real estate stipulated by law.¹⁴

It is important to note that the property tax does not reflect the value of the real estate¹⁵ – the amount of the property tax is based on the creditworthiness

¹¹ § 18 of the Act No. 582/2004 Coll.

¹² § 99 sec. 1 of the Act No. 582/2004 Coll.

¹³ Decision of the Supreme Court of Slovak Republic of 18 May 2011, file no. 2Sžf/37/2010.

¹⁴ § 17 of the Act No. 582/2004 Coll.

¹⁵ Due to the fact that the property tax does not reflect the value of the real estate, the explanatory memorandum to the Act No. 582/2004 Coll. stated that the current state in land registry records and the absence of legal and technical prerequisites for determining the value of all real estate in the Slovak Republic do not allow the adoption of a radical change without solving the basic assumptions, without an accurate, time-updated land registry and without the creation of special "valuation" bodies or institutions or offices. The explanatory memorandum to the Act No. 582/2004 Coll. also stated that from this point of view, therefore, it is not the tax legislation that is paramount, but the determination of the tax base.

of the land plot in the case of the land tax and on the size of the building in the case of the building tax and the apartment tax.¹⁶ The property tax also does not consider whether the taxpayer is a natural person or a legal entity.

3. Real Estate as an Object of Property Tax

The legal definition of real estate is contained in the Civil Code. This legal definition is very simple and it is based on the principle “aedificatio non solo cedit”.¹⁷ Under the Civil Code, real estates are land plots¹⁸ and structures¹⁹ connected to the ground by a firm foundation (hereinafter referred to as the “building”).²⁰ The Civil Code no longer defines land plots and buildings.

According to the legal definition of real estate, the building constitutes a separate real estate (a separate thing in legal sense). The building therefore doesn't form a part of the land plot.²¹ This means that the owner of the building may be a person other than the owner of the land plot.

In the concept of real estate based on the principle “aedificatio non solo cedit”, the question of when a structure connected to the ground by a firm foundation becomes a separate real estate and when it ceases to form part of the land plot is of crucial importance not only in terms of civil law but also in terms of tax law. According to the case law, the structure becomes a separate thing in legal sense at the moment when the functional arrangement of the first above-ground floor is obvious.²² On the contrary, a structure connected to the ground by a firm foundation ceases to be a separate thing and becomes

¹⁶ Achimovičová, B. M.: Aktuálne výzvy v oblasti dane z nehnuteľností – zdaňovanie na základe trhovej hodnoty. In: Popovič, A., Sábo, J. (eds.): Aktuálne výzvy daňového práva. Recenzovaný zborník príspevkov zo študentského sympózia organizovaného pri príležitosti IV. slovensko-českých dní daňového práva. Košice : Univerzita Pavla Jozefa Šafárika v Košiciach, Právnická fakulta, 2021, p. 9.

¹⁷ The Czechoslovak legal system abandoned the principle of „aedificatio solo cedit“ with the entry into force of the Civil Code of 1950. Slovakia is probably the only one or one of the few countries in the EU where the definition of real estates is still based on the principle of “aedificatio non solo cedit”. The Czech legal system has returned to the concept of real estate based on the principle of “aedificatio solo cedit” in the Civil Code of 2012.

¹⁸ Under § 3 sec. 1 of the Act No. 162/1995 Coll. on the Land Registry and the Entries of Ownership and Other Rights to the Real Estates as amended, a land plot is a part of the surface of Earth separated from the neighbouring parts by the boundary of an administrative unit, of the cadastral district, of the built-up area of the municipality, by the boundary delimited by the rights to the real estate, by the boundary of the tenure, by the boundary of the kind of lot or by the boundary of the way of the lot usage. This definition of the land plot is also applicable for property tax purposes.

¹⁹ There is no legal definition of “structure” as a thing in the legal sense. The definition of a structure in the Act No. 50/1976 Coll. on Land-use Planning and Building Order (the Building Act) as amended is only partially applicable for the purposes of private law.

²⁰ § 119 sec. 2 of the Civil Code.

²¹ This concept of real estate has its origins in the § 25 and § 26 of the Civil Code of 1950.

²² Decision of the Supreme Court of the Czech Republic of 5 February 2002, file no. 22Cdo 2534/2000.

a part of the land plot at the moment when the functional arrangement of the first above-the-ground floor ceases to be obvious.²³

In connection with the concept of real estate it is important to note that flats and non-residential premises are not a real estate in the legal sense, but they are subject to provisions concerning the real estates²⁴ and they are subject to registration in the land registry. Even if flats and non-residential premises are not real estates in the legal sense, they are subject to the property tax.

4. The Land Registry as a Source of Data on Tax Purposes

The source of information on real estates and rights to real estates for tax purposes is the land registry administered by district offices.²⁵ Under the Act No. 162/1995 Coll., on the Land Registry and the Entries of Ownership and Other Rights to the Real Estates as amended (hereinafter “Act No. 162/1995 Coll.”) the land registry is the geometrical determination, registration and description of real estates, which also contains data on rights to real estates, including data on ownership rights to the real estate. The land registry is thus a unified register of real estates and of rights to real estates.²⁶

The subject of registration in the land registry are:

- and plots,
- buildings, if they are bounded by perimeter walls and a roof structure,²⁷
- flats and non-residential premises,²⁸
- buildings under construction, if the state of construction is such that its building and technical and functional structure is evident from its first above-the-ground floor,²⁹
- flats under construction and non-residential premises under construction, if the building in which the flats under construction or non-resi-

²³ Decision of the Supreme Court of the Slovak Republic of 21 February 1997, file no. 3Cdo 188/96.

²⁴ § 3 sec. 2 of the Act No. 182/1993 Coll. on the Ownership of Flats and Non-residential Premises as amended.

²⁵ Under § 2 of the Act No. 162/1995 Coll. on the Land Registry and the Entries of Ownership and Other Rights to the Real Estates as amended, the land registry serves as an information system for tax purposes. The importance of the land registry for the purposes of property tax is also reflected in the explanatory memorandum to the Act No. 582/2004 Coll.

²⁶ A unified register of real estates and of rights to real estates has existed in Czechoslovakia since 1st of April 1964.

²⁷ Underground structures are also the subject of land registry.

²⁸ In certain cases, a problem arises when registering flats and non-residential premises in the land registry. This happens in cases where it is not clear from submitted documentation whether a certain space in the building is an apartment or a non-residential premise. As the district office itself cannot assess the nature of the space in the building, it is necessary for the building authority to state clearly whether a space in the building is a flat or a non-residential premise.

²⁹ § 46 sec. 3 of the Act No. 162/1995 Coll.

dential premises under construction are located is bounded by the perimeter walls and the roof structure and the individual flats under construction and non-residential premises under construction are technically separated.³⁰

The land registry contains data important for determining property tax, e. g. data on the owner, the administrator or the tenant of the land plot,³¹ the amount of co-ownership of real estate or the type of the land plot.

Sensitive data of the land registry important for determining property tax is the area of land plot. The area of land plot is data derived from the geodetic determination of the land plot. In the collective consciousness, the prevailing view is that one owns a land plot with certain area. The fact is that one owns a land plot with certain geodetic determination of the land plot. This is one of the reasons why the district office can correct the area of the land plot registered in the land registry – in some cases, this correction can be done in an informal way.³² The correction of the area of the land plot can, of course, lead to its increase or decrease and therefore to an increase or decrease of the property tax.

Another data of the land registry important for determining property tax is the type of the land plot³³ although in certain cases the type of the land plot registered in the land registry is not binding – the type of the land plot registered in the land registry as a land plot of the “E” register³⁴ is not binding.

³⁰ § 46 sec. 5 of the Act No. 162/1995 Coll.

³¹ The tenant of buildings, flats and non-residential premises is not registered in the land registry.

³² Under § 59 sec. 5 of the Act No. 162/1995 Coll., in an informal way, the district office can correct the area of the land plots registered in the land registry as land plots of the „E” register.

³³ The importance of the types of land plots in the land registry is expressed in the explanatory memorandum to the Act No. 582/2004 Coll. Under § 9 of the Act No. 162/1995 Coll., the land registry includes the following types of land plots:

- arable land,
- hop gardens,
- vineyards,
- gardens,
- orchards,
- permanent grass growth,
- forest lots,
- water areas,
- built-up areas and courtyards,
- other areas.

The land registry doesn't include “construction site” as a separate type of land plot, although this type of land plot is also significant in terms of property tax. The definition of the “construction site” for the purposes of the land tax is contained in the Act No. 582/2004 Coll. The statement of the decision on the building permit is essential for assessing whether a certain land plot is a construction site – decision of Supreme Court of the Slovak Republic of 14th February 2012, No. 8Sžf/17/2011.

³⁴ The land plots are registered in the land registry as land plots of the “C” register or the “E” register for historical reasons.

From 1st of October 2018, the price of the real estate is registered in the land registry. However, the data on the price of the real estate registered in the land registry is currently irrelevant in terms of property tax.

Whereas the land registry is based on older and not very accurate registers of real estates and rights to real estates and whereas the creation, alteration, or cessation of rights to real estates may in certain cases occur without registration in the land registry, there may be discrepancy between the data registered in the land registry and the real legal status. Errors in the administration of the land registry may be a source of discrepancy between the data registered in the land registry and the real legal status as well. Therefore, the data of the land registry are reliable (trustworthy) unless it is proven otherwise. In the case of a discrepancy between the data registered in the land registry and the real legal status, the real legal status shall prevail. The data of the land registry whose credibility is refuted may not be used.³⁵

5. The Register of Buildings and a Fairer Property Tax

Even though already at the adoption of the Act No. 582/2004 Coll. the intention to consider the value of the real estate in taxation of real estates was declared,³⁶ only in 2018 was adopted the legislation in order to collect certain data needed for purpose of determining the value of real estate. This legislation is contained in the Act No. 212/2018 Coll., which amends the Act No. 162/1995 Coll. and some other acts. The adoption of this legislation was the result of relatively lengthy and complicated negotiations between the Geodesy, Cartography and Cadastre Authority of the Slovak Republic on the one hand and the Ministry of Finance of the Slovak republic on the other hand.

Under this legislation of 2018, simultaneously with the issuance of the approval decision on the use of a family house or on the use of a flat in an apartment building or on the use of an apartment building, the municipality shall enter in the information system of geodesy, cartography and cadastre

³⁵ § 71 sec. 3 of the Act No. 162/1995 Coll.

³⁶ This intention is still relevant. According to the program statement of the government for the period 2021–2024, one of the priorities in the tax area is the introduction of property tax on the value principle – Program Statement of the Government of the Slovak Republic for the Period 2021–2024, p. 56. The program statement of the government for the years 2016–2020 stated that the government, in cooperation with the Association of Towns and Municipalities of Slovakia, will create technical preconditions for the change of the real estate taxation system towards the determination of the tax base according to the value principle in order to increase tax fairness and efficiency in the area of local taxes – Program Statement of the Government of the Slovak Republic for the Period 2016–2020, p. 21. Similarly, the government's 2012 program statement stated that the government would consider an increase of property taxes, taking into account factors such as luxury or environmental harmfulness. The idea of introducing a property tax that considers the value of real estate thus represents a kind of political evergreen.

- the usable area of the family house or the floor area of the flat,
- the number of rooms in a family house or a flat,
- the number of floors of a family house or apartment building,
- construction of a family house or a flat and
- the date of approval decision on the use of a family house or apartment building.³⁷

The above-mentioned data registered in the information system of geodesy, cartography and cadastre could, together with the data on the price of the real estate registered in the land registry, be the basis for determining the value of real estate for property tax purposes.

6. Conclusions

The property tax is closely linked with the concept of the real estate in the legal sense and with the land registry. Therefore, the planned recodification of substantive civil law³⁸ and the improvement of records in the land registry are among the challenges not only of the private law, but also tax law especially in terms of property tax legislation.³⁹ The recodification of substantive civil law is likely to take several more years and poses therefore challenge to property tax in the future. As for the land registry as a source of data for property tax purposes, a significant positive shift has been achieved in improving the data of the land registry compared to the 1990s. However, we still have a lot of work to do, especially in identifying owners and eliminating discrepancies between the data registered in the land registry and the actual legal status.

One of the problems connected to the land tax and the land registry is the duplicate registration of the land plot ownership in the land registry. In order to eliminate duplicate registration of the land plot ownership in the land registry, the district offices should be entitled to decide which of the duplicate registered owners of the land plot is the real owner of the land plot.⁴⁰ A step towards streng-

³⁷ § 20a sec. 2 of the Act No. 215/1995 Coll. on Geodesy and Cartography as amended. Data is entered into the information system of geodesy, cartography and cadastre only in relation to family houses, flats in a residential building and residential buildings for which the approval decision on their use has been issued in the period from 1st of January 2014.

³⁸ The forthcoming new Civil code should return to the principle of „aedificatio solo cedit“ when defining the real estate.

³⁹ Ultimately, we could say that the challenges of the property tax are closely linked to the challenges of the registration of real estates and of rights to real estates.

⁴⁰ In application practice, there may be cases at present that if the duplicate registration of the land plot ownership in the land registry is not obvious, the property tax is paid by both duplicate registered owners. This usually refers to land plots that are not actually used. In any case, such cases of double payment of taxes for one real estate are unacceptable.

thening the reliability of the data of the land registry could be a reduction in the acquisitive prescription period in the case of real estate or setting a short period within which “the real owner” of the real estate may challenge the registration of the ownership rights in favor of a third party in the land registry⁴¹ - the period of 10 years in which “the real owner” of the real estate may challenge the registration of the ownership rights in favor of a third party in the land registry is disproportionately long at a time when the data of the land registry, including data on the ownership of the real estate, are freely available on the internet. The scope of remedies against decisions of the district offices in matters of land registry should also be reduced – the current range of remedies is unnecessarily wide.⁴²

Taking property values into account when setting property tax is certainly another great challenge – the new register of buildings could be a source of data for a fairer levying of building tax and apartment tax. However, filling this register with data is relatively slow.⁴³ At the same time, it should be added that, in the light of the new building regulations recently adopted by Parliament, the fate of this register is questionable. Finally, even if the data were entered in the building register faster and would continue to be maintained in the new building regulations, the introduction of a property tax based on the value of the real estate is unlikely in the near future due to political sensitivity.

Bibliography:

1. Babčák, V.: Daňové právo na Slovensku. Bratislava : EPOS, 2015
2. Dráčová, J. a kol.: Katastrálny zákon s porovnaním úpravy v Českej republike. Plzeň : Vydavatelství a nakladatelství Aleš Čeněk, 2012
3. Dráčová, J., Polák, A.: Katastrálny zákon. Komentár. Bratislava : Eurokódex, 2019
4. Fečík, M., Jakubáč, R.: Katastrálny zákon. Komentár. Bratislava : C. H. Beck, 2021
5. Jakubáč, R.: Zápis duplicity vlastníctva v katastri nehnuteľností z hľadiska súdnej praxe. *Justičná revue*, 67, 2015, č. 2

⁴¹ At present, the beneficial owner may challenge the registration of the ownership rights in favor of a third party in the land registry within a period of 10 years (which is under § 134 sec. 1 of the Civil Code the acquisitive prescription period in the case of real estate).

⁴² Registration of rights to real estate in the land registry can currently be challenged in administrative proceedings, proceedings in administrative courts and civil courts.

⁴³ The competent authority should be less reluctant to impose a sanction in case of breach of the obligation to fill in the data in the register in question.

6. Liptáková, K. a kol.: Miestne dane v krajinách Vyšehradskej štvorky. Zborník vedeckých prác. Praha : Leges, 2021
7. Popovič, A., Sábo, J. (eds.): Aktuálne výzvy daňového práva. Recenzovaný zborník príspevkov zo študentského sympózia organizovaného pri príležitosti IV. slovensko-českých dní daňového práva. Košice : Univerzita Pavla Jozefa Šafárika v Košiciach, Právnická fakulta, 2021
8. Sotolář, J.: Zákon o dani z nehnuteľností. Komentár. Košice : SOTAC, s. r. o., 2004
9. Števček, M., Dulak, A., Bajánková, J., Fečík, M., Sedlačko, F., Tomašovič, M. a kol.: Občiansky zákonník I. § 1 – 450. Komentár. Praha : C. H. Beck, 2019
10. Tuláček, J. a kol.: Aktuálne otázky územnej samosprávy v podmienkach Slovenskej republiky. Elektronický zborník vedeckých štúdií. Praha : Leges, 2020
11. Výškrabka, M., Antalicová, J.: Daňový report Slovenskej republiky 2018, Ministerstvo financií SR – Inštitút finančnej politiky, 2018