Abstract

As part of combating the economic effects of the coronavirus epidemic in Poland, a package of measures commonly referred to as the “anti-crisis shield” was adopted. On 31 March 2020, the Anti-COVID-19 Act was published, which includes, inter alia, regulations extending the scope of powers of municipal councils to pass legislation on tax reliefs in the field of real estate tax. The special competences of municipal councils include introducing exemptions and extending the deadline for paying tax installments. Their characteristic feature is their personal and material nature, which is a departure from the general rule, according to which municipal councils may only introduce non-personal (material, objective) tax preferences. The aim of the study is to present these new competences and to draw attention to the existing powers of municipal councils that can be used to counteract the effects of the pandemic crisis.

Keywords: real estate tax, tax exemption, COVID-19, anti-crisis shield

1. Introduction: research aim and methodology

As part of combating the economic effects of the coronavirus epidemic in Poland, a package of measures commonly referred to as the “anti-crisis shield” was adopted. On 31 March 2020, the Anti-COVID-19 Act was published, which includes, inter alia, regulations extending the scope of powers of municipal councils to pass legislation on tax reliefs in the field of real estate tax. The special competences of municipal councils include introducing exemptions and extending the deadline for paying tax installments. Their characteristic feature is their personal and material nature, which is a departure from the general rule, according to which municipal councils may only introduce non-personal (material, objective) tax preferences. The aim of the study is to present these new competences and to draw attention to the existing powers of municipal councils that can be used to counteract the effects of the pandemic crisis.

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The research aim of this article is to answer the following research question: whether the Anti-COVID-19 Act gave new powers to municipal councils in the field of granting tax reliefs. The research methods applied to answer the above question include the method of analyzing legislation, literature on the subject and jurisprudence containing theoretical findings and theorems in the field of general theory of tax law. Findings regarding the law-making power of local authorities, the concept of tax deferral and tax exemptions were made with the use of the method of legal interpretation and logical analysis, as well as the analysis of judicial decisions. The method of analyzing legislation was used to solve the research problem and answer the research question. The findings were made by means of a dogmatic and legal analysis of tax law, concerning provisions constituting the basis for real estate tax, as well as the comparative legal method and analysis of the logical structure. Grouping the types of resolutions was used as a method to show how the law-making power was exercised. The inductive method of reasoning was used to draw conclusions from the examples of resolutions issued under the Anti-COVID Act.

2. Anti-COVID-19 competences for municipalities in real estate tax

Pursuant to Article 15p(1) of the Anti-COVID Act, the municipal council may introduce, by resolution, for part of 2020, real estate tax exemptions for land, buildings and structures related to running a business, to the indicated groups of entrepreneurs whose financial liquidity has deteriorated in connection with bearing the negative economic consequences due to COVID-19.

In the resolution referred to in paragraph 1, the municipal council may also introduce exemptions from real estate tax on land, buildings and structures used for business activities by:

1) non-governmental organizations referred to in Article 3(2) of the Act of 24 April 2003 on public benefit activities and volunteering, and

2) entities listed in Article 3(3) of the act referred to in point 1 – whose financial liquidity has deteriorated in connection with bearing the negative economic consequences due to COVID-19.

Moreover, pursuant to Article 15q(1) of the Act, the municipal council may extend, by resolution, the deadlines for the payment of real estate tax installments, payable in April, May and June 2020, no longer than until 30 September 2020.
The new powers of the municipal council, the law-making body of the local government, allow it to introduce real estate tax exemptions or deferrals. These are two separate tax reliefs and may be enacted jointly or separately, depending on the tax policy of the local law maker. The personal scope of these two tax preferences deserves consideration.

The municipal council may exercise both powers in relation to groups of entrepreneurs and entities engaged in public benefits activities. The relief may be made available to sole proprietors, micro-entrepreneurs, small, medium or large entrepreneurs. The decisive requirement imposed by the COVID-19 Act is deterioration of financial liquidity due to negative economic consequences of COVID-19. The municipal council may independently determine the criteria for deteriorating financial liquidity or implement solutions adopted in this regard in the Anti-COVID-19 Act, which defines the concept of a decline in economic turnover as a result of an epidemic. The commune council may also refer to the regulation of the Council of Ministers of 31 March 2020 on the establishment of certain restrictions, orders and bans in connection with the occurrence of an epidemic\(^3\). The regulation indicates the sectors of the economy in which a temporary restriction has been established for certain scopes of activity. Undoubtedly, the entrepreneurs operating in these industries experienced a deterioration in financial liquidity. Yet the premise is difficult to quantify and, undoubtedly, it may be difficult for local law-makers and tax authorities applying the law to determine the meaning of the term “financial liquidity” and to assess the level of its deterioration. Most often, it is equated with the company’s ability to pay its current liabilities in the required amount on time. The provisions of the Anti-COVID-19 Act deliberately use undefined terms in order to grant the governing bodies of municipalities a wide range of freedom in deciding which group of entrepreneurs will benefit from reliefs and exemptions in real estate tax. If the municipal council takes a broad approach, it can adopt a resolution granting preferences to all entrepreneurs conducting business activity, regardless of their size, legal form, sector or other criteria, whereby the only one criterion will be the deterioration of the financial situation as a result of the pandemic. Municipalities may also restrict access to the relief by defining the term “deterioration of financial liquidity” or adding additional criteria or conditions to be met.

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\(^3\) Rozporządzenie Rady Ministrów z dnia 31 marca 2020 r. w sprawie ustanowienia określonych ograniczeń, nakazów i zakażeń w związku z wystąpieniem stanu epidemii, Dz.U. z 2020 r. poz. 560 (Regulation of the Council of Ministers of 31 March 2020 on the establishment of certain restrictions, orders and bans in connection with an epidemic, Journal of Laws of 2020, item 560).
Special tax measures are applied on the basis of a resolution of the municipal council, i.e. under the law, therefore the entrepreneur does not have to submit an individual application for real estate tax exemption or extension of its payment deadline. This position is supported by jurisprudence of the administrative courts. In the judgment of 22 October 2008, the Provincial Administrative Court in Krakow expressed the view that tax exemption means a definitive, final exclusion of a specific category of taxpayers or subject of taxation from the tax obligation. Therefore, it is not permissible to provide for conditional exemptions in acts of local law, such as making them dependent on the taxpayer’s application. This means that each entity that meets the conditions set out by the municipal council has the right to take advantage of the exemption based on the legal standards contained in the resolution without the need to apply for the right to benefit from relief, in particular by submitting an application and obtaining a decision on tax exemption or deferral.

However, the taxpayer subject to special tax measures pursuant to Article 6 of the Act on Local Taxes and Fees, is obliged to submit information (natural persons) or correct the declaration (legal persons) regarding tax liabilities. In this case, pursuant to Article 6(8) of the quoted act, the tax authority is obliged to amend the decision on the basis of which the tax was assessed. Therefore, if the taxpayer meets the conditions set out in the resolution, he or she does not apply for the exemption, but submits information on the real estate tax or corrects the tax return.

The resolution of the municipal council should set out the criteria of the deterioration in financial liquidity and indicate groups of entities which, in its opinion, meet the above condition, without the need for additional verification in this respect. The Ministry of Finance recommends that if the exemption is addressed to groups of entrepreneurs for which the fulfillment of the condition of deterioration of financial liquidity will not be obvious (e.g. entrepreneurs who did not have to stop operating), the municipality council in a resolution specifies the manner of documenting compliance with this condition, e.g. by submitting

\[ ^4 \text{Wyrok WSA w Krakowie z dnia 22 października 2008 r., sygn. akt I SA/Kr 177/08, LEX nr 499081 (Judgment of the Provincial Administrative Court in Cracow of 22 October 2008, I SA/Kr 177/08, LEX No. 499081).} \]


\[ ^6 \text{Pismo Ministra Finansów z dnia 10 kwietnia 2020 r. dotyczące stosowania przepisów z ustawy o COVID-19, nr PS2.844.79.2020 (Letter of the Minister of Finance of 10 April 2020 regarding the application of the provisions of the Anti-COVID-19 Act, No. PS2.844.79.2020).} \]
a declaration on meeting the conditions for the relief. The legitimacy of applying
the special tax measures by the entrepreneur can also be verified later with the
tools available to tax authorities, e.g. as part of verification activities pursuant
to Article 274a of the Tax Ordinance.\footnote{Ustawa z dnia 29 sierpnia 1997 r. – Ordynacja podatkowa, Dz.U. z 2020 r. poz. 1423 (Act of 29 August 1997 Tax Ordinance, Journal of Laws of 2020, item 1423).}

In the guidelines on the application of the special tax measures, the Ministry
of Finance emphasized that the new competence provisions for municipalities
are characterized by a significant degree of generalization. Simple and flexible
regulations are to allow communes to independently decide on the application
and scope of support for entrepreneurs, in accordance with their own fiscal
policy adapted to the local situation. The Ministry recommends to be guided
by the purposive interpretation and, at the same time, by the need to provide
local government units with their own income at an appropriate level.\footnote{Pismo Ministra Finansów z dnia 10 kwietnia 2020 r. dotyczące stosowania przepisów z ustawy o COVID-19, nr PS2.844.79.2020 (Letter of the Minister of Finance of 10 April 2020 regarding the application of the provisions of the COVID-19 Act, No. PS2.844.79.2020).}

3. Application of special tax measures in the field of real estate tax
in selected municipalities

The solutions introduced by municipal councils differ significantly in terms
of the scope of the exemption, its duration, and the conditions that must
be met by the entrepreneur to be able to benefit from the relief. Several differ-
ent solutions can be distinguished as regards the measure available pursuant
to Article 15p of the Anti-COVID-19 Act.

The first group of resolutions passed by municipalities introduced a real
estate tax exemption for all entrepreneurs whose liquidity suffered as a result
of the COVID-19 pandemic. Most of these resolutions also have their own
definition of the term “deterioration of financial liquidity”. The tax exemption was
adopted, among others, by the city council of Otyń or the councils of the muni-
cipalities of Baranów and Dziwnów. In the resolution of the Otyń city council,\footnote{Uchwała nr XIX.15.2020 Rady Miejskiej Otyń z dnia 8 kwietnia 2020 r. w sprawie zwolnienia z podatku od nieruchomości oraz przedłużenia terminów płatności rat podatku od nieruchomości dla grup przedsiębiorców, których płynność finansowa uległa pogorszeniu w związku z ponoszeniem negatywnych konsekwencji ekonomicznych z powodu koronawirusa COVID-19 (Resolution No. XIX.15.2020 of the City Council of Otyn of 8 April 2020 on real estate tax exemption and extension of the deadlines for the payment of real estate tax installments for groups of entrepreneurs whose financial liquidity has deteriorated due to negative economic consequences due to the coronavirus COVID-19).} the deterioration of the entrepreneur’s financial liquidity should be understood
as a reduction in revenues in March 2020 by not less than 25% compared
to the previous month. In the Baranów\textsuperscript{10} municipality resolution, it was assumed that the decline in sales of goods and services in terms of value or quantity must be at least 30% and be calculated as the ratio of the total turnover over two consecutive calendar months in the period from 1 January 2020 to the corresponding period in 2019. In the event of a lower decrease, by at least 10%, the taxpayer will not be subject to the exemption but the deferred tax payment date. In Dziwnów\textsuperscript{11}, the municipality council passed a full real estate tax exemption for entrepreneurs for the months of April, May and June 2020 who recorded a 30% decrease in economic turnover, understood as a decrease in sales of goods or services, calculated as the ratio of turnover from any given calendar month falling after 1 March 2020 to the day preceding the date of submitting the correction of the declaration or information compared to the turnover in the corresponding month of 2019.

The next category of resolutions adopted pursuant to Article 15p of the Anti-COVID-19 Act includes those that favor micro and small entrepreneurs. The regulations in this form were introduced by the cities of Świdnik\textsuperscript{12}, Płock\textsuperscript{13} or the municipalities of Radomsko\textsuperscript{14} and Sitkówka-Nowiny\textsuperscript{15}.

\textsuperscript{10} Uchwała nr XVII/120/2020 Rady Gminy Baranów z dnia 8 kwietnia 2020 r. w sprawie zwolnienia i odroczenia płatności podatku od nieruchomości z powodu COVID-19 (Resolution No. XVII/120/2020 of the Baranów Commune Council of 8 April 2020 on the exemption and deferral of real estate tax due to COVID-19).

\textsuperscript{11} Uchwała nr XIX/236/20 Rady Miejskiej w Dziwnowie z dnia 20 maja 2020 r. w sprawie zwolnień od podatku od nieruchomości grup przedsiębiorców, których płynność finansowa uległa pogorszeniu w związku z ponoszeniem negatywnych konsekwencji ekonomicznych z powodu COVID-19 (wirusa SARS-CoV-2) (Resolution No. XIX/236/20 of the City Council in Dziwnów of 20 May 2020 on real estate tax exemptions for groups of entrepreneurs whose financial liquidity has worsened due to negative economic consequences due to COVID-19 (SARS-CoV-2 virus)).

\textsuperscript{12} Uchwała nr XXIV/303/2020 Rady Miasta Świdnik z dnia 14 kwietnia 2020 r. w sprawie wprowadzenia zwolnień z podatku od nieruchomości na terenie Gminy Miejskiej Świdnik w związku z ponoszeniem przez przedsiębiorców negatywnych konsekwencji ekonomicznych z powodu COVID-19 (Resolution No. XXIV/303/2020 of the Świdnik City Council of 14 April 2020 on the introduction of real estate tax exemptions in the Świdnik Municipality in connection with the negative economic consequences of entrepreneurs due to COVID-19).

\textsuperscript{13} Uchwała nr 342/XVIII/2020 Rady Miasta Płocka z dnia 9 kwietnia 2020 r. w sprawie zwolnienia oraz przedłużenia terminów płatności podatku od nieruchomości: gruntów, budynków i budowli związanych z prowadzeniem działalności gospodarczej, wskazanym grupom przedsiębiorców, których płynność finansowa uległa pogorszeniu w związku z ponoszeniem negatywnych konsekwencji ekonomicznych z powodu COVID-19 (Resolution No. 342/XVIII/2020 of the Płock City Council of 9 April 2020 on the extension of the terms of payment of real estate tax: land, buildings and structures related to running a business, to the indicated groups of entrepreneurs whose financial liquidity has deteriorated in connection with with negative economic consequences due to COVID-19).

\textsuperscript{14} Uchwała nr XVI/183/20 Rady Miejskiej Radomsko z dnia 16 kwietnia 2020 r. w sprawie zwolnienia od podatku od nieruchomości grup przedsiębiorców, których płynność finansowa uległa pogorszeniu w związku z ponoszeniem negatywnych konsekwencji ekonomicznych z powodu COVID-19 (wirusa SARS-CoV-2) (Resolution No. XVI/183/20 of the Radomsko City Council of 16 April 2020 on the exemption from property tax for groups of entrepreneurs whose financial liquidity has deteriorated due to negative economic consequences due to COVID-19 (SARS-CoV-2 virus)).

\textsuperscript{15} Uchwała nr RG-XXII/238/20 Rady Sitkówka-Nowiny z dnia 14 kwietnia 2020 r. w sprawie zwolnienia
Another common solution is to limit the exemption only to those entities whose activity has been banned or restricted under the regulation of the Council of Ministers of 10 April 2020 on the establishment of certain restrictions, orders and bans in connection with an epidemic\(^\text{16}\) (e.g. hotels, restaurants, gyms), with a direct reference to this law. Such resolutions were adopted, for example, by the municipality of Mielno\(^\text{17}\), Piaseczno\(^\text{18}\) or the city of Tomaszów Lubelski\(^\text{19}\). The last group of resolutions worth distinguishing are those that provide relief for entities operating in certain sectors of the economy. Pursuant to the resolution of the Zamość City Council of 16 April 2020\(^\text{20}\), entrepreneurs running a business in the following industries: hotel, tourism, restaurant, catering, hairdressing and cosmetics were exempted from real estate tax. The Zbąszyń City Council\(^\text{20}\) applied the exemption also to entrepreneurs conducting activities related to the organization, promotion and management of collective events. Similar solutions were introduced in the Wydminy commune\(^\text{21}\), where tax breaks were offered to entities providing

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16 Rozporządzenie Rady Ministrów z dnia 10 kwietnia 2020 r. w sprawie ustanowienia określonych ograniczeń, nakazów i zakazów w związku z wystąpieniem epidemii (Dz.U. z 2020 r. poz. 658) (Regulation of the Council of Ministers of 10 April 2020 on the establishment of certain restrictions, orders and bans in connection with an epidemic (Journal of Laws of 2020, item 658)).

17 Uchwała nr XX/206/2020 Rady Miejskiej Mielna z dnia 14 kwietnia 2020 r. w sprawie zwolnienia z podatku od nieruchomości wskazanych grup przedsiębiorców, których płynność uległa pogorszeniu w związku z poniesieniem negatywnych konsekwencji ekonomicznych z powodu COVID-19 (Resolution No. XX/206/2020 of the Mielno City Council of 14 April 2020 on real estate tax exemption for certain groups of entrepreneurs whose liquidity has deteriorated due to negative economic consequences due to COVID-19).

18 Uchwała nr 509/XXIII/2020 Rady Miejskiej w Piasecznie z dnia 9 kwietnia 2020 r. w sprawie zwolnienia z podatku od nieruchomości niektórych gruntów, budynków i budowli związanych z prowadzeniem działalności gospodarczej na terenie Miasta i Gminy Piaseczno (Resolution No. 509/XXIII/2020 of the City Council in Piaseczno of 9 April 2020 on real estate tax exemption for certain land, buildings and structures related to business activity in the City and Commune of Piaseczno).

19 Uchwała nr XIX/211/2020 Rady Miasta Tomaszów Lubelski z dnia 28 maja 2020 r. w sprawie zwolnienia z podatku od nieruchomości wskazanych grup przedsiębiorców, których płynność finansowa uległa pogorszeniu w związku z poniesieniem negatywnych konsekwencji ekonomicznych z powodu COVID-19 (wirusa SARS-CoV-2) (Resolution No. XIX/211/2020 of the Tomaszów Lubelski City Council of 28 May 2020 on the exemption from property tax of certain groups of entrepreneurs whose financial liquidity has deteriorated due to negative economic consequences due to COVID-19 (SARS-CoV-2 virus)).

20 Uchwała nr XIV/172/2020 Rady Miejskiej Zbąszyń z dnia 15 kwietnia 2020 r. w sprawie zwolnienia z podatku od nieruchomości od gruntów, budynków i budowli związanych z prowadzeniem działalności gospodarczej grup przedsiębiorców, których płynność finansowa uległa pogorszeniu w związku z poniesieniem negatywnych konsekwencji ekonomicznych z powodu COVID-19 (Resolution No. XIV/172/2020 of the Zbąszyń City Council of 15 April 2020 on the exemption from real estate tax on land, buildings and structures related to conducting business activities for groups of entrepreneurs whose financial liquidity has deteriorated due to negative economic consequences due to COVID-19).

21 Uchwała nr XIX/111/2020 Rady Gminy Wydyminy z dnia 7 kwietnia 2020 r. w sprawie zwolnień od podatku od
services related to tourism, or in the city of Hrubieszów, where in addition to the above-mentioned industries, the exemption also applies to entrepreneurs operating in the field of offering services related to the improvement of physical condition. In turn, the city council of Krasnystaw, in the resolution of 30 April 2020, exempted entrepreneurs from the obligation to pay installments for real estate tax, except for postal, courier, telecommunications, banking, financial and insurance services as well as water supply and sewage disposal; retail trade, except for food trade and pharmacies, and producing, except for agricultural and food processing, production of food products and beverages, medicines and pharmaceutical products, generation of energy transmission and natural gas and hot water. The vast majority of municipalities decided to fully exempt entrepreneurs from real estate tax installments for selected months of 2020. There are also local governments that have introduced only a partial exemption. Such a solution was adopted by, among others, the municipality of Zbąszyń, where the exemption covered 50 percent of the installments of real estate tax paid in the period from April to June 2020.

In the case of the measure available under Article 15q of the Anti-COVID-19 Act which allows the municipality council to extend the deadline for paying the real estate tax, the legislator left municipalities much less freedom in shaping local law. Therefore, the solutions adopted by local law-makers are similar across municipalities. With few exceptions, the deadline for the payment of tax installments for April, May and June has been extended until 30 September 2020. For example, a resolution on the basis of which the deadlines for paying April, May and June installments for real estate tax were extended until 30 September for selected groups of entrepreneurs was adopted by the Szczecin city council. The criterion for covering a given entrepreneur with the relief is the deterioration of financial liquidity by 30% in the selected month.

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22 Uchwała nr XXI/162/2020 Rady Miasta Hrubieszów z dnia 29 kwietnia 2020 r. w sprawie wprowadzenia zwolnień z podatku od nieruchomości oraz przedłużenia terminu płatności rat podatku od nieruchomości grupom przedsiębiorców, których płynność finansowa uległa pogorszeniu w związku z ponoszeniem negatywnych konsekwencji ekonomicznych z powodu COVID-19 (Resolution No. XXI/162/2020 of the Hrubieszów City Council of April 29, 2020 on introducing exemptions from real estate tax and extending the deadline for paying installments of real estate tax to groups of entrepreneurs whose financial liquidity has deteriorated due to negative economic consequences due to COVID-19).

23 Uchwała nr XVI/551/20 Rady Miasta Szczecin z dnia 9 kwietnia 2020 r. w sprawie przedłużenia terminu płatności rat podatku od nieruchomości wskazanym przedsiębiorcom, których płynność finansowa uległa pogorszeniu w związku z ponoszeniem negatywnych konsekwencji ekonomicznych z powodu COVID-19 (Resolution No. XVI/551/20 of the Szczecin City Council of 9 April 2020 on the extension of the deadline for the payment of real estate tax installments to designated entrepreneurs whose financial liquidity has deteriorated due to negative economic consequences due to COVID-19).
from 1 March 2020 to the day preceding the date of submitting
the application, compared to 1 January 2020. A similar solution was
adopted by the City Council of Trzcianka\textsuperscript{24}. Some municipality councils,
such as, for example, the City Council of Kołobrzeg, extended
the real estate tax reliefs they first granted under the anti-COVID-19 law
to include individual tax measures resulting from the Tax Ordinance.
The first resolution of the Kołobrzeg City Council\textsuperscript{25} provides for the deferral
of the payment of the April real estate tax installment until September 2020.
The criterion of loss of financial liquidity is based on the percentage
of the decrease in turnover specified in the resolution, which was progressi-
vively dependent on the income of entrepreneurs. The second resolution of the
council\textsuperscript{26} significantly expanded support for entrepreneurs. Those who saved
their jobs in April, May and June and as of 1 March 2020 were not in arrears
with real estate tax in the amount exceeding PLN 50, will be able to pay tax
installments for these three months by the end of October 2021, after submitting
an application for deferral to the Mayor of Kołobrzeg along with the information
form on state aid, no later than by 30 September 2020. In general, it seems that
local law-makers have granted the right to extend the tax payment deadline
to a wider group of entities than in the case of the tax exemption. Assistance
in this area covers in most cases all entrepreneurs whose financial situation
has worsened, without additional criteria or requirements or limiting the relief
to micro and small enterprises.

\textsuperscript{24} Uchwała nr XXII/216/20 Rady Miejskiej Trzcianki z dnia 7 maja 2020 r. w sprawie przedłużenia terminu płatności rat podatku od nieruchomości wskazanym przedsiębiorcom, których płynność finansowa uległa pogorszeniu w związku z ponoszeniem negatywnych konsekwencji ekonomicznych z powodu COVID-19 (Resolution No. XXII/216/20 of the City Council of Trzcianka of 7 May 2020 on the extension of the deadline for payment of real estate tax installments to designated entrepreneurs whose financial liquidity has deteriorated due to negative economic consequences due to COVID-19).

\textsuperscript{25} Uchwała nr XXI/303/20 Rady Miasta Kołobrzeg z dnia 15 kwietnia 2020 r. w sprawie przedłużenia terminu płatności rat podatku od nieruchomości za miesiąc kwiecień 2020 przedsiębiorcom będącym podatnikami podatku od nieruchomości na terenie Gminy Miasto Kołobrzeg, których płynność finansowa uległa pogorszeniu w związku z ponoszeniem negatywnych konsekwencji ekonomicznych z powodu COVID-19 (Resolution No. XXI/303/20 of the Kołobrzeg City Council of 15 April 2020 on the extension of the deadline for the payment of real estate tax installments for the month of April 2020 to entrepreneurs who are taxpayers of real estate tax in the Municipality of Kołobrzeg, whose financial liquidity has deteriorated due to bearing negative economic consequences due to COVID-19).

\textsuperscript{26} Uchwała nr XXII/307/20 Rady Miasta Kołobrzeg z dnia 6 maja 2020 r. w sprawie wprowadzenia na terenie Gminy Miasto Kołobrzeg programu pn. „Kołobrzeski program pomocy dla przedsiębiorców, których płynność finansowa uległa pogorszeniu w związku z ponoszeniem negatywnych konsekwencji ekonomicznych z powodu COVID-19” (Resolution No. XXII/307/20 of the Kołobrzeg City Council of 6 May 2020 on the introduction of the program entitled “Kołobrzeg aid program for entrepreneurs whose financial liquidity has deteriorated due to negative economic consequences due to COVID-19”).
4. Previous powers of the commune council

The Act on Local Taxes and Fees contains an extensive catalog of subjective and objective exemptions from local taxes and fees. Additional exemptions are also provided for in the Act on special economic zones. It should be emphasized that before the entry into force of the Anti-COVID-19 Act, the right to introduce tax exemptions in the field of real estate tax was already vested in the municipal council under Article 7(3) of the ALTF. Pursuant to this provision, the commune council may introduce, by resolution, other objective exemptions than those specified in Article 7(1) of the ALTF and in Article 10(1) of the Act of 2 October 2003 amending the Act on special economic zones and certain acts. Apart from statutory exemptions, communes may, in the form of resolutions, extend the catalog of exemptions by other than those listed in the statutes, but only of an objective nature.

Until now, therefore, the municipal council was entitled to apply these measures only in respect of categories of real estate and could not change the personal scope of the law by exempting certain taxpayers from tax. Moreover, it is emphasized in jurisprudence of the administrative courts that it is not only unacceptable to introduce, by way of a resolution of a commune council, exemptions of a personal (subjective) nature but also of a mixed nature, i.e. applicable to taxable items distinguished based on the characteristics of the taxpayer. This rule is a consequence of the constitutional principle of “no taxation without representation" expressed in Article 217 of the Polish Constitution which introduces the principle of exclusivity of the statute with regard to determining the categories of entities exempt from taxes and requires such crucial elements of tax like personal exemptions to be regulated by the parliament. The above provision prohibits the adoption of personal (subjective) tax exemptions by the commune council, i.e. those relating to the criterion of the characteristics of the taxable entity. Therefore, the legislative powers of the commune council to introduce tax exemptions are limited. It is permissible to introduce, by way of a resolution of the commune council, exemptions of an objective nature, i.e. exemptions related to the characteristics.

of the taxable item. An exemption referring, even indirectly, to the taxpayer’s characteristics, loses its objective character and becomes an objective-subjective exemption, not provided for by law and, therefore, unacceptable. A mixed, objective-subjective exemption is characterized by the fact that despite the fact that the wording puts emphasis on the taxable item (e.g. buildings or parts thereof), the decisive importance is assigned to personal (subjective) factors (e.g. real estate occupied by entrepreneurs, restaurants, sports clubs or cultural units).

The anti-COVID-19 competence is exceptional in that it considerably extends the power of the municipal council to grant tax reliefs, in particular of a personal nature which has been reserved for statutory legislation. Article 15p of the Anti-COVID-19 Act enables the introduction of exemptions for groups of entrepreneurs indicated in the resolution, which suggests loosening the rigor resulting from Article 7(3) ALTF.

Under the already existing general law, municipal councils have a wide range of law-making powers in the field of real estate tax, such as the right to issue resolutions to introduce exemptions for certain categories of land, buildings and structures, the right to introduce exemptions for entrepreneurs as part of de minimis aid, the right to determine the annual rates of local taxes and fees applicable in their territory within the statutory limits, the right to introduce or abolish certain fees, e.g. dog or market fees. A properly formulated exemption introduced by a resolution of the commune council should apply to specific objects of taxation, e.g. land, buildings, structures or their parts, indicated precisely by naming the features of these objects, e.g. the manner of their use. Thus, while it is unacceptable to exempt real estate occupied by gym owners, the commune may release real estate used for sports purposes.

The resolutions of the municipal council adopted on the basis of the Anti-COVID-19 Act and ALTF are not the only legal basis for applying tax reliefs in the payment of real estate tax liabilities. Local tax authorities also have the power to grant tax reliefs in respect of the payment of tax liabilities regulated in Chapter 7a of the Tax Ordinance. Pursuant to Article 67a(1) (1)–(3) of the Tax Ordinance, a taxpayer may apply for tax reliefs provided for in the provisions. The right to grant the tax breaks is vested in the the head of the commune (mayor, city president), who, as a competent tax authority, may, at the taxpayer’s request justified by an important self-interest or public interest, issue a decision on: (i) postponing the tax payment deadline or dividing the tax payment into installments, (ii) deferment of the payment or payment
in installments of tax arrears together with interest for late payment or interest on unpaid tax advances, (iii) cancellation of all or part of tax arrears, interest on arrears or prolongation fees. Tax authorities may grant reliefs in the payment of tax liabilities, e.g. to prevent or eliminate serious cross-sectoral disturbances in the economy.

The municipal council, as the local law-maker, is also responsible for setting down tax rates of the real estate tax applicable in its territory, within the limitations provided for in the ALTF. The tax rates can be lowered and differentiated, based on non-personal criteria.

5. Conclusions

Entrusting new competences to communes was part and parcel of extraordinary legal solutions relating to the support of entities conducting business activity, aimed at counteracting negative economic effects of COVID-19, including in particular the loss of financial liquidity by entrepreneurs. The question that arose was whether these competences amount to new powers or the same or similar competences are in fact already granted to local authorities under the general laws.

The examples provided in this article show that the special anti-COVID-19 tax measures in the field of real estate tax are a tool that is willingly used by municipal councils. The legal analysis method allowed for the analysis of the resolutions issued by local law-making bodies under the anti-crisis shield. The method of grouping the types of resolutions was used to show how the law-making power was exercised. As a result, four groups of resolutions have been distinguished according to the criterion of the recipients of the relief: (i) those applicable to all entrepreneurs whose financial liquidity has deteriorated; (ii) those favoring small and micro enterprises; (iii) those referring to the regulation of the Council of Ministers regarding deterioration of financial liquidity; (iv) those granting relief to entrepreneurs operating in selected sectors of the industry (mostly those in which the activity was banned or restricted due to COVID-19).

The legislator left to the discretion of municipal councils to identify groups of entrepreneurs in which, in their opinion, there has been a deterioration in the financial situation and to specify the deterioration criteria. As has been

28 Uzasadnienie do rządowego projektu ustawy o zmianie ustawy o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych oraz niektórych innych ustaw, druk nr 299 (Justification for the government draft act amending the act on special solutions related to the prevention, counteraction and combating of COVID-19, other infectious diseases and crisis situations caused by them and some other acts, No. 299).
shown, while some resolutions rely on the accounting data for entrepreneurs (e.g. a 30% decrease in revenues from the sale of goods or services), some rely on formal criteria, e.g. the type of business or the size of the entrepreneur or refer to the regulations of the Council of Ministers. The municipalities have thus used their competence to a different extent as regards determining the meaning of the statutory condition for the exemption.

The legal solutions included in the Anti-COVID-19 Act constitute an extension of the existing competences of the municipal council in respect of enacting tax exemptions. They are characterized by flexibility and simplification of the procedure for granting tax reliefs as compared to the general principles contained in Chapter 7a of the Tax Ordinance. The new solutions do not violate the existing powers of municipal councils to introduce tax exemptions resulting from acts regulating local taxes. The anti-COVID-19 provisions entitle, but do not oblige, municipal councils to offer entrepreneurs exemptions from real estate tax. Contrary to Article 7(3) of the ALTF, exemptions may be of a mixed nature with a personal character whereby the exemption covers real estate related to economic activity conducted by certain entrepreneurs. The scope of the exemption may be limited only to those items that are related to a specific type of business, e.g. hotel.

Another unique feature is a limited time range that covers only part of 2020, with the earliest possible release date of 1 March 2020. This is because the premise for the application is the deterioration of the economic situation of the entrepreneurs due to the negative consequences of COVID-19. In Poland, the state of epidemic emergency was introduced on 14 March 2020, followed by the state of epidemic announced on 21 March 2020. It is admissible to introduce an exemption with a retrospective date or to adopt a resolution with a shortened vacatio legis, if an important state interest requires the immediate entry into force of a normative act and the principles of a democratic state ruled by law do not prevent it.29 It is also not affected by the expiry of the tax installment payment deadline, regardless of whether it was paid (which leads to overpayment) or tax arrears arose (the tax liability expires retroactively). The end date of the exemption must be, at the latest, 31 December 2020. It should be noted that this solution does not diverge from or violate the existing law. The principle

of non-retroactivity of law may be departed from in the name of the principle of protection of acquired rights, following from Article 2 of the Constitution\textsuperscript{30}. In tax law, it is justified in a situation where the retroactively introduced regulations grant or increase the rights of taxpayers (e.g. tax exemptions or reliefs\textsuperscript{31}) or relate to the relaxation of obligations or sanctions. Even in such case, however, it is assumed that the limit of retroactive effect for a normative act introducing tax exemptions is the year in which this act was issued\textsuperscript{32}.

The wording of Article 15p of the Anti-COVID-19 Act suggests that since the commune council may introduce an exemption by resolution, the right to apply this exemption cannot be conditioned upon submitting a relevant application\textsuperscript{33}. Submitting the application would require its examination by way of a decision, for which there is no legal basis. Each entrepreneur who meets the conditions provided for in the resolution is subject to tax exemption. The tax authority may of course verify the fulfillment of the conditions for exemption\textsuperscript{34}.

Was it necessary to introduce specific solutions in the light of existing rights? Extension of the deadline for payment of real estate tax installments by a resolution adopted pursuant to Article 15q bears all the features of the relief referred to in Article 67a(1)(1) of the Tax Ordinance. However, it is not granted by decision of the tax authority at the individual request of the taxpayer, but results from the provisions of the local law. The commune council, as a law-making body, was thus endowed with the competence of the authority applying the law. As a result, both municipal authorities – the law making municipal council and the executive tax authority – may grant reliefs consisting in postponing the obligation to pay installments of real estate tax.

According to Article 7(3) of the ALTF, the commune council, by resolution, may introduce objective exemptions other than statutory. Therefore, the legislative powers of the commune council to introduce tax exemptions are limited. Apart from statutory exemptions, communes may, in the form of resolutions, extend the catalog of exemptions by other than those listed

\textsuperscript{30} Uchwała NSA z dnia 12 marca 2001 r., sygn. akt OPS 14/00 (Resolution of the Supreme Administrative Court of 12 March 2001, OPS 14/00).

\textsuperscript{31} Uchwała Regionalnej Izby Obrachunkowej w Szczecinie z dnia 1 lutego 2007 r., sygn. akt nr III/05/K/07 (Resolution of the Regional Audit Chamber in Szczecin of 1 February 2007, No. III/05/K/07).

\textsuperscript{32} Uchwała Regionalnej Izby Obrachunkowej w Poznaniu z dnia 3 grudnia 2008 r., sygn. akt nr 26/1173/2008 (Resolution of the Regional Audit Chamber in Poznań of 3 December 2008, No. 26/1173/2008).

\textsuperscript{33} R. Dowgier, Nowe uprawnienia podatkowe rad gmin związane z pandemią COVID-19, „Przegląd Podatków Lokalnych i Finansów Samorządowych” 2020/5, p. 6–18.

\textsuperscript{34} S. Czarnecki, Podatek od nieruchomości – szczególne rozwiązania na czas epidemii COVID-19, „Przegląd Podatków Lokalnych i Finansów Samorządowych” 2020/5, p. 19–25.
in the acts, but only of a material nature. It is unacceptable to introduce, by way of a resolution of the commune council, exemptions of a subjective or mixed nature, of a subjective and objective nature, i.e. relating to the characteristics of the tax subject. Meanwhile, Article 15p enables the introduction of exemptions for groups of entrepreneurs indicated in the resolution, which suggests loosening the rigor resulting from Article 7(3) ALTF. It also raises doubts as to the compliance of this competence norm with Article 217 of the Constitution. Pursuant to Article 15p and 15q it will be most difficult to determine the meaning of the term “financial liquidity” and to assess the level of this liquidity. Most often, it is equated with the company’s ability to pay its current liabilities in the required amount on time. The provisions of the Anti-COVID-19 Act deliberately use undefined terms in order to grant the governing bodies of municipalities a wide range of freedom in deciding which group of entrepreneurs to apply for reliefs and exemptions in real estate tax. Consequently, a solution consisting in adopting a resolution granting preferences to all entrepreneurs conducting business activity, regardless of the size, legal form, sector or other criteria, is acceptable, as long as there has been the deterioration of the financial situation as a result of the pandemic.

Another existing power of municipal councils is the competence to establish tax rates of local taxes and fees, applicable in their territory. In reaction to the COVID-19 crisis, tax rates could be lowered by resolution to take into account the disturbances in certain sectors of the economy. However, the municipal councils would have to carefully draft the legislation to make sure that any differentiation of rates refers exclusively to objective criteria, not linked to characteristics of taxpayers. The Anti-COVID-19 Act certainly extends this power of local law-makers.

The conducted analysis aimed to answer the question of whether the Anti-COVID-19 Act gave new powers to municipal councils in the field of granting tax reliefs. The presented reasoning and applied research methods allow to answer the question in the affirmative. Municipal councils and municipal tax authorities should first consider the use of legal instruments that do not lead to an ineffective expiry of a tax liability (extension of the payment deadline, deferral, spreading into installments). The application of the exemption and remission should be treated as an exception to the rule, balancing the public interest and the interest of the taxpayer.