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Buildings and Structures as the Object of Real Property Taxes in the Countries of the Visegrad Group²

1. Introduction

Real property tax (RPT), as a type of property tax,³ is a direct tax⁴ of a recurrent nature with a long-standing tradition.⁵ It is applicable also in the countries of the Visegrad group (V4) comprising Slovakia, Czechia, Hungary, and Poland, which was established on 15 February 1991 in the Hungarian town of Visegrad⁶ and thus is celebrating its 30th anniversary.

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In Slovakia and Czechia, RPT has a form of one tax regulated in Slovakia by the Act on Local Taxes and Local Charge⁷ and in Czechia by the Immovable Property Tax Act,⁸ while in Hungary it is created by the tax on land and tax on buildings, both regulated by the Act on Local

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³ W. Nykiel, Z. Kukulski, *Raport generalny – Transformacja systemów podatkowych w państwach Europy Środkowo-Wschodniej – 25 lat doświadczeń oraz wyzwania na przyszłość – cz. II*, “Kwartalnik Prawa Podatkowego” 2017, No. 3, p. 19.

⁴ P. Molitoris, *Z aktualnej problematyki podatków lokalnych w Republice Słowackiej*, “Warmińsko-Mazurski Kwartalnik Naukowy” 2015, No. 3, p. 110.

⁵ D. Prammer, *Immovable property: Where, why and how should it be taxed? A review of the literature and its implementation in Europe*, “Public Sector Economics” 2020, No. 4, p. 492 et seq.

⁶ K. Jasiecki, *The Role and Importance of Economic Cooperation of the Visegrad Group Countries in the European Union*, “Online Journal Modelling the New Europe” 2020, No. 33, p. 26.

⁷ SK, Act No. 582/2004 Coll. on local taxes and fees for municipal waste and minor construction waste [Zákon o miestnych daniach a miestnom poplatku za komunálne odpady a drobné stavebné odpady], amended.

⁸ CZ, Act No. 338/1992 Coll. on Immovable Property Tax [Zákon o dani z nemovitých věcí], amended.

Taxes.⁹ In Poland, there is one local RPT regulated by the Act on Local Taxes and Fees,¹⁰ nevertheless, there are two other taxes – agricultural tax and forest tax that need to be taken into account in this context. All of these RPT systems comprise taxation of buildings and/or structures, however, their approaches vary.

Following our previous research on RPT in Slovakia,¹¹ partial comparison with other V4 countries,¹² the broader context,¹³ and the work of academics on the topic,¹⁴ this paper aims to present the differences between the determination of objects of real property taxes, as regards buildings and structures, in particular, applied in the V4 countries upon their primary analysis and comparison. Due to the limited range of this paper, the exclusions from taxation and exemptions were not subject to the analysis.

2. Legislation of the V4 countries

In Slovakia, RPT is a three-tier system (tax on land, tax on buildings, and tax on apartments and non-residential premises). As regards the buildings, subject to the buildings tax are constructions in the territory of the Slovak Republic which have “one or several above-ground storeys or underground storeys¹⁵ and are connected to the ground by a solid

⁹ HU, Act No. C of 1990 on Local Taxes [Törvény a helyi adókról], amended.

¹⁰ PL, Act of 12 January 1991 on Local Taxes and Fees [Ustawa o podatkach i opłatach lokalnych], Official Gazette [Dziennik Ustaw] 1991, No. 9 heading 31, amended.

¹¹ A. Vartašová, K. Červená, *Views on Quality of Tax Regulation in the Slovak Republic (Focused on Real Property Taxation)*, Leges, Prague 2019.

¹² Eadem, *Real Property Tax in the Countries of Visegrad Group – Comparative View*, “Studia Iuridica Lublinensia” 2022, No. 1, pp. 191–211; A. Vartašová, *Uplatňovanie inštitútu miestnych daní v krajinách V4*, [in:] D. Cevárová (ed.), *Interpolis 2020*, Belianum, Banská Bystrica 2020, pp. 500–508; eadem, *Komparácia systémov miestnych daní v krajinách Vyšehradskej štvorky*, [in:] K. Liptáková (ed.), *Miestne dane v krajinách Vyšehradskej štvorky*, Leges, Prague 2021, pp. 127–186.

¹³ J. Brzeski, A. Románová, R. Franzsen, *The Evolution of Property Taxes in post-Socialist countries in Central and Eastern Europe*, “ATI Working Papers”, WP/19/01, African Tax Institute, University of Pretoria, <https://www.up.ac.za/media/shared/223/Working%20Papers/wp-19-01.zp190805.pdf> (accessed: 22.05.2022).

¹⁴ E.g.: L. Etel, *Systems of Immobile Property Taxation in the States of the Visegrad Group*, “Analizy i Studia CASP” 2019, No. 8, pp. 1–13.

¹⁵ The storey of the building is defined as a part of the interior of the building delimited by the floor and the ceiling structure. If the building does not have a ceiling structure, the floor is considered to be a part of the building delimited by the floor and the roof structure.

foundation or anchored by piles". These are divided into several categories (residential buildings, cottages, garages, industrial buildings, etc.), among which the act refers to the Building and Planning Act to provide the definitions only as regards residential buildings and small buildings that have additional functions for the main building.¹⁶ Inclusion of the building into the relevant category is governed by the purpose of its use as of 1 January of the taxation period, and the tax liability is not affected by the fact that the building has ceased to be used. An uncompleted building is taxed as a part of the building plot until the certificate of building compliance becomes final.

Apartments and non-residential premises are subject to tax on apartments if they are situated in residential buildings in which at least one apartment or a non-residential premise has been acquired by a natural person or legal entity (the building itself is not subject to tax in such a situation).

Since the Czech Republic divides the RPT into the tax on land and tax on buildings and units, the subjects of the latter tax are:

1) taxable buildings and their parts located in the territory of the Czech Republic, which are completed or already used, covering: a) buildings as defined by the Cadastral Act¹⁷ and b) engineering structures listed in the annex to the Act on Immovable Property Tax;¹⁸ and

2) taxable units and parts thereof if they are completed or in use, located in the territory of the Czech Republic.

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An above-ground storey is defined as any storey that does not have a floor level or part thereof lower than 0.80 meters below the highest point of the adjacent terrain in a zone 5.00 meters wide around the perimeter of the building.

¹⁶ Residential buildings are defined by the Building and Planning Act as buildings in which at least half of the floor area is intended for housing and include three categories (apartment houses; family houses; and other residential buildings, such as orphanages, student dormitories, retirement homes, and shelters for the homeless), however, for the purpose of the RPT, the Local Taxes Act only refers to apartment buildings and family houses – SK, Act No. 50/1976 Coll., on Spatial Planning and Building Regulations (Building and Planning Act) [*Zákon o územnom plánovaní a stavebnom poriadku (stavebný zákon)*], amended, Art. 43b(1).

¹⁷ Defined as an above-ground structure connected to the ground by a solid foundation, which is spatially concentrated and externally mostly enclosed by perimeter walls and a roof structure – CZ, Act. No. 256/2013 Coll., on the Real Estate Cadastre (Cadastral Act) [*Zákon o katastru nemovitostí (katastrální zákon)*], amended, Art. 2(l).

¹⁸ This covers: 1) transmission towers, retransmission towers, and telecommunication masts, 2) towers, masts, tower tanks for mining, and extraction of raw materials, 3) cooling towers for energy, 4) chimneys and flues for energy, 5) towers, masts, and tower tanks of chemical companies, 6) metallurgical and heavy industry construction (except buildings) (blast furnaces), 7) towers, masts, and tower tanks for other industries, and 8) industrial chimneys for other industries.

A taxable building itself in which there are taxable units is excluded from taxation. A taxable building that is not separate immovable property shall be regarded as an immovable object owned by the person who owns the property of which the building is a part.

In Poland, besides land, the RPT covers buildings or parts thereof and constructions or their parts related to the conduct of business. The Act on Local Taxes and Fees defines the building as “a building object within the meaning of the provisions of the Construction Law,¹⁹ which is permanently connected to the ground, separated from the space by means of building partitions and has foundations and roof” and the construction as “a construction object within the meaning of the provisions of the Construction Law,²⁰ which is not a building or a small architecture object, as well as construction equipment within the meaning of the provisions of the Construction Law²¹ related to a construction object, which enables the use of the object in accordance with its intended purpose”. The tax applies to buildings and structures (or parts thereof) from 1 January of the year following the year in which the building/structure was either finished or started to be used even before its completion.²²

¹⁹ Articles 3(2) and (2a) of the Construction Law (PL, Act of 7 July 1994 the Construction Law [*Ustawa z 7 lipca 1994 r. Prawo budowlane*], Official Gazette [*Dziennik Ustaw*] 2021, item 2351, amended) define a building as a building object that is permanently connected with the ground, separated from the space by means of building partitions and has foundations and a roof and, separately, a single-family residential building as a free-standing building or a semi-detached, terraced or group building, serving to meet housing needs, constituting an independent unit structurally, in which it is allowed to separate no more than two residential premises or one residential premise and one business premise with a total area not exceeding 30% of the total area of the building.

²⁰ Construction is defined by Art. 3(3) of the Construction Law as any construction object which is not a building or a small architecture object, such as linear structures, airports, bridges, viaducts, flyovers, tunnels, culverts, technical networks, free-standing antenna masts, free-standing plates permanently attached to the ground, advertising devices, earthworks, defence (fortifications), protective, hydro-technical structures, tanks, free-standing industrial installations or technical devices, sewage treatment plants, waste landfills, water treatment plants, retaining structures, over-ground and underground pedestrian crossings, land utilities, sports facilities, cemeteries, monuments, as well as construction parts of technical devices (boilers, industrial furnaces, nuclear power plants, wind farms, and other devices) and foundations for machines and devices, as technically separate parts of objects making up the usable whole. A linear object (Art. 3(2a)) should be understood as a construction object, the characteristic parameter of which is the length, in particular a road with exits, railway line, water supply, channel, gas pipeline, and others there mentioned.

²¹ Construction equipment is defined by Art. 3(9) of the Construction Law as a technical device related to the construction object, ensuring the possibility of using the object in accordance with its intended purposes, such as connections and installation devices, including those for the treatment or collection of sewage, as well as crossings, fences, parking yards, and places for garbage containers.

²² Article 6(2) of the Act on Local Taxes and Fees.

In Hungary, instead of one RPT, there are two separate taxes – a tax on land and a tax on buildings. Among the constructions in the area of competence of the local government, the dwellings and non-residential buildings and parts thereof are taxable. The tax liability covers all premises of the building, regardless of its purpose or utilization. Dwelling is defined by the Act on Local Taxes (Art. 52(8)) as a residential house, residential building,²³ flat, castle, villa, manor house, registered as such or awaiting to be indicated as such following the provisions of special regulations,²⁴ and the non-residential building is defined in Art. 58(11) as the building or part of a building that does not qualify as a dwelling according to Art. 52(8) of the Act on Local Taxes. The building is defined by Art. 52(5) of the Act on Local Taxes as a structure or part thereof according to the Act on the Formation and Protection of the Built Environment,²⁵ which forms an artificially separated, partially, or completely artificial space from the surrounding external space and thus ensures the conditions of permanent or temporary residence or use, including also a stand-alone installation that is partially or completely below the surrounding connecting ground level with its internal height.

3. Discussion and conclusions

There are several differences found, however, for the limited range of this paper, we will discuss only a few of them.

From the above-presented legislation, especially the definitions, it is clear that the most limiting regulation is the one in Slovakia. The strict binding of taxable buildings only to those having a storey (limited by the floor and ceiling or roof) disqualifies the taxation of any other structures, especially those used in industry and other economic activities. The Polish

²³ Residential (or apartment) building is defined by Art. 52(60) of the Act on Local Taxes as a building where at least 50% of the useful floor area serves as dwellings.

²⁴ These provisions define the categories of dwellings according to the comfort levels (all-comfort, comfort, semi-comfort, non-comfort) and emergency dwellings – HU, Act No. LXXVIII of 1993 on Certain Rules Concerning the Renting and Alienation of Dwellings and Premises [*Törvény a lakások és helyiségek bérletére, valamint az elidegenítésükre vonatkozó egyes szabályokról*], amended, Art. 91/A(1–6).

²⁵ Which defines a building as a structure, typically intended for human habitation, which encloses, in whole or in part, a space, room, or group of buildings with its structures for a specific purpose or activity related to its purpose, or for regular work or storage – HU, Act No. LXXVIII of 1997 on the Formation and Protection of the Built Environment [*Törvény az épített környezet alakításáról és védelméről*], amended, Art. 2(10).

regulation, on the other hand, covers a large scale of structures and linear objects which enlarges the coverage of RPT. Czechia may be found in between since it uses a similar definition of a building (“mostly enclosed by perimeter walls, and roof structure”), however, covers at least some roofless structures (towers, chimneys, masts, etc.), yet M. Radvan speaks for a broader scope of taxation.²⁶ Hungarian definitions are not that strict; the definition of a building covers even “a stand-alone installation that is partially or completely below the surrounding connecting ground level with its internal height”, which serves as the basis to tax advertising media (e.g., billboards).²⁷ Even though the buildings tax does not cover linear objects, these, however, are subject to other tax – Public Utility Lines Tax,²⁸ which is destined to the state budget unlike the tax on buildings, as this one is a local tax accruing to the budgets of municipalities. This range of buildings and structures as the potential scope of objects of taxation makes a difference, especially in terms of the fact that the V4 countries acquire the majority of the RPT revenues from buildings/structures rather than land.²⁹ In favour of taxing buildings and structures the “Polish way” instead of the “Slovak way” speaks also the comparison of the overall RPT revenue to GDP ratio (Slovakia: 0.41%; Czechia: 0.22%; Hungary: 0.46%; Poland: 1.18%),³⁰ which confirms that the RPT is the most important property tax in Poland.³¹

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The approach towards the setting of definitions varies as well. While Czechia does not define the notions and fully refers to the Cadastral Act (even though only as regards the buildings), the Slovak approach is to define some notions in the act of tax law with only a limited direct reference to act of the building law. On the contrary, the Hungarian Act on Local Taxes comprises vast and detailed definitions with a very limited reference to other laws (beyond the tax law). In Poland, the definition

²⁶ M. Radvan, *Major Problematic Issues in the Property Taxation in the Czech Republic*, “Analysis and Studies CASP” 2019, No. 2, p. 20.

²⁷ I. Hoffman, *Only a Theoretical Possibility of the Ad Valorem Property Tax System – the Regulation on Immovable Property Taxes in Hungary*, “Analysis and Studies CASP” 2019, No. 2, p. 65.

²⁸ HU, Act No. CLXVIII of 2012 on Public Utility Lines Tax [Törvény a közművezetékek adójáról], amended.

²⁹ The buildings and flats tax creates on average (2010–2019) 73.99% of the overall RPT revenues in Slovakia and 85.28% in Hungary. In Poland, the tax on buildings and structures makes on average (2018–2019) 82.11% of the overall RPT revenues. Data for the Czech Republic were unavailable. Data source: own processing based on the data of ministries of finance (Slovakia, Poland) and central statistical office (Hungary).

³⁰ Data source: own processing based on the data of the Ministry of Finance of the Czech Republic and as mentioned above.

³¹ M. Sek, *Other taxes: Immovable property tax*, [in:] W. Nykiel, M. Wilk (eds), *Polish Tax System. Business Opportunities and Challenges*, Wolters Kluwer Polska, Warszawa 2017, p. 216.

pattern shows the combination of own – tax law definitions and references to the Construction Law's definitions. Such an approach, as was pointed out by R. Dowgier,³² creates more space for the legislative body to bypass the amending of tax legislation by the amendment of building legislation instead, or to accidentally change the tax legislation through such an amendment, as was stressed by W. Morawski.³³ The question is whether the lack of direct definitions or reference to the definition of other laws does not create even more space for uncertainty or has, actually, the same effect (since some definitions of other branches of law still need to be used in case of doubt).

Another important difference is the determination of the point in time when the (un)completed building/structure becomes subject to taxation, where the regulation, in our view, speaks again in favour of the Polish and Czech regulation³⁴ compared to the Slovak one.

Based on these initial findings and the limited range of this paper, we have to conclude that the similarities and differences between the analysed taxation systems of the V4 countries as were identified here definitely create the basis for a deeper analysis of the regulation, its interpretation by local academics, practitioners, and case law, and will be subject to further research.

References

- Brzeski J., Románová A., Franzsen R., *The Evolution of Property Taxes in post-Socialist countries in Central and Eastern Europe*, "ATI Working Papers", WP/19/01, African Tax Institute, University of Pretoria, <https://www.up.ac.za/media/shared/223/Working%20Papers/wp-19-01.zp190805.pdf> (accessed: 22.05.2022).
- Dowgier R., *A few remarks on the establishment of local tax law in Poland*, "Prawo Budżetowe Państwa i Samorządu" 2018, No. 4.
- Etel L., *Systems of Immobile Property Taxation in the States of the Visegrad Group*, "Analizy i Studia CASP" 2019, No. 8.
- Hoffman I., *Only a Theoretical Possibility of the Ad Valorem Property Tax System – the Regulation on Immovable Property Taxes in Hungary*, "Analysis and Studies CASP" 2019, No. 2.

³² R. Dowgier, *A few remarks on the establishment of local tax law in Poland*, "Prawo Budżetowe Państwa i Samorządu" 2018, No. 4, p. 60 et seq.

³³ W. Morawski, *Wpływ zmiany definicji obiektu budowlanego na zakres przedmiotowy podatku od nieruchomości – przypadkowa rewolucja?*, "Przegląd Podatkowy" 2015, No. 6, p. 23 et seq.

³⁴ "Such a broad definition enables to cover de facto all buildings constructed legally and illegally" – M. Radvan, *Místní dane*, Wolters Kluwer, Prague 2012, p. 173.

- Jasiecki K., *The Role and Importance of Economic Cooperation of the Visegrad Group Countries in the European Union*, "Online Journal Modelling the New Europe" 2020, No. 33.
- Molitoris P., *Z aktualnej problematyki podatków lokalnych w Republice Słowackiej*, "Warmińsko-Mazurski Kwartalnik Naukowy" 2015, No. 3.
- Morawski W., *Wpływ zmiany definicji obiektu budowlanego na zakres przedmiotowy podatku od nieruchomości – przypadkowa rewolucja?*, "Przegląd Podatkowy" 2015, No. 6.
- Nykiel W., Kukulski Z., *Raport generalny – Transformacja systemów podatkowych w państwach Europy Środkowo-Wschodniej – 25 lat doświadczeń oraz wyzwania na przyszłość – cz. II*, "Kwartalnik Prawa Podatkowego" 2017, No. 3.
- Prammer D., *Immovable property: where, why and how should it be taxed? A review of the literature and its implementation in Europe*, "Public Sector Economics" 2020, No. 4.
- Radvan M., *Major Problematic Issues in the Property Taxation in the Czech Republic*, "Analysis and Studies CASP" 2019, No. 2.
- Radvan M., *Místní dane*, Wolters Kluwer, Prague 2012.
- Sęk M., *Other taxes: Immovable property tax*, [in:] W. Nykiel, M. Wilk (eds), *Polish Tax System. Business Opportunities and Challenges*, Wolters Kluwer Polska, Warszawa 2017.
- Vartašová A., *Komparácia systémov miestnych daní v krajinách Vyšehradskej štvorky*, [in:] K. Liptáková (ed.), *Miestne dane v krajinách Vyšehradskej štvorky*, Leges, Prague 2021.
- Vartašová A., *Uplatňovanie inštitútu miestnych daní v krajinách V4*, [in:] D. Cevárová (ed.), *Interpolis 2020*, Belianum, Banská Bystrica 2020.
- Vartašová A., Červená K., *Real Property Tax in the Countries of Visegrad Group – Comparative View*, "Studia Iuridica Lublinensia" 2022, No. 1.
- Vartašová A., Červená K., *Views on Quality of Tax Regulation in the Slovak Republic (Focused on Real Property Taxation)*, Leges, Prague 2019.

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Abstract

In this paper, the author compares the legal regulation of real property taxes applied in the Visegrad countries (Slovakia, Czechia, Hungary and Poland) in terms of the means of determination of part of its object, namely the buildings and structures. Based on the analysis of these national regulations, the author concludes that, despite all the analysed states apply taxation of buildings and/or structures within their real property tax(es), there are conceptual differences among the particular states' policy in determining the objects subject to tax. While the author concludes on the broadest range of taxable objects to be in Poland and the narrowest in Slovakia, there is a lot of room for inspiration and for legislative adjustments for the Slovak legislation.

Keywords: real property tax, Slovakia, Czechia, Hungary, Poland