

Exemptions from Real Estate Tax Enacted via Resolutions by Municipal Councils Pursuant to COVID-19 Legislation: Issues Discussed in the Context of Constitutional Regulations and Supervisory Powers of Regional Audit Chambers

Zwolnienia z podatku od nieruchomości wprowadzane uchwałami rad gmin na podstawie przepisów covidowych – problemy na tle regulacji konstytucyjnych oraz działalności nadzorczej regionalnych izb obrachunkowych

Ewa Piechota-Ołoś

Asystent, magister, Uniwersytet Opolski, Instytut Nauk Prawnych, ORCID: 0000-0002-4895-0481

Abstract:

This paper addresses the issue of exemptions from real estate tax constituted by municipal councils. As a result of the emergent state of epidemic, legislation was introduced in order to confer a power on municipal councils to enact exemptions from real estate tax by way of appropriate resolutions. The objective of this paper is to describe the legislation thus introduced and the interpretative problems that have arisen due to its operation. The legislator employs general clauses as regards the entities that could benefit from the exemption. The issue as to whether constituting an exemption for the period that has passed would be possible is a controversial one. A further problem addressed here is the assessment of permissibility of the exemption thus introduced against the backdrop of the constitutional rules. The decisions made as part of supervisory activity of the regional audit chambers are herein subjected to practical analysis as well. This study may be useful for authorities that are considering the introduction of an exemption, and it could serve as a basis for setting a direction for subsequent amendments of the rule at issue.

Keywords: real estate tax, exemption, resolution of a municipal council, COVID-19

Streszczenie

W artykule poruszono problematykę zwolnień z podatku od nieruchomości stanowiących przez rady gmin. W wyniku zaistniałego stanu epidemii uchwalono przepisy nadające tym organom uprawnienie do wprowadzenia, w drodze stosownej uchwały, zwolnień z powyższego podatku. Celem niniejszego opracowania jest charakterystyka wspomnianej regulacji oraz wynikłych z jej obowiązywania problemów interpretacyjnych. Ustawodawca, aby określić podmioty, które mogą skorzystać ze zwolnienia, posługuje się pojęciami nieostrymi. Kwestią budzącą wątpliwość jest również możliwość ustanowienia zwolnienia za okres, który już minął. Kolejnym zagadnieniem poruszonym w opracowaniu jest ocena dopuszczalności wprowadzonego zwolnienia w zestawieniu z regulacjami konstytucyjnymi. W treści artykułu dokonano analizy praktycznej rozstrzygnięć zapadłych w ramach działalności nadzorczej regionalnych izb obrachunkowych. Niniejsze opracowanie może być przydatne dla podmiotów, które rozważają wprowadzenie zwolnienia, a także może stanowić podstawę do obrania kierunku przy kolejnej nowelizacji omawianego przepisu.

Słowa kluczowe: podatek od nieruchomości, zwolnienie, uchwała rady gminy, COVID-19.

1. INTRODUCTION

Since 20 March 2020, the state of epidemic, as introduced pursuant to the Ordinance of the Minister of Health of 20 March 2020 'on the proclamation of a state of epidemic

within the Republic of Poland',¹ has been in force in Poland. A socioeconomic situation hitherto unheard-of required taking steps in view of facilitating for everyone the functioning in a different reality. Public-law dues, including taxes and charges,

materially affect the operation of entities, be they individual or professional. For this reason, the legislator has decided to introduce a veritable number of amendments to the tax legislation, both substantive and procedural, the aim of which was to grant financial support to entities most severely affected by COVID-19. Among the numerous instruments selected by the legislator, worth noting are the ones whose implementation was delegated to local government units. To be more specific, the instruments in regard to which the legislative branch has restricted its decision-making powers, only allowing the introduction of requisite mechanisms by particular units of local government.

The mechanism which is the object of this paper is the support granted to entrepreneurs, enacted by resolutions of municipal councils that fall within the scope of the possibility to enact exemptions from real estate tax. By opting to introduce the regulations described herein, the legislator has enabled local government bodies to make autonomous decisions on whether, and if so, for whom support ought to be granted. This enacted rule of competence [Polish, *norma kompetencyjna*] expresses a further step of tax independence on the part of communes, within the framework of tax autonomy conferred on them. The legislator has provided that the bodies whose budgets would have been reduced shall first decide at the local level whether to grant aid, and subsequently on how to set the amount (or duration) thereof. The support mechanism thus enacted causes specific interpretative problems both at municipal council and supervisory level, for the regional audit chambers must rule, while examining the passed resolutions within their remit of supervision, on whether the resolution produced conforms to the law. The objective of this paper is to describe the legislative framework that allows municipal councils to introduce exemptions from real estate tax. The conclusions presented herein below may then be used to scrutinise the resolutions already in force, while also serving as a basis for further study in the field of oversight carried out by regional audit chambers.

The adopted tax regulation may contribute to the commencement of discussion as to which type of exemptions from real estate tax may constitute the subject-matter of resolutions passed by municipal councils. From the point of view of constitutional regulations, the discrepancies among the doctrine and the case-law on which type of exemptions from real estate tax granted by communes must be addressed again.

2. TAX EXEMPTIONS FROM REAL PROPERTY TAX ENACTED BY COMMUNAL COUNCIL'S RESOLUTION

Exemptions from real estate tax are, in principle, governed by Article 7 of the Local Taxes and Charges Act of 12 January 1991². Those exemptions may be divided into those which are expressly specified in the Act, and those which may be introduced by a resolution made by a municipal council. Article 7 (1) of the Act provides a list of objective tax exemptions, whereas Article 7 (2) features a list of tax exemptions that are subjective, in principle, for certain entities are additionally required to meet objective conditions.

The remit of legislative powers attributable to units of local government is specified by statutes, which unequivocally follows from Article 168 of the Constitution of the Republic of

Poland, in conjunction with Article 18 (2), item (9) and Article 40 (1) of the Municipal Government Act of 8 March 1990³. Pursuant to Article 18 (2), item 8 of that Act, the exclusive remit of municipal councils shall include passing resolutions in respect of taxes and charges within the limits specified in separate statutes. This regulation corresponds to the operative part of Article 7 (3) of the Local Taxes and Charges Act which accords powers to introduce, by resolution, objective tax exemptions other than those specified in Article 7 (1) of the Local Taxes and Charges Act and in Article 10 (1) of the Act of 2 October 2003 on the amendment of the Special Economic Areas Act and certain other acts, to a municipal council. Article 7 (3) of the Local Taxes and Charges Act features no criteria or restrictions for the adoption of exemptions from real estate tax, except for taking account of the rules on granting State aid. Thus, restrictions on the remit of the council follow not from the wording of Article 7 (3) but rather from its systemic interpretation⁴. Autonomy enjoyed by a municipal council ought to be as wide-ranging as possible because those authorities are most knowledgeable as to when and where there is a need to introduce a tax exemption, and what kind of exemption may be introduced within a given territory⁵.

The doctrine specifies that a municipal council has the option to make certain alterations to the legislative enactments in the scope of real estate tax⁶. The issue of the permissible degree of intervention is only applicable to exemptions that are subjective in nature. This directly follows from the constitutional rule enshrined in Article 217 of the Constitution of the Republic of Poland, according to which the imposition of taxes and other public imposts, the specification of those subject to the tax and the rates of taxation, as well as the principles for granting tax reliefs and remissions, along with categories of taxpayers exempt from taxation, shall be made by means of statute. It follows from the comparison of the Constitution's Article 217 and Article 7 (3) of the Local Taxes and Charges Act that there is no option to introduce exemptions for entities specified *ex ante*. It is still subject to dispute in the doctrine and the case-law whether the communes may impose combined exemptions, e.g. referring both to the object and the subject thereof⁷. The most recent views expressed in the doctrine posit that "a council may introduce exemptions for specified objects of taxation, such as e.g. a building, land, structure, or premises. Where an exemption applies to an object thus specified, then its further specification by indicating certain characteristics of such an object, e.g. by whom or for what purposes it is used, does not alter its principal nature. It is an objective exemption⁸. A contrary view categorically professes that "in relation to that, such a resolution may not be framed in a manner as to specify an exemption in a way that refers both to the object and the subject thereof, which is very often stressed by tax jurisprudence⁹". One more doctrine view of relevance is also reflected in academic literature: "... it shall then apply only to those objects of taxation which fall within a certain category, and on the other hand it shall not include a power to constitute exemptions that refer both to the subject and the object, that is to exempt from taxation certain categories of entities whose factual or legal situation is specific"¹⁰. The Supreme Administrative Court, in turn, holds

in a judgment that “the exemption specified in Article 7 (3) of the Local Taxes and Charges Act may apply only to an object, and thus to real estate used for various types of activities. However, it is important that such an object be specified in a manner so as to make identification of a particular taxable person impossible. Therefore, the features of that object must be specified in the provision so as to apply to a potentially (hypothetically) indeterminate individual taxable person. The task is a trying one as the exemption would, in every case, be finally applicable to a specific entity, the reason being that the framework of a tax includes both the object of taxation and the subject being taxed. As a result, no subjective exemption exists that cannot be attributed to a specific entity. This hardship requires diligence in framing the provisions of local law on the part of municipal councils, above all when specifying the criterion of exemption through identification of the object of exemption and not the subject thereof. In every case where it is possible to infer who namely is entitled to an exemption directly from the rule having been introduced, and not only which object is covered by an exemption, the nature of that exemption is one that refers both to the object and the subject thereof may be attributed thereto. This implies, in turn, a transgression of the statutory delegation to enact the exemption specified in Article 7 (3) of the Local Taxes and Charges Act¹¹⁹. Determination of the nature of an exemption being enacted is therefore of fundamental importance for the purposes of assessing its permissibility. In addition, observance of the rules relied on the above reflects the principle of equality before the law, which is of prime importance for tax burdens and tax exemptions.

Within the area of the law on public dues, a unit of local government may be in charge only if expressly and statutorily permitted¹². It follows from Article 7 of the Constitution of the Republic of Poland that the units of local government and their authorities shall function on the basis and within the limits of the law. Local government authorities are required to act strictly within the limits of that conferral while exercising their legislative remits laid down in the statutory delegations. They are neither authorised to regulate what has already been regulated by the statute, nor are they permitted to stray beyond the scope of the statutory delegation. In light of the above, every rule of competence must be implemented in a strict manner, and it is not permissible to engage in any extensive interpretation of the provisions on remits. The provisions of the Communal Self-Government Act and specific statutes that provide the basis for a commune’s constitutive authority to expressly regulate a given area set out the object of delegated powers, and thus the adoption of an act that exceeds the statutory delegation therefor is unlawful¹³. This position is confirmed by the case-law of the administrative courts, which includes e.g. a contravention of provisions delimiting remits to adopt resolutions, a legal basis to adopt resolutions, constitutional and substantive-law where wherever incorrectly interpreted, and provisions governing the procedure for adoption of resolutions among the types of contraventions that cause nullity of resolutions made by authorities of local government¹⁴.

The exemptions introduced by a municipal council pursuant to Article 7 (3) of the Local Taxes and Charges Act ought

to be applicable by the very operation of the law in force and cannot be dependent on the acts of a tax authority. Exemptions that follow from a resolution should be recognized *ex officio* by tax authorities in their decisions setting the amount of tax due, or by taxable persons themselves in a tax self-assessment¹⁵. Moreover, it must be pointed out that the adopted “resolution therefore may not, in its terms, relate to such objects of taxation which have been, pursuant to a statute, rendered objectively exempt, both by Article 7 (3) of the Local Taxes and Charges Act and by the Act on the amendment of the Special Economic Areas Act and certain other acts—the provisions at issue here¹⁶”. The position expressed above unequivocally follows from the principles of legislative technique, which considers the repetition of statutory provisions in the contents of the adopted resolutions to be erroneous.

3. THE FRAMEWORK OF REMIT FOR REAL ESTATE TAX EXEMPTION ENACTED BY COMMUNAL COUNCIL’S RESOLUTION PURSUANT TO COVID-19 REGULATIONS

Faced with the situation caused by the emerging COVID-19 pandemic, the legislator decided to introduce an additional regulation that allows the interested municipal councils to introduce a specific tax exemption from real estate tax within the territory of their operation. According to the original wording of Article 15p of the Act of 2 March 2020 ‘on special solutions related to the prevention, counteraction and combating COVID-19, other infectious diseases, and the emergencies caused by them¹⁷, a municipal council may introduce, by a resolution and for a part of the year 2020, exemptions from real estate tax regarding: land, buildings, and structures connected to the carrying out of economic activity, for selected groups of entrepreneurs whose financial liquidity worsened in relation to bearing negative economic consequences due to COVID-19. The legislator explained in the statement of reasons for the bill that the “envisaged approach shall allow the communes, within the framework of their tax autonomy, to introduce solutions in the scope of real estate tax, which shall be directed at aid for entrepreneurs whose financial liquidity worsened in relation to bearing negative economic consequences due to COVID-19. Those solutions would have positive influence on their economic situation and shall contribute to the improvement of their financial situation¹⁸”.

Then, by the Act of 16 April 2020 ‘on special support instruments in relation to the spread of the SARS-CoV-2 virus¹⁹, paragraph (2) was added to Article 15p of the COVID-19 Act, whereby in a resolution referred to in Article 15p (1) a municipal council may also introduce exemptions from tax due on land, buildings and structures occupied for operational purposes by:

- 1) non-governmental organisations referred to in Article 3 (2) of the Public Benefit and Volunteer Work Act of 24 April 2003; and,
 - 2) bodies/authorities referred to in Article 3 (3) of the Act referred to in point (1) above,
- whose financial liquidity has worsened in relation to bearing negative economic consequences due to COVID-19.

Article 15p (1) of the COVID-19 Act was subsequently amended by Article 1 point (10) of the Act of 9 December 2020

'on the amendment of the Act on special solutions related to the prevention, counteraction and combating COVID-19, other infectious diseases, and the emergencies caused by them, and certain other Acts'²⁰, by means of which municipal councils were authorised to introduce, by a resolution and in regard to a part of the year 2020 and selected months of the first half of 2021, an exemption from real estate tax regarding land, buildings, and structures connected to business operations, for selected groups of entrepreneurs whose financial liquidity has deteriorated owing to negative economic consequences due to COVID-19. Pursuant to the latest amendments²¹, the municipal council may enact, by way of a resolution, an exemption to real estate tax in regard to a part of the year 2020 and select months of the year 2021.

The enactment of the regulation at issue which authorises to introduce an exemption from real estate tax was dictated by the special situation wherein the bodies operating businesses found themselves due to the state of epidemic being in force in Poland. The principal purpose of this rule of competence was aiding a specific group of entities, thus contributing to the improvement of the national economy and constituting an additional source of aid. Bearing in mind the dispute on the permissibility of existence of mixed exemptions, Article 15p of the COVID-19 Act may be deemed to be an additional reinforcement and incentive for local legislators and decision-makers to take resolution-making initiative, irrespective of the nature of the exemption. It should be assumed that the exemption at issue has a dual objective and subjective nature where subjective features are preponderant. This is related to the idea associated with the introduced regulation, consisting in providing aid to entrepreneurs whose financial liquidity has worsened. It only follows from the operative part of Article 15p (1) of the COVID-19 Act that there is a possibility for the exemption at issue to be introduced, and that the exemption is not obligatory. It is the municipal council of a given commune that has the power to decide on the enactment of the tax exemption within the territory of its operation. The legislator has granted an authorisation to the communes, with the conferred powers to enact local law in mind. The power in question follows from the extant assumption on the part of the legislator that the authorisation to grant a tax exemption shall be implemented while observing qualitative criteria in force, which were in turn mandated by the substantive law, and which also follow from the principles of legislative technique. In addition, the above constitutes an expression of the fiscal powers of a commune within its own territory. As the legislator points out, a municipal council may decide on instituting a specific exemption. However, abstention from enacting a resolution on real estate tax exemption would not constitute grounds for demanding the introduction of one. Absence of an exemption does not prevent entrepreneurs from seeking individual aid specified in Article 67 (a) et seq. of the Act of 29 August 1997—Tax Ordinance²², yet the instrument set up by the bundle of statutes on COVID-19 has the objective of facilitating and accelerating the granting of aid by communes to select groups of entrepreneurs, without the need to commence fiscal proceedings.

It follows from the sequence of amendments to the originally introduced regulation that the group of addressees at

whom the exemption is targeted, or the subjective scope, becomes apparent at the later stage. The optional exemption from real estate tax may be introduced to the benefit of selected groups of entrepreneurs whose financial liquidity is deteriorated owing to adverse economic consequences due to COVID-19. Furthermore, the legislator includes NGOs and bodies referred to in Article 3 (3) of the Act 'on public benefit and volunteer work' in the substantive scope thereof. It must be pointed out that the new paragraph (2) of that provision would pertain to State aid on condition that the entities referred to in items (1) and (2) be businesses. Where a given entity would engage in statutory activities consisting in volunteer work and would not offer goods or services on any market, such an entity would not be a business. Where the activities of a given entity prove purely social in nature, they would not be regarded as business (or, economic) activities and, consequently, such an entity would not be a business²³. Thus, the list of entities to which the COVID-19 exemption may potentially apply has been substantially extended. A mandatory prerequisite was imposed with the introduction for both groups of entities referred to in Article 15p of the COVID-19 Act of the category of worsened financial liquidity in relation to negative economic consequences stemming from COVID-19. Nevertheless, the legislator introduced no definition for "worsening/deterioration of financial liquidity", nor did it otherwise specify how the criterion of such worsening/deterioration is supposed to be understood. The groups of entrepreneurs eligible for an exemption have not been specified, either. In that regard, the legislator assumed that the communes themselves, due to their territorial and subjective expertise, are best placed to know which conclusive and decisive criteria are to be adopted for the granting of real estate tax exemption. A specific object of business as per the Polish Classification of Business ("PKD") may serve as a criterion to isolate a group to which the exemption is addressed. A great variety of further clarifying criteria becomes apparent while reviewing selected resolutions of municipal councils made in the matter of exemptions from real estate tax. For instance, an exemption could be applicable to entrepreneurs against whom a prohibition of, or a restriction on, operating their business was introduced by statute or by executive regulation; or, it could be that the worsening of financial liquidity was associated with a decrease in the revenue, such decrease having been specified via an appropriate formula. At this stage, the discretion left to the local government as to the more detailed specification of the criteria that would be decisive for the decrease in the turnover should be assessed favourably. It must be kept in mind that the situation which all the units of local government came across has hitherto been unheard of, while any solutions introduced were meant to simplify those that had been in force, or make the preferential treatment thus introduced as uncomplicated as possible.

It should be assumed while assessing the framework of Article 15 (p) of the COVID-19 Act that this provision constitutes a *lex specialis* for the regulation following from the Local Taxes and Charges Act. Such an assessment is related to the circumstances of the time when that regulation was introduced, and the purpose of its introduction. As it shall be proven below, it was also during the assessment of lawfulness

as regards specific resolutions having the exemptions from real estate tax as their object that the purposive interpretation was the preponderant one. That was due to the purpose of the regulation then introduced, as the legislator authorises the communes to frame the real estate tax exemption in a broad manner. Through the introduction of general clauses, the legislator has enabled autonomous municipal decision-making, as expressed in the remit to adopt resolutions on the real estate tax exemption thus conferred.

4. RESOLUTIONS INTRODUCING EXEMPTIONS FROM REAL ESTATE TAX PURSUANT TO ARTICLE 15 (P) OF COVID-19 ACT AND THE SUPERVISION CARRIED OUT BY REGIONAL AUDIT CHAMBERS

The supervisory activity of regional audit chambers in the scope of examining the lawfulness of resolutions adopted by municipal councils constitutes an important tool that verifies the intensified legislative work of local governments. Due to the short timeframe and the need of ad-hoc intervention and aid, a multitude of errors that were repeated by communes could be then observed, and the need to apply supervisory measures by regional audit chambers was a consequence of that. Those errors, and the proposed approaches to allaying them, are to be indicated as a result of research on selected supervisory decisions of regional audit chambers.

After its original enactment, the evolution of the provision conferring the competence amounted, in the first place, to a modification in the scope of its temporal application—from the beginning of 2020, through to selected months of H1 2021 and the current authorisation of exemptions for selected months of 2021. It should be pointed out that the provisions of a resolution that would cover selected months of a year, e.g. February, March, or April, are going to be permissible whereas the rule at issue may form a basis to enact a real estate tax exemption for the full half-year period, or for the entirety of the year 2021. Nonetheless, each time there is a requirement to indicate the months covered by the exemption from real estate tax in the contents of the resolution.

The timeframe for the applicability of the exempting resolution should then be considered when analysing the contents of fiscal resolutions made in the supervisory capacity. The answer to this issue has not lost its relevance, for Article 15p of the COVID-19 Act still refers both to the period of 2020 and to the period of 2021. This necessitates consideration as to whether it would be possible to enact the tax exemption retroactively. In this regard, one may rely on Article 4 of the Act of 20 July 2000 'on promulgation of normative acts and certain other legal acts'²⁴, according to which acts of local law shall enter into force after the expiry of 14 days from their promulgation in the related voivodeship's official journal. There is an exception to this rule as enshrined in Article 5 of the aforesaid Promulgation Act which lays down a possibility to accord retroactive binding force to a normative act, with the principles of democratic state ruled by law not precluding it. On that point the Minister of Finance has voiced his view, stating that "the provision does not authorise the introduction of exemptions from real estate tax for the year 2020 in 2021. The real estate tax is an annual tax. Introduction of an exemption from that tax after the year to which it relates is not possible"²⁵. The

position being referred to appears to be controversial, due to the wording of the Article 5 of the Act 'on promulgation of normative acts and certain other legal acts'. In addition, it may then be pointed out that the case-law of administrative courts has allowed the introduction of provisions with retroactive effect as well, in a situation where such provisions improve the legal position of the addressees of a given legal rule. According to the judgment of the Voivodeship Administrative Court in Szczecin, "an exemption from real estate tax enshrined in a resolution of a municipal council may also cover prior years"²⁶. Invoking the support to entrepreneurs necessitated by the pandemic as the reason to accord retroactive effect to a resolution appears to be compliant, reasonable, and welcome from the point of view of the principle of law-ruled democratic state. However, the consequences of introduction of a retroactive tax exemption, including the need to amend self-assessments by taxable persons or to alter decisions setting the amount of tax due, cannot be lost from sight.

The reasoning on the timeframe of application for the provisions on exemptions outlined above remains relevant to the idea of the so-called COVID-19 exemption. The purpose of the originally introduced regulation was to provide aid through tax exemption for selected periods of the year 2020. The amendments introduced thereto has resulted in the possibility to temporally extend that exemption for further periods of the year 2020, and subsequently for 2021. The enacted and subsequently amended rule of competence is clear in that regard, pursuant to systemic interpretation. Admittedly, always where there is a need to employ interpretation other than textual interpretation, the likelihood of difference in views increases. In regard to the differences on the possibility to introduce the exemption retroactively, it should be concluded that the legislator has unequivocally confirmed the issue in the subsequent amendment of Article 15p of the COVID-19 Act.

A further issue that was deliberated by regional audit chambers is the assessment of the permissibility to render the granting of an exemption dependent on the lodging an appropriate application therefor. This issue was the subject-matter debated at the adjudicating panels of regional audit chambers to make their views conformant to the previous rules, and it was held that "the objective exemption constitutes a right available by virtue of a resolution by the constitutive authority introducing it, and the acquisition of that right may not be made dependent on making an appropriate application"²⁷. The assessment of the contents of a resolution within the scope of the regulation at issue should be subject to an in-depth analysis, for pursuant to Article 15h (1) of the COVID-19 Act, support granted on the basis of Article 15p of the said Act constitutes State aid to remedy a serious disturbance in the economy of a Member State, and pursuant to Article 37 (5a) of the Act of 30 April 2004 on the Procedure in Matters Pertinent to State Aid²⁸, in respect of State aid provided for in a normative act referred to in Article 6 (2), certificates, affidavits or information referred to in paragraphs (1), (2), or (5) shall be lodged by the beneficiary together with a self-assessment, annual self-assessment, or another document from which follows the amount of aid. Therefore, it does follow from the above that the indication of a requirement to produce a

requisite affidavit or information is permissible²⁹, yet there are no grounds to grant exemption pursuant to an application submitted by an entrepreneur³⁰. Local government units should use precise language for the required documentation at the stage of framing the resolution and they should be careful that no contents possibly pointing to a procedure commenced on application be found in the documents required by them. In that regard, it should be recalled that if it follows from Article 37 (7) of the Aid Act that there is no possibility to grant aid without prior lodgement of appropriate certificates, affidavits, or information by the entity seeking aid, then the granting of such aid without the lodgement thereof should be put in question during supervisory activities in progress³¹.

As is pointed out in the doctrine, it appears hard to accept that the assessment of financial reports or other financial documents of every entrepreneur subject to aid is required, due to the constraints of time and organisation, at least at the stage of assessment of documentation definitive for the granting of aid in the form of an exemption. Therefore, communes have stopped at admissible affidavits, with the option to verify documentation in the future³². An affidavit was the main element of resolutions granting the exemption as regards the vast majority of resolutions hitherto analysed. Provisions contained in the resolutions on the requirement to lodge additional documents—irrespective of the wording—involve a functional element related to the possibility of granting the exemption to entities meeting certain criteria. Consequently, the resolutions being referred to, whereunder it is required to provide additional information in the form of an affidavit or a form, are examples falling within the scope of applicable law.

In relation to the affidavits having been made, the issue of provisions on criminal liability for making a false statement has also formed the object of supervisory activity. Adding a term on the attestation of falsehood following from Article 233§1 of the Act of 6 June 1997—the Polish Criminal Code³³ has been questioned by the *collegia* of regional audit chambers as something contrary to the competence specified in Article 15p of the COVID-19 Act and outside its rule³⁴. It should be pointed out that both the example of the term having been referred to, and any other terms that could be considered for introduction by the communes, should be reflected in the content of a statutory provision that provides the remit to adopt a resolution. Transgressing that rule in any way must result in the implementation of supervisory measures by the regional audit chamber.

5. FINAL REMARKS

The COVID-19 epidemic and the consequences thereof have caused the need for amendment vis-à-vis the provisions hitherto in force, and the adjustment thereof to the current socioeconomic situation. The amendments have also found their way into the tax law. Aid provided to entities affected by a decrease in their financial turnover has been the main premise for the amendments within the area of the law concerned. The example of regulation outlined in this paper has necessitated the cooperation of competent local government authorities. Such an assumption for an aid programme was natural and fully justified, for it is at the municipal level that the scale of the required aid has made itself most apparent.

By introduction of the rule of competence in Article 15p of the COVID-19 Act, the legislator has opened the possibility for municipal councils to enact exemptions from real estate tax for entrepreneurs affected by the pandemic. This exemption is, clearly, both objective and subjective in nature. The Local Taxes and Charges Act, which governs real estate tax and its constitutive elements, allows for the possibility to introduce exemptions by municipal councils outside of the exemptions, both objective and subjective, that are described in detail in the Act. The nature of those exemptions is subject to uniform interpretation neither in the doctrine nor in the case-law. The prevalent view is that the exemptions at the local level must only be objective exemptions; this directly follows from the constitutional rules. Allowing the possibility to enact exemptions that are both objective and subjective pursuant to Article 15p of the COVID-19 Act should be deemed an exception to the rule in force. The introduction of the provision at issue would be an argument in favour of the adherents to the theory of permissibility as regards mixed exemptions. Nevertheless, it should be posited that the provision of Article 15p of the COVID-19 Act ought not, upon framing and applying the law, to constitute a template or a basis to further introduce the like solutions, whose contents would consist in mixed exemptions. The unique nature of the regulation introduced and constituted due to the specific and still extant epidemiological situation should be stressed here again.

The examples of legislative work presented in this paper and the examples of supervisory activity that have emerged due to them show the direction for required amendments, so that the doubts in interpretation would be eliminated should the state of epidemic continue.

Footnotes

- ¹ I.e. Journal of Laws [JL] 2020, Item 491, as amended.
- ² Consolidated text: JL 2019, Item 1170, as amended; hereinafter referred to as the 'Local Taxes and Charges Act'.
- ³ Consolidated text: JL 2020, Item 713, as amended; hereinafter, the 'Municipal Government Act'.
- ⁴ L. Etel, *Podatek od nieruchomości. Komentarz* (Warszawa 2012), p. 437.
- ⁵ See also R. Dowgier, L. Etel, G. Liszewski, and B. Pahl, *Podatki i opłaty lokalne. Komentarz* (Warszawa 2020), p. 771.
- ⁶ J. Małecki, 'Konstrukcja prawna podatku od nieruchomości', in A. Gomułowicz and J. Małecki, *Podatki i prawopodatkowe* (Warszawa 2013), p. 634.
- ⁷ The exemption from real estate tax should pertain to specific real property (land) due to its intended purpose, without taking account, to any degree, of the economic situation or specific features of the entities holding the property concerned—viz. Voivodeship Administrative Court in Wrocław, judgment of 3 June 2009, case ref. no. III SA/Wr 73/09, Official Journal of the Lower Silesian Voivodeship No. 142, Item 2825.
- ⁸ Dowgier *et al.*, *Podatki, op. cit.*, pp. 775–6.
- ⁹ P. Borszowski and K. Stelmaszczyk, *Podatki i opłaty lokalne. Podatek rolny. Podatek leśny. Komentarz*, Warszawa 2016, p. 264.
- ¹⁰ Cf. K. Koperkiewicz-Mordel, 'Stanowienie przez rady gminy zwolnień i ulg podatkowych w podatkach i opłatach lokalnych', *Finanse Komunalne* 2005, no. 1–2, p. 71.
- ¹¹ Supreme Administrative Court's judgment of 6 May 2016, case ref. no. II FSK 2217/14, as reported in LEX no. 2082952. A similar position was taken by the SAC in its judgment of 23 October 2014, case ref. no. II FSK 2592/12 (LEX no. 1591774), whereas a dissenting view was expressed in the judgment of the Supreme Administrative Court

- of 24 November 2016, case ref. no. II FSK 2531/16, as per LEX no. 2155899.
- ¹² See C. Kosikowski, 'Gospodarka i finanse publiczne w nowej Konstytucji', *Państwo i Prawo* 1997, no. 11–12, p.161, see also Supreme Administrative Court judgment of 14 August 2007, case ref. no. II FSK 912/06, available at www.orzeczenia.nsa.gov.pl (hereinafter: 'CBOSA'); Constitutional Tribunal's judgment of 2 April 2007, case ref. no. SK 19/06, reported in OTK-A of 2007, no. 4, item 37.
- ¹³ Resolution no. 12/38/2020 of the Collegium of the Regional Audit Chamber in Opole of 15 April 2020, as reported in the Official Journal of the Opole Voivodeship, 2020, Item 2313.
- ¹⁴ Supreme Administrative Court's judgment of 3 December 1996, case ref. no. SA/Wr 949/96; SAC's judgment of 11 February 1998, case ref. no. II SA/Wr 1459/97 (LEX no. 33805); Wrocław Voivodeship Administrative Court's judgement of 13 April 2012, case ref. no. IV SA/Wr 625/11 (LEX no. 1273175); Olsztyn VAC's judgment of 19 April 2018, case ref. no. I SA/OI 153/18 (LEX no. 2481238).
- ¹⁵ Resolution no. 6111/16 of the Collegium of the Regional Audit Chamber in Białystok of 29 December 2016, Official Journal of the Podlaskie Voivodeship, 2017, item 392.
- ¹⁶ Borszowski, Stelmaszczyk, *Podatki, op. cit.*, p. 264.
- ¹⁷ JL 2020, Item 374; hereinafter, 'COVID-19 Act'.
- ¹⁸ Bill of the Sejm no. 299 – a bill by the Government to amend the Act 'on special solutions related to the prevention, counteraction and combating COVID-19, other infectious diseases, and emergencies caused by them', <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=299>.
- ¹⁹ JL 2020, Item 695.
- ²⁰ JL 2020, Item 2255.
- ²¹ As amended by Article 9 of the Act of 20 May 2021 'on the amendment of the VAT Act and certain other acts' (JL 2021, Item 1163).
- ²² Consolidated text: JL 2019, Item 900, as amended; hereinafter, the 'Tax Ordinance'.
- ²³ Court's judgment of 10 January 2006, case C-222/04 04: Ministero dell'Economia e delle Finanze v Cassa di Risparmio di Firenze SpA, Fondazione Cassa di Risparmio di San Miniato i Cassa di Risparmio di San MiniatoSpA, EU:C:2006:8, para.121.
- ²⁴ Consolidated text in JL 2019, item 1461; hereinafter, the Promulgation Act'.
- ²⁵ The position of the Ministry of Finance of 14 January 2021, as reported in L. Jaworski, 'MF: Z powodu epidemii JST nie mogą wstecznie zrezygnować z podatku od nieruchomości', *Samorząd i Administracja (a Dziennik Gazeta Prawna supplement)*, 20 January 2021.
- ²⁶ Judgment of the Voivodeship Administrative Court in Szczecin of 20 February 2020, case ref. no. I SA/Sz 946/19, LEX no. 2865454. A similar position was included in a judgment of the Voivodeship Administrative Court in Warsaw of 28 April 2014, case ref. no. III SA/Wa827/14, LEX no. 1585304: "In the view of this Court, the provision explicitly allows the retroactive introduction of normative acts, albeit on condition that the principles of democratic state ruled by law remain inviolate."
- ²⁷ Resolution no 32/183/2014 of the Collegium of the Regional Audit Chamber in Łódź of 5 November 2014, *Official Journal of Łódź Voivodeship* of 2014, item 4431.
- ²⁸ Consolidated text in JL 2021, Item 743; hereinafter, the 'Aid Act'.
- ²⁹ The template for information to be produced while applying for State aid related to prevention, counteraction, and combating COVID-19 is provided by ordinance of the Council of Ministers of 29 March 2010 in the matter of the scope of information to be produced by an entity applying for de minimis aid (JL 2010, No. 53, Item 311).
- ³⁰ Examples of resolutions by regional audit chambers: resolution no. 14/40/2020 of the Collegium of the Regional Audit Chamber in Opole of 13 May 2020, Official Journal of Opole Voivodeship, 2020, item 2314, resolution no. 69/20 of the Collegium of the Regional Audit Chamber in Wrocław of 6 May 2020, Official Journal of the Lower Silesian Voivodeship, 2020, Item 3142 (LEX no. 2977554).
- ³¹ A similar view is provided by R. Dowgier, 'Wsparcie dla przedsiębiorców w 2021 r. Wprowadzane uchwałami rad gmin podejmowanymi na podstawie tzw. tarczy antykryzysowej', *Przegląd Podatków Lokalnych i Finansów Samorządowych* 2021, no. 3, p. 12.
- ³² R. Cieślak in: G. Kubalski (ed.), R. Cieślak, A. Głębski, K. Liszka-Michałka, M. Małowiecka, and R. Rudka, *Zmiany w funkcjonowaniu JST w związku z COVID-19*, Warszawa 2020, pp. 128–9.
- ³³ Consolidated text in JL 2020, Item 1444; hereinafter, the 'Criminal Code'.
- ³⁴ Resolution no. 14/39/2020 of the Collegium of the Regional Audit Chamber in Opole of 13 May 2020, Official Journal of the Opole Voivodeship, 2020, Item 2314; Resolution no. 70/20 of the Collegium of the Regional Audit Chamber in Wrocław of 6 May 2020, Official Journal of the Lower Silesian Voivodeship, 2020, Item 3143 (LEX no. 2977556).

Bibliography

1. Borszowski P., Stelmaszczyk K., *Podatki i opłaty lokalne. Podatek rolny. Podatek leśny. Komentarz*, Warszawa 2016.
2. Dowgier R., Etel L., Liszewski G., Pahl B., *Podatki i opłaty lokalne. Komentarz*, Warszawa 2020.
3. Dowgier R., 'Wsparcie dla przedsiębiorców w 2021 r. wprowadzane uchwałami rad gmin podejmowanymi na podstawie tzw. Tarczy antykryzysowej', *Przegląd Podatków Lokalnych i Finansów Samorządowych* 2021, no. 3.
4. Etel L., *Podatek od nieruchomości. Komentarz*, Warszawa 2012.
5. Jaworski L., 'MF: Z powodu epidemii JST nie mogą wstecznie zrezygnować z podatku od nieruchomości', *Samorząd i Administracja (a Dziennik Gazeta Prawna supplement)*, 20 January 2021.
6. Koperkiewicz-Mordel K., 'Stanowienie przez rady gminy zwolnień i ulg podatkowych w podatkach i opłatach lokalnych', *Finanse Komunalne* 2005 no. 1–2.
7. Kosikowski C., 'Gospodarka i finanse publiczne w nowej Konstytucji', *Państwo i Prawo* 1997, no. 11–12.
8. Kubalski G. (ed.), Cieślak R., Głębski A., Liszka-Michałka K., Małowiecka M., Rudka R., *Zmiany w funkcjonowaniu JST w związku z COVID-19*, Warszawa 2020
9. Małecki J., 'Konstrukcja prawna podatku od nieruchomości', in A. Gomułowicz, J. Małecki, *Podatki i prawo podatkowe*, Warszawa 2013.