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## SELECTED ASPECTS OF THE REFORM OF THE SYSTEM OF TAXATION ON REAL ESTATE IN POLAND

### 1. Introduction

The process of reforming the tax system in Poland has so far covered taxes on income and value added tax. The next stage in the reform will concern the tax on real estate. At present the existing tax on real estate is characterized by the fact that its basis is the area of land or buildings, and it is only with reference to buildings that their initial value is determined according to principles of amortization. It seems that due to the internal needs of the state and the necessity of harmonizing Polish tax law with the corresponding regulations in force in the European Union, it is indispensable to introduce a tax calculated according to the value of real estate, that is to say one called the cadastre. This paper attempts to determine the features that this tax should have and also to discuss systems of registering real estate.

### 2. Definition of cadastre and a cadastre system

The term 'cadastre' covers different types of registers of goods, including, for instance, buildings (building cadastre), water (water cadastre), or land (land cadastre).<sup>1</sup> In practice, a cadastre is defined to be a me-

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<sup>1</sup>The etymology of the word 'cadastre' derives from Greek - *katastichon* - meaning 'register' or Latin - *capitastrum* - meaning 'register of tax per capita'. A broader discussion on this subject is offered by Nowecki [1996, 1 ff.].

thodically run public register of data concerning all the real estate on the territory of a country or its provinces. The basis of such registration is formed by measurements of borders marked by identifiers of real estate. The outline of borders and identifiers are, as a rule, shown on small-scale maps, which may – together with the registers – indicate, among other things, the type, designation, size, value and right of use of real estate [Wilkowski, 1996, 3]. A cadastre is also defined to be a current system of information on an area based on plots of land, including a register of property rights to land. It consists of a geometrical description of plots together with registers describing the character of the rights, value of the plot and changes made to these items. This system can be established for fiscal or legal reasons, or with a view to developing and protecting the environment [Kasprzak, 1998, 14]. In an holistic approach, the cadastre is referred to as a register including the official description of land and buildings and the cadastral value of real estate. It is supposed to contain precise data related to the taxpayer's identity, the area of real estate, the character of its use and a description of its components. This information defines the value of real estate, and – in consequence – the level of the cadastral tax [Bronowicz and Joachimowski, 1999, 30]. In turn, the UN European Economic Commission defines a cadastre system as an information system composed of two parts – one graphic (maps and plans), which illustrates the size and location of all plots and the other descriptive, which characterizes the attributes of the land [Wilkowski, 1998, 4].

On the basis of the views presented above on the question of a cadastre it is possible to formulate the following features that such a tax should possess. It seems that it ought to include information on real estate, property rights, rights and limitations concerning usage of the land. Moreover, it should be available to all, perform the functions of an information system and by law be subject to updating. Such a system should function on a continuous basis in compliance with accepted principles on the territory of the whole state, supported by appropriate acts and decrees. Control over and management of a cadastre should rest in the hands of competent organs of the state administration. The cadastre on real estate, together with a real estate register and fiscal register creates a cadastral system, understood as a set of data included in the sub-systems mentioned above and also procedures concerning the collection and processing of this data, as well as making them accessible.<sup>2</sup>

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<sup>2</sup>A broader treatment of this problem is presented by Bujakowski [1999] in his article on directions in the development of the cadastre on real estate in Poland.

### 3. Models of cadastre

There are three models of cadastre which can be distinguished: fiscal, legal and physical.

The fiscal model is characterized by the fact that the data included in it are indispensable in the calculation of taxes on real estate. The data refer to the following: data on the taxpayer, value of the real estate, income obtained from the property. Applying such a model is cheap and simple, it does not require establishing ownership rights or great financial outlays. The legal model aims at establishing the legal status of real estate, *i.e.* establishing the owner of the property and registering the rights to the estate. It includes information concerning ownership rights, as well as rights and obligations connected with the real estate. This register is linked to the real-estate (land) register or can replace it. Applying legal cadastre must be preceded by establishing ownership rights to the individual estates, together with their borders. This can entail the necessity of bearing substantial financial costs and is time consuming. The physical cadastre consists in procuring maps and descriptions of real estate, as well as objects included in the property. This cadastre also includes data concerning the designation and usage of real estate. Apart from the examples listed above, as a result of the development of the institution of cadastre, a multi-task model has formed, which is used for the simultaneous realization of several aims, including spatial planning, economic planning, calculation of taxes and benefits, recording real estate in land registers and also in state statistics. It is an effect of the technical development and gradual harmonizing of the economic and legal systems of various countries [see Nowecki, 1996].

### 4. An appraisal of the solutions to the problem of registering real estate applied in Poland

At present the manner of developing and registering land and buildings is regulated by the following legal acts: the Land-surveying and Cartographic Law<sup>3</sup> and the Decree of the Minister of Spatial Management and Construction and Minister of Agriculture and Food Management Concerning Registration of Land and Buildings.<sup>4</sup> The first act defines the notion of registration of land and buildings in a uniform way

<sup>3</sup>The Act of 17 May, 1989, *Land-surveying and Cartographic Law*.

<sup>4</sup>Decree of the Minister of Spatial Management and Construction and Ministry of Agriculture and Food Management Concerning Registration of Land and Buildings.

for the whole country, as a systematically updated collection of information on land and buildings, their owners and other physical or legal persons entitled to these grounds and buildings. The contents of the register, with reference to land, are the location, borders, total area, type of land, class of soil, identifiers in the land register or collections of documents. As regards buildings, the register includes data concerning their location, designation, usage and general technical functions; in the case of premises, the register contains information on their location, usage and usable area. The register of land and buildings also includes the owner, yet with reference to state-owned and local government-owned land the individual or corporate entity under whose management the land or buildings, or their parts remain, the headquarters or place of residence of the persons registered, information on properties in the register of monuments, as well as the value of the real estate. Registration of land and buildings is overseen by the Starost<sup>5</sup> (chief officer of the county). Owners and persons responsible for the land, buildings, or their parts, are obliged to report all alterations to the data subject to registration to the appropriate Starost within 30 days of their execution. This obligation does not apply to changes resulting from decisions by appropriate government organs. On the Starost's request, the owner, or the person reporting the change, is obliged to submit suitable geodetic or cartographic documents. In the next part of the act discussed, courts and public notaries are obliged to send copies of notarial acts, which contain changes of data subject to registration within 30 days of the validation of the decision, ruling or drawing up the notarial act. Information on land, buildings and premises is contained in a registry unit including maps, registers and documents that are subject to registration. Poland is one of the countries which have a register of land covering the whole state. The register of land, founded between 1955–1975, made it possible to calculate, in a uniform way, scales for real estate tax, opening real-estate registers, as well as settling the question of farm ownership by the so-called enfranchisement action. A register of buildings was not begun at that time, the procedure was intended merely to show the outlines of buildings on the registration map or to determine the area developed. As time went on the register of land was updated and modernized. At present, it is possible to state that it contains full data on over 28.7 million properties (plots) with the inclusion of soil classes and farming land, partial data on buildings (location, area for development, number of floors, designation, resistance to fire) and also data on the owners or the per-

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<sup>5</sup>The Act of 17 May, 1989, *Land-surveying and Cartographic Law*, art. 22.

sons managing the real estate. The register of land, which is in operation in Poland at present, does not satisfy all of the requirements posed by it. It differs from the multi-task cadastre currently in use in Europe as far as the ideas behind it and its informative function are concerned. So-called substitution maps have been used as a registration map for part of the country, or simplified measurement was taken with the use of a photo-map. As a result of such moves, in these areas there is a lack of geodetic data, which determine the co-ordinates of corners on borders. This makes automatic discretization of the cartographic part of the information registers impossible, that is to say that transformation into a numerical form is impossible. The major drawbacks of such a system, which lower its effectiveness, are a lack of equipment and personnel to run the basic links of the system, such as centers of geodetic and cartographic documentation. Moreover, the system effectiveness has been lowered due to the fact that the state administration responsible for the registration of land has been subject to few transformations of a restructuring nature.

Evaluating the range and quality of the data, which are included in the register drawn for fiscal needs, it can be concluded that their use is limited. They primarily concern land, whereas the data on other objects subject to taxation are fragmentary (*e.g.* with reference to buildings), or do not exist at all (register of edifices or premises). The register does not include much information indispensable from a fiscal point of view, and the information already contained in it is not fully reliable, due to a lack of regulations as regards its updating. Another drawback of the register is the manner in which the subject of taxation, *i.e.* the owner of the estate, is included. The data included in the register reflect the means of usage of the land, with the inclusion of the title of ownership and person (name) of the owner. The basic unit of registration is a plot, not real estate, and instead of the owner, often the person responsible for the land is registered as the taxpayer. Such a solution leads to blurring the boundaries between the legal state of real estate and registration of the real estate itself [Nowecki, 1996a, 24]. It appears that it is necessary to change the present way of collecting information on real estate. It is vital that the data concerning the real estate, that is land, buildings, or their parts should be complete, clear and available. A new tax on the value of the real estate should be constructed on their basis. Furthermore, forming the Polish cadastral system and its substantial adaptation to European standards constitutes only one of the conditions of Poland's entering the EU. Certain steps have already been undertaken towards reforming the registration of lands and buildings. On 18<sup>th</sup> June, 1995, the Committee of the Board of Ministers agreed to accept a docu-

ment called *The Theses of the Taxation System and Real Estate Registration Reform*. A course of further action will see the following sets of acts materialize:

- On cadastre on real property;
- On obligatory unions of municipalities and selected agglomerations, and also on local government offices in charge of local taxes and cadastre;
- On the Central Bureau of Cadastre, Land-Surveying and Cartography;
- On the tax on real estate;
- On conditions for an early introduction of the tax on real estate.

The first three projects determine the shape of the future system of registration of real estate and it appears that establishing such a system is a necessary condition for the final success of the tax reforms. The solutions proposed assume the creation of a modern fiscal cadastre on the basis of the registration of land and buildings. This system would make an inventory of all real estate and, at the same time – would become the basis of creating a cadastral system in Poland. In the process of creating such a real estate cadastre it seems reasonable to make use of the existing registers of land and buildings, as well as the information from other sources such as: land registers, state geodetic and cartographic resources, resources of public statistics, as well as architectonic-construction documentation. The legal foundation for transforming the present register of land and buildings into a modern real estate cadastre is the Decree of the Minister of Regional Development on Registering Land and Buildings [Dziennik Ustaw, 2001]. In order to transform the existing register of land and buildings into a real estate cadastre, the register should be supplemented with the following elements: the cadastral value of the property, data on premises as real estate and data on buildings. It will also be indispensable to modify the procedures connected with the principles of such a tax and ways of establishing boundaries of estates in order to simplify the procedure further. A complete explanation of the legal status of the boundaries of the real estate should follow as a result of activities undertaken upon the request of a real estate owner and at their cost.

In order to carry out the program of setting up a cadastre system, work related to the following should be undertaken urgently:

- Intensification of work on computer processing of data on land boundaries and geometry of urbanized areas;
- Supplementing the existing registration of land with data concerning buildings and premises;

– Elaboration of guidelines connected with carrying out common taxation of real estate, in order to supplement the data on real property with information on the cadastral value;

– Elaboration of the principles of forming data banks dealing with transactions executed on local and regional markets.

Transforming the register of land and buildings into a real estate cadastre can lead to the appearance of numerous consequences, among which the following are the most significant:

– Satisfying individual needs of citizens to free management of the ownership of real estate;

– Rationalization of the usage of limited land resources;

– Creation of an information system which could be used in the process of administrating a town/city;

– Obtaining information used in the process of land development, urban planning, for administrative and statistical purposes, connected with spatial management, environmental protection and construction;

– Improvement of turnover in the real estate market;

– Activating mortgage credit and systems of credit security;

– Improvement of procedures of merging, division and protection of farming land.

A modern real estate cadastre can perform the function of a basic element of the information infrastructure in a well managed state. The information which is included in it can be used, among others, in spatial and economic planning, calculating taxes and benefits and recording real estate in land registers for the needs of state statistics and management of land.

## 5. Conclusion

One of the most vital questions in the process of building a modern cadastre is the appropriate choice of a model for the system. It seems that, for the solutions presented above, the most heated discussion concerns making a choice between the multi-functional and fiscal models [Wilkowski, 1998, 4; Kasprzak, 1998]. The first one should be established for financial and practical reasons. Establishing the cadastre solely for fiscal purposes could create the necessity of new structures taking over the obligation of realizing the other functions of the cadastre. One of the results of such action would be to incur additional costs related to their creation, equipping and manning with appropriately qualified personnel. A multi-functional cadastre ought to be characterized by a rich source of records, ought to include elements of the current register of land and buildings, as well as new elements, most importantly cadastral value,

and as regards the subjects covered by the cadastre, apart from lands and buildings, the cadastre must also cover premises.

On the other hand, an analysis of the costs of reform, whose basic part is connected with obtaining information, speaks in favor of introducing the fiscal model. The question of the precision of data and measurements regarding real estate, which considerably raise the costs of the whole operation, is of very marginal importance as regards the purpose of this model. The effect of taking measurements is supposed to facilitate setting a tax on real estate and to name the subject obliged to pay the tax. Moreover, EU experts suggest that the first step towards the introduction of the cadastre system in Poland should be establishing a fiscal cadastre [Konieczny, 1996]. It appears that the Polish cadastre system, in a subjective sense, will now be a suitably ordered list of real estate, including information that allows identifying, and also geometrically and descriptively registering land, buildings and premises. Such a list supplemented by suitable data would enable the determination of the level of tax on the value of real estate.

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