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## TAX CONTROL OF THE COMMUNE AND ITS CONSEQUENCES

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## WŁADZTWO PODATKOWE GMINY I JEGO NASTĘPSTWA

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**Summary:** The aim of the article is an attempt to outline the boundaries of taxation powers of communes and to indicate their influence on the amount of budget revenues. The research method was the analysis of literature, applicable law acts and data relating to budget revenue resulting from the power of taxation and their relationship to own revenue and total revenue. The study includes a thesis that local authorities can create local tax policies (on the basis of their powers), but in its essence it slightly affects the execution of budget revenues of communes. The rights of taxation powers granted to communes are systematically used by the government authorities. Generally, applying lower tax rates or exemptions in question affects the reduction of budget revenues of communes. Thus, consequences of using power of taxation may be defined as so-called lost income. The observations have made it possible to formulate the assumption that municipalities usually use these powers to reduce the higher tax rates.

**Keywords:** commune, budget, financial autonomy, tax control.

**Streszczenie:** Celem artykułu jest próba zarysowania granic obszaru władztwa podatkowego gmin i wskazania jego wpływu na wysokość dochodów budżetowych. Metodą badawczą była analiza literatury przedmiotu, obowiązujących aktów prawa oraz danych dotyczących dochodów budżetowych wynikających z władztwa podatkowego oraz ich relacje do dochodów własnych i dochodów ogółem. W opracowaniu postawiono tezę, że władze gminy mogą kreować lokalną politykę podatkową (w oparciu o swoje uprawnienia), choć w swej istocie tylko w nieznacznym stopniu wpływa to na wykonanie dochodów budżetowych gmin. Uprawnienia w zakresie władztwa podatkowego przyznane gminom są przez władze systematycznie wykorzystywane. Generalnie stosowanie niższych stawek podatkowych bądź też zwolnień przedmiotowych wpływa na zmniejszenie dochodów budżetowych gmin. Zatem skutki stosowania władztwa podatkowego można określić jako tzw. utracone dochody. Przeprowadzone rozważania pozwoliły sformułować m.in. taki wniosek, że gminy najczęściej korzystają z uprawnień w zakresie obniżania górnych stawek podatkowych.

**Słowa kluczowe:** gmina, budżet, samodzielność dochodowa, władztwo podatkowe.

## 1. Introduction

The provisions of the European Charter of Local Government stipulate the right of local government to have adequate own financial resources which are adjusted to tasks. At least a part of these resources must come from local taxes and charges, whose amount may be determined by self-government to the extent specified by the law [Art. 9 of the European Charter of Local Government 1985]. Based on the Article 168 of the Polish Constitution communes were granted the power of taxation in the area of setting volumes of local taxes and fees to the extent specified in the Act [Konstytucja Rzeczypospolitej Polskiej... 1997]. This includes exemptions, setting tax rates (to the extent stipulated by the law), tax base or tax reliefs. Other units of local government, i.e. districts and the regions *de facto* do not have such competences.

Power of taxation, which is associated with the possibility of shaping the volume and structure of local taxes and fees, is an expression of independence of local government revenue. This means the ability to run their own fiscal policies by local governments in the given area [Kosek-Wojnar, Surówka 2007]. The condition of this policy is to equip a local government with stable and efficient sources of revenue for its budget. Hence, a part of the revenue in the budgets of local government should be connected with the area and conducted economic activity. This applies mainly to their own sources of income, the characteristics of which meet the conditions for local authorities to act independently. The possibility of exerting some influence on the community structure of own revenues results from the abovementioned concept of the power of taxation.

The aim of this article is an attempt to outline the boundaries of the taxation powers of communes and to indicate their influence on the volume of budget revenues. To achieve the set objectives it was necessary to conduct the study of literature, analysis of existing law acts and, above all, the diagnosis based on the analysis of reports of local government budgets, the level of income arising from the taxation powers and their relations to own revenue and total revenue.

## 2. The powers of taxation of the municipality

A tax is a complex political, social and economic category. The provisions of the Tax Code defines a tax as *public, free, compulsory and non-returnable funds to the Treasury, province, county or communes, resulting from the tax act* [Ustawa z dnia 29 sierpnia 1997 r. Ordynacja podatkowa]. In the unitary countries (due to the beneficiary of tax) central and local taxes are distinguished. On the other hand, in countries of a federal or regional structure there are three groups of taxes: federal, national and local [Gajl 1993]. This division is in line with the criterion of the power of taxation, which includes the functions related to the management of tax resources and related to conducting public activity in the field of tax law.

It should be noted that some delegation of authority by the central authorities to local authorities is manifested e.g. by the possibility of reducing tax rates or their diversity, applying tax reductions or exemptions. From the perspective of the community which performs most of the tasks of public local government, the use of fiscal autonomy should be carried out taking into account three basic tax principles (rules) of tax, i.e.: efficiency, equity and simplicity [Owsiak 2008; Talik, Mazur 2015, p. 213]. The principle of efficiency requires the use of such tax contrivances that allow to realize budget revenues in the expected volume. The principle of equity should guarantee universality and equality of taxation, and the rule of simplicity mentioned as a technical rule states that the cost of implementing taxes must not unduly deplete public revenues.

In Poland, communes have limited tax control. They are the only entities that have a right to local taxes, which are an important source of their own income. Thus, speaking of financial independence (more precisely independence of income)<sup>1</sup> of local government in Poland, a relatively wide range of powers of taxation should be conferred. Taxes serve as instruments of local policy influencing the course of socio-economic processes [Filipiak 2015]. There is a view that while setting tax rates local governments influence the level of economic activity in their area. They can thus create conditions for local development whose consequence is a longer-term increase in budget revenues. As S. Owsiak puts it, the importance of local taxes for municipal budgets is dependent on the type of tax, and more precisely on the performance of the sources and the volatility of the tax base [Owsiak 2008].

As previously noted, in Poland the scope of taxation powers of communes in the development of local taxes is limited. Powers of local authorities come down to setting tax rates to the amount designated by the national law and to granting exemptions, waiving charges and using incentives. The provisions of the Local Government Act stipulate that the commune authority that has been given the power to adopt resolutions on local taxes (within the limits specified in separate laws) is a decision making body i.e. municipal council (city council) [Ustawa z dnia 8 marca 1990 r. o samorządzie gminnym]. Thus, this commune council adopts the tax acts of local law under the Act. This means that in the sphere of setting tax rates or introducing exemptions, the legal basis are such laws as the Act on Local Taxes and Fees (it regulates the property tax and vehicle tax) [Ustawa z dnia 12 stycznia 1991 r. o podatkach i opłatach lokalnych], the Act on Forestry Tax [Ustawa z dnia 30 października 2002 r. o podatku leśnym] and the Act on Agricultural Tax [Ustawa z dnia 15 listopada 1984 r. o podatku rolnym]. The tax authority for the following taxes: property, means of transport, forestry and agriculture – are the commune head, mayor or city president.

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<sup>1</sup> It is assumed that financial independence includes income independence (i.e. a right to possess and shape own revenues) as well as expenditure independence (independence while performing own tasks) [Surówka 2013, p. 22].

In the structure of local authorities, there is an effective mechanism for making tax decisions. The promoter of the rates is in practice a single executive body, using the aid of a specialized administrative apparatus. The final decision is taken by the commune council, as the decision making body. It is worth noting that the adoption of the local tax rates, which are annual, should be adopted and published<sup>2</sup> before the start of next year.

Going beyond the limits of the subject matter, it can be assumed that an interesting problem in the financial management of local governments are mutual relationships between tax power and fiscal policy shaping local taxes. This issue seems to be cognitively significant because the limited power of taxation affects the freedom to shape a particular tax policy. The conclusion is that the power of taxation provides a framework that delineates a field of conducting specific tax policy of communes. Local taxes are an important element of local government.

### 3. The scope and structure of the revenue from local taxes

The group of own income, determining the income independence of communes includes: revenues from local taxes, income from fees, revenues from the owned property, other income, e.g. receipts from self-taxation of residents, inheritances, bequests and donations. Undoubtedly, an important source of own income for communes are receipts from local taxes. Local budgets are replenished by local taxes such as property tax, agricultural tax, forest tax, tax on means of transport, income tax in the form of fixed amount tax, inheritance tax and gift tax and the tax on civil law transactions [Ustawa z dnia 13 listopada 2003 r. o dochodach jednostek samorządu terytorialnego, art. 4, poz. 1, p. 1]. Local authorities lack the competence to the imperious shaping of the elements of the following taxes as a source of own income: income tax from individuals paid in the form of fixed amount tax, gift tax and tax on civil law transactions. Taking into consideration the fact that the proceeds of the first four listed taxes go directly to the budgets of individual municipalities, they will be analyzed further.<sup>3</sup>

Property tax is a local tax, levied by the communes. Taxable real estate includes the following properties: land and buildings (or parts of them) and building structures (buildings or parts thereof relating to the conduct of business). Taxpayers are natural persons and legal persons. The commune council determines the amount of property tax rates, and the Minister of Finance through an announcement sets annual upper limits of rates in local taxes. The commune council may differentiate tax rates for different types of objects of taxation.

Transportation tax is also a local tax levied by the communes. It is regulated in the Act on local taxes and fees, and paid to the tax authority, which is the commune head,

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<sup>2</sup> In the official journal

<sup>3</sup> Remaining taxes are collected by tax offices and by means of them transferred to the budget of a given commune.

mayor or city president. It is paid by the owners of trucks and other vehicles. Tax liability under the tax on means of transport is imposed on natural persons and legal persons who are owners of the means of transport. This tax is paid to the commune in the territory which is the place of residence or registered office of the taxpayer.

In Poland, the taxation of agriculture is treated particularly, mainly due to the nature of agricultural production. Agricultural tax is discharged to the budgets of communes, in which areas subjects to taxation are located. The amount of this tax is established by the commune council on the basis of price of quintals of rye referred to in the form of an announcement by the President of the Central Statistical Office. In this tax there is an extensive catalog of reliefs and exemptions of economic, social, subjective and objective nature. In addition, it is extended by the right to apply exemptions and allowances in question other than those specified in the Act for municipal authorities. This significantly reduces the proceeds of this tax, as well as the possibility of the municipalities to shape the volume of income from this source of own income. Forest tax is paid directly to municipalities and is similar in many respects to the agricultural tax. From the point of view of local budgets, forest tax is complementary to the agricultural tax. The tax base is the area of the forest, expressed in hectares resulting from the register of land and buildings. Every commune council may reduce the amount representing the average selling price of wood, adopted as the basis for calculating the tax on the area of a given commune. It should be added that in the forest tax there are no tax credits.

Total own income of communes<sup>4</sup> in the period between 2010-2015 ranged from PLN 66.5 billion to 88.3 billion (an increase by almost 33%). Each year, the amount

**Table 1.** Budget revenues of communes between 2010 – 2015.

The content of the	2010	2011	2012	2013	2014	2015
amount in \$						
Total revenues	126196094410	132690457520	139654496424	144260001155	152808759527	158227339014
Own income	66548180049	70441681305	73930532947	78604774102	84604713184	88347042956
Real estate tax	15122136974	16253131588	17602654355	18729408917	19532020159	20171305299
Tax on means of transport	856915193	884372608	916757439	940917806	974318847	1015466659
Forest tax	165259856	187830578	226664930	227779777	209311577	229732409
Agricultural tax	989448359	1062292139	1545893812	1665241291	1592972997	1653534863
structure in%						
Total revenues	100.00	100.00	100.00	100.00	100.00	100.00
Own income	52.73	53.09	52.94	54.49	55.37	55.84
Real estate tax	22.72	23.07	23.81	23.83	23.09	22.83
Tax on means of transport	1.29	1.26	1.24	1.20	1.15	1.15
Forest tax	0.25	0.27	0.31	0.29	0.25	0.26
Agricultural tax	1.49	1.51	2.09	2.12	1.88	1.87

Source: own study based on a CSO Local Data Bank.

<sup>4</sup> Including cities with country rights.

of these revenues increased, and the rate of change was respectively 5.9, 5.0, 6.3, 7.6 and 4.4% in 2015. Changes in shaping a volume of own revenues in total show an upward trend, with the exception of 2012 when there was a slight decrease compared to 2011. The most important source of own tax revenues, which reveals the power of taxation, is property tax. Proceeds from this range from 22.7 to 23.8% of all funds belonging to a group of community's own revenues.<sup>5</sup> The others in terms of efficiency include the following taxes: agricultural, means of transport and forestry. Transportation tax can be classified as a stable source of income for municipalities. However, it is inefficient because in the structure of own income, proportion is only slightly above 1%. Agricultural tax in most years does not exceed 2%, and forest tax is marginal. While municipal authorities have a possibility (albeit limited) to exert impact on the size of the rates of four mentioned taxes, the proportion of revenue from these sources in own income is not characterized by a clear upward trend. Property tax, whose proportion in the years 2010-2013 increased (in 2013 slightly compared to 2012), has shown a downward trend since 2014.

Table 1 clearly shows that the effects arising from the possession of certain power of taxation do not translate into a noticeable increase in income from these sources. The local authorities apply a general policy of moderate growth in the amount of such an income, without using the possibility of setting tax rates at the maximum level. The report of the Parliamentary Research Bureau of the Chancellery of the Parliament shows that more than 90% of Polish communes apply lower than the maximum rates of property tax [Gołębiowski, Korolewska (eds.) 2015]. It can be justified by the structure of communes because numerically rural and urban-rural communes dominate, and they are characterized by much greater caution and restraint in setting higher tax rates. It can, therefore, be assumed that the main influence on the growth of tax revenue of local governments is exerted by large units i.e. mainly provincial capitals as well as some cities and towns.

#### 4. Tax rates in selected cities

Municipalities have been granted the exclusive competence of passing resolutions on local taxes and fees. The only limitation is upper limit rates set by law and updated by the Minister of Finance on the basis of the rate of price increases. The analysis of the resolutions of councils of communes and cities indicates that the scope of rates and various exemptions are very wide. Although the principles laid down in the Act on Public Finances dictate to maximize current income, communes have limited possibilities of creating this income. Some policies of local authorities, which consist in maintaining tax rates at the same level for a few years, had no immediate impact on the improvement of the economic situation of local government, as well as on an increase in investment activity. In large communes (towns) low local tax rates are not

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<sup>5</sup> The biggest share in this income are revenues that are a proportion of personal income tax.

a sufficient impulse to invest in them. More important factors include e.g. prices of properties. Moreover, some municipalities by using certain exemptions (preferences) want to achieve certain benefits, e.g. the renovation of the facade of a building or its part, exempts the owner from paying property tax for several years.<sup>6</sup> The benefit for the city is an improvement of the aesthetic arrangement of space, and the growth of its attractiveness.

While determining the level of local tax rates there is a visible disproportion between the central government and local government. The legislator defined the powers of the tax system in the regulations. It was pointed out that the upper (maximum) levels were set by the finance minister or the president of the Central Statistical Office. Specific rates (below the maximum levels) are set by the communal authorities governed by a variety of premises. The most important include: levels of taxation in comparable communes, efficiency and cost of acquisition, and a sense of equality for all entities covered by the tax obligation. Moreover, many communes take into account the current level of taxation and its distance to the maximum rate. If the current tax rate differs significantly down from a ceiling, there is a large reserve to make any maneuver to raise the tax rate. It should be emphasized that the decisions undertaken by commune authorities are strictly political, since the councilors and the executive body are aware of the reaction of the inhabitants, representing their electorate after the elections. Therefore, commune authorities are afraid of setting tax rates at the maximum level, in the context of limited financial and major social needs.

An example of a city that did not attempt to raise local tax rates to the maximum level is Cracow, where from 2007 to 2011 there was no increase in tax rates. Eventually, their levels differed considerably from maximum rates. After a thorough analysis the city authorities stated that there was no correlation between increasing tax rates and strategic decisions of potential investors, as well as the number of investments. Thus, the decision made of approaching the maximum rates for the years 2012-2014, and then annual indexation by the rates of inflation [Uchwała Nr XXI/233/11 Rady Miasta Krakowa]. The result of these activities was an increase in this source of income in the period between 2012-2014 by approx. PLN 136 million.

As for the property tax a commune council cannot pass a rate of tax of zero zlotys, since such a decision would involve a violation of the law, in fact leading to the repeal of the tax obligation established by the Act. However, the body is entitled to diversify the property tax rates in relation to the objects of taxation.<sup>7</sup> This makes it possible to adjust the rates to local conditions. Rates can also be diversified based on other grounds. Yet, no diverse tax rates can be introduced on an entity basis (natural person, legal person). The legislature also authorized the local council to

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<sup>6</sup> The example in this area is e.g. Cracow.

<sup>7</sup> The subjects to tax include lands, buildings or their parts and buildings or their parts connected with business activity.

**Table 2.** Implications of commune taxation power on the realization of tax income (in thousands of PLN)

Content	2012			2013			2014			2015		
	Setting rates below upper limits	Reliefs and exemptions	Tax debt write-off	Setting rates below upper limits	Reliefs and exemptions	Tax debt write-off	Setting rates below upper limits	Reliefs and exemptions	Tax debt write-off	Setting rates below upper limits	Reliefs and exemptions	Tax debt write-off
Real estate tax	1825809	593449	105544	2031692	642002	95689	2122126	660169	94825	2296280	685036	92524
Agricultural tax	689780	3597	13903	649680	2777	11516	464079	2687	11493	290080	3971	10924
Means of transport tax	395168	3217	5198	436194	3434	4852	471968	2790	5864	510052	2561	4592
Forest tax	2883	511	333	1632	411	379	1348	387	348	1789	466	310
Total	2913640	600774	124978	3119198	70624	112436	3059521	666033	112530	3098201	692034	108350

Source: own study based on reports of commune budgets.

make certain exemptions<sup>8</sup>, which is connected with irretrievable loss of certain budget revenues.

Some local governments do not rely only on fiscal grounds, but they treat local taxes (and local fees) as e.g. an incentive for economic activity in the commune and to attract domestic or foreign capital, as well as new residents to their area.<sup>9</sup> It should be emphasized that the policy of using excessive fiscal preferences may prove disadvantageous because budget revenue can be lost forever, i.e.: approx. 3.640 million in 2012, 3.302 million in 2013, 3.838 million in 2014 and in 2015 – PLN 3.899 million. The loss of the relatively high tax revenue in the commune may have a direct impact, e.g. on a decline in investment activity. As it is illustrated by the data in tab. 2 the largest amount of lost income falls on property tax and vehicle tax. Local authorities within their powers of taxation most commonly use the reduction of the top tax rates, then tax debt write-offs and reliefs and exemptions. Other options that are used more seldom include payment in installments and deferring payment terms of tax arrears [Brzowska, Kogut-Jaworska 2016; Przygodzka 2014].

In the agricultural tax communal authorities apart from that they have the power to introduce tax reliefs and exemptions of an objective nature, other than those specified in the Act, may set the corporate tax rate within the limits set by the law. They can reduce the purchase price of rye, assumed for this tax, as well as they have

<sup>8</sup> For example, a rate of tax can be lowered while taking into consideration a type of business activity. For buildings rates can be diversified due to their localization, a way of using, a type of buildings, technical condition or the age of a building.

<sup>9</sup> So far two communes tried to increase their attractiveness by passing the resolution on exemptions from real estate tax. These were: Michałowo (Podlaskie) and Września (Wielkopolskie). According to the authorities it is to attract new residents and tax-payers.

a right to include some of the villages to another tax district. The tax that is similar to the agricultural tax is the forest tax. In this case, the manifestation of the tax power is the ability of commune authorities to introduce additional exemptions. They can also reduce the average price of wood, according to which the tax is calculated on the area of a given commune. The local authorities are free within the power of taxation to determine the tax rate on means of transport within the rates set by the law. They can also differentiate them and extend the list of exemptions.

The rates of vehicle tax are set usually at a lower level than the maximum corporate tax rate. In order to increase their attractiveness to stakeholders in the transport sector, local authorities use tax policy consisting in lowering the maximum rate, applying exemptions, deductions and write-offs of tax liabilities. Careful decision-making regarding the amount of tax is related to the fact that excessively high rates, e.g. in comparison with neighboring communes, may result in registering means of transport in another commune. As in the case of property tax, the full power of taxation is limited by upper limits of tax rates, which communal authorities cannot exceed by their resolutions. Most often, this tax is an instrument of fiscal policy of local government in order to reduce the top tax rates.

Local authorities have no powers to decide on any element of the structure of the following taxes: inheritance and gift tax, civil transactions and a tax card. Although these receipts supply the commune budgets, the local authorities do not decide on any element of their design, they are not entitled to introduce deductions and exemptions. This means no power of taxation, although they are included in the group of commune sources of tax revenues.

## 5. Conclusions

The abovementioned discussion allows to present some general conclusions oriented to the needs of local government practice. To some extent, the comments and suggestions as well as proposals can be used as premises to initiate the correction of existing legislation governing tax issues in communes.

1. Tax policy of communes affects the amount of their own income. Therefore, to ensure the independence of decision-making in the area of setting the amount of taxes, it is not advisable to try to limit the range of commune powers. The range of the tax power is of particular importance in the income independence of communities. An appropriately determined high level of own income allows communes to become independent to a greater extent.

2. Among the analysed communes a considerable variation of tax rates can be observed. One may be tempted to claim that to a large extent, the main motive for setting the level of tax rates is taking political considerations into account, or taking actions focused on increasing investment attractiveness for potential external investors, as well as local entrepreneurs.

3. The largest range of commune tax control applies to property tax. Significant effects of reducing the tax burden originate from that tax. In this case communal authorities are willing to exercise their powers of taxation. This is expressed in reducing the top tax rates using a different range of reliefs and exemptions.

4. Among the local taxes the greatest fiscal importance belongs to property tax. However, not all communes treat the tax as a source of maximum productivity, i.e. they do not seek to set the tax rates at the level of the upper limit established annually by the Minister of Finance, and they use their powers to introduce exemptions and reliefs.

5. To implement the rationalization of the management of local finances a solution that should be considered is the transfer of tax power to districts. This would refer to the transport tax, which shows economic activity in business. The tasks that would belong to districts are: registration of vehicles, issuance and withholding documents confirming a right to drive, issuing licenses and permits for domestic reward carriage of passengers and goods. The location of this tax over a larger area is justified by achieving potentially higher performance of this source of own income.

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