

Environmental protection solutions and real estate tax

Rozwiązania z zakresu ochrony środowiska a podatek od nieruchomości

Решения в области охраны окружающей среды и налог на недвижимость

Охорона навколишнього середовища та податок на нерухомість

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Summary: This study analyses property tax regulations in the context of taxation of land occupied by photovoltaic farms and taxation of electrofilters and hydroelectric power plants in the context of environmental solutions. The analysis of the current regulations leads to the conclusion that there are solutions in the real estate tax that can be regarded as, to put it mildly, not encouraging “green” behaviour, an example of which is the highest rate of taxation land occupied by a photovoltaic power plant, as well as the taxation of elements of hydroelectric power plants. Also, the “randomness” in the taxation of structures in property tax raises doubts about the taxation of electrostatic precipitators, resulting in the lack of the expected incentive (stimulus) of an ecological nature for the installation of such facilities. The author used the dogmatic and legal analysis method and an analysis of administrative court decisions.

Key words: tax, property tax, local taxes, structures, business activity

Streszczenie: Przedmiotem opracowania jest analiza regulacji podatku od nieruchomości w kontekście opodatkowania gruntów zajętych na farmy fotowoltaiczne oraz opodatkowania elektrofiltrów i elektrowni wodnych w kontekście rozwiązań ekologicznych. Analiza obowiązujących przepisów prowadzi do wniosku, że w podatku od nieruchomości występują rozwiązania, które można uznać za co najmniej niemotywuujące do zachowań „ekologicznych”, czego przykładem jest opodatkowanie najwyższą stawką gruntów zajętych na elektrownię fotowoltaiczną, jak również opodatkowanie elementów elektrowni wodnych. Ponadto „przypadkowość” w opodatkowaniu budowli w podatku od nieruchomości powoduje wątpliwości odnośnie do opodatkowania elektrofiltrów, co skutkuje brakiem oczekiwanej zachęty (bodźca) o charakterze ekologicznym do instalowania tych obiektów. Autor posłużył się analizą dogmatyczno-prawną oraz analizą orzeczeń sądów administracyjnych.

Słowa kluczowe: podatek, podatek od nieruchomości, podatki lokalne, budowle, działalność gospodarcza

Резюме: Предметом данной работы является анализ регулирования налога на недвижимость в контексте налогообложения земель, занятых фотоэлектрическими фермами, и налогообложения электрофильтров и гидроэлектростанций в контексте экологических решений. Анализ действующих норм приводит к выводу о наличии в налоге на недвижимость решений, которые можно рассматривать, по крайней мере, как немотивирующие для «экологичного» поведения, примером которых является налогообложение по максимальной ставке земли, занятой фотоэлектрической станцией, а также налогообложение элементов гидроэлектростанций. Кроме того, «случайность» в налогообложении сооружений в рамках налога на имущество вызывает сомнения в налогообложении электрофильтров, что приводит к отсутствию ожидаемого стимула (побуждения) экологического характера для установки этих сооружений. Автор использовал догматико-правовой анализ и анализ решений административных судов.

Ключевые слова: налог, налог на имущество, местные налоги, сооружения, хозяйственная деятельность

Резюме: Предметом дослідження є аналіз податкового законодавства на нерухоме майно в контексті оподаткування землі, зайнятої під фотоелектричні ферми та оподаткування електрофільтрів і

гідроелектростанцій у контексті екологічних рішень. Аналіз чинного законодавства дозволяє зробити висновок, що в податку на нерухоме майно існують рішення, які можна вважати принаймні такими, що не мотивують “екологічної” поведінки, прикладом чого є найвища ставка оподаткування землі, зайнятої під фотоелектричну станцію, а також оподаткування елементів гідроелектростанцій. Крім того, “випадковість” оподаткування будівель податком на нерухоме майно викликає сумніви щодо оподаткування електрофільтрів, що призводить до відсутності очікуваного екологічного стимулу для встановлення цих об’єктів. Автор використовував догматико-правовий аналіз та аналіз рішень адміністративних судів.

Ключові слова: податок, податок на нерухоме майно, місцеві податки, будівлі, підприємницька діяльність

Introduction

It is indisputable that, apart from the fiscal function, taxes, especially those related to, i.a, property rights, such as real estate tax, can also stimulate specific social processes.¹ Nowadays, as part of sustainable development policy, one of the priority goals of such taxes is to care for the natural environment, which involves the appropriate shaping of tax solutions. At the same time, the theory distinguishes a group of so-called “ecological taxes,” which consist of environmentally friendly emission taxes, indirect taxes and tax-related fees that stimulate financial solutions.² At the same time, it is undisputed that these taxes not only serve to implement the desired solutions for ecological effects but also are one of the most effective tools for influencing the environment.³ Economic goals can be achieved by introducing not only specific “ecological” taxes but also “ecological” solutions in the existing taxes.⁴ In this context, doubts arise regarding the assessment of legal solutions in the real estate tax as having a significant impact on environmental protection.

At the same time, there are other important arguments justifying the analysis of real estate tax regulations also in the context of ecological solutions. The importance of real estate tax is indicated, on the one hand, by the economic argument that the annual revenues to municipal budgets from this tax amount to over PLN 20 billion, and on the other hand, by numerous arguments relating to normative issues in this tax. In particular, the real estate tax applies to over 50,000 judgements of administrative courts,⁵ including several resolutions of the Supreme Administrative Court of Poland, and, since 2011, eight judgements and one signalling decision of

¹ R. Dowgier, A. Olechno, S. Grabowska, *Municipal Tax Policy in State Emergencies*, Białostockie Studia Prawnicze 2024, vol. 29, no. 1, p. 147.

² J. Głuchowski, *Podatki ekologiczne*, Warszawa 2002, p. 11 and 177.

³ Ibidem, p. 11 and 21.

⁴ A. Ogonowska, *Ekologiczne aspekty w polskim systemie podatków*, in: *System podatkowy w Polsce. Jego rola i znaczenie w procesach gospodarowania*, ed. W. Bożek, Szczecin 2016, p. 263.

⁵ Behind the Central Database of Administrative Court Judgments.

the Constitutional Tribunal have been passed.⁶ On the other hand, real estate tax at the legal level seems to be ideal also as a tool of tax policy in the field of ecology. It is characterised by, among others, simplicity of structure, brevity of regulations, stable subject of taxation and lack of “revolutionary” changes over several years. Additionally, taking into account the subject of taxation under this tax, including land and buildings, among others: related to energy production and pollution of land, air or water, *prima facie* it seems to be an appropriate instrument for achieving ecological goals. Concurrently there is a doubt as to whether the legislator is properly implementing this goal. This assumption should be verified by analysing the applicable real estate tax regulations in the scope of current problems resolved in the jurisprudence and being disputed in the doctrine. The provisions of two typical tax exemptions related to environmental protection, which are included in this tax as a typical environmental protection instrument, will be omitted in the analysis.

This study analyses real estate tax regulations in the context of taxation of land used for photovoltaic farms and taxation of electrostatic precipitators and hydro-power plants in the context of ecological solutions. The choice of the above problems was dictated by their topicality and connection with the issue of ecology.⁷ Also, due to the judgement of the Constitutional Tribunal of 4 July 2023,⁸ which declared the unconstitutionality of the provisions defining a structure in real estate tax, as a result of which its new definition should be in force from 1 January 2025, the legislator now has the opportunity to take into account, for example, preferential facilities serving ecological purposes. In this context, this article should also be treated as a voice in the debate on the direction of possible legal solutions.

1. Legal framework

When characterising the principles of real estate taxation, it should be noted that under Article 3 section 1 point 1 of the Act of 12 January 1991 on Taxes and Local

⁶ See broadly: R. Dowgier, *The Impact of Abstract Control by the Constitutional Court on the Recovery of Property Tax Overpayments: Procedural Issues*, Białostockie Studia Prawnicze 2023, vol. 28, no. 2, pp. 68–69.

⁷ Of course, there are a great number of other issues such taxation of wind farms (see K. Teszner, *Legal Aspects of Taxation of Offshore Wind Farms in Poland*, Studia Iuridica Lublinensia 2023, vol. 32, no. 3, pp. 220–233), which are outside the scope of this analysis.

⁸ Case no. SK 14/21.

Fees,⁹ real estate taxpayers are natural persons, legal persons, organisational units, including companies without legal personality, which are owners of real estate or parts thereof, or buildings or parts thereof. Based on Article 2 section 1 and Article 3 section 1 of the Act on Taxes and Local Fees, buildings, structures (related to running a business) and land or parts thereof owned by natural persons are subject to real estate tax. Pursuant to Article 5 section 1 points 1 and 2 of the said Act, the amount of tax rates is determined by municipal councils and depends on the type of real estate and its purpose. The Act on Taxes and Local Fees in Article 5 section 1 point 1 letters a and c, and point 2 letters b and e, provides different maximum tax rates for buildings or their parts and land related to business activity and real estate that is not related to business activity. Pursuant to Article 1a section 1 point 3 of the said Act, land and buildings related to running a business are defined as land and buildings owned by an entrepreneur or another entity conducting business activity.¹⁰ Ownership should be understood in accordance with Article 336 of the Civil Code Act of 23 April 1964¹¹ as actual possession by an owner and ownership by a usufructuary, pledgee, tenant, leaseholder or a person having another right which involves specific authority over someone else's property (dependent possessor).

Based on Article 2 section 2 of the Act on Taxes and Local Fees, agricultural land is exempt from real estate tax, except when it is taken over for business purposes. In turn, according to Article 1 of the Act of 15 November 1984 on Agricultural Tax,¹² land classified in the register of land and buildings as agricultural land is subject to agricultural tax, with the exception of land used for business activities other than agricultural activities. Interpreting Article 1 of the Agricultural Tax Act in connection with Article 2 section 2 of the Act on Taxes and Local Fees, it should be stated that land classified as agricultural in the register of land and buildings will not be subject to agricultural tax if it is used to conduct business activities other than agricultural activities.

Court judicature has repeatedly commented on the understanding of the concept of “taking possession” of agricultural land for business purposes. The courts

⁹ Consolidated text: Journal of Laws 2023 item 70 as amended (hereinafter: the Act on Taxes and Local Fees).

¹⁰ In accordance with the judgment of the Constitutional Tribunal of 24 February 2021, Article 1a section 1 point 3 of the Act of 12 January 1991 on Local Taxes and Fees (Journal of Laws 2019 item 1170), understood as meaning that the connection of land, building or structure with running a business is determined only by the possession of the land, building or structure by an entrepreneur or other entity conducting business activity, has been found inconsistent with Article 64 section 1 in connection with Article 31 section 3 and Article 84 of the Constitution of the Republic of Poland.

¹¹ Consolidated text: Journal of Laws 2024 item 653 (hereinafter: Civil Code).

¹² Consolidated text: Journal of Laws 2020 item 333 (hereinafter: Act on Agricultural Tax).

find that the concept of “occupation for the conduct of a business activity” cannot be identified with the concept of “connection with the conduct of a business activity” as defined in Article 1a section 1 point 3 of the Act on Taxes and Local Fees,¹³ which means that in order to tax agricultural land with the real estate tax, the mere possession of land by an entrepreneur is not enough within the meaning of Art 1a section 1 point 3 of the Act on Taxes and Local Fees. The above position was justified by the fact that synonymous interpretation prohibits the assumption that the legislator assigns the same meaning to different phrases.¹⁴ Courts commonly assume that the scope of both concepts is that land taken for conducting business activity will always be related to conducting this activity, but mere possession by the entrepreneur or another person conducting business activity is not enough. However, judicature recognises that taking possession is also a requirement for the land to be considered occupied for business purposes.¹⁵ In turn, in the judgements of the Voivodship Administrative Court of 20 January 2009,¹⁶ referring to the literal interpretation of Article 2 section 2 of the Act on Taxes and Local Fees, it is indicated that, in accordance with the definitions contained in the Polish dictionary, the word “zająć”, “zajmować” (occupy) means – to fill up a space with oneself or an object, and the phrase “zająć się”, “zajmować się” (engage in) means – to start doing something or work on something, to do some work. These definitions show that the concept of “land occupied for conducting business activities” should be understood as the actual performance of specific activities (actions on the land) resulting in the achievement of intended goals or achievement of a specific result related to the conducted business activity. The jurisprudence draws attention to the fact that the occupation of land for running a business means that the land is taken exclusively from agricultural production through actual activities.¹⁷ The courts recognise that such a situation arises, for example, when melioration works are commenced, roads are marked out, and water and sewage networks are reconstructed.¹⁸ The above theses, established in judicature, should be fully accepted.¹⁹

As a result, based on court judicature, land on which such activity is actually conducted should be considered as “occupied for conducting business activities.”

¹³ The judgment of the Voivodship Administrative Court of 8 September 2005, III SA/Wa 346/2005.

¹⁴ The judgment of the Voivodship Administrative Court of 30 October 2007, I SA/Wr 819/07.

¹⁵ The judgment of the Voivodship Administrative Court of 2 April 2014, I SA/Gd 1631/13.

¹⁶ From III SA/Wa 2129/08 to III SA/Wa 2130/080.

¹⁷ Among others, judgment of the Supreme Administrative Court of 16 July 2010, II FSK 1637/09.

¹⁸ The judgments of the Supreme Administrative Court of 2 April 2010, II FSK 1942/08 and 10 January 2007, II FSK 97/06.

¹⁹ See W. Morawski, in: T. Brzezicki, K. Lasiński-Sulecki, P. Majka, W. Morawski, *Ustawa o podatkach i opłatach lokalnych. Komentarz*, ed. W. Morawski, Gdańsk 2016, pp. 195–196.

The analysis of court judgements also leads to the conclusion that the assessment of the occupation of agricultural land for business purposes should be related to actual (observable) activities that make it impossible to conduct other activities. Although the theses from the judgements mentioned above are undisputed, in practice, the analysed regulation gives rise to interpretation disputes, among other things: in the scope of preparatory activities related to the investment in the event of undertaking only formal and legal (i.e. not actual) activities.²⁰ At the same time, the judiciary does not raise any doubts about the taxation of land in a situation where an investment is implemented. In such circumstances, agricultural land should always be treated as occupied for business purposes. For example, in the judgement of the Voivodship Administrative Court of 5 February 2007,²¹ it was found that lands classified in the land register as wasteland and agricultural land were subject to the regulations of the Act on Taxes and Local Fees and were subject to taxation as of the commencement of construction-related activities on them. In the Court's opinion, taking possession of land to conduct a business activity covers not only the actual performance of activities falling within the scope of this business, but also activities aimed at the performance of such economic activities, and therefore also the so-called preparatory activities. In turn, in the judgement of the Voivodship Administrative Court of 6 February 2014,²² it was indicated that preparatory activities aimed at generating income include actual activities involving interference in the land causing a change in the land that prevent its use as agricultural land. A similar view was expressed even in the actual situation in which agricultural activity was still carried out on the land in parallel with its occupation.²³

2. Land occupied for a photovoltaic farm

In the context of the abovementioned understanding of the term “occupied” for running a business, a doubt arises whether it should be applied to the assessment of

²⁰ See e.g. judgment of the Voivodship Administrative Court of 4 December 2007, I SA/Kr 757/07; judgment of the Voivodship Administrative Court of 4 December 2012, I SA/Gl 531/1; judgment of the Voivodship Administrative Court of 11 September 2007, I SA/Go 384/07; judgments of the Supreme Administrative Court of 2 April 2010, II FSK 1942/08; judgment of the Supreme Administrative Court of 10 January 2007, II FSK 97/06; judgment of the Voivodship Administrative Court of 14 September 2006, I SA/Wr 19/06.

²¹ I SA/Wr 1354/06.

²² I SA/Gl 817/13.

²³ The judgment of the Supreme Administrative Court of 3 April 2015, II FSK 604/13.

a typical situation in which a photovoltaic farm was built on agricultural land. The problem is related to the possibility of further agricultural use of the plot on part of which the solar power plant equipment is located. The doubt concerns whether, on the surface of the land on which the farm is located, which is indisputably the part “occupied” for running a business, for the purposes of determining the type of tax paid, it is necessary to separate the part of the land including the buildings to the foundations of which the photovoltaic panels are attached – and consider only this specific part of the land as subject to real estate tax. In turn, the remaining part of the land to be used for agricultural purposes (e.g. sheep grazing, keeping apiaries or growing plants) will be subject to agricultural tax as agricultural land that is not used for business activities.

In the Voivodship Administrative Court’s judgement of 7 May 2019,²⁴ which was one of the first to address the above issue, it was assumed that in the light of Article 1 of the Agricultural Tax Law, it is irrelevant whether or not there will be agricultural activity on the land. What is important is that if the land is occupied for the performance of economic activities – this circumstance, so to speak, “takes it out” of agricultural taxation and moves it into the scope of property taxation. It therefore makes no sense to analyse from the perspective of agricultural activities whether the area will be used in part or entirely for agricultural purposes. It is important that the entrepreneur needs this area to run a photovoltaic farm and that the area is fenced. The court pointed out that if the taxpayer-entrepreneur did not need the land, it would not have been fenced. If the taxpayer uses and fences the land, it means that the area is occupied for business purposes. Even conducting agricultural and at the same time business activities in a given area gives priority to real estate tax, and agricultural tax is excluded under Article 1 of the Agricultural Tax Act. According to this provision, land is excluded from agricultural tax not only when it is occupied “exclusively,” i.e. 100%, for running a business, and not only when agricultural activity there is excluded or significantly limited.²⁵ The court stated that if a photovoltaic farm is located on land, it is impossible to conduct proper, complete and rational agricultural activity there. Therefore, the entire area under the photovoltaic power plant should be considered as occupied for business activities and, therefore, it will be subject to real estate tax at the highest rates for real estate related to business activities. Additionally, the Court noted that if the agricultural land on which the photovoltaic power plant is located is fenced, this results in

²⁴ III SA/Wa 1932/18.

²⁵ The judgment of the Supreme Administrative Court of 9 August 2023, III FSK 385/23.

a clear separation of agricultural land for use in business activities. Even if the land can be used, for example, for animal farming, this activity will not be primary, but incidental.²⁶

The above theses should be divided by pointing out that already during the construction of the photovoltaic farm, the plots, despite their agricultural nature, are entirely occupied for business purposes, which results in their area being taxed with real estate tax at the rates applicable to real estate related to running a business. Similarly, if, after completion of construction, the investment results in the location of photovoltaic farm equipment on the entire plot and its fencing, this results in the taxpayer taking over the entire agricultural land for business purposes.²⁷

Therefore, there is no basis for measuring each time the area of the land on which the farm is located to calculate real estate tax, delimiting only the land on which the buildings with photovoltaic panels attached to them are located, and considering the remaining part of it that is used for agricultural purposes, such as grazing animals or growing plants, as not used for business activities.²⁸

As a side note, it should be mentioned that in the context of treating agricultural land as subject to real estate tax, interpretation problems analogous to the one described above arise in the situation of taxation of protection zones of industrial plants²⁹ and land occupied for mineral extraction and then subjected to recultivation.³⁰

3. Taxation of structures related to environmental protection

The definition of structure contained in Article 1a section 1 point 2 of the Act on Taxes and Local Fees stipulates that structure is a construction object within the

²⁶ Similar judgment of the Voivodship Administrative Court of 7 March 2023, I SA/Gd 1071/22.

²⁷ For a different opinion, see: D. Jankowska, A. Kałużny, *Opodatkowanie elektrowni fotowoltaicznych – im dalej w las, tym więcej drzew*, Przegląd Podatkowy 2022, no. 4, p. 42.

²⁸ R. Dowgier, L. Etel, G. Liszewski, B. Pahl, *Komentarz do art. 2*, in: *Podatki i opłaty lokalne. Komentarz*, 2021 [LEX database].

²⁹ See the judgment of the Voivodship Administrative Court of 16 April 2024, I SA/Wr 800/23.

³⁰ See more broadly P. Majka, *Taxation of Agricultural Land Used for Conducting Business Activity in the Light of Judicial Practice of Administrative Courts*, in: *Essential Problems with Taxation of Agriculture*, eds. M. Burzec, P. Smoleń, Lublin 2017, pp. 140–142 and 146–147; R. Dowgier, L. Etel, G. Liszewski, B. Pahl, *Komentarz do art. 2*; the judgment of the Supreme Administrative Court of 7 September 2022, III FSK 939/21; B. Pahl, *Opodatkowanie użytków rolnych zajętych na farmy fotowoltaiczne. Glosa aprobująca do wyroku WSA z dnia 13 kwietnia 2018 r.*, I SA/Lu 26/18, Przegląd Podatków Lokalnych i Finansów Samorządowych 2020, no. 7, pp. 35–40.

meaning of provisions of the construction law, which is not a building or object of small architecture, or a construction device within the meaning of the provisions of the construction law related to a construction object that ensures the possibility of using the object in accordance with its purpose. Based on Article 3 point 1 of the Construction Law Act of 7 July 1994,³¹ a construction object should be understood as a building, structure or small architectural object together with installations ensuring the possibility of using the object in accordance with its intended purpose, constructed using construction products. Therefore, a building within the meaning of the Act on Taxes and Local Fees should be considered to be a building that has been clearly indicated in the definition of a building or in other provisions of the Construction Law.³² At the same time, in accordance with Article 3 point 3 of the Construction Law, buildings include, in particular: airports, roads, railway lines, bridges, viaducts, flyovers, tunnels, culverts, technical networks, free-standing antenna masts, free-standing advertising devices permanently attached to the ground, earth structures, defensive structures (fortification), protective structures, hydrotechnical structures, tanks, free-standing industrial installations, or technical devices, sewage treatment plants, landfills, water treatment plants, retaining structures, overground and underground pedestrian crossings, land development networks, sports buildings, cemeteries, monuments, and also construction parts of technical equipment (boilers, industrial furnaces, nuclear power plants, wind farms and other devices) and foundations for machines and devices, as technically separate parts of objects constituting a functional whole. In turn, pursuant to Article 3 point 9 of the Construction Law, a construction device is considered a technical device ensuring the possibility of using the facility in accordance with its intended purpose, and includes connections and installation devices, including for sewage treatment or collection, passages, fences, parking areas and areas for garbage bins.

Due to the classification of an object as a structure in real estate tax, there is a broader problem assessed as “industry-related” in the taxation of structures, which is additionally not based on clear criteria adopted by the legislator but seems accidental.³³ The legislator does not use a clear criterion for classifying objects that are subject to real estate tax as buildings. Similar facilities with the same function are often subject to taxation or do not constitute buildings, depending on which industry they belong to, e.g. energy, telecommunications, gas, mineral extraction,

³¹ I.e. Journal Laws 2023 item 682 (hereinafter: Construction Law).

³² The judgment of the Constitutional Tribunal of 13 September 2011, P 33/2009.

³³ P. Karwat, G. Liszewski, P. Majka, W. Morawski, K. Radzikowski, *Czy cały wiatrak jest budowlą przy obliczaniu podatku od nieruchomości?*, Wysokie Napięcie, 15.09.2018, <https://wysokienapiecie.pl/13142-turbina-wiatrowa-budowla-podatek-od-nieruchomosci-opinia-prawnikow/> [access: 1.04.2024].

etc. In terms of legal solutions regarding buildings in light of environmental protection issues, doubts arise, among others: about taxation of electrostatic precipitators, as well as hydrotechnical facilities related to the operation of hydroelectric power plants.

In the field of ecological facilities, doubts arise first of all regarding the basis for taxing the so-called electrostatic precipitators, which are devices used to purify exhaust gases from dust to protect the atmosphere. Until about 2020/2021, in the judicature of administrative courts, electrostatic precipitators were generally considered to be technical devices related to a building, which allowed them to be classified as a building device within the meaning of Article 3 point 9 of the Construction Law, being a structure subject to real estate tax.³⁴ Currently the judicature questions the automaticity of the above approach, pointing out that the essence of the matter of classifying electrostatic precipitators, apart from the issue of their potential classification into the category of buildings, requires demonstrating what type of building the electrostatic precipitators are associated with and that this building constitutes a structure (or building) within the meaning of the Act on Taxes and Local Fees.³⁵ Therefore, it is currently not certain whether these devices are subject to real estate tax,³⁶ especially whether they are buildings.³⁷

Next, attention should also be paid to policy related to real estate tax imposed on power plant facilities generating energy from renewable sources. The provisions of the Act on Taxes and Local Fees introduce uniform taxation of hydro, photovoltaic and wind power plants,³⁸ based on the recognition that only the building

³⁴ See the judgment of the Voivodship Administrative Court of 22 April 2021, I SA/Po 853/20 and judgment of the Voivodship Administrative Court of 14 September 2016, I SA/Gl 783/16 (these judgments were annulled).

³⁵ The judgments of the Supreme Administrative Court of 19 September 2023, III FSK 1256-1257/22.

³⁶ See the judgments of the Voivodship Administrative Court of 11 April 2023, I SA/Po 1539-1542/22; judgment of the Voivodship Administrative Court of 29 June 2022, I SA/Po 10/22; judgment of the Voivodship Administrative Court of 11 July 2023, I SA/Rz 183/23.

³⁷ See the judgments of the Voivodship Administrative Court of 28 March 2024, I SA/Po 84-25/24. See also the doctrinal views: P. Banasik, *Opodatkowanie podatkiem od nieruchomości urządzeń technicznych na przykładzie elektrofiltrów*, Przegląd Podatkowy 2019, no. 10, pp. 41–47; T. Gwóźdź, *Opodatkowanie podatkiem od nieruchomości urządzeń technicznych w Polsce – zagadnienie wybrane*, Kwartalnik Prawa Podatkowego 2021, no. 2, p. 44; W. Morawski, in: *Podatek od nieruchomości w orzecznictwie sądów administracyjnych. Komentarz. Linie interpretacyjne*, eds. W. Morawski, T. Brzeziński, K. Lasiński-Sulecki, O. Lunarski, P. Majka, J. Wantoch-Rekowski, Warszawa 2013, p. 75.

³⁸ It is worth mentioning the historical problem of taxation of wind farms in 2017–2018 – Article 3 point 1 of the Act on Investments in Wind Farms (Journal of Laws 2016 item 961) introduced, from 1 January 2017, the rule that a wind farm is a structure within the meaning of the construction law, consisting of at least a foundation, a tower and technical elements. However, in point 2 of Article 3 of this Act, it was clarified that the technical elements of a wind power plant are: a rotor with a set

parts of these power plants are subject to real estate tax as structures (in the case of photovoltaic farms – foundations and the supporting structure, in the case of wind farms – foundation and tower), which seems to meet the postulate of equality. In this context, however, there is significant doubt regarding the taxation of hydro-power plants because construction elements constitute a disproportionately large part of these power plants compared to other power plants, which significantly affects the tax base. Article 3 point 3 of the Construction Law lists hydrotechnical structures, and the annex to the Construction Law Act includes “hydrotechnical structures for damming, discharge and regulation, such as: dams, water thresholds and stages, weirs, flood gates, embankment locks, siphons, embankments for flood protection, canals, navigable locks, edges and groynes, drainage ditches” in category XXVII. The set of construction objects of category XXIV also includes water management objects such as water and above-water reservoirs and fish ponds. In view of the above, a hydroelectric power plant is recognised in the judicature as a structure listed in the Construction Law as a hydrotechnical structure which should also be recognised as such under the Act on Taxes and Local Fees.³⁹

Additionally, in practice, there is a problem with determining the tax base for structures constituting hydropower plants⁴⁰ due to the age of the hydrotechnical facilities that constitute them (usually they are several dozen years old), in the case of which their “market value” is often determined as the tax base, which causes procedural difficulties.⁴¹ The above problems, resulting in burdensome taxation of hydroelectric power plants in light of the need to introduce incentives for renewable energy generation, allow for the formulation of a postulate on the need for preferential treatment of hydroelectric power plants compared to other power plants.

of blades, a drive transmission unit, a power generator, control systems and a gondola unit with a mounting and a rotation mechanism (additionally, there was an amendment to category XXIX in the Annex of the Construction Law Act). Then, the change in this regulation in 2018 resulted in the restoration of the status quo from before 2017 for taxation purposes as of 1 January 2018, i.e. taxation only of the construction parts of a windmill.

³⁹ See the judgment of the Voivodship Administrative Court of 22 September 2020, I SA/Gd 364/20.

⁴⁰ Pursuant to Article 4 section 1 point 3 of the Act on Taxes and Local Fees, the tax base for buildings or their parts related to running a business is the value referred to in the provisions on income taxes, determined on January 1 of the tax year, constituting the basis for calculating depreciation in that year not reduced by depreciation write-offs, and in the case of fully depreciated structures – their value as of January 1 of the year in which the last depreciation write-off was made. Pursuant to Article 4 section 5 of the Act on Taxes and Local Fees, if the buildings or parts thereof referred to in section 1 point 3, no depreciation deductions are made – the tax base is their market value, determined by the taxpayer on the date of tax liability.

⁴¹ The judgment of the Supreme Administrative Court of 10 May 2023, III FSK 2077/21.

Conclusion

Currently, there is no doubt about the need to use legal regulations concerning environmental protection, including standards specifying the conditions for the use of environmental resources and regulations as an incentive for environmental protection behavior. For this purpose, primarily environmental protection law regulations are used, which provide for, among others, benefits and sanctions for entities using natural resources.⁴² It is also justified to use tax regulations regarding the taxation of entrepreneurs for this purpose.

The conducted analysis leads to the conclusion that real estate tax is currently not used by the legislator as a tool to achieve a wide range of environmental protection objectives.⁴³ It is obvious that it was not created with broad ecological solutions in mind, and the applicable regulations in this area are limited to exemptions for land, buildings and structures located in national parks or nature reserves and serving directly and exclusively to achieve objectives in the field of nature conservation (Article 7 section 1 point 8 of the Act on Taxes and Local Fees) and land constituting wasteland, ecological land, wooded and bushy land (Article 7 section 10 on Taxes and Local Fees). At the same time, the nature of the real estate tax implies that it could be an effective tool of ecological policy.

The analysis of the applicable regulations leads to the conclusion that there are solutions in the real estate tax that can be described, to put it mildly, as not encouraging “green” behavior, an example of which is the highest rate of taxation of land occupied for a photovoltaic power plant, as well as taxation of elements of hydroelectric power plants. Also, the general “randomness” of taxation of buildings in real estate tax causes doubts regarding the taxation of electrostatic precipitators, which results in the lack of the expected ecological incentive to install these facilities.

Translated by Grzegorz Galdyn

⁴² A. Gorgol, *Prawo ochrony środowiska jako ustawa daninowa*, Krytyka Prawa. Niezależne Studia nad Prawem 2020, vol. 12, no. 4, p. 74.

⁴³ This is not an exception, because the literature emphasises that the Polish tax system is characterised by a small number of taxes related to environmental protection, A. Ogonowska, *Ekologiczne aspekty...*, p. 266.

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