НАЛОГОВОЕ ПРАВО

UDK 343.2
DOI: 10.54649/2077-9860-2023-1-44-50

Adam Kałążny[1]
[1]**Nicolaus Copernicus University**
Poland,Toruń
e-mail: akalazny@deloittece.com
ORCID ID: 0000-0002-6186-9549

THE IMPACT OF CHANGES IN THE INTERPRETATION OF NORMATIVE ACTS ON THE STIMULATING FUNCTION OF THE TAX ON THE EXAMPLE OF THE POLISH REAL ESTATE TAX

Annotation:

The article presents the issue of variability in the approach to the interpretation of tax law by courts. The author's goal is to determine how changes in the approach to the interpretation of regulations may affect the implementation of the tax stimulating function. The analysis was carried out on the example of Polish regulations governing real estate tax, in particular providing for two types of tax exemptions: for harbour infrastructure and for railway infrastructure. Since in Poland the real estate tax paid on infrastructure facilities is a significant burden for entrepreneurs, tax exemptions have a large stimulating function by encouraging taxpayers to build and maintain certain types of assets (e.g., harbours, railway lines). The author presents how the approach taken by the courts to the interpretation of the exemption for harbour infrastructure resulted in the exclusion of river harbours from the scope of the exemption. At the same time, contrary to this approach, the subsequent line of interpretation of the courts regarding the railway exemption enabled taxpayers to exempt railway sidings from tax. Despite this change, in the case of river harbours, the courts are still sticking to the old approach, as a result of which the stimulating function of the tax exemption for river harbours does not work.

Keywords: interpretation of law, jurisprudence, tax incentives, real estate tax, property tax

Adam Kałążny[1]
[1]Николай Коперник университеті
Польша, Торунь
e-mail: akalazny@deloittece.com
ORCID идентификаторы: 0000-0002-6186-9549

ПОЛЬШАДАҒЫ МҮЛІККЕ САЛЫҒЫ МЫСАЛЫНДА САЛЫҚТЫҢ ЫНТАЛАНДЫРУ ФУНКЦИЯСЫНА ҚАТЫСТЫ НОРМАТИВТІК ҚҰҚЫҚТЫҚ АКТІЛЕРДІ ТҮСІНДІРУДЕГІ ӨЗГЕРІСТЕРДІҢ ӘСЕРІ

Аңдатпа:

Мақалада соттардың салық заңнамасын түсіндіру тәсілдерінің өзгермелілігі мәселесі қарастырылады. Автордың мақсаты – нормативтік құқықтық актілерді түсіндіруде көзқарастың өзгеруі салықтың ынталандыру функциясын жүзеге асыруға қалай әсер ететінін анықтау. Талдау жылжымайтын мүлік салығын реттейтін, атап айтқанда, порт инфрақұрылымы және теміржол инфрақұрылымы үшін салықтық жеңілдіктердің екі түрін қарастыратын Польша құқық нормаларының мысалын пайдалана отырып жүргізілді. Польшада инфрақұрылымдық активтерге төленетін мүлік салығы кәсіпкерлер үшін айтарлықтай ауыртпалықты салатындықтан, салық

жеңілдіктері салық төлеушілерді активтердің белгілі бір түрлерін (мысалы, порттар, теміржол желілері) салуға және ұстауға ынталандыратын үлкен ынталандырушы функцияға ие. Автор порт инфрақұрылымын салықтан босатуды түсіндіруге соттардың көзқарасы өзен порттарын салықтан босату шеңберінен алып шығаруға қалай әкелгенін көрсетеді. Сонымен бірге, осы көзқарасқа қарамастан, соттардың темір жолды салықтан босатуға қатысты түсіндірудегі кейінгі тәсілдер салық төлеушілерді темір жол бойындағы салықтан босатуға мүмкіндік берді. Осы өзгеріске қарамастан, соттар өзен порттарына қатысты бұрынғыша ескі пікірді ұстанғандықтан, соның салдарынан өзен порттарын салықтан босатудың ынталандыру функциясы жұмыс істемейді.

Түйінді сөздер: құқыққа түсінік беру, заң ғылымы, салық жеңілдіктері, жылжымайтын мүлік салығы, мүлік салығы.

Adam Kałążny[1]
[1]Университет Николая Коперника
Польша, г. Торунь
e-mail: akalazny@deloittece.com
ORCID ID: 0000-0002-6186-9549

ВЛИЯНИЕ ИЗМЕНЕНИЙ В ТОЛКОВАНИИ НОРМАТИВНЫХ АКТОВ КАСАТЕЛЬНО СТИМУЛИРУЮЩЕЙ ФУНКЦИИ НАЛОГА НА ПРИМЕРЕ НАЛОГА НА НЕДВИЖИМОСТЬ В ПОЛЬШЕ

Аннотация:

В статье рассматривается проблема вариативности подходов к толкованию судами налогового законодательства. Целью автора является определение того, как изменения в подходе к толкованию нормативных актов могут повлиять на реализацию стимулирующей функции налога. Анализ проводился на примере нормативных актов Польши, регулирующих налог на недвижимость, в частности, предусматривающих два вида налоговых льгот: для портовой инфраструктуры и для железнодорожной инфраструктуры. Поскольку в Польше налог на недвижимость, уплачиваемый за объекты инфраструктуры, является существенным бременем для предпринимателей, налоговые льготы имеют большую стимулирующую функцию, поощряя налогоплательщиков строить и содержать определенные виды активов (например, порты, железнодорожные линии). Автор показывает, как подход судов к толкованию освобождения от налога для портовой инфраструктуры привел к исключению речных портов из сферы действия исключения. В то же время, вопреки этому подходу, последующие подходы судов к толкованию касательно освобождения от налога для железных дорог позволили освободить налогоплательщиков от налога на железнодорожные подъездные пути. Несмотря на это изменение, в случае с речными портами суды по-прежнему придерживаются старого подхода, в результате чего стимулирующая функция налогового освобождения для речных портов не действует.

Ключевые слова: толкование права, юриспруденция, налоговые льготы, налог на недвижимость, налог на имущество.

Introduction

The aim of the article is to present the problem of the impact that a change in the approach of courts to the interpretation of legal acts in the field of tax law may have on taxpayers' tax settlements. In particular, the article presents the problem of the impact that the changing approach of courts to the interpretation of provisions may have on the stimulating function of tax regulations. For the proper functioning of the tax system, it is necessary for taxpayers to be confident about their obligations and their rights (e.g., in the field of tax exemptions). By way of interpretation, courts may increase or reduce this certainty and, as a result, support or weaken the stimulating function of the tax provisions planned by the legislator. The analysis of the problem will be presented on the example of Polish tax regulations regulating the taxation of various types of infrastructure and the jurisprudence of Polish administrative courts. In particular, the exemption for harbour infrastructure and the exemption for railway infrastructure will be examined.

The specificity of the Polish real estate tax

Real estate tax in Poland is a kind of property tax which is a local tax collected by municipalities. While the real estate tax paid by individuals is very low (the tax on a 50-meter apartment is about EUR 12 per year), for entrepreneurs the tax is a significant burden. Total real estate tax revenues in Poland amount to approximately EUR 6 billion

per year, i.e., more than half of CIT revenues. The bulk of this amount falls on entrepreneurs.

The subject of taxation is land, buildings and structures (defined as a construction object that is not a building, Article 2(1) L.T.C.A.). The tax base is the area of land and buildings and the value of the structure (Article 4(1) L.T.C.A.). Importantly, in the case of structures, the tax base is determined as their initial value not reduced by depreciation charges, and the tax rate is 2% of this initial value. This means that the entrepreneur after 50 years of using the structure pays the full value of the investment in the form of tax (and pays on). Such regulations mean that the real estate tax is a significant cost that should be included in the business plan of any investment related to the construction of new buildings and structures. Particularly large amounts of tax are potentially associated with capital-intensive infrastructure investments. To mitigate this effect, the Polish legislator provided tax exemptions for various types of infrastructure, e.g., harbour or railway infrastructure.

The problem, however, is the vagueness of the regulations. Real estate tax is the source of an unusually large number of disputes in Poland, which is reflected in a disproportionate number of cases in the field of this seemingly niche tax, which are dealt with by administrative courts [statistics published by the Polish Supreme Administrative Court, www.nsa.gov.pl/statystyki-nsa.php, access as of 27 November 2021]. For this reason, a separate department has been separated in the Supreme Administrative Court since 1 January 2021, dealing mainly with real estate tax.

Also, the provisions regulating tax exemptions for infrastructure cause numerous disputes between taxpayers and tax authorities, and the problem in this case is the variability and inconsistency of the jurisprudence of administrative courts. This issue will be presented in the article on the example of exemptions for harbour and railway infrastructure. In each of these cases, the jurisprudence of administrative courts played an important role in determining the binding interpretation of the provisions, which had a major impact on the tax settlements of entrepreneurs.

The stimulation function of the tax

The basic function of any tax is its fiscal function, consisting in providing the financial resources necessary to carry out various tasks of the state. However, what is important, taxes also perform other functions in addition to the fiscal function, in particular the redistributive function and the stimulating function, which is indicated in the doctrine of tax law [Gomułowicz 2016]. The stimulating function also plays an important role in the case of Polish real estate tax [Pahl 2017]. As indicated above, real estate tax is a significant burden for taxpayers who are entrepreneurs and its cost must be included in the business plan of each planned investment. Therefore, the appropriate shaping of real estate tax regulations when it comes to taxing individual types of assets can effectively encourage or discourage taxpayers to invest in a given area. At the same time, a noticeable trend in Poland is that tax authorities (i.e., municipalities) prefer the fiscal function of real estate tax over the stimulating function, which is manifested, for example, in the reluctance to introduce local tax incentives [Kałążny 2020a, pp. 318-320].

For this reason, the interpretation of the provisions by the administrative courts plays a special role in ensuring the proper implementation of the tax stimulating function. In principle, the role of the courts in this respect should be to restrain the fiscal impulses of tax authorities and ensure that the regulations provided for by the legislator to encourage taxpayers to invest in a given area have their effect. In particular, the stimulating function of tax regulations may be undermined by their narrow interpretation, which leads to the fact that the tax preferences provided for by the legislator may in practice benefit a very narrow circle of taxpayers.

A directive on the interpretation of tax law that ensures the protection of taxpayers' rights is the principle of the primacy of literal interpretation. A literal interpretation sets the limits of a tax ruling within the possible meaning of the words contained in its provisions [Mastalski 2007, pp. 7-12]. That does not, of course, preclude the use of other methods of interpretation, but only in the alternative where it is not possible to determine the meaning of the terms used in a legal act by means of a literal interpretation [Brolik 2014, p. 56]. Courts, by applying a literal interpretation in the first place, provide taxpayers with certainty regarding the tax law provisions applicable to them. At the same time, the primacy of a literal interpretation reduces the risk of a narrowing of taxpayers' rights (or an extension of their obligations) by means of a teleological interpretation that would justify an increase in the tax burden on more or less camouflaged fiscal considerations. As will be presented in the further part of the article, Polish courts declare that they adhere to the primacy of

literal interpretation when interpreting tax regulations, but in practice they often depart from the linguistic meaning of the terms used in the regulations, which often leads to adverse effects for taxpayers. Moreover, the approach of the courts is characterized by instability and high volatility over the years, which only increases the uncertainty of taxpayers.

Exemption for port infrastructure

The infrastructure of harbours (both sea and river) is one of the pillars of the state's transport system. Maintaining harbours in a state that allows them to be properly operated requires large financial outlays, a significant part of which consists in modernizing existing assets and increasing their initial value. At the same time, water transport is considered to be the best fit into the policy of sustainable development due to the low degree of pollution emitted by it. For this reason, from the beginning of the L.T.C.A. (i.e., since 1991), it included an exemption for harbour infrastructure, according to which buildings used only for the needs of sea and river harbours were exempted from real estate tax. This exemption was abolished in 2001, which was motivated by the desire to increase the budget revenues of municipalities. Subsequently, after only one year, on 1 January 2002, a new provision was introduced under which harbour infrastructure structures, structures providing access to ports and marinas and land occupied for them are exempted from real estate tax (Article 7(1)(2) L.T.C.A.). The restoration of the tax exemption was motivated by the need to support the development of water transport [Kałążny 2020a, pp. 130-135].

As we see, “river harbours” have disappeared from the content of the recipe. It is difficult to find a justification for such treatment of river harbours, which are by no means distinguished by a better financial condition than sea harbours. On the contrary, river transport in Poland has been in a state of constant regression for the last 30 years.

This inconsistency in the treatment of sea harbours and river harbours in the legal situation in force since 1 January 2002 was attempted to be removed by an interpretation referring to the literal wording of the provisions. It should be noted that the provision provides for an exemption for ‘harbour infrastructure structures’, without specifying whether it is a river or sea harbour. According to the accepted principles of interpretation, the concept of “construction of harbour infrastructure” should be interpreted on the basis of the common language (since this concept is not defined in the tax act, nor does it refer to the definition from another act). Harbour infrastructure undoubtedly includes not only sea harbours facilities, but also river harbours.

However, in the jurisprudence of Polish administrative courts, a uniform line of jurisprudence has been established, according to which when defining the concept of “harbour infrastructure structure” one should refer to the provisions of the S.H.M.A. (Judgement of the Supreme Administrative Court of 14 May 2014 (II FSK 1222/12); Judgement of the Provincial Administrative Court in Wrocław of 19 October 2017 (I SA/Wr 577/17)). Thus, under the current jurisprudence, river harbour structures cannot benefit from a tax exemption on an equal footing with sea harbours.

This standpoint should be assessed unequivocally negatively. As indicated above, as a result of uncoordinated and insufficiently justified legislative action, river harbours were excluded from the scope of the tax exemption by the legislator. Subsequently, such a standpoint was sanctioned by the jurisprudence of administrative courts (despite strong arguments put forward by representatives of the tax law doctrine in favor of a different interpretation of the provisions allowing the release of river harbour structures [www.sip.lex.pl/#/commentary/587339571/137011, access as of 27 of November 2021]. As a result, the current regulations discriminate against one type of transport infrastructure (river harbours) in relation to all the others, and such a legal situation has not been justified both by the legislator and by administrative courts interpreting the provisions in question.

Moreover, the interpretation of the term ‘harbour infrastructure’ adopted by Polish courts by referring to the definition from the S.H.M.A. (despite the absence of such a reference in the L.T.C.A.) has another effect. The tax exemption may be used only by harbour infrastructure structures belonging to the so-called seaport authorities – state-owned companies (Judgement of the Supreme Administrative Court of 11 July 2013 (II FSK 678/13)). Meanwhile, private entrepreneurs who own identical harbour structures (e.g., quays) and perform identical services (e.g. consisting in unloading containers) must pay a very high real estate tax (2% per year from the initial value of the structure).

Exemption for railway infrastructure

Despite the similar subject matter of the regulation, the provisions providing for an exemption for railway infrastructure have been interpreted by Polish administrative courts in a completely different way than in the case of harbour infrastructure.

In the case of the exemption for railway infrastructure, the main doubt concerned its applicability to private infrastructure which is not part of publicly accessible railway lines, and in particular to railway sidings belonging to private entrepreneurs. Disputes between taxpayers and tax authorities in this respect arose both on the basis of the provisions of the L.T.C.A. in force in the period from 1 January 2007 to 31 December 2016, as well as on the basis of the provisions in force since 1 January 2017. This issue is directly related to the principle of the primacy of literal interpretation in tax law (as in the case of disputes over the scope of the exemption for harbour infrastructure).

Until the end of 2016, railway infrastructure structures within the meaning of the R.T.A. were exempted from real estate tax if the infrastructure operator was obliged to make them available to licensed railway carriers. Therefore, in order to determine whether a given building qualifies for exemption from real estate tax, it was necessary to determine whether it is railway infrastructure within the meaning of the R.T.A., and then whether the infrastructure operator is obliged to make it available to railway carriers.

With regard to the first of the above conditions, taxpayers most often argued that the railway infrastructure should also include sidings, but this opinion was not based on the provisions of the R.T.A. According to R.T.A., “railway infrastructure” was understood as a railway line. At the same time, the definition of 'railway line' indicated that it did not include ‘railway sidings’. Thus, ‘railway sidings’ could not be regarded as ‘railway infrastructure’.

The second condition, i.e., the question of how to understand the “obligation to make available” railway infrastructure to a licensed railway carrier, raised even more doubts. The interpretation of this concept on the basis of the provisions of the R.T.A. led to the conclusion that the tax exemption cannot be applied to sidings, because the regulations do not obliged operators to make them available to railway carriers.

The amendment introduced on 1 January 2017 significantly extended the scope of tax relief for railway infrastructure. In particular, according to the new version of R.T.A., the tax exemption covers land, buildings and structures forming part of the railway infrastructure within the meaning of R.T.A., which is made available to railway carriers (Article 7(1)(1) L.T.C.A.). The extension of the exemption to sidings was the result of both a reformulation of the provisions of the tax law and the provisions of the R.T.A. The new definition of railway infrastructure in the R.T.A. also includes sidings (Article 4(1) and Appendix 1 R.T.A.).

At the same time, as in the legal status in force until the end of 2016, two conditions must be met for the application of the exemption. First, the facility must be classified as a railway infrastructure in accordance with R.T.A. Secondly, the infrastructure must be made available to railway carriers. Importantly, in the version in force since 1 January 2017, the provision no longer provides that infrastructure must be made available to carriers on the basis of R.T.A., but only requires that the infrastructure be used by carriers.

Numerous disputes between taxpayers and tax authorities have arisen regarding the understanding of the premise of making railway infrastructure available on the basis of the regulations in force since 1 January 2017. According to some representatives of the doctrine, the condition “providing access to railway infrastructure” should be interpreted taking into account the provisions of the R.T.A. – both in the legal status in force until the end of 2016 and in the version in force since 1 January 2017 [Pahl 2017, pp. 39-52]. This approach entails serious tax consequences, as it de facto excludes the possibility of applying the exemption to sidings. It should be noted that the vast majority of railway sidings are so-called private infrastructure, used only for the own needs of the owner-entrepreneur. The provisions of R.T.A. regarding making the railway infrastructure available to the carriers shall not apply to private infrastructure.

This approach to the interpretation of the regulations was rejected in the jurisprudence of Polish administrative courts, which recognized the right of taxpayers to exempt railway sidings constituting private infrastructure from real estate tax. In particular, according to the courts, the L.T.C.A. refers to the provisions of R.T.A. in a strictly defined area, i.e., only to determine what railway infrastructure is. Therefore, the condition of making the railway infrastructure available should be interpreted on the basis of the rules of everyday language, and not through the application of the

provisions of R.T.A. If the taxpayer actually makes the railway infrastructure available to the railway carriers, the condition should be considered to be fulfilled even if it is not made according to the rules set in R.T.A.

Summary

A comparison of the approach of Polish administrative courts to the interpretation of the provisions on exemption from real estate tax for harbour and railway infrastructure leads to the conclusion that over the years the approach to the primacy of linguistic interpretation has changed.

In the line of jurisprudence concerning the interpretation of the provisions on the harbour exemption (formed in the years 2010-2014), it was assumed that in order to decode the term "harbour infrastructure" used by the legislator, it is necessary to refer to the provisions of the non-tax act (S.H.M.A.). It should be emphasized that the courts have come to this conclusion despite the fact that the provisions of L.T.C.A. do not contain such a reference. Moreover, the concept of harbour infrastructure is understandable in everyday language and, therefore, according to the approach adopted in tax law doctrine, concepts from other legal acts should not be used in such a case, since the addressees of a tax law cannot be required to have knowledge of legal language [Brzeziński 2013, p. 36]. The direct consequence of this approach of the courts is to exclude the possibility of applying the exemption for harbour infrastructure to river harbours.

At the same time, in the line of jurisprudence regarding the exemption for railway infrastructure, which was formed later (in 2017-2020), the courts adopted a different approach, adopting the primacy of literal interpretation as the applicable principle. Despite the doubts raised by the tax authorities reluctant to such a position, according to the courts, the reference to the provisions of the R.T.A. should be applied to the extent strictly indicated in L.T.C.A. This approach allowed railway sidings to be exempted from the real estate tax.

Applying the above comparison to the considerations on the implementation of the tax stimulating function, it should be noticed that the jurisprudence on the exemption for harbour infrastructure has eliminated the use of the tax incentive for the expansion and maintenance of river harbours in Poland. As a result, regulations that could and should become an important stimulus for the development of river harbours is not working, and river transport in Poland is practically not developing.

The approach of administrative courts to the principle of the primacy of literal interpretation, which could be observed in the case of the provisions on exemption for railway infrastructure, seems to suggest the emergence of understanding for the importance of the tax stimulating function. The approach of the courts opened the way for the use of the exemption by private entrepreneurs with railway sidings, and thus enabled the implementation of the stimulating function. Entrepreneurs encouraged by the tax exemption received an incentive to build and modernize railway sidings, and as a result to develop the use of rail transport (which, as more ecological than road transport, requires support by various methods, also through tax incentives).

Unfortunately, despite the emergence of a line of jurisprudence concerning railway infrastructure based on the primacy of a literal interpretation, contrary to expectations, so far administrative courts have not changed their approach to the interpretation of the provisions on the exemption for harbour infrastructure. The doctrine proposes to include in the harbour exemption the current position of the Supreme Administrative Court, according to which the reference to the provisions of another act should be applied in cases strictly provided for in the tax act [Kałążny 2020b, p. 55]. However, we still have to wait for its implementation.

Bibliography

1. Annual report of the Supreme Administrative Court, www.nsa.gov.pl/statystyki-nsa.php, access as of 27 November 2021.
2. Brolik J. (2014), *Wykładnia prawa podatkowego oraz jej determinanty*, "Zeszyty Naukowe Sądownictwa Administracyjnego" No. 3.
3. Brzeziński B. (2013), *Wykładnia prawa podatkowego*, ODDK, Gdańsk.
4. Gomułowicz A., Mączyński D. (2016), *Podatki i prawo podatkowe*, Wolters Kluwer, Warszawa.
5. Kałążny A. (2020a), *Opodatkowanie Infrastruktury Podatkiem od Nieruchomości*, Wolters Kluwer, Warszawa.
6. Kałążny A. (2020b), *Wszystko płynie – czyli o zmienności wykładni przepisów zwalniających infrastrukturę transportową z podatku od nieruchomości*, "Przegląd Podatkowy" No. 12.

7. Mastalski R. (2007), *Miejsce wykładni językowej w procesie stosowania prawa podatkowego*, Przegląd Podatkowy", No. 8.
8. Morawski W. (ed.) (2013), Brzezicki T., Lasiński–Sulecki K., Łunarski O., Majka P., Wantoch–Rekowski J., *Podatek od nieruchomości w orzecznictwie sądów administracyjnych. Komentarz. Linie interpretacyjne*. Wolters Kluwer, Warszawa.
9. Pahl B. (2017), *Podatki i opłaty lokalne. Teoria i praktyka*, Wolters Kluwer, Warszawa.
10. Pahl B. (2017), *Zwolnienie od podatku od nieruchomości infrastruktury kolejowej przed i po 1 stycznia 2017 r.*, "Samorząd Terytorialny" No. 9.

List of legal acts

1. Act of 12 January 1991 on local taxes and charges (Journal of Laws of 2019, it.1170 as Amended).
2. Act of 20 December 1996 on sea harbours and marinas (Journal of Laws of 2021, it.491 as Amended).
3. Act of 28 March 2003 on railway transport (Journal of Laws of 2003, No. 86 it.789 as Amended).