

TAX-RELATED IMPLICATIONS OF ACQUIRING OWNERSHIP OF REAL ESTATE BY NATURAL PERSONS – SELECTED ISSUES

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Summary. Tax law, treated as a branch of public law, shows strict links with other branches of the law, including the civil law or the private law. These links primarily involve taxing acts performed under the civil law. These consequences occur mainly with regard to levies included in the category of wealth taxes and revenue taxes. The subject of the analysis is the scope and nature of tax-related implications of acquiring the ownership right to real estate in individual taxes classified in these groups. On the basis of the research *de lege lata* conclusions are formulated. Primarily, the relationship between the personal and material scope of tax and acquiring real estate is demonstrated. Reference is also made to those elements of tax laws which directly affect the amount of taxation in the discussed scope.

Key words: real estate, ownership, wealth taxes, revenue taxes

1. INTRODUCTORY REMARKS

Constant and dynamic development of the tax law shows that it should be treated as a separate branch of law (previously considered a field of financial law).

It needs to be emphasized, however, that it is impossible to conduct an unambiguous delimitation of legal norms included in individual branches of laws. It is because there are strict relationships and links between them. This also applies to the tax law, which by being a branch of public law demonstrates far-reaching relationships with the civil law too (which is a typical example of private law). The relationship between the above-mentioned branches is determined by the object of the regulation [Mastalski 1994, 250].

Tax law often regulates consequences of acts performed under civil law.

The aim of this study is to analyse tax implications of natural persons acquiring the ownership of real estate. Currently applicable rules on the ground of the Polish system of tax law are presented. Due to the multidimensional nature of the subject-matter, the scope of reflections covers issues of a basic nature, that is those where the acquisition of real estate brings about effects in the sphere of levy-related duties. Due to this restriction, an in-depth analysis covers individual (all) design elements of taxes paid by the acquirer.

The scope of research also excludes an analysis of civil law regulations which govern acquisition of ownership of real estate focusing on issues falling under the scope of the title of the study.

It also needs to be emphasized that to maintain the transparency of the presented issues a conventional, though controversial classification of taxes was adopted, drawn up due to the material criterion (criterion of the object of taxation). Pursuant to it, the following can be identified: wealth taxes, revenue taxes, income taxes and consumption taxes. The nature of a tax is taken into account in the process of legal interpretation of tax law often determining the result of interpretation.¹

A review of legal solutions in a scope corresponding to the outlined research field also allows the research to be limited to wealth taxes and revenue taxes.

2. WEALTH TAXES AND REVENUE TAXES – BASIS OF IDENTIFICATION

As signalled above, among the groups of taxes classified due to the subject matter of taxation, one can identify wealth taxes and revenue taxes, which most fully reflect the research problem in question.

Therefore, it is indispensable to refer to the determinants of identifying wealth taxes and then subsequently revenue taxes.

For the first category of performances, as the name itself suggests, it is characteristic to make wealth the object of taxation. Wealth is a term taken from economic sciences, a term which on the ground of law was not given a normative meaning. In the views of legal scholars and commentators it is used in two meanings: a narrower and a broader meaning [Ziemianin and Kuniewicz 2007, 154]. In the former, it is composed of the total of assets [Czachórski 1994, 44]. Contrary to this, a broad approach assumes that wealth usually means the total of assets and liabilities. Civil law scholars and commentators as a rule understand wealth in the narrow approach [Ziemianin 1999, 156; Grzybowski 1985, 463]. It is treated in a corresponding way in the public levy law – in taxes referring to taxing it.

It is worth emphasizing that such taxes are considered historically first of the first, which was already pointed to in the study of treasury [Krzyżanowski 1923, 120]. They were rightly specified as performances imposed on taxpayers with regard to their assets or increase in the value of assets [Głąbiński 1925, 308].

Without a doubt, a distinguishing feature of wealth taxes is linking their design elements with wealth [Litwińczuk 1981, 176]. It is not, however, a homogeneous group, which influences the size and diversity of these ties [Litwińczuk 1985, 333]. Therefore, a certain simplification needs to be adopted, according to which these performances refer directly (less often indirectly) to the holding of assets

¹ Judgement of the Voivodship Administrative Court of 14 January 2010, III SA/Wa 1703/09, LEX no. 554220; judgement of the Voivodship Administrative Court of 6 December 2010, I SA/GI 752/10, LEX no. 748337; judgement of the Supreme Administrative Court of 6 February 2008, II FSK 1608/06, LEX no. 471082; judgement of the Voivodship Administrative Court of 25 June 2008, III SA/Wa 442/08, LEX no. 477467; resolution of the Constitutional Tribunal of 6 September 1995, W 20/94, “OTK” 1995, no. 1, item 6.

[Gajl 1996, 33]. However, the internal division within this category cannot be left out, according to which one needs to identify: wealth taxes encumbering the very fact of having assets, acquisition (transfer) of assets and increase in their value.

In turn, taking into consideration the criterion of the scope of the object of taxation, one can identify wealth taxes encumbering the total assets and those encumbering their individual elements. Referring to the way they are collected, one needs to point out regular and one-off wealth taxes [Litwińczuk 1985, 334].

Revenue taxes, similar to wealth taxes, show great internal diversification. The analysis of the views of legal scholars and commentators in this scope allows a demonstration of certain attributes of this type of performances.

First and foremost, it needs to be noted that it is revenue that is the object of taxation here. Therefore, deductible costs are not taken into consideration, thus these taxes do not refer to the taxpayer's personal situation.

Given the above, this levy is defined as one in which taxation concerns revenue in the course of its emergence and takes the form of preliminary taxation, when the final value of this revenue is not yet known [Wójtowicz 2005, 36]. Therefore, it is demonstrated that taxation in revenue taxes concerns obtaining revenues from specified sources, which can be real estate agricultural farms, property rights, or broadly understood economic activity [Mastalski 2000, 490].

Therefore, the notion of revenue is crucial. An investigation of legal acts allows a conclusion that there is no legal definition of this. Besides, in some taxes that show features of such performances, this term is left out entirely. The nature of these taxes is determined only by a comprehensive analysis of specific design elements of the performance. Therefore, it is legitimate to divide taxes into revenue taxes, where the evidenced revenue is taxed, and those that refer to external signs evidencing the size of the obtained revenue [ibid.].

3. TAXATION OF TRANSFER OF ASSETS

Moving on to the reflections on specific legal solutions accommodated in the outlined scope, it needs to be concluded that the first wealth tax which should be analysed is the gift and inheritance tax.² It is crucial from the point of view of the outlined subject-matter. First and foremost, it needs to be highlighted that in the light of Art. 1 of the Gift and Inheritance Act its taxpayers are only natural persons. Specifying the material scope of this tax is also critical. It is because taxation under it applies to acquirers of things and property rights. Even though the legislator did not expressly point to real estate, because it falls under the category of things, without a doubt acquisition thereof is subject to taxation.

From the perspective of these findings, the manner of acquisition subject to taxation is important. A general conclusion flows from Art. 1 of the Act that gratu-

² Act of 28 July 1983 on the gift and inheritance tax, Journal of Laws of 2019, item 1813 [henceforth cited as: GIT Act].

itous increase in property results in the emergence of tax liability.³ The adoption of such a solution aims, *inter alia*, at eliminating tax evasion as a result of replacing taxable transactions with performing gratuitous acts. On the other hand, noticing social considerations, the legislator subordinated the structure of the tax to a rule pursuant to which the size of taxation is correlated with family relationships between the acquirer and the person from whom (after whom) this acquisition took place. A tax privilege of gratuitous transfer of assets between close family members is noticeable, which will be still discussed. This rule is applied to acquiring real estate with no exception.

To ascertain facts, it needs to be stated, that the scope of taxation of gratuitous acquisition of real estate is not determined by the manner of acquiring it (specified in Art. 1 GIT Act). Nevertheless, it is essential when establishing the amount of tax. This results from conditioning the type and scope of application of tax privileges on the manner of acquisition, on the type of acquired real estate and naturally on the acquirer's belonging to one of the tax groups.

It is worth adding that the territorial scope of application of the act has been outlined broadly; taxation covers acquisition of real estate located on the territory of the Republic of Poland and acquisition of ownership of a thing located abroad. The only requirement that lies on the side of the acquirer in this case is his having Polish citizenship or his having permanent residence on the territory of the Republic of Poland at the moment of opening the succession or concluding a donation agreement. As has been pointed out in judicial decisions, the tax liability rests with the acquirer – Polish citizen, even if he resides outside of Poland.⁴ It also needs to be added, that conventions for the prevention of double taxation in fact do not cover the inheritance tax or its equivalent, therefore, this acquisition is subject to double taxation – both on the territory of Poland and abroad [Dowgier, Etel, et al. 2004, 57]. Commenting on the territorial scope of application of the act one needs to point to the exclusion of acquisition where on the date of this acquisition neither the acquirer nor the deceased nor the donor were citizens of Poland or had residence on the territory of the Republic of Poland. This exclusion is, however, limited to acquisition of ownership of movable things located on the territory of the Republic of Poland or property rights enforceable on this territory. Therefore, it is not applicable to immovable property located on the territory of the Republic of Poland. One can conclude, that taxpayers of the Polish gift and inheritance tax will include equally natural persons without ties with Poland in the form of a place of residence or citizenship.

Thus it needs to be concluded that the location of the real estate acquired gratuitously is a determinate of taxation under the gift and inheritance tax.

³ Cf. judgement of the Supreme Administrative Court of 27 April 2001, I SA/Gd 1738/00, Lex no. 48959; judgement of the Supreme Administrative Court of 10 November 2000, I SA/Gd 1485/00, Lex no. 47108.

⁴ Judgement of the Voivodship Administrative Court of 6 May 2008, I SA/Gd 1035/07, unpublished, www.mf.gov.pl [accessed: 6.04.2020].

As has been highlighted, the amount of tax depends on a number of factors. The first of them involves a natural person belonging to a tax group. This in turn, in accordance with the legislator's declaration, occurs on the basis of a personal relationship linking the acquirer with the person from whom or after whom the things and property rights were acquired. The first tax group includes: spouse, ascendants, descendants, stepson, stepdaughter, son-in-law, daughter-in-law, siblings, stepfather, stepmother and parents-in-law. The second tax group includes: sibling's ascendants, parents' siblings, ascendants and spouses of stepchildren, spouses of siblings and siblings of spouses, spouses of spouses' siblings, spouses of other ascendants. Persons not enumerated in any of the previous two groups were included in the third tax group.

Acquirers in individual tax groups are entitled to different amounts of a tax minimum and the scope of granted tax privileges is also different (dependent, as has already been pointed out, in certain cases also on the type of acquired real estate).

The most important tax privilege, if not in the entire tax system then definitely on the ground of the gift and inheritance tax, involves exemption referred to in Art. 4a of the Act. Those entitled to the enjoyment of it are persons included in the first tax group excluding parents-in-law, sons-in-law, daughters-in-law, hence the term "zero group" is more and more universally used to specify acquirers enumerated in this provision. Exemption in fact covers all⁵ taxable manners of acquisition and the privilege is in no way limited in terms of the amounts. And even though this significantly affects the efficiency of taxation [Smoleń 2009, 413], it pursues social objectives. The absence of amount limitation is especially important for acquiring real estate due to its significant market value. It needs to be emphasized that the acquirer, when applying the preference, is in no way limited in the use and enjoyment of the acquired thing, in particular he may further transfer it without losing the right to the exemption. The legislator, in turn, introduced a number of formal requirements authorizing the application of the exemption, which can be attributed the records-keeping and audit function. One of them is the obligation to inform the competent head of the tax authority about the acquisi-

⁵ A review of judicial decisions allows a conclusion that a rather uniform line has begun to be established, according to which the scope of exemption needs to cover all manners of acquisition of ownership of things or property rights subject to tax, including acquisition by usucaption. The prerequisite for the exemption involves acquisition of ownership in such a manner from a person enumerated in Art. 4a of the Act and meeting other formal requirements specified in this provision – judgement of the Voivodship Administrative Court in Bydgoszcz of 26 November 2013, I SA/Bd 742/13, LEX no. 1434591; judgement of the Supreme Administrative Court in Warsaw of 19 March 2014, II FSK 883/12, LEX no. 1447090. Special notice needs to be given to the court's highlighting that Art. 4a, sect. 1, point 1 GIT Act needs to be understood in the following way: on the ground of the tax and inheritance act it is possible to acquire ownership of real estate from previous owners by usucaption – judgement of the Voivodship Administrative Court in Gliwice of 28 October 2015, I SA/Gl 441/15, LEX no. 1926273.

tion of the ownership of the thing or property rights.⁶ It is worth noting that the time for the notification defined in the statute has the nature of the time limit of substantive law, therefore it is non-extendable and non-restorable.⁷

The specific nature of using the exemption in reference to real estate manifests itself *inter alia* in the fact that the legislator waived the said requirement where the acquisition occurs on the basis of an agreement concluded in the form of a notarial deed. In turn, keeping this form is a *sine qua non* requirement of transferring ownership of real estate by way of a gift. As clearly results from this, the manner of the transfer of ownership also specifies the terms of using the tax preference. Acquisition by succession (at the same time meeting other premises), in turn, requires observing the deadline for informing the competent head of the tax authority about this fact.

Apart from this, pursuant to Art. 4 GIT Act, other exemptions were introduced concerning acquisition of real estate. They include privileges enumerated in Art. 4, sect. 1, point 1, Art. 4, sect. 1, point 5a, Art. 4, sect. 1, point 9d, Art. 4, sect. 1, point 15 and Art. 4, sect. 1, point 18. They refer directly to acquisition of real estate (or things without indicating that it concerns solely movable things). It is also worth noting exempting certain funds referred to in Art. 4, sect. 5 of the Act, which will be allocated for acquisition, under the terms specified in the act, of real estate in the form of buildings and residential premises.

The legislator's specification of additional criteria allowing their use should be considered a characteristic feature of the catalogue of exemptions under Art. 4. They include primarily falling under a certain tax group. The type of the transferred real estate (agricultural property, a building) is not irrelevant either, neither its status (real estate which is a historical monument or building). Thus, these privileges are instruments of implementation of non-fiscal purposes of taxation.

Tax reliefs are an additional tax privilege, of a different type but bringing about corresponding effects. It is significant that only one tax relief is applied on the ground of the gift and inheritance tax act. It concerns acquisition of real estate and involves, in simplest terms, excluding a limited equivalent of the acquired real estate from the taxable base. The purpose of introducing this measure was the possibility of preferential acquisition of real estate which satisfies taxpayers' basic housing needs. This is where the introduction of a number of regulations

⁶ On terms specified under Art. 4a, sect. 1, point 1 and Art. 4a, sect. 1, point 2 (1a and 2) of the Act. The additional formal requirement results from Art. 4, sect. 4 GIT Act.

⁷ Cf. judgement of the Voivodship Administrative Court of 19 February 2010, I SA/Kr 1822/09, LEX no. 576037; judgement of the Voivodship Administrative Court of 29 July 2009, I SA/Sz 342/09, LEX no. 512631; judgement of the Voivodship Administrative Court of 8 October 2009, III SA/Wa 577/09, LEX no. 528239; judgement of the Voivodship Administrative Court of 17 March 2009, I SA/Wr 1024/08, LEX no. 493569; judgement of the Voivodship Administrative Court of 7 July 2009, I SA/GI 214/09, LEX no. 512644; judgement of the Voivodship Administrative Court of 28 May 2009, III SA/Po 102/09, LEX no. 508770; judgement of the Voivodship Administrative Court of 4 December 2008, I SA/Gd 678/08, LEX no. 519982.

results from which are to confirm this fact (e.g. referring to the requirement to reside in the acquired real estate).

Adoption of this assumption determined the material scope of the relief. This is because it covers acquisition of ownership (co-ownership) of a residential building or a residential premise which is a separate real estate, cooperative member's ownership right to a residential premise or share in such a right, cooperative member's right to a single-family home or share in such a right. Two conclusions result from this: firstly, the material scope of the preference covers not only the ownership right, but also limited rights *in rem* which in the universal language are a synonym for "real estate." Secondly, this relief does not apply to acquisition of land (even developed land).

Linking the material scope of the privilege with the taxpayer is crucial for the discussed issues. Pursuant to Art. 16 of the Act, the persons entitled to this relief include persons classified in the first tax group who acquire the above-mentioned things or property rights by succession, particular legacy, absolute legacy, subsequent legacy, testamentary instruction, gift or donor's instruction. Acquirers included in group II may use the relief as long as the acquisition takes place by way of succession, particular legacy, absolute, subsequent legacy or testamentary instruction. Taxpayers from group II can enjoy the privilege as long as the acquisition took place by means of succession, particular legacy, absolute legacy, subsequent legacy or testamentary instruction, and additionally they provide care for the intestate who requires this care on the basis of a written agreement with a signature certified by a notary, for at least two years from the date of certifying the signature by the notary. At the same time, it is assumed that a person requiring care is understood as such a person who due to their health and life status requires care of a third person. This may be dictated by age, health status as well as other reasons due to which such a person is not able to run a household independently [Chustecka, Krawczyk, and Kurasz 2008, 238]. To establish facts, the closer the relationship of the acquirer with the transferor, the broader the scope of application of the tax preference.

To recap, it needs to be concluded that on the ground of the gift and inheritance tax act a wide array of legal solutions apply which establish a special legal regime concerning taxation of acquisition of ownership of real estate and limited rights *in rem* treated in a corresponding way. Most of the provisions situated in this area cause or may cause a direct effect in the form of influencing the size of taxation. These rules are correlated with basic principles underlying the basis of the structure of the gift and inheritance tax.

A civil law transactions tax is also a wealth tax associated with transfer of assets.⁸

As a rule, it applies to civil law transactions performed outside of economic activity. An analysis of provisions of Art. 1 of the act which lay down the material

⁸ Act of 9 September 2000 on the civil law transactions tax, Journal of Laws of 2019, item 1519 as amended.

scope allows a conclusion that it covers contracts against payment. This is a fundamental difference between regulations of the gift and inheritance tax act and the civil law transactions tax. However, for the purpose of this study the following principle is crucial: it is the taxpayer (and in a contract of exchange subject to tax – parties to the transaction) who is the acquirer of the ownership of the real estate and the tax liability arises with the moment of performing a civil law transaction. It is, in turn, excluded from taxation if the transaction is taxed under the goods and services tax.

In view of the above, it needs to be highlighted that the acts on the gift and inheritance tax and on the civil law transactions tax regulate taxation of transfers of assets. In both cases acquisition of ownership of real estate results in the establishment of tax liability. It needs to be emphasized, that the system of tax preferences, applicable on the ground of the gift and inheritance tax act, puts the relevant taxpayers in a privileged position. This results, however, from the purposes of applicability of both legal acts. Gratuitous acquisition of ownership of a thing is most frequently carried out between members of a family, contrary to transactions against payment. Social contexts, therefore, determine the design of both acts. Thus, the final civil law effect, in the form of acquisition of real estate, may bring about tax effects which are different in terms of the amount of the performance.

4. TAX-RELATED IMPLICATIONS OF ACQUISITION OF OWNERSHIP OF REAL ESTATE IN PROPERTY TAX, AGRICULTURAL TAX AND FORESTRY TAX

Property tax⁹ is a typical wealth tax associated with the mere fact of having actual control of real estate. Classification of the agricultural tax¹⁰ and the forestry tax¹¹ is not homogeneous due to their specific design. Taking into account their features they may be classified as revenue taxes or wealth taxes. Irrespective of the indicated dilemmas, all presented levies feature significant similarities and the mutual dependencies between scopes of their application provide justification for their comprehensive analysis. This will allow avoiding unnecessary duplications.

Most of all, one needs to note that direct tax implications of acquisition of real estate in the indicated levies cause a permanent effect in the sense that these taxes have a recurring nature – they encumber the person with actual control of the real estate (in the manner specified in statutes),¹² and thus the legal or factual relationship linking him with the object of taxation. Holding the legal status of the owner

⁹ Act of 12 January 1991 on local taxes and fees, Journal of Laws of 2019, item 1170.

¹⁰ Act of 15 November 1984 on the agricultural tax, Journal of Laws of 2020, item 333.

¹¹ Act of 30 October 2002 on the forestry tax, Journal of Laws of 2019, item 888.

¹² The concept of real estate on the ground of the act of local taxes and fees was given a physical meaning which will be discussed in a further part of this study. However, a natural person who has a limited right *in rem* associated with the real estate is not a tax-payer of property tax.

of real estate is only one of the relationships with which the legislator linked the emergence of tax liability. The manner of acquisition of the real estate (gratuitous, against payment) is irrelevant here.

Grave effects in the sphere of taxation are caused by the so-called instrumental obligations imposed on taxpayers in these taxes. Before moving on to their characteristics, one needs point to the principle of taxing real estate in the indicated public levies. It needs to be noted here that they all feed budgets of local government units of the basic level.

The property tax has the broadest material scope here. Land, buildings and structures are subject to this tax. It is interesting to formulate legal definitions of the enumerated things. These definitions refer not so much to the civil law understanding of real estate but to definitions applied on the ground of Construction Law.¹³ The analysis of legal solutions adopted on the ground of Art. 1a, sect. 1, point 2 and Art. 2, sect. 1, point 3 of the local taxes and levies act allows a conclusion that temporary construction facilities (or parts thereof) are also subject to taxation if they are associated with operating a business activity. In other words, taxed real estate may include: land, buildings and their parts (as long as they are a separate item of ownership) and constructions (associated with operating a business activity) which also are understood as temporary construction facilities.

As has been pointed out, one of the taxed types of real estate is land. It may be subject to taxation under the property tax or under the agricultural tax or under the forestry tax. The relationships between the scopes of application of these taxes are of significant importance. Taking them into consideration the legislator adopted two assumptions: one concerning formal aspects, the other concerning factual premises. The following rule results from the literal wording of the regulations applicable in the three above-mentioned taxes. The agricultural tax and the forestry tax covers land classified in the register of land and buildings as agricultural or forestry land, respectively, unless it is occupied for the needs of operating a business activity other than agricultural or forestry activity. Should this circumstance occur, this land, regardless of its classification, is subject to taxation under the property tax. Therefore, for example, the acquirer of agricultural real estate, due to the very fact of even a temporary change in the use of the land, becomes a taxpayer of property tax.

As has already been signalled, the obligations are of cardinal importance for characterizing levies. Legal scholars and commentators point out that they are a special category of obligations functionally related with the obligation to pay tax, which includes, i.a. the obligation of the taxpayer's taking specified actions (e.g. submission of declarations, maintaining books, informing about the change in the factual status) [Borszowski 2004, 176]. The essence of taxpayers' duty in this regard results from the way the tax obligations arise. For natural persons it is the moment of delivering the decision establishing the amount of this obligation.

¹³ Act of 7 July 1984 Construction law, Journal of Laws of 2019, item 1186 as amended.

A tax authority calculates the amount of tax on the basis of information drawn up by the taxpayer. Natural persons are obliged to submit it to a competent tax authority within 14 days from the date of occurrence of the circumstances substantiating the emergence of the tax liability. Such a circumstance includes i.a. acquisition of ownership of real estate. As results from the above, the indicated specific obligation determines the tax in an appropriate amount. A tax decision in this case is constitutive. Submitting the above information determines the limitation period of the right to deliver the decision establishing the amount of one of the above-mentioned taxes. Fundamentally, according to the rule adopted in Art. 68 of the Tax Ordinance Act,¹⁴ a tax obligation does not arise if the decision establishing this obligation was delivered after the lapse of 3 years from the end of the calendar year in which the tax liability arose. Exceptions from this rule have been prescribed for, associated with taxpayer's negligence in terms of the information submitted by him. If the taxpayer: failed to submit the tax return by the deadline provided for in tax law provisions, failed to reveal in the submitted tax return all the data necessary to establish the tax obligation, the limitation period is extended to 5 years counting by analogy.

It needs to be emphasized that taxpayers of the property tax, the agricultural tax and the forestry tax are also obliged to submit information on all changes resulting in the change of the amount or manner of taxation within 14 days from the occurrence of circumstances resulting in such effects.

To conclude, one needs to note that acquisition of ownership of real estate results in the establishment of a tax liability relationship of a lasting, recurring nature. Notifying of these circumstances is a duty of a natural person, derived from the fact of acquisition of ownership of the object of taxation. Carrying out this duty should result in the tax authority taking action to transform tax liability into tax obligation.

5. SUMMARY

The subject-matter of tax-related implications of taking over ownership of real estate covers a broad spectrum of issues, both theoretical and practical. It comprises subject-matter classified under the general and detailed tax law. It is because regulations in this regard are complementary.

An analysis of legal solutions, views of legal scholars and commentators and the abundant judicial decisions leads to the following observation. Tax law, treated as a separate branch of law, is directly related to civil law, too. Tax-related effects of civil-law transactions occur universally in wealth taxes and revenue taxes. They are a consequence of rules and designs of individual public levies adopted in the system. Regulations in this regard are thus not homogeneous. The scope of taxation of acquisition of ownership of real estate is thus affected not only by

¹⁴ Act of 29 August 1997 Tax Ordinance Act, Journal of Laws of 2019, item 900 as amended.

characteristic features of the investigated taxes. The type of real estate is often crucial, which predetermines the scope of application of a given statute. The way it is actually used is taken into account here too (occupying it for the needs of operating a business activity – which determines the exclusion of land from the scope of application of the agricultural tax act and the forestry tax act). Legal implications of acquisition of real estate by natural persons are also a derivative of the manner of acquiring it and the tax amount is affected also by the relationships between the acquirer and the transferor specified by statute.

The legal design of the presented taxes specifies different catalogues of tax preferences, though dependent on meeting formal requirements. These, in turn, depending on the type of tax, are associated with, i.a., the manner of acquisition, the person acquiring ownership and the type of transferred real estate or its status.

From the point of view of emergence of tax obligations in the investigated public levies, instrumental obligations imposed on taxpayers are crucial. This results, i.a., from the fact that tax obligations arise in these cases by way of delivering the establishing decisions, the issuance and service of which is possible after taxpayers fulfil these duties.

To sum up, it needs to be emphasized that acquisition of ownership of real estate causes an array of effects not only in the sphere of private law, but also in the sphere of public law under which tax law falls.

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PODATKOWE NASTĘPSTWA NABYCIA WŁASNOŚCI NIERUCHOMOŚCI PRZEZ OSOBY FIZYCZNE – WYBRANE ZAGADNIENIA

Streszczenie. Prawo podatkowe, traktowane jako gałąź prawa publicznego wykazuje ścisłe związki z pozostałymi gałęziami prawa, w tym prawem cywilnym, będącym prawem prywatnym. Powiązania te polegają przede wszystkim na opodatkowaniu czynności dokonywanych na podstawie przepisów prawa cywilnego. Następstwa te występują przede wszystkim w daninach zaliczanych do kategorii podatków majątkowych i przychodowych. Przedmiotem podjętej analizy uczyniono zakres i charakter podatkowych skutków nabycia prawa własności nieruchomości, w poszczególnych podatkach, zaliczanych do tych grup. Na podstawie przeprowadzonych badań sformułowano wnioski o charakterze *de lege lata*. Przede wszystkim wskazano na zależności pomiędzy zakresem podmiotowym i przedmiotowym podatku, a nabyciem własności nieruchomości. Odniesiono się także do tych elementów ustaw podatkowych, które w bezpośredni sposób rzutują na wysokość opodatkowania w omawianym zakresie.

Słowa kluczowe: nieruchomości, własność, podatki majątkowe, podatki przychodowe

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