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Brief comment on the questionnaires that require taxpayers to submit data related to the future real estate taxation

Recently, there have been announcements of the real estate taxation delay. To make the taxation delay possible, it is necessary to amend the Local Taxes Act, considering that the real estate tax has already been included in the Act's provisions, postponing the real estate taxation until 1 January 2018.

Despite the announcements of the delay of implementation of this tax, the Tax Administration issued a public statement on its web site, in which it unclearly called for further updating of units of local self-government real estate databases. In the mentioned statement, the Tax Administration points out, in a very general way, what is the objective of updating the database and what units of local self-government should do, but does not outline the obligations of the taxpayers. Considering what exactly the Local Taxes Act prescribes as an obligation of the taxpayers regarding the submission of real estate data, it does not come as a surprise that this announcement is so ambiguous.

Namely, the submission of specified data to the units of local self-government by the taxpayers is only provided for by the transitional provisions of that Act (Article 59), and only:

- those data that units of local self-government *do not have at its disposal* and
- those data that *significantly differ* when comparing the data of the units of local self-government and the data that a unit of local self-government receives from other competent authorities (State Geodetic Administration, Ministry of Construction and Physical Planning, Ministry of Finance, Tax Administration)

29. kolovoza 2017.

Kratki komentar na upitnike kojima se od poreznih obveznika traži dostava podataka vezanih za buduće oporezivanje nekretnina

U posljednje vrijeme mogu se čuti najave o odgodi primjene poreza na nekretnine, no da bi odgoda bila moguća potrebno je izmijeniti Zakon o lokalnim porezima, s obzirom da je porez na nekretnine već uključen u taj Zakon na način da je propisan početak primjene tog poreza od 1. siječnja 2018. godine.

Usprkos najavama o odgodi početka primjene ovog poreza, Porezna uprava je na svojim web stranicama dala priopćenje za javnost u kojem je vrlo nejasno pozvala na daljnje ažuriranje baza podataka jedinica lokalne samouprave o nekretninama. U navedenom priopćenju Porezna uprava vrlo općenito ističe što je cilj ažuriranja baze podataka te što trebaju činiti jedinice lokalne samouprave, no uopće ne daje osvrt na to kakve su obaveze poreznih obveznika. Kada se pogleda što je točno Zakonom o lokalnim porezima propisano kao obaveza poreznih obveznika vezano za dostavu podataka o nekretninama, nije niti čudno što je ovo priopćenje toliko nedorečeno.

Naime, dostavljanje određenih podataka jedinicama lokalne samouprave od strane poreznih obveznika predviđeno je tek prijelaznim odredbama tog Zakona (čl. 59.), i to samo:

- onih podataka kojima jedinica lokalne samouprave *ne raspolaže* te
- onih podataka koji se *bitno razlikuju* usporedbom podataka jedinice lokalne samouprave i onih podataka koje jedinica lokalne samouprave preuzme od drugih nadležnih tijela (Državne geodetske uprave, Ministarstva graditeljstva i prostornog uređenja te Ministarstva financija, Porezne uprave) kako je to Zakonom propi-

as prescribed by the Act. In addition to the Act, the Ordinance on Determining Corrective Coefficients and Real Estate Records has been adopted, but there is no provision that would oblige the taxpayers to fill in and submit the questionnaires.

Article 33, paragraph 2 of the Local Taxes Act prescribes that the annual amount of real estate tax per m^2 shall be determined by multiplying the following coefficients:
= point value × zone coefficient × usage coefficient × ***condition coefficient*** *×* ***age coefficient****.*

However, the explanation of the proposal of the Local Taxes Act, submitted to the Parliament on 28 November 2016, indicates it is obvious that units of local self-government already have all the necessary information, **except those relating to the condition and age of a real estate**. Namely, this Explanatory Note states:
*„****Two new coefficients are included*** *in the calculation of the tax, along with the existing coefficients for public utility charge:* ***age, i.e. year of construction and condition of the building****, all with the aim of approximating the tax calculation to the calculation depending on the value.“*

It is clear that the only piece of information that units of local self-government may still be missing are data on the age and the condition of the building. Therefore, these are the only two bits of information for which the legislator predicted that units of local self-government could request the taxpayers to submit.

Transitional provisions of Article 59 of the Act indicate that also, prescribing the following:
„If the taxpayer fails to provide the required information, tax obligation shall be determined on the basis of data available to a unit of local self-government using the highest coefficients established by this Act for ***condition and age****.“*

Therefore, usage of the highest coefficients for condition and age is predicted as a penalty for not submitting the data. From this, it can be concluded that units of local self-government already have at their disposal other data based on which other coefficients are determined.

sano. Uz Zakon je donesen i Pravilnik o utvrđivanju korektivnih koeficijenata i evidenciji o nekretninama, no u tom Pravilniku nema niti jedne odredbe koja bi poreznim obveznicima nametala obavezu popunjavanja i dostavljanja upitnika.

Članak 33. st. 2. Zakona o lokalnim porezima propisuje da se godišnji iznos poreza na nekretnine po m^2 utvrđuje množenjem sljedećih koeficijenata:
= vrijednost boda × koeficijent zone × koeficijent namjene × ***koeficijent stanja*** *×* ***koeficijent dobi****.*

Međutim, iz obrazloženja prijedloga Zakona o lokalnim porezima koji je upućen u Sabor 28. studenog 2016., vidljivo je da jedinice lokalne samouprave već raspolažu svim potrebnim podacima, **osim onih koji se odnose na stanje i dob nekretnine**. Naime, u tom Obrazloženju bilo je navedeno:
„U izračun poreza uz postojeće koeficijente komunalne naknade ***ulaze i dva nova koeficijenta: dob, dakle godina izgradnje i stanje građevine****, a sve s ciljem da se izračun poreza približi izračunu prema vrijednosti.“*

Jasno je vidljivo da jedina dva podatka koja još eventualno nedostaju jedinicama lokalne samouprave jesu podaci o godini izgradnje i stanju građevine, prema tome, to su i jedina dva podatka za koja je zakonodavac predvidio da bi ih jedinice lokalne samouprave mogle tražiti od poreznih obveznika.

Vidljivo je to i iz prijelaznih odredbi Zakona iz članka 59. koji kaže:
„Ako porezni obveznik ne dostavi tražene podatke, porezna obveza će se utvrditi na osnovi podataka kojima raspolaže jedinica lokalne samouprave s najvišim koeficijentima utvrđenima ovim Zakonom ***za stanje i dob****.“*

Naime, kao kazna za nedostavljanje podataka predviđeno je korištenje najviših koeficijenata samo za stanje i dob. Iz toga se može zaključiti da jedinice lokalne samouprave već raspolažu drugim podacima na temelju kojih se određuju ostali koeficijenti.

It is not the subject of this review, but we notice that the coefficients are being used as some sort of punishment, while offence provisions for not submitting the data related to the real estate tax are not provided for at all in the Local Taxes Act. However, we believe that the constitutionality of a provision, imposing such a penalty in case a unit of local self-government is not provided with specified data, is questionable. Namely, a parallel can be drawn with the fact that up to the year 2000, the Real Estate Transfer Tax Act's provision prescribed a penalty for not filing a tax application in time by increasing the tax obligation by 20%. However, this provision was abolished on 23 February 2000 by the Decision of the Constitutional Court of the Republic of Croatia No. U-I-1023/1999 because it was not in accordance with the Constitution. The Constitutional Court then stated in the explanatory statement to its Decision: "*The abolished provision actually establishes a higher tax obligation due to the fact of not filing a tax application in time, therefore, for the act that is in fact an offence. In this way,* ***some sort of "penalty" tax*** *is introduced in the legal system, which is contrary to the meaning and purpose of taxation as well as constitutional principles of participation in defrayment of public costs in accordance with economic possibilities and principles of equality and equity of the tax system...*".

Accordingly, provision of the Local Taxes Act prescribes the imposition of an additional „penalty" tax instead of an offence punishment, so it can be concluded that current provisions of the Local Taxes Act, in part addressing the real estate tax, are partially not in accordance with the Constitution.

In addition, the legislator has failed to clearly define the taxpayer's obligations regarding the provision of information required for the determination of real estate tax (e.g. in what extent and in which form, as well as by what date are the taxpayers obliged to provide specified data), leaving units of local self-government to arbitrarily decide on the data requests. However, practice shows that units of local self-government, when filing their requests for the submission of data in the form of a rather detailed and unclear questionnaires, stepped outside the Act.

Nije predmet ovog osvrta, ali primjećujemo da se koeficijenti koriste kao neka vrsta kazne, a da Zakonom o lokalnim porezima za propuštanje davanja podataka koji se odnose na porez na nekretnine uopće nisu predviđene prekršajne odredbe. Međutim, smatramo da je upitna ustavnost odredbe kojom je propisana takva kazna za slučaj da se jedinici lokalne samouprave ne dostave određeni podaci. Naime, paralela se može povući s time da je do 2000. godine u Zakonu o porezu na promet nekretnina bila sadržana odredba koja je kao kaznu za nepravovremeno prijavljivanje porezne obveze propisivala razrezivanje za 20% povećanog poreza. Međutim, ova je odredba ukinuta Odlukom Ustavnog suda Republike Hrvatske br. U-I-1023/1999. od 23. veljače 2000. godine zbog toga što nije bila u skladu s Ustavom. Ustavni sud je tada u obrazloženju svoje Odluke istaknuo: „*Ukinutom odredbom se, zapravo, utvrđuje uvećani porez zbog nepravodobnog podnošenja porezne prijave, dakle zbog djela koje u biti predstavlja prekršaj. Time se u pravni sustav uvodi* ***nekakav „kazneni" porez****, što je suprotno smislu i svrsi oporezivanja, a također je to protivno ustavnim načelima o sudjelovanju u podmirenju javnih troškova u skladu s gospodarskim mogućnostima te načelima jednakosti i pravednosti poreznog sustava...*".

Prema tome, i Zakon o lokalnim porezima sadrži odredbu koja umjesto prekršajne kazne propisuje nametanje dodatnog „kaznenog" poreza, pa se može zaključiti da trenutne odredbe Zakona o lokalnim porezima, u dijelu u kojem se odnose na porez na nekretnine, u jednom dijelu nisu u skladu s Ustavom.

Uz to, zakonodavac je propustio jasno definirati kakve su obaveze poreznih obveznika vezano za dostavljanje podataka koji su potrebni za utvrđivanje poreza na nekretnine (npr. u kojem opsegu i obliku te u kojim rokovima porezni obveznici imaju obavezu dostaviti određene podatke), pa je zahtjev za podacima ostavljen samovolji jedinica lokalne samouprave. Međutim, iz prakse je vidljivo da su jedinice lokalne samouprave prilikom dostavljanja svojih zahtjeva za dostavom podataka u obliku prilično detaljnih i nejasnih upitnika izašle iz okvira Zakona.

Finally, and in the context of these questionnaires, it is our opinion that citizens should not, nor are obliged to, provide any data except the aforementioned two – age and condition of the building.

Na kraju, a u kontekstu ovih upitnika, naše je mišljenje da građani ne bi trebali davati, niti su u obvezi davati, niti jedan podatak osim prethodno navedena dva – dob i stanje građevine.

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