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TURNOVER OF AN ENTERPRISE INCLUDING FOREST LAND

Dr. habil. Wojciech Gonet, University Professor
Institute of Political Sciences and Administration, Faculty of Social Sciences,
Siedlce University of Natural Sciences and Humanities, Poland
e-mail: gonetw@interia.pl; https://orcid.org/0000-0003-0066-706X

Abstract. The study deals with the issues of trade of an enterprise, an organized part of an enterprise, which includes forest land or the right to use forest land. It was found that the sale of the enterprise, an organized part of the enterprise, which includes forest real estate, is subject to the restrictions resulting from the Forest Act, i.e. the State Treasury has a pre-emption right in case of sale of the enterprise or the right to purchase forest land when a contract other than sale is concluded. Turnover of an enterprise, an organized part of an enterprise which includes the right of perpetual usufruct of forest land, is easier, i.e. it is not subject to restrictions resulting from the Forest Act.

Keywords: forest real estate, enterprise, sale, pre-emptive right, purchase right

INTRODUCTION

Regulations of the Civil Code[1] in Article 55^2 and Article 75^1 in connection with Article 158 indicate that a legal action relating to an enterprise covers everything that is included in it, unless the parties to the contract agreed otherwise or the specific provisions do not state otherwise, and the legal action relating to the regulation of an enterprise which includes real estate requires the form of a notarial deed. The enterprise may include forest real estate or the right of perpetual usufruct of forest land. The disposal of forest real estate is subject to restrictions resulting from Article 37a of the Forest Act.[2] The State Treasury for which the State Forest Holding "National Forests" operates has the pre-emptive right to forest land upon sale, and in case of concluding other agreements, e.g. donations, the State Treasury has the right to purchase. An enterprise is a collection of different things and rights that can be disposed of entirely or separately. This implies the question to what extent the provisions of the Forest Act, i.e. restrictions on the acquisition of forest real estate, should be applied to the sale of an enterprise that includes forest real estate. The aim of the study is to determine whether a pre-emption right or the right to acquire forest land applies to the sale of a company that includes forest land, and if this question is answered positively, then what difficulties this may cause when selling the company. The provision of Article 37a of the act on forests has been in force since April 30, 2016. Earlier, in the

[1] Act of 23 April 1964, the Civil Code, Journal of Laws of 2019, item 1145 as amended [hereinafter: CC].
[2] Act of 28 September 1991 on forest, Journal of Laws of 2020, item 1463 [hereinafter: AF].

act on forests, in force since January 1, 1992, pursuant to Article 82 of the Forest Act, there were no regulations entitling the State Treasury to pre-purchase forest real estate.

1. THE CONCEPT OF ENTERPRISE

In Polish law, the term "enterprise" has three meanings: functional, objective and subjective [Habdas 2018, 399]. The provision of Article 1 of Act on State Enterprises[3] contains a subjective definition of a state enterprise as an independent, self-governing and self-financing entrepreneur with legal personality. In the subjective sense, the legislator used the concept of an entrepreneur in Article 429 CC. The functional meaning of an enterprise combines functioning and activities of entities related to running the enterprise [ibid., 401, 403]. Provisions, e.g. Article 709[1] CC (through the leasing contract, the financing party undertakes, in the scope of the activity of its enterprise, to purchase the item from the designated vendor under the conditions set out in this agreement and gives this item to the user only to exploit or to use and receive benefits for a specified period). Article 8(2) Commercial Companies Code[4] (a partnership runs an enterprise under its own name) indicates the functional use of the concept of an enterprise by the legislator [ibid., 402–403]. The definition of an enterprise is included in Article of the CC, i.e. an enterprise is an organized set of intangible and tangible assets intended for business activities, which in particular are the fallowing: signs individualizing the enterprise or its separate parts (name of the enterprise); ownership of the real estate or movable property, including equipment, materials, goods and products, and other rights in rem to real estate or movable property; rights arising from rental and lease agreements for real estate or movable property; and rights to use real estate or movable property arising from other legal relationships, receivables, rights in securities and cash, concessions, licenses and permits, patents and other industrial property rights, copyrights and property rights, business secrets, books and documents related to running a business. The listed elements of the company are examples and not every company must include them. In particular, the enterprise does not have to include tangible or intangible assets at the same time. It is enough that only one type of assets is included in the enterprise for this group of ingredients to be considered an enterprise. The enterprise does not include liabilities and burdens, which means that the enterprise is a group of assets [ibid., 414]. Material elements are the substrate of the enterprise and the enterprise is not a mechanically set complex of the elements that can be easily detached, because any enterprise is an intangible good [Buczkowski 1963, 365–66]. During its economic development, the enterprise acquires an increasingly di-

[3] Act of 25 September 1981 on State Enterprises, Journal of Laws of 2020, item 1644 [hereinafter: ASE].
[4] Act of 15 September 2000, the Commercial Companies Code, Journal of Laws of 2020, item 1526 [hereinafter: CCC].

stinct character from the entrepreneur, and intangible elements that actually determine the prosperity and success of its specific economic activity are more important [Widło 2002, 56]. The essence of the enterprise is the element of its organization, whereas its success is determined by such elements as: reputation, organizational secrets, and the manner of customer service [Poźniak–Niedzielska 1997, 34]. The presented views on the essence of the enterprise indicate a greater importance of intangible elements in the enterprise over things and real estate. Nowadays, in many companies, intangible elements are of much greater value than tangible elements, e.g. in companies that produce computer programs. The computers used to make computer programs and the real estate used by IT specialists, are often of little value compared to the income obtained from the sale of computer programs. Concepts, pointing to the element of organization of the enterprise as the essence of this enterprise, also work well in the enterprises dealing, for example, with real estate trading, because the elements of marketing in the field of real estate trading are very important.

An organized part of an enterprise, as defined in Article 5a(4) of the Act on personal income tax,[5] Article 4a(4) of the Act on corporate income tax,[6] Article 2(27e) of the Act on tax on goods and services,[7] should be distinguished from an enterprise, which is an organisationally and financially separated group of tangible and intangible assets in the existing enterprise and includes liabilities intended for the implementation of specific economic tasks that could also constitute an independent enterprise carrying out these tasks autonomously. An organized part of an enterprise differs from an enterprise, among others, the fact that it includes liabilities, whereas the enterprise does not include liabilities. Dividing the enterprise into several organisationally and financially separated parts and selling them is something different from selling the entire enterprise because, in the first case, the liabilities are also sold, meanwhile, in the second case, only assets are.[8] An enterprise divided into several organisationally and financially separable parts is not a simple sum of them, as the enterprise includes organizational and management elements related to the merging of individual parts into a single whole. The organized part of the enterprise may also include agricultural real estate, whereas the organized part of the enterprise may be traded. The rules of trading an enterprise and an organized part of an enterprise, which include agricultural real estate, should be the same.

[5] Act of 26 July 1991 on personal income tax, Journal of Laws of 2020, item 1426 as amended [hereinafter: APIT].
[6] Act of 15 February 1992 on corporate income tax, Journal of Laws of 2020, item 1406 as amended [hereinafter: ACIT].
[7] Act of 11 March 2004 on tax on goods and services, Journal of Laws of 2020, item 106 as amended [hereinafter: ATGS].
[8] As an example of an organized part of an enterprise, one can mention one of the petrol stations with tanks, distributors, cash registers, a shop, and employees in the enterprise constituting a network of entrepreneurs.

2. ENTERPRISE AS AN OBJECT OF THE TRADE

The provision of Article 55^2 CC stipulates that one can sell the entire enterprise, i.e. make an in-kind contribution to a capital company or a partnership, include an agreement for its exchange, sale, dissolution of co-ownership, partial division of the estate, lease, leasing, etc. The situation becomes more complicated when enterprises enter non-transferable rights, such as the use or acquisition of a specific component of it requires a prior administrative decision regarding the transfer of a license or permit. In the resolution of the Supreme Court of June 25, 2008[9] it was ruled that upon conclusion of the contract for sale of the enterprise within the meaning of Article 55^1 CC, limitations or exclusions of the admissibility of transferring individual components of this enterprise resulting from the provisions of the Act, contractual reservation or the nature of the obligation remain valid. The same ruling indicated that the sale of an enterprise is a series of singular successions that means the necessity to conduct a separate legal assessment of each of them, which is indirectly indicated in Article 75^1(4) CC. This results in the need to assess the admissibility of each transfer of ownership of things and rights included in the enterprise separately, and thus the sale of the enterprise does not absorb the individual requirements for the transfer of ownership of its individual components.

Agreements covered by Article 55^2 CC, are not contracts with a general title [Kępiński 2018, 479]. The provision of art. 55^2 CC: a) does not release the legal successor of the entrepreneur from fulfilling additional conditions necessary for the transfer of rights included in the company;[10] b) it concerns the relationship between the seller of the enterprise and the buyer of the enterprise and does not regulate either the manner of transfer or the effects of selling the enterprise [Habdas 2018, 432].

The contract for sale of the right to the enterprise has an impact on the sale of its components [ibid., 433]. The double obligatory and disposing effect will apply to the parts, the sale of which does not require the fulfilment of special conditions or obligations [ibid.] e.g. the sale of a pharmacy does not result in the transfer of rights to the buyer, resulting from the authorization to run a pharmacy issued to the seller.[11] The principle of non-transferable rights under public law of rights resulting from concessions, permits and licenses is not undermined by the provision of Article 55^2 CC, which, by introducing the principle that a legal transaction relating to an enterprise covers everything that is part of the enterprise, stipulates that it does not apply if the content of the legal act or specific provisions states

[9] Ref. no. III CZP 45/08, Lex no. 393765.
[10] Resolution of the Supreme Court of 25 June 2008, ref. no. III CZP 45/08, Lex no. 393765.
[11] Verdict of the Supreme Administrative Court of 20 February 2007, ref. no. II OSK 350/06, Lex no. 344615.

otherwise.[12] The sale of an enterprise does not lead to universal succession, and certain conditions may be required to transfer certain components of the enterprise successfully [ibid.].

The provision of Article 55^2 CC is of a dispositive nature and the parties may exclude certain components of the enterprise from the scope of the disposing activity [Kępiński 2018, 477]. The acquisition of an enterprise may occur as a result of several contracts.[13] When the circumstances of concluding two agreements regarding the sale of an enterprise allow it to be assumed that one of them concerned the acquisition of liabilities and the other of the assets of this enterprise, such agreements may be jointly treated as the sale of the enterprise.[14]

Qualifying whether a given activity is the sale of the enterprise or its components has tax consequences. The sale of an enterprise or its organized part is not subject to tax on goods and services (Article 6(1) ATGS), therefore their sale for a payment is subject to tax on civil law transactions, and free disposal may be subject to inheritance and donation tax if the buyer is a natural person. The sale of individual components of an enterprise is a supply of goods and is subject to goods and services tax, unless the specific supply is exempt from this tax in accordance with Article 43 et seq. ATGS, in which case the sale for payment is taxed on civil transactions, and the sale free of charge may be subject to inheritance and gift tax if the buyer is a natural person. Under certain circumstances, separate transactions, which can be carried out unconnectedly, and which, on their own, can lead to taxation or exemption, should be considered as a unitary transaction if they are not independent of each other, e.g. the fact of an in-kind contribution of an enterprise to a corporation in several stages does not change the nature of the activity that should be considered a uniform transaction of the in-kind contribution of the enterprise.[15] When a transaction consists of a set of elements and activities, all the circumstances in which it is made should be taken into account to determine whether it concerns two or more separate transactions or a single transaction.[16]

The parties to the contract concerning the enterprise may decide themselves which components to exclude from the scope of the contract subject for sale. However, they do not have full freedom in this regard. The scope of the exclusions cannot override the essence of the enterprise within the meaning of Article 55^1 CC, therefore the sale of the enterprise should include at least those components that determine the functions performed by the enterprise.[17] The sale of the enter-

[12] Verdict of the Supreme Administrative Court of 20 February 2007, ref. no. II OSK 350/06, Lex no. 344615.
[13] Verdict of the Supreme Court of 6 July 2005, ref. no. III CK 705/04, Lex no. 150645.
[14] Verdict of the Supreme Court of 24 June 1998, ref. no. I CKN 780/97, Lex no. 34441.
[15] Verdict of the Supreme Administrative Court of 7 December 2012, ref. no. I FSK 89/12, Lex no. 1366327.
[16] Verdict of the Supreme Administrative Court of 7 December 2012, ref. no. I FSK 89/12, Lex no. 1366327.
[17] Verdict of the Supreme Court of 17 October 2000, ref. no. I CKN 850/98, Lex no. 50895.

prise takes place when the components necessary for the performance of its economic tasks are transferred.[18] The sale of individual components of the enterprise, even if they represent a significant value compared to the value of the enterprise as a whole, does not constitute grounds for considering that it has been sold.[19] What components of the enterprise must be covered by the content of the activity performed in order to be able to conclude that the enterprise is the object of the legal act, should be specified in a specific factual state [Skowrońska–Bocian 2011, 284]. The subject of the performed act must be the minimum resources necessary to run the enterprise [ibid.].

3. THE CONCEPT OF FOREST LAND

The provision of Article 37a(1) AF provides that the State Treasury on behalf of which the State Forest Holding "National Forests" operates shall have the pre-emptive right to the sold land: 1) marked as a forest in the land and building register, i.e. with the symbol Ls, or 2) intended for afforestation according to the local spatial development plan or in the decision on building conditions and land development, or 3) referred to in Article 3 AF, covered by the simplified forest management plan or the decision referred to in Article 19(3) AF.

When forest land is acquired as a result of: concluding a contract other than a contract for sale or a unilateral legal act, the "National Forests" representing the State Treasury may submit a declaration on the acquisition of this land for a payment of a monetary equivalent. Regardless of how the ownership will be transferred, the State Treasury may purchase forest real estate. The provisions of the act on forests do not indicate that the pre-emption right and the right to purchase should be directly or appropriately applied to the right of the perpetual usufruct of forest land. When selling the right of perpetual usufruct of forest land, the State Treasury has no pre-emption right or the right to purchase.

The definition of forest includes two elements mentioned in Article 3(1–2) AF [Rakoczy 2011, 26]. The first element refers to a specific area, that is, land equal to or greater than 0.1 ha, the second refers to the relationship of land with forest management or its use for forest management purposes [ibid.]. The Act on forests defines four criteria for recognizing a specific land as a forest [Radecki 2008, 25]: 1) natural – a cover with forest vegetation (forest crops), which consists of trees, shrubs, undergrowth, whereas a temporary depriving the ground of the forest vegetation does not deprive it of the features of a forest when other criteria are met; 2) spatial – a compact area of at least 0.1 ha; 3) intended use – for forest production, except for the cases when forests are located in reserves and national parks

[18] Verdict of the Supreme Court from the Supreme Court of 10 January 1972, ref. no. I CR 359/71, Lex no. 1385; verdict of the Supreme Court of 30 January 1997, ref. no. III CKN 28/96, Lex no. 29109; verdict the Supreme Administrative Court (until 2003.12.31) in Gdańsk of 6 October 1995, ref. no. SA/Gd 1959/94, Lex no. 24237.

[19] Ref. no. SA/Gd 1959/94.

or are included in the register of monuments whose forests are not intended for forest production; 4) related to forest management.

The definition of forest contained in Article 3(1) AF indicates that the property may be a forest, as long as its area is equal to or greater than 0.1 ha and one of the three conditions specified in Article 3(1)(a–c) AF, i.e.: 1) it is land intended for forest production. The concept of forestry production is not defined in the Forest Act. The provision of Article 6(1)(1) AF defines the concept of forest management as forestry activities in the field of forest arrangement; protection and management; maintenance; increase of resources, forest crops; game management; obtaining – with the exception of purchase – wood, resin, fir trees, stumps, bark, pine needles, game and undergrowth crops; sale of these products and implementation of non-productive functions of the forest. The word "production" means an organized activity aimed at the production of some goods, services or cultural goods; something that was produced.[20] The word "economy" means, *inter alia*, the entirety of mechanisms and conditions for the operation of economic entities related to the production and distribution of goods and services.[21] The term "economy" is broader than the term "production," i.e. the concept of production is included in the concept of economy. The concept of forest management cannot be equated with the concept of forest production. The land with an area of at least 0.1 ha, devoid of forest vegetation by the owner, is still a forest. The land with an area of less than 0.1 ha, i.e. e.g. 0.099 ha, covered with forest vegetation is not a forest, but wooded and bushy land [Biernacki and Mikołajczuk 2016, 17]; 2) it is a nature reserve or part of a national park; 3) it is entered in the register of monuments.

Immovable monuments are, among others parks, gardens and other forms of designed greenery (Article 6(1)(1g) on the protection of monuments[22]). An immovable monument, including a forest property, the surrounding of the monument are entered in the register of monuments on the basis of a decision issued by the provincial conservator of monuments ex officio or at the request of the owner of the immovable monument or perpetual usufructuary of the land on which the immovable monument is located (Article 9(1) APM). Whether a forest property is entered in the register of monuments should result from section III of the excerpt from the land and mortgage register and from an excerpt from the land register. In addition, the information whether a specific forest allotment is entered in the register of monuments can be obtained from the office of the commune in which the allotment is located, because pursuant to Article 22(4–5)(1) APM the head of the commune (mayor, president of the city) keeps the municipal register of monuments in the form of a set of address cards of immovable monuments

[20] See http://sjp.pwn.pl/szukaj/produkcja.html [accessed: 12.02.2021].
[21] See http://sjp.pwn.pl/szukaj/gospodarka.html [accessed: 12.02.2021].
[22] Act of 23 July 2003 on the protection of monuments and the care of monuments, Journal of Laws of 2020, item 182 [hereinafter: APM].

from the territory of the commune, which should include immovable monuments entered in the register.

According to Article 3(1a–c) AF an allotment of 0.09 ha, covered with trees and shrubs, e.g. entered in the register of monuments or constituting a reserve, cannot be considered a forest. The provision of Article 3(2) AF indicates that the forest is land related to forest management, occupied for forest management purposes: buildings and structures, water drainage facilities, forest spatial division lines, forest roads, areas under power lines, forest nurseries, wood storage sites, and also areas used for forest car parks and tourist facilities. The cited provision does not include the area criterion in its definition, which means that any small allotment related to forest management can be considered a forest. Forest roads are roads located in forests that are not public roads within the meaning of the provisions on public roads (Article 6(1)(8) AF).

To be a forest, a real property does not need to have an area of more than 0.1 ha, it is enough that there is forest management on the land. Whether the real estate is a forest may result from the following documents: a) an excerpt from the land register if the property is marked as Ls; b) a certificate of land use in the local spatial development plan if the plan shows that the property is intended for afforestation or it is a forest; if the local spatial development plan has not been adopted, the decision on development conditions may indicate that the land is intended for afforestation; c) from the simplified forest management plan, which results from the certificate issued by the county governor; d) the governor's decision issued on the basis of the forest inventory, concerning fragmented forests with an area of up to 10 ha.

It is enough for a part of the allotment to be marked in the land register as a forest or, according to the local spatial development plan, a small part of the allotment will be designated for afforestation, then the State Treasury will have a pre-emption right or the right to purchase the entire allotment. When there are two or more allotments in the land and mortgage register, and one of them is even a small part of a forest, the State Treasury also has a pre-emption right or the right to purchase.

4. PROBLEMS OF SALE OF AN ENTERPRISE INCLUDING FOREST PROPERTIES

Forest land may be included in the enterprise: 1) dealing with the production of solid wood panels for the production of furniture; 2) constituting a sawmill; 3) dealing with the production of plant protection products.

In the case described as the third, land is not a significant element of the enterprise, determining the scope of its activity. In the other two cases, forest land: a) may be essential for business operations, when timber harvested from forests within a sawmill or a solid wood panel manufacturing company may constitute the primary substrate for production, or b) may be an unimportant element of the en-

terprise, this applies to a situation where a sawmill or a plant producing solid wood panels purchases cut wood for production from external entities (it does not use its forest resources for this purpose).

The provision of Article 55^2 CC allows the parties to a future sale agreement of the enterprise to separate from its composition forest real estate (in the cases described above) if they do not constitute elements necessary for the implementation of economic tasks, and to subject the forest land sale agreement to the rigors of the Forest Act, i.e. the right of pre-emption (Article 37a(1) AF) or the right to acquire (Article 37a(2) AF). When forest real estate is a component necessary for the implementation of the basic economic activity of the enterprise (e.g. dealing with the cultivation of tree seedlings), the sale of forest real estate will be the sale of the enterprise to which the provisions of the Act on forests will apply.

When the enterprise includes forest properties, it is necessary to prepare: 1) a contract obliging the sale of forest real estate, provided that the State Forest Holding "National Forests" representing the State Treasury does not exercise the right of pre-emption; 2) a contract obliging the sale of the remaining components of the enterprise, provided that the contract is concluded transferring the ownership of forest real estate in the event that the "National Forests" does not use the pre-emptive right to purchase forest real estate.

These contracts may be covered by one notarial deed, and instead of the second contract, a preliminary contract for the sale of the remaining components of the enterprise may be concluded.

The division of the sale contract or any other contract of transfer of the enterprise which includes forest real estate, into two concerning forest real estate and other components of the enterprise, does not guarantee the achievement of the parties' goal, i.e. the transfer of the entire enterprise, when the State Forest Holding "National Forests" operating for the State Treasury uses pre-emption rights for forest real estate. The sale of an enterprise which includes forest real estate by a contract other than sale may take place in one contract, transferring the ownership, e.g. donation; in this case the State Forest Holding "National Forests" has the right to acquire the forest real estate pursuant to Article 37a(2) AF.

A different interpretation of Article 55^2 CC, indicating that by selling the enterprise or concluding another sale agreement the provisions of the Act on forests do not apply, would lead to a situation when contributing a forest property as an in-kind contribution to a capital company would simply result in non-application of the provisions of the Forest Act. The provision of Article 55^2 CC indicates that the activity of an enterprise may not include everything that is a part of it, when specific regulations so provide; such is the Act on Forests which specifies the purchase of forest real estate very broadly, by indicating that the acquisition of forest real estate may occur as a result of making a legal transaction (e.g. relating to an enterprise). When transferring the ownership of an enterprise which includes any real estate, including forest real estate, the notary drawing up the contract is obliged to submit an application for the entry in the land and mortgage register via

the ICT system servicing the court proceedings (Article 92(4) of the Notary Law[23]). The provisions of the Act on forests do not apply to sale of an enterprise which includes the right of perpetual usufruct of forest land, as the pre-emption right and the right to purchase are vested in the State Treasury in relation to forest land and not in relation to the right to use forest land. Such an interpretation of the provisions of the Forest Act is supported by the need for a strict interpretation of the limiting provisions, such as the regulations on the right of pre-emption and purchase, regulated in Article 37a AF.

In bankruptcy proceedings, a participant in the proceedings may file an application for approval of the terms of sale of the debtor's enterprise, its organized part or assets constituting a significant part of the enterprise to the buyer (Article 56a(1) of the Bankruptcy Law[24]). In the terms of sale of the enterprise which includes forest real estate, it is possible to indicate that the forest real estate should be sold separately from the remaining components of the enterprise. The application for approval of the terms of sale is approved by the court (Article 56c(3) BL). The provision of Article 206(1)(2) BL provides that the creditors' board may agree to withdraw from the sale of the enterprise as a whole in bankruptcy proceedings. If no creditors' council has been established in the bankruptcy proceedings, the judge-commissioner expresses his consent to waive the sale of the business as a whole (Article 213(1) BL). The provisions of the Bankruptcy Law allow for the sale of individual elements of the bankrupt enterprise (e.g. forest real estate) and the application of the pre-emption provisions to the Treasury. The provisions on the pre-emption right and the right to acquire forest land also apply to the turnover of an organized part of an enterprise which includes forest land.

The provisions on the pre-emptive right to forest real estate do not apply in the case of the sale of an agricultural holding which includes this real estate (Article 37a(4)(3) AF). This provision cannot be interpreted broader, so it cannot be assumed that, when selling an enterprise which includes forest real estate, the provisions on the pre-emption right for forest real estate also do not apply. The provisions on the forest land pre-emption right cannot also be interpreted that if the subject of the pre-emption right is not identical with the subject of sale, the "National Forests" operating for the benefit of the State Treasury does not have the right of pre-emption. The fact that the object of sale (the enterprise) is not identical with the object subject to the pre-emption right (forest land) does not constitute an obstacle to the exercise of the pre-emption right to forest real estates included in the enterprise. The provisions of the Act on forests regarding the right to acquire forest real estate should also be applied when contributing an enterprise which includes forest land as an in-kind contribution to partnerships or capital companies.

[23] Act of 14 February 1991, the Notary Law, Journal of Laws of 2020, item 1192.
[24] Act of 28 February 2003 on taxes of the Bankruptcy Law, Journal of Laws of 2020, item 1228 [hereinafter: BL].

CONCLUSIONS

The provisions of the Act on forests apply to the sale of an organized enterprise and part of the enterprise which includes forest real estate, i.e. the State Treasury has the right of pre-emption of forest land in the event of sale of the enterprise or an organized part of the enterprise which includes such land, and the right to acquire forest land if a contract other than the sale of the enterprise is concluded. The provisions of the Act on forests do not apply to the sale of the enterprise and an organized part of the enterprise which includes the right of perpetual usufruct of forest land, which means that it can be sold without restrictions resulting from the pre-emption right and the right to purchase, which in these cases the State Treasury is not entitled to. The right of perpetual usufruct of forest land is something other than forest real estate, and the restrictive regulations should be interpreted strictly, not broadly.

An entity intending to acquire an enterprise which includes forest land, by a contract of sale or another contract, may not achieve the intended goal, if the State Forest Holding "National Forests," acting for the benefit of the State Treasury, exercises its pre-emptive right or the right to purchase by concluding a contract other than sale. This leads to uncertainty in trade. The separation of the sale of an enterprise into two contracts, the sale of forest real estate that is a part of it and the rest of its components, leads to uncertainty in the taxation of both contracts: whether they should be treated as a single transaction subject to tax on civil law transactions, or should they be treated as two separate contracts and be taxed with a tax on goods and services or a tax on civil law transactions. In order to be sure whether in a specific case it will be a sale of the enterprise despite the conclusion of two agreements, or whether the tax office considers it to be two separate agreements, one should apply for an individual interpretation pursuant to Article 14b of the tax ordinance.[25] An individual interpretation of the tax law is issued within 3 months from the date of receipt of a complete application (Article 14d(1) of the tax ordinance). This means an extension of the enterprise turnover transaction.

The provisions of the analysed acts do not provide a possibility to obtain a binding letter from the State Forest Holding, acting for the benefit of the State Treasury, stating that the State Treasury will not exercise the right of pre-emption or the right to purchase forest land in the event of concluding a contract other than sale. This would make easier the sale of a company that includes forest land, especially when the area of this land is small. The issuance of a declaration by the State Forest Holding "National Forests," acting for the benefit of the State Treasury that it would not exercise the pre-emption right for forest land included in the enterprise would require changes in the provisions regulating the pre-emption right. The legislator decided to exclude the provisions on the right of pre-emption and

[25] Act of 29 August 1997 on tax ordinance, Journal of Laws of 2020, item 1325.

the right to acquire he forest land included in an agricultural holding; the same may be done for the sale of an enterprise which includes forest land.

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