

## LOCAL TAXES IN THE JURISPRUDENCE OF LOCAL GOVERNMENT BODIES\*

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**Abstract.** This article explores the role of local taxes within the jurisdiction of the local government bodies. It first highlights the significance of local taxes and their two-fold expression of territorial and material sovereignty. The authors delve into the concept of local taxes, its legal definitions, and the scope of taxes that local government units have authority over. The paper discusses the functions of local taxes. Furthermore, it emphasizes the importance of proper income division between the state and local governments to ensure effective decentralization of administration and public finances. The article explores the entities responsible for administering local taxes and their roles in establishing tax liabilities, granting reliefs and collecting revenues. It outlines the decisions made by local authorities regarding taxes, distinguishing between declaratory and constitutive decisions based on how tax liabilities are incurred. It then delves into the impact of tax relief on local government budgets, discussing the criteria used to grant such relief and how it relates to the economic circumstances of taxpayers. The text also addresses relief measures introduced during the COVID-19 pandemic and their implications for local authorities. Lastly, the paper discusses the roles of local government bodies as creditors in enforcement proceedings, particularly in cases where tax liabilities need to be enforced. It outlines the conditions under which local authorities act as enforcement bodies.

**Keywords:** real estate tax; local budget revenues; tax reliefs; local taxes

### INTRODUCTION

Local taxes and fees are the only source of revenues for local government units, with which their bodies can exercise tax authority and attempt

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to conduct their fiscal policy. Tax power as an expression of sovereignty can be considered in two aspects: territorial and material. The first means that it is implemented in a specific territory, and it is not permissible to extend it beyond the territorial scope of operation of a given public law entity. The second aspect consists of the right to introduce taxes, collect benefits from taxes, and administer them [Glumińska-Pawlic 2011, 119; Tegler 1997, 376]. Competences to administer taxes are expressed in the fact that the relevant local government bodies carry out tax control activities, as well as tax assessment and collection and the enforcement of tax receivables. Tax authorities also have the power to refrain from collecting taxes, write off tax arrears, postpone payment deadlines, and pay in installments. Therefore, it is about carrying out the tasks of the tax authority by the relevant provisions of substantive and procedural tax law [Borodo 2000, 20]. The concept of tax authority also includes the statutorily defined scope of authority to make decisions in individual tax matters that shape the content of the obligation relationship.

## 1. THE CONCEPT OF LOCAL TAXES

The concept of local taxes has not been defined in law. However, the legislator uses it several times in legal acts of various ranks. In Article 167(2) of the Constitution of the Republic of Poland,<sup>1</sup> the income of local government units was divided into own income (but not mentioning benefits that should be included in this category), general subsidy, and targeted subsidies from the state budget. Even so, in Article 168 it was stated that these units have the right to determine the amount of local taxes and fees within the scope specified in the Act. In the Act on the revenues of local government units<sup>2</sup> the legislator indicated that the sources of the commune's revenues are from specific taxes listed in Article 4(1).

However, districts and voivodeships were deprived of any tax revenues. It should be noted, that the legislator included in the category of own income revenues not only local taxes and fees referred in the Act of 12 January 1991 on local taxes and fees,<sup>3</sup> i.e., from real estate tax and tax on means of transport but also from taxes: agricultural,<sup>4</sup> forest,<sup>5</sup> personal income

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<sup>1</sup> Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended.

<sup>2</sup> Act of 13 November 2003 on the income of local government units, Journal of Laws of 2022, item 2267 as amended.

<sup>3</sup> Act of 12 January 1991 on local taxes and fees, Journal of Laws of 2023, item 70 as amended.

<sup>4</sup> Act of 15 November 1984 on agricultural tax, Journal of Laws of 2020, item 333 as amended.

<sup>5</sup> Act of 30 October 2002 on forest tax, Journal of Laws of 2019, item 888 as amended.

paid in the form of a tax card,<sup>6</sup> inheritance and donation taxes<sup>7</sup> and civil law transactions.<sup>8</sup> Moreover, within the meaning of Article 3(2) of the Act – the own income of communes, districts, and voivodeships also includes shares in the revenues from personal income tax<sup>9</sup> and corporate income tax.<sup>10</sup> It is difficult to assume that all taxes mentioned in the Act, especially shares in (state) income taxes, are local in nature and that the local government has any tax power over these levies. The fundamental feature of local taxes, apart from the nature of the budget they support, is the right to determine their amount. The above doubts can also be raised concerning taxes on inheritance and donations, on civil law transactions, and the tax card because although these levies contribute to the budgets of municipalities, the rules of assessment and collection have been precisely defined in laws, and tax proceedings are conducted by the heads of tax offices, transferring the collected revenues to the accounts of the relevant municipalities. The only power for the executive bodies of municipalities is provided for in Article 18(2) and (3) of the Act on revenues of local government units, which states that in the case of taxes and fees collected by the tax office and constituting the entire income of local government units, the head of this office may write off, postpone the payment deadline or divide the amounts into installments and release the payer from the obligation to collect or limit the collection of receivables only with the consent of the chairman of the management board of the local government unit. There is no right to appeal against the decision on reliefs, but an appeal against the decision of the head of the tax office may be submitted to the director of the tax administration chamber. Finally, it should be noted that districts and voivodeships, apart from shares in state taxes, do not have any income tax sources. Therefore, it is challenging to consider that their income is differentiated if a significant part of it comes from the state budget.

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<sup>6</sup> Act of 20 November 1998 on flat-rate income tax on certain income earned by natural persons, Journal of Laws of 2022, item 2540 as amended.

<sup>7</sup> Act of 28 July 1983 on inheritance and donation tax, Journal of Laws of 2021, item 1043 as amended.

<sup>8</sup> Act of 9 September 2000 on tax on civil law transactions, Journal of Laws of 2023, item 170 as amended.

<sup>9</sup> Act of 26 July 1991 on personal income tax, Journal of Laws of 2022, item 2647 as amended.

<sup>10</sup> Act of 15 February 1992 on corporate income tax, Journal of Laws of 2022, item 2587 as amended.

## 2. FUNCTIONS OF LOCAL TAXES AND THEIR ROLE IN THE STRUCTURE OF COMMUNE BUDGET REVENUES

According to Article 51(1) of the Act on Municipal Self-Government,<sup>11</sup> the commune independently conducts financial management based on a budget resolution, which is an annual plan of income and expenses as well as revenues and expenses of this unit, adopted for a calendar year in the form of a budget resolution, constituting the basis for its financial management in a year. The budget includes revenues, constituting forecasts of their amounts, and expenses and expenditures, constituting an unsurpassable limit. The forward-looking nature of the income and revenues included in budgets and financial plans does not relieve the bodies creating them from the obligation to estimate them and reliably plan and implement them realistically. The proper division of income between the state and local government and its levels is essential for the functioning of the local economy, mainly due to the diversified nature of local government units and the disproportions in their development.

To implement the entrusted tasks, it is necessary to provide local government units with appropriate financial resources, and therefore, they should be guaranteed an appropriate share in public revenues, and the other hand, the stability of the sources of these revenues should be ensured and a prohibition on modifying them, eliminating the appropriateness of this share<sup>12</sup> [Ruśkowski 2008, 30ff]. The correct division of public funds between individual sectors (government and local government) becomes vital in decentralizing administration and public finances, understood as the transfer of tasks, competencies, tools, and instruments for their implementation. The literature emphasizes that the practice of regulating financial management issues in ordinary laws, which are usually subject to frequent changes, is based on erroneous assumptions, which are accused of being fragmentary, generic, and fragmenting a uniform subject matter between many laws and some sub-statutory acts [Małecki 1991, 37ff; Drwillo and Gliniecka 1995, 88ff; Glumińska-Pawlic 2003, 98ff; Borodo 2011, 63-64].

The primary function of local taxes is the fiscal function. However, these taxes are unique in nature, as the revenues may vary significantly depending on the type of commune, its size, and the degree of industrialization. The real estate tax is significant in the income structure of highly industrialized communes, although it constitutes a small percentage in rural communes. Local taxes also have a stimulating function because,

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<sup>11</sup> Act of 8 March 1990 on municipal self-government, Journal of Laws of 2023, item 40 as amended.

<sup>12</sup> See judgment of the Constitutional Tribunal of 23 October 1996, ref. no. K 1/96; judgment of the Constitutional Tribunal of 27 June 2000, ref. no. K 20/99.

by differentiating tax rates and introducing exemptions and reliefs, they can influence the specific behavior of taxpayers [Pahl 2017, 50-54]. However, as a rule, these taxes are separate from many municipalities' fundamental core of budget revenues. Statistically, these taxes (together with local fees) take up to 20% of the total income generated. This does not apply to cities with district rights and the capital city of Warsaw, where these revenues are several percentage points higher.<sup>13</sup>

Considering that the Polish legislator granted only commune revenues from certain taxes, further considerations should be limited only to this level of local government.

### 3. BODIES OF LOCAL GOVERNMENT UNITS AS TAX AUTHORITIES

The concept of authority is associated with a legal structure consisting of specific rights and obligations and, simultaneously, with the person or group of people to whom these rights and obligations are or will be granted. The Act on Municipal Self-Government in Article 11 mentions the commune council and the commune head (mayor, city president) as the executive body. However, in Article 39, it is indicated that the commune head is authorized to issue administrative decisions in individual matters in public administration. It should be emphasized that the authority always makes decision, not its holder [Martysz 2000, 43ff].

The first-instance tax authorities in the field of taxes and fees constituting the revenues of municipal budgets are commune heads (mayors/city presidents) – according to Article 13(1)(1) of the Tax Ordinance<sup>14</sup> in connection with the Article 39(1) of the Act on Municipal Self-Government and Article 4(1)(1-2) of the Act on the revenues of local government units. These authorities issue individual decisions regarding establishing or determining tax obligations, reliefs, and exemptions regarding real estate tax, agricultural tax, forestry tax, and tax on means of transport. As of 1 January 1999, the powers of tax authorities are also vested, to a limited extent, with head of the district and voivodeship marshals, provided, however, that districts and voivodeships will be granted revenues falling within the scope of the Tax Ordinance, which may include taxes, fees and non-tax budgetary receivables. Decisions of first-instance bodies may be appealed to local government appeal boards, which are competent in particular to consider appeals and complaints against decisions, reminders, requests to resume proceedings, or to declare decisions invalid. Local government appeal boards

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<sup>13</sup> See Collective financial reports of municipalities published on the website of the National Council of Audit Chambers, <https://rio.gov.pl> [accessed: 29.09.2023].

<sup>14</sup> Act of 29 August 1997, the Tax Ordinance, Journal of Laws of 2022, item 2651 as amended.

are state budgetary units that operate based on the provisions of the Act of 12 October 1994<sup>15</sup> and are higher-level bodies than the bodies of local government units. The general competence of the board is therefore related to the verification of decisions and resolutions of local government bodies of the first instance during the instance and extraordinary modes of tax proceedings.

The scope of the colleges' powers changed in 2000 in connection with the change in the content of Article 233(3) of the Tax Ordinance, specifying the powers of appeal bodies in matters resolved by local government bodies. The new wording of this provision limited the ability of colleges to issue reform decisions only to situations in which the law does not leave the method of resolving the matter to the discretion of the local government body. Therefore, in the case of discretionary decisions, the colleges, recognizing the validity of the appeal, can only repeal the contested decision. However, taking into account the content of Article 234 of the Tax Ordinance, it must be stated that such a solution will not always be possible. The cited provision states that the appellate body cannot issue a decision to the detriment of the appellant. In this situation, the board – even if it decides that the taxpayer's arrears should be divided into five installments instead of three (as done by the commune mayor) – is obliged to maintain the decision in force because its repeal will deprive the taxpayer of the relief granted to him.

#### 4. TYPES OF DECISIONS ISSUED IN TAX MATTERS BY MUNICIPAL AUTHORITIES

As part of the tax authority of municipalities, their executive bodies issue decisions in tax matters by which they establish or determine the amount of tax liability. These decisions are declaratory or constitutive depending on how the tax liability is incurred. The legal basis for the distinction mentioned above is Article 21 of the Tax Ordinance, which indicates two possible ways of creating a tax liability: on the date of the occurrence of the event to which the tax law relates the creation of such an obligation or on the date of delivery of the decision of the tax authority determining the amount of this obligation. In both cases, taxpayers must submit a tax return and provide correct and complete data regarding taxation.

In the field of real estate tax, agricultural tax, and forestry tax, a similar solution has been applied regarding the moment when the tax liability arises – in the case of natural persons, it is the date of delivery of the decision

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<sup>15</sup> Act of 12 October 1994 on local government appeal boards, Journal of Laws of 2018, item 570.

determining the amount of the tax liability (constitutive decision), while in the case of legal persons, organizational units and companies without legal personality – the first day of the month following the month in which the event giving rise to a tax obligation occurred (if it does not exist from the beginning of the year) or at the beginning of the tax year [Dowgier, Eteł, Liszewski, et al. 2021].

In the case of natural persons, issuing an assessment decision is the responsibility of the tax authority, and failure to do so results in no tax liability arising. Its amount is determined by the data contained in the tax declaration unless, during the proceedings, it is found that the data contained in the declaration, which may affect the amount of the tax liability, is inconsistent with the actual situation. However, legal persons, organizational units, and companies without legal personality – if, despite their obligation, they have not paid all or part of the tax, have not submitted a declaration, or the correct amount of the tax liability turned out to be different from that indicated in the declaration, or the resulting liability has not been demonstrated – the tax authority issues a decision specifying the amount of the tax liability (declaratory decision). Therefore, it does not create a new tax liability but only states the correct amount it should be calculated and indicates the date and method of payment [Eteł 2023a].

In the tax on means of transport, the tax liability arises on the date of occurrence of a specific event, which in this case means the first day of the month following the month in which the means of transport was registered in the territory of Poland, and in the case of purchasing a registered means of transport – from the first day of the month following the month in which the means of transport was purchased. Therefore, the tax authority may only issue a decision determining the amount of the tax liability if it detects irregularities.

In addition to the decisions indicated so far, the executive bodies of municipalities also issue rulings regarding applying tax reliefs listed in Article 67a of the Tax Ordinance will be discussed later in the article.

## 5. RELIEFS IN THE REPAYMENT OF TAX LIABILITIES AND THEIR CONSEQUENCES FOR THE BUDGETS OF LOCAL GOVERNMENT UNITS

Although by Article 84 of the Constitution, everyone is obliged to bear public burdens and benefits, including taxes specified in acts; the taxpayer can apply for relief in the repayment of tax liabilities provided for in tax acts. This exception to the principle of universality of taxation may be applied if the taxpayer submits an application to the tax authority according

to Article 67a et seq. of the Tax Ordinance. The act provides for three types of relief in the repayment of tax liabilities: 1) deferring the tax payment deadline or paying the tax in installments; 2) deferring or spreading into installments the payment of tax arrears together with interest for late payment or interest on unpaid tax advances; 3) cancellation of tax arrears, late payment interest, or extension fee in whole or in part.

Postponing the tax payment deadline constitutes a temporary waiver of the obligation to pay it, taking into account exceptional circumstances that temporarily impede the provision of this public service. It is possible until the tax payment deadline expires and takes place by way of a decision of the competent tax authority [Szadkowska 2017, 7-13], which expires by operation of law when the tax is paid, or the deferred deadline has expired, and the tax liability has still not been paid [Etel 2023b]. A similar institution is the deferral of payment of tax arrears and interest for late payment. It occurs when the primary tax payment deadline has expired. Failure to meet the deferred deadline results in restoring the statutory tax payment deadline [Dauter 2019]. Another possible relief is to divide the payment of tax or tax arrears and interest into installments. The case law of administrative courts indicates that the competent tax authority can freely shape them. However, it should consider the actual circumstances of the case and the taxpayer's capabilities.<sup>16</sup> The write-off of tax arrears, late payment interest, or extension fee, according to Article 67a(1)(3) of the Tax Ordinance are unique institutions. It aims to improve the economic situation of the taxpayer.<sup>17</sup> It covers the scope marked explicitly in the tax authority's decision on the write-off of tax arrears [Dzwonkowski and Kurzac 2020].

In Article 67a(1) of the Tax Ordinance, two conditions have been indicated that may constitute the basis for a favorable consideration of the application – important interest of the taxpayer or public interest. They are autonomous and independent. These are general clauses, i.e., vague concepts not defined in the act. Thus, in practice, some problems arise related to assessing individual factual situations regarding the occurrence of the premises mentioned above. The tax authority has some freedom both in the interpretation of these concepts and in the assessment of the taxpayer's situation.<sup>18</sup> These premises should take an objective approach, consistent with the hierarchy

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<sup>16</sup> See judgment of the Supreme Administrative Court of 29 June 2005, ref. no. I FSK 44/05; judgment of the Supreme Administrative Court in Warsaw of 1 March 2000, ref. no. III SA 1546/99; judgment of the Provincial Administrative Court in Szczecin of 29 October 2015, ref. no. I SA/Sz 676/15.

<sup>17</sup> See judgment of the Supreme Administrative Court in Łódź of 18 April 1995, ref. no. SA/Łd 2424/94.

<sup>18</sup> See judgment of the Supreme Administrative Court of 31 October 2012, ref. no. II FSK 510/11.



of values generally applicable in society, and not only by the subjective feelings of the taxpayer [Linka 2019, 46-47]. The tax authorities must conduct evidentiary proceedings in this respect, comprehensively explaining the factual circumstances [Żoźnierz 2020, 657-58].

A compelling interest exists when exceptional circumstances exist in a particular taxpayer's life or economic situation. They cannot be caused by the behavior or omission of the party but by events objectively beyond his control, which would have occurred even if he had exercised due diligence [Wołowicz 2016, 17-21]. However, this condition cannot be limited only to extraordinary situations and random events. A vital interest of the taxpayer is also related to the existence of special reasons on his part, which means that complete and timely tax payment may undermine the basis of the taxpayer or people dependent on him.<sup>19</sup> In this sense, the concept's scope also includes the usual situation of a party, which, however, prevents it from covering expenses related to the living needs or health care of immediate family members.<sup>20</sup>

The second condition that allows for relief in the repayment of tax liabilities is the public interest. This concept is also vague and has a wide range of meanings. It will occur primarily when following a refusal to grant a natural person one of the reliefs indicated in Article 67a(1) of the Tax Ordinance, the burden of maintaining the taxpayer would be transferred to the budget of the state or local government unit – for example, due to the need to use social assistance benefits. In the case of legal persons and entrepreneurs, the potential liquidation of jobs should be considered a manifestation of implementing the discussed condition [Radzikowski 2006, 156-57]. Therefore, the premise of public interest is a directive to respect values common to the entire society, such as justice, security, trust in public authorities, and the efficiency of the state apparatus<sup>21</sup> [Gomułowicz and Mączyński 2016]. Examining the existence of the public interest condition requires weighing the situation in two aspects – the principle of equality and universality of taxation and the related timely payment of taxes in total amount,<sup>22</sup> and the exception to it – i.e., the application of an individual tax relief. Therefore, the authority has to determine a more favorable solution from the point of view of the public interest, the protection of which

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<sup>19</sup> See judgment of the Supreme Administrative Court of 2 October 2020, ref. no. II FSK 1679/18.

<sup>20</sup> See judgment of the Supreme Administrative Court of 10 March 2010, ref. no. I FSK 31/08.

<sup>21</sup> See judgment of the Supreme Administrative Court of 8 November 2019, ref. no. I GSK 1403/18.

<sup>22</sup> However, the examination of public interest cannot be limited solely to the need to implement these principles – the facts must always be subject to a thorough analysis. See judgment of the Supreme Administrative Court of 9 May 2019, ref. no. II FSK 1421/18.

not only means ensuring the priority payment of given receivables but also minimizing public expenses arising as a result of the need for the obligated person to settle tax receivables.<sup>23</sup>

The crisis caused by the economic and social consequences of the COVID-19 pandemic was also a reason that could justify the application of relief in the repayment of tax liabilities on general principles. There was also a need to create new solutions to support entrepreneurs whose financial liquidity had deteriorated due to the pandemic's negative economic consequences. An example of such action was the possibility of exemption from real estate tax or extension of the deadlines for payment of real estate tax installments based on a resolution of the relevant commune council in the manner specified in Article 15p and 15q of the Act of 2 March 2020 on unique solutions for preventing, counteracting, and combating COVID-19, other infectious diseases, and crises caused by them.<sup>24</sup> Under the provisions mentioned above, municipal councils could, by way of resolution: 1) for part of 2020 and for selected months of the first half of 2021, exempt from real estate tax: land, buildings, and structures related to running a business;<sup>25</sup> 2) extend the payment deadlines for real estate tax installments payable in April, May, and June 2020, no longer than until 30 September 2020, and payable in selected months of the first half of 2021, no longer than until 31 December 2021;<sup>26</sup> 3) designated groups of entrepreneurs whose financial liquidity has deteriorated due to suffering negative economic consequences due to COVID-19. The purpose of this regulation was to enable municipalities, within their tax autonomy, to apply solutions whose task was to have a positive impact on the economic situation of taxpayers conducting business activity and those particularly affected by the effects of the pandemic, as well as contributing to the improvement of their financial liquidity.<sup>27</sup>

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<sup>23</sup> See judgment of the Supreme Administrative Court of 30 June 2020, ref. no. II FSK 486/18.

<sup>24</sup> Journal of Laws of 2023, item 1327 as amended [hereinafter: the Covid Act].

<sup>25</sup> Resolutions issued pursuant to Article 15p were adopted, among others: in Sosnowiec (Resolution No. 642/XXXVI/2021 of the City Council in Sosnowiec of 19 January 2021, Journal of Laws of the Silesian Voivodeship of 2021, No. 539) or in the Popów Commune (Resolution No. 183/XXIX/2021 of the Popów Commune Council of 13 January 2021, Journal of Laws of the Silesian Voivodeship of 2021, No. 519).

<sup>26</sup> Resolutions issued pursuant to art. 15q were adopted, among others: in Polanica-Zdrój (Resolution Number XII/119/2020 of the City Council in Polanica-Zdrój of 30 December 2020, Journal of Laws of the Lower Silesian Voivodeship of 2021, item 284), in the Bukina Tatrzańska Commune (Resolution No. XXVII/240/2021 of the Bukowina Tatrzańska Commune Council of 15 January 2021, Journal of Laws of the Małopolska Province of 2021, item 458).

<sup>27</sup> See Justification for the government draft act amending the act on special solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and crisis situations caused by them, and certain other acts, Sejm form no. 299, <http://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=299> [accessed: 29.09.2023].

The indicated resolutions of municipal councils contained detailed information related to the application of relief for entrepreneurs in connection with COVID-19, including: 1) specific definition of the groups of entities that are entitled to the described reliefs; 2) explaining the concept of deterioration of financial liquidity due to the negative economic consequences of COVID-19; 3) indication of how to document the deterioration of financial liquidity; 4) specifying the taxation subject to real estate tax relief – as it may be only land, buildings, or structures related to a specific business activity or all land, buildings, or structures of specific groups of entrepreneurs.

The crisis caused by the SARS-CoV-2 pandemic required action by the legislators – including increasing support for entrepreneurs. However, the solutions introduced by the Covid Act did not constitute comprehensive assistance, leaving municipalities free to make decisions. In turn, municipalities were also in a difficult financial situation due to reduced revenues and were reluctant to adopt resolutions on real estate tax exemptions. Granting the described reliefs to specific groups of entrepreneurs could result in difficulties in financing the implementation of municipalities' tasks. From the point of view of municipal budgets and fiscal policy pursued by local governments under their financial authority, this solution could have been more favorable. The COVID Act did not provide for compensation for municipalities that decided to introduce optional real estate tax relief.

Moreover, due to restrictions on the possibility of running a business due to the epidemic threat, local government units' income from their share in personal and legal income tax has decreased. The losses of local governments were also significant, caused by restrictions on the use of local public transport or other services offered by their subordinate units. All this meant that municipal councils rarely decided to adopt resolutions exempting certain groups of entrepreneurs from real estate tax.<sup>28</sup>

## 6. BODIES OF LOCAL GOVERNMENT UNITS AS CREDITORS IN ENFORCEMENT PROCEEDINGS AND ENFORCEMENT BODIES

According to Article 19(2) of the Act of 17 June 1966 on enforcement proceedings in administration,<sup>29</sup> the executive body of a commune with the status of a city (mayor, president of the city) and the capital city of Warsaw – are enforcement authorities and perform tasks in the field of enforcement of monetary receivables, for which the determination or determination

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<sup>28</sup> For example, in the Silesian Voivodeship, as at the date of writing this article, only 53 out of 167 communes decided to adopt at least one resolution temporarily exempting entrepreneurs from real estate tax.

<sup>29</sup> Journal of Laws of 2022, item 479 as amended.

and collection are appropriate, i.e., in terms of local taxes and fees. They have the authority to apply all enforcement measures, except enforcement against real estate. Enforcement proceedings in administration are intended to force the obligated party to fulfill his obligations or to create conditions facilitating future enforcement. The use of coercive enforcement is the primary way in which the administration responds to the disobedience of administered entities. It is only possible in cases where the addressee of the administrative act is obliged to implement it, i.e., to take actions aimed at subordinating the actual state of affairs to the norm of substantive law specified in the administrative act [Przybysz 2023; Pietrasz 2015].

The executive bodies of municipalities with the status of a city and the capital city of Warsaw may act in the process of implementing monetary benefits, including levy obligations, in three roles: 1) as a tax authority in tax proceedings in which a monetary obligation is established or determined – and in such a case, it has the status of a creditor; 2) as an entity of a material tax-law relationship; 3) as an enforcement authority that is also a creditor – which usually happens when the enforcement concerns receivables determined or determined and collected by this authority [Pietrasz 2015].

The commune body with the status of a city becomes the enforcement body in the administrative enforcement of monetary receivables only within the scope of its tasks. Enforcement proceedings are dependent proceedings which, as a rule, concern the execution of an act issued in another administrative (tax) proceeding or court proceedings. Therefore, the subject of this proceeding is independent because it is determined by the content of an administrative act issued in another proceeding and, in some cases, by a court decision.<sup>30</sup>

The discussed bodies, therefore, become enforcement authorities for monetary receivables if two conditions are met: the commune authority is authorized to establish or determine monetary receivables, and this authority is authorized to collect them.<sup>31</sup> Consequently, the position that the commune authority is the enforcement authority in the enforcement of monetary receivables collected exclusively by this authority, which, however, does not establish or determine them, may raise doubts.

In the administrative enforcement of monetary receivables for which the executive body of a commune with the status of a city is competent to establish or determine and collect, this body is not defined in the act as solely the competent enforcement authority. Based on Article 19 in connection

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<sup>30</sup> See decision of the Supreme Administrative Court of 30 December 2013, ref. no. I OW 192/13.

<sup>31</sup> See decision of the Supreme Administrative Court of 25 June 2008, ref. no. II FW 2/08.

with Article 22(2) and (3) of the act to carry out administrative enforcement of such receivables in a situation where the obligor resides or has its registered office or the obligor's assets known before the initiation of enforcement, or a significant part of them are located in the area of operation of a commune other than the local government unit that established or determined the claimed receivable; the competent enforcement authority is the head of the tax office.<sup>32</sup>

Concerning other (rural) communes, in the scope of monetary receivables, including taxes and fees for which the commune body is competent to establish or determine and collect them, the enforcement authority is the head of the tax office. In such a case, the commune authority must issue an enforcement title and send it immediately to the locally competent head of the tax office and participate in the enforcement proceedings as a creditor [Klat-Wertelecka 2005, 34; Madej 2013; Wołowiec 2021, 27-34]. However, an exception in this respect results from Article 6qa of the Act of 13 September 1996 on maintaining cleanliness and order in municipalities,<sup>33</sup> according to which the competent authority of the municipality to which Article 19(2) of the act. (i.e., the commune head) may perform tasks related to the administrative enforcement of monetary receivables for municipal waste management fees based on an agreement with the head of the tax office. However, it cannot concern the enforcement of monetary receivables from real estate.

It is worth noting that concerning taxes constituting the income of municipalities and implemented by the heads of tax offices (such as inheritance and donation tax and tax on civil law transactions), the competent authority of the municipality that is the beneficiary of these receivables is not the enforcement authority. Moreover, the commune itself is not a creditor in enforcement proceedings. The creditor's rights in these proceedings are exercised by the tax authority (head of the tax office) determining or determining the receivables mentioned above [Pietrasz 2015].

## CONCLUSIONS

Local taxes and fees should constitute one of the most stable sources of income for municipal budgets, which will allow them to become financially independent from external factors, especially the political situation in the country, which directly affects the level of funds transferred from the state budget and may limit their acquisition from extra-budgetary

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<sup>32</sup> See resolution of the Supreme Administrative Court of 8 December 2014, ref. no. II FPS 5/14.

<sup>33</sup> Journal of Laws of 2023, item 1469 as amended.

sources. Their share in the total budget reflects not only the financial condition of the commune but is also a measure of its self-sufficiency, economic potential, and investment capacity.

In implementing the constitutional obligation of universal taxation, municipal authorities must pursue a rational tax policy, which should be reflected not only in the right to claim budget receivables together with late payment interest but also in the application of relief in the repayment of tax liabilities. Municipal tax authorities should perform their tasks using the statutorily defined scope of powers to make decisions in individual tax matters, shaping the content of the obligation relationship. Reliefs in the repayment of tax liabilities are often treated as tax privileges. However, it should be remembered that they are also an incentive to engage capital, regulate demand and supply, develop economically backward regions, promote employment, and alleviate income disproportions. The most frequently mentioned functions that they have to fulfill include economic and social functions, which include supporting investment activities, supporting desired business activities, correcting tax assessments due to circumstances that weaken the payment capacity of a specific taxpayer, and the nature of the activity performed by him (economic functions), as well as supporting specific groups of taxpayers due to the nature of the activity conducted, the obligation to protect persons disabled people, improving the professional qualifications of taxpayers or pursuing a pro-family policy by the state (social functions).

The scope of independence of municipalities depends on what attributes of tax authority are transferred to their authorities and what limitations result from the applicable regulations. By pursuing a rational tax policy and consciously and skillfully using available financial instruments, local government tax authorities should guarantee the provision of planned budget revenues to implement tasks and ensure sustainable development, considering residents' needs.

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