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JOINT RIGHTS DISSOLUTION IN ORDINARY LEGAL TRANSACTIONS IN THE CONTEXT OF TAX LEGISLATION

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Abstract. The tax law system provides for the taxation of numerous legal events (or their financial consequences), including special types of legal transactions aimed at dissolving joint ownership of property or property rights held by more than one entity. Within the scope of common civil law transactions, these include the dissolution of co-ownership, the division of an inheritance, and the division of joint property held by spouses. The law clearly defines the principles of the tax liability with regard to the first two categories of transactions, while extending this liability to the division of joint property of spouses is debatable. In this paper, the author presents issues that arise under the tax legislation related to the aforementioned transactions and suggests solutions.

Keywords: dissolution of joint ownership; division of the inheritance; division of the joint property of spouses; tax liability.

INTRODUCTION

This paper refers to the category of legal transactions in a broad sense, including both substantive and formal (procedural)[1] transactions involving the liquidation (total or partial) of a common property or property rights. The subject of the commonality may be a single item – in this case, co-ownership – a single property right other than ownership, such as perpetual usufruct or lease, or a set of items and/or rights, including a particular aggregate of them termed as property or assets [Gniewek 2007, 430-32]. Thus, these transactions are made by civil law entities remaining in a special legal and property relationship, such as joint ownership (commonality).

[1] Therefore, the sources of their regulation are not only the provisions of substantive civil law, namely the Act of 23 April 1964, the Civil Code, Journal of Laws of 2024, item 1061 [hereinafter: CC], and the Act of 25 February 1964, the Family and Guardianship Code, Journal of Laws of 2023, item 2809 [hereinafter: FGC], but also civil procedural law, namely the Act of 17 November 1964, the Code of Civil Procedure, Journal of Laws of 2024, item 1805 [hereinafter: CCP].

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In ordinary legal transactions, which consist of non-business legal transactions [Doliwa 2005, 5], especially concerning natural persons, three categories play a particularly important role: dissolution of co-ownership (joint ownership), division of inheritance and division of joint property of spouses. The present discussion will be narrowed down to the above three categories of legal transactions, while the question of division of property of partners of a civil partnership will be omitted due to its relation to business transactions.

The dissolution of co-ownership plays an exceptional role in the system of transactions due to its independent position and complete regulation, which does not allow for referral to other transactions [Swaczyna 2004; Kostański 2004; Świeczkowski 2013]. The material and legal aspects of co-ownership dissolution are regulated in Articles 210-221 CC, while procedural issues are regulated in Articles 606-608 and 617-625 CCP. It should also be noted that the dissolution refers to the basic model of joint ownership, i.e. joint ownership in fractional parts (where particular co-owners are entitled to shares indicated by a fraction). It is not applicable to joint ownership (i.e. shareless ownership, such as marital joint ownership), for which special regulations apply on a case-by-case basis.

In light of the aforementioned legislation, three main methods of dissolving co-ownership can be identified: 1) physical division of the common property, if it is not contrary to the provisions of the law or to the social and economic purpose of the property, or if it does not involve a substantial change in the property or a substantial decline in its value (Article 211 CC); if, at the same time, the value of the physically divided parts does not coincide with the value of the individual shares, this value may be compensated for by cash payments (Article 212(1) CC); 2) granting ownership of the common property to one co-owner with the obligation to repay the others (Article 212(2) CC); 3) sale of the common property pursuant to the provisions of the Code of Civil Procedure (Article 212(2) CC).

The literature also permits hybrid methods of dissolving co-ownership upon the unanimous request of the co-owners. Examples include applying a partial physical division or allocating part of the property to one of the co-owners and selling the remainder [Gniewek 2007, 480].

It should be added, as will be discussed later, that the aforementioned cash transactions involving surcharges and repayments are key to determine tax liability. The function of the above benefits is as follows: (a) a surcharge is due to a co-owner (subject of a joint right) obtaining, as a result of the dissolution of co-ownership, a benefit whose value is lower than the value of his share – from a co-owner (subject of a joint right) obtaining a benefit whose value exceeds his share; (b) a repayment is due to the co-owner (subject of the joint right) disposing of his share as a result of the dissolution of co-ownership – from the co-owner (subject of the joint right) to whom the disposal is made.

The division of inheritance involves the allocation of the inherited property among the co-heirs, and the principles and manner of this allocation are defined in Articles 1035 and 1037-1046 CC, as well as in Articles 627-628 and 680-689 CCP with regard to procedural aspects.[2] Unlike the regulation of the dissolution of co-ownership, the provisions relating to the division of inheritance are not exhaustive, as the legislator omitted the methods of dividing inherited property and its constituent elements. At the same time, Article 1035 CC provides for the appropriate application of the provisions on joint ownership in fractional parts in this respect.

A similar mechanism, although with significant modification, has been applied to the division of joint property of spouses, which is the final phase of the dissolution of a specific property rights – that is, a system of joint property ownership between spouses.[3] The legislator has devoted only a few provisions to this matter (Articles 46 and 58(3) FGC, and Article 566 CCP), using the method of referencing other legal norms in a rather characteristic way. In Article 46 FGC, the legislator provides for the appropriate application of the provisions on division of the inheritance. In doing so, they refer, among other things, to Article 1035 CC. As mentioned above, this article contains a reference to the provisions on the dissolution of joint ownership. As can be seen, the legislator has used a mechanism involving a double reference in this case [Smyczyński 2009, 513].

Thus, not only the transaction of dissolution of joint ownership (commonality), but also any of the other transactions may use any of the three methods of dissolution of commonality referred to hereinabove.

Referring to the remark made at the beginning of this paper, it should also be emphasised that each of the aforementioned transactions undertaken to liquidate joint ownership may take the form of either a substantive legal action (i.e. an agreement concluded by the parties to the legal relationship of joint ownership or commonality) or a procedural action, such as a court or arbitration court decision, a settlement concluded before a court or, having the legal force of a court settlement, a settlement concluded before an arbitration court after it has been recognised or declared enforceable by the court (Article 1212(1) CCP), or a settlement concluded before a mediator (after court approval – Article 183^{15}(1) CCP).

The tax consequences with regard to the individual transactions referred to hereinabove are not uniform. *Expressis verbis*, the dissolution of joint ownership is subject to both tax on civil law transactions and tax

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[2] This topic has been extensively analysed by: Kremis 2009, 639-825; Biernat 2007; Stempniak 2022, among others.

[3] More information on this subject can be found in: Ignaczewski and Skiepko 2021; Ciepła and Pytlewska 2022; Smyczyński 2009, 512-29.

on inheritance and donations, while the division of inheritance – only to the former. On the other hand, the act of division of joint property of spouses seems to be tax-neutral, although there is not a full consensus of views in the legal doctrine here. The question also arises as to whether the provisions relating to other taxes may apply to the analysed transactions.

1. TAXATION OF THE DISSOLUTION OF JOINT OWNERSHIP AND TAXATION OF THE DIVISION OF THE INHERITANCE UNDER THE TAX ON CIVIL LAW TRANSACTIONS

Legal regulations concerning the tax indicated in the title of this part of the paper[4] adopt a narrower approach to the subject of the tax obligation in relation to the analysed transactions, stipulating that agreements on division of inheritance and agreements on dissolution of joint ownership are subject to tax only in the part concerning repayments or surcharges[5] (Article 1(1)(f) TCLT). In other words, the tax only comes into play if the performance of a certain act is combined with a repayment or surcharge. In these cases, therefore, an obligation is imposed on all participants in the transaction: the benefit of one party consists in a contribution to the other party corresponding to the value of the share or a contribution in excess of the share, while the benefit of the other party takes the form of a repayment or surcharge, constituting equivalents for the aforementioned contributions. This allows us to classify this category of community liquidation transactions as bilaterally (multilaterally) obliging and at the same time chargeable transactions, which is in line with the concept of the tax under analysis [Goettel and Goettel 2007, 62-63; Michta and Pankrac 2013].

A characteristic feature of the analysed tax is the circumstance that the obligation under this title is connected with the very occurrence of a specific civil law event, regardless of whether this event entails a benefit to a given person or persons (it usually does) or not. While constructing the catalogue of events constituting the subject of taxation, the legislator used the method of enumerating them, i.e. the principle of *numerus clausus* [Ofiarski 2018, note 2 to Article 1; Wilk 2016, 136; Filipczyk 2015; Goettel and Goettel 2007, 60; Skwierczyńska and Szymańska 2015, 18; Gargul and Oleś 2024], but did not apply it in its entirety. He did so, pursuant to Article 1(1)(1) and (2) (2)(1) and (3) TCLT, only with regard to acts of substantive civil law (mainly contracts), listing in the catalogue, as mentioned hereinabove, agreements

[4] Act of 9 September 2000 on tax on civil law transactions, Journal of Laws of 2024, item 295 [hereinafter: TCLT].

[5] A judgment of the Provincial Administrative Court in Bydgoszcz of 18 December 2019, ref. no. I SA/Bd 601/19, Lex no. 2760300.

on division of inheritance and agreements on dissolution of joint ownership. However, in accordance with the conception of the subject of taxation adopted in the Act, it also covers procedural transactions. Goettel analyses this problem in more detail. Nevertheless, the scope of these transactions is no longer specified by means of an unambiguous criterion. According to the wording of Article 1(1)(3) TCLT, only those procedural transactions that produce the same effects as the substantive legal transactions covered by taxation and their amendments are subject to tax (i.e. those indicated in Article 1(1)(1) and (2) TCLT). Therefore, the subject matter covered herein concerns court and arbitration court rulings, as well as settlements on the dissolution of joint ownership and division of inheritance. These constitute an alternative mode of creating, modifying or abolishing a specific civil law relationship [Goettel 2020, 62].

Against the background of transactions dissolving joint ownership, an interesting view has been expressed in jurisprudence: the use of the name "Agreement on the Division of a Portion of the Inheritance and the Division of a Portion of the Property Included in the Marital Statutory Joint Ownership" in the notarial deed, i.e., a wording not included in the catalogue in Article 1(1)(1) TCLT, does not exempt this action from the scope of the tax in question concerning the division of inheritance with agreed-upon repayments or surcharges.[6] This no doubt accurate view has been approved by legal requirements [Ofiarski 2018].

The objective scope of the tax under review was further expanded, pursuant to Article 1(2)(3) TCLT (on the basis of being treated like inheritance division and joint ownership dissolution agreements, respectively) to comprise: 1) acquisition of ownership of common property or common property right or parts thereof by some of the existing co-owners for further co-ownership – in the part of repayments or surcharges, 2) separation of ownership of premises for consideration in favour of some or all co-owners.

The first case is classified as a mixed method of liquidating joint ownership in the doctrine [Gniewek 2007, 480], while the second case is a method of establishing separate ownership of premises [Ignatowicz and Stefaniuk 2012, 150]. The option to tax this method was accepted in jurisprudence before Article 1(2)(3) TCLT[7] took effect.

Regardless of the form of the act liquidating joint ownership, the presented formula of the law supports including only the dissolution of joint ownership and the division of inheritance in the tax, thus excluding other such acts from taxation, specifically the division of joint property of spouses.

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[6] A judgment of the Provincial Administrative Court in Gdansk of 14 November 2014, ref. no. I SA/Gd 910/14, Lex no. 1552596.

[7] A judgment of the Supreme Administrative Court of 17 November 2015, ref. no. II FSK 2288/13, Lex no. 1916697.

The tax obligation under this levy is imposed on the co-rights holder who, as a result of the dissolution of co-ownership or division of the inheritance, obtains a gain, in the form of the acquisition of a property or property right, over and above the share in the inheritance or co-ownership (Article 4(5) TCLT). This type of situation occurs primarily when there is an allocation of the property or right in its entirety to one of the co-owners as part of the aforementioned transactions, with the obligation to repay the shares held by the other co-owners, but also when there is a physical division of the property, combined (due to the impossibility of carrying out this operation according to the value of the shares) with repayments or surcharges [Biernacki 2009, 22]. This obligation, however, does not fall on the entity enjoying a monetary benefit in the form of a surcharge or repayment.

According to Article 6(1)(5) TCLT, the basis for taxation is the market value of the property or property right acquired over and above the value of the share in joint ownership or inheritance. Therefore, this basis is not the amount of the repayment or surcharge paid on this account, as agreed by the parties. This is because the amount due may not coincide with the market value of the property or property right acquired in excess of the share's value. Not only the jurisprudence,[8] but also the doctrine [Bogucki 2021b] has spoken to this effect. Such a situation may only occur in the event of a contractual dissolution of joint ownership since, in court proceedings, the court's decision on repayments or surcharges always takes into account the market value. In practice, the amount of the repayment or surcharge will be the reference point for determining the tax base when the method of determining it is not in doubt. Otherwise, the tax authority will determine it in accordance with the rules of Article 6(3) and (4) TCLT.

In turn, the tax rates have been differentiated depending on the type, representing the subject of the transaction, of the property, where the acquisition is made over and above the share in the inheritance or joint ownership. They have been set as a percentage of the value of the acquisition, at the rate of: 1) 2%, if the subject of the transaction is: ownership of real estate, ownership of chattels, perpetual usufruct rights and designated cooperative ownership title to an apartment; 2) 1%, if the subject of the transaction involves other property rights.

[8] For instance, in the judgments of the Supreme Administrative Court: of 1 December 2009, ref. no. II FSK 1054/08, Lex no. 582760; of 12 October 2016, ref. no. II FSK 2718/14, Lex no. 2149084; of 1 March 2018, ref. no. II FSK 437/16, Lex no. 2467934; and in the judgment of the Regional Administrative Court in Lodz of 22 March 2019, ref. no. I SA/Łd 844/18, Lex no. 2651927.

2. TAXATION OF DISSOLUTION OF CO-OWNERSHIP WITH INHERITANCE AND DONATION TAX

The category of the above-mentioned transactions is also of interest in the regulations governing the taxation of gratuitous acquisition of property and other property rights.[9] In this case (in contrast to the taxation of civil law transactions), the subject of the tax is not the legal act itself or any other civil law event, but the property gain obtained on their basis (Article 1(1) *in principio* IDT). Among the sources of acquisition, the Act includes, under Article 1(1)(4) IDT, only one act, namely: the gratuitous dissolution of co-ownership,[10] extending, under Article 1a, the application of the provisions of the Act to gratuitous: 1) acquisition of ownership of a common item (common property right) or part thereof by some of the existing co-owners for further co-ownership. 2) spin-off of ownership title to premises for some or all co-owners respectively.

This extension resembles the similar, taking into account the difference regarding the criterion of payment, legal solution provided for in Article 1(2)(3) TCLT [Bogucki 2021a; Borszowski 2022].

By contrast, the omission of a gratuitous inheritance division under Article 1(1)(4) of the Inheritance and Donation Tax Act is because the acquisition of inheritance by co-heirs (Article 1(1)(1) of the Act) is taxable. The division of the inheritance does not represent the acquisition of property rights by the co-heirs; this takes place, albeit not definitively, from the opening of the inheritance, i.e. the death of the testator [Piątowski 2009, 133]. However, it is a kind of concretisation of the aforementioned acquisition, i.e. the acquisition of exclusive rights to designated components of the inherited property by the individual heirs [Kremis 2009, 641]. Otherwise, if the tax burden were imposed on the inheritance division, it would result in the acquisition of a property right being taxed twice.

The question of what sort of dissolution of co-ownership is considered gratuitous under the provisions under review is of great interest. Certainly, the notion does not cover cases of dissolution where each co-owner obtains a benefit (in natural or monetary form) corresponding to the value of their share. As this type of action does not constitute a source of additional benefit in the form of the acquisition of a thing or property right, it does not comply with the concept of the analysed tax and will therefore be tax-neutral. According to the unanimous position of the judiciary and legal scholars[11]

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[9] Act on Inheritance and Donation Tax of July 28, 1983, Journal of Laws of 2024, item 1837 [hereinafter: IDT].

[10] It is extensively analysed by Babiarz 2010.

[11] A judgment of the Supreme Administrative Court of 23 June 2009, ref. no. II FSK 237/08,

[Czerski 2010, 201], this is undoubtedly the case in situations where there is a property gain exceeding the value of the share, while the beneficiary is not obliged to make a repayment or pay a surcharge. This type of impact will take place, in particular, in the case of a physical division of assets when the value of the parts separated from the parent assets (i.e. the new assets), do not match the value of the shares, or if the existing co-owners obtain parts with a lower value than their share value and waive the right to demand surcharges from co-owners who obtain parts with a value exceeding their share value. It will also occur if a common asset is allocated to one of the co-owners and the remaining co-owners relieve him of the obligation to repay the shares due to them. This line of reasoning is confirmed in Article 7(6) IDT, as will be discussed shortly [Biernacki 2009, 21].

The design of a gratuitous dissolution of co-ownership resembles, what is apparent especially in the case of granting ownership of a common item to one of the co-owners without the obligation of repayment, the design of a donation of a share, i.e. a type of legal transaction[12] other than a dissolution of co-ownership [Gniewek 2007, 477]. The interested parties will therefore be able to choose the type of transaction they want to use to attain the desirable effect.

It should also be noted that, among the numerous tax exemptions relating to all or only certain acquisitions, an exemption has been individually addressed to participants in a gratuitous dissolution of co-ownership if it takes place between persons classified in tax group I (Article 4(1)(15) IDT). However, this provision does not apply due to the prohibition arising from Article 35 FGC. It does not apply to the dissolution of the joint ownership of a designated asset belonging to spouses, as the transfer of such an asset may only take the form of a donation.[13]

The tax liability for the acquisition transaction under review is, as a general rule, borne by the acquirer (Article 5 IDT), and arises upon entering into a contract or an agreement or a court decision on the subject becoming final and legally binding (Article 6(1)(7) IDT).

The tax base is the value of the property or property rights in excess of the value of the share in co-ownership vested in the acquirer prior to its abolition (Article 7(6) IDT).[14] The amount of the tax is determined in ac-

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Lex no. 529255 and a judgment of the Regional Administrative Court in Warsaw of 9 June 2015, ref. no. III SA/Wa 3802/14, Lex no. 1730164.

[12] A judgment of the Supreme Court of 9 March 2009, ref. no. III CSK 307/08, Lex no. 492154.

[13] Rationale of the judgment of the Provincial Administrative Court in Warsaw of 29 June 2011, ref. no. III SAWa 3289/10, Lex no. 1087859.

[14] See, on how to determine this value – the judgment of the Provincial Administrative Court in Warsaw of 9 June 2015, ref. no. III SA/Wa 3802/14, Lex no. 1730164, and the judgment of the Supreme Administrative Court of 1 February 2018, ref. no. II FSK 131/16, Lex

cordance with the general rules (i.e. without providing for certain modifications in relation to the gratuitous dissolution of co-ownership) set out in Articles 9, 14, 15 and 17 IDT, setting this amount depending on the taxpayer's membership in a particular tax group and the amount of the excess of the tax base over the tax-free amount, with the possibility of adjustment due to price changes.

3. REMOVAL OF JOINT OWNERSHIP AND DIVISION OF THE INHERITANCE IN THE LIGHT OF OTHER TAX LEGISLATION

The question then arises as to whether the taxation of the activities mentioned in the title of this section is also applicable to other taxes, whereby, for understandable reasons, only the income tax payable by natural persons may be taken into consideration.[15] Doubts in this respect may arise from the fact that the provisions of the aforementioned Act, in contrast to the previously discussed tax regulations, do not explicitly indicate the given activity as a subject of taxation (in other words, among the sources of income subject to tax). Indirect indication may be found in the content of Article 2(1)(3) PIT, which excludes the application of this Act to revenue subject to the provisions of Act on Inheritance and Donation Tax, and therefore also to revenue from a gratuitous dissolution of joint ownership.

Therefore, is it possible that a chargeable transaction abolishing a joint ownership could represent the income tax base? A closer look at the relevant provisions suggests that the answer is affirmative.

Such a conclusion is prompted by the content of Article 10(1)(8)(a) of the Personal Income Tax Act, which deems the "disposal of a share in real property against payment" to be a source of revenue. The assessment of this acquisition scenario is relevant, inter alia, in the context of the method of dissolving joint ownership, whereby ownership of the property is granted to one of the co-owners, who is obliged to repay liabilities vis-à-vis the others (Article 212(2) CC). This mechanism involves the remaining co-owners disposing of their shares in the joint ownership for the benefit of one of the co-owners. Thus, what occurs here is the disposition of shares [Gniewek 2007, 478-79], or more specifically, the transaction of their disposal. The benefit of the acquirer of the shares (he becomes, as a consequence, the sole owner of the previously jointly owned property) is the due amount related to their repayment. The disposal in question is therefore for valuable consideration [Słomka 2021, 108], and thus falls within the hypothesis

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no. 2450530.

[15] Act of 26 July 1991 on personal income tax, Journal of Laws of 2025, item 163 [hereinafter: PIT].

of Article 10(1)(8)(a),[16] provided that the other conditions are met (in particular, the five-year period expires at the end of the calendar year in which the real property was acquired or constructed).

It is all the more surprising, therefore, to note the position adopted in certain administrative court decisions, which assumes that the disposal of a share for a repayment corresponding to its value, as part of the dissolution of co-ownership, does not generate income within the meaning of Article 10(1)(8) PIT. Consequently, it is argued that income would only be generated if the repayment exceeded the value of the share.[17] This point of view is probably the result of a misunderstanding of the term 'revenue' in the context of the aforementioned provision. Putting aside the validity of this solution in light of the principles of the legal system for the moment, the provision uses a normative concept of revenue, which does not necessarily reflect its economic sense. In other words, it does not consist of an increase in the value of the seller's assets. In this understanding, revenue constitutes an equivalent benefit to the asset that has been disposed of (ownership of a thing, other property rights or a share in co-ownership), which is usually in the form of a sale price. However, it can also take the form of a thing obtained on the basis of a swap agreement or another type of benefit. In the case of a sale, revenue is recognised directly under the terms of Article 19(1) PIT. This states that revenue is the value specified in the sales agreement, minus the sale costs (e.g. advertising, expert valuation, agent's fees, notary fees). After all, the exit of an asset from the seller's assets following a sale agreement, and the subsequent entry of a cash consideration corresponding to the value of that asset (i.e. the price), does not generate an increase in assets, i.e. income in economic terms. In other contracts of disposal, the peculiar equivalent of the price is, for example, the value of the things to be exchanged (in a swap agreement) or the value of another type of consideration. There are no obstacles to assessing the repayment of a share in the same way (in a contract for the removal of joint ownership or for the division of the inheritance). This means that in a contract of removal of co-ownership combined with repayment of a share, the same mechanism operates as in a contract of sale. Thus, the income from entering

[16] In its judgment of 28 January 2021 (ref. no. III SA/Wa 1225/20, Lex no. 3195773), the Provincial Administrative Court in Warsaw convincingly demonstrated that the dissolution of joint ownership combined with the repayment of a share represents one of the cases of disposal for consideration within the meaning of Article 10(1)(8) IDT.

[17] So, in particular, the judgments of the Supreme Administrative Court of: 28 July 2017, ref. no. II FSK 1432/16, Lex no. 2330363; 3 March 2020, ref. no. II FSK 1557/18, Lex no. 3007185; 7 May 2021, ref. no. II FSK 342/21, Lex no. 3265732; 10 December 2021, ref. no. II FSK 1115/21, Lex no. 3371818; 22 January 2022, ref. no. II FSK 58/20, Lex no. 3361100; and the judgment of the Provincial Administrative Court in Wrocław of 19 May 2022, ref. no. I SA/Wr 989/21, Lex no. 3356917.

into such an agreement will be a repayment that not only exceeds the value of the share, but also coincides with that value (in other words, equivalent to the value of the share). It is positive that this view has also been expressed, despite the line of case law presented in the jurisprudence above.[18]

The absence of harmonisation between the aforementioned provisions of the Income Tax Act is a matter that should be subject to criticism. Article 19(1) seems to narrow the scope of paid disposal transactions to sale agreements by mentioning only the price, although the literature is clear that, in light of the wording of Article 10(1)(8) PIT, other disposal agreements are also included [Małecki 2003; Bartosiewicz and Kubacki 2015].

However, the wording of Article 10(1)(8) gives rise to another interpretative question. It refers only to an interest in real estate. Therefore, the question arises as to whether the same treatment should be given to interests in other real estate-related rights listed in the provision, as well as to the ownership of movables. Such a possibility has been accepted in case law, for example in relation to cooperative ownership rights to premises,[19] or perpetual usufruct,[20] which would support an affirmative answer. It would be completely incomprehensible to limit the subject matter of the disposal action in terms of Article 10(1)(8) to a share in real property only [Goettel 2013, 446-47].

4. TAX IMPLICATIONS OF THE DIVISION OF JOINT PROPERTY OF SPOUSES

Although the above-mentioned activity is not encountered in the tax law system (apart from the exemption from taxation provided for in Article 2(1)(5) PIT, inter alia, revenue from the division of joint property of spouses), the legal formula of the said division, as indicated in Section 1 of this article, leads us to consider this issue. According to this, it is possible to apply the methods of dissolution of co-ownership (joint ownership) of property or other property rights (including their complexes), which are provided for with regard to joint ownership and inheritance, to such division on the basis

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[18] See the judgment of the Provincial Administrative Court in Warsaw of 28 January 2021 (cited above in footnote 13) and the judgment of the Provincial Administrative Court in Warsaw of 12 June 2019 (ref. no. III SA/Wa 2384/18, Lex no. 3079609, in which it was rightly assumed that dissolving co-ownership and receiving a repayment equivalent to the value of one's share gives rise to taxable income, as referred to in Article 10(1)(8) PIT. The same applies to the judgment of the Provincial Administrative Court in Wrocław of 16 April 2024 (ref. no. I SA/Wr 887/23, Lex no. 3712191).

[19] The Provincial Administrative Court in Warsaw made the following judgment on 8 October 2009 (ref. no. III SA/Wa 903/09, Lex no. 533780).

[20] The judgment of the Supreme Administrative Court of 23 November 2012, ref. no. II FSK 696/11, Lex no. 1227981.

of the reference contained in Article 46 FGC. Consequently, as part of the division of the spouses' joint property, the joint ownership or commonality of property rights may be dissolved by physical division of the asset, exclusive allocation to one of the spouses (including former or separated spouses), or sale to a third party. As these transactions are subject to inheritance and donation tax or tax on civil law transactions, could they also be subject to tax if the techniques used to liquidate the community are used to divide the spouses' common property?

According to the legal doctrine, it is not possible to indicate a uniform decision when assessing the division of the joint property of the spouses under tax law. This depends on the circumstances relating to the division, particularly the content of the division agreement (also a procedural act). If the agreement only covers some of the joint property, disregarding the rest, this type of operation should only be assessed as the termination of joint ownership (commonality), rather than the division of the property itself [Pietrasiewicz 2004, 146-47]. Accepting this line of reasoning would mean that the aforementioned operation would be subject to either civil law transaction tax (if repayments or additional payments were made as part of it) or inheritance and donation tax (if it was gratuitous).

The above position seems to be based on a misunderstanding, as it does not appear to take into account the possibility of a partial division of joint property of the spouses, which is permissible under the legislation (Article 1038(1) and (2) CC in connection with Article 46 FGC) and commonly accepted in the doctrine [Smyczyński 2009, 513]. In this case, we are also dealing with a type of legal transaction that is separate from the dissolution of joint ownership and the division of inheritance. Furthermore, the formulation of Article 1(1)(1)(f) TCLT suggests that the legislator only considers agreements relating to the division of inheritance and the dissolution of joint ownership. The implicit extension of this provision's hypothesis to agreements on the division of spouses' joint property would, in view of how the subject of taxation is shaped in the field of tax on civil law transactions based on the principle of *numerus clausus*, be an unacceptable interpretation.[21] Conversely, it is possible for a single act abolishing joint ownership (e.g. a court ruling) to involve the division of joint property and the dissolution of joint ownership of an asset to which the spouses are entitled on the basis of fractional joint ownership, with an obligation to pay

[21] This view is widely accepted in both literature (e.g. Waluga 2009; Bogucki 2021b; Goettel and Goettel 2007, 69-70; Goettel 2016, 298; Skwierczyńska and Szymańska 2015, 18) and judicial decisions, for instance, the judgment of the Supreme Administrative Court of 30 November 2001, ref. no. SA/Łd 251/00, Lex no. 53603, and the judgment of the Provincial Administrative Court in Warsaw of 23 August 2018, ref. no. VIII SA/Wa 280/18, Lex no. 2549134.

a repayment or surcharge. The tax obligation would then apply only to the latter transaction.[22]

The reasoning presented above applies not only to the tax on civil law transactions, but also to inheritance and donation tax.

Returning to the issue of the income tax consequences of dividing spouses' joint property, which was mentioned at the beginning of these considerations, it should be clarified that this division could be a source of potential income [Goettel 2016, 196; Sekita 2012, 17]. However, Article 2(1)(5) of the Personal Income Tax Act categorically resolves this issue, explicitly excluding the application of its provisions to such income. Ambiguity may only arise as to whether this exclusion also applies to income resulting from a specific operation related to the division of property, namely the reimbursement of expenses and outlays (Article 45 FGC). The possibility of the court ordering early reimbursement on the grounds of family welfare as an exception to the principle of reimbursement at the time of the division of property raises doubts. However, a purposive interpretation seems to support a broad understanding of the exemption in question, including the proceeds of the reimbursements [Goettel 2016, 201].

Taking the above considerations into account, it can be concluded that dividing the spouses' joint property has no impact on the three taxes examined in this document.

5. CONCURRENCE OF TAXES IN RELATION TO THE DISSOLUTION OF A COMMONALITY

The freedom of co-owners to take different transactions means that, in relation to a single transaction leading to the dissolution of co-ownership or division of the inheritance, different tax provisions may apply. For instance, such a situation will arise if a transaction involving several co-owners is aimed at the physical division of property and it is agreed that one of the co-owners will be charged with the obligation of surcharge due to the acquisition of more than their share, while the others will not. As is well known, the former is liable for civil law transaction tax and the latter for inheritance and donation tax. Another example relates to granting ownership of a common item to one of three co-owners while stipulating that he is only obliged to repay his share to one of the other co-owners. In other words, the acquirer of the common item obtains one share in exchange for payment and another share in exchange for payment. Once again, given the different acquisition scenarios, the two aforementioned taxes will apply.

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[22] Ref. no. VIII SA/Wa 280/18.

The basis of the concurrence of taxes on the grounds of the factual situation provided for by the provision of Article 10(1)(8) PIT analysed above is a different ratio legis. This provision states that, under certain conditions, the benefit from disposing of a share in exchange for payment – including following the dissolution of joint ownership – is considered taxable income. At the same time, the acquirer of the share (who is obliged under the terms of the transaction to repay the seller) will be charged tax on civil law transactions in respect of the repayment, due to obtaining a gain in excess of the value of their own share. Therefore, such a concurrence will not be possible with respect to Inheritance and Donation Tax due to the gratuitousness of the dissolution of joint ownership.

CONCLUSIONS

The diverse nature and non-uniform design of transactions aimed at dissolving a joint property portfolio mean they are subject to different tax regimes.

The fact that these transactions are subject to tax on civil law transactions is underpinned by a characteristic *ratio legis*. The legislator has applied this kind of procedure only to a specific category of operations connected with the obligation of repayment or surcharge, and only to the part concerning these operations. These operations are characterised as paid operations (i.e. payment of a cash consideration for the acquisition of a whole or part share), which is the main motive for taxation (i.e. of the operations themselves, rather than the acquisition based on them), with the aforementioned tax.

However, if these transactions are not linked to repayment or surcharge, they are considered transactions under a gratuitous title (free of charge). This means they are subject to inheritance and donation tax. It should also be noted that a taxable acquisition only occurs when the acquirer's assets increase (as a result of acquiring assets worth more than their entitlement).

Due to the nature of the dissolution of joint ownership and the division of the inheritance, they are generally not subject to personal income tax. In the case of transactions involving consideration (along with an obligation to repay or pay a surcharge), it is difficult to assess the revenue gain to each party to the transaction (whether acquiring the whole or part of a share, or receiving a repayment or surcharge) from a theoretical point of view. However, in this case, we are dealing with a specific exception, whereby the law treats such a gain as income subject to income tax. Gratuitous transactions, on the other hand, are excluded from tax by an express provision of the law, even though they may be a source of revenue.

Lastly, there is a type of transaction that dissolves joint property (the division of spouses' joint property), which is neutral from a tax and legal point of view. Interestingly, its construction refers to mechanisms that are characteristic of taxable transactions, which gives rise to certain doctrinal controversies. However, as a separate civil and legal event, it is either not subject to a specific tax (in relation to tax on civil law transactions and inheritance and donation tax), or it is excluded on *expressis verbis* basis from their scope (personal income tax).

It seems possible to find a solution to the debatable issues signalled in the study within the framework of interpreting the relevant provisions. This can be done without the need for *de lege ferenda* postulates.

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