

TAXATION OF APARTMENT IN THE DEVELOPER'S ECONOMIC ACTIVITY

PhD thesis summary

The main purpose of the dissertation is the analysis of tax regulation concerning the economic activity of the entrepreneur – developer in the scope of an apartment due to the relationship between tax law and socio-economic considerations resulting from the character of the apartment, including the housing policy. The aim of the thesis is also to determine whether current tax regulation forms suitable conditions to perform developer's activity connected with the apartment, as well as whether it contributes to fulfillment of the guidelines of socio-economic policy, including housing policy. The analysis of these objectives is related to the need of defining in the tax law, characteristic for the civil law, notions of the apartment and the developer including its economic activity, as well as determining their mutual relation under tax law. The tax legislator, despite using the concept of an apartment, does not explicitly explain, nor by the by reference to other legal acts, its content. The word “developer” is not known to the tax legislator, and the role of the developer in the tax law should be considered through the regulation concerning the entrepreneur in connection with the economic activity related to the apartment.

The thesis, apart from the introduction as well as the summary and the conclusions, contains five chapters, and its structure is the result of adopted scope of considerations. Each chapter begins with an introduction, the aim of which is to introduce in the issues brought up in a given chapter and ends with a summary. Furthermore, the final verification of adopted hypothesis is accompanied by *de lege lata* oraz *de lege ferenda* postulates.

The first chapter, constituting the basis for the considerations of the subject-matter of the thesis, was devoted to the determination of the special nature of the relation between tax law and socio-economic postulates concerning the apartment. In scope of this analysis, among others, the importance of the tax policy regarding the apartment was raised. The postulates resulting from the current housing policy of the state were also analyzed. In the further part of

the first chapter, the author attempted to define the scope of apartment's definition for the purposes of the tax law. The remaining part of the first chapter on the other hand concerns the place of the apartment within the object of tax as well as outlining the scope of factual and legal statuses regarding the apartment constituting the object of taxation.

The second chapter was devoted to the analysis in the tax law the notion of developer – entrepreneur and the developers activity related to the apartment. The tax legislator neither uses the notion of developer nor directly indicates the characteristics of such kind of entity that would distinguish him from other types of economic activities. Any distinction of the developer's notion in the tax law takes place only by defining actual and legal statuses subject to taxation, which will associate the entrepreneur (or other entity) with the apartment, or a building or a real estate.

The third chapter concerns the apartment as the element of the object of taxation in a static term. Assuming that the tax law operates in a certain socio-economic environment, the part of the third chapter is devoted to the relation between the taxation of the apartment in static term and the objectives of local socio-economic policy, especially housing policy. Further considerations concerned examining the form of taxation of the apartment as the element of the object of taxation in static term in polish tax regulation. In particular the subject of the analysis was to determine the meaning of the apartment's definition *sensu stricte* and *sensu largo* as regard the local taxes. The considerations of the third chapter are also devoted to the possibility of implementing to the polish law an alternative, i.e. based on the value of the real estate, method of taxation of real estate with local taxes.

The fourth chapter is devoted to the apartment as the element of the object of taxation in a dynamic term, as regards performing the transactions of this apartment. The actions having for an aim the sale of the apartments are a long process, that can last from few days even till few years and embrace many stages, the effect of which will be usually the transfer of the ownership of real estate. At one time, the static and dynamic situation of the apartment as the element of the object of tax will coexist. The fourth chapter presents the factors affecting the manner of taxation of real estate sale such as the position of the developer as the seller as well as the status and the intentions of the real estate buyer or the character of the apartment. Differences between the primary and secondary market, which affect the way of taxation, were also raised. The issues of social housing construction and the current form of the tax regulation in this area were also analyzed. The taxation of payments made by the buyers securing the conclusion of the sales agreement, with special consideration on issues relating to the various methods of creating by the developers the status of this payments in reservation and developer's

agreements, was discussed. Subsequently, the subject of the analysis was the manner of taxation of transferring the ownership of apartments. The considerations were also devoted to the problem of different taxation of parts of the building constituting the apartment *sensu largo* notion, which is the continuation of the analysis regarding such kind of parts of the building started in the third chapter.

This fifth chapter is the continuation of the considerations regarding the sales of apartment as the element of the object of taxation in a dynamic term and was devoted to the taxation of additional services provided by the developer and related to the apartment in a dynamic term. The basic additional services offered by the developers are the services consisting in performing the works from the developer's state of the apartment to the conditions that allow the full use of this apartment. The new practice on the polish real estate market is also offering, while selling, the rental service as related to the purchase of the apartments for investment purposes. The developers also provide other additional services related to the finishing and rental of the apartment. Bearing in mind, that these services have for an aim intensifying the sales of the apartment and are strictly related to the apartment, and at the same time have strictly economic nature for its owner, certain doubts arise as to the manner of the taxation and form of currently binding regulations.

20.04.2018 Joanna Kordel