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ANALYSIS OF LEGAL REGULATIONS RELATING TO COMPREHENSIVE PROPERTY TAXATION IN POLAND. PROPOSALS FOR AMENDING SELECTED LEGAL PROVISIONS

Abstract

This article analyzes the key legal regulations concerning comprehensive property taxation (CPT) in Poland. The analysis demonstrated that an effective property tax system should rely on consistent terminology that is formulated in the applicable legal acts. Terms such as ‘real estate’, ‘cadastral plot’, ‘building’, and ‘structure’ should be defined in a single act of tax law, and their definitions should be consolidated in other legal acts pertaining to finance and real estate. Property appraisal is a key concern for both the national revenue administration and taxpayers because the value of real estate directly affects municipal revenues collected from property taxes as well as the amount of

tax levied on property owners. Therefore, the value of property should be assessed based on transparent rules that build confidence among taxpayers. The article proposes several amendments to the Real Estate Management Act, including a more detailed definition of the terms pertaining to CPT and mass appraisal, and changes in the name and definition of real estate value determined for tax purposes.

KEYWORDS

ad valorem property tax, cadastral value, mass appraisal, legal provisions, inclusive tax policy, taxable value

SŁOWA KLUCZOWE

podatek ad valorem od nieruchomości, wartość katastralna, masowa wycena, przepisy prawne, inkluzywna polityka podatkowa, wartość podatkowa

I. INTRODUCTION

It is common knowledge that recurrent property taxes are the main, stable source of income for many local governments. However, they also cause significant expenses for taxpayers, including levies collected on a regular, annual basis for the use or ownership of real estate. In many countries, these taxes are levied on land and buildings as a percentage of the assessed value of the property based on rental income, sales price or capitalized income; or in terms of other characteristics of the property (such as size or location) from which the presumed rent or capital value can be derived.^{1,2,3,4}

According to the Valuation Thesaurus, international practices, and scholarly literature, the following types of real estate may be subject to valuation: (a) land (such as a cadastral parcel), (b) improvements (such as buildings), (c) land with improvements as land property, (d) land with improvements as condominium

¹ OECD (2021), *Making Property Tax Reform Happen in China: A Review of Property Tax Design and Reform Experiences in OECD Countries*, OECD Fiscal Federalism Studies, OECD Publishing, Paris, <<https://doi.org/10.1787/bd0fbac3-en>> accessed 18 March 2024.

² Paweł Felis and others, *Opodatkowanie nieruchomości w Polsce na tle systemów europejskich. Wybrane problemy i propozycje zmian*. Wydawnictwo Instytutu Finansów, Warsaw (2023).

³ Joanna Zielińska, Jakub Sawulski, *Modele systemów podatkowych w państwach Unii Europejskiej* (2022) Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu, 66(1).

⁴ Michal Radvan and others, *Real Property Taxes and Property Markets in CEE Countries and Central Asia*. Lex Localis, Maribor (2021).

property.⁵ In most countries (25 out of 31), both land and buildings (land with improvements) are taxed (Fig. 1).

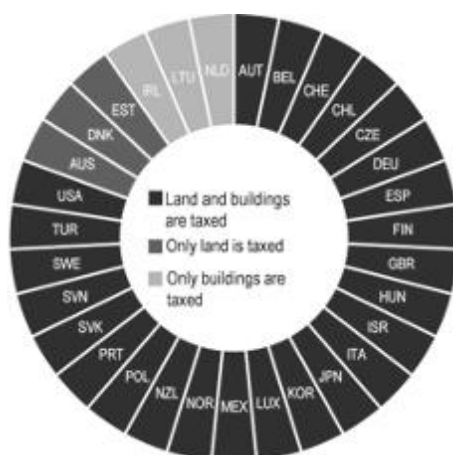


Figure 1. Types of real estate that are subject to taxation in the OECD countries. Source: OECD (2021).⁶

The assessment is based on the area or value of property. However, this simple dichotomy is misleading and confusing because most area-based property taxes make adjustments for location, property use, structural features, and building characteristics. Value-based systems rely on notional values (also called **normative values** or **presumptive area-based values**) and market-informed values (also called **market-based values**). The quality of a value-based system depends largely on the degree to which there exists an active property market, easily available market value information, and the capacity to analyze and develop appropriate market-based valuations. As property markets, information and capacity develop, property tax systems should be able to better capture and reflect the relative and absolute market values in valuation and tax rolls.⁷ In some tax jurisdictions, agricultural property may be assessed based on area, while urban property may be assessed based on its value. In countries where taxes are levied on the tax base, efforts are underway to replace the tax base with an ad valorem tax. How-

⁵ Abdullah Kara and others, *Supporting fiscal aspect of land administration through a land-based valuation information model* (2018), 1–34. Paper presented at Land Governance in an interconnected World, Washington DC, United States.

⁶ OECD (2021), *Making Property Tax Reform Happen in China: A Review of Property Tax Design and Reform Experiences in OECD Countries*, OECD Fiscal Federalism Studies, OECD Publishing, Paris, <<https://doi.org/10.1787/bd0fbae3-en>> accessed 18 March 2024.

⁷ Roy Kelly, Roland White, Aanchal Anand, *Property Tax Diagnostic Manual*. Washington, D.C.: World Bank Group (2020).

ever, the transformation of the real estate taxation system is a complex process that has multiple consequences for individuals and organizations.⁸

Numerous issues have to be taken into consideration in the process of establishing a new legislative approach to property taxation, including the scope of the tax, taxpayer identification, exemptions, concessions and preferential assessments, tax base, tax rate, intergovernmental issues, procedural issues, collection and enforcement.⁹ According to Bahl, a reform of the property tax system should involve the following five steps:

1. Diagnose the present system and prepare a Policy Paper that outlines the structural and administrative reform program;
2. Reform the tax structure. Concentrate on the choice of a tax base, on rate structure and on exemption policy;
3. Administrative reforms: a) increase coverage (GIS, mapping), b) upgrade valuation (training, procedures) c) unify record keeping (interagency cooperation and unique numbering system), d) improve the collection rate (reduce preferences, reduce compliance cost, toughen enforcement);
4. Reform the property transfer tax to remove the incentive to under-declare the value of property sales;
5. Establish a monitoring activity with quantitative indicators of success with property tax reform.¹⁰

According to many economists, an efficient and inclusive tax system should be developed based on four groups of principles: fiscal (efficiency, stability, elasticity), economic (private property as an inviolable right), technical (reliability, low cost, convenience), and ethical (universality, equality, tax capacity).^{11,12} The European Commission noted in 2018 that ‘recurrent property taxes remain low in the majority of Member States, and there may be scope to increase them, while avoiding negative redistributive impacts on low-income households. In countries where the current systems of housing taxation rely heavily on transaction taxes, an internal shift from transaction taxes towards recurrent taxes could also bring efficiency gains’.¹³ In modern societies, a critical issue in making any changes

⁸ Michał Głuszak, Bartłomiej Marona, *Podatek katastralny. Ekonomiczne uwarunkowania reformy opodatkowania nieruchomości*, Wydawnictwo Poltext, Warsaw (2015).

⁹ Victor Thuronyi, *Tax Law Design and Drafting*, Vol 1, International Monetary Fund (1996).

¹⁰ Roy Bahl, *Property Tax Reform in Developing and Transition Countries* (2009), USAID <https://pdf.usaid.gov/pdf_docs/Pnadw480.pdf> accessed 18 March 2024.

¹¹ Joseph E Stiglitz, *Ekonomia sektora prywatnego*, C.H. Beck, Warsaw (2004).

¹² Stanisław Owsiak, *Finanse publiczne. Teoria i praktyka*, Wydawnictwo Naukowe PWN, Warsaw (2013).

¹³ European Commission. Tax Reforms in EU Member States (2020) Publications Office of the European Union.

to tax systems is their compatibility with the concept of good governance.^{14,15,16} Therefore, it is crucial to design inclusive solutions for the transformation, so that it is not an arbitrary imposition of new rules, but a process in which the persons and entities affected take an active part, and the public administration bears responsibility for the well-being of every community member.

The present study posits that the real estate valuation procedure prescribed by legal regulations should be analyzed in detail to reform the property taxation system in Poland. Property appraisal constitutes an important topic of research for three main reasons. **Firstly**, the existing property tax system is based on area (property taxes are calculated based on the area of land and buildings), but it includes ad valorem taxes (calculated based on the value of the transaction) and quasi ad valorem taxes that are applied to agricultural land and forests.¹⁷

Secondly, an ad valorem tax (generally referred to as the cadastral tax in Poland) cannot be introduced without mass property appraisal. **Thirdly**, the process of appraising the value of land and buildings for ad valorem tax purposes is highly institutionalized and standardized in Poland.^{18,19}

Property taxation is a topic that stirs heated debate in various communities. The strengths and weaknesses of systems where taxes are calculated based on the area of property and systems where property taxes are calculated ad valorem (which are predominant in Europe and the USA) have been widely discussed and compared. According to politicians and decision-makers, the tax base cannot be easily modified due to insufficiently developed systems of real estate information, slow progress in the integration of cadastral data with fiscal and legal data, and public opposition. The weaknesses of property tax regulations applicable to land, buildings, and structures have been described by Felis and others.²⁰ They also proposed a number of solutions to the identified problems. The cited authors noted that the main weakness of the Polish property tax system stems from the

¹⁴ OECD, (2015) G20/OECD Principles of Corporate Governance, OECD Publishing, Paris.

¹⁵ European Commission. Tax Reforms in EU Member States (2020) Publications Office of the European Union.

¹⁶ Alexander Leodolter, Savina Princen, Aleksander Rutkowski, *Immovable Property Taxation for Sustainable & Inclusive Growth* (2022), Discussion paper 156, European Union <https://ec.europa.eu/info/publications/economic-and-financial-affairs-publications_en> accessed 25 March 2024.

¹⁷ Act of 15 November 1984 on agricultural tax (Journal of Laws 2023, item 1450); Act of 30 October 2002 on forest tax (Journal of Laws 2019, item 888); Act of 12 January 1991 on local taxes and fees (Journal of Laws 2023, item 70).

¹⁸ Marian Wolanin, *Powszechna taksacja nieruchomości – zagadnienia materialno-prawne i proceduralne* [*Universal real estate taxation: material-legal and procedural issues*] *Nieruchomości*, 10(86), Wydawnictwo C.H. Beck, Warsaw (2005).

¹⁹ Małgorzata Krawczyk, *Powszechna taksacja nieruchomości – istota i znaczenie* (2009) *Ruch Prawniczy, ekonomiczny i socjologiczny* year LXXI – Issue 3.

²⁰ Paweł Felis and others, *Opodatkowanie nieruchomości w Polsce na tle systemów europejskich. Wybrane problemy i propozycje zmian*. Wydawnictwo Instytutu Finansów, Warsaw (2023).

fact that the relevant laws do not contain a general section that would apply to all three types of taxes levied in Poland, namely the property tax, the agricultural tax, and the forest tax. However, less attention was given to the legally regulated procedure of property appraisal (comprehensive property taxation) and its feasibility. Certain important legal decisions are missing and there is a general scarcity of studies evaluating the applicability and effectiveness of the existing laws in the context of social changes, growing levels of knowledge, and technological advancements that facilitate analytical and computational processes. It should be noted that the laws governing mass property appraisal were developed more than 30 years ago based on the existing legal norms, a less developed real estate market, and a smaller body of theoretical knowledge about mass appraisal. The present study was undertaken to partly fill in this knowledge gap.

The article is divided into several sections. Section II discusses previous attempts to modify the property tax base in Poland. The legal and administrative procedure of determining cadastral value in Poland is briefly described and presented graphically in section III. The last two sections are key for achieving the research objective. Section IV proposes changes to selected legal regulations with the aim of improving the effectiveness and feasibility of mass property appraisal. The proposed changes are discussed and recommendations for future research are made in section V.

The main research method was an analysis of legal acts, scientific literature, popular science literature, documents published by various institutions, and social media posts. The study also relied on the authors' experience in property valuation. The Real Estate Management Act²¹ and the Regulation on Comprehensive Property Taxation²² served as the main points of reference for the analysis. Whenever necessary, the provisions of other legal acts, including the Civil Code²³ and the Geodetic and Cartographic Law,²⁴ were also analyzed to achieve the research objective.

II. PREVIOUS ATTEMPTS TO INTRODUCE AN AD VALOREM PROPERTY TAX IN POLAND – KEY FACTS

The first attempts to reform the Polish property tax system were made at the end of 1993. In 1994, the Polish Parliament adopted a resolution on increasing

²¹ Act of 21 August 1997 on Real Estate Management (Journal of Laws 2023, item 1899, as amended).

²² Regulation of the Council of Ministers of 29 June 2005 on comprehensive property taxation (Journal of Laws, 18 July 2005).

²³ Civil Code Act of 23 April 1964 [2023] (consolidated text, Journal of Laws 2023, item 1610).

²⁴ Act of 17 May 1989 implementing the Geodetic and Cartographic Law (Journal of Laws 2023, item 1752).

the national revenue, and it placed the government under an obligation to develop a plan for reforming the budgetary revenue system, where real estate would be taxed based on its value. The Ministry of Finance was tasked with creating a comprehensive property database for fiscal purposes, including for determining the taxable value of property. Territorial governments were to be provided with greater powers to make decisions about taxation, including tax rates, tax allowances and exemptions.

The legislators recognized that successful implementation of an ad valorem tax would be determined by a number of factors, in particular:

- close cooperation between government departments, in particular the Ministry of Finance, the Ministry of Spatial Planning and Construction, the Ministry of Agriculture and Food Economy, and the Ministry of Justice,
- active support from territorial governments and their agencies,
- adequate funding from the central budget for creating a fiscal cadaster,
- an effective educational campaign to inform the public about the reform, including detailed provisions of the draft act on the real estate cadaster and the property tax.²⁵ The planned legislative changes concerning the introduction of an ad valorem property tax were included in the provisions of the Real Estate Management Act.

The procedure of determining the cadastral value of real estate was tested in several locations in Poland (including in Ostróda and Sarzyna) as part of a pilot program. However, due to the absence of respective legal regulations, the results of the pilot program were used only to ascertain the feasibility of the proposed solution^{26,27,28} and to test the property appraisal procedure in practice. The outcomes were used by the Surveyor General to develop a set of Guidelines for comprehensive property taxation – CPT²⁹ based on the provisions of the Geodetic and Cartographic Law. These guidelines have not been implemented to date.

Minor changes in tax structure were introduced in the following years to adapt the revenue system to a new social and economic reality.³⁰ However, none

²⁵ Geoforum, (1995) < <https://geoforum.pl/archiwum-geodety/rok/1995> > accessed 17 March 2024.

²⁶ Waldemar Klocek, 'Powszechna Taksacja Nieruchomości miasta Ostródy' (1998) *Geodeta* 12, 43.

²⁷ Sabina Żróbek, 'Ocena uproszczonych rozwiązań taksacyjnych' (1998) *Zagregowany SIT w zreformowanej administracji*. Materials from a scientific-technical conference entitled: Tax Accountability Through Citizen Participation & Education, Ostróda-Mierki, 17–19 September 1998, published by the voivode of Olsztyn, 100–104.

²⁸ Sabina Żróbek, Tomasz Telega, 'Powszechna taksacja nieruchomości' (2000) *Przegląd Geodezyjny* 2000 (No 2), 10–130.

²⁹ GUGiK, *Wytoczne techniczne przeprowadzania powszechnej taksacji nieruchomości*. Projekt (2001).

³⁰ Paweł Felis and others, *Opodatkowanie nieruchomości w Polsce na tle systemów europejskich. Wybrane problemy i propozycje zmian*. Wydawnictwo Instytutu Finansów, Warsaw (2023).

of the attempts to modify the property tax base has been successful, which can be attributed mainly to historical factors, as well as conservative and conformist attitudes of the Polish public. Many experts have argued that the property tax system could not be effectively reformed mainly because the government placed the key emphasis on fiscal goals, while disregarding the issue of fair and rational distribution of tax obligations and good governance in spatial management.^{31,32}

Researchers have also noted that the property tax system had been developed in a different political and economic reality, and it is not adapted to a free market economy. The fact that the property tax system requires reform is non-debatable. For the reform to be effective, it must be implemented in stages to develop the necessary legislation, infrastructure, and public communication channels.^{33,34,35}

To introduce an ad valorem tax, Poland must create a modern fiscal cadaster for property tax purposes. According to the Head Office of Geodesy and Cartography (GUGIK), 40 million plots of land, including 8 million plots in urban areas, were registered in the real estate cadaster. Statistics Poland estimates that there were around 15.4 million dwelling units (apartments and houses) in Poland at the end of 2021.³⁶ Thus, a significant portion of the Polish population falls subject to the property tax system. The tax system also requires a large number of property appraisers who are qualified to estimate the value of property according to mass appraisal rules, as well as an efficient system for monitoring the real estate market. For practical and financial reasons, the value of real estate should be determined as part of a CPT procedure. The value of real estate is the key concern for both the revenue authorities and taxpayers because it directly affects municipal revenues collected from property taxes as well as the amount of tax levied on property owners. Therefore, the value of property should be appraised based on transparent rules that build confidence among taxpayers. Slovenian experiences clearly indicate that this is a necessary prerequisite for establishing good tax governance: ‘the lack of complete records of the mapping and surveying authority was one of the arguments put to the Slovenian Constitutional Court in spring

³¹ Leonard Etel and others, *Podatki i opłaty lokalne* (2020) Komentarz, Wolters Kluwer Polska, Warsaw.

³² Rafał Dowgier, ‘Polski System Opodatkowania nieruchomości’ (2021) *Prawo Budżetowe Państwa i Samorządu* 9 (3):33-52.

³³ Michał Głuszak, Bartłomiej Marona, *Podatek katastralny. Ekonomiczne uwarunkowania reformy opodatkowania nieruchomości*, Wydawnictwo Poltext, Warsaw (2015).

³⁴ Paweł Para, ‘Uwarunkowania reformy systemu opodatkowania nieruchomości w Polsce’ (2020) *Studia Ekonomiczne, Gospodarka, Społeczeństwo, Środowisko* No 1/2020 (5).

³⁵ Sylwia Skrzypek, Tomasz Wołowicz, *The concept of real estate taxation based on the ad valorem principle* (2021) *IJOLS* 2021; 9 (1): 225–249.

³⁶ Statistics Poland (2022) Local Data Bank Territorial Cross-Sections <<https://www.bdl.stat.gov.pl>> accessed 20 March 2024.

2014, when it ruled that a new real estate tax was unconstitutional as it did not determine the value of property clearly enough'.³⁷

However, any changes in the tax system require appropriate legal regulations. In Poland and many countries around the world, taxes can be levied and modified solely by amending the respective legal provisions.³⁸ Therefore, the necessary legal amendments must be developed with the highest level of accuracy.

III. THE PROCEDURE OF CALCULATING PROPERTY TAX BASED ON THE VALUE OF REAL ESTATE IN THE CONTEXT OF POLISH LAW

The procedure of calculating the property tax base in the legal systems of various countries and in different valuation standards^{39,40,41} is generally referred to as mass appraisal. Mass appraisal has many definitions. According to the Food and Agriculture Organization of the United Nations, 'mass appraisal is the process of valuing a large number of properties at the same time using standardized procedures'.⁴² The definition formulated by the International Association of Assessing Officers states that mass appraisal is 'the process of valuing a group of properties as of a given date and using common data, standardized methods, and statistical testing'.⁴³ Similar and somewhat broader definitions have been also proposed in the literature, where mass appraisal was described as 'the process of valuing a group of properties as of a given date, using common data, employing standardized methods and conducting statistical tests to ensure uniformity and equity in the valuations'.⁴⁴

Regardless of the adopted definition, the mass appraisal process has a number of common characteristics in most systems:

- tasks and competencies are divided between the competent authorities,

³⁷ Slovenia – Constitutional Court Suspends Real Estate Tax (2014) <<https://regfollower.com/slovenia-constitutional-court-suspends-real-estate-tax/>> accessed 25 March 2024.

³⁸ Marian Wolanin, *Powszechna taksacja nieruchomości – zagadnienia materialno-prawne i proceduralne* [Universal real estate taxation: material-legal and procedural issues] *Nieruchomości*, 10(86), C.H. Beck Publishing House, Warsaw (2005).

³⁹ EVS, European Valuation Standards, TEGoVA, (2020).

⁴⁰ IVS, International Valuation Standards. International Valuation Standard Council (2023).

⁴¹ IAAO, International Association of Assessing Officers, Standard on Mass Appraisal of Real Property. Kansas City, Missouri (2023).

⁴² Ciparisse G, *Multilingual Thesaurus on Land Tenure* (2003), FAO, Roma.

⁴³ IAAO, International Association of Assessing Officers, Standard on Mass Appraisal of Real Property. Kansas City, Missouri (2023).

⁴⁴ Concord MA, *Definitions Used In Mass Appraisal* (2024) <<https://concordma.gov/217/Definitions-Used-In-Mass-Appraisal>> accessed 18 March 2024.

- standardized methods are used to collect and analyze data,
- the property tax base is calculated with the use of appropriately scaled valuation models,
- a number of measures and indicators are applied to verify the accuracy of the collected data and the results.

A methodology that is acceptable should include, but should not be limited to, automated valuation models, an adaptive estimation procedure, multiple regression analysis, statistical analysis, and other generally accepted techniques.⁴⁵ Such a methodology should also involve computer-assisted mass appraisal (CAMA) and automatic valuation models (AVMs).⁴⁶ Different terms are used around the world to describe the end result of the mass appraisal process, including fiscal value, tax value, cadastral value, or assessed/rough value.

For municipal authorities that base taxes on the value of property, mass appraisal is an efficient and cost-effective way to value all properties in a fair, transparent and consistent manner, because properties with the same attributes will be identically valued. In Poland, this type of property appraisal is referred to as comprehensive property taxation (CPT). The principles and procedures applicable to CPT are described by the Real Estate Management Act of 21 August 1997. A detailed methodology for conducting the CPT process is provided by the Regulation of the Council of Ministers of 29 June 2005 on comprehensive taxation.⁴⁷ The competencies of the authorities competent for conducting the CPT process are listed in detail in the Act of 17 May 1989 implementing the Geodetic and Cartographic Law.⁴⁸

In the Real Estate Management Act, CPT is defined as a process of real estate valuation which leads to the determination of the cadastral value of property. Legal, technical, administrative, and methodological procedures for determining the tax base, as well as the competencies of legal entities and individuals, including property appraisers and expert groups, play an important role in mass appraisal (CPT). According to legal regulations, the commencement of the CPT process is announced by the Parliament in an act of law (Fig. 2). The CPT process can be also initiated by a resolution adopted by a municipal council. A municipal council can adopt such a resolution only between the dates announced by the Parliament. The dates on which the CPT procedure will begin and end, and the relevant sources of funding will be defined in the Act on comprehensive property taxation. The CPT procedure consists of two stages.

⁴⁵ Law Insider, mass appraisal definition <<https://www.lawinsider.com/dictionary/mass-appraisal>> accessed 18 March 2024.

⁴⁶ Małgorzata Renigier-Biłozor and others, 'International acceptance of automated modern tools use must-have for sustainable real estate market development' (2022) *Land Use Policy*, Elsevier, Vol 113(C).

⁴⁷ Regulation of the Council of Ministers of 29 June 2005 on comprehensive property taxation (*Journal of Laws*, 18 July 2005).

⁴⁸ Act of 17 May 1989 implementing the Geodetic and Cartographic Law (*Journal of Laws* 2023, item 1752).

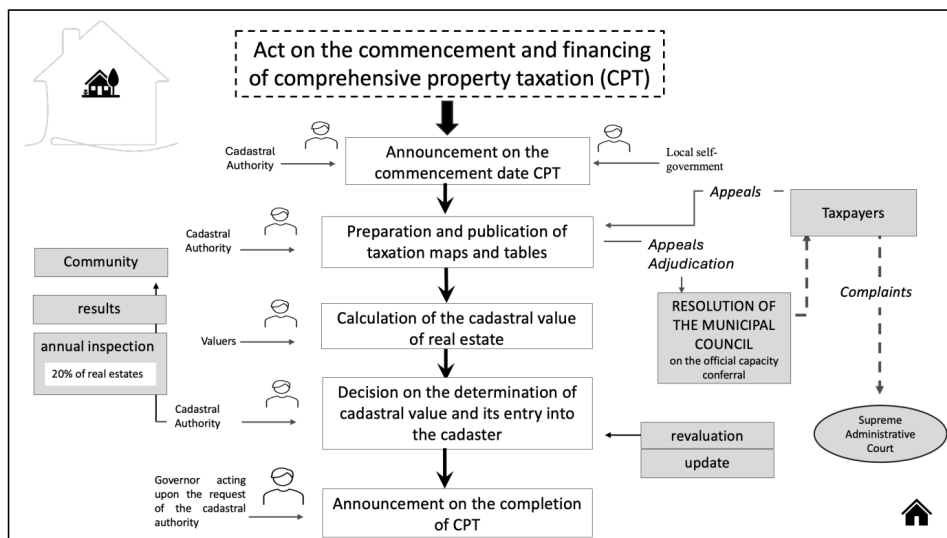


Figure 2. The procedure of comprehensive property taxation in Poland. Source: own elaboration based on the Act of 1997.⁴⁹

In the first stage, the unit value of real estate is calculated, and municipal authorities pass a resolution introducing legally binding tax maps and tax tables. In the second stage, the cadastral value of real estate is calculated pursuant to an administrative decision based on the documents adopted in the first stage. The cadastral value of land property is calculated as the value of land itself plus the value of land improvements:⁵⁰

$$CVP = A_l \cdot CV_{ul} \text{ (based on the tax map)} + \sum A_{li} \cdot CV_{uli} \text{ (based on the tax table)} \quad (1)$$

where: CVP – cadastral value of property; A_l and A_{li} – area of land and land improvements, respectively; CV_{ul} and CV_{uli} – cadastral value per unit of land and land improvements.

The cadastral values of property determined based on tax maps and tables acquire the status of **official data** as of the moment they are **entered into the real estate cadaster**. After cadastral values have been entered into the real estate cadaster, the authority competent for CPT submits a request to the voivodeship governor to publish an announcement on the completion of the CPT process in the local official gazette.

⁴⁹ Act of 21 August 1997 on real estate management (Journal of Laws 2023, item 1899, as amended).

⁵⁰ § 13 of the Regulation of the Council of Ministers of 29 June 2005 on comprehensive property taxation (Journal of Laws, 18 July 2005).

The legal and administrative proceedings associated with CPT and the entities participating in the CPT process are presented in Table. 1. Pursuant to the provisions of Article 161.3 of the Real Estate Management Act,⁵¹ the value of representative property is estimated by a property appraiser, whereas the cadastral value of property is set pursuant to an official decision issued by the county governor.

Table 1. Entities participating in the CPT process

| Entity | Tasks | Legal basis |
|--|---|--|
| Surveyor General | Develops guidelines for the CPT process and supervises its implementation. | Article 7a point 12 (Act of 1989) |
| Property appraiser | Assesses the value of representative properties in the preliminary stage of the valuation process. | Article 161 section 3 (Act of 1997) |
| County governor | Implements the CPT process, develops tax maps and tables, determines the cadastral value of taxable property in an official decision, and publishes cadastral values in the real estate cadaster. | Articles 161.1, 169.1, and 170. 1 (Act of 1997) |
| County governor acting jointly with the municipal governor (town mayor or president) | Publish tax maps and tax tables for public viewing for minimum 21 days. | Article 169.2 (Act of 1997) |
| Municipal council | Passes a resolution on implementing tax maps and tax tables and the procedure for processing the relevant complaints. | Article 169.4 (Act of 1997) |
| Central administration agency competent for the real estate cadaster | Conducts annual audits of the CPT system in selected areas. | Article 172.1 (Act of 1997) |

Source: own elaboration based on the Act of 1997 and the Act of 1989.

The introduction of legal provisions concerning CPT to the Real Estate Management Act enforced and accelerated a new approach towards the development of a real estate database. An Integrated Real Estate Information System is being developed by the Head Office of Geodesy and Cartography for the needs of mass property appraisal. Alarming messages concerning the government's plans to introduce an ad valorem property tax are being posted on social media and various websites. Any mention of cadastral tax is bound to cause national hysteria.⁵² Fear of change and the anticipated decline in personal wealth are the main reasons why

⁵¹ Act of 21 August 1997 on real estate management (Journal of Laws 2023, item 1899, as amended).

⁵² Łukasz Zalewski, 'Idą zmiany w podatku od nieruchomości. Wraca polskie hasło grozy: podatek katastralny' (2024), Business Insider <<https://businessinsider.com.pl/prawo/podatki/zmiany-w-opodatkowaniu-nieruchomosci-znany-plany-ministerstwa-bedzie-podatek/>> accessed 22 March 2024.

this essential but socially unpopular reform cannot be implemented in Poland. In an official statement addressed to the Polish Ombudsman, the Vice-Minister of Finance Jarosław Neneman wrote: ‘At present, there are no plans to reform the property tax system’.⁵³

Public opposition to cadastral tax is one of the reasons why CPT has been shelved, and at present, the government is only considering the option of imposing a new tax on owners of multiple properties (the number of properties is subject to debate). The proponents of this solution argue that the new tax, provided that it is appropriately structured, would prevent a further increase in real estate prices. The efficacy of the proposed solution was questioned by experts who participated in an economic panel organized by *Rzeczpospolita* daily: ‘An ad valorem tax would be difficult to implement in practice because it requires regular appraisals that generate massive costs. A cadastral tax system also increases the risk of abusive transactions’, or ‘An ad valorem tax would discourage investments in property and could increase public interest in other types of investments, such as equity investments’.⁵⁴ Online discussions clearly indicate that Polish real estate owners have many doubts as to whether the value of their property would be appraised in a just and fair manner.

Due to the large number of entities participating in the CPT process and the multiplicity of the assigned tasks (Table 1), close collaboration is required between lawyers, revenue administration, surveying authorities, property appraisers, economists, and sociologists to assuage the taxpayers’ concerns.

IV. PROPOSED CHANGES TO SELECTED LEGAL REGULATIONS CONCERNING COMPREHENSIVE PROPERTY TAXATION

Tax laws and regulations should contain precise and consistent terminology to meet legal and regulatory standards and to guarantee the effective implementation of property taxes. The absence of consistent terminology can lead to legal disputes regarding the material scope of tax regulations.⁵⁵ The above is well illustrated by two judgements of the Polish Constitutional Tribunal (CT). In a judge-

⁵³ Katarzyna Dybińska, ‘W Polsce ta danina to “podatek grozy”. Pomysł jej wprowadzenia powraca’. (2024) <<https://biznes.interia.pl/podatki/news-w-polsce-ta-danina-to-podatek-grozy-pomysl-jej-wprowadzenia>> accessed 20 March 2024.

⁵⁴ Grzegorz Siemoneczyk, ‘Podatek katastralny uzdrowi rynek mieszkań? Ekonomści analizują’ (2023) < <https://klubekspertow.rp.pl/panel-ekonomistow/art39061971-podatek-katastralny-uzdrowi-rynek-mieszkan-ekonomisci-analizuja>> accessed 17 March 2024.

⁵⁵ Paweł Felis and others, *Opodatkowanie nieruchomości w Polsce na tle systemów europejskich. Wybrane problemy i propozycje zmian*. Wydawnictwo Instytutu Finansów, Warsaw (2023).

ment of 4 July 2023 (case No SK/14/21), the CT ruled that the definition of the term ‘structure’ in the Act on local taxes and fees is inconsistent with the Polish constitution. The CT argued that the definitions of terms that are commonly applied in property tax regulations may not be interpreted by reference to their meaning in the Construction Law. In the second case,⁵⁶ the CT questioned the legal validity of the principles for imposing taxes on garages and parking spaces in residential buildings. As a result, the Ministry of Finance has been obligated to amend the Act on local taxes and fees by January 2025.⁵⁷

The terminology applied in the Real Estate Management Act and the Regulation on comprehensive property taxation concerning the principles of the CPT process should also be consolidated. This is an important consideration because these terms make a reference to other legal provisions in the same or related acts of law (acts and regulations). Legal terms should also be sufficiently comprehensible for taxpayers who are the immediate addressees of property tax laws.

International valuation standards and mass appraisal guidelines also recognize the need for harmonizing legal terminology and increasing the transparency of valuation procedures.^{58,59,60} According to the European Valuation Standards (EVS): ‘The process needs an established and clear basis for the valuation – whether capital or rental, on what assumptions, on market value or other bases. This is needed not simply to aid the task of the professional valuers concerned, but to ensure taxpayer confidence in the system with the important requirement that it be clear that all are assessed fairly. That transparency should apply to the procedure as well as to the basis of valuation’.⁶¹

These needs are determined mainly by the evolution of the real estate market and the methods and technologies that are applied under specific market conditions. Transparent procedures also benefit the revenue authority because they increase the reliability of property appraisals whose results are used to calculate the property tax base. Legal terms and their definitions should also be harmonized with the provisions of international law, in particular, the European Union (EU) law. For example, the definition of the market value of property in the Real Estate Management Act has been harmonized with the definition provided in the

⁵⁶ Judgement of the Supreme Court of 18 October 2023 [2023] (case No SK 23/19).

⁵⁷ Łukasz Zalewski, ‘Biznes chce reformy podatku od Nieruchomości. Nie tylko nowych definicji’ (2024a) Business Insider <[Businessinsider.com.pl/prawo/podatki/podatek-od-nieruchomosci-do-zmiany-takie-sa-oczekiwania-biznesu](https://businessinsider.com.pl/prawo/podatki/podatek-od-nieruchomosci-do-zmiany-takie-sa-oczekiwania-biznesu)> accessed 22 March 2024.

⁵⁸ EVS, European Valuation Standards, TEGoVA, (2020).

⁵⁹ IVS, International Valuation Standards. International Valuation Standard Council (2023).

⁶⁰ IAAO, International Association of Assessing Officers, Standard on Mass Appraisal of Real Property. Kansas City, Missouri (2023).

⁶¹ EVIP 2, Valuation and Other Issues for Recurrent Property Taxation TEGoVa (2021).

EU law.^{62,63} The proposed modifications to legal regulations concerning CPT in Poland are presented in Table 2.

Table 2. Proposed modifications to legal regulations concerning comprehensive property taxation in Poland.

| EXISTING PROVISIONS AND LEGAL BASIS in the ACT OF 1997 | PROPOSED CHANGES | COMMENTARY |
|---|---|---|
| <p>Term: Comprehensive Property Taxation Definition: property appraisal for the purpose of calculating the cadastral value of property (Article 4.7)</p> | <p>Term: Comprehensive Property Taxation System Definition: Legal, administrative, technical and analytical proceedings resulting in the determination of the cadastral value of property.</p> | <p>The aim of the proposed change is to place the word ‘system’ to highlight that Comprehensive Property Taxation is a broader concept than property appraisal, and that it deals with legal, administrative, and methodological aspects of property valuation.</p> |
| <p>Term: Mass appraisal. Article 162.1 states that the cadastral value of property is determined with the use of mass appraisal principles. Definition: none.</p> | <p>Term: Mass property appraisal for tax purposes Definition: Mass property appraisal for tax purposes is defined as a systematic process of property valuation based on the principles of fairness and equity, and a list of standardized property attributes, which is conducted on a specific date with the use of standardized procedures and analytical models.</p> | <p>The term ‘mass appraisal’ is not defined in the Act of 1997. The proposed definition should be included in Article 4 (Act of 1997). The Act of 1997 contains a definition of the term ‘real estate valuation’, but this term cannot be equated with mass property appraisal for tax purposes. The relevant provisions should clearly stipulate that mass appraisal concerns real estate and is conducted for tax purposes.</p> |
| <p>Characteristic attributes of buildings and dwellings</p> | <p>A standardized list of property attributes that affect the long-term taxable value of all items of taxable property should be included.</p> | <p>This provision is vital for the correct and accurate determination of real estate value for tax purposes. The transparency and fairness of the valuation process could be undermined if property attributes are selected arbitrarily. This solution will have a positive effect on the perceived fairness of the property tax system</p> |

⁶² Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Text with EEA relevance.

⁶³ Directive 2014/17/EU of the European Parliament and of the Council of 4 February [2014] on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 Text with EEA relevance.

| | | |
|---|--|---|
| <p>Term: Cadastral value</p> <p>Definition: The cadastral value of real estate is the value determined in the process of comprehensive property taxation (Article 151.3).</p> | <p>Term: Taxable value</p> <p>Definition: Taxable value is the financial worth of property determined by the local revenue authority for the purpose of calculating the tax base in accordance with the provisions of the Real Estate Tax Act.</p> | <p>Most taxpayers and politicians associate the term ‘cadastral value’ with cadastral tax, which is why any efforts to update public registers of land, buildings, and dwellings meet strong opposition from the public.</p> <p>In addition, the proposed term ‘taxable value’ unambiguously reflects the purpose for which it was established. The valuation base will be generally defined in the relevant national or local legislation or regulations (EVS 2: Valuation Bases Other than Market Value).⁶⁴</p> <p>Taxable value is rarely the market value or even the assessed value of property because taxable value may be subject to exemptions or reliefs that are applied by the local revenue authority to determine the annual property tax. In addition, other adjustments may be applied to ensure that taxable value is below the market value of property.</p> <p>It is also worth noting that in most countries, the market value of property is underestimated to avoid excessive and unfair taxation. The assessed values generally account for up to 70-75% of real market values.</p> |
| <p>The cadastral value of real estate is determined for the property as a whole or for property components that have been classified as items of taxable property according to property tax regulations (Article 164). The cadastral value of land property is the cadastral value of land itself and the cadastral value of land improvements (Article 165).</p> | <p>The following provision should be included in Article 4 of the Act: (...) determination of the taxable value of real estate – the taxable value of land without improvements that is enclosed by the boundaries of a cadastral plot, as well as land improvements which constitute a separate item of taxable property.</p> | <p>The items of taxable property should be clearly identified to ensure the effective operation of the mass appraisal system.</p> <p>The items of taxable property should be clearly identified and defined by a legal act promulgated in the Journal of Laws. According to Article 48 of the Civil Code (Act of 1964), land improvements include buildings and other structures that are permanently attached to the ground, as well as trees and other types of vegetation as of the moment they have been planted or sown.</p> <p>The definition of land property formulated in Article 46 of the Civil Code is the only definition of land property in the entire Polish legal system (Judgement of the Supreme Court of 30 October 2003, case No IV CK 114/02; OSNC 12/04, item 201).⁶⁵ The Supreme Court ruled that adjacent land plots that are owned by the same person and are listed as separate entries in the land and mortgage register constitute separate properties.</p> |

⁶⁴ EVS, European Valuation Standards, TEGoVA, (2020).

⁶⁵ Judgement of the Supreme Court of 30 October 2003 [2003] (case No IV CK 114/02; OSNC 12/04, item 201).

| | | |
|--|--|--|
| The cadastral value of property is defined and entered into the cadaster pursuant to a decision of the authority competent for the cadaster. | The cadastral value of land, buildings, and dwellings is defined and entered into the cadaster pursuant to a decision of the authority competent for the cadaster. | Cadastral plots, buildings, and dwellings are registered separately in the Polish cadaster. Therefore, the cadaster is not a register of real estate. For this reason, the calculated values cannot be entered into the cadaster. In common parlance, a cadastral plot (Act of 1998) is generally associated with real estate (Act of 1964) but from the legal perspective, these concepts are not unanimous. |
| Detailed descriptions of the mass appraisal procedure are included in many articles of the Act of 1997. | These provisions should be removed from the Act. | To follow the example of other countries, the technical details of the mass appraisal procedure should be described in dedicated guidelines and/or standards, such as the Standard on Mass Appraisal of Real Property. ⁶⁶ General comment: The methodology of the mass appraisal procedure should be expanded to account for new sources of data and modern tools for data processing and analysis. At least two valuation models should be included in the methodology to enable cross-validation of data. The methods for determining the taxable value of real estate should be clear and transparent. |

Source: own elaboration based on the Act of 1997, Civil Code of 1964, and the Act of 1998.⁶⁷

V. DISCUSSION AND RECOMMENDATIONS

The process of calculating the property tax base and the proposed changes to the CPT procedure were analyzed in detail in reference to the existing legal regulations in Poland. However, the proposed modifications also rely on previous scientific achievements and the experiences of countries characterized by different stages of market development. A new legislative approach to calculating the property tax base was proposed. The existing system, where the property tax is determined based on area, should be replaced with a system where the property tax is calculated based on the value of real estate. All issues pertaining to the property tax should be regulated by a dedicated legislative act, preferably a tax law that is promulgated in the Journal of Laws. A consistent definition of taxable

⁶⁶ IAAO, International Association of Assessing Officers, Standard on Mass Appraisal of Real Property. Kansas City, Missouri (2023).

⁶⁷ Act of 21 August 1997 on real estate management (Journal of Laws 2023, item 1899, as amended); Civil Code Act of 23 April 1964 [2023] (consolidated text, Journal of Laws 2023, item 1610), Act of 17 May 1989 implementing the Geodetic and Cartographic Law (Journal of Laws 2023, item 1752).

property should also be introduced in all relevant legislative acts. The following issues need to be resolved to avoid discrepancies and misinterpretation:

1. Is the property tax calculated based on the value of entire property or is it determined separately based on the value of land, buildings, and dwellings?
2. Is the property tax also levied on land improvements, including buildings and other structures that are permanently attached to the ground, such as machines and devices?

The definitions of items of taxable property, including real estate, cadastral plot, building, and structure, should be provided by a single legal act, i.e., a tax law, and these definitions should be consolidated in the relevant financial and real estate laws.

Items of taxable property should be clearly identified in tax records, and tax records should be consolidated with other documents and registers kept by the competent authorities, including registers of real estate deeds, land and mortgage registers, and the real estate cadaster. The Integrated Land Information System should be implemented as soon as possible to facilitate the achievement of these goals.

A clearly defined tax base and the method for its determination are key considerations in the tax system based on real estate value. The relevant legal acts should be clearly formulated to resolve three main issues. Firstly, is the tax based on the market value of real estate determined based on an internationally acknowledged definition and interpretation of this value? Secondly, should real estate valuation be based on the capital or rental value of real estate? Thirdly, should the value of real estate be determined based on the highest and best use concept? Highest and best use refers to the most advantageous and financially feasible use of a property that is legally permissible, physically possible, financially feasible, and maximally productive.⁶⁸ If property is appraised based on specific, non-market valuation principles, such as a list of standardized property attributes and/or parameters that affect the value of taxable property, the result will be a **non-market value**, such as **taxable value**. The value of real estate is influenced not only by intrinsic attributes, but also by extrinsic factors, including usability, scarcity, attractiveness, and effective purchasing power. All four factors have to be taken into consideration to ensure that the value of real estate is determined reliably and accurately. The market value (or similar valuation bases) of real estate can be determined only if property can be legally traded in a given country. In legal systems that do not permit free trade in real estate, property that has usable value does not have market value. In such cases, the value of real estate should be determined with the use of a different approach, such as the cost method of valuation. Legal regulations should clearly stipulate whether reinstatement costs should be determined based on the current cost of reproducing or replacing a building or a structure, minus an estimate for depreciation, and

⁶⁸ IVS, International Valuation Standards. International Valuation Standard Council (2023).

whether depreciation should account for physical wear only or also for functional wear. Therefore, the valuation base should be defined in a transparent manner that is comprehensible for the competent authorities and, equally importantly, the taxpayers. Any inconsistencies and discrepancies in the definition of the tax base can exert a negative effect on the perceived fairness of the property tax system. The methodological details of the appraisal process should be described in separate documents, such as technical guidelines or standards. Such solutions are also promoted in the international arena.^{69,70} This solution will speed up the reform of the property tax system, and it will promote the implementation of effective techniques for the acquisition and processing of data for mass property appraisal. The proposed approach will also eliminate the need for frequent legislative changes, thus contributing to the stability of the tax law. The discussed solution will also decrease revaluation costs.

Valuation theory assumes that land is a property item with a special value (and this observation is confirmed by market practice), which is an important consideration in the context of the debate on the reform of the Polish property tax system. Land is a limited and finite resource, whereas land improvements merely influence the value of land. Improvements that do not increase the value of land, or even decrease it, should be removed and replaced with new property items. This argument validates the claim that an ad valorem tax should be imposed on land only.⁷¹ Tax systems based on the above assumptions have been introduced in some countries of the world⁷² or in the initial stages of the property tax reform. The proposed system is garnering increasing support among experts and researchers. The legislative definition of ‘cadastral value’ and the colloquial meaning of ‘cadastral tax’ should also be revised. The term ‘cadastral tax’ has negative connotations, and it slows down the efforts to transform the cadastral system into an Integrated Real Estate Information System. These measures would significantly contribute to the implementation of a fair and inclusive tax system in Poland.

Lastly, it should be stressed that there is no single approach to building an effective property tax system that is optimal and fully accepted by taxpayers in all countries around the world.⁷³ However, transparent legal regulations can build taxpayers’ awareness and confidence in tax laws and revenue authorities.

⁶⁹ EVIP 2, Valuation and Other Issues for Recurrent Property Taxation TEGoVa (2021).

⁷⁰ IAAO, International Association of Assessing Officers, Standard on Mass Appraisal of Real Property. Kansas City, Missouri (2023).

⁷¹ Sabina Żróbek and others, ‘Some aspects of local real estate taxes as an instrument of land use’ (2016) REMV Vol 24.

⁷² OECD (2021), *Making Property Tax Reform Happen in China: A Review of Property Tax Design and Reform Experiences in OECD Countries*, OECD Fiscal Federalism Studies, OECD Publishing, Paris, <<https://doi.org/10.1787/bd0fbac3-en>> accessed 18 March 2024.

⁷³ Richard Grover and others, *Achieving Successful Implementation of Value-Based Property Tax Reforms in the ECA Region*. World Bank Conference on Land and Poverty. The World Bank – Washington DC (2016).

This research was funded in whole by the National Science Centre [grant number 2023/49/B/HS4/00701].

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