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Engineering Structures and Their (non)Taxation by Slovak Real Property Tax (in the V4 Context)¹

Introduction

Real property tax (RPT) is a standard local tax (LT)² or, in a broader sense, a tax used to finance the needs of local self-governments.³ The latter have long argued that one of the problems associated with its existence and the exercise of self-government and transferred competencies is its inadequate funding in Slovakia (SK). Although the central government tends to deny this conclusion, it is supported mainly by the findings of academics.⁴ Although, as Vybíhal points out,⁵ LTs are one of the pillars of decentralization, especially fiscal decentralization in SK. However, LT revenues, and especially RPT as the backbone of LTs,⁶ do not constitute a significant share of the total revenues

¹ This study was carried out in the Local Taxation and Fiscal Policy Research Group framework of the Central and Eastern European Association for Public Administration, <https://kte.sze.hu/> and as a partial output of the VEGA 1/0214/21 and VEGA č. 1/0485/21 projects implemented at Pavol Jozef Šafárik University in Košice.

² R.M. Bird, E. Slack, *International Handbook of Land and Property Taxation*, Northampton 2004, pp. 1–18.

³ P. Mrkvývka, *Některé úvahy o materiálním základu veřejné správy*, "Časopis pro právní vědu a praxi" 2003, nr. 2, pp. 153–157.

⁴ For example, V. Papcunová, E. Balážová, P. Agh, *The Evaluation of the Relations Between the State Budget and the Local Self-Government Budgets (Case Study of the Slovak Republic)* [in:] *22nd International Colloquium on Regional Sciences. Conference Proceedings*, eds. V. Klímová, V. Žitek, Brno 2019, pp. 369–377; V. Vybíhal, *Comparative study of the impact of local taxes and other revenues on the financial self-sufficiency of municipalities* [in:] *PUBLICITY 2020 I. – 30 rokov verejnej správy*, eds. P. Horváth, J. Machyniak, Trnava 2020, pp. 7–26; K. Liptáková, Z. Rigová, *Financial creditworthiness of Slovak municipalities* [in:] *Interpolis '20*, eds. D. Cevárová et al., Banská Bystrica 2020, pp. 418–428.

⁵ V. Vybíhal, *Comparative study...*, pp. 7–26.

⁶ D. Belkovicsová, *Daň z nehnuteľností ako významný zdroj financovania územnej samosprávy*, "Acta aeriarii publici" 2020, nr. 1, pp. 93–111.

of local self-government (LG),⁷ which has long been largely dependent on revenues provided by the state.⁸ The situation is also very similar in the Czech Republic (CZ) and, as far as RPT revenues are concerned also in Hungary (HU), but the last of the V4 countries, Poland (PL), is a notable exception in this respect. As our previous research shows,⁹ RPT revenues in PL are significantly higher than in the other V4 countries, and the reason for these deficits or differences in revenues compared to PL is, among other things, legislative differences in the individual legal regulations, including the breadth of the object of taxation.

A stimulus for a deeper analysis of this issue was the Act on the Tax on a Special Structure, amending certain acts (the “Special Structure Tax Act”),¹⁰ which was adopted by the National Council of the Slovak Republic as the legislative body on 22 December 2022 and which was to introduce a new property tax levied on selected real properties in SK into the system of taxes applied in SK. This tax was intended to supplement the taxation of selected real properties located on the territory of SK that was not subject to RPT levied in SK under Act No. 582/2004 Coll. on local taxes and local fees for municipal waste and minor construction waste as amended (the “Act on Local Taxes”), but only with respect of gas pipelines used for transmission of gas on the territory of SK. However, this change was not to have been made by an amendment to the Act on Local Taxes but by a special law. Even though the Special Structure Tax Act was ultimately not adopted due to the veto of the President of the Slovak Republic, which was justified by the assumed contradiction with the Constitution of the Slovak Republic, it raises the question of the appropriateness of the definition of the object of the Slovak RPT in relation to the intended object of the planned tax, i.e., utility lines or, more broadly, engineering structures. RPT in SK applies not only to land, dwellings, and non-residential premises but also to structures. It does not tax several categories of engineering structures, including line structures, which would have been the object of the planned new tax on a special structure.

Therefore, within the framework of the analysis of the current state of the definition of the object of taxation, the authors’ aim is primarily to identify the position of engineering structures as objects that are excluded from tax in SK and to determine the status of such structures concerning their inclusion in objects of taxation in other V4 countries (HU, CZ, PL), and on this basis to assess the scope for the possible expan-

⁷ A. Vartašová, K. Červená, *Real Property Tax in the Countries of Visegrad Group – Comparative View*, “Studia Iuridica Lublinensia” 2022, no. 1, pp. 191–211.

⁸ E.g. V. Papcunová, D. Országhová, R. Hornyák Gregáňová, *Evaluation of Tax Incomes of Municipalities in Conditions of the Slovak and Czech Republics*, “Acta Universitatis Bohemiae Meridionalis: scientific journal for economics, management and trade” 2018, no. 2, pp. 1–12; L. Poliak, *Finančná autonómia obcí – mikroekonomické východiská*, “Societas et Iurisprudentia” 2016, nr. 1, pp. 122–138.

⁹ A. Vartašová, K. Červená, *Real Property Tax...*, pp. 191–211.

¹⁰ National Council of the Slovak Republic, Details of the bill: Act of 22 December 2022 on the tax on a special structure, amending certain acts, returned by the President of the Slovak Republic to the National Council of the Slovak Republic for reconsideration, <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=9041> [accessed: 2023.06.23].

sion of the object of RPT in SK. Thus, this research should serve as a starting point for the further exploration of this issue.

For this purpose, the analysis of the legal regulation of RPT in SK, especially with regard to the regulation of the taxation of structures, the analysis of professional and scientific literature, and the comparison of the situation in SK with the legal regulation of the taxation of structures in selected countries were used, where the authors chose the micro-region of the V4 countries as a sample, based on the economic, social and, above all, historical and political proximity of its member countries. The authors' research was also based on previous research in the field of RPT.¹¹ The data presented in the paper were obtained from Eurostat and the Hungarian Statistical Office (KSH) databases.

1. Legislative background – object of the planned new tax on special structures vs. current RPT in the Slovak Republic

The proposed Act on the Tax on a Special Structure was very short and contained very concise regulations in 11 sections. The object of taxation was to be a special structure on the territory of SK, i.e., a gas pipeline, legally defined for the purposes of this tax as a network of gas pipelines serving for the transmission of gas on the territory of SK, except a network of gas pipelines serving primarily for the distribution of gas within part of its territory. The taxpayer was to be the operator of the special structure – a gas company authorized to transport gas on the territory of SK. Since, in practice, only one company would be considered a taxpayer, such discriminatory targeting of the new tax was criticized as contrary to the Constitution, and this was one of the arguments for the veto of the bill by the President.¹² The tax was to be based on the total length of the special structure in kilometers, and a fixed rate of EUR 6,000 was to be applied to it for each (even incomplete) kilometer of the special structure.

A closer look at the intended object of the new tax required it to be classified under the relevant type of real property. According to the Concise Dictionary of the Slovak Language, a gas pipeline is a pipeline for gas transmission, whereas a pipeline is a system of pipes for the distribution (of liquid or gaseous material). Under Act No. 50/1976 Coll. on land-use planning and building regulations (Building Act), as amended, Section 139(3)(a), gas pipelines are line structures – a type of engineering structure within the meaning of Section 43a(3)(f). Certain structures in this category are excluded from objects of RPT under Section 10(3)(b) of the Local Taxes Act, namely dams, water sup-

¹¹ A. Vartašová, K. Červená, *Views on Quality of Tax Regulation in the Slovak Republic (Focused on Real Property Taxation)*, Prague 2019; *idem*, *Real Property Tax...*, pp. 191–211; G. Hulkó, J. Fehér, *Hungary [in:] Real Property Taxes and Property Markets in CEE Countries and Central Asia*, eds. M. Radvan, R. Franzen, W.J. McCluskey, F. Plimmer, Maribor 2021, pp. 143–176.

¹² SITA, *Eustream will not have to pay the pipe tax, MPs agree with President Čaputová's comment*, 17 February 2023, <https://sita.sk/venergetike/eustream-nebude-musiet-platit-dan-z-rury-poslanci-sa-stotoznili-s-pripomienkou-prezidentky-caputovej/> [accessed: 2023.04.14].

ply and sewerage systems, flood protection structures, and heat distribution systems. Although gas pipelines are not mentioned here, a complete exclusion of most engineering structures from the objects of RPT can be inferred from Section 10(2) in conjunction with Section 12(4) of the Local Taxes Act, according to which only structures with one or more stories above or below ground (connected to the ground by a solid foundation or anchored by piles) are subject to the tax on structures, where a storey of a structure is part of the interior space of the structure defined by its floor and ceiling structure, or roof structure if the structure has no ceiling structure. This restriction limits the scope of structures subject to the tax on structures. Concerning the tax on land, land or parts of land on which roads other than special public roads and national and regional railways are built, as well as land or parts of land on which structures are erected that are not subject to the tax on structures pursuant to Section 10(3) of this Act, shall also not be subject to the tax in accordance with Section 6(2)(b) and (c) of this Act. It follows from the above that a gas pipeline, as the object of the new tax on a special structure, could not be subject to RPT primarily due to the limiting element, which is the definition of a structure as the object of the tax on structures, i.e., RPT.

2. Approach to taxation of engineering structures in other Visegrad countries

RPT is applied in different forms in all V4 countries. In CZ, it is RPT (daň z nemovitých věcí), which is enshrined in Act No. 338/1992 Coll. on the tax on immovable property, as amended, which divides it similarly as in SK into the tax on land and the tax on structures and units.¹³ Despite being a state tax, according to Radvan, it has the characteristics of an LT.¹⁴ The object of the tax on structures and units, as regards structures, is, pursuant to Section 7(1)(a), taxable structures, which, for the purposes of this tax, are defined by the Act as any completed or used buildings (within the meaning of a building under the Land Register Act) and engineering structures listed in the Annex to the Act (including parts thereof, if completed and used).¹⁵ In the case of buildings, reference is therefore made to Act No. 256/2013 Coll. on the Land Register (Land Register Act), which defines a building in Section 2(l) as an above-ground structure connected to the ground by a solid foundation, which is spatially concentrated and predominantly enclosed externally by perimeter walls and a roof structure. As regards taxable engineering structures, the above-mentioned Annex to the Act enumerates the following: transmission towers, repeater towers, and telecommunication masts;

¹³ I.e., flats and non-residential premises.

¹⁴ M. Radvan, *Correction Elements in Case of Czech Local Charges* [in:] *The Challenges of Local Government Financing in the Light of European Union Regional Policy*, eds. P. Mrkývka et al., Brno 2018, pp. 474–486.

¹⁵ A. Vartašová, *Komparácia systémov miestnych daní v krajinách Vyšehradskej štvorky* [in:] *Miestne dane v krajinách Vyšehradskej štvorky: zborník vedeckých prác*, Prague 2021, p. 144.

towers, masts, and storage towers for mining and quarrying; cooling towers for the power industry; chimneys and stacks for the power industry; towers, masts, storage towers for chemical plants; industrial chimneys for chemical plants; blast furnaces (buildings for metallurgy and heavy industry); towers, masts, storage towers – for other industries; industrial chimneys for other industries. From the above, it can be seen that in CZ, despite a similarly limited definition of a structure and a limited scope of the objects of taxation, at least selected types of engineering structures are nevertheless taxed. From the definition of the object of taxation, it is clear that, despite a similarly strict definition of a building as in CZ, the Czech RPT taxes at least a limited range of other (industrial) structures, but neither line structures nor engineering structures, in general, are subject to taxation.

In PL, RPT is regulated by the Act of 12 January 1991 on local taxes and fees (Ustawa z dnia 12 stycznia 1991 r. o podatkach i opłatach lokalnych). RPT is levied on land, buildings or parts thereof, and structures or parts related to business activities (Section 2(1) of the Act); however, some land, namely agricultural and forest land, is regulated by special laws.¹⁶ As regards the definition of buildings and structures for tax purposes, the Act provides their legal definitions, where a building is a construction object within the meaning of the Building Act, which is firmly connected to the ground, separated from the space by building partitions and has a foundation and a roof, and a structure is a construction object within the meaning of the Building Act, other than a building or a small architectural object, as well as a construction installation within the meaning of the Building Act connected to a construction object that ensures the possibility of using the object per its purpose. The Act of 7 July 1994, Building Act (Ustawa z dnia 7 lipca 1994 r. – Prawo budowlane) defines a building in Section 3(2) in the same way as the Act on Local Taxes and Fees, but in the case of a building it is more detailed. Paragraph 3 of the same Section defines a structure as any construction object other than a building or a small architectural object, such as line structures, airports, bridges, viaducts, overpasses, tunnels, culverts, technical networks, stand-alone aerial masts, stand-alone signs permanently fixed to the ground and advertising structures, earthworks, defensive structures (fortifications), protective structures, hydrotechnical structures, reservoirs, stand-alone industrial or technical installations, wastewater treatment plants, landfills, water treatment stations, retaining structures, overhead and underground pedestrian walkways, engineering structures, sports grounds, cemeteries, memorials, as well as structural parts of technical installations (boilers, industrial furnaces, nuclear power plants, wind power plants, offshore wind turbines, and other facilities) and foundations for machinery and equipment as technically separate parts of objects forming a utilitarian whole. Paragraph 3a further defines the line structures mentioned in the preceding paragraph (a structure the characteristic parameter of which is its length, in particular a road, including exits, a railway, a water supply system, a sewerage system, a heat supply line, a gas pipeline,

¹⁶ See in more detail e.g. *ibid.*, pp. 157 *et seq.*; W. Miemieć, P. Zawadzka, *Poland* [in:] *Real Property Taxes...*, pp. 121 *et seq.*

an electric power line and traction, overhead and underground cable lines, a dike and cable ducts, where cables laid in a cable duct, cables laid in a conduit, and telecommunications cables connected to an existing overhead cable line do not constitute an engineering structure or part thereof or a construction object), and paragraph 4 defines small architectural objects (small objects and in particular objects of religious rites such as chapels, roadside crosses, statues; sculptures, fountains, and other garden objects; utilitarian facilities for everyday recreation and maintaining order, such as sandpits, swings, ladders, litter bins). Some of these structures are exempt from the tax, namely a large part of structures forming part of railway infrastructure, ports, airports, protective embankments, or some agricultural production structures. However, the legal definitions show the different approach of Polish legislation to the taxation of other structures (in addition to standardly defined buildings) than that applied in SK, i.e., the whole broadly defined range of various structures, mainly those that can be considered as engineering structures in the sense of the Slovak Building Act, are subject to RPT if they are related to the conduct of business activities, which significantly expands the object of taxation by this tax.

In HU, LGs are financed in two ways. One source of revenue comes from the central budget, which is used to provide compulsory LG services. The other source of income comes from the LGs' own revenues, the most important of which are LTs. Local authorities can use their own revenue to finance the performance of their voluntary tasks once the financial resources for the performance of the compulsory tasks have been thoroughly secured.¹⁷ Act C of 1990 on local taxes ("1990. évi C. törvény a helyi adókról"; hereinafter as Hungarian Local Taxes Act)¹⁸ defines the types of LTs: property-type taxes (building tax and land tax), communal-type taxes (communal tax on individuals and tourism tax), and local business tax. In addition, settlement tax ("Települési adó") may be introduced in addition to LTs. However, the introduction of a single type of tax is subject to the restriction that only one type of tax can be introduced: the right of the municipality to assess taxes is limited by the fact that taxpayers are only obliged to pay one type of tax as decided by the municipality for a specific taxable property (building, part of a building, plot of land).¹⁹ Local taxation policies are one of the most important instruments of economic autonomy in the LT system, which gives municipalities the right to exercise local sovereignty in exercising their right to tax and, in turn, developing LT policy.

¹⁷ More on the topic of local taxes relevance in the V4 countries local government budgets see L. Pardavi, *Az önkormányzati adók és a közteherviselés* [in:] *A települési adók elmélete és gyakorlata különös tekintettel Győr-Moson-Sopron Megyére*, ed. *idem*, Győr 2022, pp. 24–28; G. Hulkó, *A cseh, szlovák és lengyel helyi adók és illetékek szabályozási rendszerének elemzése, különös tekintettel a szabályozás gyakorlati problémáira* [in:] *A települési adók...*, pp. 115–150 or *idem*, *A V4-országok helyi önkormányzati rendszerének összehasonlító elemzése* [in:] *A helyi önkormányzatok nemzetközi környezete*, ed. E. Farkasné Gasparics, Budapest 2021, pp. 239–279.

¹⁸ 1990. évi C. törvény a helyi adókról, <https://net.jogtar.hu/jogszabaly?docid=99000100.tv> [accessed: 2023.04.14].

¹⁹ Article 7 section a) Hungarian Local Taxes Act.

Since there is no general central property tax in HU, it exists only for LTs, divided into building tax (“Építményadó”) and land tax (“Telekadó”). The building tax covers buildings and parts of buildings for residential and non-residential purposes. All rooms of a building are subject to tax regardless of their purpose or use.²⁰

Article 52 of the Hungarian Local Taxes Act (in connection with Act LXXVIII of 1997 on the Shaping and Protection of the Built Environment²¹) clarifies the definition of a building, according to which, as such, can be considered a space artificially formed in whole or in part from the surrounding external space and separated by building elements, thereby providing conditions for permanent or temporary habitation or use, including a separate installation situated in whole or in part below the level of the surrounding adjacent ground. Furthermore, it defines a “part of a building” as a room or group of rooms in a building that has a separate function and a separate entrance under the open sky or from a common corridor of the building and that is adjacent to a dwelling, holiday home, commercial unit, or other non-residential building, but that is not registered as a separate property. According to these definitions, therefore, structures that are not considered buildings or parts of buildings are not subject to the building tax, regardless of whether they are low or high buildings. So a cellar or a bunker is covered by the law because they are buildings. Still, a wire or an antenna is not because it is not a building (or part of a building) under the provisions of the Local Taxes Act or Act LXXVIII of 1997 on the Shaping and Protection of the Built Environment.²² Given these definitions, engineering structures are not subject to building tax.

However, the specificity of HU lies in the special tax on public engineering structures, regulated by Act No. CLXVIII of 2012 on the tax on public utility lines (“2012. évi CLXVIII. törvény a közművezetékek adójáról”).²³ The public utility line tax is levied from the sixth year following the date of commissioning, as defined: water, sewage and stormwater, natural gas, heat, electricity, and communications services, as well as part of pipelines located in public areas on the surface, below or above the surface of public areas, or not in public areas, utilities situated above or below the surface of the land, except utilities located on public land or not on public land, which are designated for the exclusive use of the user of the land and which are recorded under the appropriate parcel number in connection with the use of the land. The taxpayer is the owner of the public distribution system or the operator in the case of distribution systems owned by the State or local authorities.²⁴ The tax is based on the length of the lines in meters, adjusted by the statutory coefficients set out in regulation in the case of drinking water lines, sewage lines, and electricity and natural gas lines. The tax rate

²⁰ Article 11 Hungarian Local Taxes Act.

²¹ 1997. évi LXXVIII. törvény az épített környezet alakításáról és védelméről, <https://net.jogtar.hu/jogszabaly?docid=99700078.tv> [accessed: 2023.04.14].

²² G. Hulkó, J. Fehér, *Hungary...*, p. 151.

²³ 2012. évi CLXVIII. törvény a közművezetékek adójáról, <https://net.jogtar.hu/jogszabaly?docid=a1200168.tv> [accessed: 2023.04.14].

²⁴ The State and local governments are exempt from this type of tax; telecommunications lines are also partially exempt.

is HUF 125²⁵ per meter. In HU, therefore, some civil engineering works, namely linear works, are subject to a special tax in addition to the building tax. The planned Slovak tax on a special structure would be similar to this special tax model, as it was to be introduced as a state tax (not a LT such as RPT), flowing into the state budget (not to municipalities) and, unlike other state taxes, administered by the Office for Selected Economic Entities (*Úrad pre vybrané ekonomické subjekty*).

However, it is worth noting that these structures are not subject to building tax, which does not mean local authorities cannot receive revenue when they are built or even afterward. This revenue will also be their own revenue, which may not be tax revenue, but in the form of the use of a property. The utility lines will be installed on public land (underground or in the air). Their installation requires the consent of the owner, for which they may charge a fee. A lump sum or an annual installment may then be agreed upon. However, if a local authority fails to ask for this at the time of the owner's consent, it will not be able to exercise this right in the future. Nor should it be overlooked that no distinction should be made between the requirements of free competition (and avoidance of prohibited state aid) and the condition of equal treatment. In other words, compensation must be sought from everyone or no one. A difference in remuneration is only possible to the extent that it can be justified based on objective criteria.

Today in HU, underground utility lines are less useful for other purposes. However, overhead utility lines and their supporting cables/poles have the potential to generate revenue for the utility operator. Support poles can be let out to other utility companies, advertising can be placed on support poles or lines, etc. Since support poles are not subject to building tax or public utility lines tax, they are not subject to direct taxation, even though they are typically used for profit-oriented economic activities.

Since January 1, 2015, LGs can introduce a settlement tax.²⁶ LGs may introduce the settlement tax, but it is not an LT as defined in the Hungarian Local Taxes Act, but rather a special type of tax. The term settlement tax is used alongside LTs and not as part of them. Settlement taxes may be used for municipal development and social welfare purposes.

Many local authorities saw the introduction of the settlement tax as an opportunity to increase their revenues. However, an analysis of the detailed rules reveals that it is, in fact, a nice-sounding option that is difficult to implement in any substantial way. In essence, only natural persons are subject to the settlement tax; thus, organizations and/or businesses with the most substantial financial resources are not. Consequently, natural persons, not residents of a municipality, could also be subject to the tax, but there would have to be a link connecting them to the municipality. In addition, the

²⁵ Equivalent of 0.33 EUR (April 13, 2023).

²⁶ See: A. Bencsik, *A helyi önkormányzatok (pénzügyi) autonómiájáról*, "Pro Publico Bono – Magyar Közigazgatás" 2017, nr. 1, pp. 56–69, <https://bit.ly/3Urxarm> [accessed: 2023.04.14]; P. Bordás, *A települési adó rendszertani és gyakorlati kérdései*, "Pro Publico Bono – Magyar Közigazgatás" 2015, nr. 3, pp. 4–12, <http://bit.ly/3APVRF> [accessed: 2023.04.14] or Zs. Ercsey, A. Bencsik, *A helyi önkormányzatok pénzügyi autonómiájának átalakulása*, "Glossa Iuridica" 2020, nr. 1–2, pp. 225–237.

object of the tax can be any taxable object not covered by other public charges. To avoid double taxation, only taxable property not yet taxed can be subject to the tax. This needs to be revised. Defining a taxable subject that is not subject to other public charges is difficult. This could be the case for a pole supporting a utility line since, as a structure, it is not taxed by either the building tax or the utility line tax. However, it does not make sense to introduce it because of the taxable person limitation since natural persons own no utility poles.

Local authorities have tried introducing the settlement tax, but few proper solutions have been found. Where they have been introduced, the primary function of taxation, which is to raise revenue, has yet to be effected, while rather the secondary function of influencing behavior has. However, they were doomed to failure from the outset because the tax could only be levied on natural persons, while legal persons would have been a more proper subject for this type of public burden. An example of this is when the height of a building was taxed so that the height of a church tower would not be taxed. In contrast, a mobile phone tower would have been, or a very high number of animals in a municipality would have been taxed, which only an animal rescue foundation could achieve. Since, in both cases, the tax would have been levied on a legal entity, the main objective of the settlement tax, i.e., to raise local income, could not be achieved. Of course, the regulations would not have passed the test of legality either since no discriminatory tax can be introduced concerning a settlement tax assessment. A tax is discriminatory if it imposes a tax obligation on one or a minimal number of taxpayers regarding a given taxable object while exempting many others.²⁷

However, there are other international examples of the taxation of energy structures, such as in Latvia and partially in Lithuania and France.²⁸

3. Discussion

There are different approaches to the inclusion of different types of real property in the object of recurrent property taxes. For example, while some countries tax only structures and/or only land, others apply taxation globally to all real properties. In theory, property taxes are generally levied on all types of properties – residential, commercial, industrial, and farm properties; sometimes, different categories of property are treated differently, and certain classes of property, or property owners, or uses of property, are

²⁷ For more detail concerning settlement taxes in Hungary see: D. Borsa, G. Hulkó, P.B. Király, L. Pardavi, *A települési adók szabályozási környezete, gyakorlata és kihívásai: Van-e jelentősége a települési adónak krízishelyzetekben vagy egyáltalán?*, "Közgazdaságtudomány" 2022, nr. 2, pp. 22–34; P. Bordás, *A települési adó kivetésének korlátai a Kúria joggyakorlatának fényében*, Kúria 2021, <http://bit.ly/3VxyH0h> [accessed: 2023.04.14] or G. Hulkó, L. Pardavi, *Practical Experience and the Significance of the Settlement Tax in Hungary*, "Annual Center Review" 2022, no. 14–15, pp. 43–49.

²⁸ European Commission: Taxes in Europe database, https://ec.europa.eu/taxation_customs/tedb/index.html [accessed: 2023.01.11].

exempt.²⁹ For example, non-residential properties include a wide variety of property uses, including commercial uses (such as offices, banks, retail outlets, restaurants, and hotels), industrial uses (such as mines, manufacturing plants, and shipyards), and special uses (such as pipelines and railway rights-of-way).³⁰

In the case of SK, although the object of RPT generally includes all types of real properties, i.e., land, structures, dwellings, and non-residential premises, due to the limiting definition of the object of taxation, in the case of the tax on structures, it would be more appropriate to speak only of the tax on buildings, as all other structures that do not meet the condition of having a ceiling/roof are excluded from taxation. The situation is very similar in CZ, and Radvan also presents the view that the object of RPT should be broader.³¹ On the other hand, Hungarian definitions are not that strict; the definition of a building covers even “a stand-alone installation that is partially or completely below the surrounding connecting ground level with its internal height,” which serves as the basis for taxing advertising media (e.g., billboards).³²

The differences in the approach of the countries compared to the definition of the object of RPT have already been noted in our previous research, where we identified differences in the definition of the object of RPT in the overall perspective, including the different definition of the object of taxation in relation to structures,³³ however, a deeper analysis is needed. Even in the context of the difference in the budgetary significance of the RPT examined there, such a significant difference in the definition of the scope of the taxed structures leads us to believe that the much broader definition of the object of taxation in the Polish legislation compared to the other V4 countries can also have a significant impact on the significantly higher RPT revenue to GDP ratio than in the other V4 countries (on average, for 2010–2020, it was as high as 1.181%, compared to 0.411% in SK, 0.394% in HU, and only 0.216% in CZ).³⁴ The taxation of structures is all the more important because in SK, HU, and PL, their revenue accounts for the majority of RPT revenue.³⁵ The specific regime in HU, after taking into account the income from the tax on public engineering structures, would mean that the total RPT revenue would represent an average share of 0.543% of GDP over the 2013–2020 period (after the introduction of the tax)³⁶ (see Fig. 1).

²⁹ R.M. Bird, E. Slack, *Land and Property Taxation: A Review*, World Bank 2002, p. 12.

³⁰ *Ibid.*, p. 25.

³¹ M. Radvan, *Major Problematic Issues in the Property Taxation in the Czech Republic*, “Analysis and Studies CASP” 2019, no. 2, p. 20.

³² I. Hoffman, *Only a Theoretical Possibility of the Ad Valorem Property Tax System – the Regulation on Immovable Property Taxes in Hungary*, “Analysis and Studies CASP” 2019, no. 2, p. 65.

³³ A. Vartašová, K. Červená, *Real Property Tax...*, p. 204.

³⁴ *Ibid.*, pp. 196–197.

³⁵ A. Vartašová, *Buildings & Structures as the Object of Real Property Taxes in the Countries of Visegrad Group* [in:] *Challenges of Contemporary Tax Law: Jubilee Book Dedicated to Professor Włodzimierz Nykiel on His 70th Anniversary*, Łódź 2023 – in print.

³⁶ Own calculation based on data from the Hungarian Central Statistical Office (Központi Statisztikai Hivatal).

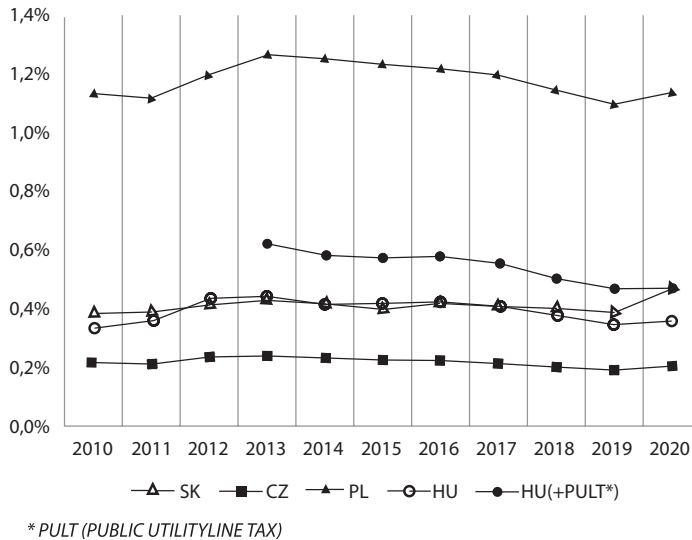


Fig. 1. RPT to GDP ratio

Source: authors' own elaboration based on Eurostat data.

At least in the case of SK (and CZ), according to our analysis, there is much scope for expanding the object of RPT, but in our opinion, it would be more appropriate to do this more conceptually and reasonably than by introducing a special tax on only one type of line structure (as intended). According to the Explanatory Memorandum to the Special Structure Tax Bill, "one of the reasons for introducing the tax on a special structure is that this is not subject to RPT." Although the Explanatory Memorandum is silent on other reasons, this one was vague and questionable since, in our opinion, the justification for introducing the new tax on the grounds that its object has not previously been subject to taxation does not stand up. Moreover, since the fiscal function of taxes is one of their essential functions, we see no reason why this rationally justifiable reason for introducing the tax should be obscured by another very poorly justified reason. The fiscal objective could be better fulfilled by a comprehensive review of the scope of RPT after expert discussion and consideration of its potential benefits and risks (e.g., by shifting the tax burden from operators/owners of certain engineering structures to energy consumers). This issue is even more topical in the context of a long-term trend of dependence of municipalities in SK on state-transferred funds and shared tax (personal income tax – PIT) and the generally low share of budget incomes covered by LTs, which is also the case in CZ and PL (see Fig. 2). Since, in absolute terms, municipalities in HU yield significant incomes from local business tax, broadening the taxable objects of the Hungarian building tax does not seem to be such an urgent topic.

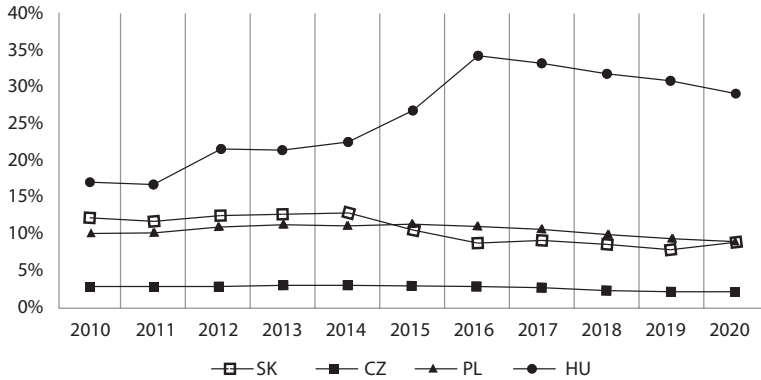


Fig. 2. LT to total revenues of LG (S1313)

Source: according to A. Vartašová, K. Červená, *Real Property Tax in the Countries of Visegrad Group – Comparative View*, "Studia Iuridica Lublinensia" 2022, no. 1, pp. 191–211.

The vulnerability of this system, especially in SK, was highlighted during the COVID-19 crisis, when, because of lock-downs, lower PIT revenues accrued in the state budget. Thus, the shares of the tax transferred monthly to the budgets of municipalities suddenly dropped drastically, which led to ad hoc agreements with municipalities on the provision of repayable financial support from the Ministry of Finance to compensate for the shortfall in the share of tax and taking loans.³⁷ Another example is the PIT share reduction caused by the state-increased personal tax benefits since 2023 forcing municipalities to raise LTs and fees for services or to limit services provided.³⁸ Such a revenue source model is susceptible to the economic situation in the country and updates of personal tax benefits, which is very likely to cause fluctuation in municipal incomes, as demonstrated in SK's case. Therefore, this state-fund dependence is hardly sustainable, and a conceptual solution should be sought, one of which could be rethinking the concept of local taxation, especially RPT.

Conclusions

The relevance of LTs in the V4 countries varies, but they play an important role in funding LGs and providing public services to residents. A critical feature of the V4 countries is that they have different levels of decentralization in terms of LG structures and funding. PL and CZ generally have more decentralized systems. HU tends towards an operation under a more centralized approach, while the Slovak LG system is roughly in the

³⁷ See e.g. A. Vartašová, K. Červená, *Finančné hospodárenie mesta Košice v kontexte pandémie Covid-19* [in:] 4. *Slovak-Czech days of tax law: Taxation of Virtual Currency and Digital Services*, Košice 2021, pp. 384–398.

³⁸ See e.g. ZMOS, *Samosprávy: Zvýšenie daňového bonusu môže spôsobiť dvojité postih*, November 29, 2022, <https://www.zmos.sk/samospravy--zvysenie-danoveho-bonusu-moze-sposobit-dvojity-postih-oznam/mid/405616/> [accessed: 2023.04.14].

middle of the range of the former in terms of decentralization and centralization. In PL, LGs have a significant degree of autonomy in taxing and spending. They are responsible for a wide range of public services, including education, healthcare, and public transportation. LGs have similarly broad tasks and responsibilities in CZ and SK. Given the strict separation of functions and powers between the state administration and LGs, the Hungarian system of tasks and responsibilities differs from the other V4 states, nevertheless, it also focuses on the provision of public services to residents. Overall, while the specific role and importance of LTs vary among the V4 countries, LTs are crucial sources of revenue for funding LG operations and providing public services to residents.

Furthermore, it is generally true that state financing is an essential source of revenue for LGs in the V4 countries and that LTs play a less significant role compared to state transfers. However, it is important to note that they still play an essential role in financing LGs and providing public services in the V4 countries, as they are the source that might be – to a certain and varying extent – influenced by the municipality itself.

As for the situation of LG funding in SK in particular, we conclude that there is a relatively high dependence on state-transferred and shared revenue sources. The LGs' own source of tax revenue, consisting of LTs, is important but it cannot be described as sufficient to secure fiscal autonomy for Slovak municipalities. This includes RPT and seven other LTs of lesser budgetary significance, where the municipalities have a certain range of competencies even regarding customizing legislation, but this covers only one of the four most relevant tax elements, i.e., tax rates. The others (taxpayers, tax bases, and taxable objects) are out of their scope of competence. This type of limitation is very similar in the other V4 countries, where even the existence of a "bianco tax" (i.e., the settlement tax) in HU does not, in practice, enable municipalities to compensate the state-determined legislative framework for local taxation possibilities and implement a settlement tax that would, e.g., target engineering structures or other possible structures not taxed by the building tax.

In recent times, we have experienced how a high dependence on state funding causes problems in municipal budgets, and for this reason, we are of the opinion that LGs' own sources of municipal tax revenues needs to be strengthened. We see room for a debate on the appropriateness of the narrow concept of taxable objects under RPT. The example of PL is noteworthy of mention here since the tax's scope is of a much more complex nature and covers a wide range of various structures used for business. We see that, very much like SK, CZ and HU also do not collect high revenues from RPT in contrast to the Polish case, and so it is the difference among these countries regarding the limited or broader scope of property taxation, as practically none of the three low-revenue countries taxes actual structures (including engineering ones), but only "regular" buildings with their RPTs. For example, should we consider the special situation of HU, where some engineering structures (public utility lines) are subject to a separate state tax, including this revenue would raise the property tax revenue share in GDP by one-third. Even though much has been debated³⁹ on potential reform to-

³⁹ E.g. K. Červená, C. Olexová, *Realita zdaňovania nehnuteľností na Slovensku (ekonomický pohľad)* [in:] *Stav a perspektívy verejných financií v EÚ = The condition of public finances in the EU and their future per-*

wards ad-valorem change of the tax base determination, to the best of our knowledge, no debate has been entertained on updating taxable objects. These, however, are considerable thoughts, and a more comprehensive discussion should be endorsed.

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Summary

Anna Vartašová, Mária Bujňáková, Gábor Hulkó, Lajos Csörgits

Engineering Structures and Their (non)Taxation by Slovak Real Property Tax (in the V4 Context)

The paper deals with real property tax regulation, especially in the Slovak Republic, but also in the rest of the Visegrad group countries (Czech Republic, Poland, and Hungary) in the context of its position and role in funding local self-governments in all the countries studied, with a particular focus on engineering structures as a potential object of taxation, which is excluded from taxation in Slovakia. The authors focus primarily on the legislation of the Slovak Republic, and using the comparative method, they search for models of (non)inclusion of these objects into real property taxation among the V4 countries. They draw conclusions on the different approaches applied and suggest the most comprehensive system is in Poland. Based on a comparison of the real property tax revenues in the countries studied, these different approaches can be connected to the low real property tax revenues in the Slovak Republic (and also in the Czech Republic).

Keywords: real property tax; object of taxation; tax on buildings, engineering structures, utility lines; local government financing.

Streszczenie

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Budowle inżynieryjne i ich (nie)opodatkowanie słowackim podatkiem od nieruchomości (w kontekście V4)

Artykuł poświęcony jest problematyce podatku od nieruchomości w kontekście jego miejsca i roli w finansowaniu samorządu terytorialnego na Słowacji, a także w pozostałych krajach Grupy Wyszehradzkiej (Czechy, Polska, Węgry). W szczególności uwzględnione zostało zagadnienie obiektów inżynieryjnych jako potencjalnego przedmiotu opodatkowania, który został wyłączony z opodatkowania na Słowacji. Autorzy skupiają się przede wszystkim na ustawodawstwie Republiki Słowackiej i metodą porównawczą poszukują modeli (nie)włączenia tych obiektów do opodatkowania nieruchomości wśród krajów V4. Wnioskując z różnych stosowanych podejść, dochodzą do konkluzji, że najbardziej kompleksowy system istnieje w Polsce. Na podstawie porównania dochodów z podatku od nieruchomości w badanych krajach te różne podejścia można wiązać z niskimi wpływami z podatku od nieruchomości uzyskiwanymi na Słowacji (a także w Czechach).

Słowa kluczowe: podatek od nieruchomości; przedmiot opodatkowania; podatek od budynków, budowli inżynieryjnych, przyłączy; finansowanie jednostek samorządu terytorialnego.