

Resolutions of the Municipal Councils on Exemptions and Deadline Extensions for Payment of Property Tax within the Framework of the So-Called Anti-Crisis Shields: A Summary Attempt

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The purpose of this article is to attempt to analyse and summarise the legal solutions that enable municipalities to implement property tax preferences in the context of the crisis caused by SARS-CoV-2. The legal solutions that have been adopted constitute an important novum. They extend the powers of the municipal decision-making bodies by way of entitling them to introducing exemptions from property tax and to deadline extensions for payment of instalments of this tax. Research results demonstrate that application of those cause quite considerable problems. First of all, the number of tax resolutions challenged by the Boards of Regional Accounting Chambers testifies to that. In 2020, out of 969 resolutions, 158 were found to be in violation of the law.

Keywords: tax resolutions, COVID-19, property tax

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Introduction

The pandemic caused by SARS-CoV-2 has significantly affected the financial condition of numerous groups of entrepreneurs. Therefore, a variety of different legal actions have been taken to support economic operators. The repeatedly amended Act of 2 March 2020 on special solutions related to preventing, counteracting, and combating

COVID-19, other infectious diseases, and the resultant crises has been of key importance in this respect.¹ It should be stressed that the said legislative Act did not originally contain any legal solutions that would allow municipal councils to support entrepreneurs by way of introducing, for

¹ Journal of Laws of 2020, item 374 as amended – hereinafter referred to as the Anti-Crisis Shield.

example, tax resolutions on exemptions from local taxes and fees and deferrals of payments, etc. Regulations allowing municipal councils to support entrepreneurs by means of specific tax resolutions were only introduced through the Act of 28 March 2020 amending the Act on special solutions related to preventing, counteracting, and combating COVID-19, other infectious diseases, and the resultant crises and some other Acts² and the Act of 9 December 2020 amending the Act on special solutions related to preventing, counteracting, and combating COVID-19, other infectious diseases, and the resultant crises and some other Acts³ upheld the solutions that empower municipal councils to introduce tax preferences for 2021.

Aid granted by the municipal authorities under the above-mentioned legislation is selective, that is, it does not cover all local taxes and fees that the municipality has tax authority over, but it is limited to property tax only. It is difficult to understand such selectivity, especially as in the explanatory memorandum of the draft bill the initiator of new legal solutions notes themselves that “it has become necessary to introduce a business protection package, in particular to prevent liquidity loss with respect to business activity.” In their opinion, “the submitted draft bill will allow application of extraordinary business support instruments during this period.”⁴ As long as support with respect to agricultural and forestry tax seems unnecessary since it is a relatively low burden for businesses, it is difficult to comprehend the lack of adequate legal solutions as regards tax on means of transport. The transport industry, both the transport of people and goods, has been badly affected by the coronavirus pandemic.

The purpose of this article is to attempt to analyse and summarise the legal solutions that en-

able municipalities to implement property tax preferences in the context of the crisis caused by SARS-CoV-2. It seems all the more appropriate as the epidemiological hazard has not yet been eliminated, while the relevant legislation in force has raised significant doubts both at the stage of making and applying it. Analysis of these legal solutions will allow formulating proposals *de lege ferenda* that may contribute to improving this area of tax law in the context of possible further support of entrepreneurs in the sectors most affected by the pandemic or in case of other future emergencies of a similar nature.

The study adopts the legal and dogmatic method and the empirical method. In the latter case, the analysis covers supervisory resolutions of the Regional Accounting Chambers, the Report of the National Board of Regional Accounting Chambers on the Activities of the Chambers in 2020 (NBRAC, 2021), and the case law of administrative courts.

Municipal councils’ entitlement to introduce tax exemptions and extend deadlines for payment of property tax as a manifestation of the tax authority of local self-government units

The essence of the municipal tax authority is limited to a legally defined range of powers to decide on tax matters (Glumińska-Pawlic, 2011, pp. 111–128). According to Article 168 of the Constitution of the Republic of Poland,⁵ local self-government units (LSGUs) have the right to set rates of local taxes and fees within the scope defined by an act of law. This provision reflects the principle of financial autonomy of LSGUs and fulfils the obligations that Poland has accepted by ratifying the European Charter of Local Self-Government.

⁵ Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483, as amended).

² Journal of Laws of 2020, item 568.

³ Journal of Laws of 2020, item 2255.

⁴ The explanatory memorandum of the draft bill amending the Act on special solutions related to preventing, counteracting, and combating COVID-19, other infectious diseases, and the resultant crises (print No. 299), <http://www.sejm.gov.pl>

It also sets the limits of the tax authority of local self-government units, which must be observed when making local tax legislation. This should be understood as the limits of the local authorities' competence for regulating tax matters. The above-mentioned regulation should be considered in conjunction with another constitutional provision, that is, Article 16(2) that highlights participation of the local self-government in the exercise of public authority (Popławski, 2007, p. 30). The principle of financial autonomy enables LSGUs to carry out their tasks related to satisfying residents' needs independently from the central authorities (Etel, 2004, p. 80).

However, the entitlement arising from Article 168 of the Constitution cannot be limited to the mere setting of tax rates and fees (Ofiarski, 2015, p. 385). It is certainly much broader in scope. However, it is not absolute, either. It is the legislator who decides on the final extent of LSGUs' autonomy in the Constitution and the acts of law. Articles 84 and 217 of the Constitution are of key importance in this respect as they require that tax obligations be regulated in an act of law. There are no exceptions to this rule. This means that a tax can only be imposed by the parliament and not by the local authorities (Kotulski, 2004, p. 123). The legislator cannot effectively delegate their power to impose tax obligations to other entities. Thus, local acts of law cannot impose or abolish tax burdens on a given territory, except where expressly provided for in *ius positivum*.⁶ In effect, these solutions severely restrict LSGUs' tax authority.

Article 217 of the Constitution not only establishes the principle of exclusivity of acts of law as regards imposition of public levies but also introduces other restrictions on the possibility of regulating tax matters through local acts of law. This provision indicates the elements of the legal structure of tax that must be regulated by acts of law and, therefore, cannot be regulated by local

acts of law. An act of law must specify the scope *ratione personae* of a tax and so it must define entities that the tax is imposed on and ones that may be exempt from it. Hence, it is prohibited to introduce exemptions *ratione personae* by way of municipal resolutions. This is undoubtedly an important limitation of LSGUs' tax authority. The essence of an exemption *ratione personae* is that it applies to a particular entity with no indication of the object that the tax is imposed on.⁷ Ultimately, municipal decision-making bodies are explicitly banned from introducing exemptions applying to specific entities. Such a prohibition is also expressed in the provisions regulating the construction of local taxes; for example, Article 7(3) of the Act of 12 January 1991 on local taxes and fees⁸ that authorises municipal councils to introduce other exemptions *ratione materiae*. *A contrario*, those cannot be exemptions *ratione personae*. In view of the explicit wording of Article 217 of the Constitution of the Republic of Poland and Article 7(3) of the ALTF, municipal decision-making bodies do not either have the right to introduce exemptions of a *ratione personae* and *ratione materiae* character combined (Dowgier et al., 2020, p. 775 et seq.).

What is more, Article 217 of the Constitution provides for setting the rules on granting reliefs and remissions exclusively through an act of law. Therefore, neither the municipal council nor any other municipal body are competent to modify the statutory provisions on the rules for granting reliefs and remissions.

It follows from the above that municipalities do not enjoy full tax authority. Meanwhile, the regulations that have existed for many years turned out insufficient to allow municipal authorities to support entrepreneurs affected by the SARS-CoV-2 pandemic. It was thus appropriate to introduce new special powers that municipalities could exercise. However, it should be clearly stressed that they do not exclude the possibility of applying the

⁶ This is the case with the local market fee, the visitor's tax, the health resort fee, dog fee, and advertising fee – for more see Pahl (2017), p. 52 et seq.

⁷ More on exemptions see Nykiel (1998), p. 173 et seq.

⁸ Consolidated text: Journal of Laws of 2019, item 1170, as amended – hereinafter referred to as the ATLF.

existing regulations, in particular such as individual reliefs from paying off tax receivables, which are granted by municipal tax authorities under the provisions of the Tax Ordinance, or exemptions *ratione materiae* introduced by way of resolutions of municipal councils.

The explanatory memorandum to the draft bill introducing the new legal instruments clearly states that “the proposed solutions will allow municipalities, within their tax autonomy, to introduce property tax solutions intended to aid entrepreneurs whose financial liquidity has deteriorated due to the negative economic consequences of COVID-19. These solutions will have a positive impact on their economic situation and contribute to the improvement of their liquidity.”⁹

Under the provisions of the Anti-Crisis Shield, the municipal council has been granted two powers. Firstly, the Act allows municipalities to introduce exemptions from property tax on land, buildings, and constructions used in pursuit of economic activity applicable to specified groups of entrepreneurs whose liquidity has deteriorated due to the negative economic consequences of COVID-19 (Article 15p) for part of the year 2020 (and following the amendment of the Act for selected months of the first half of 2021 as well). Secondly, it provides for the possibility of extending, by way of a resolution, the deadlines for payment of property tax instalments payable in April, May, and June 2020, not later than until 30 September 2020, and following the amendment, the entitlement also covers the deadlines for payment of property tax instalments payable in the selected months of the first half of 2021, not later than until 31 December 2021 (article 15q) – in the case of specified groups of entrepreneurs whose financial liquidity has deteriorated due to the negative economic consequences of COVID-19.

⁹ The explanatory memorandum of the draft bill amending the Act on special solutions related to preventing, counteracting, and combating COVID-19, other infectious diseases, and the resultant crises (print No. 299), <http://www.sejm.gov.pl>

Optionality of the resolutions on exemptions from property tax and extensions of deadlines for payment of instalments of this tax

Both Article 15p and Article 15q of the Anti-Crisis Shield provide for solutions that are optional in character in the sense that the municipal council may (but does not have to) exercise the power to introduce an exemption from property tax or extend the deadline for payment of the instalments of this tax. This solution seems very much appropriate since introduction of an obligation to adopt a resolution, especially on exemptions, would result in depriving municipalities of quite significant revenues against their will. At the same time, this would infringe on the principle of financial autonomy.

Thus, the optionality of the resolutions that can be adopted based on the above-mentioned provisions allows the municipalities to make autonomous decisions. This means that each municipality may single-handedly decide to give up (or not) its revenue that will not, in fact, be compensated in any way. Introduction of preferences in a form of tax exemption should not be a rule but an exception. When considering introduction of such legal solutions, each time the municipalities must analyse their effects on both the potential beneficiaries and the entire local community. The legitimacy of these instruments cannot be denied, but solutions that facilitate repayment of tax receivables should be adopted first, for example, deferrals of payment, instead of giving up on them completely (due to exemption).

Scope of the exemption from property tax

In accordance with Article 15p(1) of the Anti-Crisis Shield, municipalities may introduce exemptions (by way of a resolution) from property tax on land, buildings, and constructions used in pursuit of economic activity applicable to specified groups

of entrepreneurs whose liquidity has deteriorated due to the negative economic consequences of COVID-19 (Article 15p) for part of the year 2020 and for selected months of the first half of 2021.

The said exemption is of a character *ratione personae* and *ratione materiae* combined. The objects of the exemption include land, buildings, and constructions used in the pursuit of economic activity. Although the exemption applies to ‘whole’ buildings, it is appropriate to apply it to parts of buildings as well (premises). It is hardly possible that the legislator intended to exclude parts of buildings from the scope of the exemption. The tax exemption may be limited to those objects subject to taxation that are linked to a particular type of activity (e.g., hotel or hairdresser’s services, etc.). Nothing stands in the way for it to cover all the properties and constructions owned by the business groups defined in the municipal council’s resolution. The part *ratione personae* of the exemption concerns the groups of entrepreneurs whose financial liquidity has deteriorated due to the negative economic consequences of COVID-19, which are indicated in the council resolution.¹⁰ Therefore, potentially not every entrepreneur may benefit from tax exemption, but only the ones who are mentioned in the resolution and whose liquidity has deteriorated due to the negative economic consequences of COVID-19. It is quite a challenge to identify such groups of entrepreneurs. The Anti-Crisis Shield gives the decision-making bodies a lot of freedom in this respect. As rightly noted by Dowgier, the municipal council may indicate that the exemption relates to land, buildings, and constructions used to pursue economic activity classified under a specific code within the framework of

¹⁰ The above mentioned Act of 9 December 2020 amending the Act on special solutions related to preventing, counteracting, and combating COVID-19, other infectious diseases, and the resultant crises and some other Acts extended the scope *ratione materiae* of the exemption to cover land, buildings, and constructions occupied for the purposes of pursuit of economic activity by non-governmental organisations referred to in Article 3(2) of the Act of 24 April 2003 on common public interest and voluntary activities and entities referred to in Article 3(3) of the said Act.

the Polish Classification of Activity, or it may refer to the relevant regulations of the Council of Ministers restricting or preventing the pursuit of a particular economic activity (Dowgier, 2021, p. 8).

If a resolution described criteria for establishing ‘liquidity deterioration,’ such as reduction in turnover, revenue or income, the tax authority would need to verify these circumstances. Therefore, the best solution is for the municipal council to indicate the group of entrepreneurs in the resolution, that – as the municipality believes – have experienced such a situation (Dowgier, 2020, p. 12) e.g., entrepreneurs providing hotel or food services, etc.

In the context of the *ratione personae* scope of the exemption, a significant problem arises when the taxable object is jointly owned by the entrepreneur and the entity that does not perform economic activity. Considering the fact that the exemption applies to groups of entrepreneurs specified in the council resolution, it is appropriate to apply the exemption only to the part owned by the entrepreneur. The share of the co-owner who does not pursue economic activity is subject to taxation in accordance with the general rules. In this case, Article 3(6) of the ALTF applies. This provision stipulates that the principle of joint and several tax liability referred to in section 4 thereof does not apply, if one or more co-owners or holders are exempt from or are not subject to property tax. In such a case, the co-owners or holders who are subject to and are not exempt from property tax are jointly and severally liable to the extent corresponding to their joint share in ownership.

The exemption provided for under the provision in question is limited to a certain part of the fiscal year 2020 and 2021 only. The municipal council’s decision should, therefore, clearly indicate the period in which the exemption applies and nothing stands in the way of adopting such a resolution retroactively. Article 4 of the Act of 20 July 2000 on the Promulgation of Normative Acts and Certain other Legal Acts,¹¹ which introduces a 14-day *va-*

¹¹ Consolidated text: Journal of Laws of 2019, item 1461, as amended.

catio legis period does not prevent that. This period can be shortened, if important interest of the State requires immediate entry into force of a legislative act and the principles of a democratic rule of law do not stand in the way of that. Moreover, Article 5 of said Act also allows for the adoption of a legislative act that is retroactive in character, if the principles of a democratic rule of law do not prevent that. These principles are not infringed by an act of law which reduces a tax burden, for example by introducing a tax exemption or a reduction in the tax burden (Etel, 2004, p. 229). A retroactive exemption may be introduced, no matter if the deadline for making payment of the relevant tax instalment has expired or if the taxpayer has paid the instalment or tax arrears have emerged. In the case of tax exemption, the tax obligation does not translate into a tax liability. Thus, if the taxpayer has paid the instalment, an overpayment emerges, and if they have not paid it, no tax arrears arise.¹²

Introduction of a retroactive exemption from property tax pursuant to Article 15p gives rise to far-reaching legal consequences. In such a case, legal persons and organisational entities without legal personality should correct the property tax returns they have submitted and as for natural persons, it is legitimate to adjust the final assessments in an extraordinary mode.

Extension of the deadline for payment of property tax

Apart from the possibility of introducing an exemption from property tax, the Anti-Crisis Shield additionally granted municipal authorities the right to extend the deadline for payment of the instalments of this tax on their territory.

Pursuant to Article 15q of the Act under analysis, the municipal council may by way of a resolution extend the deadline for payment of instalments of property tax payable in April, May, and June 2020, but not later than until 30 September

2020, and payable in the selected months of 2021, but not later than until 31 December 2021, for specified groups of entrepreneurs whose financial liquidity has deteriorated due to the negative economic consequences of COVID-19. Secondly, in the resolution referred to in section 1, the municipal council may extend, by way of a resolution, the deadlines for payment of instalments referred to in section 1 for non-government organisations regarded in Article 3(2) of the Act of 24 April 2003 on common public interest and voluntary activities and entities considered in Article 3(3) of the Act referred to in point 1 – whose financial liquidity has deteriorated due to the negative economic consequences of COVID-19.

The municipal council's right in question only refers to the deadlines for payment of tax instalments and, therefore, does not cover the instalments whose deadlines have expired. This is because the concept of tax should be clearly distinguished from tax arrears. Following expiration of the deadline, tax arrears arise that cannot be equated with tax. The legislator sets clear boundaries between these two concepts in the Act of 29 August 1997 – Tax Ordinance.^{13, 14}

Article 15q explicitly states which tax instalments may be covered by the municipal council's resolution and the date of entry into force of that resolution plays a significant role. In this case, nothing stands in the way of the resolution entering into force on the day it is promulgated. The provision under examination also indicates the maximum extended deadlines for payment of property tax instalments. In 2020, the maximum deadline for instalment payment expired on 30 September 2020 and in 2021 on 31 December 2021. As Dowgier rightfully indicates, the municipal council may set a single deadline for all instalments or specify new separate deadlines for each of them (Dowgier, 2020, p. 14). Nothing stands in the way of setting the deadlines for payment of the instalments before the maximum deadlines.

¹² See more: Dowgier (2020), p. 8.

¹³ Consolidated text: Journal of Laws of 2021, item 1540 – hereinafter referred to as the TO.

¹⁴ See, inter alia, Article 67a(1) of the TO.

Just as the case with exemption from property tax in line with Article 15p of the Anti-Crisis Shield, the municipal council is required to identify relevant groups of entrepreneurs and non-government organisations in its resolution. However, it should be stressed that the municipal council may choose to grant the exemption to entrepreneurs only and not to indicate non-government organisations. The legislator left this to the municipal council's discretion. The categories of entities that may enjoy the extended deadline for payment of property tax may be determined on the same basis as in the resolution adopted on the basis of Article 15p of the Anti-Crisis Shield.

Resolutions adopted within the framework of the Anti-Crisis Shield and public aid

The tax resolutions on exemptions from property tax and extension of the deadlines for payment of tax instalments, which are adopted based on the above-mentioned provisions, primarily apply to economic operators. This means that they should be adopted and applied taking into consideration the rules governing granting state aid.

In this context, one should note Article 15zzzh(1) of the Anti-Crisis Shield. It stipulates that aid referred to in Articles 15p and 15q thereof is state aid intended to remedy a serious disturbance in the economy in line with the Communication from the Commission – temporary framework for state aid measures to support the economy in the current COVID-19 outbreak – (2020/C 91 I/01). Therefore, this type of state aid is different from aid *de minimis*.

Thus, Article 37(5) of the Act of 30 April 2004 on the procedural issues concerning state aid should be taken into account in the process of granting it.¹⁵ According to that provision, an entity applying for public aid other than *de minimis* or aid

¹⁵ Consolidated text: Journal of Laws of 2020, item 708, as amended.

de minimis in agriculture or fishery is required to submit an aid application to the granting entity along with information about the applicant, their business, and information on the public aid received, including in particular an indication of the date of and legal basis for granting it, its form, and intended use or a declaration that aid has not been received. It should be stressed that aid cannot be granted to the applicant until they submit certificates, declarations or information specified in the said provision (Article 37(7) of the Act in question).

It follows from the wording of that provision that these rules refer to entrepreneurs who apply for aid, whereas aid granted by a municipal council's resolution does not require filing an application. However, it is worth noting Article 37(5a) of the Act on the procedural issues concerning state aid. In accordance with that provision, in the case of public aid provided for in a legislative act (here: resolution of a municipal council) referred to in Article 6(2), the certificates or information referred to in sections 1, 2 or 5 are submitted by the beneficiary of the aid with each declaration, annual tax return, or another document stating the value of the aid.

The information that the enterpriser should provide the tax authority with when applying for the tax exemption or extension of the deadline for payment of the installments of that tax is specified in Annex No. 3 to the Regulation of the Council of Ministers of 29 March 2010 on information to be provided by an applicant for aid other than aid *de minimis* or aid *de minimis* in agriculture or fishery.¹⁶

Research results

General notes

The research concerning tax resolutions adopted on the basis of the Anti-Crisis Shield took into account data obtained by the courtesy of the staff

¹⁶ Journal of Laws No. 53, item 312, as amended.

of the Regional Accounting Chamber (RAC) in Szczecin, the Report of the National Board of Regional Accounting Chambers on the Activities of the Chambers in 2020, the case law of administrative courts, and the supervisory resolutions of Boards of RACs regarding municipal council's resolutions adopted on the basis of the Anti-Crisis Shield, which are available in the LEX Legal Information System. Throughout the period of producing this paper (i.e., October 2021), the NBRAC's report for 2021 was obviously unavailable.

As of 01 January 2020, the number of municipalities in Poland was 2477. The NBRAC's 2020 Report indicates that 969 municipal authorities' resolutions adopted based on the provisions of the Anti-Crisis Shield were examined. However, the data included therein do not allow for singling out resolutions on exemptions from property tax (based on Article 15p) and ones extending the deadline for payment of installments of that tax (based on Article 15q). Unfortunately, the Report presents aggregated data. If the Report distinguished between the resolutions adopted on the basis of different provisions of the Anti-Crisis Shield, it would be possible to verify which instruments the municipalities preferred (i.e., exemptions or postponement of installment payment deadlines). Furthermore, such a distinction would allow for examining infringements of the law in each category of the resolution.

The Report shows that out of 969 resolutions examined in 2020, 811 were adopted without breaching the law and 158 were found to be in violation of the law. Insignificant infringement was found in 23 resolutions, 16 supervisory proceedings that had been initiated were discontinued, and 118 resolutions were invalidated. In the case of the latter, 106 resolutions were invalidated in part and 12 resolutions were found to be completely invalid.

In view of the above, it is appropriate to examine the judgments of administrative courts grounded on the provisions of the Anti-Crisis Shield as well as the supervisory resolutions of Boards of RACs in order to diagnose problems arising in establishing and applying preferences introduced by municipal councils.

Analysis of selected judgements of administrative courts and RACs' resolutions

Relatively frequently, municipal councils abused their power in terms of application of Articles 15p and 15q of the Anti-Crisis Shield by way of introducing in their resolutions additional conditions for applying the exemption from property tax or extension of the deadline for payment of the installments of property tax. In this respect, the Voivodeship Administrative Court (VAC) in Olsztyn rightly stated in its judgment of 24 June 2021 that Article 15p(1) of the COVID-19 Act does not constitute a legal basis for the introduction by the municipality, in its resolution on exemption from property tax, of a deadline for the submission of relevant documents.¹⁷ Such a violation of the delegation of legislative powers serves as grounds for invalidation of part of the Resolution of the City Council of Ciechanów of 25 February 2021 No. 332/XXXIII/2021 on exemptions from property tax charged on land, buildings, and constructions used in pursuit of economic activity applicable to specified groups of entrepreneurs whose financial liquidity has deteriorated due to the negative economic consequences of COVID-19. In a Resolution of 16 March 2021 (11.104.2021), the Board of RAC in Warsaw noted that the provisions of section 135 in conjunction with section 143 of the Annex to the Regulation on 'Legislative Drafting Principles,' which are applicable to local acts of law, stipulate that a resolution may include legal provisions governing only matters falling under the scope of delegated powers. This means that an act adopted based on delegation of legislative powers may only regulate matters that are covered by the delegation, and regulation of matters other than those covered by the delegation in a local act of law is not justified and goes beyond the scope of authorisation.

Application of exemptions from property tax and extensions of deadlines for payment of installments of this tax was also made dependent on whether the taxpayer is in arrears as regards

¹⁷ I SA/Ol 336/21, LEX No. 3196479.

local taxes or whether they are involved in a dispute with the municipality. There is no legal basis for introducing such conditions. The Board of RAC in Cracow – Branch Division in Nowy Sącz – voiced its opinion on this issue in its Resolution of 24 February 2021 (KI.4110.65.2021). According to the Board of the Chamber, the introduction by the City Council of Nowy Sącz of stipulations preventing operators that are in property tax arrears at a specific date or have been involved in a legal dispute with the City of Nowy Sącz from enjoying the exemptions goes beyond Article 15p(1) of the above Act that serves as legal basis for the adoption of the resolution under examination. Similar was the opinion of the Board of RAC in Bydgoszcz expressed in its Resolution of 24 June 2020 (XVII/49/2020).

Another defect that results in invalidation of a resolution as a whole or in part is the introduction of a condition that must be met in order to be granted an exemption, that is, a requirement to submit an application, as well as setting a deadline for submitting it. The Board of RAC in Lublin rightly stated in its Resolution of 26 January 2021 (26/21) that in the provisions delegating legislative powers, there is no basis for such resolution stipulations.¹⁸

In the light of the provisions of Articles 15p and 15q of the Anti-Crisis Shield, there is no legal basis for making application of the exemption from property tax or extension of payment deadlines dependent on submission of a declaration under penalty of perjury and on the accuracy of the data. In this respect, the opinion of the RAC in Łódź expressed in its Resolution of 24 June 2020 (25/106/2020) should be fully endorsed. The Board of the Chamber indicates that an entrepreneur's declaration submitted based on the said resolution is not filed in court proceedings or any other proceedings carried out under the acts of law. Furthermore, no provision of law, in particular no provision of the Act of 2 March 2020 on special so-

¹⁸ Similar was the case with the Resolution of the Board of RAC in Rzeszów of 19 May 2020 (XIII/1227/2020) and the Resolution of the Board of RAC in Wrocław of 6 May 2020 (69/20).

lutions related to preventing, counteracting, and combating COVID-19, other infectious diseases, and the resultant crises indicated as the legal basis of the resolution, gives the authority the power to impose an obligation on an entrepreneur to submit a declaration while instructing them on criminal liability referred to in Article 233 of the Penal Code. The municipal council was not legally authorised to impose a requirement to submit such a declaration and thereby infringed Article 233(1) and the Penal Code. Identical was the opinion of the Board of RAC in Poznań expressed in its Resolution of 09 June 2020 (13/572/2020) and Resolution of the Board of RAC in Wrocław of 3 June 2020 (83/20).¹⁹

The supervisory authorities legitimately challenged the provisions of the resolutions adopted based to Articles 15p and 15q where it was not possible to clearly identify the entities entitled to the exemption on the basis of these resolutions. The Resolution of the RAC in Łódź of 29 May 2020 (20/92/2020) states that the use of the term 'in particular' in a resolution providing for an exemption of specified groups of micro and small enterprises from property tax leads to a conclusion that the exemption applies to all entrepreneurs who have suffered financial liquidity deterioration due to the negative economic consequences of COVID-19 and the prerequisites listed in the resolution are merely an exemplary indication of the conditions testifying to the deterioration of financial liquidity.²⁰

What is more, municipalities have received applications for exemption from property tax under the provisions of the Anti-Crisis Shield despite the absence of a relevant municipal council's resolution. In these cases, it was absolutely justified for the tax authority to refuse to initiate a tax procedure. In this respect, the judgement of the VAC in

¹⁹ Similar was the case with the Resolution of the Board of RAC in Katowice of 28 May 2020 (226/XII/2020). See also the Resolution of the Board of RAC in Opole of 27 May 2020 16/42/2020 and the Resolution of the Board of RAC in Warsaw of 12 May 2021 (12.214.2020).

²⁰ Case Law Regarding the Local Self-Government 2020/3/77-79. Similar is the case with Resolution of the RAC in Szczecin of 09 March 2021 (V.41.S.21)

Cracow of 25 February 2021 rightfully claims that if the municipal council has not adopted a resolution under Article 15p of the COVID-19 Act, there are no grounds for exempting an entity from the obligation to pay property tax. Article 7 of the ALTF provides for a closed catalogue of exemptions both *ratione personae* and *ratione materiae* in character.²¹

Conclusion

Analysis of the provisions of the Anti-Crisis Shield authorising municipal decision-making bodies to introduce property tax preferences, case law of administrative courts, and supervisory resolutions of Regional Accounting Chambers allows the following conclusions to be drawn.

Firstly, it is perfectly legitimate to give municipalities the opportunity to support entrepreneurs whose condition has deteriorated as a result of the pandemic. Although it is difficult to calculate exactly how many municipalities adopted resolutions in 2020 on the basis of Articles 15p and 15q of the Anti-Crisis Shield, it can only be estimated based on the number of resolutions examined by the RAC that this was about 30 to 35 per cent of the municipalities in Poland.

Secondly, in similar circumstances in the future, it would be appropriate to introduce more forms of support concerned with other taxes managed by the municipal tax authorities, especially the tax on means of transport.

²¹ I SA/Kr 1261/20, LEX No. 3161327. Similar is the case with judgment of the VAC in Cracow of 26 January 2021 (I SA/Kr 1217/20, LEX No. 3161758; judgment of the VAC in Cracow of 09 December 2020 (I SA/Kr 1089/20), LEX No. 3124436.

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Thirdly, an act of law delegating power to adopt resolutions should define the catalogue of entities that can benefit from the various tax preferences. The provision of a general definition of these criteria, that is: "... specified groups of entrepreneurs whose financial liquidity has deteriorated due to the negative economic consequences of COVID-19" raises a relatively important problem when it comes to the development of local acts of tax law. A more specific definition would unify the criteria for granting aid to entrepreneurs in these forms across the country. Absence of it results in a wide disparity among the municipalities.

Fourthly, it would be appropriate to include a provision in an act of law that would make it clear that tax preferences are applied *ex officio*. This would limit situations where tax resolutions would make their application dependent on submission of 'some' applications.

Fifthly, I believe that it would be useful if an act of law provided for a closed catalogue of documents (declarations) – preferably one document (declaration) – necessary to verify the right to an exemption or deadline extension that would need to be submitted.

Sixthly, some tax resolutions illegitimately introduced provisions referring to criminal liability. It seems to me that this is because the municipalities worried the tax preferences might be used by unauthorised persons. Therefore, it is also worth considering introduction in an act of law of certain legal consequences in case of making false statements. This would certainly limit situations where beneficiaries of the aid would provide incorrect information in the documents serving as the basis for granting tax exemption or extension of the deadline for payment of the tax instalments. Such a provision would be preventive in character.

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