

CONSIDERATIONS REGARDING TO THE REGULATION OF BUILDING TAXATION COMPARATIVE STUDY ROMANIA-HUNGARY

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Abstract: The local taxes and fees represent an important financing source of the local public needs. Indeed under the reform conditions of the local public administration, of the economical, social and cultural institutions, for the accomplishment of a real local; autonomy, a major objective is to assure sufficient financial resources, in proportion to the competences of the local and district councils.

Key-words: local taxation, building, taxable value, inventory value

The actual (ordinal) incomes of the local budgets from those countries, that have an economy based on liberal principles, are realized through some local taxes and fees.

The local taxes and fees (in generally, taxation upon belongings) are frequently used in all developed European states (for example in England, France, Germany, even if the specific “local” fiscality of this states is not free from tough critics towards the “poll-tax”/taxation upon citizens in England or towards “Gewerbesteuer” – GewST/the professional taxation, which represents approx. 50% from the local incomes in Germany).

It is asserted, for the controlled fiscality of the local budgets, that those taxes show usability and efficiency, which do not imply complicated fiscal procedures, those which present a high level of stability of the encashment by the respective budget.

The model of the local taxation used in Hungary has its legal basis in the fundamental regulation of the Constitution of the state. Thus it is estimated that the levy and collecting of the local taxes and fees represents the basic instrument to realize the local autonomy and implicitly the financial autonomy (to create and apply an own fiscal politics of that certain administrative-territorial unit).

According to the Romanian legislation²² the following financial sources integrally represent the incomes of local budgets of the different administrative-territorial units (communes, cities, towns, the sectors of Bucharest, districts):

- Taxation upon buildings;
- Taxation upon lands;
- Taxation upon vehicles;
- Taxes for certificates, notifications and authorizations;
- Taxes for use of advertising and publicity;
- Taxes upon shows;
- Hotel taxes;
- Special taxes;
- Other local taxes;
- Amendments and penalties for the earlier mentioned local taxes and fees
- Interest for the late payment of the local taxes and fees mentioned in part I.

Different taxes and fees controlled by: Law No. 146/24.07.1997 regarding to judicial timbre tax, published in the Official Monitor of Romania No. 173 from 29.07.1997, with the ulterior modifications and

²² Title IX “Local taxes and fees”, art. 248 and Law No. 571/22.12.2003 published in the Official Monitor of Romania No. 927/23.12.2003 with the ulterior modifications and replenishments

replenishments; Law No. 117/30.06.1999 regarding to the extrajudicial timbre taxes, published in the Official Monitor of Romania No. 321 from 06.07.1999.

In our country, those persons who own buildings placed in Romania must pay every year the tax for these buildings.

According to the legal definition building is “any construction placed on the ground and/or under the ground, whatsoever name or utility it has, and which has one or more rooms, which can be used as shelter for humans, animals, objects, products, materials, installations, equipments and other things, and the structural elements of it are walls and roof, irrelevant what materials are these constructed from. The room represents the space from the interior of the building²³”. There are some buildings that that are free of this taxation, as follows:

- the buildings which are propriety of the state, of the administrative-territorial units or of any public institution, except those buildings which are used for economical purposes²⁴;
- the buildings, which by the law are classified as historical, architectural or archeological monuments, museums, memorial houses, regardless of who the owner of the property or administrative right is, except those buildings which are used for economical purposes;
- buildings that through their destination are cult-houses, owned by religious cults approved officially in Romania, except those buildings which are used for economical purposes;
- the buildings that are the inheritance of the educational units and institutions belonging to the state, to religious cults or private units, which have provisional authorization or which are accredited, except those buildings which are used for economical purposes;
- the buildings of the public health units, except those buildings which are used for economical purposes;
- the funeral buildings from the cemeteries and the crematories;
- the buildings which are the inheritance of the Romanian Academy, except those buildings which are used for economical purposes;
- the buildings used for social-humanitarian activities by associations, organizations and cults, according to the decisions of the local council, etc.

In the Hungarian system, the taxable object is the building, so the tax is paid for the buildings. The notion “building” implies art objects too – monuments, etc., which can’t be taxable object.

The object of the taxation is only the construction itself, the interior court with roof is considered to be construction too.

At the same time, taxable objects are considered to be the annexes too.

The Hungarian legislator underlines too the importance of classification of buildings from the point of view of the obligation to pay taxes. Also we have the followings: ♦ buildings designated for housing, residence is considered to be that building, which according to law can be classified in comfort groups and exists in the immobile evidences as residence; the notion of residence is important in case of remission of taxes, because the majority of the local public administrations foresee the tax remission for the residence – and ♦ the buildings for other purposes as residence, like offices, commercial centers, factories, garages, etc.

The Romanian law from the point of view of taxation makes a difference between the evaluation method of the buildings which are owned by private persons and those which are owned by juridical persons, so that:

- In case of private persons the tax is calculated with the use of a taxation level of 0,1 % of the *taxable value*²⁵ of the building.

²³ Art. 249 paragraph 5 from Law No. 571/2003 regarding to the Fiscal Code

²⁴ Through the notion “used for economical purposes” we understand all the places used in commercial purposes, how these are defined in the content of article 3 of the Romanian Commercial Code.

²⁵ The taxable value of the building, established in RON, is calculated through the multiplication of the constructed surface, established in square meter, with the taxable value established in RON/m² in the content of article 251, paragraph 3 of the Fiscal Code.

- In case of juridical persons, the building tax is calculated with the use of the *taxation level*²⁶ upon the *inventory value*²⁷ of the building.

The same way like in the Romanian law, in the Hungarian law, the subject of the building taxation is the owner – that private or juridical person which exists in the evidences of the National Land Register and Immobile Publicity Office as owner. In case of attaining the building through succession, the successor must pay the tax beginning with the next year after the decease of the testator. In case of co-owners, the society of owners supports the costs of the building taxation, according to the percent of property (rule introduced by Chapter XII, article 141 from the Hungarian Civil Code).

The categories of tax remissions are established in a different way in the Hungarian legislation, considering some remissions of certain residences or remissions offered according to the person of the tax-payer. In the first category we can give as example: tax remissions for the residence of some social categories which have financial difficulties – which have suffered in a disaster, etc. when these are existing in the registers in such way; residences without comfort in smaller locations, which are not considered locations for repose, treatment, being placed in small human locations, which have no more than 500 inhabitants – for these residences is offered a tax remission for 100 m². In the second category we can mention the tax remission offered to public authorities, religious cults for the churches.

The Hungarian local administration had established two different ways to calculate the building taxation. This way we have: ♦whether the calculation of the used surface established in m², upon which it is applied a level, which maximal limit is 900 ft/m², ♦ or the taxation with 3% of the stated value of the building or construction²⁸.

In Romania, the annual taxation upon buildings must be paid in two equal rates, until the dates 31 March and 30 September, to the local budget of the administrative-territorial unit, where the building is located. For the advanced payment of the whole amount of the building taxation until 31 March, it is offered a discount of even 10%, established by the decision of the local council. The annual building taxation under the value of 50 RON inclusively, must be integrally paid until the established legal term.

Finally, we must stop upon a particularity of the Hungarian legislation from the studied domain, which consists in the possibility to request the abeyance/postponement, even for an unlimited period of time of the payment of building taxes. This postponement is conditioned by the final payment of some interests, the quantum of which will reflect the interest rates of the central banc. This option can be chosen by the aged persons with low incomes, persons with handicaps – owners of immobile, used as residence. The total value of the tax will be finally paid, in case when the immobile is sold or when the owner deceased – case in which the costs must be supported by the successors, or whenever the owner request it.

As a conclusion, the building taxation is levied in the majority of the European states, in most cases by the local communities.

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4. ***Legea 571/2003 privind Codul fiscal

²⁶ The level of the taxation is established by the decision of the local council and it can be between 0,25% and 1,50%.

²⁷ Through the notion “the inventory value of the building” is expressed the value of the building when it was obtained, registered in the accounting system of the owner, being referred whether to the buying costs for the buildings obtained with onerous title, or the cost of production, for the buildings constructed by juridical persons.

²⁸ Taxation system rarely used, in this moment approx. by 5 administrative-territorial units is used