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Real Property Taxation in the Republic of Srpska

Abstract: In tax matters, looking through the prism of taxation sources, three names are usually used for groups of taxes: property taxes, consumption taxes and income taxes. Property taxation exists and has existed in various forms in almost all tax systems. Nowadays, property taxation implies real property taxation, although the term “property” itself is much broader, because more sources can be considered as falling under property taxation, including taxation of movable property and income resulting from real and movable property. The generally accepted name is real property taxation, which is also the case in the Republic of Srpska, although legally speaking, taxation of real rights in immovable property and transfer of real rights in immovable property would be more precise, depending on whether the object of taxation is solely the possession or use of real property or the object of taxation is the transfer of real rights from one person to another for or without consideration. In most countries, real property taxation involves a high degree of coordination between central and local authorities, and speaking from the point of view of the criterion of revenue distribution in most countries, income from real property taxation belongs to the group of local taxes, meaning that, in some countries, they are referred to as “local taxes”.

The goal of this paper is precisely to study the real property taxation in statics, as well as the taxation of the transfer of real rights in immovable property for and without consideration, within the framework of the Republic of Srpska’s legal system.

Keywords: Republic of Srpska, taxes, real property, income of natural persons.

1. INTRODUCTION

Property taxation, as one of the oldest ways of collecting tax revenue, existed and exists in different forms in almost all tax systems. As specified in the title of this paper, we focused our research on the taxation of real property, which is only one of the sources in the group of property taxes, which is, from the economic point of view, seen as a set of movable and immovable assets and rights or the totality of their value at disposal of a legal or natural person during the period concerned. The very definition of property, in the economic sense, for lawyers, is about defining the assets, that is, the economic base of the property consisting of the totality of the economic goods of a

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specific legal entity, while the property consists of a set of subjective rights that relate to the economic goods¹ existing in the assets. Property so understood in the economic sense is not a static category, for it increases or decreases, depending on the relationship between the current income generated by that very property or from other sources and the current needs of its owner.

In legal terms, property implies property rights and property obligations that belong to an entity, natural or legal person. So, as a legal category, property represents a “unity of rights” belonging to one entity, which does not mean that such a consideration of property sets limitation preventing a legal entity from having more than one property, in particular, if the matter is considered in the legal tax context.

According to the tax classification of the Organization for Economic Cooperation and Development (OECD), property taxes are classified in group 4000 and include: tax on immovable property, estate tax, inheritance tax, gift tax, and tax on financial and capital transactions in property transfers². The said classification of property taxes was made on the basis of the OECD definition of property tax determining that property tax represents periodic or one-time taxation of the use, ownership or transfer of property. Within the framework of GSF classification of public revenues adopted by the International Monetary Fund, property taxes are classified in group 113 106 and, essentially, there is no difference in the respective determinations of the scope of property taxes within the GFS and OECD tax classifications³.

Unlike real property taxes, taxes on movable property are, according to the international tax classification, classified in group 5000 and named taxes levied in respect of the use of goods or permission to use goods or to perform activities. Taxation of movable property, in most OECD member states, is thus regulated by a special law, most often called the “law on tax on the use of goods”.⁴

In modern tax systems, real property taxes are of insignificant fiscal importance in total tax revenues, but they are still retained in tax systems as a supplementary instrument for addressing relatively higher economic strengths. From the point of view of social and political reasons, the justification for the taxation of real property in statics is to emphasize the realization of the principle of equal distribution of tax burden, for taxpayers realizing different incomes. From the point of view of fiscal reasons, the justification for taxing real

¹ Dautbašić, I. (2001). *Finansije i finansijsko pravo*. Sarajevo: Faculty of Law, University of Sarajevo, 214-215.

² OECD Classification of Taxes and Interpretative Guide. (2001). Downloaded on 19 September 2018, from <https://data.oecd.org/tax/tax-on-property.htm>

³ See Drljača, Z., Džakula, M., Muminović, E. (2019). *Oporezivanje imovine sa osvrtom na zakonsku regulativu u Bosni i Hercegovini*. In the collection of papers International Scientific Conference –Science and Practice of Business Studies -Field of Legal Sciences, III/3. Banja Luka: University of Business Studies Banja Luka, 108.

⁴ In the Republic of Srpska, taxation of movable property is regulated by the Law on the Use, Possession and Carrying of Goods, Official Gazette of the Republic of Srpska, No. 37/01, 35/07, 52/14, 110/15, 44/16, 66/18, which introduces a tax on the use of motor vehicles, boats, navigation facilities and yachts, aircrafts and weapons. Unlike the Republic of Srpska, in the Federation of BiH, taxation of movable property is governed by cantonal laws on property taxes, which regulate, at the same time, the taxation of real property. See, for example, the Law on Property Taxes of the Sarajevo Canton, Official Gazette of the SA Canton, No. 7/09; the Law on Property, Inheritance and Gift Taxes of the Bosnian-Podrinje Canton Goražde, Official Gazette of the BPK Goražde, No. 7/0 and other cantonal laws regulating property taxation.

property is based on the implementation of investments in local infrastructure, where the starting point is that taxation of real property enables provision of one part of funds for financing the needs of local self-government units and establishment of greater interdependence between the funds allocated for the payment of real property taxes and the use of such funds. Economic arguments are also cited to support the justification of introduction of real property tax. Thus, for example, the tax on real property in statics or inheritance tax, unlike income taxation, has the advantage of not discouraging work or earning. However, the primary economic reason for introducing this type of tax lies in the fact that it encourages wealth holders to get rid of assets that generate little or no income. When it comes to economic reasons, the significance of real property taxation is, highlighted, also as a form of stimulating commitment of funds in productive investments, because it enables taxpayers to grow their capital and bear the tax burden by capital growth, which is achieved by applying certain measures in the form of tax exemptions for certain productive objects (agricultural land, certain assets of companies and entrepreneurs)⁵.

One of the arguments justifying the introduction of these forms of taxes is their administrative suitability, based on the fact that real property is visible, that public records thereof are kept (land registers, cadasters, etc.), meaning that evasion is reduced to a minimum. Justification is also found in the fact that the state provides legal protection of property, builds infrastructure, while, from the administrative point of view, the question of how to determine the basis for tax calculation can appear as a problem⁶. However, regardless of arguments of justifiability, there is also an understanding that real property taxation is not justified for it represents values that have already been taxed; hence, from the economic point of view, it should not even be taxed in the first place, because the "property" tax has already been paid twice: when the income was generated for the first time and when that amount of income was used to buy a property for the second time.⁷

In modern tax systems, tax forms affecting real property are classified into three groups. The first group includes property taxes in statics, i.e. periodic real property taxes, while the second group includes property taxes in dynamics, which includes transfer of real rights in immovable property for consideration (e.g. sale, exchange) and the transfer of real rights without consideration (inheritance and gift taxes), while taxes on real property income (e.g. lease) can be classified under the third group.

2. BASIC CHARACTERISTICS OF REAL PROPERTY TAX

We are talking about real property tax in statics when the object of taxation is real property (*per se*), the tax base is its value, and the reason for taxation is the property itself as such, i.e. real property in its static form; hence, this tax is also called property tax in statics. Real property tax is an analytical and object tax, or a partially subjectified object tax. It is analytical because it affects individual property objects. Houses, apartments, garages, weekend houses, and other individual real properties are taxed separately, i.e. the right of ownership and other real rights in all immovable property are taxed, but also the right to use and utilize, with the exception of those real rights in immovable property that are exempt from taxation by law.

⁵ See Drljača, Z., et al., op. cit., 107.

⁶ See Jeličić, B.(1998). *Finansijsko pravo i finansijska znanost*. Zagreb: Informer, 305.

⁷ Milojević, A., Trklja, M.(2000). *Javne finansijske*. Istočno Sarajevo: University of Istočno Sarajevo, Faculty of Economics, 306.

Real property tax in statics belongs to the group of immediate (direct) taxes aimed at addressing the economic strength of taxpayers resulting from property or from the taxpayer's income. At the same time, they are subjective taxes, because when determining the tax burden, the taxpayer's personal and family situations are taken into account (e.g. number of household members). Unlike the real property tax, the tax on the transfer of real rights in immovable property is classified as indirect tax for the reason that it is related to a current manifestation of ability to pay taxes, that is, the transfer of a specific real right in immovable property.⁸

It is common in the financial literature to divide real property taxes into real and nominal taxes. The real tax is paid from the property substance and its application reduces the property that appears as a tax source. Unlike the real tax, the nominal tax is paid from the taxpayer's revenue i.e. income, because it is assumed that the taxpayer will pay this tax from the income generated by the real property or from his own income, which is assumed to be realized for the taxpayer owns and uses a specific real property (house, weekend house, apartment, business premises, etc.). In ordinary circumstances, nominal taxes on real property are mainly represented in modern countries, i.e. taxes the source of which is not in the value of the

real property, but in the taxpayer's revenue (income), meaning that taxable real property is here the reason for taxation and at the same time the object of taxation. Unlike nominal taxes, in the case of real taxes on real property, real property is the source and the object of taxation, and the tax rates are high, while in the case of nominal taxes on real property we have low tax rates.

In addition to nominal and real taxes on real property, in some countries there is also a tax on net property, where the object of taxation is the taxpayer's entire property, with a derogation, however, from the principle of complete coverage in relation to the exemption of movable property, e.g. art paintings, household items, while the market value of property items covered by this tax is taken as the criterion for determining the tax base⁹.

However, in modern countries, the real and nominal taxes on real property are more often applied than the tax on net property, and the reason is of administrative and technical nature, for it is based on the fact that real property as an object of taxation cannot be hidden (objects are immovable, always remaining in the territory of the local community), and, looking from a broad point of view, there is no danger of interlocal conflict between tax jurisdictions, which is possible, for instance, in the taxation of personal earnings. In practice, we come across different names of real property taxes; for instance, in the Republic of Srpska we have the name "property tax" even though the object of taxation is real property¹⁰. In Croatia, real property taxation is regulated by the Law on Local Taxes¹¹, just like it is also regulated in Hungary¹², while in the Federation of BiH, in most cantons,

⁸ Anđelković, M. (1999). *Poresko pravo-teorijski aspekti i poreske reforme*. Niš: Faculty of Law, 250.

⁹ Ječić, B., Jelčić, B. (1998). *Poreski sustav i porezna politika*. Zagreb: Informator, 274.

¹⁰ Law on Property Tax of the Republic of Serbia. Downloaded on 22 February 2025, from: <http://www.paragraf.rs/propisi/zakon-o-porezu-na-imovinu>.

¹¹ See Art. 25-28, Law on Local Taxes, Official Gazette of the Republic of Croatia, no. 115/16, 101/17.

¹² Hungarian Law on Local Taxes. Downloaded on 18 August 2018, from: [https://net.jogtar.hu/jogszabal?docid=99000100.TV&searchUrl=/gyorskereso%3Fkeyword53D1990.%2B%25c3%](https://net.jogtar.hu/jogszabal?docid=99000100.TV&searchUrl=/gyorskereso%3Fkeyword53D1990.%2B%25c3%25)

real property taxation is regulated under the Law on Property, Inheritance and Gift Taxes, noting that, in most cantons, the object of taxation is real property (house, apartment, business premises, etc.), solely when used for renting purposes¹³.

There is a high degree of coordination between central and local authorities in the field real property tax in statics, given that in most countries the income from real property taxation is the income of local communities, as is the case in the Republic of Srpska, or it is a common income of the central level of authority and local communities, but, percentage-wise, much more in favour of the budgets of local communities. The fact that the revenue belongs to the local community's budget does not mean that local communities are independent to introduce real property tax, for this would be contrary to the basic taxation principle, i.e. the principle of legality¹⁴. However, in most countries, local self-government units are authorized under the law governing real property taxation to determine tax rates within limit rates defined by law (e.g. up to a maximum rate of 020%). One of the key characteristics of this tax is its both periodic and regular payment and, as a rule, proportional rates are applied depending on the purpose of the real property and some personal and family circumstances of the taxpayer.

3. REAL PROPERTY TAX IN THE REPUBLIC OF SRPSKA

Real property tax (under that name) was introduced into the tax system of Republic of Srpska in 2008, with the adoption of the Law on Real Property Tax, as applied starting from 01 January 2010.¹⁵

With the adoption of the aforementioned Law in the Republic of Srpska, a significant reform of real property taxation was carried out. The goal of the reform was to harmonize real property taxation with international practice, which included adapting real property taxation to the concept of local self-government established under the European Charter of Local Self-Government ratified by Bosnia and Herzegovina in 2002¹⁶, determining that the real property taxation revenue belongs to local self-government units, a greater degree of cooperation between local self-government units and the Tax Administration and the involvement of local self-government units in establishing records of real property and real property taxpayers.

With the entry into force of the said Law, the Law on Property Taxes from 2001, which governed property taxation, inheritance and gift taxes and tax on the transfer of real property and rights¹⁷, ceased to be in force. According to the Law on Property Taxes, the object of taxation included real rights in immovable property: right of ownership, right of usufruct; right of use and right of dwelling; the right to lease an apartment, the right to lease business premises and other real property for over one year, as well as the right to use city construction land. The tax base was determined on the basis of the area of real

25A9vi%2BC.%Bt%25C3%25B6rv%25C3%15a9NY.

¹³ See: Drljača, Z. et al. op. cit. 109-110.

¹⁴ See: Drljača, Z. Orešković, LJ. (2017). Principi zakonitosti u oblasti poreza. Yearbook of the Faculty of Legal Sciences 7/7. Faculty of Legal Sciences Apeiron University Banja Luka, 5-18.

¹⁵ Law on Real Property Tax, Official Gazette of the Republic of Srpska, No. 110/2008 and 118/2009.

¹⁶ Bosnia and Herzegovina signed and ratified the European Charter of Local Self-Government on 12 July 2002, and it entered into force on 1 November 2002.

¹⁷ Law on Property Taxes, Official Gazette of the Republic of Srpska, No. 51/2001 and 53/2007.

property in an absolute amount per square meter of usable area, depending on the purpose of the real property and on whether the real property is located in an urban or rural area. For instance, for a residential area in an urban area measuring up to 100 square meters, the amount of tax was calculated at the rate of BAM 0.3 per a unit of measure of one square meter, for those over 100 square meters at the rate of BAM 0.5, with the amount of tax for the said tax base for residential space in rural areas reduced by 50%. In addition to object tax exemptions (which have essentially been retained in the current Law on Real Property Tax), the lawmaker also determined subject tax exemptions, meaning that the following were exempt from tax payment on rights in buildings and apartments (including right of occupancy): invalids of war from I to III categories of disability, families of dead and missing soldiers, retired persons and persons registered with Social Work Centres.

In the case of inheritance tax, according to the Law on Property Taxes, the taxpayer is a natural person who inherits the right of ownership and other taxable rights in immovable property, and the taxpayer of gift tax is a natural person and legal person who receives the said rights as a gift, provided that the object of taxation on the basis of inheritance and gift included also cash, monetary claims, intellectual property rights, ownership rights to a used motor vehicle, vessel and other movable property.

The following were exempt from inheritance and gift tax: an heir or a gift recipient of the first order of succession, testator's or donor's spouse or grandchild; an heir or a gift recipient who is a farmer of the second order of succession who inherits or receives as a gift property that serves him for carrying out agricultural activities; an heir or a gift recipient of the second order of succession to one inherited or gifted apartment, if he lived in a common household with the testator or the donor for no less than one year before the death of the testator or the donor, or before receiving the gift; a legal person that receives as a gift property serving exclusively for the purposes for which funds or foundations are established, and the Republic as the legal heir.

The inheritance tax base was determined as the market value of the inherited property, reduced by the amount of debts, expenses and other charges the taxpayer is obliged to pay or settle in a different way from the inherited property on the day when the tax liability was incurred (the day when the decision on inheritance becomes final and binding), and in the case of acquisition of property by gift, the market value of the property received as a gift, on the date when the tax liability was incurred (on the day of conclusion of the gift contract, and if the contract was not concluded in writing, on the day of receipt of the gift).

The tax rate was determined at the rate of 3% on the tax base for the transfer of taxable real rights in immovable property if there was no tax exemption based on inheritance, and for the taxation of inherited movable property at the rate of 10% on the determined tax base.

The above-mentioned Law envisaged a tax rate of 3% for the transfer of real rights for consideration on the established tax base (e.g. in case of a sale, the agreed price if it is not lower than the market price of real property, in case of exchange, the difference in the market value of the real property or rights being exchanged). There were certain exemptions from the payment of tax on transfers of real property, which applied in cases as follows: when the right is transferred to settle obligations based on public revenues; when the right of ownership to real property is transferred to diplomatic and consular representative office of foreign countries, and under the condition of reciprocity; when the right of ownership to real property is transferred to the provider of lifelong support who

is in the first line of succession in relation to the support recipient, to the part of the real property that the provider of support would inherit under the law at the time of conclusion of the contract; when the right to use city construction land is transferred to refugees and displaced persons for the purpose of building a residential facility.

The Law on Property Taxes ceased to be in effect with the entry into force of the Law on Real Property Tax from 2008, which envisages only real property in statics as the object of taxation, introduces a nominal form of real property tax, defining in Art. 2, item d) that real property is “land with everything that is permanently attached to it, or that is built on the surface of the land, above or under it (a slightly narrower definition compared to the one in the Law on Real Rights)”.¹⁸ Taxation of the transfer of real rights for consideration or without consideration, as well as the taxation of income from real property in the Republic of Srpska is governed under the Law on Income Tax, which was amended several times after 2001, and in 2015, another Law on Income Tax was adopted which became effective as of 01 January 2016, and which has also been amended more times until the date of writing this paper.¹⁹ The reason for such determination of the taxation of transfers of real rights for and without consideration should be regarded as a result of the comprehensive tax reform in the Republic of Srpska and the introduction of the synthetic form of income taxation, which is based on the concept that the total income of natural persons should be taxed, irrespective of its nature and sources, while taking into account the circumstances related to the personality of the taxpayer, which is achieved by determining tax reliefs in the form of tax exemptions for certain incomes or tax base reductions for social, demographic, political and other reasons, as well as base reductions for recognized expenditures and application of progressive tax rates. This concept is in place in most of the countries that have adopted the market economy system and is considered to be efficient not only for achieving fiscal, but also a wide range of other tax policy goals.²⁰

Based on the aforementioned concept of synthetic taxation of natural persons' income, the legislator in the Republic of Srpska, following the principle of enumeration, stipulates that the tax on natural persons' income shall be calculated and paid on income resulting from: personal earnings; independent activity; copyrights and rights related to copyrights and industrial property rights; income on capital; income from capital gains; from foreign sources and other income²¹. It should be borne in mind here that in addition to the principal objective of the real property taxation reform (introduction of real prop-

¹⁸ Law on Real Rights, Official Gazette of the Republic of Srpska, No. 124/2008, stipulates, in Article 4, that real property is anything that is built on the surface of the land, above or under it, and is intended to remain there permanently, or is built into the real property, added to it, or built on it or is, in any other way, permanently attached to it and is part of that real property until it is separated from it.

¹⁹ Law on Income Tax, Official Gazette of the Republic of Srpska, No. 24/01, which ceased to be in effect with the adoption of the Law on Income Tax, Official Gazette of the Republic of Srpska, No. 60/15, 5/2016, 66/2018, 105/2019, 123/2020, 40/2021, 119/2021, 56/2022, 112/2023, 110/2024.

²⁰ See Drljača, Z., Mumonović, E. (2020). Oporezivanje dohotka fizičkih lica u Republici Srpskoj. In the Yearbook of the Faculty of Legal Sciences, No. 10/10. Faculty of Legal Sciences of the Pan-European University Apeiron Banja Luka, 183-199.

²¹ See Drljača, Z. (2022). *Finansije i finansijsko pravo*. Banja Luka: Pan-European University Apeiron, 211.

erty tax in statics), the goal of the reform was to determine that the transfer of real rights in immovable property for and without consideration (inheritance and gift) is determined as income from capital gains, while the taxation of income from real property, i.e. when real property is also a source of economic strength, is classified under the tax on income from capital (e.g. tax on the lease of real property).

The Law on Real Property Tax from 2008, after all amendments, ceased to be in effect with the adoption of the Law on Real Property Tax in 2015, as applied since 01 January 2016. The goal of adoption of the new Law was to further improve the unified policy of real property taxation in the Republic of Srpska, and to synchronize real property taxation with other tax laws, primarily the Law on Income Tax, given the accepted concept that the market value of real property constitutes an integral part of the overall economic strength of an individual and a company. In order to complete and update the fiscal register of real property, maintained by the Tax Administration, the obligation of the Republic Administration for Geodetic and Property Legal Affairs to provide the Tax Administration and local self-government units with permanent access to data on real property and real property owners is prescribed, in addition to stricter stipulation of misdemeanour liability for taxpayers who fail to report the entry of real property in the fiscal register of real property, with an obligation prescribed for taxpayers to settle, in case of transfer of ownership of real property to another taxpayer, tax obligations for that real property due until the date of transfer of real property ownership. For purposes of determining the settlement of tax obligation on the basis of real property tax, obligation is stipulated for notaries public to mandatorily review, during the notarization of contracts on the transfer of real property rights, tax certificates on the status of tax obligations based on real property tax, and to state this in the notarial act.²²

3.1. Legal description of tax situation and factual situation in terms of real property taxation in statics

Taxpayer of real property tax in the Republic of Srpska is a natural or legal person, who is registered as the owner of real property in land registers or other prescribed records. However, if in a specific case, the factual situation and the situation in the records do not match, from a tax-legal point of view, the taxpayer is the user of real property, that is, a person who uses the real property on whatever grounds²³. When determining the taxpayer, residency is not decisive, meaning that resident and non-resident natural persons are equal in terms of taxpayer status. The tax liability for all taxpayers arises on the day when the taxpayer acquires or begins to use real property, whichever occurs first.

The object of taxation is real property, which is defined as land and anything permanently attached to it or built on the surface of the land, above or under it, which in the sense of the said Law, includes, in addition to land, as follows: residential and commercial buildings, apartments, garages, business premises, facilities for rest and recreation and other buildings. Objects of taxations also include real property under construction, depending on the percentage of their completion as of the value appraisal date.

The real property tax base is determined based on the estimated market value of the real property as of December 31 of the previous year for the year in which the market

²² See Art. 15 of the Law on Real Property Tax, Official Gazette of the Republic of Srpska, No. 91/15.

²³ See Art. 5 of the Law on Real Property Tax.

value of real property is determined, which represents the monetary amount for which the real property can be exchanged at a given time on the market by the free will of the buyer and seller. The initial value of real property is determined by special decisions of city and municipal assemblies, with the obligation to submit such decisions to the Tax Administration. On the basis of the above data submitted by city and municipal assemblies, the characteristics of real property specified in the application for registration in the fiscal register of real property and other available data on real property, the Tax Administration determines the market value of the real property by applying the Mass Appraisal Model to estimate the market value of real property, in

such a way that, for each characteristic of real property, the value of the coefficient by which the market value of real property is adjusted, on an annual basis, is determined. Some of the elements for determining the coefficients for adjusting the market value of real property include, for instance, for buildings: quality elements of the building (building structure, insulation, type of roof, roofing material), quality elements of the interior of the building (e.g. entrance, a separate building unit, types of use of the building interior) as well as other elements related to the real property.

The tax rate is determined as a percentage and has the characteristics of a marginal tax rate. The law thus limits the maximum tax rate to 0.20% for real property owned by natural persons, while local self-government units are granted the authority to determine the tax rate in their respective areas within that percentage. The preferential tax rate of up to 10% is prescribed for the taxation of real property of legal persons in which production activities are carried out, provided that they form an all-encompassing production unit (facilities for production and facilities for storage of raw materials, semi-finished products and finished products), for the basic tendency of the tax policy of the Republic of Srpska is to create favourable conditions for production activities, regardless of the industrial branch involved.

Tax reliefs are determined in the form of tax exemptions for certain real properties (object exemptions) as well as in the form of a tax base reduction. The following are exempt from taxes: real property used for bringing economic benefits (e.g. real property used for own-use agricultural production); public goods, except for facilities located on them and serving to bring economic benefits; real property owned by institutions of BiH, Entities, Brčko District of BiH and local self-government units; real properties of diplomatic and consular representative offices of foreign countries, according to the principle of reciprocity; real properties of religious communities that are used for the performance of religious ceremonies; real properties located in minefields and access to and normal use of which are not allowed; and others. Real property tax exemptions apply also to cultivated agricultural land used for own-use agricultural production. The Law on Real Property Tax does not specify what is considered arable agricultural land, but such a definition is contained in Article 4 of the Law on Agricultural Land, which stipulates that arable agricultural land includes fields, gardens, orchards, vineyards and meadows.²⁴ If the agricultural land is not cultivated, that is, if it is real property that is not used for own-use agricultural production, there is an obligation to pay real property tax. Tax reliefs in the form of a tax base reduction are determined in such a way that the taxpayer is entitled to a tax base reduction for

²⁴ Law on Agricultural Land, Official Gazette of the Republic of Srpska, No. 93/2006, 86/2007, 14/2010, 5/2012, 58/2019, 119/2021 and 106/22.

the value of one real property measuring up to 50 m² for the taxpayer and 10 m² for each member of his household, provided that the taxpayer or members of his household have their residence in that real property.

Tax return for real property tax is submitted only once, when registering the real property in the fiscal register of real property, and the tax is paid annually, in two parts, based on the tax invoice delivered to the taxpayer by the Tax Administration. The first part of the tax is paid by no later than 30 June and the second part by 30 September of the tax year, where the payment of the first part may not be less than 50% of the total tax liability amount according to the tax invoice. Revenues from real property taxation belong exclusively to local self-government units' budgets.²⁵

4. TAXES ON THE TRANSFER OF REAL RIGHTS IN IMMOVABLE PROPERTY WITHOUT CONSIDERATION

Taxes on the transfer of real rights without consideration include inheritance tax and gift tax. These taxes are, in their essence, direct taxes because they directly affect the increased ability to pay taxes of heirs and recipients of gifts, realized by accepting an inheritance or a gift. The motives for introducing

these forms of taxes are: financial, social and political. First of all, inheritance and gifts increase the economic strength of the heir, that is, the gift recipient, meaning that, in accordance with the principle of equal taxation, the increased economic strength should be taxed. On the other hand, the starting point is the understanding that the imposition of inheritance and gift taxes does not cause unfavourable economic and social consequences, because it does not have a de-stimulating effect on the taxpayer's economic activity and does not alter the hitherto social position of the taxpayer. It is considered that the taxation of property received as a gift is a necessity, too, because, otherwise, the owner could avoid paying the inheritance tax if he gives the property to his future heirs during his lifetime²⁶. When it comes to inheritance tax, numerous reliefs are generally applied, such as the determination of non-taxable threshold, recognition of the degree of kinship and determination of progressive tax rates the tariff of which depends on the amount of the inherited part and proximity by the degree of kinship between the testator and the heir. Even in the case of gift tax, there are certain reliefs in the form of tax exemptions based on the degree of kinship, and some are also determined for cultural and social reasons, when it comes to bequests and donations.

Inheritance and gift tax in the Republic of Srpska, as aforementioned, was not introduced by a separate law, but is regulated by the Law on Income Tax, which governs the taxation of natural persons' income. This is referred to in Article 36 of the said Law, which stipulates that "capital gain represents the positive difference between the selling price of rights and property and their purchase value, realized by the taxpayer through sale or other transfer for or without consideration", *determining that this also includes the transfer of real rights in immovable property, right of use and right to build on construction land*. The tax base for determining the capital gain in transfers of real property without consideration, based on the fact that there is no selling price of the right here, is the market price

²⁵ See Art. 20 of the Law on Real Property Tax and Art. 11 of the Law on the Budget System of the Republic of Srpska, Official Gazette of the Republic of Srpska, No. 121/2012, 103/2015, 15/2016. and 110/2024.

²⁶ Kulić, M.(2006). Poresko pravo, Belgrade: Megatrend University, 206.

of the inherited or gifted property in the year in which the real property and the real right were acquired, and which is determined by the Tax Administration.²⁷ Until the adoption of amendments to the Law on Income Tax in 2020, in effect starting from 01 January 2021, tax reliefs in the form of inheritance and gift tax exemptions classified as income from capital gains, no specific tax reliefs in the form of exemptions from inheritance and gift taxes, were determined. Amendments to the said Law²⁸, specify that the difference arising from property acquired by inheritance; transfer of property rights between married spouses and common-law spouses and blood relatives in the first line of succession; transfer of property rights between divorced spouses directly related to the divorce, shall not be considered capital gain or loss. In determining tax reliefs for the acquisition of real rights based on a gift, the tax relief in the form of exemption from payment of tax on the gifted property is determined solely if the gift was made between blood relatives in the direct line, married and common-law spouses, siblings, adopted children and adoptive parents. In the case of transfers of real rights by gift, and the recipient of the gift is a person who is not included in the category of tax exemptions based on gifts, the purchase price is considered the price at which the legal predecessor of the taxpayer, i.e. the donor, acquired the right.

If case of acquisition of real rights without consideration, when the said tax reliefs in the form of exemptions from tax on capital gains cannot be recognized, the tax is paid at the rate of 13% on the determined tax base, which represents the positive difference between the purchase, or market value of the real property at the time of real property acquisition and the selling price, or market value of the real property at the time of transfer of rights. The tax is paid on the basis of a tax return submitted by the heir or gift recipient. Revenues from income from capital gains, which includes inheritance and gift tax, when the tax reliefs in form of tax exemptions cannot be applied, are, entirely, the revenues of the budget of the Republic of Srpska.²⁹

5. TAXES ON THE TRANSFER OF REAL RIGHTS IN IMMOVABLE PROPERTY FOR CONSIDERATION

Taxes on the transfer of real rights in immovable property for consideration are based on the economic-legal transfer of real rights in immovable property, and are also called transfer taxes³⁰. From a formal point of view, taxes on the transfer of real rights in immovable property for consideration are indirect taxes, since they include the tax payment capacity that is manifested through the transfer of property, that is, the transfer of real rights in immovable property for consideration. The difference between the tax on the sale of goods and services and the tax on the sale of property for consideration consists in the fact that the first one includes transactions aimed at obtaining goods and services for consumption purposes, while in the case of the second one, only the holder of property rights changes, while the property object, as the object of transaction, remains unaffected. Another essential difference lies in the object of taxation, because the tax on the sale of goods and services involves the sale of movable (corporeal) items for consideration, while the second one involves the transfer of real rights in immovable property for consideration as

²⁷ See Art. 39. of the Law on Income Tax.

²⁸ See Art. 36a. of the Law on Amendments to the Law on Income Tax, Official Gazette of the Republic of Srpska, No. 123/2020.

²⁹ See Art. 8. Law on the Budget System of the Republic of Srpska.

³⁰ See Lovčević, I. (1979). *Institucije javnih finansija*. Belgrade: Official Gazette of the SFRY, 122.

the object of taxation. Taxes on transfers of property for consideration are typical analytical taxes, which are paid on the transfer of individual real rights in immovable property. The acquisition of property rights and other real rights to property based on a final court decision or other state body's act is also considered a transfer for consideration.

The taxpayer in transfers of property for consideration is the seller, that is, the transferor of rights, and in property right exchanges, the taxpayer is the holder of the higher market value right. The tax obligation for these taxes arises on the date of conclusion of the property transfer contract or the conclusion of the property exchange contract. If the transfer of property is carried out on the basis of a court decision, i.e. a decision of the competent administrative body, the tax obligation arises on the date of when that decision becomes final and binding. If no valid contract has been concluded, the tax obligation arises as of the day when the buyer, or the participant in the exchange, takes possession of the real property. The tax base for the tax on the transfer of real rights for consideration is the agreed price or the market value of the real property at the time when the tax obligation is incurred. In some countries, this tax is called "tax on the transfer of absolute rights", "tax on the transfer of real property and rights", and in some countries "tax on property transfers".

In the Republic of Srpska, taxation of the transfer of real rights for consideration for natural persons is governed by the Law on Income Tax, under the name of the tax on income from capital gains. Capital gain is defined in the same way as in the case of acquisition of real rights without consideration if the legislator does not determine tax reliefs based on inheritance and gifts. For the purpose of determination of the capital gain, the selling price is considered to be the agreed price, i.e. the market price as determined by the Tax Administration, if it assesses that the agreed price is lower than the market one, while the purchase price is considered to be the price at which the taxpayer acquired the right and the property that is the object of taxation. The legislator made a distinction for cases of determination of the market price of real property built by the taxpayer himself, stipulating that the purchase price shall be considered to be the market price of the real property in the year of completion of construction or the amount of construction costs that the taxpayer can prove.³¹ Adjustment was also made for cases of determination of the market price of real property under construction, stipulating that the purchase price shall include the amount of construction costs or the amount of construction costs that the taxpayer had until the day of sale or the market value of the newly built facility adjusted by the level of construction. The tax rate is 13% on the determined tax base. Revenues from capital gains resulting from the transfer of real rights for consideration are the revenues of the Republic of Srpska budget.

Tax reliefs in the form of tax exemptions are determined in cases of transfers of real rights in immovable property that the taxpayer owned continuously for at least seven years before the transfer.

The taxpayer transferring real rights in immovable property who realized capital gain has a legal obligation to pay the determined tax amount by the 10th of the month for the capital gain realized in the previous month, and to notify that to the Tax Administration. Bearing in mind that

any revenue that the taxpayer realizes during the tax period concerned (tax year, which coincides with the calendar year) is considered income, the taxpayer transferring

³¹ See Art. 9 of the Law on Income Tax.

real rights in immovable property is also obliged to declare capital gain in their annual income tax return submitted to the Tax Administration at the end of the calendar year, i.e. by 31 March of the current year for the previous year.

6. COMPARATIVE OVERVIEW OF REAL PROPERTY TAXATION IN THE FEDERATION OF BOSNIA AND HERZEGOVINA

6.1. Real Property Taxes in Statics

In the Federation of Bosnia and Herzegovina, as specified in the introduction of this paper, real property taxation is regulated by cantonal laws that are called, in most cantons, the Law on Property, Inheritance and Gift Taxes, with the exception of the Central Bosnia Canton, West Herzegovina County and Herzeg- Bosnia County, where real property taxation is regulated by the Law on Taxes. In the Sarajevo Canton, it is regulated by the Law on Property Tax.³²

Unlike the Republic of Srpska, where real property tax revenue is exclusively the revenue of local self-government units, in the Federation of Bosnia and Herzegovina, it is mainly a matter of revenue shared between the cantonal budgets and local self-government unit budgets in a ratio of 50% for the cantonal budget and 50% for the budget of the local self-government unit where the real property is located. In Tuzla, Una-Sana and Zenica - Dobož Cantons, revenues from real property taxation are entirely the revenues of local self-government units. In the Sarajevo Canton, the revenues from these taxes are shared in a ratio of 60% for the cantonal budget and 40% for the local self-government budget.

Taxpayers of real property tax in all Cantons are resident and non-resident legal and natural persons, who are owners or users of real property in the territory of the respective Canton.

The object of taxation, with some discrepancies from one Canton to another, includes: houses, buildings, weekend houses or apartments, which are used for rent (as prescribed in all cantons/counties with the exception of Zenica - Dobož and Central Bosnia Cantons); business premises (prescribed in the Zenica-Dobož and Una-Sana Cantons); business premises used for rent (prescribed in all Cantons with the exception of the Zenica - Dobož and Una - Sana Cantons); weekend houses, buildings for rest and recreation (prescribed in all Cantons, with the exception of the Central Bosnia Canton); garages (prescribed in the Zenica - Dobož Canton); garages used for rent (prescribed in all Cantons, with the exception of the Zenica - Dobož Canton and Central Bosnia Canton/County). As we emphasized in the introduction of this paper, the Cantonal laws governing real property taxation provide for movable property taxation, too, i.e. the use of goods: passenger motor vehicle, bus and truck, motorcycle, vessel, casino table, slot machines for games of chance, slot machine for amusement games. Tax reliefs in the form of tax exemptions are determined for state, Entity, cantonal and local administration bodies, foreign countries under the condition of reciprocity, religious communities for property they use for religious purposes.

Unlike the Republic of Srpska, in the Federation of Bosnia and Herzegovina, there is no single fiscal register of real property, although the Tax Administration of the Federation of BiH operates as a single authority in the territory of the Federation, and the records of taxable real property are established on the basis of data from submitted tax returns for

³² See Drljača, Z. *et al.* (2019), 112-114.

real property registration and data collected *ex officio*. Most cantonal laws thus provide for the obligation of the competent body that keeps records on real property to regularly submit data on real property owners to the

tax authority.³³ The obligation to submit data on real property is also prescribed for the bodies that issue building permits, in such a way that they submit a monthly report on the issued building permits to the competent office of the Tax Administration in the territory of which the construction takes place and the owner of the building under construction has residence.³⁴

Real property taxpayers submit an annual tax return to the competent tax office of the Tax Administration of the Federation of Bosnia and Herzegovina where the real property is located. The deadline for submitting tax returns is 15 January in all Cantons, with the exception of the Tuzla Canton, where the deadline for submitting tax returns is until the end of February for the current year, for which the tax is determined.

The tax is paid at a flat rate on an annual basis, and the way in which the tax amount is determined differs from one Canton to another. The amount of tax per a unit of measure of 1 m² is set at a fixed rate, with the exception of the Bosnian - Podrinje Canton Goražde, the Sarajevo Canton and the Central Bosnia Canton, where the minimum amount of tax per a unit of measure of 1 m² is prescribed by law and the municipal bodies have the obligation to determine the tax amount by a special decision. For instance, in Sarajevo Canton, the amount of tax for leased business premises and apartments is BAM 4 per a unit of measure of 1 m², while in Herzegovina-Neretva Canton it is BAM 3 for leased business premises and BAM 2 for leased apartments, in Zenica-Doboj Canton it is BAM 0.75 for leased business premises and apartments per a unit of measure of 1 m², and BAM 0.50 in the Central-Bosnia Canton for leased business premises and apartments.³⁵

6.2. Taxes on transfers of real property without consideration in the Federation of BiH

In the Federation of BiH, unlike the Republic of Srpska, inheritance and gift taxes are designated as a special form of tax and included in the aforementioned cantonal laws governing property taxation, with the exception of the Sarajevo Canton, where this tax is regulated under the Law on Taxes on Real Property Transfers and Inheritance and Gift Tax.³⁶ All cantonal laws, including the Sarajevo Canton Law, clearly define that the person who inherits or receives as a gift property that is subject to taxation is liable for inheritance and gift tax. The obligation to pay tax arises at the moment when the decision on inheritance becomes final and binding, that is, at the moment of receiving the gift. The majority of cantonal laws stipulate that the inheritance and gift tax applies to : land, buildings and other immovable property, as well as the right of enjoyment, or use, in respect of the immovable property that a natural person acquires in the territory of the Canton on the basis of the Law on Inheritance, i.e. a gift contract between living persons or in case of death³⁷.

³³ See Art. 9 of the Law on Taxes of the Herzeg-Bosnia Canton, Official Gazette of the Herzeg-Bosnia Canton, No. 10/09.

³⁴ See Art. 10 of the Law on Taxes of the Central Bosnia Canton,

³⁵ See Drljača, Z., et. al. (2019), 114.

³⁶ Law on Tax on Real Property Transfers and Inheritance and Gift Tax. Official Gazette of the Sarajevo Canton, No. 28/2018.

³⁷ See, for example, Art. 10. Law on Property, Inheritance and Gift Taxes of the Posavina County,

Tax reliefs in the form of tax exemptions in all cantons are determined for the heir or gift recipient of the first order of succession; spouses, parents when they inherit and receive property as a gift from children; a minor without both parents; an heir of the second order of succession when he inherits or receives as a gift one residential building, i.e. one apartment, on the condition that he lived in a joint household with the testator at the time of his death, i.e. the recipient at the time of receiving the gift, and that he and his family members do not own another apartment; when the heir, i.e. the recipient of the gift, is a brother and sister, on the condition that such property cannot be alienated for a period of time specified by law (e.g. in the Zenica-Doboj Canton for five years), while in some cantons, such grounds for tax exemption are not specified. Tax rates on inherited property differ from one Canton to another. The tax rate on inherited property in Una-Sana Canton is thus 3%, in Tuzla Canton 2%, in Herzegovina-Neretva Canton 10%, in Sarajevo Canton 8%, and 5% in the remaining Cantons. The tax rate on gifted property in Una-Sana Canton, Herzegovina-Neretva and Sarajevo Cantons is 10%, in Tuzla 3%, and in other cantons 5%.³⁸

6.3. Taxation of transfers of real property for consideration in the Federation of BiH

The transfer of real rights in immovable property for consideration in the Federation of Bosnia and Herzegovina is regulated under cantonal laws on the transfer of real property and rights, with the exception of the Sarajevo Canton, where this matter is regulated under the Law on Taxes on Property Transfers and Inheritance and Gift Tax, and in the Una-Sana Canton by the Law on Real Property Transfer Tax³⁹. The transfer for consideration of ownership right to real property, right to use state-owned real property, as well as the exchange of one real property for another are considered as real property transfers in the Cantons.

The tax base is the market value of the real property, which means the price that is achieved or can be achieved on the market at the time when the obligation is created, which is estimated by an expert commission appointed by the municipal mayor. Cantonal laws stipulate that without a proof of payment of real property transfer tax, the ownership of real property cannot be registered in cadastral, land and other public registers. The tax rate at a fixed rate of 5% is determined in all cantons, with the exception of the Una-Sana and Herzegovina-Neretva Cantons, where the tax rate is limited to 5% by law, and it is left to the local self-government units to determine the tax rate for their respective areas up to that percentage.

Tax reliefs in the form of exemptions from payment of taxes on real property transfers in all cantons are determined: for real property transfers in relations between municipalities, Cantons, Federation of BiH, institutions of BiH; when real property transfers are carried out on the basis of the law, independently of the will of the taxpayer; when the right of ownership to real property is transferred to a foreign diplomatic - consular representative office, under the condition of reciprocity. Most of the cantonal laws prescribe that the real property transfer tax is not paid on the transfer of ownership rights on newly built apartments when they are sold to the first buyer if the seller is a legal person. This grounds

Official Gazette of the Posavina County, No. 09/2008.

³⁸ See cantonal laws cited in the references.

³⁹ Law on Real Property Transfer Tax of the Una - Sana Canton, Official Gazette of the Una - Sana Canton, No. 6/2004.

for tax exemption should certainly be viewed in connection with provisions of the Law on Value Added Tax of Bosnia and Herzegovina.⁴⁰ This is due to the fact that the transfer of the right of disposal (ownership) of newly constructed buildings or economically divisible units within a newly constructed building is considered a transfer of assets subject to value added tax, if two conditions are cumulatively met: that it involves a newly built building and the first transfer of the right of disposal in respect of that building.⁴¹ Bearing in mind that the Law on Value Added Tax of Bosnia and Herzegovina is applied in the entire territory of Bosnia and Herzegovina, this grounds for exemption from payment of tax on the transfer of real rights in immovable property for consideration also applies to the territory of the Republic of Srpska, even though this is not specifically emphasized in the Law on Income Tax.

Some of the tax reliefs in the form of exemptions from the payment of tax on transfer of real property for consideration for economic and social reasons are recognized for certain categories of war veteran population and family members of fallen veterans when buying their first residential property. For instance, in the Canton of Sarajevo, there is a relief prescribed in the form of a tax exemption for BiH citizens up to the age of 38 residing in the territory of the Sarajevo Canton who do not own real property and are buying an apartment or house for the first time to solve their housing issue, for an area of 30 m² for the first member of the household and 15 m² for each subsequent household member (spouse and underage children).

In Sarajevo, Tuzla, Una-Sana, Zenica-Doboj and Herzegovina-Neretva Cantons, revenues from the transfer of real rights in immovable property for consideration are entirely the revenues of the municipality in which the real property is located, while in other Cantons, revenues are shared between the Cantonal budget and the municipal budget in a ratio of 50%:50%, with the exception of the Central Bosnia Canton, where the revenues resulting from this tax belong to the municipal budget at the rate of 95% and to the Cantonal budget at the rate of 5%.

7. CONCLUSION

One of the oldest ways of collecting tax revenue is property taxation, looking at the taxation of both movable and real property. In modern tax systems, tax forms affecting real property are classified into three groups. The first group includes real property taxes in statics, i.e. nominal periodic taxes on real property paid from the taxpayer's income, while the second group includes property taxes in dynamics, which includes the transfer of real rights in immovable property for consideration and the transfer of real rights without consideration. The third group includes taxes on income from real property. In the Republic of Srpska, as part of the comprehensive reform of the taxation system, a real property tax in statics was introduced, and taxes on the transfer of real rights in immovable property, in view of the introduction of synthetic (global) income taxation, i.e. the concept of taxation of the total economic strength of natural persons during the period concerned (calendar year), are classified as income from capital gains, with certain tax reliefs in cases of transfer of real rights without consideration on the basis of inheritance and gifts. Income from real property, when the real property is the object of taxation and

⁴⁰ Law on Value Added Tax of Bosnia and Herzegovina, Official Gazette of BiH, No. 9/2005, 35/2005, 100/20008, 33/2017, 46/2023 and 80/2003.

⁴¹ See Art. 4 of the Law on Value Added Tax of Bosnia and Herzegovina.

the source of taxation, is classified as tax on income from capital (e.g. real property lease tax). Bearing in mind the distribution of revenues in the Republic of Srpska, the real property tax in statics can also be called a local tax because it belongs entirely to the budget of local self-government units in the territory of which the real property is located with the revenue from the transfer of real rights in immovable property belonging to the budget of the Republic of Srpska.

Bearing in mind the complexity of the constitutional organization of BiH, which consists of two Entities, Republic of Srpska and Federation of BiH, real property taxation is differently regulated in the territory of the Federation of BiH, which consists of ten Cantons, meaning that we have ten cantonal laws governing property taxation in the territory of respective Cantons. We can, therefore, draw a general conclusion that the legal solutions in BiH are quite different, not only between the Republic of Srpska and the Cantons, but also between the Cantons themselves, including different determination of distribution of revenue from real property tax and tax on the transfer of real rights in immovable property for and without consideration in the Republic of Srpska and in Cantons in the Federation of BiH.

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Oporezivanje nepokretnosti u Republici Srpskoj

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Rezime: U poreskoj materiji, posmatrajući kroz prizmu izvora oporezivanja, uobičajeno je da se koriste nazivi za tri grupe poreza: porezi na imovinu, porezi na potrošnju i porezi na dohodak. Oporezivanje imovine postoji i postojalo je u različitim oblicima u skoro svim poreskim sistemima. Danas se pod oporezivanjem imovine u poreskoj materiji podrazumijeva oporezivanje nekretnina, iako je sam pojam „imovine“ mnogo širi, jer se pod oporezivanjem imovine može posmatrati više izvora, uključujući, oporezivanje pokretne imovine i prihoda koje daje nepo-

kretna i pokreta imovina ako to . Opšte prihvaćen naziv je oporezivanje nepokretnosti, što je slučaj i u Republici Srpskoj, iako bi pravnički bilo preciznije –oporezivanje stvarnih prava na nepokretnoj imovini i prenos stvarnih prava na nepokretnoj imovini, u zavisnosti da li je predmet oporezivanja samo posjedovanje odnosno korištenje nepokretnosti ili je predmet oporezivanja prenos stvarnih prava sa jednog lica na drugo sa naknadom ili bez naknade. U većini zemalja, oporezivanje nepokretnosti povezuje se sa visokim stepenom koordinacije centralnih i lokalnih organa vlasti, a prema kritirijumu rapodjele prihoda u većini zemalja prihodi od oporezivanja nepokretnosti spadaju u grupu lokalnih poreza, pa se u nekim zemljama i određuju pod nazivom „lokalni porezi“.

Upravo, cilj ovog skromnog rada je istražiti oporezivanje nepokretnosti u statici i oporezivanje prenosa stvarnih prava na nepokretnosti sa naknadom i bez naknade, posmatrajući to u okviru zakonskog uređenja Republike Srpske.

Ključne riječi: Republika Srpska, porezi, nepokretnosti, dohodak fizičkih lica.

