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## **PRACTICAL TAX LAW-MAKING PROBLEMS AT COMMUNE-LEVEL**

Tax law-making process takes place above all at the central level. However, with relation to taxes constituting the revenue of communes, legal acts are constituted at local level (tax resolutions). Their important role is justified in Article 168 of the Constitution of the Republic of Poland.<sup>1</sup> According to this regulation the units of local government have right to determine the amount of taxes and local charges in the scope determined in the Act. It is impossible not to notice that conferring certain legislative competences in the sphere of local taxes to local level, constitutes an important element of self-government of these subjects. The possibility to form the rates of taxes or tax preferences by the communes gives them the opportunity to pursue, among other things, their own tax policy.

Tax resolutions are formed as a result of discussion. On the one hand, the discussion is carried on between the subjects involved in the process of constituting the acts of local law. At this level, the polemics takes place between town councillors and also between councillors and village-mayor. The discussion in this field may occur between the employees of commune council responsible for preparation of bill drafts and legal advisers employed in the council. This may concern the evaluation of the target of tax policy of communes, which is to be implemented by the introduced resolutions relating to tax rates or tax exemptions. In this aspect, in countries respecting the principles of a democratic legal state the debate is an element of a natural political dispute. The dialog between the above mentioned subjects might as well relate to the correctness of adopted measures of realisation of a defined tax policy. In this context, the exchange of views aims at creating

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<sup>1</sup> Constitution of the Republic of Poland of 2 April 1997 (Dz. U. [Journal of Laws] No. 78 item 483 as amended).

best law possible where such criteria as transparency or consistency of the created law should be of high importance.

On the other hand, the dialog on the basis of tax resolution passed, should take place between the representatives of a commune passing the acts and organs supervising the legislative activity, that is, above all the Regional Chamber of Auditors and the President of the Office of Competition and Consumer Protection. At this level the discourse is based, above all, on the criteria of legality of passed local law acts.

The present study was elaborated on the basis of the research conducted as part of research grant 'Local tax law reform in Poland' (Reforma lokalnego prawa podatkowego w Polsce) financed by the Ministry of Science and Higher Education.<sup>2</sup> The research attempted to explain the process of creation of tax resolution from the point of view of individuals employed in city and commune offices and people involved in this problem. Evaluation of the quality of the discourse within and beyond communes from their point of view, concerning tax resolution created by communes will be subject to analysis. It seems that a study in this scope has not yet been conducted in Poland.

The above mentioned activity may contribute to indication of practical functioning of determined legal law-making mechanisms at local level in Poland and of the way they are evaluated by people involved directly in this activity. It seems that information obtained this way might contribute to appropriate diagnosis of the quality of procedures of creation of tax law in communes and could help to identify the weak points in this field.

## **1. Research Material**

In this part of the study we will present findings which are based on a survey conducted among employees of communes and city offices involved in tax cases. For 500 questionnaires 160 respondents gave an answer. We adopted a principle which consisted in directing one questionnaire to a given commune (thus 160 units answered). The communes of almost all voivodeships of diverse character (42 communes of urban character, 83 rural and 35 urban-rural) are represented in the questionnaires except opolskie voivodeship. The data obtained seems to be representative since 6,45% of 2479 existing Polish municipalities took part in the survey.

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<sup>2</sup> Nr N N110 183637 directed by prof. dr hab. Leonard Etel and realised at the Faculty of Law at the University of Białystok.

Information provided by the survey may be divided into several categories: preparation of resolution projects, supervision and control of resolutions, tax exemption, tax rates differentiation, tax collection, the period for which resolutions are passed, special resolutions.

## **2. Preparation of resolution projects**

Commune employees were asked, among other things, who prepares tax resolution projects. In the majority of cases (134) it is an employee of a unit responsible for assessment and collection of taxes, in 22 cases it was a treasurer, and in only 2 it was a secretary or a municipality council service inspector. It shows that in communes there are no specialised units involved in tax law creation. Apart from that, people responsible for execution of taxes, are also responsible for preparation of tax resolution projects. The fact that, in certain cases, preparation of resolution project is based on cooperation of various subjects does not change this image. From the research it results that such cooperation occurs sporadically between the employees of administration and the treasurer (3 cases), employee and legal adviser (6 cases), employee, treasurer and legal adviser (3 cases). Legal advisers' assistance in the field of preparation of tax resolution projects leaves much to be desired. In 30% of answers cooperation with legal advisers (41 cases) was negatively rated by respondents and in 19 situations the opinion was even worse. The assistance obtained good and satisfactory opinion respectively in 41 and 51 cases.

The situation of the process preparation of tax resolution projects does not look good if we look at it from the point of view of education of people involved in this activity. From the answers obtained it results that in majority of cases (93) people responsible for preparation of tax resolution projects do not have specialist knowledge in the field of creation of legal acts. Solely in 30% of questionnaires contrary answers to this question appeared. In this situation the analysis of answers to the question concerning the sources from which the employees responsible for preparation of projects draw the basic knowledge on tax law, provides valuable data. Decidedly, the most significant role is played by information obtained from professional trainings (139 cases), then specialist periodicals (70 cases) and Internet (60 cases). The results show the awareness of the need to improve knowledge in the field of creation of tax law and the existence of serious needs in this scope as well.

On the other hand, general application of principles of legislative technique in the domain of resolution projects should be appraised positively.

To the question whether while preparation of projects of tax resolution the requirements imposed by the Ordinance of the President of the Council of Ministers of 20 June 2001 concerning 'Principles of Legislative Technique' are observed, decided majority (138 respondents) gave a positive answer and 10 negative. The fact that in 12 cases the question was left unanswered, which can be interpreted as lack of knowledge of this act, cannot change this rating.

Communes may obtain essential assistance in preparing tax resolution projects from Regional Chambers of Auditors. Despite the fact that such type of cooperation did not trace into regulations during the survey, it was still applied according to the information from the questionnaires. We should call attention to Article 13 Section 1 of the Law on Regional Chambers of Auditors in force from 1 January 2010.<sup>3</sup> According to this regulation, it comes within the Chamber's duty to provide explanations to the subjects mentioned in Article 1 Section 2 concerning application of regulations in public finance. This regulation might currently constitute a formal basis for communes to address the Chambers to evaluate their projects of tax resolutions. 76 communes answered positively to the question whether a prepared tax resolution project is consulted with a Regional Chamber of Auditors. Only in 37 cases a negative answer was given and 47 municipalities did not give any answer. This data is the evidence of pragmatic approach of both communes and chambers which, with their assistance in this scope, limit the number of questioned resolutions. On the other hand, a considerable number of local government units do not use the possibility to consult the projects, maybe because they are unaware of such possibility. That is probably why this question was left unanswered in so many cases.

Commune employees when analysing tax resolution projects from the point of view of difficulty of their preparation stated that preparing vehicle excise duty resolutions (110 cases) and property tax resolutions (45 cases) gives them most trouble. Interesting conclusions may be drawn from the answers to the question concerning the basic problem of preparation of tax resolution projects. The fundamental cause of this status quo are external pressure e.g. lobby groups, councillors (52 cases) as well as poor quality of tax law regulations (48 answers). Councillors who, pursuing to a specific goal, may introduce amendments to project of resolution, give the final form to resolutions. Such an activity may deform the original project and even generate incorrect solutions, especially if we take into account the fact that

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<sup>3</sup> Act of 7 October 1992 on Regional Chambers of Auditors (Dz. U. [uniform text: Journal of Laws] of 2001, No. 55, item 577 as amended).

that councillors seemingly do not frequently have the necessary knowledge to shape certain legal solutions correctly from the point of view of the law. It would be then relevant to introduce a mechanism which would penetratingly assess councillors' resolution project modification before the final voting or resolution. Significant element influencing preparation of project of tax resolutions is the lack of knowledge in the field of creation of legal acts (34 cases) and short time limits for project preparation (36 cases). The issue of time limit is connected to the fact of late minimum tax rate announcement in vehicle excise duty.<sup>4</sup>

### **3. Supervision and control of tax resolutions**

It results from this research that in the field of tax resolution, the supervision of the President of the Office for Consumer and Competition Protection and also Regional Chambers of Auditors is particularly important. Minor role in practice is played by the Minister of Agriculture, Voivodeship Administrative Courts acting among others on the initiative of tax-payer, prosecutor or Regional Chambers of Auditors. Certain activities of consultative character belong also to Agriculture Chambers.

In determined majority of cases the President of the Office for Consumer and Competition Protection and Regional Chambers of Auditors did not have reservations about tax resolutions (133 cases). They appeared only in 15 cases which gives 9,37% of all the examined units.

The supervising activity exercised by Regional Chambers of Auditors did not establish much irregularity in assistance resolutions for investment. To the question whether the Regional Chamber of Auditors questioned the resolution of commune council concerning property tax exemption within regional assistance, the majority answered negatively (94 cases) and 3 positively. In supervising activity exercised by Regional Chambers of Auditors doubt arose whether this is a proper subject in the field of resolutions concerning zoning fee and betterment levy. Relating to these issues in the law, the same number of respondents stated that they send such resolutions to Regional Chambers of Auditors (33 cases) and to the voi-

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<sup>4</sup> See Article 12b Section 4 of the Act on local charges and taxes of 12 January 1991 (Dz. U. [Journal of Laws] of 2010, No. 95 item 613 as amended – hereinafter referred to as ALTC according to which the competent Minister in charge of Public Finances announces not later than 31 October of each year by official announcement in the Official Journal of the Republic of Poland 'Monitor Polski' rates mentioned in Section 1 in force in the following year calculated according to the rules defined in sections 1–3 rounding them up.

vode (36 units). However, the majority of municipalities did not answer this question (96 cases).

The activity of the President of the Office for Consumer and Competition Protection being an organ of supervision is not positively assessed. To the question of how perceive the assistance of the Office for Consumer and Competition Protection in passing tax resolutions is perceived the answer was: well, in 4 cases it was: very well. The majority judged this cooperation not very favourably: satisfactory (40 cases), bad (13), very bad (7 cases). Prosecutor who can appeal against tax resolution to an administrative court plays a relatively unimportant role. Almost all communes (156 cases) answered negatively to the question whether such a situation arose. It does not mean that such situations did not occur at all. The prosecutor appealed against a resolution concerning visitor's tax which varies according to age and is different for children and young people and pensioners. On tax payer's application the prosecutor undertook to appeal against a resolution in the matter of mixed exemption concerning pensioners' immovable property. There were similar incidental situations in which tax payers appealed against tax resolutions to the Voivodeship Administrative Courts. Only 3 units gave positive answer to this question and 149 units negative. Questioned resolution under Article 101 of the Act on commune self-government of 8 March 1990<sup>5</sup> concerned immovable property tax rates and market fee rates. Any case of appeal to VAC was stated in questionnaires concerning tax issues under Article 101a of the Act on commune self-government.

The duty of agriculture chambers to give an opinion about resolutions related to agriculture tax is not very often realised. To the question whether resolution projects related to farm tax exemption on arable lands on which production was ceased and to lowering rye prices were given opinion by the agriculture chamber, the answer was negative in 99 cases and it was positive in only 22.

#### **4. Immovable property tax relief**

Resolutions concerning immovable property tax relief play a significant role in the context of legislative activity of commune councils. To the question whether resolutions introducing immovable property tax relief are passed on the basis of the entitlements from Article 7 Section 3 of the Act

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<sup>5</sup> Dz. U. [Journal of Laws], of 2001, No 142, item 1591 as amended – hereinafter referred to as ACF.

of 12 January 1991 on local taxes and charges, decided majority of communes answered positively (93 cases) while 54 communes answered negatively.

Most problems within this resolution were stated by employees preparing resolution projects concerning mixed exemptions and public assistance, among others, the opinion of the President of the Office of Competition and Consumer Protection on a project. Moreover, ambiguity of regulations, jurisdiction discrepancies, problems with correct determination of tax exemption and precise definition of conditions of tax exemption, problems with definition of item entitled to exemption, preparation of resolution projects by employees who do not have sufficient knowledge, controversies among councillors concerning application and tenor of exemptions, lack of educational materials useful for preparation of resolution projects, councillors' objections. Issues occurring not only at the stage of passing a resolution but also its application were also raised by those surveyed, who accentuated, above all, the problem of control of entrepreneurs from the point of view of fulfilment of exemption conditions.

When introducing exemptions these preferences were most frequently addressed to immovable property belonging to communes, volunteer fire brigades, and culture institutions. Apart from that, various criteria was applied in creating resolutions related to exemptions. They may be divided into two following categories:

– immovable property connected to business (types of business, buildings used for collective water supply, for entrepreneurs opening business enterprises for the first time, new investments and employment connected to new investment),

– immovable property not related to business (libraries, country halls, sport facilities, community centres, museums, show and sport halls, immovable property belonging to fire service units, cellars, immovable property being a commune property not transferred to other subjects, cemetery immovable property, immovable property occupied by farmers' social-professional business, farmers' residential buildings, grounds marked in evidence as roads, shelters, country common rooms, joint property of lands, social assistance, expanded residential buildings to which heating was connected or in which heating method was changed to geothermal, gas, oil or electricity, year of construction of a building, immovable property of subjects which are financed from commune budget, grounds occupied by parks, age of tax payer, considerable level of disability certificate, farm buildings seated on 1 h land).

More than half of communes which introduced exemptions, recognised them as of public assistance character, in 40 cases they were treated as

preferences of *de minimis* aid character, in 17 as exemptions of regional assistance character. Solely in one case they were treated as horizontal assistance. Consequently, it results that more than half of exemptions is of public assistance character. Out of 93 communes which passed resolutions concerning exemptions 57 indicated that these were resolutions of the above mentioned character. On the other hand, communes judge the most simple mechanism of granting assistance as the best. The proof of that is the fact that a vast majority of assistance resolutions was of *de minimis* character characterised by, on the one hand, a relatively low increment amount which may be assigned to an entrepreneur and on the other, a simple construction and relatively limited formal requirements at the stage of passing and execution of these resolutions.

## 5. Immovable property tax rate differentiation

Commune councils' entitlement to immovable property tax rate differentiation finding its legal basis in Article 5 of the Act on the Protection of Tenant's Rights, was applied by smaller part of communes (58 cases). Vast majority does not apply the mechanism (98 cases). Communes applied different criteria to differentiation of rates, among them related to:

- character of buildings or lands (resorts, individual pastime facilities, holiday homes and lands, residential buildings on farms, garages),
- purpose of buildings or lands (buildings occupied by public tasks organisations, lands and buildings used for farming, living purposes, lands occupied by ski lifts, meant for construction works),
- type of business (physical education, public security, seasonal),
- tax payer's situation (source of income, place of residence, status of pensioners who transferred their farms to the State Treasury),
- location of a land or building (urban, country area).

It is characteristic that in majority of cases, assistance provided by majority of communes in relation to property tax rates differentiation was not recognised as public assistance. Out of 58 units which answered the question whether resolutions related to rates which introduced differentiation constitute public assistance, 46 gave a negative answer. The remaining stated that the assistance was provided as *de minimis* aid. It results from that, that majority of communes, while differentiating rates, introduce preferences of non-assistance character. These preferences are related to, above all, buildings and lands not connected to business. The answer given may mean that communes did not recognise differentiation of rates related to

entrepreneurs as of assistance character which is not necessarily a correct approach. On the other hand communes are conscious of the fact that by introducing preferential rates related to buildings, lands connected to business they may grant assistance solely in form of *de minimis* aid.<sup>6</sup> The proof of that is the lack of answers expressing that assistance through differentiation of rates was granted as other than *de minimis* aid. Awareness of social assistance problems concerning differentiation of tax rates is expressed also in the answer to the question asking what are basic problems connected to differentiation of property tax rates. Most communes pointed that these are related to problems of public assistance and limits resulting from them. Moreover, the following answers appeared: necessity of precise definition of the type of business, definition of holiday buildings rates, councillors' striving for maximal lowering of rates, pressure of specific groups of tax payers for lowering rates.

## **6. Tax collection**

Collection as a form of commune tax execution is widely applied in Poland. The fact that in vast majority of communes which took part in the survey this tool is used proves that. Most frequently it is applied in agricultural tax (116 cases), property tax (111 cases), market fee (110 cases), forest tax (108). In majority of the above mentioned benefits introduction of tax collection facilitates execution, while absence of this mechanism in market fee in practice means depriving communes of income. It is difficult to assume that people selling at market places will individually pay the benefit into tax organs' accounts.

A basic problem connected to tax collection and zoning fees, in the opinion of communes employees who are in charge of these benefits, is correct construction of collection resolution. Such a problem was noticed in 41 cases. Another issue was non-execution of collections by collectors (20 cases), but also non-transferring collected taxes and fees by collectors (13 cases). In questionnaires problems appeared related to functioning of this institution in practice, more important than preparation of objective resolution: not accounting for collection on term, limited possibilities of control of reliability of collected market fee by the collector, faulty filling in

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<sup>6</sup> See Art. 20c ALTC where it is indicated that in cases mentioned in Art. 5 Section 2–4, in Art. 10 Section 2 and Art. 19 point 1 and 3 if a resolution of commune council provides for granting public assistance the assistance is then granted as *de minimis* aid.

receipt books, accounting errors of collectors, finding people for pet/dog fee collection – appropriate traits of character that is, emotional intelligence, ability to continuously fill in pre-numbered forms, purchase and stamping of market fee tickets by a commune, resistance of market sellers who do not want to pay due payment to collectors.

## **7. Period to which tax resolutions are passed**

From the analysis of questionnaires it results that in decided majority of cases tax resolutions are passed for a definite period of time (110 cases). 47 units declared passing resolutions for indefinite period of time. It may be the evidence of interest of communes in annual, even though insignificant, since at most by inflation level, increase of tax rates in force in a given commune.

Part of communes which did not pass resolutions for the following year used mechanism included in Article 20 of the ALTC. To the question whether in the analysed period there were situations in which commune/city council did not pass compulsory resolutions concerning tax rates and zoning fees, which in consequence led to a situation when on the basis of Article 20a of the ALTC previous year rates remained in force, 31 units gave a positive answer. It means that vast majority of communes understand correctly this regulation as a specific safety valve which should only be applied in exceptional situations. As for the rule, commune councils should determine rates for a given year or for a definite period. The mechanism from Article 20a of the ALTC was most frequently applied to property tax rates (19 communes) and vehicle excise duty rates (21 cases). In certain units it concerned more than one tax. In one of the questionnaires this regulation was applied to 4 resolutions, in 6 it was indicated that it was applied to 3 resolutions and in 9 to 2 types of resolutions.

## **8. Special resolutions**

Almost half of the surveyed communes introduced a resolution enabling to collect a pet (dog) fee (71 cases). In 81 communes the resolution was not passed, which was caused by too small number of employees, too low income from this fee compared to the amount of work and costs connected to collection, problems with execution of the fee, lack of instruments for verification of dog data, statutory tax exemption in rural communes, lack

of dogs in general, lack of will of councillors, public opinion stand finding this fee contrary to animals protection, taking in homeless dogs etc.

A resolution concerning the course and specific conditions related to farm tax exemption on arable lands on which production was ceased (82 cases) functions in almost half of communes. In 70 units such an act was not passed. The number of communes which passed a resolution related to lowering the prices of rye is proportional. In 70 communes these acts are in force, in 85 they were not introduced.

In 83 communes resolutions related to extension fee were not passed. In 51 communes the amount was defined at the level of maximum rate 50% rate for delay. In some of the communes lower rates are in force that is 10% (4 communes), 20% (4 communes), 25% (4 communes), 30% (9 communes), 37% (1 commune), 40% (2). In two units differentiation of rates was enacted depending on whether maturity postponement or spreading the payment into instalments concerned arrears or tax. In the first case rate 50% is in force for arrears and 30% for tax, in the second 50% for arrears and 20% for tax.

Communes not very often decide to extend the term of payment for collectors. Such a situation occurred in 29 units. The following solutions are applied in this case: prior to the lapse of the 10<sup>th</sup> day after payment time limit, prior to the lapse of the 17<sup>th</sup> day of each quarter, prior to the lapse of 20 March, May, September and November, prior to the lapse of the 25<sup>th</sup> day of the month during which the collection was done, 5 days after the day on which the collector collected the charge (only collectors serving country areas, since they have to commute to communes), 3, 4, 5 or 7 days after the day of collection, 14 days after the payment time, until the end of the month during which the tax was collected.

Part of communes introduced or intends to introduce resolutions which make possible to file an e-statement (28 cases). It shall relate to farm, forest, and property tax altogether. There is considerably lower interest in vehicle excise duty, which actually might intrigue taking into account the existing electronic model defined by the Minister of Finance.

There were incidental situations in which commune council moved a proposal to voivodeship assembly to include the commune into another tax district. Only two communes referred to the question concerning this issue affirmatively. It also results from the survey that self-taxation resolutions were enacted (5 cases) in certain communes. It shows little interest in this method of acquisition of funds for coverage of public expenses.

## **Conclusions**

In the light of the results of the above presented research concerning legislative activity of communes in the field of tax law done by employees of communes being in charge of taxes, certain problems appear. On the other hand, it is possible to indicate certain actions which are or could be undertaken in communes to improve this situation. Among the problems, the most significant are the following:

- employees of local units give negative opinion of the dialogue within the internal structures of these subjects concerning creation of resolution projects; the proof of that is the fact that the opinion about the assistance of legal advisers employed in communes in preparation of tax resolutions is not very flattering,
- commune workers who take care of preparation of tax resolutions draw attention to the fact that there is no dialogue at all concerning this issue between them and councillors, as a consequence incorrect modifications of tax resolutions are introduced by councillors,
- dialog with certain control organs concerning creation of local tax law is judged insufficient by employees of communes; cooperation of communes and the President of the Office of Competition and Consumer Protection in the field of evaluation of tax resolution projects is not very well evaluated,
- the same people in communes are involved in tax execution and preparation of tax resolution projects,
- lack of proper education of employees who prepare tax resolution projects,
- there are problems with correct construction of exemptions resolution connected to contesting mixed exemptions by the Regional Chambers of Auditors, vagueness of regulations, among those related to the problem of public assistance, discrepancies in jurisdiction, difficulty in definition of purely subjective exemption, precise definition of conditions of exemption, problems in defining the type of object which is to be exemptible, arguments among councillors as far as acceptance and tenor of exemptions is concerned, lack of educational materials for preparation of resolution projects,
- problems connected to differentiation of property tax rates and related to necessity of application of public assistance regulations and resulting limitations, necessity of precise definition of the type of business, councillors striving for maximal lowering of rates, pressure of specific groups of tax payers to reduce the rates,

- problems with collection connected to the fact of not executing collection by tax collectors, non-transferring collected taxes and payments,
- Agriculture Chambers duty to give an opinion on farm tax resolution scarcely fulfilled,
- short terms for project preparation.

The following elements might be or are applied in communes to improve the quality of tax law resolution passed by the communes:

- the role of professional trainings in the field of preparation of tax resolutions is very important, as a consequence this method of improvement of commune employees' knowledge (councillors and legal advisers) involved in this issue should be developed; trainings in this field organized above all by units supervising the resolution-passing activity that is the Regional Chamber of Auditors, the President of the Office of Competition and Consumer Protection, Administrative Courts, and the Ministry of Agriculture should constitute an important element of this system,
- increase of activity of communes in finding support from the Regional Chambers of Auditors in preparing tax resolution projects should be suggested,
- introduction of mechanism which would help scrutinise projects of resolutions modified by councillors from the point of view of requirements of conformity with law before the final voting on a given resolution.
- introduction of assistance exemptions most frequently under a relatively transparent and simple *de minimis* formula,
- reduction of situations in which differentiation of rates concerns entrepreneurs, this mechanism should be used with relation to buildings or remaining lands and will lead to elimination of public assistance problem,
- communes should be suggested to pass resolutions for an indefinite period of time.

#### S U M M A R Y

The article is an attempt to evaluate the process of creation of tax resolutions in Poland from the point of view of people employed in commune and town offices and those engaged in this problematic. The quality of the existing discourse related to tax resolutions created by communes was also evaluated. The discourse takes place between subjects which take part in the process of creation of these domestic legal acts, that is councillors, and also between these people and the village-mayors, or mayors, employees of the commune office responsible for preparing resolutions projects and legal advisers employed in offices. On the other hand, a dialog

in accordance with tax resolutions passed should take place between the representatives of a commune passing these acts and organs controlling the legislative activity, namely the Regional Accounting Chamber and the president of the Office of Competition and Consumer Protection.

The present study was elaborated on the basis of research based on a survey carried out among employees of town and commune offices engaged in tax affairs. 160 respondents out of 500 questionnaires answered the questions.

On the basis of the research related to the legislative activity of communes in terms of tax law done by the employees of the communes in charge of tax issues certain problems appear. These problems were described in detail in the topical article. Specific actions which could be taken in the communes to eliminate the above-mentioned problems are also indicated in the article.