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THE REAL ESTATE CLAUSE IN THE OECD MODEL TAX CONVENTION AND ITS RECEPTION INTO POLISH LAW

Abstract

This article deals with the issue of the real estate clause and its reception to Polish law as a real estate company. The research was conducted on the grounds of Corporate Income Tax Act and Personal Income Tax Act. The article verifies the hypothesis the concept of the real estate clause included in the OECD Model Tax Convention constitutes a mechanism enabling the countries of the location of the real estate to participate in the benefits arising in connection with the transaction of disposal of shares in a given company in exchange for granting legal protection of such transaction. The research method used in this study was a critical analysis, including a linguistic analysis of the provisions of tax acts and international agreements to which the Republic of Poland is a party. In addition, the research methods used in this article are the analysis of views of doctrine and jurisprudence of administrative courts and tax authorities.

Key words: international tax law, real estate clause, real estate company, OECD Model Tax Convention, immovable property, double tax convention.

JEL Classification: K25, K34

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1. Introduction

Nowadays, it is becoming increasingly popular to conduct business activities involving the use of real estate by means of separate special purpose vehicles. Such companies use real estate in a certain area, which facilitates the management of such real estate, as all real estate from a certain territory is concentrated in one company [Gayrimenkul, Ortakhklan 2016: 26]. The use of real estate companies enables investors to reduce the costs of their operations [Ambrose, Fuerst, Mansley, Wang 2019: 1]. Furthermore, real estate companies are also important in international business, as business practice shows that parent companies from one country use daughter companies from another country to conduct their business activities.

The aim of this article is to prove that the concept of the real estate clause included in the OECD Model Tax Convention and in particular double tax treaties constitutes a mechanism enabling the countries of the location of the real estate to participate in the benefits arising in connection with the transaction of disposal of shares in a given company in exchange for granting legal protection of such transaction. Furthermore, this article addresses both the interpretation of the real estate clause based on the definition of immovable property contained in the provisions of the Civil Code and the reception of this clause into the Personal Income Tax Act and the Corporate Income Tax Act by the definition of a real estate company. Particular emphasis will be placed on the infringement of taxpayers' rights in connection with the introduction of the definition of an immovable property company into the Polish legal order and the deficiencies related to the insufficient definiteness of the provisions of civil law, resulting in the infringement of taxpayers' rights in the form of the lack of legal security of their conduct.

The research method used in this study was a critical analysis, including a linguistic analysis of the provisions of tax acts and international agreements to which the Republic of Poland is a party. In addition, during research, the analysis of doctrinal views and case law of administrative courts and tax authorities was used.

2. Definition of real estate in the OECD Model Tax Convention in comparison with the definition of real estate in Polish law

There is no definition of immovable property in the OECD Model Tax Convention itself for the purposes of applying the OECD Model Tax Convention. However, according to the OECD Model Tax Convention, it is for the purposes of applying the Convention that the understanding of the definition of immovable property for the country having jurisdiction over the location of the immovable property should be adopted [Model Tax Convention on Income and on Capital: Art 6(2)]. Moreover, it should be noticed, that Israel and Latvia reserved the right to include "any option or other similar right to acquire immovable property" [Model Tax Convention on Income and on Capital 2017 (Full Version), Commentary on Article 6, point 14, p. C (6)-3]. It means that the only possibility to acquire the immovable property in the future may become the immovable property with all effects linked with the status of immovable property in the meaning of certain double tax convention. The similar reservation was made by Estonia, which reserved the right to include in the definition of immovable property any right of claim in respect of immovable property [Model Tax Convention on Income and on Capital 2017 (Full Version), Commentary on Article 6, point 13, p. C (6)-3].

The jurisdiction should be understood as the territory, where the things are located and the law would be applied to them [Ford 1999: 852], because the jurisdiction is the form of combination the geography with the interest [Kaushal 2015: 765]. According to the OECD, this provision is intended to counteract possible interpretation disputes between Contracting States over the definition of immovable property for the purposes of a particular double tax convention [Model Tax Convention on Income and on Capital 2017 (Full Version), Commentary on Article 6, point 2, p. C (6)-1].

While determining the territorial scope with respect to the land territory of a state does not raise major issues, the application of Article 6(2) of the OECD Model Tax Convention may be problematic with respect to maritime areas. First of all, the main problem in this respect is to determine what constitutes the territory of a state on the basis of the OECD Model Tax Convention, namely, is it only the territorial sea or also the contiguous zone or the exclusive economic zone of a state? According to the United Nations Convention on the Law of the Sea, the sovereignty of a coastal State extends to the territorial sea, which is the area up to 12 nautical miles from the baseline. It means that the territorial sea area is undoubtedly part of the State's territory [United Nations Convention on the Law of the Sea, Art. 2(1)], which also extends to the application of the OECD Model Tax Convention. This is indicated by the understanding of the word sovereignty, meaning the ability to make and enforce laws in a given area [A Dictionary of Law (9 ed.), Oxford University Press, sovereignty]. It should be noticed, that only the state has a monopoly on lawmaking and enforcing the law on the certain territory [Schuppert 2021: 226].

A different approach is taken regarding the contiguous zone. The purpose of the contiguous zone is to enable the coastal state to exercise the control necessary to prevent and punish infringements of the state's laws in its territorial sea [United Nations Convention on the Law of the Sea, Art. 33(1)]. It means that the contiguous zone has only a functional character, as it only supports the fulfilment of certain functions by the coastal State, inherent in its powers in the territorial sea.

The final area requiring further discussion is the exclusive economic zone of the coastal State, which is an area no further than 200 nautical miles from the baselines. On the one hand, the coastal state has only certain rights related to the exclusive economic zone belonging to it, which means that the exclusive economic zone does not constitute the territory of that state. On the other hand, in accordance with the United Nations Convention on the Law of the Sea, it is the coastal State that has the power to enact legislation, including fiscal legislation, regarding artificial islands, installations and structures located in the exclusive economic zone sea [United Nations Convention on the Law of the Sea, Art. 60(2)].

The Polish legislator, in the Article 4 of Corporate Income Tax Act and the Article 5 of Personal Income Tax Act, decided on an incomprehensible solution to this issue. The legislator formulated that the territory of the Republic of Poland should be also understood as the exclusive economic zone in which the Republic of Poland, pursuant to domestic law and in line with international law, exercises rights relating to exploration and exploitation of the seabed and its subsoil as well as natural resources. It does not follow from the provision what significance the exercise of the aforementioned rights by the Republic of Poland would have for the emergence of tax liability on the part of taxpayers.

The most efficient solution to this problem would be to amend Article 4 of the Corporate Income Tax Act and Article 5 of the Personal Income Tax Act to indicate that the territory of the Republic of Poland for income tax purposes is also deemed to be the exclusive economic zone to the extent to which artificial islands, structures and installations are located therein. Such a solution, however, would require a definition of artificial islands, structures, and installations in Polish law, because neither the provisions of the United Nations Convention on the Law of the Sea, nor the Act on maritime areas and maritime administration provide what should be understood by artificial islands, structures, and installations. Such a legal status, when accepting the aforementioned conception, could infringe the principle of definiteness of tax law, therefore this postulate should be realized comprehensively.

The definition of an immovable property in Polish law should be found in the provisions of the Civil Code. Immovable property includes parts of the earth's surface constituting a separate object of ownership (land) as well as buildings permanently attached to the land or parts of such buildings, if under special regulations they constitute a separate object of ownership from the land [Civil Code, Art. 46(1)]. However, the legislator has not determined what should be understood by a building within the meaning of the Civil Code.

The judicature of the Supreme Court on the definition of a building under the Civil Code is inconsistent, but the essence of the definition remains the same, regardless of the view taken. According to the Supreme Court, a building should be understood as either a building within the meaning of the Construction Law [SN[1], I CSK 484/10], i.e. a building which is permanently connected to the ground, separated from the space by building partitions and has foundations and a roof, or "a building permanently connected to the ground, forming a component part of a land property (Article 48 of the Civil Code) or an object of ownership separate from the ground (Article 235(1) of the Civil Code), separated from the space by building partitions and having foundations and a roof, with the proviso that the characteristic of separateness may also be achieved by establishing the necessary easements" [SN, III CZP 136/06].

Moreover, regardless of the adopted view, it may be concluded that a structure is not immovable property within the meaning of the Civil Code, as a structure is a category of construction object separate from a building, which is evidenced by the exclusion of buildings from the list of structures in Article 3(3) of the Construction Law [Golat 2018: 15]. In the light of the above, the status of constructions should be considered in terms of Article 48 of the Civil Code, which regulates components of the land as, in particular, buildings and other facilities permanently connected with the land. It means that the Polish legislator decided to introduce a separate division of the relationship between buildings and other facilities - either a building or facility is permanently connected with the land and is its component part, or a building or facility is not permanently connected with the land and is a separate object of ownership.

However, the Polish legislator did not formulate in the Civil Code regulations how the feature of permanent connection with land should be understood. According to the Supreme Court, a permanent connection to the land should be understood as a physical and functional link between the land and the device, which makes them an economic unit. The technical possibility to disconnect a device from the ground does not deprive the device of the status of permanent connection with the ground [SN, II CSK 65/05]. In addition, the physical connection to the ground shall be sufficiently strong and tight [SN, IV CSK 418/18]. The

[1] from hereinafter "SN" stands for "Sąd Najwyższy" (the Supreme Court).

WSA[2] in Gliwice defines the meaning of permanent connection with the ground in a slightly different way. If disconnection of an object resulted in inability to re-found the object without re-preparation of the ground, then only then would the permanent connection with the ground be established [WSA in Gliwice, II SA/Gl 1357/10]. However, it would be consistent with the principle of definiteness of tax law if, for the purposes of the definition of a real estate company, the feature of permanent connection with the land were understood from the point of view of the connection itself and not from the point of view of effects occurring after the device is detached from the land. The emergence of the status of a real estate company is examined on the basis of circumstances existing at a given time, and not on the basis of circumstances yet to come, which justifies the need to examine the actual state of affairs and not an uncertain future event.

However, it is not possible to support the view that the functional, technical and economic link of a building or facility with other buildings and facilities on the land in question would result in the building or facility being regarded as a component part, despite the fact that it is not permanently connected to the land [Sokołowski-Żok 2021: Legalis/el.]. In such a situation, it would be, as it were, the taxpayers themselves who would shape their tax-law situation in disregard of the provisions of tax law, making it possible to deliberately jeopardise the fiscal interests of the state.

In the doctrine of civil law there is also a view that article 48 of the Civil Code should also be applied to article 47(3) of the Civil Code, according to which objects connected with a thing only for temporary use do not constitute its components [Dybowski 1969: 89]. In this situation, if something is connected to the land for a transitory use, it would also not be a component of the land. Furthermore, in a situation of connection for a temporary use, the fact that the disconnection of the device from the land will lead to damage or a material change to the land or the device does not make the device a component part of the land and it will not be a separate object of ownership [Pahl 2008: 23-34]. The literature also holds the opposite view, according to which, in the case of Article 48 of the Civil Code, Article 47(2) of the Civil Code shall also apply additionally [Dybowski 1969: 89]. However, the view on the application of Article 47(3) of the Civil Code is justified, because in the text of the Civil Code the legislator decided to separate the category of the components of land from the components of things, i.e. the legislator in a way decided on separate legal effects of the components of land from the components of things.

[2] from hereinafter “WSA” stands for “Wojewódzki Sąd Administracyjny” (Provincional Administrative Court).

Polish civil law does not define the attribute of association of an object with a thing for transitory use. In the doctrine of Polish civil law there are three approaches to the attribute of connecting the object with the thing for transitory use: an objective approach, a subjective approach and a compromise approach [Żelechowski 2021: Legalis/el.]. According to the objective conception, it is circumstances cognisable to third parties that determine that a temporary use connection has been made, in particular the provisional nature of the connection, which is visible and can be established on the basis of experience [Dybowski 1969: 88]. The subjective concept consists of the will of the merging entity to make the merger only for a certain period of time [SN, I CR 855/62]. In the case of the subjective concept, even the technical soundness of the connection does not result in a permanent link with the ground if the entity connecting the device to the ground has chosen to maintain such a link for a certain period of time [Heliniak 1999: 38]. A compromise approach combines the will of the merger maker with consideration of the external circumstances of the nature of the merger [Katner 2012: 1313-1314]. In this case, a compromise concept seems to be the most justifiable one in tax law, as it combines respect for both the principle of definiteness of tax law and economic interpretation as a directive of interpretation in tax law, requiring that the legal and tax consequences of the taxpayers' behaviour be considered from the point of view of the most economically advantageous behaviour.

3. The real estate clause in international tax law

Article 13(4) of the OECD Model Tax Convention, which constitutes the property clause in the body of the OECD Model Convention, was introduced into it by the OECD Council on 28 January 2003. The original wording of this article was as follows: "Gains derived by a resident of a Contracting State from the alienation of shares more than 50 per cent of their value directly or indirectly from immovable property situated in the other State may be taxed in that other State" [Model Tax Convention on Income and on Capital 2017 (Full Version), Commentary on Article 13, p. M-44]. However, this provision has been amended by "The 2017 Update to the Model Tax Convention" adopted by the OECD Council on 21 November 2017.

The purpose of the change in the wording of Article 13(4) of the OECD Model Tax Convention was to prevent the contribution of assets to a company shortly before the transfer of shares or interests in order to dilute the portion of the value of those shares or interests that is derived from immovable property located in a Contracting State. Before the introduction of the real estate clause in the OECD Model Tax Convention, investors used real estate companies to acquire real estate in the second country so that the rules on taxation of income from real estate assets did not apply [Daurer, Krever 2014: 19]. The provisions of the OECD Model Tax Convention do not provide for the taxation of gains on the disposal of a real estate company only to the extent that the company holds real estate in the source state. However, this is dictated by considerations of the difficulty of determining the appropriate proportion of tax paid in the both Contracting States [Lennard 2009: 8].

According to the wording of Article 13(4) of the OECD Model Tax Convention after 21 November 2017, gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other State. On the basis of the current wording of this provision, two problems arise: what is the nature of a comparable right and how to determine the origin of more than 50% of the value of the shares or comparable rights from immovable property [Model Tax Convention on Income and on Capital 2017 (Full Version), Commentary on Article 13, point 28.5, p. C(13)-10].

In its Commentary to the OECD Model Tax Convention, the OECD indicates that the purpose of introducing the concept of comparable right in Article 13(4) was to ensure that the hypothesis of the real property clause would also cover entities other than corporations, and the OECD cited partnerships and trusts as examples of such entities [Model Tax Convention on Income and on Capital 2017 (Full Version), Commentary on Article 13, point 28.5, p. C(13)-10]. The common element in all three organisational and legal forms is that each of these forms may acquire ownership rights, including in immovable property. It means that a comparable right for the purposes of Article 13(4) of the OECD Model Tax Convention should be understood as all the rights and obligations in an association whose substratum is property, which association may acquire rights, including in particular rights of ownership in immovable property. Furthermore, both direct and indirect derivation of at least 50% of the company's shares value from immovable property is dictated by the need to ensure tax equity [Haase 2017: 288].

At the beginning of the discussion on the percentage of the value of shares or comparable rights originating from real property, it should be noted that the 50% threshold is a recommendation. This is the value indicated by the OECD in the text of the OECD Model Tax Convention, but this value may be both lowered and increased by the Contracting States

[Model Tax Convention on Income and on Capital 2017 (Full Version), Commentary on Article 13, point 28.6, p. C (13)-10]. This value can be changed freely, as the OECD has not adopted a minimum or maximum percentage. However, according to the preamble of the Vienna Convention on the Law of Treaties in conjunction with Article 2 of the Charter of the United Nations, it would have to be considered that the percentage ratio must be equal for both Contracting States. One of the guiding principles of public international law, raised both in the United Nations Charter and the Vienna Convention on the Law of Treaties, is the principle of equality of all States. This means that it is impossible to accept the wording of a double taxation convention which would put taxpayers from one contracting state in a better position than taxpayers from the other contracting state, if those taxpayers are in a similar factual situation which would not justify a different legal and fiscal situation of those taxpayers from the two contracting states. Moreover, this approach complies with the concept of international rule of law. One of the requirements of international rule of law is the equality of the state before the international law, which means that the law must be applied in equal way to all states [Watts 1993: 31]. An example of a breach of the principle of treaty equality of the Contracting States is the lack of definition of the phrase "mainly" in the double taxation agreement between Poland and Sweden. As a result of the lack of definition of this phrase, it was Polish and Swedish domestic law that should have been applied, but only the Swedish legal order stipulated a percentage of real property in the company's assets of 75%. In this situation, the Polish Supreme Administrative Court adopted the dictionary understanding of the phrase 'mainly' as a share exceeding at least 50% [NSA[3], II FSK 3155/16]. In such circumstances, the view of the Polish Supreme Administrative Court should be endorsed, because as a result of the lack of regulation of the share of immovable property in the company's assets, it is only the verbal understanding of the word "mainly" that is able to ensure the treaty balance between the contracting states.

4. Reception of the real estate clause into Polish income tax acts

The reception of the real estate clause into the Personal Income Tax Act and into the Corporate Income Tax Act occurred by virtue of the Act of 28 November 2021 amending the Personal Income Tax Act, the Corporate Income Tax Act, the Act on Lump Sum Income Tax on Certain Income Earned by Natural Persons and certain other acts. This act introduced to the Polish income tax laws a definition of a real estate company. According to the Polish legislator, such a move was necessary from the point of view of inefficiency of tax liability

[3] from hereinafter “nSA” stands for “Naczelny Sąd Administracyjny” (Supreme Administrative Court).

enforcement against partners of real estate companies [Print number 642, Draft Act amending the Personal Income Tax Act personal income tax, the law on income tax from legal persons, the Act on a lump-sum income tax from certain incomes generated by natural persons and natural persons and some other acts, p. 59].

The definition of a real estate company takes on different wording, depending on whether the taxpayer started the activity in a given tax year or continues it. However, the Polish legislator has not formulated how to understand the commencement of business activity within the meaning of the definition of a real estate company. The only reference to the provisions of the Accounting Act contained in the definition of a real property company is the limitation of the catalogue of real estate companies to entities other than natural persons, which are obliged to prepare a balance sheet within the meaning of the Accounting Act. It appears that the determination of the moment of commencement of business activity also requires reference to the provisions of the Accounting Act. The date of the commencement of an entity's activities is the date of the first event that produces property or financial effects [Accounting Act, Art. 12(1)]. Depending on the type of company, such day will be either the day of drawing up the memorandum of association in the case of capital companies (because such a company may operate as a company in organization) [Helin 2017: LEX/el.], or the day of registration of the company in the National Court Register in the case of companies [Walińska, Walińska 2018: LEX/el.].

Another significant issue in the construction of the definition of a real estate company is its considerable complexity, as a taxpayer must meet a total of two conditions to constitute a real estate company within the meaning of the income tax concerned. In the case of starting entities, the conditions in question must be met on the first day of the financial year. For a taxpayer commencing operations, at least 50% of the market value of the assets held directly or indirectly by the taxpayer must be the market value of real estate located in the territory of the Republic of Poland or rights to such real estate, and the market value of this real estate must exceed PLN 10,000,000 or the equivalent of this amount determined using the average exchange rate for foreign currencies as published by the National Bank of Poland on the last business day preceding the first day of the tax year.

In the context of the quoted conditions, the understanding of the phrase "rights to such real estate" is problematic. The laws on income tax do not contain any catalogue of rights understood as rights to real property. In this case, reference should be made to the provisions of the Civil Code, more specifically to book 2 devoted to ownership and other rights in rem. Limited rights in rem in the Polish legal system consist in the fact that a person who is not an owner obtains rights to a third party's property specified in the act, which are effective towards third parties [Morek 2019: Legalis/el.]. The object of a limited right in rem may also be real estate [Szadkowski 2021: Legalis/el.].

In the light of the above characteristics of limited in rem rights, it should be concluded that the phrase "rights to such real estate" used in the definition of a real estate company should be regarded as a reference by the Polish legislator to limited in rem rights occurring in the legal situation of a given entity. A view confirming this reasoning is the assertion that the content of each limited in rem right is a fragment of the owner's rights [Strzelczyk 2019: Legalis/el.]. Moreover, the catalogue of "rights to such real property" will also include perpetual usufruct, as the perpetual usufructuary also receives certain rights to another person's property which are effective towards third parties [WSA in Kraków, II SA/Kr 752/18].

Moreover, it should be noted that "rights to such real estate" do not include, for example, a lease agreement or a tenancy agreement of real estate. In the case of a lease or tenancy agreement, the lessee or the tenant obtains only the right to use another person's property (and to derive benefits from it in the case of a tenancy agreement) [Grochowski, Królikowska, Strugała 2020: 1010]. It means that in the case of this type of contract, no property effects arise [Jezioro 2021: Legalis/el.]. The lack of any transfer of rights associated with lease or tenancy agreements of real estate means that such agreements cannot be regarded as an element of the catalogue of "rights to such real estate" used in the definition of the real estate company. Moreover, such a view was confirmed by tax authorities in the period before the definition of a real estate company was introduced into the Polish legal system [Director of National Fiscal Information, 0111-KDIB2-1.4010.511.2019.1.BKD]. It should be noted that in some jurisdictions, the scope of the definition of a real estate company is not limited to rights connected with real estate. For example, in Spanish law, when determining the status of a real estate company, also machinery, equipment, devices, installations fixed to the ground are taken into account [Hauessler 2010: 76].

In the case of entities other than those commencing their activities in a given tax year, on the part of such an entity, at the same time at least 50% of the balance sheet value of the assets held directly or indirectly by the taxpayer must be the balance sheet value of real estate located within the territory of the Republic of Poland or rights to such real estate, and the balance sheet value of this real estate must exceed PLN 10,000,000 or an equivalent amount determined according to the average exchange rate of foreign currencies published by the National Bank of Poland on the last working day preceding the last day of the tax year preceding the tax year or the financial year, respectively. This move by the Polish legislator has gained approbation in the doctrine of Polish tax law, as it allows taxpayers to be relieved of the need to carry out a valuation of the company's assets each time in order to establish its status as a real estate company [Gajewski 2022: 85].

Apart from this condition, on the part of the taxpayer, in order to be a real estate company, one more condition must be fulfilled, namely, in the year preceding the tax year or the financial year respectively, tax revenue, and if the real estate company is not a taxpayer of income tax - revenue disclosed in the net financial result, from lease, sublease, tenancy, subtenancy, leasing and other agreements of a similar nature or from the transfer of ownership, the subject of which is real estate or real estate rights located in the territory of the Republic of Poland, and from shares in other real estate companies, lease, sublease, tenancy, subtenancy, leasing and other similar agreements or transfers of ownership which involve real estate or rights to real estate located on the territory of the Republic of Poland, and interests in other real estate companies, constituted at least 60% of the total tax revenue or revenue recognised in the net financial result, respectively.

On the basis of the definition of a real estate company as an entity other than a starting company, the main problem may be the understanding of the phrase "other contracts of similar nature". It should be assumed, however, that this refers to any type of agreement where one party obtains only the right to use a given asset, without transferring the ownership right or other rights to this asset, as is the case with lease, sublease, tenancy, subtenancy and leasing agreements indicated expressis verbis in the text of the provision. Moreover, it should be pointed out that the fact that the legislator compared a leasing agreement to a tenancy agreement and a rental agreement is not accidental, since in the case of a leasing agreement, the ownership right is transferred, as a rule, upon termination of the agreement [Grochowski, Królikowska, Strugała 2020: 976].

5. Conclusion

Adopting, for the purposes of application of particular Double Taxation Conventions, the definition of immovable property appropriate for the country in which the property is located is an expression of legal security and certainty by the Contracting States. Thanks to such a move, taxpayers are able to predict the legal consequences of their actions, taking into account the provisions of the regulations of a given state with regard to real estate, thus the realities of economic turnover functioning in a given state are also preserved. Despite this, the definition of real estate under Polish civil law is characterised by an insufficient degree of specificity, which makes it difficult to apply these regulations under the tax law. The very degree of connection with the land affects the possible classification of a given building as real property, which violates the principle of definiteness, as it is not a provision of law, but a technical circumstance that causes recognition of something as real property.

Moreover, the provisions of double taxation conventions that include real estate clauses are the result of the Contracting States exercising their taxing authority, as they can obtain additional budgetary revenue from the sale of shares of companies that use real estate located in that country in their business activity. The use of immovable property in the course of economic activity is also connected with being subject to other regulations of the State in which the property is located and with the possibility of benefiting from legal protection provided for in that State. The immovable property clause shall in such cases constitute a form of compensation to the State in which the immovable property is located for the provision of legal protection, including legal protection of the transaction itself.

However, the current definition of a real estate company introduced into the Polish legal order infringes the principle of legal determinacy and the principle of legal security. Taxpayers are unable to precisely determine the criteria affecting their legal-tax situation. The status of a real estate company entails certain obligations under the Personal Income Tax Act and the Corporate Income Tax Act. It means that the provision regulating the premises for the status of a real estate company should be characterised by a high degree of precision, because an inappropriate determination of the status of a real estate company may result in the lack of fulfilment of certain obligations related to this status.

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