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## **FISCAL POLICY AND URBAN GROWTH CHALLENGES: U.S. PERSPECTIVES ON PROPERTY TAX REFORM IN WARSAW**

### **1. INTRODUCTION**

This Article was written as part of a series of scholarly works generated from the fascinating and insightful sessions of *Study Space VIII* at the University of Warsaw, organized by the George State University College of Law's Center for the Comparative Study of Metropolitan Growth. The focus of the conference, like that of other Study Space programs prior to it, was to engage with policy makers, government and legal scholars, urban designers, and planning professionals in an intensive study of how a particular city or municipality has grown, developed, and adapted to the ever-changing and expanding roles of the metropolis. Interestingly, this year's conference focused on the experience of Warsaw, a city known in the eighteenth and nineteenth centuries as the Paris of the East but that was later destroyed almost entirely by the German Nazi government during World War II<sup>1</sup>. Under Soviet rule, and through the herculean efforts of the Polish people, Warsaw was rebuilt brick by brick back into the beautiful and historic baroque city that exists today<sup>2</sup>. This tremendous undertaking has been lauded by historians and planners alike as a grand achievement<sup>3</sup>, and despite its relatively recent construction, the Old Town of the city enjoys the status of being a UNESCO World Heritage Site<sup>4</sup>.

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<sup>1</sup> D. Crowley, *People's Warsaw / Popular Warsaw*, Journal of Design History 1997, No. 2, p. 10.

<sup>2</sup> A. M. Tung, *Preserving the World's Great Cities: The Destruction and Renewal of the Historic Metropolis*, New York NY 2002, p. 80.

<sup>3</sup> *Ibidem*, p. 8 ("One of the unexpected phenomena of World War II was that in cities subject to bombardment, planners recognized the inadvertent opening of a unique possibility for advantageously restructuring the metropolis").

<sup>4</sup> UNESCO: *Historic Centre of Warsaw*, at <http://whc.unesco.org/en/list/30> (visited July 1, 2015).

Nevertheless, Warsaw faces a series of urban planning and development challenges<sup>5</sup>. This is due, in part, to the relative economic success Poland, and Warsaw in particular, has experienced over the course of the last several years. With one of the fastest growing economies in central Europe, one of the largest stock exchanges on the continent, and having escaped the 2008 financial crisis relatively unscathed, the country is undergoing a period of notable growth and prosperity<sup>6</sup>. This success is particularly true of the City of Warsaw, the country's political, economic, and cultural hub<sup>7</sup>. But with these successes come the challenges of growth. With a ballooning population, increasing housing needs, new buildings and high-rise towers popping up all over downtown, and much of the labor force needing to commute into the city center for work, urban planning and development has been a major focus for government leaders, academics, and policy advocates<sup>8</sup>. Indeed, although the city center, with its baroque palaces, reliable mass transit, and picturesque squares, is reasonably able to mask its growth problems, the nearby Praga district that lies a mere several minute walk from the Royal Castle in the middle of the Old Town suffers from dilapidated buildings, regularly struggles with crime, and until fairly recently even lacked many basic utilities<sup>9</sup>.

What lies at the heart of the Warsaw metropolitan area's urban planning problems is a perhaps justifiable aversion to centralization. Under the command and control economy of the Soviet Union that dominated Poland's political and economic life for so many years, virtually all power was concentrated in a central administration<sup>10</sup>. It was this centralized and monolithic bureaucracy – alongside the dispensing with private property rights – that made the reconstruction of Warsaw, completed in a mere six years, a relative success in the eyes of many<sup>11</sup>. But what has resulted in contemporary times is a strong sense of municipal autonomy. Individual local governments that surround and comprise the greater Warsaw

<sup>5</sup> G. Gorzelak, M. Smetkowski, *Warsaw as a Metropolis – Success and Missed Opportunities*, Regional Science Policy & Practice 2011, pp. 38–42.

<sup>6</sup> S. Faris, *How Poland Became Europe's Most Dynamic Economy*, Bloomberg Business, November 27, 2013; J. Feffer, *Reinventing Republicanism in Poland*, Lobelog, April 17, 2015.

<sup>7</sup> See G. Gorzelak, M. Smetkowski, *Warsaw as a Metropolis...*, pp. 38–42.

<sup>8</sup> *Ibidem*, p. 4 (“The city is still lacking land-use plans that would control and influence the location of major private investment projects. Only 16 percent of the city area is covered by master plans. Urbanistic chaos and uncontrolled investment are the results. In several major projects financed from foreign sources have been located without related public investment, leading to severe malfunctioning of the urban space and aesthetic contrasts in the very city centre”).

<sup>9</sup> See generally T. Saltzman, *The Crumbling Beauty of Warsaw's Praga District*, The Globe and Mail, November 21, 2010, at <http://www.theglobeandmail.com/life/travel/destinations/the-crumbling-beauty-of-warsaws-praga-district/article571562/>.

<sup>10</sup> See N. Davies, *God's Playground: A History of Poland*, Vol. 2, New York NY 2005, pp. 539–643.

<sup>11</sup> S. Dziewulski, S. Jankowski, *The Reconstruction of Warsaw*, The Town Planning Review 1957, No. 28, pp. 209–221.

metropolitan area have historically shown very little ability to cooperate and coordinate urban planning strategies and initiatives<sup>12</sup>. This is particularly problematic since truly effective planning involves a variety of services and infrastructure regimes that cross municipal borders and require an ongoing and interlocking relationship between various governmental entities. This is especially true since the high cost of housing has pushed many Warsawians into the suburbs, while the jobs and major industries remain located in or near the central city<sup>13</sup>.

But as with all politics, it is important to follow the money. What projects move forward and with whom such initiatives are undertaken is often dictated by the size of the purse and the hand holding its strings. In this Article, I argue that one of the chief impediments to effective urban and growth planning in the Warsaw area comes from Poland's laws relative to municipal finances – specifically those related to real property taxation. Although real property taxation is an important source of revenue for local governments in Poland, municipalities have surprisingly little control or autonomy over them. Indeed, although local governments reap the benefits of property taxation and administer its collection, the processes by which these taxes are assessed and the rate at which they are set is entirely dictated by the national government<sup>14</sup>. This, combined with a system that bases tax liability on parcel size rather than parcel value and restricts the types of local government entities that enjoy property taxing powers, has resulted in a financial structure that leaves little incentive for cooperation and almost no flexibility or ability to respond to changing needs<sup>15</sup>.

This Article argues for a limited reformation of Poland's property tax system as a way to build better planning capacity between local governments through the adoption of the special taxing district device found in the United States (U.S.). Part 1 gives an overview of the local government structure in Poland, as well as how municipal finances more broadly and property taxation more narrowly are designed. Part 2 describes the U.S. system of real property taxation, including a brief discussion of the U.S. governmental hierarchy. Part 3 identifies two major deficiencies in Polish real property taxation and how they do harm to effective urban and growth planning in Warsaw. Lastly, this Part concludes by suggesting that the U.S. special taxing district might offer a real property tax-related model that could be helpful in remedying Warsaw's urban planning difficulties when it comes to cross-municipal cooperation.

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<sup>12</sup> See J. Feffer, *Reinventing Republicanism...*, pp. 2–5.

<sup>13</sup> S. Tsenkova, *The Social Housing Sector in Prague and Warsaw: Trends and Future Prospects*, *GeoJournal* 2014, No. 79, pp. 433–447.

<sup>14</sup> G. Liszewski, *Evolution of the Rules Pertaining to the Issuing of 'Official' Interpretations of Tax Laws in Poland*, n. 12, *Studies in Logic, Grammar and Rhetoric* 2013, No. 33, p. 46.

<sup>15</sup> See *infra* Part 4 and accompanying discussion.

## 2. REAL PROPERTY TAXATION IN POLAND: AN OVERVIEW

During the Soviet period, local government rule was non-existent, as all power was concentrated in the centralized bureaucracy. However, starting in 1990 and then continuing through 1999, the gradual creation of municipal entities and the loosening of financial regulations heralded local government's arrival in Poland<sup>16</sup>. Alongside these reforms fiscal powers were accorded to local governments, although in quite a limited fashion. The following sections on the Polish local government structure and how municipal entities are financed provides key insights into Warsaw's larger planning and development challenges.

### 2.1. POLISH GOVERNMENTAL STRUCTURE

In Poland the government structure is broken down into three tiers. There are 2,500 municipalities, 315 counties (65 of which are actually cities), and 16 regions<sup>17</sup>. Of these, only municipalities are actually designated in the Polish constitution, with the others being the subject of individual legislation. As noted by comparative local government scholar Pawel Swianiewicz, regional, county, and municipal governments hardly ever cooperate in the delivery of public services, and the regulations imposed by the national government are so strict that "local government's role is to a huge extent reduced to being an agent of central government and implementing central policies"<sup>18</sup>. The local governments nominally coordinate efforts in the realm of economic development, but since such endeavors are often tied to infrastructure and other capital incentives, efforts can leave much to be desired.

Municipalities are perhaps the most important of the three tiers. They are charged with delivering a wide array of public services, including water supply, sewage treatment, lighting, public transportation, waste disposal, local roads, most public education, housing, a host of social welfare programs, and, importantly, urban planning and building regulation<sup>19</sup>. While regional governments are nominally charged with coordination and strategic planning, their duties are confined to rail services, main roads, and higher education<sup>20</sup>.

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<sup>16</sup> See P. Swianiewicz, *Local Government Organization and Finance: Poland*, (in:) A. Shah (eds.), *Local Governance in Developing Countries*, Washington D.C. 2006.

<sup>17</sup> *Ibidem*.

<sup>18</sup> See *ibidem*, p. 305.

<sup>19</sup> *Ibidem*, p. 310.

<sup>20</sup> *Ibidem*.

## 2.2. LOCAL GOVERNMENT FINANCE

Local governments generally receive their funding from the national government—about 38% of the national budget goes to local governments<sup>21</sup>. Of the recipient entities, municipalities have the largest budgets, accounting for 77% of all monies allocated to local governments, with 18% going to counties and 5% to regional governments. This is due, in large part, to how big municipalities are in Poland as compared to their counterparts in other European countries<sup>22</sup>.

Although the local government funds are channeled from the national government, their source comes from a revenue sharing of central taxes, national government grants, and local tax revenues<sup>23</sup>. Importantly, of the tiers, only municipalities have the power of taxation, and it is quite limited. The other tiers are financed completely from the central government, despite language in the constitution according them independent taxing authority<sup>24</sup>.

Municipalities collect local taxes related to property, agriculture, vehicles, forests, civil legal activities, legacies and donations, and even dog ownership. Importantly, although the municipality generally collects all of these taxes itself and the local government may decrease the tax rate, the maximum rate is dictated by the national government<sup>25</sup>.

## 2.3. PROPERTY TAXES AND MUNICIPAL REVENUE

Swianiewicz notes that “without a doubt, property tax is by far the most important source of local revenues”<sup>26</sup>. Generally, the tax is paid by the owner on a per square meter-basis, with only a few and financially insignificant number of improvement-related items being based on value. By way of example, as of 2003 Poles paid .51 *złotych* per square meter for residential property and 17.31 *złotych* for commercial buildings<sup>27</sup>. And lastly, unlike natural persons, legal entities that own property are obligated to determine their own property tax liability and remit payment to the government, regardless of whether they received official notification.

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<sup>21</sup> See *ibidem*, p. 308–309. The budgets of cities with county status (larger cities like Warsaw) are comprised of 35.4% from own-source revenues, 13.8% from property taxes, 27.5% from local government shares in central taxes, 23.6% in general grants, and 13.5% in conditional grants. See *ibidem*, p. 315.

<sup>22</sup> See *ibidem* (“Only a few Polish municipalities have populations under 2,000, and none have fewer than 1,000 inhabitants”).

<sup>23</sup> *Ibidem*, p. 312.

<sup>24</sup> See *ibidem* (citing the Article 168 of the Polish Constitution: “territorial self-government units have a right to set rates of local fees and taxes, within limited decided by law”).

<sup>25</sup> *Ibidem*.

<sup>26</sup> See *ibidem*, p. 313.

<sup>27</sup> *Ibidem*.

Similar to the property tax is the agricultural tax paid by farm owners and renters<sup>28</sup>. Although the tax is paid by hectare, other factors such as quality of the soil and economic and environmental variables relative to farming activities also play a part in determining the ultimate tax liability owed to the municipality.

### 3. SUMMARY OF AMERICAN REAL PROPERTY TAXATION

Although it shares some surface-level similarities, the real property tax structure in Poland and the United States is markedly different. Some dissimilarity derives from the divergent federal-state-local government hierarchy that pervades the American governmental landscape, but a significant portion derives from political norms involving competition and specialization among U.S. local governments and their various sub-entities<sup>29</sup>. The following describes the U.S. local government pyramid, how municipal finance is devised, and lastly, explains the special taxing district model.

#### 3.1. US LOCAL GOVERNMENT STRUCTURE

The United States ascribes to a federal system whereby national and state governments share power<sup>30</sup>. The power of the states is considered plenary; it is not constrained by anything other than what is in the applicable state constitution and, by virtue of the supremacy clause, what is contained in the U.S. constitution<sup>31</sup>. The federal government, however, is a government of limited authority; it only has those powers delegated to it by the U.S. constitution<sup>32</sup>.

Within the ambit of the states comes the role of local governments<sup>33</sup>. As early American colonies had little actual government structure other than the involvement of trading companies and the general sovereignty of the British monarchy,

<sup>28</sup> See *ibidem* (“A farm is defined as an area larger than one hectare that is used as arable land, that contains a pond, or that contains buildings used for farming activity, [regardless of whether cultivated]”).

<sup>29</sup> See generally C. K. Odinet, *Fairness, Equity, and A Level Playing Field: Development Goals for the Resilient City*, Idaho L. Rev. 2014, No. 50, p. 217.

<sup>30</sup> A. L. LaCroix, *The Ideological Origins of American Federalism*, Cambridge MA 2011.

<sup>31</sup> See generally J. Martinez, *Nature and Scope of Local Government Powers*, Local Government Law 2015, No. 2.

<sup>32</sup> P. M. Garry, *Liberty Through Limits: The Bill of Rights as Limited Government Provisions*, SMU L. Rev. 2009, No. 62, pp. 1745, 1747.

<sup>33</sup> Local governments are said to operate under *Dillon's Rule*, which is a jurisprudential doctrine stating that local governments have no power except that which is given to them by their state legislature or constitution. See *Hunter v. Pittsburgh*, 207 U.S. 161 (1907)

settlers began to form their own local governing entities<sup>34</sup>. Since that time, local government structures have become much more formalized and sophisticated. Under the U.S. constitution, rather than having an inherent right to self-government at the local level, as is contained in the Polish constitution and that of other countries, the creation and allocation of powers, rights, and duties of local governments is delegated to the states<sup>35</sup>.

Local government in America operates at two levels — counties and then within those counties various municipalities, such as cities, towns, and villages<sup>36</sup>. Generally speaking, the residents of these local government areas directly elect their own councils and sometimes mayors or other executive officials. However, the powers accorded to each level vary from state to state, with some counties being very weak and cities being very strong (or vice-versa), and with some having a combined county-municipality form of government<sup>37</sup>. The allocation of specific functions is equally diverse, with some counties being in charge of public education, roads, and sewage, and in other places with such activities being shifted to cities.

### 3.2. LOCAL GOVERNMENT FINANCE

In the United States, local government funds are chiefly derived from local sources<sup>38</sup>. These include taxes levied on personal and real property, sales, income, severance, and gifts and estates, as well as specific user fees<sup>39</sup>.

The actual power of local governments — both municipalities and counties — to tax is often restricted by state and federal constitutional limitations. These include restrictions on the type of taxes that can be enacted, the rate at which they are imposed, and the uses for which they can be made<sup>40</sup>. However, despite these restrictions, most commentators say the propensity of American courts to uphold taxing laws has resulted in giving local governments a relative free hand<sup>41</sup>.

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<sup>34</sup> See *The Colonial Government: Foundations of American Government*, at <http://www.ushistory.org/gov/2a.asp> (visited July 1, 2015).

<sup>35</sup> See J. Martinez, *Nature and Scope*...

<sup>36</sup> E. McQuillin, *Nature and Kinds of Municipal Corporations*, McQuillin Mun. Corp. 2015, § 2:48 (Many of these names are similar across international audiences, and jurisdictions in the U.S. vary on what type of local government qualifies as each).

<sup>37</sup> See generally D. R. Mandelker, D. C. Netsch, P. W. Salsich, J. Welch Wegner, J. C. Griffith, *State and Local Government in a Federal System*, Dayton OH 2010.

<sup>38</sup> W. Hellerstein, K. J. Stark, J. A. Swain, J. M. Youngman, *State and Local Taxation: Cases and Materials 4–10*, New York NY 2009.

<sup>39</sup> See *ibidem* (discussing the diverse mixture of tax sources at the local and state level).

<sup>40</sup> See *ibidem*, pp. 11–13.

<sup>41</sup> See S. W. Mazza, T. A. Kaye, *Restricting the Legislative Power to Tax in the United States*, Am. J. Comp. L. 2006, No. 54, p. 641.



Historically speaking, real property taxation has been a major source of local government revenue in the U.S.<sup>42</sup>. It is, for the most part, uniformly based on the value of the property and its improvements, rather than the actual size of the land at issue<sup>43</sup>. Because of this, property taxes are often called *ad valorem* taxes. They are collected annually and, at least in theory, the property is also revalued from year-to-year, generally by the local government that benefits from the tax, through a variety of reassessment approaches<sup>44</sup>.

### 3.3. SPECIAL TAXING DISTRICTS

A distinctive feature of American real property taxation is the use of special-purpose local government sub-entities known as “special taxing districts”, or just “special districts”<sup>45</sup>. These entities serve specific functions such as the provision of public education, water distribution, fire safety, or sewer services. They charge assessments against owners of parcels of property within the district, but because the funds so generated provide a “special benefit” to those property owners, they are not legally considered a tax<sup>46</sup>. Nevertheless, they are essentially offspring of the property tax; the assessments are generally a special line item on the owner’s annual property tax bill.

The funds generated by these districts are used to fund infrastructure projects and services within the district such as sewers, parking facilities, recreational areas, and drainage improvements, among others<sup>47</sup>. Rather than being assessed on a reoccurring basis, special district assessments often only last as long as is needed to retire the debt for a specific project or set of projects. The method of assessment is usually more flexible and can be based on value, land size, benefited area, or some combination thereof<sup>48</sup>. And importantly, they are often exempt from the legal limitations that states and the federal constitution place on property taxes more generally<sup>49</sup>.

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<sup>42</sup> See G. W. Fisher, *History of Property Taxes in the United States*, EH.Net Encyclopedia, 2002, at <http://eh.net/encyclopedia/history-of-property-taxes-in-the-united-states/>; see also G. W. Fisher, *The Worst Tax? A History of the Property Tax in America*, Lawrence KS 1996.

<sup>43</sup> See W. Hellerstein, K. J. Stark, J. A. Swain, J. M. Youngman, *State and Local Taxation*..., pp. 919–933.

<sup>44</sup> See *ibidem*.

<sup>45</sup> See C. K. Odinet, *Super-Liens to the Rescue? A Case Against Special Districts in Real Estate Finance*, Wash. & Lee L. Rev. 2015, No. 72, pp. 707, 737–745.

<sup>46</sup> M. D. Geldfand, J. A. Mintz, P. Salsich, Jr., *State and Local Taxation and Finance*, Eagan MN 2007, p. 105 (“The characteristics that distinguish special assessments from taxes are the one-time nature of the assessments, their application only to specially benefited property, and the requirement that their level be correlated with the benefit received”).

<sup>47</sup> See C. K. Odinet, *Super-Liens to the Rescue?*..., p. 738.

<sup>48</sup> M. D. Geldfand, J. A. Mintz, P. Salsich, Jr., *State and Local Taxation*..., pp. 112–114.

<sup>49</sup> C. K. Odinet, *Super-Liens to the Rescue?*..., pp. 739–740.



Lastly, a special board or commission governs special taxing districts, of which the members are appointed by the local government's council or a chief executive, or even by direct election of the property owners within the district's boundaries<sup>50</sup>. The board has the power to set the policies of the district, authorize specific infrastructure projects, direct the imposition of assessments according to law, and issue debt instruments – such as tax-exempt municipal bonds – to finance their initiatives<sup>51</sup>. Moreover, the special district's versatility and usefulness has certainly been recognized in the United States<sup>52</sup>. There are roughly as many special taxing districts as there are counties, towns, and cities across the United States combined<sup>53</sup>.

#### 4. PROPERTY TAXATION REFORM: PROBLEMS AND POSSIBILITIES FOR WARSAW

The Polish property tax system suffers from a number of structural weaknesses that render it a rather poor tool for local governments seeking to address the needs of the country's ever-growing economy, and specifically the urban planning and growth control goals of Warsaw and its neighboring municipalities. While property taxes are extremely important in the constellation of revenue sources accorded to Polish local governments, the strict and unbending limitations imposed on these governmental units with regard to fiscal policy-making are overly burdensome<sup>54</sup>.

##### 4.1. PROBLEM: LACK OF MUNICIPAL FLEXIBILITY AND FISCAL AUTONOMY

The chief problem with the Polish property tax system is that it offers no autonomy to the country's municipalities<sup>55</sup>. The rates at which taxes are assessed are entirely dependent on the whims of the national government. Therefore, the minister of finance and the Parliament make general determinations about what

<sup>50</sup> K. A. Stahl, *Neighborhood Empowerment and the Future of the City*, U. Pa. L. Rev. 2013, No. 161, pp. 939, 941–946.

<sup>51</sup> J. C. Griffith, *Special Tax Districts to Finance Residential Infrastructure*, Urb. Law 2007, No. 39, pp. 959, 979.

<sup>52</sup> S. R. Miller, *Legal Neighborhoods*, Harv. Envtl. L. Rev. 2013, No. 37, pp. 105, 143–156.

<sup>53</sup> U.S. Census Bureau, *2012 Census of Governments: Organization Component Estimates tbl.2*, at <http://www.census.gov//govs/cog2012>.

<sup>54</sup> See P. Swianiewicz, *Local Government Organization...*, pp. 319–322.

<sup>55</sup> For a graphical depiction of total tax revenues in Poland by source, see *The Tax System of Poland*, at [http://www.finance.mf.gov.pl/documents/766655/936176/20111026\\_tax\\_system\\_of\\_Poland.pdf](http://www.finance.mf.gov.pl/documents/766655/936176/20111026_tax_system_of_Poland.pdf) (visited July 2, 2015).

is proper for a given jurisdiction even though they might have very little knowledge about the actual “needs-on-the-ground” in that particular municipality or the pressing concerns of its citizenry<sup>56</sup>. This naturally produces a system whereby local governments in Poland cannot adapt and respond to changing circumstances and public demands because their major source of self-generated revenue is tied up in the hands of powers that are quite removed from the place where the needs are most felt<sup>57</sup>.

Further, the lack of a direct correlation between local government decision-making and the level of property taxes undermines public accountability. The uniform process of assessing property taxes is also problematic. Rather than allowing for a system that measures the amount of the tax based on the value of the property, the mere size of the land determines the liability. Property in the middle of Old Town Warsaw and property in the middle of a rural field, as long as they are of equal size, are assessed identically<sup>58</sup>. While value-based property taxation has its critics<sup>59</sup>, a system that allows for variation or at least a mix of the two approaches would provide local governments with better options for customization based on place and need.

#### 4.2. PROBLEM: LACK OF MUNICIPAL COOPERATION IN URBAN PLANNING

Another problem, related to the want of a flexible tool for property taxation, is raised in connection with the lack of coordination between Warsaw and its surrounding municipalities<sup>60</sup>. Related to historical aversions to centralized planning, neighboring local governmental entities rarely work together on infrastructure projects. This is due, in part, to the fact that the tier of local government charged with wide-range planning – the regional governments – are excluded from the

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<sup>56</sup> A. Kopańska, T. Levitas, *The Regulation and Development of the Subsovereign Debt Market in Poland: 1993–2002*, (in:) P. Swianiewicz (eds.), *Local Government Borrowing: Risks and Rewards*, Budapest 2004, p. 33 (“Municipalities, unlike counties and regions, have the right to impose “own taxes” on real estate, agricultural and forestry activities, small businesses (an octroi) and dogs. With the exception of the tax on dogs, however, the Ministry of Finance determines both the base and maximum rates of these taxes”).

<sup>57</sup> See *ibidem*, p. 34 (“[M]unicipalities have no true own taxes of any significance and their capacity to generate additional revenues is based primarily on the sale or rental of municipal property”).

<sup>58</sup> See *ibidem*, p. 319–320.

<sup>59</sup> See, e.g., D. Shanske, *Revitalizing Local Political Economy Through Modernizing the Property Tax*, Tax L. Rev. 2015, No. 68, p. 143.

<sup>60</sup> A. Kopańska, T. Levitas, *The Regulation and Development...*, pp. 32–33 (“[T]he establishment of cities with county rights has placed many rural citizens in jurisdictions that lack the infrastructure necessary to perform county functions. This has created a variety of transportation problems and has led to some disputes between local governments about how the costs of certain services should be paid for”).

function of providing for local roads, sewer, drainage, and related improvements. These services and public goods are the backbone of urban planning<sup>61</sup>, but are exclusively the province of municipalities. Since municipalities guard their individualism and autonomy so fiercely, meetings of local leaders often conclude with only pledges to meet yet again, with no real outcomes.

Related to the issue of property taxation and local government revenues, a coalition of 40 municipalities in the Warsaw metropolitan area recently banned together for the purpose of investing in infrastructure projects. However, it is notable that the funds for these endeavors are derived from European Union grants. Indeed, many of the notable infrastructure projects in and around Warsaw in recent years have been the result of EU funding<sup>62</sup>. But even with “free” money on the table, local Warsaw officials note that building the coalition has been difficult and time consuming as local leaders are weary of one another and often prefer to work in insolation. One can easily imagine that, were the various neighboring local governments made to come up with the money themselves for these cross-municipal infrastructure projects, such coalitions might rarely be formed.

#### 4.3. POSSIBLE SOLUTION: PLANNING AND DEVELOPMENT THROUGH SPECIAL DISTRICTS

In light of these issues of coordinated urban planning and fiscal autonomy, the Warsaw metropolitan area, and perhaps Poland more broadly, could benefit from a limited adoption of the special taxing district system<sup>63</sup>. These districts provide a way for coordination across large geographic areas to occur, without necessarily having to create a new general-purpose local government. Moreover, these districts are meant to fulfill a specific purpose, rather than address the broader needs of an entire community. And, importantly, they generate their own revenues through an assessment that is separate and apart from general property taxes.

The special taxing district financing device addresses a number of concerns that Poles care about. First, it delegates only a limited amount of authority to a centralized entity. The municipalities that would form the special district could agree in the enabling legislation that the district would only undertake certain urban projects or planning functions as agreed upon. This might include public

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<sup>61</sup> R. Zimmerman, *Making Infrastructure Competitive in an Urban World*, Annals Am. Acad. Pol. & Soc. Sci. 2009, p. 226.

<sup>62</sup> *EU Funding Released for Warsaw Metro*, PMR, September 26, 2011; *EU Funding: Billions for Science*, The Warsaw Voice, December 5, 2007.

<sup>63</sup> Since Polish law does not seem to give recognition to the concept of the special taxing district, new legislation would likely be needed to authorize such a device. This would assumedly be accomplished at the Parliament level.

transportation systems and utility infrastructure projects that cross over the various municipal boundary lines<sup>64</sup>.

The governing bodies of the various municipalities could select the governing board of the district, the locations of which would comprise the geographic area of the district itself. In this way, each municipality would have its own representative to advocate its interests. If properly selected and structured, it might be possible to somewhat insulate the special district's board from being overly influenced by the parochial politics that are so bound-up in popularly elected councils.

Lastly, the district would be able, with limitations, to generate its own revenue to finance its activities by charging assessments against the property within the district. The ability to tax and generate a steady stream of revenue is essential to local government borrowing, which has become the major method of financing capital improvements in Poland<sup>65</sup>. By 2003 Polish local government debt reached 4.3 billion, up from essentially zero in the early 1990s<sup>66</sup>. Further, by limiting the assessments to only those properties within the district, there would be a better correlation between the benefits accorded and the charges imposed, as well as a better connection between local fiscal decision-making and the needs of the locale. The method of assessment of the land could, like many special districts in the United States, be comprised of a mixture of different techniques that include value, size, and other economic or environmental factors as is somewhat done in Poland for the agricultural property tax.

## 5. CONCLUSION

Weak fiscal policies and a lack of coordinated urban and growth planning among the municipalities comprising the larger Warsaw metropolitan area are strongly connected. The historical prejudice against centralization that is superimposed over the fragmented nature of local government and its functions in Poland make effective planning and coordination very difficult. The U.S. special taxing district provides a tool whereby municipalities would need only to concede a very specific and temporally limited set of functions in order to achieve broader planning goals. Also, the district's ability to generate funds through property assessments provides a mechanism for these much needed infrastructure projects to be financed and made possible with everyone feeling like they have "skin in the game". While special taxing districts might show some promise for

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<sup>64</sup> See J. C. Griffith, *Regional Governance Reconsidered*, J.L. & Pol. 2005, No. 21, p. 505 (for a discussion of regional infrastructure governance structures in Vancouver, Canada).

<sup>65</sup> A. Kopańska, T. Levitas, *The Regulation and Development...*, p. 29.

<sup>66</sup> *Ibidem*.

Warsaw's urban planning challenges and its ability to respond to them, they also have a number of drawbacks<sup>67</sup>. Increased authority to local government entities can result in a greater disparity between geographic areas. While competition between municipalities or regions can be healthy and good for economic growth, it can also produce inequities and social harms such as levels of wealth, education, health, and quality of life. Similarly, despite best efforts, parochialism is difficult if not impossible to avoid, so some level of self-interest will inevitably be internalized into the special district board's decision-making. However, as discussed above, there are a number of positives to using this form of special-purpose local government device and, despite its negatives, the greater Warsaw metropolitan area may nonetheless find it a helpful tool. A special taxing district for urban planning and infrastructure could be created to provide a coordinated form of cross-municipal decision-making and a reliable device for financing much needed infrastructure and related projects.

## **FISCAL POLICY AND URBAN GROWTH CHALLENGES: U.S. PERSPECTIVES ON PROPERTY TAX REFORM IN WARSAW**

### **Summary**

In a meteoritic rise from the dark days of World War II and Soviet hegemony, Warsaw has experienced an economic renaissance in recent years, boasting one of the largest stock exchanges in Europe and one of the fastest growing economies on the continent. However, the city and its surrounding areas suffer from a serious lack of comprehensive urban growth strategies, with only 16% of the city being master planned despite increasing housing, transportation, and infrastructure needs. This absence, combined with a general public aversion to centralized decision-making and weak local government fiscal policies – particularly with regard to the laws governing the setting and administration of real property taxation – has caused and will likely continue to exacerbate Warsaw's urban growth problems. This Article explores and assesses these various challenges and their causes and recommends the adoption of the U.S. special taxing district model as one vehicle that could be used to facilitate a more effective structure for urban and growth planning in the Warsaw metropolitan area.

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<sup>67</sup> See, e.g., R. Florida, *Rise of the Fragmented City*, The Atlantic, April 28, 2015; see also L. Reynolds, *Taxes, Fees, Assessments, and the "Get What You Pay For" Model of Local Government*, Fla. L. Rev. 2004, No. 56, p. 373; L. Reynolds, *Local Governments and Regional Governance*, Urb. Law.2007, No. 39, p. 483; L. Reynolds, *Intergovernmental Cooperation, Metropolitan Equity, and the New Regionalism*, Wash. L. Rev. 2003, No. 78, p. 93.

## **POLITYKA FISKALNA I WYZWANIA DLA ROZWOJU URBANIZACYJNEGO: REFORMA PODATKU OD NIERUCHOMOŚCI W WARSZAWIE Z PERSPEKTYWY AMERYKAŃSKIEJ**

### **Streszczenie**

Warszawa doświadczyła odrodzenia gospodarczego po latach sowieckiej hegemonii i tragicznych wydarzeniach II wojny światowej. Stolica Polski ma dziś jedną z największych giełd w Europie i jest jedną z najszybciej rozwijających się gospodarek na kontynencie. Jednak Warszawę i jej okolice dotyka poważny brak kompleksowej strategii rozwoju – tylko 16% obszaru metropolii jest objęte planem zagospodarowania przestrzennego pomimo rosnącego zapotrzebowania na mieszkania, transport i infrastrukturę. Te braki w połączeniu z ogólną niechęcią społeczeństwa do odgórnego sposobu podejmowania decyzji i słabej polityki podatkowej samorządów lokalnych, zwłaszcza w odniesieniu do opodatkowania nieruchomości, spowodowały i prawdopodobnie nadal będą tworzyć problemy rozwojowe miasta. W artykule autor poddaje analizie i dokonuje oceny różnych wyzwań dla Warszawy, zachęcając do rozważenia przyjęcia amerykańskiego modelu podatkowego dla samorządów terytorialnych w celu stworzenia lepszych warunków do rozwoju urbanistycznego aglomeracji warszawskiej.

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### KEYWORDS

Warsaw, urban development; planning, special districts, local government, real estate, Study Space, economic development

### SŁOWA KLUCZOWE

Warszawa, rozwój obszarów miejskich; planowanie, obszary specjalne, samorząd, rozwój gospodarczy