

Real estate tax



report
2019

SETTLING IT RIGHT, FROM THE GROUND UP

ayming



business
performance
consulting



Ayming is an international consulting group, which provides Business Consulting Services in 16 countries in Europe, Asia and North America. Ayming Polska supports companies to optimally conduct their operational activity and to achieve better financial results, by offering professional consulting in two areas:

- **Finance & Innovation Performance**
(real estate tax, excise tax on electrical energy, VAT tax, research and development reliefs, grants)
- **HR Performance**
(accident premium, payments to the PFRON – State Fund for Disabled Persons)

Ayming has been supporting entrepreneurs to verify the soundness of their real estate settlements and was the first company to introduce this service in the Polish market. The company has conducted 2400 projects of this kind in Poland, obtaining 20 mln PLN savings for its clients yearly. Globally this figure is about 20 mln € annually. The services provided by Ayming Polska are certified by ISO 9001: 2015.

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Real estate tax



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Introduction

“ The tax refund amounts may be significant and may improve the financial situation of the company and enable investments into key areas of activity. ”

You are now holding our report, the outcome of our fourteen years of experience in the field of supporting entrepreneurs correctly settle their property tax. Our statistics developed from nearly 2 thousand property tax examinations we have conducted indicate that only 35% businesses in Poland pay the correct amount of this tax. Nearly half of the businesses are eligible for refunding overpaid amounts, going back even as long as 5 years. The tax refund amounts may be significant and improve the financial situation of the company and enable investments into key areas of activity. However, the commonplace belief is that property tax is a second-rate kind of tax – businesses record much higher tax burdens in the VAT and CIT areas.

This report shows that the real estate tax should also be treated as a significant expense of the business. It is particularly important to assess the amounts due correctly, already when planning future investments, such as purchasing land, raising buildings or creating new systems. Thanks to this, businesses can estimate their future spending and avoid overpayments.

The reluctance to reclaim overpaid real estate tax amounts is caused by the fear of hurting the relations with the local authorities of the commune (the Gmina). The commune is both the tax's beneficiary, as well as the tax authority

that sets the rates. It is worth keeping in mind that many communes offer exemptions from property tax, using them as a strategy for growing the local business. The money saved thanks to such tax benefits and thanks to reclaimed overpaid amounts may be used by the businesses to make new investments in the commune or to create new jobs – this is a situation in which both parties gain in the long run.

What are the most frequent reasons why businesses overpay on the property tax? How does each sector settle the tax? What elements must be kept in mind to minimize the risk of wrongful taxation? These and many other questions will be answered by this report.

Magdalena Burzyńska

Managing Director at Ayming Polska



“Without thorough awareness of the tax and construction laws, it may be very difficult to correctly settle the tax.”

Over the past years, we have seen a surge of interest in the real estate tax among entrepreneurs and local tax authorities. It appears that a seemingly insignificant and uncomplicated tax may be a source of significant savings for businesses. This is first of all due to the overpaid amounts that may be recovered, secondly – a diligently conducted verification of the soundness of the real estate tax settlement often enables lowering the tax burdens in the future.

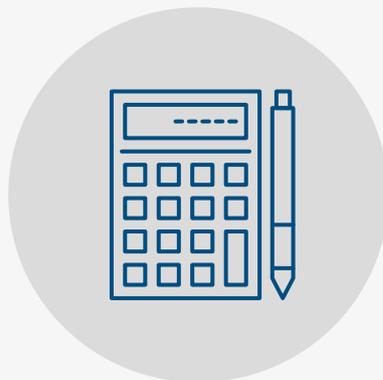
The real estate tax is sometimes problematic for the tax authorities, it is a source of numerous interpretative discrepancies. The law on taxes and local fees has been in place since 1991, whereas its most recent and larger update took place in 2003. Three years later, seemingly small modifications were implemented to this law, which however significantly increased the taxpayers' burdens, among others owners of buildings in a poor technical condition. What is important, real estate tax is often influenced by changes in non-tax regulations, because the law about taxes and local fees refers to such laws as the Construction law, the law in income taxes or even (although not directly) the laws on ports and harbors.

Referring to specialized laws, the equivocality of the regulations and frequently the inconsistency of the verdicts of the administrative courts is what has made it challenging for businesses to properly assess the real estate tax amount that is due. Without thorough awareness of the tax and construction laws, it may be difficult to correctly settle the tax. This report comprehensively outlines the legal complexities related to the property tax and the difficulties that taxpayers are facing.

Agnieszka Hrynkiewicz-Sudnik

Director, Finance & Innovation Performance

5 key facts on the real estate tax in Poland



65%

companies are incorrectly settling their real estate tax



71%

largest taxpayers (over 3 mln PLN in tax annually) overpay in their tax amounts



2478

communes in Poland which makes just as many "local tax systems"



56%

overpaid amounts pertain to the tax categories of "buildings" and "lands", but each sector has its characteristics

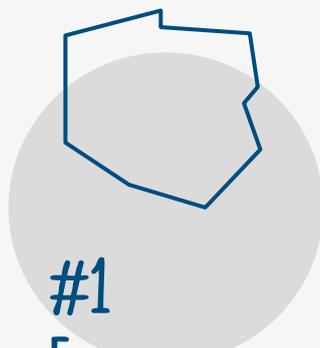


1,6%

the amount by which the maximum real estate tax rate grew in 2019 (vs. 2018)

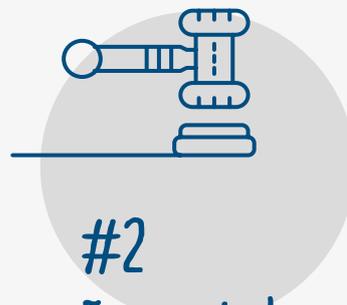


6 key causes of the 6 irregularities



#1 Every commune has different regulations

All of the proceeds from the real estate tax flow to the budget of the commune (the Gmina), which is simultaneously the tax authority and the beneficiary. The communes constitute "independent tax systems" that differ from one another among others with respect to the rates, the tax exemptions, tax return forms and interpretations of the tax code. This is particularly problematic for companies that have properties in multiple locations.



#2 Frequent changes in legal tax regulations

The changes to the regulations most often create an opportunity to verify the payments made thus far, which is one the taxpayer needs to be always updated on them. However, it is not enough to simply monitor the changes in the law about local taxes and fees. It is necessary to know the contents of the specialized acts, which are seemingly unrelated to the real estate tax.



#3

Interpretation discrepancies

The property tax poses an interpretational challenge to the tax payers and the tax authorities alike, which often leads to legal disputes. Therefore, it is essential to continuously follow any changes in the interpretations of the provisions of the tax law and the rulings of the administrative courts.



#4

Dispersed competences

The technical and accounting departments in companies often have divergent approaches to determining the tax base of properties as divided into respective tax categories. One cause for wrongful settlement of the tax is that legal-tax knowledge is not combined with technical expertise.



#5

Confusing of the tax categories

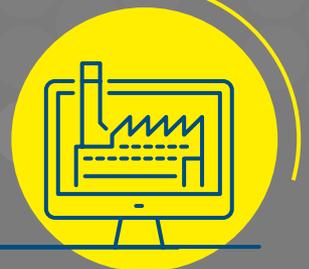
The property tax is paid in three main categories: land, buildings and structures. The tax base for the land and buildings is their surface, whereas in the case of structures, it is their value that is used for determining the tax base. Taxpayers often confuse buildings with structures. Furthermore, plots of land on which no economic activity is being conducted are declared as qualifying under the property tax regardless of how they are actually qualified in the register.



#6

Second-class tax

Financial-accounting departments of businesses tend to focus more on CIT and VAT due to their direct impact on the financial performance of the organization. Property tax is verified annually only with respect to the new tax rate, whereas the actual tax amounts are also dependent on regulatory changes.

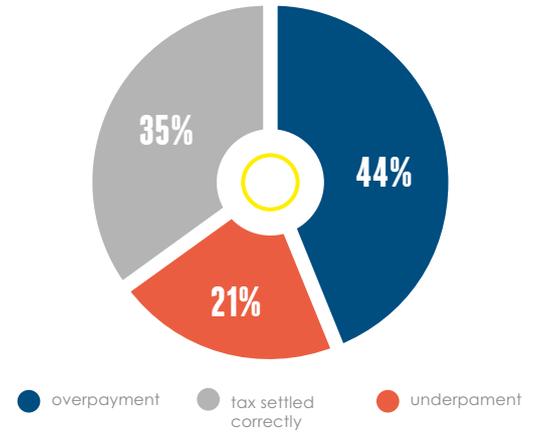


Higher tax, higher chance of overpayment

According to the Ayming Polska analysis, only 35% businesses that pay over 200 thousand PLN property tax annually pay the proper amount of the tax. Nearly half of the companies pay a too high real estate tax, whereas one in five pay too little.

As the analysis' findings suggest, there is a correlation between the tax burden amount and the soundness of the property tax's settlement. The higher the property tax that a company pays, the smaller the chance that they are settling it correctly. As many as 71% of the largest taxpayers are paying more than they should to the commune, whereas 16% should be paying more. On in five businesses paying a property tax amount of 1 to 3 million PLN annually are actually settling it optimally. As it turns out, more than half of the businesses that pay amounts of this size could lower their property tax expenses. Underpayments are identified in one in four businesses on average.

CORRECT SETTLEMENT OF REAL ESTATE TAX IN COMPANIES

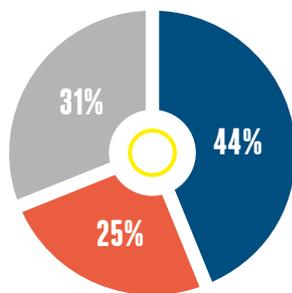


Nearly one in three companies paying from 200 thousand to 1 million PLN annually are settling their property tax correctly. In nearly half of the companies from this group, overpayments of property tax have been identified, whereas underpayments have been recorded in one in four.

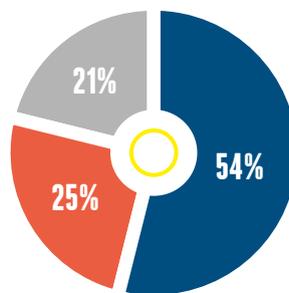


Only 13%
of the largest taxpayers are correctly settling the real estate tax

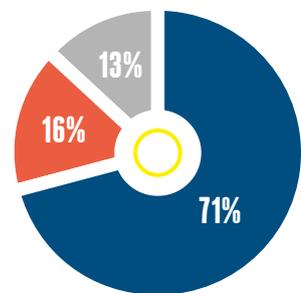
REAL ESTATE TAX AMOUNT AND CORRECT SETTLEMENT



200 ths. PLN – 1 mln PLN



1 – 3 mln PLN



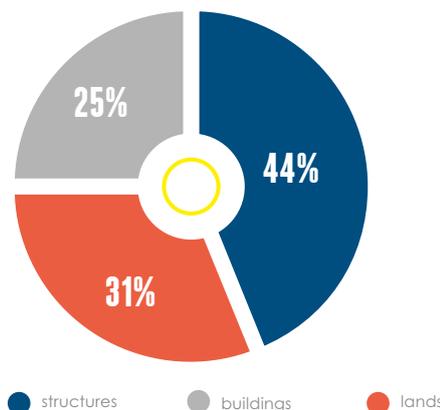
> 3 mln PLN

● overpayment ● tax settled correctly ● underpayment

Where is the source of the overpaid amounts of the tax?

Many businesses have difficulties correctly determining their tax base, which in turn generates overpayments in the property tax. According to the Ayming Polska analysis, companies overpay in each of the three tax categories – lands, buildings and structures. In order to correctly classify the assets, it is necessary to have knowledge of the tax law and the construction law, the court rulings, but also technical expertise enabling to soundly verify the assets in the field.

SHARE OF EACH TAX CATEGORY IN OVERPAYMENTS




Structures

The Ayming Polska analysis indicates that structures are responsible for the largest share (44%) of the overpaid tax amounts in businesses. This is the most problematic of the three tax categories, which is connected to the definition of "structure" outlined in the law on local taxes and fees. It consists of two contradictions and an open listing of examples of such assets. This frequently leads to a misqualification of a structure for tax purposes, therefore to incorrectly establishing the tax amount due and possible overpayment. *"Another issue tied to the definition of the structure is that it does not conform to the dynamically changing economic reality. The presently valid regulations cannot be easily applied to new structures and technical solutions. Correctly using the >>structures<< category requires an individual approach to each asset and a detailed analysis of the technical records"* – comment by Kamila Kesicka, Manager of the Taxes and Fees Department.



Lands

As many as 31% overpayments are due to land being qualified for the wrong tax. Depending on how the land is used, they may fall under the property tax, arable land tax or forest tax. Therefore, it is the companies that need to properly qualify the land on which they are conducting economic activity. Housing development project lands are taxed differently, land purchased for future investments is taxed differently as well, there is also a different tax for agricultural land purchased for the purpose of economic activity.



Buildings

25 of the overpaid tax is a consequence of issues with the correct determination of the building's usable surface area. It needs to be kept in mind that a measure direct, on-site measurement done for the purpose of establishing the property tax due is the only correct source of information on the actual surface area of the taxpayer's assets. Neither the building design, nor usage permits take into consideration the provisions of the local taxes and fees law.



It's essential to know the specificity of one's industry... from the ground up



There is no single company that settles the real estate tax in a perfect, model way, much like there is no single industry that most frequently records overpayments. Only 35% business correctly settle their tax burden. Companies operating in the real estate business are performing the best when it comes to settling their property tax. According to the data analysis, 42% companies are paying the due tax in an optimal way. On the other hand, even

in this sector there are 40% companies with identified overpayments in the property tax. In the commerce sector, 39% have no difficulty paying the right amount of the tax, but the same share of businesses is overpaying.



56%

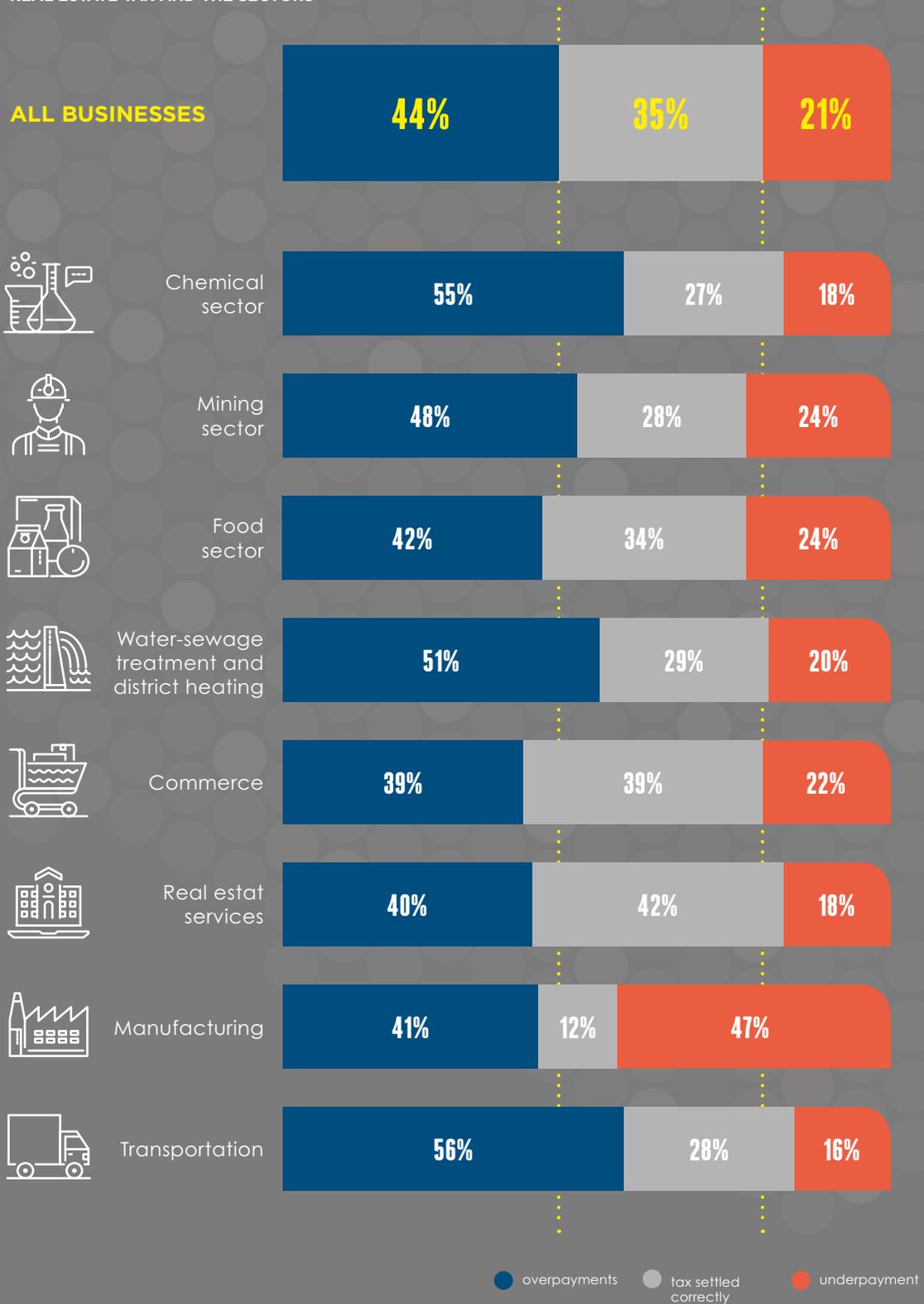
transportation sector companies are overpaying their real estate tax

All of the sectors in discussion are overpaying their property tax amounts, but the largest number of such cases was recorded in the transportation sector, chemical sector, district heating companies, waterworks and sewage sectors. In these industries, over half of the analyzed companies are paying a too high property tax.

On the other hand, underpayments occur most often in the manufacturing industry and apply to 47% businesses. In the other analyzed sectors, the share of companies that paid less than was due ranged around 20%.



REAL ESTATE TAX AND THE SECTORS





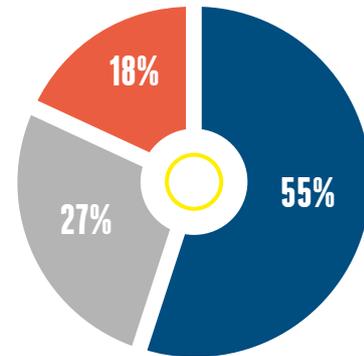
Chemical sector

The distinctive characteristic of chemical business properties is that they have assets of varying ages. On one hand, a significant proportion of their assets are buildings erected in the seventies and sixties of the XXth century, or even older frequently without updated surface area records or any building documentation whatsoever. On the other hand, chemical industry companies use technologically advanced installations that enable using modern production technologies. **The challenge is to qualify such installations to the proper tax category.**

“Companies often qualify installations as a whole as structures. Due to this, the tax is calculated based on value. Whereas in reality, an installation may be comprised of many elements and only some of these should be qualified as structures. This significantly changes the property tax amount that is due” – comment by Magdalena Pietkiewicz, Senior consultant at the Department of Taxes and Fees.

The most frequent property tax irregularities in the chemical industry are caused by **stairwells and elevator shafts being added to the usable surface area of buildings**. It also happens that companies do not separately qualify the usable surface areas of buildings with a height of 1.4m-2.2m - whereas such surface areas fall under a 50% tax rate.

SETTLING THE REAL ESTATE TAX IN THE CHEMICAL SECTOR

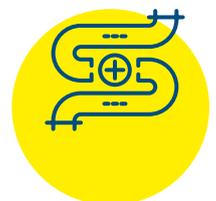


● overpayments ● tax settled correctly ● underpayments

The chemical sector also utilizes warehouse spaces, where finished products that don't require special storing conditions are kept. For this purpose, businesses use **shelters or canopies, which often do not satisfy all the regulatory conditions that would qualify them as buildings**, such as: permanence connected to the land, separation from space via wall barriers, having fundamentals, having a roof. The incorrect classification of such objects is a consequence of the businesses' following outdated regulations, which often leads to overpayments in the property tax.

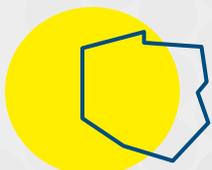
Most frequent irregularities:

- qualifying an installation as a whole as a structure
- including stairwells and elevator shafts into the usable surface areas of buildings
- not singling out the usable surface area of buildings with a clear height of 1.4m-2.2m
- including sheds or canopy-roofing into the “buildings” tax category





Case study – chemical sector



Slaskie region



commune of 10 K residents

ORIGINAL ANNUAL REAL ESTATE TAX AMOUNT



IRREGULARITIES IDENTIFIED

not all assets were taxed; reduced usable surface area of buildings; overestimated declared value of structures

OVERPAYMENTS IDENTIFIED

buildings, structures

UNDERPAYMENTS IDENTIFIED

400 000 PLN in buildings and structures

ANNUAL REAL ESTATE TAX AMOUNT AFTER VERIFICATION



PROJECT LENGTH **1 YEAR***

MAIN CHALLENGE

establishing the correct surface areas of buildings and locations of objects that are to be taxed

RECOVERING OVERPAID AMOUNTS FOR 2013-2018

1 080 000 zł



SAVINGS ACQUIRED IN NEXT FISCAL YEAR

180 000 zł

* Project length - from the analysis, to the conclusion of the proceedings with the tax authority (analysis, on-site inspection, tax proceedings)

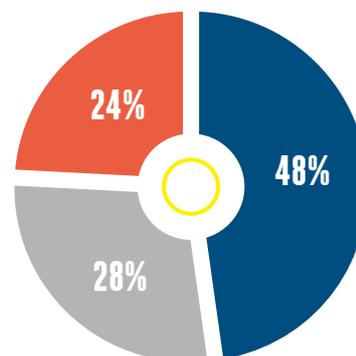


Mining sector

Due to the character of their business, mining companies often own large plots of land. A significant share of the land is usually used for excavation. However, **the land located farther away from the mine area is often not intended for conducting economic activity**. What is required in this case is to verify the source documentation (extracts from the registries of lands and buildings) and the actual state.

The next challenge is the taxation of structures that constitute a part of the assets of the mining company. Based on the ruling of the Constitutional Court of Poland from September 13th, 2011 (signature P33/09) conclusions may be drawn on how to tax structures located in excavation areas. According to the Constitutional Court, **communes are entitled to tax only the part of assets that are in the area of the mine, not the whole value of the excavation areas**.

SETTLING THE REAL ESTATE TAX IN THE MINING SECTOR

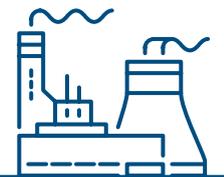


● overpayments ● tax settled correctly ● underpayments



Excavation area

- >> as a surface area within a land property or a rock mass is not a structure
- >> may not be wholly considered a structure as defined by the local taxes and fees law



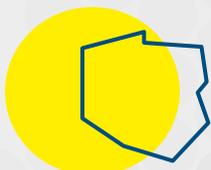
Most frequent irregularities:

- incorrect taxation of lands
- incorrect taxation of structures located within buildings or as a part of excavation





Case study – mining sector



Wielkopolskie region



commune of 6.5 K residents

ORIGINAL ANNUAL REAL ESTATE TAX AMOUNT

IRREGULARITIES IDENTIFIED

OVERPAYMENTS IDENTIFIED

ANNUAL REAL ESTATE TAX AMOUNT AFTER VERIFICATION



inconsistency between the accounting records and actual state in the "buildings" category

lands, buildings, structures



MAIN CHALLENGE

RECOVERING OVERPAID AMOUNTS FOR 2013-2018

SAVINGS ACQUIRED IN NEXT FISCAL YEAR

establishing the correct surface area of lands for conducting economic activity, determining the tax base in the "buildings" and "structures" categories

256 000 zł

42 680 zł



* Project length - from the analysis, to the conclusion of the proceedings with the tax authority (analysis, on-site inspection, tax proceedings)



Food industry

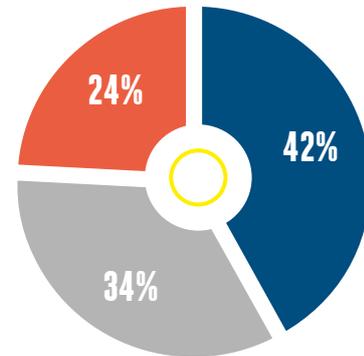
Companies operating in the food industry have large surface areas of undeveloped land, sewage treatment facilities, buildings used for storage (i.e. seed material) or for the activity of special agricultural areas. This diversity of the assets frequently leads to a wrongful qualification of structures to their appropriate tax categories.

Businesses operating in the food industry often have **large swaths of undeveloped lands, on which they are not conducting economic activity, because their investments are only being planned, or because these lands are a greenbelt separating the facility from the nearby residential buildings.** In such cases, the applicable statutory exclusion or tax exemption may be used.

Sometimes businesses have assets that constitute **special-purpose buildings.** These would be utility buildings and buildings used for storing, i.e. seed material. When a company has such assets, they may use preferential tax rules, such as lower rate or tax exemption.

What is also typical for the food industry is that the companies use their own sewage treatment facilities. **The incorrect qualification of individual elements of the sewage treatment facility and their incorrect distinction gives rise to complications,** which in turn lead to an overestimation of the tax base.

SETTLING THE REAL ESTATE TAX IN THE FOOD SECTOR



● overpayments ● tax settled correctly ● underpayments

Such facilities need to be treated individually. In light of the ruling of the Constitutional Court of Poland from December 13th, 2017 (signature act SK 48/15), it is exceptionally significant to thoroughly analyze the actual condition and to refer to the four statutory conditions that constitute the definition of a building, these being:

- permanent attachment to the land,
- separation from space with the use of building walls,
- having fundaments,
- having a roof.

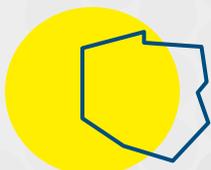


Most frequent irregularities:

- incorrect qualification of undeveloped lands
- not using preferential tax rules for special-purpose buildings
- incorrect qualification of sewage treatment facilities



Case study – food industry



Kujawsko – pomorskie region



commune of 10 K residents

ORIGINAL ANNUAL REAL ESTATE TAX AMOUNT



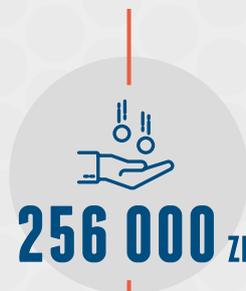
IRREGULARITIES IDENTIFIED

incorrectly determined tax base (incorrect values used); sewage treatment plant taxed incorrectly

OVERPAYMENTS IDENTIFIED

buildings, structures, lands

ANNUAL REAL ESTATE TAX AMOUNT AFTER VERIFICATION



PROJECT LENGTH **7 MONTHS***

MAIN CHALLENGE

complicated analysis due to the diversity of the assets, lack of a complete list of elements that would exhaust the definition of "structure"

RECOVERING OVERPAID AMOUNTS FOR 2013-2018

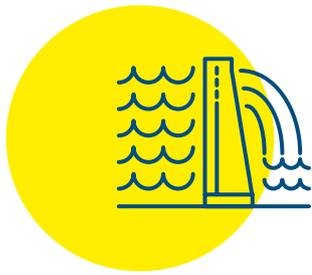
420 000 zł



SAVINGS ACQUIRED IN NEXT FISCAL YEAR

84 000 zł

* Project length - from the analysis, to the conclusion of the proceedings with the tax authority (analysis, on-site inspection, tax proceedings)



The water-sewage and heating industry

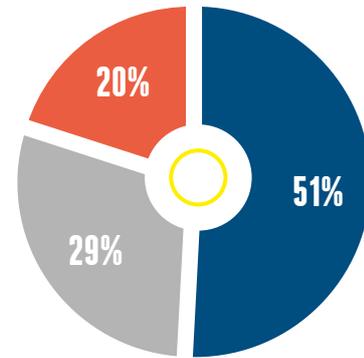
Companies in the water-sewage and heating industry sector not only have assets located within the grounds of the plants (sewage treatments or heat and power plants), but also networks that are often located across a vast area – covering the whole city or commune.

Preparing a full documentation of all the elements of such assets is a major challenge, similarly as submitting correct tax returns.

For example, there are numerous doubts regarding the definition of “structure” and sewage treatment facilities are among others considered as such. The tax authorities often rule that the sewage treatment facility as a whole is a structure and falls under the category of “structures for the conduct of economic activity”, in the case of which the starting value is the tax base. In reality, modern sewage treatment facilities are extremely intricate complexes, which, besides structures, also include specialized technical machines (pumps, agitators, presses) and buildings (pumping stations, hydraulic buildings or laboratories). Therefore, one cannot consider such a complex a homogenous object. This also applies to airports. The legislator defines them as an example of a structure. In reality however, an airport consists of many elements, including structures (i.e. tarmac), as well as buildings (i.e. terminals, hangars).

“An important matter for water-sewage businesses is the ruling of the Constitutional Court from December 13th, 2017 (sign. act SK 48/15), according to which the qualification of an object that meets the statutory criteria of

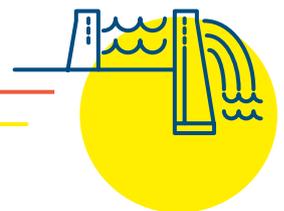
SETTLING THE REAL ESTATE TAX IN THE WATERSEWAGE AND HEATING SECTOR



● overpayments ● tax settled correctly ● underpayments

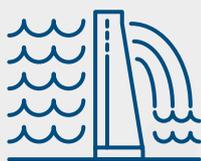
the definition of a building as a structure is in breach of the constitution. According to this ruling, the practices of tax authorities leading to treating sewage or water treatment facilities as structures is unconstitutional – in the situation when they are buildings, according to the statutory definition of the buildings” – comment by Przemysław Smoczyński, Senior Consultant in the Taxes and Fees Department.

Due to the significant value of the assets owned by companies operating in the water-sewage and heating industries, the average amount of the overpayments in taxes is higher than in other sectors of the economy.



Most frequent irregularities:

- incorrect qualification of elements of the assets to specific tax categories
- qualifying sewage treatment facilities as a whole as structures



Case study - water-sewage and heating industry



Pomorskie region



commune of 50 K residents

ORIGINAL ANNUAL REAL ESTATE TAX AMOUNT

IRREGULARITIES IDENTIFIED

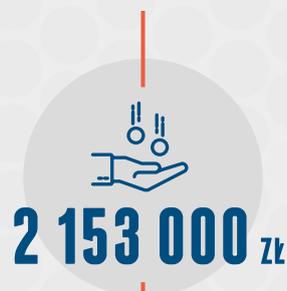
OVERPAYMENTS IDENTIFIED

ANNUAL REAL ESTATE TAX AMOUNT AFTER VERIFICATION



the tax base included values of assets that did not exhaust the definition of structure; qualification of assets in the plant grounds to wrong tax categories; incorrect taxation of arable lands

buildings, structures, lands



PROJECT LENGTH **6 MONTHS***

MAIN CHALLENGE

putting together and analyzing documentation, including the accounting documentation of the new investment for purposes of real estate tax

RECOVERING OVERPAID AMOUNTS FOR 2013-2018

94 000 zł



SAVINGS ACQUIRED IN NEXT FISCAL YEAR

47 000 zł

* Project length - from the analysis, to the conclusion of the proceedings with the tax authority (analysis, on-site inspection, tax proceedings)



Commerce

The commerce sector businesses often own lands that are purchased in large amounts and used, for example, to build a shopping mall. After the construction process is over, they are most often wholly taxed by the property tax solely due to the fact that the owner is conducting economic activity.

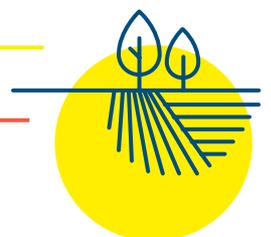
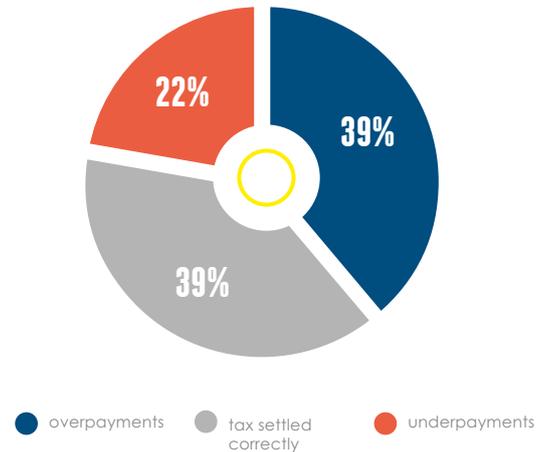
According to the law¹, **land property consists of the land, together with its elements, with the exclusion of buildings and establishments, provided that they have separate ownership statuses**. Therefore, the land is a certain part of the surface, singled out based on the ownership criterion. However, one has to keep in mind that the concept of land is not synonymous with the concept of the parcel of record.

"Lands are taxed by the property tax based on their surface area. However, the sole fact that the entrepreneur owns land is not a criterion that justifies them being taxed with the property tax" – comment by Sylwia Bożek, Project Manager at the Taxes and Fees Department.

Investors building malls in the outskirts of cities often pay the costs of modifying or expanding the roads to reach the real estate being developed. It is advisable to analyze these costs in order to correctly establish **who should be paying the tax on access road construction**.

1. Law on local taxes and fees; Civil code

SETTLING THE REAL ESTATE TAX IN THE COMMERCE SECTOR



Most frequent irregularities:

- classifying the whole surface area of the land as being intended for economic activity
- confusing the term "land" with "parcel of record"
- incorrectly identifying the entity required to pay the tax on building access roads



Case study – commerce



Malopolskie region



commune of 767 K residents

ORIGINAL ANNUAL REAL ESTATE TAX AMOUNT

IRREGULARITIES IDENTIFIED

OVERPAYMENTS IDENTIFIED

ANNUAL REAL ESTATE TAX AMOUNT AFTER VERIFICATION



3 650 000 zł

some of the costs were incorrectly qualified into the tax base for structures

structures



3 430 000 zł

PROJECT LENGTH **13 MONTHS***

MAIN CHALLENGE

RECOVERING OVERPAID AMOUNTS FOR 2013-2018

SAVINGS ACQUIRED IN NEXT FISCAL YEAR

establishing the correct tax base on structures for conducting economic activity

1 320 000 zł

220 000 zł



refund to bank account

* Project length - from the analysis, to the conclusion of the proceedings with the tax authority (analysis, on-site inspection, tax proceedings)



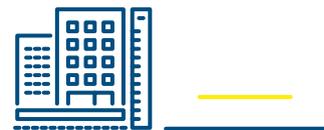
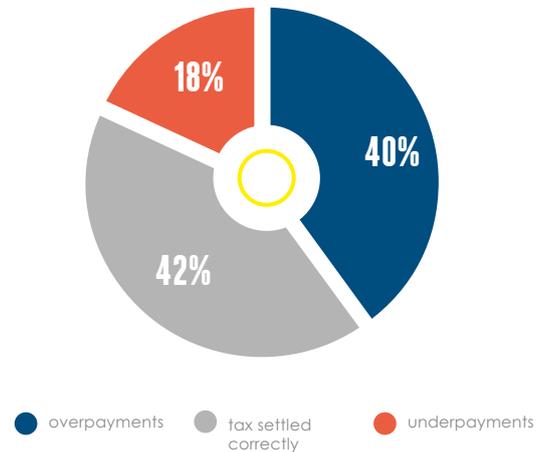
Real estate services

For the real estate management businesses, it is fundamental to have a large number of buildings, the usable surface area of which serves as the base for the real estate tax. According to the provisions of the local taxes and fees law, usable surface area is "(...) surface area measured along the interior length of the walls on all stories, with the exception of stairwells and elevator shafts; underground garages, basements and utility attics are also considered stories."

Companies often **declare as eligible for taxation the whole surface area, based on – for example – the deed of ownership, which is not a sound practice.** According to the above mentioned definition, stairwells do not constitute usable area. However, one has to keep in mind that the definition of the stairwell is not always functional in legal regulations. Practice shows that it is not always easy to single it out from the building's surface area, especially when it is not separated by walls.

"Sometimes the owner interferes with the building's surface area, i.e. by placing various dividing walls, which reduces the amount of surface area and therefore – should reduce the amount of the tax due. This is an argument in favor of remeasuring and re-drawing of the records of the surface areas of the buildings owned. Furthermore, the manner of use of the buildings or their parts may also help optimally calculate the tax. For example, the legislator offers a preferential tax rate for surface areas intended for providing health services" – comment by Sylwia Bożek, Project Manager at the Taxes and Fees Department.

SETTLING THE REAL ESTATE TAX IN THE REAL ESTATE SERVICES SECTOR



Tangible savings may be provided by singling out, then **verifying the initial value of the structure** as listed in the registry of fixed assets as a single fixed asset with a building. This is due to the fact that the initial value of fixed assets is the direct property tax base for buildings. It may be particularly beneficial to verify the value of structurally complex assets, i.e. a car park on the roof of a shopping mall, which tax authorities usually classify completely as structures.

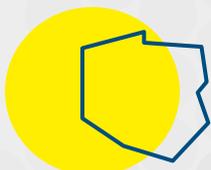
Most frequent irregularities:

- declaring the surface area based on the inappropriate source documents
- no regular verification of the surface areas of buildings
- incorrectly establishing the value of the building at the stage of the first settlement of the investment





Case study – real estate services



Slaskie region



commune of 171 K residents

ORIGINAL ANNUAL REAL ESTATE TAX AMOUNT

IRREGULARITIES IDENTIFIED

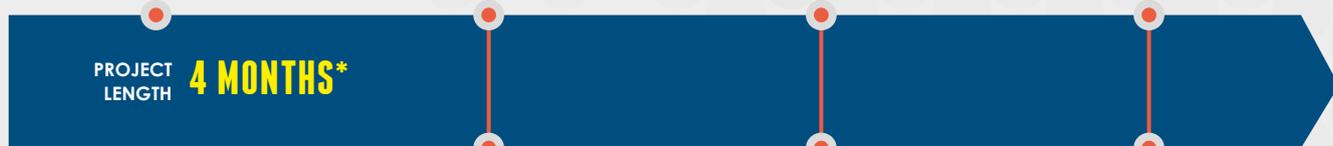
OVERPAYMENTS IDENTIFIED

ANNUAL REAL ESTATE TAX AMOUNT AFTER VERIFICATION



the wrong tax was used for some lands

lands



MAIN CHALLENGE

RECOVERING OVERPAID AMOUNTS FOR 2013-2018

SAVINGS ACQUIRED IN NEXT FISCAL YEAR

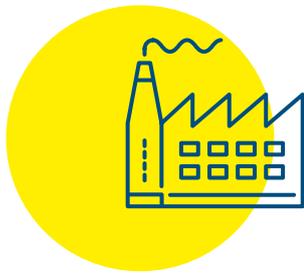
establishing the correct tax base of the lands used for economic activity

430 000 zł

71 667 zł



* Project length - from the analysis, to the conclusion of the proceedings with the tax authority (analysis, on-site inspection, tax proceedings)



Manufacturing

Due to the character of their activity, processing businesses often have a large warehouse space. Some of the warehouse assets do not need to be tightly separated from the external conditions. They are only intended to protect the goods from atmospheric factors. These are often tents or roofed sections, not separated from the space using permanent building walls. In this case, one has to examine whether they meet all of the **four conditions that make up the definition of a building**, these being:

- permanent attachment to the land,
- separation from space with the use of building walls,
- having foundations,
- having a roof.

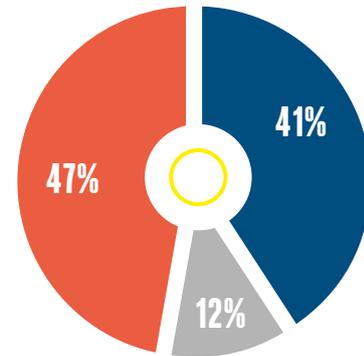
The amount of the tax to be paid to the commune depends on the correct classification of such an asset as a “building” or “structure”.

Manufacturing companies often have **land acquired for the purpose of economic activity and purchased i.e. with future investment in mind**. In this case, it is important to verify the documentation, i.e. extracts from the registries of lands and buildings, but also to verify the actual state, to tax the asset with the proper local tax.

Sometimes it happens in manufacturing companies that despite the changes implemented (changes such as renovations or asset modifications), the usable surface area of buildings is not being verified for years and that historic construction data is copied to the records of assets without checking them before.

It also happens frequently that companies do not distinguish in their tax base the usable area of buildings with a clear height of 1.4m-2.2m,

SETTLING THE REAL ESTATE TAX IN THE MANUFACTURING SECTOR



● overpayments ● tax settled correctly ● underpayments

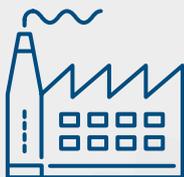
whereas that surface area should be taxed with a 50% rate in the category of “buildings for the conduct of economic activity”. For example, for a room/ building, with a height of 2m, the surface area measured “based on the floor” is 100 m², but only 50m² should be declared for taxation.

“Another challenge for the processing sector is also correctly taxing the technical and technological installations that the building could not perform its purpose without. These installations often go beyond the building’s outline. Should they be then qualified as structures? Court rulings have not been coherent on the matter. In this case, one has to consider the technical-utility criterion, the definition of structure and building as outlined in the Construction Law” – comment by Matgorzata Patys, Senior Consultant at the Taxes and Fees Department.

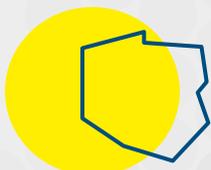
Most frequent irregularities:

- classifying tents, canopies or roofed sections as “buildings”
- incorrect taxation of lands
- lack of a regular verification of the buildings’ usable area
- incorrect taxation of technical and technological installations





Case study - manufacturing



Warminsko-
Mazurskie
region



commune of
7.6 K residents

ORIGINAL ANNUAL REAL ESTATE
TAX AMOUNT



IRREGULARITIES
IDENTIFIED

qualifying the to lands the
wrong tax

OVERPAYMENTS
IDENTIFIED

lands

ANNUAL REAL ESTATE TAX AMOUNT
AFTER VERIFICATION



PROJECT
LENGTH **8 MONTHS***

MAIN
CHALLENGE

establishing the correct
surface area of the lands
used for economic activity

RECOVERING OVERPAID
AMOUNTS FOR 2013-2018

100 000 zł



SAVINGS ACQUIRED IN
NEXT FISCAL YEAR

16 667 zł

* Project length - from the analysis, to the conclusion of the proceedings with the tax authority (analysis, on-site inspection, tax proceedings)



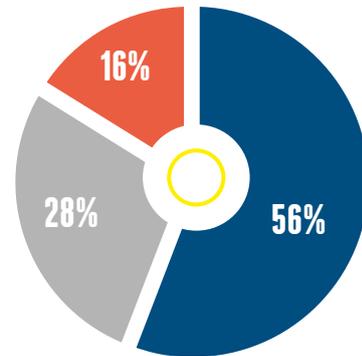
Transportation

The transportation sector's highest tax burdens are due to the tax on usable surface areas of buildings. The taxpayers who are using large surface areas of the buildings for economic activity are the most exposed to increases in the real estate tax burdens due to yearly indexations of rates. This is why it is so important to correctly establish the surface area to be declared in the tax return.

The commonplace practice is to determine the tax base on buildings based on construction records, which actually do not comply with the guidelines of the local taxes and fees law. **Using measurements developed for other purposes than taxation is the cause of numerous errors in establishing the tax base.** Furthermore, companies from the transportation industry also have warehouse spaces, which have various kinds of mezzanines and service bridges. **It is not always the case that the surface area of these assets actually constitutes an area that should be taxed. Another reason for the overpayments is the taxation of access ramps, which are an integral part of the buildings.**

Businesses in the transportation industry not only own buildings, but also lands purchased for future investments as their assets. It happens frequently that many years pass between the moment of purchase of the land and the start of the investment. **The company is not always obliged to pay the real estate tax on the lands owned in that period.** In the transportation industry, special attention needs to be paid also to how structures are taxed.

SETTLING THE REAL ESTATE TAX IN THE TRANSPORTATION SECTOR



● overpayments ● tax settled correctly ● underpayments

This is an area that needs special attention already at the stage of conducting the investment process and establishing the value of specific fixed assets. It needs to be kept in mind that **not all the expenses that constitute the value of a fixed asset need to be considered the value of the taxable structure.** Administrative courts have ruled on multiple occasions that the value of individual fixed assets must not be considered the same as the value of a structure to be taxed. For example, the Administrative Court in Olsztyn, in its ruling from August 10th, 2017 (sign. act I SA/ OI 433/17) pointed out that: "(...) Therefore there is no correlation between the scopes of the following terms: fixed asset and structure subjected to the property tax. There is also no correlation between the term structure and thing (in civil law understanding) – a structure may be comprised of separate things, i.e. when its individual parts are connected with the rest only »for passing utility«."

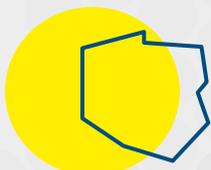


Most frequent irregularities:

- establishing the tax base on buildings based on measures made for other purposes than for taxation
- incorrect qualification of the mezzanines and service bridges
- incorrect taxation of access ramps
- equating the value of individual fixed assets with the tax base



Case study - transportation



Mazowieckie region



commune of 10 K residents

ORIGINAL ANNUAL REAL ESTATE TAX AMOUNT

960 000 zł

IRREGULARITIES IDENTIFIED

lowering the surface area lands of buildings taxed; tax base did not include all the elements that fulfill the definition of a structure: taxing assets that are not structures; incorrect taxation of lands

OVERPAYMENTS IDENTIFIED

structures, lands

UNDERPAYMENTS IDENTIFIED

600 000 zł worth of buildings and structures

ANNUAL REAL ESTATE TAX AMOUNT AFTER VERIFICATION

776 667 zł

PROJECT LENGTH **1 YEAR***

MAIN CHALLENGE

tax authority lacks the proper expertise

RECOVERING OVERPAID AMOUNTS FOR 2013-2018

1 100 000 zł

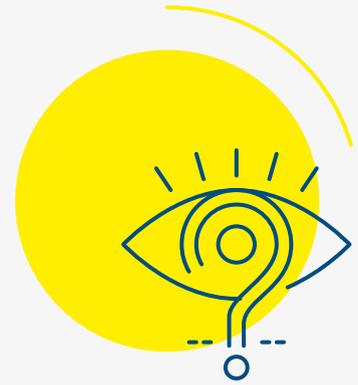
used to cover tax liability

SAVINGS ACQUIRED IN NEXT FISCAL YEAR

183 333 zł

* Project length - from the analysis, to the conclusion of the proceedings with the tax authority (analysis, on-site inspection, tax proceedings)

Myths about the real estate tax in Poland



#1

Myth: Property tax cannot be a source of savings.

Fact: The real estate tax amounts are often overpaid due to the unawareness of the applicable provisions of law, due to qualifying assets to the wrong tax categories or due to relying on incorrect measurements of buildings and structures. The verification of the soundness of the property tax settlement not only enables recovering the overpaid amounts, but also acquiring savings thanks to reducing the tax burdens in future.



#2

Myth: The architectural plans of buildings are sufficient for determining the correct amount of the real estate tax due.

Fact: In the case of buildings, one has to measure their utility surface area according to the guidelines of the tax law. Relying exclusively on architectural plans may result in overpayments.





#3

Myth: The Finance Ministry sets the real estate tax rates.

Fact: The real estate tax rates are set by the Council of the Commune or the City Council, however, it must not exceed the maximum rate set by the Finance Ministry in an annually updated announcement.



#4

Myth: The real estate tax needs to be only verified yearly with respect to the new tax rate.

Fact: The real estate tax amount depends not only on the applicable rates, but also on new legal regulations. Following the court rulings and local resolutions regarding the real estate tax enables verifying the tax returns submitted thus far.



Different Locations, different tax rates

In 2018, the maximum real estate tax rate on buildings or their parts used for economic activity was **23,10 zł/m²**.

RATES IN DIFFERENT CITIES

TAX AMOUNT IN COMPANY FOR 20 000 M²

GDAŃSK
23,10 zł / M²

GDAŃSK
462 000 zł

SIEMIATYCZE
20,95 zł / M²

SIEMIATYCZE
419 000 zł

NOWE MIASTO NAD WARTĄ
18,28 zł / M²

NOWE MIASTO NAD WARTĄ
365 000 zł

In a 5-year-perspective, the difference in tax between extreme values of the rates is as much as 482 000 PLN. This may influence the choice of the location for the new investment of the business.



#5

Myth: Only statutory exemptions to the real estate tax are available.

Fact: The Council of the Commune may pass a resolution granting different tax exemptions than just the ones mentioned in the act, such as:

de minimis

- aid limits up to 200.000 EUR
- settlement in 3-year periods granted among others for a planned investment or to create new jobs

as part of the regional investment aid

- for businesses that are making new investments or growing their workforce
- the aid limit is set as the % of the investment expenses incurred



#6

Myth: Knowing the law on local taxes and fees is sufficient for correctly settling the real estate tax.

Fact: In order to correctly settle the real estate tax, it is necessary not only to know the law on local taxes and fees, but also the Act on Construction Law or the civil code. Even though the real estate tax act is short, it is widely considered very complicated.



#7

Myth: Communes simply want the most revenue from the real estate taxes.

Fact: Communes take into consideration various strategies for developing local entrepreneurship when planning their revenue policy. Tax exemptions may be one of many tools encouraging businesses to invest within the area of the commune.



#8

Myth: Submitting a return that amends the real estate tax amount worsens relations with the authorities of the commune.

Fact: Many times it happens that filing a second return actually establishes a relationship with the commune and helps foster good relations in the future. It needs to be kept in mind that the tax authorities want the real estate tax to be settled correctly, as they are subject to the Regional Accounting Chamber, among others.



#9

Myth: Every piece of land owned by the business is subject to the real estate tax.

Fact: Only the lands on which economic activity is being conducted and which are properly qualified in the registry of lands and buildings are subjected to the real estate tax.



#10

Myth: Sewage treatment plants are structures.

Fact: A sewage treatment plants are complex facilities, besides structures they also include specialized technical machinery and buildings, this is why their classification as structures as a whole is not justified.

Analysis methodology

The analysis has been conducted on a sample of 1975 projects aimed at verifying the payments made in connection with the real estate tax made by companies that hire over 200 people

and pay real estate tax amounts over 200 thousand PLN annually. Data analyzed in several subgroups.



Amount of the real estate tax paid

For the purpose of the analysis, the companies were divided into groups with an annual real estate tax burden of:

- 200 ths. PLN - 1 mln PLN
- 1 mln PLN - 3 mln PLN
- > 3 mln PLN



Sector

A particularly deep analysis was conducted for the sectors in which the real estate tax burden is usually the highest: manufacturing, food industry, chemical industry, transportation, commerce, mining, real estate service, district heating and water-sewage treatment.



Tax category

The tax categories of the company in which overpayments of the real estate tax were recorded have been analyzed with respect to irregularities occurring in all three tax categories: lands, buildings and structures. Based on that, the share of each tax category in the overpayments was calculated.

New rates and higher costs in 2019



According to the announcement of the Finance Ministry², the real estate tax rates in 2019 **will be higher by 1.6%** compared to 2018. What does this change mean for the taxpayers in practice?

2. Announcement of the Finance Ministry from July 25th, 2018, regarding the upper caps of the rates of local taxes and fees in 2019. <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WMP20180000745> [accessed 06.11.2018]



A company that has

- lands for conducting economic activity with a surface area of 200 000 m²,
- buildings for conducting economic activity, surface area 100 000 m²,

assuming the maximum real estate tax rates

- in 2018 will pay a tax amount of 2 492 000 PLN,
- in 2019 will pay a tax amount of 2 533 000 PLN, which is 41 000 PLN more than in the previous year.



MAXIMUM RATES IN 2019

Lands

related to the conduct of economic activity, regardless of its qualification in the lands and buildings registry

0,93 zł/m²

under still surface waters or surface areas of flowing lakes and artificial bodies of water

4,71 zł/ha

others, included the ones acquired for conducting paid statutory public benefit activity by public benefit organizations

0,49 zł/m²

undeveloped, within the grounds of a revitalization area or located in areas for which the local urbanization plan indicates housing, service or mixed-purpose developments

3,09 zł/m²

Buildings or their parts

residential

0,79 zł/m²

related to the conduct of economic activity and housing buildings or their parts used for the conduct of economic activity

23,47 zł/m²

acquired for conducting economic activity with the area of trading qualified seed material

10,98 zł/m²

related to providing health services within the understanding of the regulations on healthcare services, occupied by entities that provide such services

4,78 zł/m²

others, including occupied for conducting paid statutory public air services by a public benefit organization

7,90 zł/m²

Contact details



If you require support in verifying the soundness of your real estate tax settlements, contact us:

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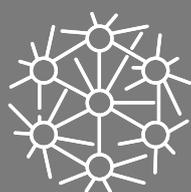
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