UNCULTIVATED AGRICULTURAL LAND BETWEEN CRIMINAL AND TAX LAW

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Introduction

The agricultural sector contributes significantly to the creation of Serbia's GDP. According to the official statistical data, agriculture accounts for between 9 and 11% of the total Serbian GDP (Strategy of Agriculture and Rural Development of the Republic of Serbia for the period 2014-2024 - Strategy of Agriculture 2014-2024, Official Gazette RS), which is significantly more than the European average (Prokopijević, 2009: 199).

Serbia has 5,346,597 ha of land, which includes agricultural land, forests and land that official statistics categorize as "other" (Ševarlić, 2015: 37). Of that area, 72.2%, or precisely 3,861,477 ha, is agricultural land. However, only 3,437,423 ha or 89% of agricultural land is used for agricultural production. The literature emphasizes the importance of the problem of uncultivated land, which makes up about 11% of the total agricultural land in Serbia, i.e., 424,054 ha (Ševarlić, 2015).[2] It is assumed that putting these land areas into operation would contribute to the increase of the Serbian GDP, which is why it is suggested to the Serbian authorities to take measures aimed at increasing the utilization of the existing natural resources. Also, it is pointed out that the social costs of implementing those measures are often neglected (Samardžić, Baturan & Mitrović, 2022).

Purpose

In order to encourage the use of currently uncultivated areas of agricultural land, Serbian agro-economists often recommend the use of taxes, ignoring the fact that in the legal system of Serbia there is already an institute whose goal is to increase the use of agricultural land, which is a misdemeanour, i.e., a misdemeanour sanction. The goal is to review the potential of misdemeanour sanctions and taxes to encourage the use of agricultural land, but within the limits of its optimal use.[3]

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2 The largest part of the land used in agricultural production consists of arable land and gardens (74.1%), while the rest is made up of meadows (10.1%), pastures (9.3%), orchards (5.3%) and vineyards (0.6%) (Gavrilović, 2019: 195).

3 This paper represents the continuation of the authors' research in the direction of defining the optimal legal framework for the use of agricultural land in Serbia. See more: Baturan, 2013; Baturan, 2017a; Baturan, 2017b; Baturan, 2018; Cvjetković Ivetić, Milošević & Baturan, 2019; Milošević & Baturan, 2021; Samardžić, Baturan & Mitrović, 2022.

Design/Methods/Approach

The initial assumption in the paper is that the primary motive for the owner/the land user is to put their resources to work and thereby acquire profit (Samardžić et al., 2022). Given that land represents a common good, misdemeanour sanctions serve as an additional incentive for putting land into production. Misdemeanour sanctions as an instrument to encourage the use of agricultural land will be presented in a separate chapter.

In Serbia, property tax is currently paid on agricultural land. Certain theoreticians propose changes in the regime of taxation of agricultural land, in order to put unused land into production. On the one hand, tax relief is proposed for agricultural land that is cultivated, while on the other hand, stricter taxation is proposed for the land that is not used. After the current tax solution is presented, the subject of the analysis in this paper will be the effects of these two fundamentally opposite proposals, as well as the experience of the Republic of Croatia, where their Constitutional Court ruled on a similar legal solution.

In order to reach the appropriate results, the synthetic method was used in the paper based on economic and legal methodology.

Findings

The hypothesis is that special taxation of uncultivated land is not acceptable from either the economic or the legal point of view. In the first place, that would lead to duplication of the instruments that are intended to encourage the use of unused agricultural land, given that there is already a system of misdemeanour sanctions. Instead of conducting one - misdemeanour procedure, the proposed modifications of the property tax would mean that it is necessary to determine in the tax procedure whether the land has been cultivated or not. Also, the tax is inferior to the misdemeanour due to its inflexibility in determining the amount that the owner of the uncultivated land should pay. It is also questionable whether the differentiated taxation of cultivated and uncultivated agricultural land is in accordance with the Constitution of the Republic of Serbia.

Originality/Value

The paper represents the result of research conducted within the project commissioned by the Agricultural Land Administration of the Republic of Serbia, in the process of preparing a legal proposal that would encourage the use of agricultural land. Based on it, the proposed changes to the tax regulations were abandoned.

Misdemeanor Sanctions as an Instrument for Encouraging the Use of Agricultural Land

The Law on Agricultural Land stipulates the obligation of the owner or user of agricultural land to regularly cultivate arable agricultural land in an appropriate manner (Law on Agricultural Land, Article 59, Official Gazette RS).[4] The law prescribes the authority and duty of the agricultural inspector

4 Arable agricultural land includes fields, gardens, orchards, vineyards and meadows (LAL, art. 2(1)(2); Dabović, 2016: 207-210). In the following text, the term agricultural land will refer only to arable agricultural land, while the term owner

to control whether the owner of the agricultural land regularly cultivates the agricultural land, applies the measures prescribed by the law and other regulations, and whether he/she acts with due diligence and according to the rules of the code of good agricultural practice, and whether he/she cultivates land regularly, i.e., applies measures in accordance with the law and by-laws (LAL, art. 83(1)(2 and 18)). Also, the inspector is authorized to order the owner of arable agricultural land to cultivate it regularly and apply measures in accordance with the law and by-laws (LAL, art. 84(1)(10)). If the inspector determines illegal behaviour, the inspector shall submit a request to initiate misdemeanour proceedings, or issue a misdemeanour order (Law on Inspection Supervision, Art. 42, Official Gazette RS).

Given the importance of agricultural land as a common good, the penal provisions of the Law on Agricultural Land also prescribe misdemeanor sanctions for its non-use. If a business company, or other legal entity does not cultivate arable agricultural land regularly, it will be fined from RSD 20,000 to 200,000. If the owner is a natural person, the prescribed sanction ranges from RSD 2,000 to 20,000, while the prescribed sanction for an entrepreneur is from RSD 5,000 to 50,000 (LAL, Art. 86).

The function of misdemeanour sanctions is, primarily, the achievement of general and special prevention, bearing in mind that the protection of assets through criminal law is accessory, subsidiary and fragmentary (Brkić, Drakić, Samardžić, 2017). By punishing the owner of uncultivated agricultural land, the owner is influenced to harmonize his/her behaviour with the legal disposition, and by doing so, the special prevention is achieved. Other subjects, fearing sanctions, also harmonize their behaviour with the prescribed disposition, which achieves general prevention. The expected result is the behaviour of economic subjects aligned with the legal disposition, whereby land as a limited resource should (in theory) be maximally used.

However, the number of submitted requests for initiation of misdemeanour proceedings so far is minimal, probably due to the small number of agricultural inspectors in the Ministry of Agriculture. For this reason, this legal instrument did not achieve the desired result. Most often, misdemeanour proceedings are conducted only if, due to non-use of a certain plot of agricultural land, damage occurs to the neighbouring plot.[5]

Consistent application of the misdemeanour provisions of the LAL can create major problems in practice. Namely, economic logic dictates the optimal use of resources, up to the limits of matching marginal costs and utility. It is the case of land of lower quality, or land in regions with a shortage of labour. If the land is state-owned, it remains unleased year after year, because there are no interested tenants. However, the problem is privately owned land. Consistent application of the misdemeanour provisions of the Law mandates the imposition of a misdemeanour sanction on the owners of such land. On the other hand, this kind of practice is economically unacceptable, because it would force the owners to use land whose cultivation generates more costs than benefits. The question arises as to how one should proceed in such a situation, since the consistent application of the principle of the rule of law is opposed to economic laws.

In the first place, it is necessary to answer the question of whether and to what extent the misdemeanour punishment of agricultural land owners who do not use their resources makes economic sense at all. The assumption is that they behave rationally (the concept of *hommo oeconomicus*), because they use their resources in such a way as to maximize their own well-being. Not putting resources to work that can bring them an increase in utility, in itself leads to an opportunity cost represented by foregone rent. However, it seems that misdemeanour punishment is necessary due to the appearance

will be used to indicate both the owner and the user.

5 See: Judgment of the Misdemeanour Appellate Court Prž. 13751/15 dated October 5, 2015.

of negative externalities[6] on neighbouring plots. In that case, the current practice of state authorities on selective misdemeanour punishment of only persons reported by the owners of neighbouring plots that suffer damage proves to be economically optimal, although legally unacceptable.

It is therefore necessary to adjust the legal framework, which will enable land owners to be acquitted from misdemeanour liability if they offer their arable land for lease to third parties, according to the market conditions. Finally, changing the use of the land remains as the last option.

Taxation of Agricultural Land by Property Tax

The basic **function of taxes** is fiscal, i.e., the task of the tax system is to ensure the collection of budget funds for financing public expenditures. However, taxes can also serve as instruments for achieving non-fiscal goals. Taxation of agricultural land has been proposed from time to time as one of the solutions to the problem of unused agricultural land.[7]

In Serbia, owners of agricultural land with an area of more than 10 ares pay **property tax** (Law on Property Taxes, Art. 2(1)(1) Official Gazette RS). The basis of the tax is the value of the agricultural land, determined in the manner provided by the Law on Property Taxes (Art. 5(1)). For a taxpayer who keeps business books and whose value in business books is reported using the fair value method in accordance with International Financial Standards (IFS), i.e., International Financial Reporting Standards (IFRS) and adopted accounting policies, the tax base is the fair value stated on the last day of the business year of the taxpayer, in the current year (LPT, Art. 7).

The problem could arise if the real value of each plot was determined individually for taxpayers who do not keep business books. That is why the legislator, acting in accordance with the principle of minimizing the costs of determining taxes, determined that in those cases the value of (agricultural) land is determined by the local self-government body, by multiplying the usable area of the land and the average price per square meter in the area where the land is located (LPT, Art. 6). The amount of the tax is determined by multiplying the base (value of the land) and the proportional tax rate of 0.3% or 0.4% (LPT, Art. 11(1)(1 and 2)).

The law also provided for several different tax benefits, of which two are particularly interesting for the purposes of this paper. The first refers to the exemption from paying property tax **on agricultural land that is re-purposed** for a period of five years, counting from the beginning of the use (LPT, Art. 12(1)(6)). The goal of this provision is to encourage taxpayers to start cultivating land that was not used for production in the previous period (Cvjetković, 2016: 199-200). The relief makes a lot of sense, given that the repurpose of previously unused land requires extraordinary costs for the user.

Another relevant tax relief refers to the situation when the **total value of the immovable property**[8] of the taxpayer in the territory of one local self-government unit does not exceed RSD 400,000 (LPT, art. 12(2); Cvjetković 2016: 210-2011). The idea is to exempt owners of low-value real estate from tax.

6 According to economic theory, negative externalities are the costs that one economic entity directly, i.e., without the market, transfers to other entities that did not give their consent.

7 Increased taxation of unused agricultural land is no stranger to the science of taxation. In principle, the economic doctrine accepts taxation of property if it is not used for productive purposes. In that case, it can be expected that the tax will influence the taxpayer to put that property into production, e.g. by starting to cultivate the land or by leasing it (Popović, 1997: 286).

8 The base does not include the properties of a taxpayer who does not keep business books, that is, a taxpayer who keeps business books whose agriculture is the predominant registered activity, which are intended and used exclusively for primary agricultural production (Act on Property Taxes, Art. 12(1)(10)).

When the land is of low quality, or is located in areas that are affected by the depopulation process due to which there is a labour shortage, it in itself has a low market value, so there is a possibility that the taxpayer meets the conditions for this tax relief.[9]

Thus, the taxation of agricultural land is harmonized with the requirement of the theory of public finance for the **evenness (fairness) of the tax burden** (Popović, 1997: 291-297; Stiglic, 2013: 477-484; Jelčić, 1983: 163-168). This tax principle is realized through requirements for horizontal and vertical equity, because the tax liability is aligned with the value of the agricultural land owned by each taxpayer. Namely, an individual acquires land in order to include it in the process of agricultural production, expecting that based on the property in the future, he/she will achieve economic benefits in the form of rent. The higher the productivity of the land, the higher is its land rent, and the higher is the value of the land, which is taken as the value of the tax base. Conversely, the lower the productivity, the lower the rent leads to the lower value of the land and therefore the tax base is low. Thus, the land that is not used, as a rule, represents the land that has the lowest productivity, which is why it has the lowest market value, and therefore the lowest tax burden.

Proposal for Differentiated Taxation of Cultivated and Uncultivated Agricultural Land

In the general and professional public of Serbia, from time to time, one can hear proposals for the modification of the property tax, in order to use this instrument to encourage the increased use of agricultural land. Basically, there are two proposals. The first proposal envisages that the *increased tax burden* on uncultivated agricultural land compared to the regular situation would encourage owners to put it into operation, in order to avoid a higher tax over time. According to the second proposal, it is necessary to *exempt from the property tax obligations* "(not only to land that is used for up to five years, but also) all areas of used agricultural land of classes 5-8, as well as the area of used agricultural land of all classes located (for example) above 400 m above sea level" (Ševarlić, 2015: 95-96).[10] Therefore, some propose tightening the tax regime for taxpayers who do not cultivate land, while others propose easing the regime for taxpayers who cultivate, i.e. use the land.

In the property tax system, the differentiated treatment of cultivated and uncultivated agricultural land is not new. In the Czech Republic, as well as in Serbia, the taxpayer is exempt from paying tax on agricultural land that is earmarked, for a period of 5 years (Radvan, 2014: 7; Cvjetković, 2016: 210-2011). In Republika Srpska, tax is not paid on agricultural land that is cultivated (Law on Real Estate Tax of Republika Srpska, Art. 9(1)(12), Official Gazette). In the previous Law on Real Estate Tax, Montenegro had a solution according to which the local self-government unit could determine a higher or lower tax rate for agricultural land that is not cultivated (Law on Real Estate Tax of Montenegro, Art. 9a(1)(1), Official Gazette of the Republic of Montenegro). That law also provided that the local self-government unit, for agricultural land that is not cultivated, whose area exceeds 150,000 m^2, determines a tax rate of 3-5%, while the regular tax rate is proportional, of 0.25-1% (Law on real estate tax of Montenegro, Art. 9b(1)). There is no similar solution in the new Montenegrin Law on Real Estate Tax. Until 2007, Croatia also had a tax on uncultivated agricultural land, but the Croatian Constitutional Court abrogated such decision.[11]

9 The practical problem is that this amount is prescribed by the Law on Amendments to the Law on Property Taxes, dated December 21, 2004. According to the average exchange rate of the NBS from that day, the limit was EUR 5,087.88, while at the time of writing this paper (August 1, 2023), the limit is only EUR 3,412.54.

10 Translation and italics were added by the author. Since the explanation of the proposal is missing, at this point it will not be considered whether the relief is better conceived as exclusion or an exemption.

11 Decision of the Constitutional Court of Croatia will be later elaborated.

Those proposals, given with almost no explanation, create a number of dilemmas, and it seems that they are not justified either from the economic or the legal side. Given that the proposals come both from foreign experts who work closely with the Agricultural Land Administration, and from highly respected domestic experts in the field of agro-economics, they deserve to be taken into consideration, despite the fact that they lack a more detailed explanation of the mechanism by which they wish to achieve the desired goal.

The main problem with the special tax treatment of uncultivated agricultural land concerns the **duplication of instruments** that should achieve the same effect. According to the existing legal framework, an individual who does not use land with appropriate characteristics is liable for a misdemeanour. The effect of a misdemeanour sanction is deteriorating the financial position of a person who does not act in accordance with the law. An additional tax burden on uncultivated agricultural land would have exactly the same effect, which is also a deterioration of the taxpayer's financial position.

Although the effects are the same, the objectives of taxes and misdemeanour sanctions are not. The aim of the misdemeanour sanction is to force the owner of the land to socially desirable behaviour through the threat to its economic power, and through general prevention to completely stop the behaviour contrary to the legal disposition. The basic (fiscal) goal of taxes is to provide funds for financing public expenditures. By counting on the effect produced by distortionary taxes, it is possible to achieve some non-fiscal goals. However, the aim and purpose of the tax is not and cannot be to punish the taxpayer, i.e., to completely stop undesirable practices such as not using arable land. On the contrary, taxes should strive for neutrality, i.e., for the realization of the principle of efficiency, which implies minimal influence on the economic decisions of economic entities (Popović, 1997: 276-281).[12]

The proposal that owners of agricultural **land of a certain class get tax relief** may make sense, but the question is how much such a solution would contribute to the goal for which it was established. Since the land is of low-productivity, its value is small, so the tax base is also small, and consequently the amount of tax debt is small as well. Exempting taxpayers from even that small tax obligation may have a certain (but limited) socio-political significance, but it is not known how it would influence the owner to put the land into use.

Jelčić shares a similar opinion. *"It is difficult, namely, to assume that the owners of uncultivated arable agricultural land are a kind of "collectors" and eccentrics who enjoy owning and buying arable agricultural land so that they could lay eyes on weed-covered arable land with undisturbed joy. Much closer to reality is that the land (a) cannot be cultivated by itself; (b) they cannot lease it because there are no interested parties; (c) they have no one to give it to; (d) nor sell; (e) do not make economic sense to process it; (f) i.e., not only can't they cultivate the land, but because it is contaminated with mines, they can't even get close to it, etc. It is completely clear that no tax can affect any of the listed reasons why arable agricultural land is not cultivated - it does not remove them, but only complicates the problem for the taxpayer and makes it difficult to solve it. We are not aware of those factors in the economy that favour the non-cultivation of arable agricultural land, even in the range that really calls for a solution as soon as possible - and it is about 50% of all agricultural land that remains uncultivated. And that is why, of course, we cannot suggest what should be done to solve the problem, but when it comes to taxes, the possibilities and limitations of their application, and the aim that can (and should) be set for some of them, we can state, quite certainly, that the fact that no tax is paid on arable agricultural land - whether it is cultivated or not - is by no means the cause of this. Therefore, introducing a tax on uncultivated arable agricultural land would be a big failure from both a socioeconomic and a legal point of view. It would be*

12 This would not be the first time that taxes are used as a way to punish individuals. A typical example is the "special tax" from the Law on Determining the Origin of Property and Special Tax (see: Baturan, 2021; Baturan, & Milošević, 2020).

wrong to start from the premise that someone cultivates his agricultural land only and precisely to avoid paying taxes" (Jelčić, 2012).

Even more objections can be made to the proposed **tax relief for land at a certain altitude**. First of all, the quality of land depends on its altitude.[13] Therefore, the altitude is already included in the determination of the land class, so the V class cannot be below 250 m above sea level, VI class below 650 m above sea level, and VII and VIII class below 1,000 m above sea level. Here, too, the question arises as to how this tax relief would affect the owner's decision to use the land for agricultural production.

However, the value of land can be conditioned by certain tourist, industrial or construction potentials, and not only by agricultural production. For this reason, the indicative method of determining the value of a tax object using some external indicators such as altitude or class is an inferior method compared to the existing property tax solution.

The existence of two legal instruments implies the conduct of **two (or even three) different and separate legal procedures**. The misdemeanour liability of the owner is determined by the misdemeanour court in the misdemeanour procedure, which is initiated by the agricultural inspector when, as part of the inspection control, he/she determines that certain land is not being used in accordance with the law. Additional taxation of uncultivated land would mean that parallel to the misdemeanour court proceedings a tax proceeding would also be conducted, the end result of which (tax payment) would be the same as in the case of a misdemeanour sanction: deterioration of the financial position of the landowner who does not fulfill the obligation.

There is also the question of **how to determine the tax liability** in case of differentiation of agricultural land according to the criterion of utilization, and every answer to this question gives rise to a new dilemma. In the first place, the case where uncultivated land would be more severely taxed than it is now will be considered. The logic of tax law dictates that a taxpayer who does not intend to use his/her land would be obliged to submit an amended tax return for property tax, in which he/she will inform the competent tax authority about that fact, which is important for determining the tax liability. If the taxpayer fails to do so, he/she commits a misdemeanour prescribed by the Law on Tax Procedure and Tax Administration, on the basis of which the tax inspector must initiate the procedure for determining misdemeanour liability (Art. 11 and Art. 177, Official Gazette of RS). However, when the tax inspector learns from the tax return about the fact that the owner (taxpayer) does not cultivate his/her land, the tax inspector is obliged to make a record on this and forward it without delay to the agricultural inspector (LIS, Art. 30(1)), who is then obliged to file a misdemeanour report (LIS, Art. 42) for violating the provisions of the LIS (Art. 82 and 83(1)(2)). Therefore, the taxpayer would be obliged to report him/herself indirectly for a misdemeanour, which brings into question the constitutionality of the proposed legal solution in view of the Constitution of Serbia (Constitution of the Republic of Serbia, Art. 33(7), Official Gazette RS).[14]

Conversely, if the agricultural inspector were the first to find out about the existence of uncultivated land, the inspector would be obliged to inform the tax inspectorate about it (LIS, Art. 30(1)). In that case, both inspectors would have to file a misdemeanour report against the owner: the agricultural inspector for not cultivating the land, and the tax inspector for not submitting a property tax return. The tax inspector would also be obliged to issue a decision on the determination of property tax, which

13 The altitude of the land determines its belonging to a certain climate-production region, that is, to the credit rating class and subclass. The vertical zoning of the climate-production regions shows the regularity of the worsening of the climate conditions that affect the credit rating class, i.e. sub-class, starting from the plain, through the hilly and hilly-mountainous areas, to the mountainous area (Regulation on land cadastral classification and credit rating, Art. 48 Par. 1 and 2, Official Gazette RS).

14 Unconstitutionality could be avoided by decriminalizing misdemeanour liability for not cultivating the land.

is adopted in the tax control procedure, and to order the taxpayer to submit a tax return in which the taxpayer should eliminate the identified irregularities (LTPTA, Art. 54(2)(1) and Art. 129). Therefore, the owner would be obliged to pay two misdemeanour fines, as well as the amount of (increased) tax.

If, on the other hand, only a special tax relief is prescribed for the use of agricultural land (as suggested by Ševarlić), then there is no obligation for the taxpayer to report his/her illegal behaviour. However, several questions arise in this case. The first one is how the taxpayer proves his/her right to tax relief, that is, how the taxpayer proves the fact that he/she cultivates the land for which he/she is requesting relief. It would not be natural to start from the assumption that all owners from the start enjoy a tax relief as if they are using the land, and that the non-use is proven in each individual case. Namely, a tax relief is "a concession made by the state in terms of the taxpayer, the tax base, tax rates or the amount of tax revenue, *all of which is compared to the general regime of these four elements* that would be regulated by the law in the absence of the relief" (Popović, 2018: 239[15]). Therefore, tax relief cannot be a rule, but can only be a deviation from that rule ("general regime").

The second question is related to the tax control procedure, and it refers to the competence of the tax inspector to conduct investigation (LIS, Art. 21(1)(5)) to directly determine whether the land has been cultivated or not, or if it is necessary to request an expert opinion. An expert opinion is performed when the determination or evaluation of a fact requires expert knowledge that the authorized official does not have (Law on General Administrative Procedure, Art. 128(1), *Official Gazette RS*). The issue becomes more important considering that the LAL expressly stipulates that the control of whether the owner of arable land is regularly cultivating the land is carried out by the Republic's agricultural inspector (Art. 83(1)(18)), and these tasks can be performed by a graduate engineer of the agricultural, land reclamation, farming, general, fruit growing and viticultural or agronomic course, with a passed professional exam and at least three years of work experience (LAL, Art. 82).

The inadequacy of the tax to encourage the use of agricultural land can also be seen from the fact that the Ministry of Finance has the jurisdiction **to decide the matter in the second instance**. The question is whether the Ministry of Finance, as a second instance body, is indeed the right body to make a final decision determining whether an individual cultivated the land or not, since the legal nature of this problem is distant from the tax law. If the taxpayer would be unsatisfied with the second instance decision, the taxpayer could request the protection of his rights from the Administrative Court.

Finally, the tax is inferior to the misdemeanour because of its **inflexibility in determining the amount** that the owner of uncultivated land should pay. Namely, misdemeanour sanctions are specified in the law in absolute amounts, depending on whether it is a business company, an entrepreneur or another natural person. As a rule, the maximum prescribed amount of the misdemeanour fine is 10 times higher than the minimum amount. When determining the monetary amount of the fine, the Misdemeanour court decides on the basis of mitigating and aggravating circumstances concerning the offense and its perpetrator (Đorđević, 2003; Risimović & Kolarić 2016; Jovašević, 2006; Janković, 2010; Jovašević, 2003; Vrekić, 1999). On the other hand, the tax authority is absolutely inflexible. Due to the principle of tax legality (Popović, 1997: 298-299), the amount of tax liabilities is obtained by applying the tax rate to the tax base (land value). The tax authority does not have any possibility of adjusting the tax base or rate, and therefore the amount of the tax debt either, based on any subjective or objective circumstances that may arise in practice.

15 Italics added by author.

The Unconstitutionality of the Croatian Tax on Uncultivated Agricultural Land

In the earlier version of the Croatian Law on Financing of Local Self-Government and Administration Units (Act on Amendments to the Law on Financing of Local Self-Government and Administration Units of the Republic of Croatia, Article 31. *Official Gazette*), it was stipulated that the **tax on uncultivated arable agricultural land** is paid by owners or tenants of that land, if they do not cultivate the land for a year. Uncultivated arable agricultural land is considered to be land that, due to its size, class and culture, can be cultivated and brought to agricultural production, but the owners or tenants do not cultivate it (Act on Financing of Local Self-Government and Administration Units of the Republic of Croatia, Article 38a).[16]

In 2007, the Constitutional Court of Croatia abrogated this legal solution, due to inconsistency with the Croatian Constitution (Decision of the Constitutional Court of the Republic of Croatia No. U-I-1559/2001 and U-I-2355/2002). Namely, the court ruled that the tax on uncultivated agricultural land has the characteristics of "punitive taxes", because it punishes the owner - the taxpayer for failing to use his immovable property (Kesner-Škreb, 2012; Marković, Radin & Trgovac, 2011, 614).[17]

According to the position of the Croatian Constitutional Court, by introducing taxes that tax uncultivated agricultural land, the legislator acted contrary to the constitutional principle according to which **everyone is obliged to participate in the payment of public expenses in accordance with their economic capabilities**.[18] A similar provision exists in the Constitution of the Republic of Serbia: there is the obligation to pay taxes and other expenses is general and it is based on the economic power of the obligee (Constitution of the Republic of Serbia, Art. 91(2)). According to the opinion of the Croatian Court, the aforementioned taxes, neither when it comes to determining their Addressees, nor when it comes to the amount or rates of taxes in general, take into account the economic capabilities of those for whom they are determined (Decision of the Constitutional Court of the Republic of Croatia No. U-I-1559 /2001 and U-I-2355/2002).

The Croatian Constitutional Court also determined that the tax on uncultivated agricultural land **violates the constitutional principles of fairness and equality**, because not all land owners pay them, but only those who do not use them.[19] Regarding the nature of property rights and the possibility of its limitations, the Court concluded that for each type of property tax, the decisive fact must be that the property exists and that the taxpayer owns it, and not the way in which the property is used. Equality, as one of the constitutional foundations of the tax system, does not exist if the tax is prescribed as a form of punishment with the purpose of forcing the owner to use his/her property against his/her interests or capabilities. Therefore, the mentioned taxes are not in accordance with the principle of the fairness of the tax system, which requires that the tax burden must be evenly distributed among all

16 The tax base was determined as the area of the land expressed in hectares, while the tax rate was expressed in a monetary amount, depending on the type of land (Act on Financing of Local Self-Government and Administration Units of the Republic of Croatia, Art. 38b and 38c).

17 According to the understanding of the Croatian Constitutional Court, the obligation to use the land is not in accordance with the constitutionally permitted property restrictions (Decision of the Constitutional Court of the Republic of Croatia No. U-I-1559/2001 and U-I-2355/2002).

18 The Constitution of the Republic of Croatia stipulates that everyone is obliged to participate in the payment of public expenses in accordance with their economic capabilities, and that the tax system is based on the principles of equality and fairness (Constitution of the Republic of Croatia, Article 51, *Official Gazette*).

19 The fairness and equality of taxation, as one of the basic principles of tax law, has been elevated to the rank of a constitutional principle in Croatia. Constitution of the Republic of Croatia, Art. 51(2). The Serbian Constitution foresees the universality of tax liability (Constitution of the Republic of Serbia, Art. 91(2)), and guarantees the equality of every individual in a fair, open and democratic society, based on the principle of the rule of law (Constitution of the Republic of Serbia, Art. 19).

addressees to whom a certain tax applies, based primarily on their economic capabilities (Decision of the Constitutional Court of the Republic of Croatia No. U-I-1559/ 2001 and U-I-2355/2002).

Finally, abrogating the provisions of the Law on Financing of Local Self-Government and Administration Units, the Constitutional Court of Croatia concludes that the legislator is authorized to prescribe various legal measures to encourage the cultivation of agricultural land, but not in a way that is contrary to the basic constitutional values and protected goods, which the legislator in the specific case failed to do so by prescribing taxes due to non-use of real estate, which is against the purpose of taxes and the tax system. Thus, the court fully accepted the position and explanation of Professor Božidar Jelčić, who proposed the constitutionality assessment of such provisions (Decision of the Constitutional Court of the Republic of Croatia No. U-I-1559/2001 and U-I-2355/2002).

It is obvious that the provisions of the Croatian Constitution, on the basis of which the Croatian tax on uncultivated land was abrogated, fully correspond to similar provisions of the Serbian Constitution. Although the decisions of the Serbian judicial authorities are unpredictable, it is quite reasonable to expect, based on everything elaborated above, that even the Constitutional Court of Serbia would not treat the same tax form differently than the Croatian Constitutional Court if it were to be implemented in the Serbian tax system.

Conclusion

Agricultural land is a natural resource of crucial importance for food production. The LAL stipulates the obligation of the owner or user of agricultural land to regularly cultivate the arable agricultural land in an appropriate manner. Nevertheless, in spite of the aforementioned legal disposition, a part of the agricultural land remains outside the production process.

The basic mechanism for encouraging the owners of agricultural land to put their resources to work is the system of misdemeanour sanctions. Agricultural inspectors are authorized to check whether owners or users of agricultural land comply with the obligation to cultivate the land in an appropriate manner. If inspector determines illegal behaviour, the inspector shall submit a request to initiate misdemeanour proceedings, i.e., issue a misdemeanour order. The misdemeanour court, after conducting the misdemeanour procedure, imposes a fine if it determines that the defendant violated the law.

Agricultural land in Serbia is subject to static property tax. The basis of the tax is the value of the land, with the proportional tax rate, which enables the realization of the principle of fairness in taxation. Although the basic functions of taxes are fiscal, they can in principle be used to achieve some non-fiscal goals.

According to the existing solution of the Law on Property Taxes of the RS, the owner of agricultural land that is re-purposed is exempt from paying property tax for a period of five years, counting from the beginning of the use. The goal of this provision is to encourage taxpayers to start cultivating land that was not used for production in the previous period.

In recent years, there have been proposals from several addresses to encourage greater utilization of agricultural land, through the application of the tax law institute. On the one hand, tax relief is proposed for agricultural land that is cultivated, while on the other hand, stricter taxation is proposed for the land that is not cultivated (used).

The analysis confirmed the hypothesis that special taxation of uncultivated land is not acceptable from either the economic or the legal point of view. First of all, this would duplicate the instruments that are intended to encourage the use of unused agricultural land, given that there is already a system of misdemeanour sanctions. Instead of conducting a misdemeanour proceeding, the proposed property tax modifications would lead to tax proceedings as well.

By considering the question of how that tax procedure should be constructed, it was concluded that the owner of the land, as a taxpayer, should inform the tax authority in the tax return about the existence of uncultivated land as an important fact for determining the tax object, i.e., for determining the tax liability. However, non-cultivation of the land is also a direct violation of the obligation from the LAL, which entails the misdemeanour liability of the taxpayer under that law. On the other hand, if the taxpayer did not report this fact in the tax procedure, he/she would violate the obligation from the LTPTA, which entails misdemeanour liability under that law. Therefore, the owner of agricultural land would be obliged to report him/herself for a misdemeanour, which calls into question the constitutionality of this Law in view of Art. 33 of the Constitution of Serbia.

In case the agricultural inspector finds out about the existence of uncultivated land, the inspector would be obliged to inform the tax inspectorate about it. In that case, both inspectors would have to file a misdemeanour report against the owner: the agricultural inspector for not cultivating the land, and the tax inspector for not submitting the property tax return. The tax inspector would also be obliged to make a decision on the determination of property tax, which is made in the tax control procedure. Therefore, the owner would be obliged to pay two misdemeanour fines, as well as the tax.

The inadequacy of the tax to encourage the use of agricultural land can be seen from the fact that the Ministry of Finance would be responsible for the final decision in the second instance, while judicial protection would be achieved in an administrative dispute before the Administrative Court.

The tax is inferior to the offense also because of its inflexibility in determining the amount that the owner of uncultivated land should pay.

Differentiated taxation of cultivated and uncultivated agricultural land would also call into question the constitutionality of such a solution. Such tax treatment is not in accordance with the constitutional principles of the universality of tax liability and its basis on the economic power of the taxpayer, and it calls into question the constitutional guarantee of equality of all individuals in a fair, open and democratic society, based on the principle of the rule of law. For these reasons, the Constitutional Court of Croatia has already abrogated a similar tax form that existed in the tax system in Croatia, and the explanation of the decision does not leave much room for a dilemma as to whether the Serbian Constitutional Court could decide differently, provided that the proposed solutions are incorporated into the Serbian tax system.

After all the aforementioned, it follows that it is absolutely unnecessary to establish additional tax incentives, in a situation where the existing legal framework enables the achievement of optimal allocation. That is why the solution to the problem of uncultivated agricultural land should be sought not in the amendment of legal regulations, but in the consistent application of the existing legal instruments.

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