PRACE NAUKOWE UNIWERSYTETU EKONOMICZNEGO WE WROCŁAWIU
RESEARCH PAPERS OF WROCŁAW UNIVERSITY OF ECONOMICS nr 482 • 2017

Wrocław Conference in Finance: Contemporary Trends and Challenges ISSN 1899-3192
e-ISSN 2392-0041

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THE RECENT DYNAMICS OF THE DISINTEGRATED REAL ESTATE TRANSFER TAX IN THE EU

DYNAMIKA DEZINTEGRACJI PODATKU OD NABYCIA NIERUCHOMOŚCI W UNII EUROPEJSKIEJ

DOI: 10.15611/pn.2017.482.14
JEL Classification: E62, H20, K25, K34, R38

Summary: An important instrument of the fiscal policy is the real estate transfer tax. The approach of EU member states to it has been growing different and departing from the USA model. The comparative study of these heterogeneously different approaches presented in the article is illustrative. The real estate transfer tax system does not belong to the conferred competencies, but a touch of harmonization for states struggling with it, such as the Czech Republic, could help. Hence, the hypotheses to be confirmed or rejected are: (i) real estate transfer tax is inherently particular and harmonization resistant and (ii) real estate transfer tax is not indispensable *per se*. These hypotheses are addressed while using scientific methods and national statistics. The conclusions confirm both hypotheses and offer thoughts and issues for further research on the (in)capacity of the EU harmonization of the real estate transfer tax and on the (in)effectiveness of the real estate tax, as such.

Keywords: European Union, *Europe 2020*, harmonization, real estate transfer tax.

Streszczenie: Ważnym instrumentem polityki fiskalnej jest podatek od nieruchomości. Podejście państw członkowskich UE coraz bardziej różni się od modelu amerykańskiego. Przedstawione w artykule badanie porównawcze tych heterogenicznie różnych podejść jest ilustracyjne. System podatkowy w zakresie transferu nieruchomości nie należy do kompetencji unijnych, ale elementy harmonizacji dla państw walczących z tym problemem, takich jak Republika Czeska, mogłoby pomóc. Zatem hipotezy, które mają zostać potwierdzone lub odrzucone, to: (i) podatek od przeniesienia własności jest z natury szczególny i odporny na harmonizację, a także (ii) podatek od nieruchomości jest nieodzowny. Te hipotezy są rozwiązywane z wykorzystaniem metod naukowych i statystyk krajowych. Proponowane wnioski potwierdzają hipotezy, jak i przedstawiają propozycje dotyczące dalszych badań nad zdolnościami unijnej harmonizacji podatków od nieruchomości oraz efektywności podatku od nieruchomości jako takiego.

Słowa kluczowe: Unia Europejska, Europa 2020, harmonizacja, podatek od przeniesienia nieruchomości.

Temeritas est damnare, quod nescias –
It is rash to condemn what you do not know.

Lucius Annaeus Seneca

1. Introduction

The recent financial and real estate crises generated negative consequences of a wide-ranging intensity on both sides of the Atlantic. The USA's recovery was generally faster than the EU's, where a big drop of confidence in the single internal market occurred and many EU and national market participants became frustrated [Cvik, MacGregor 2016]. Instability was added by the collapse of well-known economic rules, as when the set-in-stone real estate paradigms about the price down – demand up ended, i.e. real estate prices shrank but so did demand for real estate, it led to a huge increase in unfinished and incomplete building projects [Hajnal 2015]. The fall in the profitability hit with a varying extent and intensity basically the whole USA and EU and their industries and businesses of all sizes [Lacina, Vavřina 2014]. The ultimate victims were both public and private subjects, including the populace. Since today's approach to public finance is denoted by employing well-known methods respecting the economic regime from the private sector [Wojewnik-Filipkowska 2016], alike strategy on both, public and private, levels might have been expected. Yet it did not occur, at least not in the (dis)united and (dis)integrated EU.

The USA reacted promptly, launching a rather unified set of instruments, the EU and EU member states reacted slower, launching many not really matching and coordinated instruments. The instruments entailed fiscal measures, such as the real estate transfer tax. Yet due to the distribution of competencies based on the principle of conferral, the EU has not had the authority to step in and directly harmonize direct taxation, including real estate transfer taxes, in the EU member states. Still, a closer scrutiny of the EU action in the course of several years and even decades makes it clear that the pro-integration internal EU tandem, the European Commission and the Court of Justice of the EU („CJ EU") have always been very pro-active and not shy to go to the edge and even beyond, see: European strategies.

This endeavour is more welcome regarding certain policies and issues than for others. The recent dynamics of the real estate transfer tax in the EU member states suggests that here the EU quasi-harmonization attempt is not falling on very fruitful soil. Indeed, it appears that the diversity of EU member states and their legal, cultural, historical, social, political and other traditions leads to a heterogeneously diverse approach to the real estate transfer taxes. The EU is not a federation, unlike the USA, and the maintenance of the disintegrated real estate transfer tax in the EU member states, despite the integration drive led by the European Commission and CJ EU, is basically a *fait accompli.* In this view, the single internal market with the famous four freedoms of movement is way behind the federal USA market with a much greater developed and realized mobility. Indeed, the real estate transfer tax can be seen as a very interesting indicator showing internal preferences of local and state governments as projected in their fiscal policies. If a real estate transfer tax is going to be even more disintegrated in the EU, then perhaps this can be interpreted as a message sent by Europeans to Brussels. At the same time, Brussels' 'one-size--fits-all' ideas, including those regarding real estate transfer taxes, can become a good inspiration for certain EU member states, i.e. fit to them.

The multidisciplinary research of primary and secondary data, with the case study about the evolution of the Czech real estate transfer tax, yields interesting information which can be processed using description, comparison and meta--analysis. The resulting data is to be commented on and glossed in order to go above and beyond the dry static numbers of a quantitative nature to dynamic information of a qualitative nature bringing new light and perspective. Hence, the ultimate goal of this paper is to address and confirm or reject the two underlying hypotheses – that (1) real estate transfer tax is inherently particular and its harmonization is resistant and even that (2) real estate transfer tax is not indispensable *per se*. This is achieved with the scientific methods of comparison, description, meta-analysis and data analysis based on national statistics. The USA model and current status in selected EU countries is completed by contextual and historical comments in order to demonstrate the differences in the real estate transfer tax, in countries looking *prima facia*, place them in a general context (including the cross-Atlantic perspective) and to suggest reasons for that. The understanding of causes of the disparity and diversity teaches us about the real estate transfer tax, direct taxation in general and even about the differences between the states making up the EU. At the same time, the lesson learned is predominantly linked to real estate transfers between individuals, as in the corporate world often for tax, confidentiality and other reasons, the share-deal model is used, i.e. their real estate is the only asset of a company and, once all the shares of such a company are transferred, then the new shareholder *de facto* acquires the real estate which *de jure* has still the same owner, the company. Hence the recent dynamics of the disintegrated real estate transfer tax in the EU is basically a story about the European Commission, the CJ EU, EU member government and EU citizens and the fine mechanism of their *modus vivendi* in the post 2008 crisis developed world. Analogous stories have been compiled in the general field of accounting regulation where the striving for harmonization goes on since the 1950s [Kubíčková, Jindřichovská 2016].

2. Integration of the Real Estate Transfer Taxation in the EU – on the way towards the US model?

The constitutional trio of modern EU law consists of the consolidated version of the Treaty on European Union of 7 June 2016 (TEU) [2016/C 202/01], the Treaty on the

Functioning of the European Union of 7 June 2016 (TFEU) [2016/C 202/01] and the Charter of Fundamental Rights of the European Union of 7 June 2016 (Charter) [2016/C 202/2]. Art. 4 of the TEU states that competences not conferred upon the EU remain with the EU member states. According to Art. 5 TEU, this principle of conferral is completed for the use of the conferred competences via principles of subsidiarity and proportionality. Art. 3 TFEU states the exclusive conferred competences and Art. 4 TFEU states the shared conferred competences. In the first group monetary policy regarding the EURO is named and in the second group – the economic cohesion. Since the fiscal policy, namely direct taxation, is not included, it should remain completely in national hands. However, a closer scrutiny reveals that indeed there are provisions in the TFEU in the proximity of the real estate transfer taxation. Firstly, Art. 63 et foll. TFEU deals with the movement of capital, including direct investment in real estate. Secondly, Art. 110 et foll. deals with tax provisions with the main concern to battle against direct and indirect taxation of products from other EU member states. Thirdly, Art. 114 et foll. aims towards the approximation of laws, especially if the establishment and functioning of the internal single market is at stake. Fourthly, Protocol No.7 On the Privileges and immunities of the EU of 7 June 2016 [2016/C 202/01] provides in Art. 3 that EU property is exempt from direct taxes.

A short recapitulation of the primary sources of the EU law provides just a part of the picture of the EU competences and approaches to taxation and the real estate transfer tax in particular. Indeed, secondary, supplementary and other sources of EU law need to be considered. Concerning the secondary sources of the EU law, one must underline the complex set of EU economic and financial legislation. Its overview shows that the EU has been very active in this arena, generating a battery of Directives dealing with direct taxation, indirect taxation and administrative cooperation [Gellings et al. 2014]. Since real estate transfer tax is a direct tax, it is illustrative to list EU Directives dealing with the direct taxation.

They encompass the Council Directive [2003/48/EC of 3 June 2003] on taxation of savings income in the form of interest payments, Council Directive [2003/49/EC of 3 June 2003] on a common system of taxation applicable to interest and royalty payments, Council Directive [2009/133/EC of 19 October 2009] on the common system of taxation applicable to mergers, divisions, etc., and the Council Directive [2011/96/EU of November 2011] on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States. These Directives deal with the taxation of passive income and cross-border corporate asset deals and have an indirect impact on the real estate transfer taxation, e.g. when real estate is the key asset of the company. In regard to the supplementary sources of the EU law, the majority of the Court of Justice of the EU ("CJ EU") cases mentioning real estate transfer taxes deal basically with the value added tax or the free movement of capital or with state aids, i.e. not with real estate transfer tax *per se*. Yet, occasionally the CJ EU has an opportunity to express its opinion, at least via *obiter* *dictum*, regarding real estate transfer taxes, e.g. C-132/10 Halley v. Belgium about inheritance tax on assets [Judgement of 15 September 2011] (see also Art. 63 TFEU) or C-258/08 European Commission v. Belgium about the purchase of immovable property intended as a new principal residence [Judgement of 1 December 2011]. Here, it was confirmed that the tax advantages for purchases of residential real estate in the Flemish region can be compatible with the EU, i.e. the CJ EU had previously held that the need to safeguard the cohesion of the tax system may justify rules that are liable to restrict fundamental freedoms, see C-300/90 Commission v. Belgium [Judgement of 28 January 1992] and C-157/07 Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt [Judgement of 23 October 2008].

The cohesion of the national real estate transfer tax may, under certain conditions, have a priority over the protection of certain rights and duties provided by the EU, namely the abovementioned constitutional trio. Can this opinion of the CJ EU, which even went against the European Commission, be considered as the last word and, along with the lack of direct conferral competencies, lead to the conclusion that the EU can go only as far as it went with the abovementioned quartet of Directives? Such a conclusion would be premature due to the European Commission's ferocious endeavours. Indeed, the European Commission [2010] presented the final *Communication from the Commission Europe 2020. A strategy for smart, sustainable and inclusive growth*, i.e. launched strategy *Europe 2020*, as a new massive root measure for one decade which (allegedly) addresses the overcoming of the (hopefully past) economic and other crises and improves the entire integration model while focusing on smart, sustainable and inclusive growth [MacGregor 2014].

Council Regulation [No 1311/2013 of 2 December 2013] has set the framework for EU funding according to which the EU will invest almost 1 trillion Euros for sustainable growth, jobs and competitiveness, solidarity and cohesion, to, hopefully, enable the EU to play its role in the world and to achieve the objectives of the *Europe 2020* strategy [MacGregor 2014]. Especially the third of the priorities trio, inclusive growth, seems to be nearing the sphere of the real estate transfer taxation. It includes two flagship initiatives – (i) an agenda for new skills and jobs and (ii) a European platform against poverty, and both of them are at least indirectly trying to shape the real estate transfer taxation across the EU. It is logical, because if the EU, especially the European Commission, is serious about its goal to reach an employment rate of 75%, also reducing the number of Europeans living in – or bordering on – poverty (under 20 million), then it cannot ignore various national fiscal, social or other strategies establishing national real estate transfer tax systems crippling the EU employment efforts, fighting poverty and freeing many from various national particularities and discrimination.

These goals and priorities might look compatible with the preferences shared as well on the other side of the Atlantic – in the USA, where the real estate transfer tax regulation rests with states, i.e. is not federally regulated. Hence, it is illustrative to recapitulate the real estate transfer tax in various states, see Table 1. Naturally, this information is only orientative, since many states add local tax, mortgage tax, etc. and other transaction costs need to be considered.

Table 1. Real Estate Transfer Tax in the USA – selected states

State	Real Estate Transfer Tax Rate	Factors	Traditionally
Alaska, Louisiana, Idaho, Indiana, Mississippi, Missouri, Montana, North Dakota, New Mexico, Oregon, Texas, Utah, Wyoming	0%		Republican
Arkansas	0.33%		Republican
Colorado	1%		Democratic
Connecticut	0.75% or 1.25%	Based on value and if (non) residential	Democratic
Delaware	2%	In addition, local tax	Democratic
District of Columbia	1.1%		Democratic
Florida	0.7%		Republican
Georgia	0.1%		Republican
Hawaii	0.1%-1%	Based on property value	Democratic
Illinois	0.1%	(*sic*!) County surcharge (*sic*!) Chicago 1.05%	Democratic
Iowa	0.16%		Republican
Kentucky	0.1%		Republican
Maine	0.44%		Republican
Maryland	0.25% or 0.5%	Based on county and if 1st time buyer	Republican
Michigan	0.75% state tax + variable local	Based on county	Republican
New Hampshire	1.5%	0.75% paid by buyer and 0.75% by seller	Democratic
New York	0.4% or 1.4% or 2.7% or…	Based upon value and county	Democratic
Ohio	0.4%	0.1% state + 0,3% local	Republican
South Dakota	0.1%		Republican
Vermont	0.5% or 1.25%	Reduced if owner occupied property sold, and if low value	Democratic
Washington	1.28% or 1.53% or 2.03%	Upon location	Democratic
Wisconsin	0.3%		Republican

Source: own study based on data of NCSL [2012].

The states opt for real estate transfer taxes under 3%, often even reaching 0%. With the state real estate transfer tax, sometimes, as well comes the local real estate transfer tax and mortgage tax. However, the final combined tax rate does not exceed 5%. Other transaction fees include Real Estate Agent fees of up to 7% (commonly 7% on the first three hundred thousand of the sold price, 5% from three hundred to five hundred thousand and 3% thereafter), stamp fees and title registration. The entire transaction cost may oscillate around 5% if it is a sale by owner, without a Real Estate company involved, and around 10% if the real estate agent is employed. Thus, ultimately there are differences based on various factors (location, nature of the real estate, first time deal, etc.), but these differences are not massive and do not seem to limit the mobility within the entire federation. Generally, Republican states seem to have lower real estate transfer tax (even 0%) than the Democratic party controlled states. This is fully logical and in compliance with the general policies of these parties.

The European Commission does not live anymore in its golden era and cannot legislate for the EU, but it is still very serious about *Europe 2020* and the lack of explicit provisions in the TEU and TFEU does not slow it down even if the real estate transfer tax is involved. They observe the USA and its markets and should be aware of the abovementioned issues. Indeed, the mobility in the EU over time should be getting closer to the mobility in the USA, and instruments and indicators such as real estate transfer taxes should go with it. The CJ EU appears to be here, as well as in other spheres, more conservative, but, so far, has clashed with the European Commission only indirectly on the asset taxation, see above. Perhaps the European Commission is open towards the approximation of the real estate transfer taxes in EU member states, but it has not yet taken (despite the tempting idea to "catch the situation in the USA") a direct strong action and it is hardly predictable how the CJ EU would in such a situation react. Yet EU member states demonstrate a massive diversity in their approach and setting of the real estate transfer taxes, a determination to have their way and no enthusiasm to embrace the approximations pushed by the EU. Indeed, the EU member states appear to be somewhat departing from the integration vision of the EU about the real estate transfer tax and of the very mobile Europeans in general.

3. Disintegration of Real Estate Transfer Taxation in the EU member states – on the way away from the US model

A fiscal policy rule is a permanent constraint on fiscal policy [Przybylska-Mazur 2016] and the majority of states chose to have such a quasi-permanent restriction regarding real estate transfers. Most developed countries opted to tax changes in ownership of real estate, and thus their national tax systems include, in some form, an inheritance tax, gift tax and transfer tax regarding real estate [Japalli et al. 2014].

Each country has undergone a long national process of forming the approach and setting regarding real estate transfer taxation and thus the resulting systems are unlike and operate differently. Despite its different setting, the yield of the real estate transfer tax in the OECD countries oscillates around 1% of the total state budget revenues [Růžičková, MacGregor 2014]. Although this number is rather low, the real estate transfer tax is considered critical and is the subject of an intense debate involving a myriad of arguments – economic, legal, social, cultural, historical, political, etc. [Japalli et al. 2014]. Indeed, it can be argued that the existence and the rate of the real estate transfer tax are highly, both politically and socially, sensitive. Generalizations are perceived as misleading and not sufficiently academic, but the real estate transfer tax can be instrumental in searching for deeper reasons and causes. As a matter of fact, the trends of the real estate transfer taxes as shown regarding the USA are getting additional magnitude concerning the EU member states.

Real estate transfer taxation is a typical feature of the tax systems of EU member states, but there are significant differences in the perception of their foundation and function. Since European integration is less pronounced in this arena, it devolves upon each and every member state to select its own approach to the transfer taxation and how it projects into the national (intrastate) law [Růžičková, MacGregor 2014]. Many involved aspects are sensitive because they touch economic and social priorities which are not easy to be reconciled and make this field prone to some particular national legislation. It is illustrative to recap the approximate rate of real estate transfer taxes in EU member states, while keeping in mind that each state (i) determines differently the basis on which the given tax percentage is applied and (ii) provides for a different set of particular reductions, exemptions, etc. and mandatory fixed registration fees, making the data in Table 2 only a general benchmark.

The EU member states set a widely varying percentage rate to be assessed and they are considering different criteria for it. However, before engaging in more depth with the tax rate topic, the burning issue of the basis on which this percentage is to be assessed needs to be addressed. This basis is set differently – declared sales price, fair market value, table determined amount, adjusted tax basis, etc. Indeed, the calculation and reporting of the basis on which this percentage is to be assessed is an issue *per se* and there are many methods for real estate valuation [Pagourtzi, Assimakopoulos 2003]. This is a serious phenomenon basically absent in the USA, but heavily present in certain EU member states. Several south European countries and post-communist European countries have been witnessing the manipulation of the tax basis for the real estate transfer tax, such as indicating a lower sale price to tax authorities, paying in cash 'under the table' or more sophisticated carrying out of an appraisal to make an expert opinion explaining why the sale price is low.

Naturally, these tax evasion practices are in many other EU member states unknown and considered taboo. Therefore, some EU member states require an official property appraisal in the case of real estate transfers, while others pass on it. For example, the Czech Republic recently replaced the duty to file the expert assessment by a new check-up method, i.e. the declared sale price is the tax basis only if it is higher than 75% of the value set in the tables for such real estate.

Table 2. GDP per capita and Real Estate Transfer Tax in Selected EU Member States

Member State	GDP in thousand current $/ capita	Real Estate Transfer Tax Rate	Reduction Exception	Factors	Comments – individuals or residential estate for FREE or less	Comments – location (tax regionalism)
Austria	43	3.5% general	2% relatives	Nature of parties	Yes	
Belgium	40	12.5% Valons	10% Vlams	Location – Region		Yes
Bulgaria	7	0-3%	3-6% if gift	Location – Place, Payment		Yes
Croatia	12	5%				
Czech Republic	17	4%	0% if new real estate	New houses or flat exempt		
Denmark	52	0.6%				
Estonia	17	0.16%				
Germany	41	3.5% general	4.5% Berlin, 4% Saarland, etc.	Location – Bundesland		Yes
Greece	18	6% (3% state + 3% municipal)				
France	36	5-6%		Location – Place		Yes
Hungary	12	10% or 4%	2% or 0% if residential	Nature of real estate	Yes	
Italy	30	2%-9%	Proportionate	Value of real estate		
Latvia	14	0.3% or 1.5% or 3%		Location, Use of real estate		
Netherlands	44	6%	2% if residential	Nature of real estate	Yes	
Poland	12	2%				
Portugal	19	6.5%	6% if residential	Nature of real estate	Yes	
Romania	9	3% or 2%	2% or 1%	Value of real estate, time	Yes	
Slovakia	16	0%			Yes	
Slovenia	21	2%				
Spain	26	3%				
Sweden	50	4.25% general	1.5% individuals	Nature of parties	Yes	
UK	44	4%, 3%, 1%, 0%	0% if cheap	Proportionate, Value of real estate		

Source: own study based on the data of the World Bank [2016] and KPMG [2015].

In Poland both the tax on civil law transactions (Group IV of the taxation system) and property tax (Group I of the taxation system) are in the category of taxes which may require a property appraisal [Cymerman 2013]. In addition, it needs to be pointed out that the value of property is evaluated in Poland mainly through the location, surrounding infrastructure, and of course the size, although the true value of the property should be calculated predominantly on the basis of the actual condition of the property [Bywalec 2016]. Unfortunately, Poland does not have a modified real estate transfer tax separately. Further, EU member states identify differently who pays (who is the payor) – the seller, the buyer, both jointly and severally, etc., and provides various temporary or permanent exemptions. It is beyond the extent of this paper to go in detail regarding these features, and the focus will be basically on the rate and its criteria, while the basis and payor information will be added just for demonstration.

A cursory overview of the percentage rate for real estate transfer taxes indicates that this percentage rate is between 0% and 15% in the EU member states. There are similar patterns on both sides of the Atlantic, but with a dramatically different intensity. A significant number of the states in the USA completely waived the real estate transfer tax and these states are mainly the conservative republican southern states. A few of the EU member states waived the real estate transfer tax (Bulgaria and Hungary in some situations, Slovakia) or charged a rate close to 0% (Estonia, Bulgaria and Hungary in other situations) and obviously these are rather eastern, so called post-communist, countries. The remaining EU member states have a rate between 1% and 15% in the EU [Růžičková, MacGregor 2014], while in the USA the range is from 0% to 5% and the entire transaction cost can hardly exceed 10%. The real estate transfer tax oscillates in the USA around 1%, while in the EU around 3%. Other transaction costs can easily be higher than tax dues in the USA, but in the EU the costs for contracting and registration can range between 1% and 4% [Schmid et al. 2005].

Naturally, this means that Europeans may (opt to) avoid professional real estate agents more than Americans. Definitely, more data is needed to support this suggestion. However, if confirmed, then this would be an extremely important factor regarding the transaction and property stability, as well as smooth mobility on the market. Boldly, real estate deals are the most critical deals for the vast majority of individuals, while their smooth realization is critical for both individuals and the entire society, i.e. unprofessional and erroneous transferring of real estate can have a dramatic impact in many arenas. This is one of the main reasons sellers use realtors, so as to avoid errors and omissions and the chance of losing their house.

At the same time, a high real estate transfer tax with high other transaction costs might have a paralyzing effect on business conduct and social policies, even on the entire welfare. Indeed, these costs devalue real property and paralyze the movement on the internal single market. Table 3, below, is more indicative than conclusive, nevertheless it provides a strong suggestion that the real property transfer regime is better set and more legitimate in certain EU member states than in others, i.e. PIGS. Naturally, a more robust study and calculation needs to be updated and done in this respect.

Table 3. Real estate transfer tax and other transaction costs in selected EU member states and alleged welfare gains from the abolished real estate transfer tax as a percentage of GDP

EU member state	UK	Austria	Germany	France	Greece	Portugal	Italy	Belgium
Transaction costs	4%	8%	10%	12%	12%	12%	14%	14%
Welfare gains	0%-0.03%	0.03%--0.11%	0.02%--0.08%	0.08%--0.41%	0.75%--1.55%	0.77%--1.65%	0.25%--0.95%	0.40%--0.76%
Comments	Same real estate transfer tax and real estate agent fees	Same real estate transfer tax and real estate agent fees		Real estate agent fees may exceed 5%	PIGS	PIGS	PIGS	

Source: own study based on [van Ewijk, van Leuvensteijn 2009, 2010].

Turning back to real estate transfer tax rates as such, it is obvious that EU member states differ much more than the states in the USA. A number of EU member states and regions, which are conventionally perceived as wealthy and with a strong drive for social redistribution, do not hesitate to set the rate over 10%, e.g. the Valon region or rich German towns [Cinnamon 2008]. At the opposite end of the spectrum are post-communist states opting for a 0% rate. To make it even more complex, many EU member states have different rates, even progressive rates (UK), and provide for exemptions and exceptions. Considering the GDP/capita, generally wealthier states are more inclined to have a higher real estate transfer tax (Belgium, Germany, France, and the Netherlands). However, certain EU member states with a high GDP/capita charge only a symbolic real estate transfer tax (Denmark) while other EU member states with a lower GDP/capita charge even more than the wealthier ones (Portugal). Ostensibly, the GDP/capita is a consideration, but definitely neither the key consideration nor a cause for the tremendous real estate transfer tax disparity in the EU member states.

Indeed, there are many reasons and causes for a higher percentage rate, in addition to the abovementioned solidarity (social policy). It can be the fear of a massive budget deficit (fiscal policy), an attempt to steer the population (housing policy) or to agricultural and rural development (CAP). More pragmatic factors enter the picture. Perhaps the high rate can be the historic-cultural heritage of a local shrinking or over-populating with high- or low-income individuals intensified by the social redistribution drive (France, Bulgaria) or the result of frustrations due to the massive cheating and under-reporting. The PIGS acronym created by the Eurozone crises applies even here and, e.g., Spain made a legislative change to use as the basis the fair market value and not the low number from the contract, but still the tax evasion has continued [Schmid et al. 2005]. Since in certain countries the proceeds from the real estate transfer tax go, partially or fully, into local budgets (Greece), the real estate transfer tax can be the result of the, not always harmonious, interaction between the state and the local government.

Table 2 reflects real estate mobility, i.e. the slow or fast frequency of real estate transfers. A distinction should be made between residential and commercial real estate. Certain states moved to explicitly set a lower real estate transfer tax for residential real estate (Hungary, the Netherlands) while others do not dwell over the residential status and give a lower rate to individuals (Sweden) or to deals between relatives (Austria) or even exempt the purchases of newly built houses or flats (Czech Republic). The motivation to not 'punish' fiscally a slow move into bigger houses can be detected (Romania, Hungary), as well as the will to support new residential housing developments (Czech Republic). Since 2014, in the Slovak Republic it is a flat income tax rate and a flat value added tax rate, while the real estate transfer tax is abolished due to its complexity leading to low efficiency, too much work for less than 1% of the budget revenue (fiscal efficiency) and other social, labour mobility, etc. concerns. The Czech Republic went in the opposite direction; the rate is 4% while discussions are ongoing about its possible increase and about the determination of the basis and of who is the payor. In addition, the Czech real estate transfer tax is perhaps the most dramatically changed real estate transfer tax in Europe. Hence, the Czech real estate transfer tax and its evolution is a good case study.

4. Case study – Czech Real Estate Transfer Taxation

The real estate transfer tax has a long and uninterrupted tradition in the territory of the current Czech Republic. Its history goes back to Habsburg Austrian-Hungry monarchy [Act of 18 June 1901], which had been valid until 1957. The first exclusively Czech(oslovak) statute on the real estate transfer tax was [Act of 18 April 1957], which was replaced by [Act of 31 January 1964] and this Act was replaced by [Act of 18 December 1984].

It is interesting that the last-mentioned Act was about notary public fees, the fee for paid transfers of real estate was set in Art. 8 -11, the rate was progressive based on the degree of relation (family and relative deals for a lower rate) in the range 1-20%, the payor having the duty to report it within 15 days. Hence the regime launched in 1984 was completely opposed to the current one, which has a one fixed rate (4%), the payor is the buyer and it is a tax and not a notary fee. Interestingly, the communist regime of real estate transfer tax from 1984 was highly effective and efficient and the collection of its proceeds was high and the delay was sanctioned by a penalty of 0.5%

of the due tax for each commenced month. The notarial administration of real estate transfer tax survived the Velvet revolution and was substituted by a regular fiscal regime, i.e. tax collected by the fiscus – internal revenue service, only from 1993 based on the [Act of 5 May 1992]. This Act unified the tax rate at 3%, which in the crisis aftermath was increased to 4% in 2013. As a matter of fact, there were many changes, the Act had undergone 52 novelizations during its two-decade existence and became an object of almost five hundred court decisions. The entire complexity and instability was further magnified by the magnitude and diversities of various exceptions and exemptions, e.g. no tax was paid in the case of the transfer of the real estate into the capital of a company.

In 2013 not only an increase of the rate to 4% took place, also the preparation of a brand-new Act to replace the Act of 1992 was ongoing. It replaced the third from the trio of the communist statues dealing with the real estate transfer tax. The new Act, though technically correctly it was a Senate measure, due to the rejection of the Government appointed by the President, against the will of the majority of political representation, became the [Act of 9 October 2013], and since it was later confirmed, it became the law valid and in effect until today. The main *raison d´être* for this Act was the Czech private law re-codification and the re-inauguration of the principle *superficies solo cedit* and a general simplification along with the paperwork reduction. Other key concepts and features include the decrease of cases when the appraisal assessment or valuation is needed for the establishment of the tax basis, the possibility to deduct the appraisal fees from the tax basis and the setting of a battery of four methods about how to establish the tax (adjusted) basis to which the tax rate is to be applied. Perhaps the most important exemption brought by this Act is the exemption of the first transfer of real estate, provided it occurs within 5 years after its construction and approval of its habitation suitability. The proponents of the Act have been consistently repeating that it should make the real estate transfer tax easier and more customer-friendly. Often, the stability and consistency of the law had been mentioned, yet a novelization has already occurred and further changes are pending.

Naturally, the changes in the legal regulation of this tax are related to the changes in the Czech(oslovak) tax system [Jánošíková 2015] and boldly some modifications since the Stalinist era were definitely necessary. Table 4 recapitulates the historic legislative evolution of the real estate transfer tax and covers five statutes, which were subject to many amendments and updating. Hence, the Czech real estate transfer tax legislation and rates are far from being stable and, in addition, it should be kept in mind that each and every statute has provided a number of various exemptions (*sic*!).

In the Czech Republic, the real estate transfer tax is conventionally seen as a direct and transfer tax with a stable revenue. The 2008 crises proved that the financial and real estate markets can be severely impacted, real estate prices and transaction volumes decreased, leading to a dramatic drop in the real estate transfer tax revenue in the Czech Republic in 2009, which continued until 2013. Therefore, it can be argued that both, the real estate transfer tax rate and the proceeds, are unstable in

Table 4. The historic evolution of the rate of the Real Estate Transfer tax in Czech Republic

Act No.	Real Estate Transfer Tax	Comments
26/1957	6-13% general, 1-5% relatives	2% surcharge if private ownership
24/1964	6-13% general, 1-5% relatives	3% surcharge if private ownership
201/1990	1-20%	
357/1992	3%, later on 4%	(*sic*!) This Act was updated 52 times
340/2013	4%	(*sic*!) This Act was updated

Source: own study based on Act quoted thereof.

the Czech environment. Indeed, the revenue from the real estate transfer taxes in the Czech Republic is not truly stable even during these brief times when no legislative changes occur. Parallels with economic growth and recession can be detected, but do not suffice for the explanation. Naturally, significant factors are (i) the exemption for new houses and flats, because they are often the most expensive and their first buyers do not pay the real estate transfer tax, (ii) the inheritance regime and (iii) the shrinking of the population of the Czech Republic. Boldly put, secondary market real estate may avoid any transfer tax by being inherited from one generation to another generation of the same family and the primary market real estate avoids the transfer tax by the operation of law, i.e. the exemption.

As much as the stability of the Czech real estate transfer tax and its revenue are questionable, so much can the real estate transfer regulations testify about the political situation and state priorities. The communist trend to charge 13% plus 2% extra for the private ownership transfers seems as a hidden partial expropriation and progressive abolition of the least 'desirable' form of ownership, according to the 'communist thought' – this being the private ownership. The inherent instability, political historical context and current interaction between the state and local governments influenced the decision to assign all its revenue to the state and not to the concerned municipalities and regions. These factors, along with the general tax payment reluctance, contribute to the ongoing need to update the system and work hard on its enforcement. The collection of real estate transfer taxes was, until the Act from 2013, considered as heavily bureaucratic and with high establishment and collection costs. This new Act should bring more simplicity, but so far, the general public demonstrates a low awareness [Růžičková, MacGregor 2014], and both scepticism and confusion.

There was a high expectation regarding the new regime brought about by the newest Act, but immediately after the publication of its final version many questions and criticisms emerged. It has been argued that reshuffling the determination of the payor, changing forms and deadlines and other parliamentary discussions about the real estate transfer tax make the scenery even more ambiguous. Sadly enough, the brief practice proved this and a new amendment needed to be enacted [Act of 14 July 2016]. Fortunately, this amendment does not bring any conceptually dramatic

Table 5. The Revenue from the Real Estate Transfer Tax and its ratio with respect to the entire state Revenue – Czech Republic 2007-2013

Year	Revenue from Real Estate Transfer Tax in Million CZK	Total Revenue in Million CZK	Ratio Real Estate Transfer Tax/ All Revenue in %
2007	9774	576 506	1.69
2008	9950	606 665	1.64
2009	7809	522 847	1.49
2010	7453	548 477	1.36
2011	7362	561 176	1.31
2012	7660	583 569	1.31
2013	8894	610 603	1.46

Source: own study based on the data provided by Czech Fiscal administration [Generální finanční ředitelství 2015].

changes and aims only to simplify and clarify the newest regime, by e.g. clearly stating who is the payor of the real estate transfer tax – i.e. the acquirer (the buyer). Other ambiguous areas tackled by the Act form 2016, include the exchange of real estate, the exemption of territorial authorities, extension of the real estate transfer tax, as well the contractual right to build and the tax basis determination. At the same time, it is worth emphasizing that the approval of this Act was a subject of a heated discussion in both chambers of the Czech Parliament, the Chamber of Deputies and the Senate. Several deputies and senators from the right-wing parties suggested reducing the rate to 3% or even 2% (Vladislav Vilímec, ODS) and one Senator (Jan Horník) explicitly stated: “This tax should not exist at all, because we all, who purchase real estate, have cleaned (i.e. already taxed) money” and asked to postpone the entry in effect of the novelization, so contractual parties can get adjusted to it [Senate 2016]. Sadly enough, these two strong arguments were brushed off by two leading Czech parties. Seeing the evolution abroad, the dissatisfactory decline of any discussion, and the ongoing trends in Czech elections, it might be speculated that sooner or later the real estate transfer tax, including its rate, will change again.

Perhaps a little bit of consistency, continuation and EU harmonization might be helpful in the Czech Republic. However, the EU does not have the competency to do this directly, and so the Czech seasonal real estate transfer tax parade can continue and the only constant remains – the real estate transfer tax changes with changes in political leadership and due to the not perfectly argued and explained legislative proposals. This is good neither for the Czech market nor for the single internal market. This is not a cultural-historical particularity which should be eagerly cherished by the Czechs. After all, the consistent 2% of Poland and 0% of Slovakia seems to work very well in the long run. *Verba movent, exampla trahunt*?

5. Conclusion

Real estate transfer tax is a mirror of the nation, its history, priorities and social--political particularities. Each state of the USA has undergone a particular evolution in this respect and, currently, it appears that the real estate transfer tax testifies correctly about the political setting and preferences in the given state. Indeed, the clichés about Republicans trending to *laisser-faire*, recognition of individual responsibility and reduction of the state's grasp and the etatique redistribution and about the Democrats aiming to a bigger, more intrusive state with more redistribution seem to work almost perfectly with respect to real estate transfer taxes.

Also, each EU member state has undergone an evolution in this respect, and national particularities are heavily embedded with respect to real estate transfer taxes. The EU is not a federation like the USA, but still has a strong integration drive. It is interesting to note that all the EU member states have reached a stage at least partially compatible with the demand for the sustainable, smart and inclusive growth dictated by the EU through *Europe 2020*. Although the EU does not have a competency to step in directly, it arguably developed certain initiatives in this field.

Considering the heterogeneous diversity and the many policies and functions, for which the real estate transfer tax can be employed, the national particularities dominate and should be observed. Especially, regarding the very diverse and sensitive real estate transfer tax, fit-all ideas should not be developed by Brussels and pushed upon EU member states. For the time being, it seems that, in the EU, the differences in real estate transfer tax seem to have a rather increasing than a decreasing trend, i.e. the EU is getting more disunited and departing from the model present in the USA, and this should be humbly accepted and studied, before a new wave of harmonization and integration is launched. In sum, this litigates for the confirmation of the first hypothesis, namely that the estate transfer tax is inherently particular and harmonization is resistant. At the same time, there are still a few EU member states chronically struggling with the conceptual approach and the setting and collecting of real estate transfer taxes, such as the Czech Republic, and it would be perhaps less evil if these states would rather follow some EU guidance (or similar EU member state's models) and engage in a genuine policy discussion rather than continue their eternal poorly explained and justified amendments of amendments along with excessive bureaucratic requirements, which make real estate transactions less certain, more costly and not customer friendly.

Last but not least, before launching in a deeper analysis about various real estate transfer taxes in EU member states and their reasons and the EU drive to reconcile them, the underestimated, ridiculous and down played question should be addressed – is the real estate transfer tax good or badly counterproductive? It might be legitimately argued that, after all, real estate transfer tax is not indispensable *per se* and so confirms the second hypothesis. After all, the real estate transfer tax does not bring that much fiscally and at the same time can constitute a serious barrier to freedom of movement of labour on the internal signal market. However, this is not to be decided in and regulated from Brussels, this is to be openly discussed in and gently reconciled by Brussels.

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