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Article

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THE DANUBE DYNAMICS OF THE REAL ESTATE TRANSFER TAX

Radka MacGregor Pelikánová¹, Petra Jánošíková²

Abstract

The real estate transfer tax was introduced by the Habsburgs in the 19th century and has remained an integral part of the tax system of almost all countries historically belonging to their Danube monarchy. One century after the monarchy's collapse, their common roots as well as national particularities can be observed. The goal of this paper is to confirm or reject the proposed hypothesis that the real estate transfer tax and its rate in post-Danube monarchy countries reflects more general public policies and preferences than neutral fiscal needs as suggested by GDP, GDP/capita, government debt/GDP, tax revenue/GDP, etc. The critical, genesis reflecting and comparative meta-analysis of the information about the dynamics of the evaluating regimes of the real estate transfer tax leads to the conclusion in the form of the confirmation of the proposed hypothesis, especially regarding the Czech Republic, making real estate transfer tax conceptually more a political than a fiscal instrument and posing a set of Socratic style questions inviting further research.

Keywords

Real Estate Transfer Tax, Tax Law, Habsburg Monarchy, State Budget

I. Introduction

Most developed countries tax the change of ownership of real estate and the trio – inheritance tax, gift tax and transfer tax regarding real estate – is included in the majority of national tax systems, including those of Central Europe.³ Although the revenue from the transfer tax is about 1% of the total state budget revenues in OECD countries, it is considered critical and is the subject of an intense debate involving economic, legal and social arguments.⁴

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³ Růžičková & MacGregor (2014).

⁴ Japalli et al. (2014).

The real estate transfer tax is classified as a transfer tax and, according to fiscal theory, belongs in the category of direct property tax. Allegedly, the main reason for the existence of a transfer tax, including real estate transfer tax, is stability of revenues, i.e. their yields remain basically constant and independent from economic cycles and represent 1–2% of national budget revenues. Thus, real estate transfer tax should be a strong, stable and politically rather neutral fiscal instrument assuring constant revenue for the state budget. At the same time, it must be kept in mind that real estate transfer tax is a tax imposed in the case of the transfer of real estate and thus it should be considered that the global crisis, which began in 2007, is past, although real estate indicators appear not yet restored⁵ and the current demographic decline with the simultaneous rise of modern IS/IT seems to make the real estate recovery even harder.⁶ Interestingly, real estate transfer tax was introduced during the Habsburg monarchy, over a century before the global crisis of 2007. Its roots go back to the period immediately following the accession of the Lands of the Bohemian Crown, i.e. Bohemia, Moravia, Silesia and Lusatia, by the election by the Bohemian diet in 1526 in combination of the consideration of hereditary dynastic links. Namely, in 1534, Ferdinand I introduced an indirect sales tax.⁷ Under Maria Theresa, further steps towards the real estate transfer tax were completed, i.e. pursuant to the advice of Count Friedrich Wilhelm von Haugwitz and Gerard van Swieten, Maria Theresa promulgated a set of financial and educational reforms oriented to increase the general reach and efficiency of the fiscal system,⁸ i.e. the Patent from June 6, 1759, introducing an inheritance tax, a gift duty and the so-called tax equivalent. In other words, the transfer tax triad well known to many recent fiscal systems, including the Czech and Slovak fiscal systems.

Real estate transfer tax was introduced in the Habsburg monarchy by Act No. 50/1850, on duties from legal acts, documents and administrative acts from February 8, 1850, i.e. *GebührenG 1850*. The tax rate for a real estate transfer between unrelated third parties was originally 3.5%,⁹ later on progressively between 3% and 4%,¹⁰ of the sale price,¹¹ while the tax rate for inheritance and gifts was 1.5%. *GebührenG 1850* was influenced by the French *enregistrement* and conceptually was founded on a multitude of tax duties, such as real estate transfer tax and inheritance tax.¹² Interestingly, *GebührenG 1850*, was paralleled by Patent Act 329 from August 2, 1850, for Hungary, respectively, after the Austro-Hungarian Compromise of 1867, *Ausgleich*, for the Eastern part, *Transleithania*. The real estate transfer tax was further regulated by Act 74/1901 on real estate transfer fees, i.e. *GGeVer 1901*.¹³

⁵ Hajnal (2015).

⁶ Cvik & MacGregor (2016).

⁷ Falada, D., Starý, M. (2009).

⁸ Szabo, F. A. J. (1994).

⁹ TP 106 A Z 1 lit a *GebührenG 1850*, RGBI 1850 / 50.

¹⁰ VwGH 5. 1. 1907, 14.002 /1906, VwSlg 5023 f /1907, RGBI 1901/74, RGBI 1899/158, etc.

¹¹ Kofler, G. (2014).

¹² Poslanecká sněmovna Parlamentu ČR (2012).

¹³ Das Gesetz, betreffend Gebühren von Vermögensübertragungen, RGBI 1901 / 74.

Hence, until 1918 both parts of the dual monarchy, *Cisleithania* and *Transleithania*, followed fundamentally the same real estate transfer tax regime. Various surcharges were added and then abolished, and nominally the tax rate for the real estate transfer tax remained up to 4% in *Cisleithania* and 5% for *Transleithania*.¹⁴

During the First World War, a registration fee, *Eintragungsgebühr*, was added to the real estate transfer tax by the Kaiser Ordnung [DB1] on justice fees RGBI 1915/279, i.e. *Kaiserliche Verordnung über die Gerichtsgebühren*. The registration fee was originally a fixed amount.

By the end of the First World War, inheritance tax and real estate transfer tax were well known and commonly used across the entire European continent. As mentioned above, the real estate transfer tax rate was between 3% and 5% in the Danube dual monarchy. However, it reached 4% in Russia, 4.8% in Italy, 7% in France and 8.5% in the Netherlands. It is worthwhile to note that the real estate transfer tax rate was only 4% in Germany, with a possible reduction to 2% or even to 0% in the case of a transfer in the direct family line, while the rate was increased to 6% in the case of speculative transfers of real estate.

Despite Germany and, to a lesser degree Austria, achieving huge victories in the spring of 1918, the ultimate defeat of the Central Powers in 1918 and the general exhaustion of resources led to the utter collapse of the Danube dual monarchy, from whose debris a number of war-decimated states arose. It is highly illustrative to observe, describe and critically compare how these states (Austria, the Czech Republic, the Slovak Republic, Poland, Hungary, Italy and Romania) have modified the, originally unified, real estate transfer tax regime and, especially, whether they use it as a neutral and stable source of constant revenue independent of economic cycles, or whether they use it rather for various political reasons and public policies than as a strictly neutral fiscal instrument. After the necessary preamble regarding the historical context, the comparison focusses especially on the current data, namely real estate transfer tax rate and GDP, GDP/capita, state budget deficit or surplus and the general level of taxation as tax revenue/GDP in those states sharing the Danube dual monarchy history and ultimately also their legal and economic roots. Although these states have dramatically different GDP, GDP/capita as well as state budget deficit, the real estate transfer tax rate has not departed too far from that of the original Danube dual monarchy. Nevertheless, there are differences and, as suggested, these differences can hardly be explained by the macro-economic data.

As a matter of fact, the goal of this paper is to confirm or reject the proposed hypothesis that the real estate transfer tax and its rate in post-Danube monarchy countries reflects the more general public policies and preferences than neutral fiscal needs, as suggested by the GDP, GDP/capita, Government debt/GDP, the Tax Revenue/GDP, etc. The underlying motivation is to reach a deeper understanding of the conceptual and practical context and to enhance the capacity to appreciate the inherent complexity and set the real estate transfer tax regime in an effective, efficient and legitimate manner. Indeed, in 2016, conceptually the real estate transfer tax and its rate are strongly shaped by the demands of various state and government policies and interests, perhaps even more than by neutral fiscal demand.

¹⁴ Poslanecká sněmovna Parlamentu ČR (2012).

Even more interestingly, these various states and governments and policies and interests are typically very particular for the given state, i.e. each state has different ones. Indeed, the Danube dynamics of the evolution of the real estate transfer tax teaches us about much more than just dry fiscal theories.

II. Austria – the journey from 3.5% to 3.5% with the court system subsidy

In Austria, the real estate transfer tax, *Grunderwerbsteuer*, followed the Danube dual monarchy patterns until the annexation of Austria by Germany, *Anschluss*, in 1938. The German *Drittes Reich* brought a change of the real estate transfer tax by the German Act, *Grunderwerbsteuer Gesetz 1940 – GrEStG 1940*,¹⁵ which abolished the *GebührenG 1850*. According to *GrEStG 1940*, the real estate transfer tax rate was set at 3% for deals between unrelated parties.¹⁶ This German Act *GrEStG 1940* survived the Second World War in Austria and was valid for an additional ten years, i.e. until its abolition by the Austrian Act *GrEStG 1955*.¹⁷ In (West) Germany it lasted even longer and the exemptions and exonerations from the German *GrEStG 1940* passed even into the German *GrEStG 1983*. The Austrian Act *GrEStG 1955* increased, by means of its Art. 14, the real estate transfer tax rate for deals between unrelated parties to 7% or even 8%. Three decades later, the Austrian Act *GrEStG 1955* was replaced by another Austrian Act *GrEStG 1987*,¹⁸ which has been modified and in its updated versions is valid until the present day. Art. 7 *GrEStG 1987* decreased the real estate transfer tax rate for deals between unrelated parties to exactly the same percentage as did the very first Act, *GebührenG 1850*, i.e. 3.5%, of which 96% of the proceeds goes to the local government and administration and the remaining 4% goes to the state government and administration. Further, *GrEStG 1987* decreased the rate to 2% for real estate transfers between relatives and put the gift tax (deals when the consideration is 30% or less of the value of the real estate value), inheritance tax and real estate transfer tax in contextual co-relation.

Table 1: Rate of gift tax, inheritance tax and real estate transfer tax in Austria

Gift tax	0.5% for the first EUR 250,000	2% for the next EUR 150,000	3.5% for higher amounts
Inheritance tax	2%		
Real estate transfer tax	2% for deals between relatives	3.5% in all other cases	

Source: Prepared by authors based on the *GrEStG 1987*

¹⁵ Sigloch (1983).

¹⁶ Kofler, 2014.

¹⁷ Grunderwerbsteuergesetz BGBl. Nr. 140/1955 (GrEStG 1955) – Zwar nicht formell aufgehoben, aber aus dokumentalistischen Gründen wurde ein Außerkrafttredatum gesetzt (vgl. BGBl. Nr. 309/1987) – Retrieved December 30, 2016, from <https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR12160566>.

¹⁸ Grunderwerbsteuergesetz BGBl. Nr. 309/1987 (GrEStG 1987), Bundesgesetz vom 2. Juli 1987 betreffend die Erhebung einer Grunderwerbsteuer. Retrieved December 30, 2016, from <https://www.ris.bka.gv.at/Geltende-Fassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10004531> and [https://de.wikipedia.org/wiki/Grunderwerbsteuer_\(%C3%96sterreich\)](https://de.wikipedia.org/wiki/Grunderwerbsteuer_(%C3%96sterreich)).

However, it needs to be pointed out that, in addition to the real estate transfer tax, *Grundwerbsteuer*, the acquisition of Austrian real estate is subject to another public payment duty – the registration fee, *Eintragungsgebühr*, of 1.1%. The duality of the real estate transfer tax and registration fee is the product of historical evolution and political reasons, public policies and perhaps even preferences. Currently, it is the subject of legitimate criticism. Indeed, real estate transfer tax can be justified by its consumption reach and is not to be integrated in the turnover tax system. However, there are strong public law and political arguments against the registration fee, *Eintragungsgebühr*, of 1.1%. Perhaps the strongest objection targets the assignment of the proceeds, namely the breach of the equivalency and balance principle, because almost 80% of the proceeds of the registration fees go to cover court system expenses, i.e. the big bulk of the proceeds of the duty linked to the transfer of real estate finance covers the expenses of something completely unrelated to real estate and its transfers.¹⁹ This information needs to be placed in the context of OECD statistics, according to which the Austrian land transfer tax, belonging in the category 4400, brought in EUR 1,014 million in 2015.²⁰

III. Czech Republic – after indirect expropriation back to 3–4%

The Czechoslovakian Republic was constitutionally established on the debris of the Danube by Act. No. 11/1918 Coll., on establishing the independent Czechoslovakian state. Since its Art. 2 officially proclaimed the temporary continuity of the entire pre-existing law, the *Cisleithanai* tax system, including *GebührenG 1850* and *GGeVer 1901*, remained valid and in force.²¹ Over time, several legislative modifications were added, such as Act No. 31/1920 Coll., on war surcharges, setting in its Art. 2 the rate of 2% for real estate transfers between relatives and a progressive rate for other real estate transfers, i.e. 4% (value up to CZK 10,000) or 4.5% (value from CZK 10,000 to CZK 20,000), etc. and reaching even 7%.²² This temporary feature became basically permanent because this legal regulation lasted through the entire existence of the First Czechoslovakian Republic and even beyond.

The new system was introduced by the post-Stalinist communist regime by Act No. 26/1957 Coll., on notarial fees, and thus, from 1957 to 1993, Czech transfer taxes were collected via notarial fees.²³ Art. 11–13 regulated the duties and fees to be paid in cases of inheritance, gifts or other acts. The fee had to be paid even in cases of the transfer from the personal or private ownership into socialist ownership. The selection of the payor was ideologically self-explanatory – the payor was the acquirer except for the transfer into socialist ownership, i.e. the socialist institution did not pay any fee and instead the entire fee was reversed to the transferring person. In this context, it does not surprise one that the

¹⁹ Kofler (2014).

²⁰ OECD (2015).

²¹ Jánošíková (2015), p. 89–109.

²² Zákon č. 31/1920 Sb., kterým se nově upravují válečné přírážky k poplatkům a mění některá ustanovení o poplatcích. Retrieved December 30, 2016, from <http://www.beck-online.cz/bo/chapterview-document.seam?documentId=onrf6mjzgiyf6mzrfuya>.

²³ Andrlík (2010).

fee rate was very high – indeed, the communists hated the concept of ownership and deeply believed that it would evaporate; if not by itself, then they would succeed in destroying it. Hence, the real estate transfer fee was between 6% and 13% and in the case of deals covering traditional (normal) ownership, i.e. private ownership, the rate was increased by an additional 2%. Boldly, what communists did not manage to expropriate or to obtain by a “free” gift to themselves, was subject to a 15% transfer fee and hence after six sales of the same piece of real estate, its entire value was collected as the proceeds of the fee tax. Although Act No. 26/1957 Coll., on notarial fees was replaced by Act No. 24/1964 Coll., on notarial fees, and this Act was later replaced by Act No. 146/1984 Coll., on notarial fees, basically nothing conceptually changed; the rates remained similar, with just a touch of progression added.

After the Velvet Revolution, the real estate tax system was significantly modified and Act No. 201/1990 Coll., on notarial fees, which brought in a large rate going from 1% to 20%, a number of exemptions, and a switch in the payor – to the transferor. The return from the notarial fee to tax was completed by Act No. 357/1992 Coll., on inheritance, gift, and real estate transfer tax, which among other things reduced the rate to 3% while keeping the transferor as its payor. However, in 2013 the rate was increased to 4%. Certainly, Czech law has been far from stable. Act No. 357/1992 Coll., on inheritance, gift, and real estate transfer tax, has significantly contributed to this bad reputation of unpredictability and non-conceptuality, since it was, during the two decades of its existence, legislatively modified and updated 52 times and the Supreme Administrative Court and Constitutional Court had to make almost 500 judgments dealing with this Act and its interpretation and application, and even led to its ultimate cancellation.

Senate Measure No. 340/2013 Coll., on real estate acquisition tax, ended the ongoing patching and brought about a new regime reflecting the re-codification of Czech private law, which brought back the principle “*superficies solo cedit*”. This last legislative contribution should make the real estate transfer tax, now called the real estate acquisition tax, less bureaucratic and more effective and efficient. The rate stays at 4% and already one legislative amendment was performed through Act No. 254/2016 Coll. Well, the near future will show how stable, effective and efficient this system is. It is highly interesting that there are only a few voices, in academia as well as in the parliament, calling for the reduction or even abolition of the real estate acquisition tax. These few academic opinions against the real estate transfer tax underline the fact that transfer taxes reduce the accumulation of wealth and thus have a function to impose social equality, i.e. they again tax already taxed income and so represent double taxation.²⁴ Sadly, these well-founded opinions are either overlooked or underplayed by stating that double taxation is normal and omnipresent.²⁵ These few political opinions against the real estate transfer tax came generally from rightist parties, e.g. according to the leader of the ODS, Petr Fiala, real estate transfer tax means double taxation, which is not acceptable and which hurts many layers of society, such as young families wanting to purchase their dwelling. However, these words came in 2015, i.e. when the ODS was in opposition, and Fiala’s proposal to abolish the real estate transfer

²⁴ Šíroký et al. (2008).

²⁵ Prabhakar (2008).

tax was already rejected in the first reading, as was a follow-up proposal by another ODS deputy, Vladislav Vilímec, to at least reduce its rate to 2% or 3%. The government of social democrat Bohuslav Sobotka replied that “the proceeds from the real estate transfer tax are a stable revenue for public finances and this tax is transparent, easy to be proven, simple to manage and difficult to be evaded”.²⁶

Transfer taxes are perceived as independent of economic cycles and generally providing constant revenues,²⁷ and thus it is often implied that real estate transfer tax revenue is stable regardless of the conjuncture and recession curves. However, it must be stressed that a real estate transfer tax is a tax paid upon the transfer, i.e. highly critical are real estate sales cycles, which do not fully match economic cycles. Indeed, real estate sales cycles are hardly predictable. In addition, the processing of the collection of real estate transfer tax represents an extremely busy red-tape job. So, it is true that a real estate transfer tax is difficult to evade, as long as no assets deal mechanisms are employed (transfer of all shares of a company owning real estate), but the very collection is a busy administrative work demanding important state administration resources. Indeed, Table 2 below shows that Czech revenues from the real estate transfer tax are far from either being stable nor in correlation with all revenue and it can be suggested that there are clear indices of independency from Czech economic cycles.

Table 2: Comparison of the Czech state budgets Total revenues and real estate transfer tax (RETT) in 1995, 2000, 2015 and 2016 in bill. CZK

Fiscal Year	1993	1995	2000	2005	2010	2015	2016
Revenues	358	439.97	586.2	866.46	1000.38	1 234.5	1 281.6
RETT	0.62	2.77	5.44	7.49	7.34	11.2	12.9
RETT/Revenues	0.2%	0.6%	0.9%	0.9%	0.7%	0.9%	1%

Source: Prepared by authors based on the Andrlik (2010) and Žurovec (2017)

Hence, a real estate transfer tax neither brings stable revenues nor is it administratively light. Thus, the only true justification, or better to say explanation, is that it is easy to prove it. It is extremely sad that even the government admits that they collect a certain type of tax at a much higher rate than abroad just because the tax administration manages to prove this tax duty and not other tax duties.

In order to show even more that the *raison d'être* of a real estate transfer tax is the policy misconception by the government and parliament and the incapacity of the tax administration, then it is worth noting key public finance figures. Pursuant to OECD statistics, Czech real property tax, belonging in the category 4400, brought in CZK 11,566 million in 2015 (OECD, 2015), while the state budget notably did not end in a massive deficit. Also, revenues in 2016 reached CZK 1,281.6 billion, while the expenses were only CZK 1,219.8 billion, i.e. the surplus for 2016 reached CZK 61.8 billion. This is a unique result, both in the current Danube large sphere, as well as in Czech history. Indeed, the

²⁶ Hovorka & Váchal (2016).

²⁷ Andrlik (2010).

last budget surplus occurred in the Czech Republic in 1995 and this surplus was definitely less than the current CZK 61.8 billion.

A myriad of factors contributed to the exceptional Czech budget surplus for 2016 – including important state savings as well as “EU money” and higher revenues than expected. Economic growth, very low unemployment and perhaps increased efficiency played a critical role. Nevertheless, the fact that the collected revenue was, by CZK 100.8 billion, higher than what was planned might suggest that the planning was not sufficiently exact and that the state drive for revenue and its collection is going maybe too far. The figures regarding property taxes look even more unbalanced, because they were collected in the amount of CZK 12.5 billion and this was not only CZK 2.2 billion more than what was planned, but in addition this was a 100% annual increase, since the collected transfer taxes for 2015 were only CZK 6.8 billion. This category also includes the real estate transfer tax, which, in 2016, brought in CZK 1.7 billion more than in 2015 – a 15% increase.²⁸ Boldly, the state took great advantage of economic growth, low mortgage rates and the consumer’s eagerness to go ahead with their real estate purchases before the new (allegedly pro-consumer) legislation took effect. Table 3 below shows that the big budget surplus in 2016 got 1% of its revenue from real estate tax while collecting 15% more than in 2015. The question then emerges – was it necessary to take advantage of consumers who were pushed to go ahead with real estate deals? By the way, the budget surplus only occurred in 2016 when the real estate tax brought in 1% of revenues (the highest ratio real estate transfer tax/revenues) and in 1993–1995 when the real estate tax brought in 0.2–0.6% (the lowest ratio real estate transfer tax/revenues)! Indeed, there is neither a clear trend nor correlation between the revenues, RETT, and the budget deficit or surplus. Hence, the alleged reasons for a real estate transfer tax collapse, as does the myth about its neutrality. This brings about a legitimate question – do we really need to have, and should we really have, any real estate transfer tax? If yes, is it necessary to keep the high rate of 4% and mercilessly collect it from all, especially from those buying homes for their growing families or moving to other towns to keep their jobs or frenetically going ahead with a real estate deal in the fear that, in the near future, they will not manage to obtain a mortgage, due, e.g., to the 15% down payment requirement?

Table 3: Comparison of the final accounts of the Czech state budgets in 2015 and 2016

Fiscal Year	2015	2016	Comparison
Revenues	CZK 1,234.5 bill.	CZK 1,281.6 bill.	3.8% growth
Result	– CZK 62.8 bill.	+ CZK 61.8 bill.	100% turn!
Real Estate Transfer Tax	CZK 11.2 bill.	CZK 12.9 bill.	15% growth
RETT/Revenues	0.9%	1%	Similar

Source: Prepared by the authors based on Žurovec (2017).

²⁸ Žurovec (2017).

The above data and analysis suggests that the Czech state could easily ‘pass’ on the real estate transfer tax in 2016, or at least reduce its rate, and so not contribute to the real estate panic which the Czech state created with the new legislation. In a short-term perspective, everything worked beautifully for the state and less beautifully for tax payers, but in the long term, this might be bad for all. The future will provide an answer, but the present should address the burning why – why 4% and no exceptions, i.e. why more aggressive than all other states from the large Danube sphere! Hopefully the answer is not that 4% without exception should stay because here people do not protest too loudly against it and cannot evade it, while in other areas more vocal complaints are to be heard and at the same time nobody can stop the evaders.

IV. Slovak Republic – crossing the Rubicon to 0% rate and staying there

Slovakia was part of *Transleithania* and thus its Danube dual monarch legislative heritage differed slightly from Bohemia, which was part of *Cisleithania*. Nevertheless, they, along with other nations and territories, formed the Czechoslovakian Republic and their legislative regime had been approximated and ultimately unified. Another split occurred during the Second World War, but in 1945 Bohemia and Slovakia were again united in one state, the federal Communist Czechoslovakia.

The Velvet Revolution was followed by a new split, when the Czecho-Slovak Republic split into the Czech Republic and Slovak Republic. Thus, since January 1, 1993, Slovakia is again an independent state and since the big enlargement of 2004, it is a member of the EU. According to OECD statistics, the Slovak transfer tax, classified in category 4400, brought in exactly EUR 0 in 2015.²⁹

Indeed, Slovak national law, inherited from the Czecho-Slovak Republic, has been modified and Slovak fiscal evolution in the last two decades has obviously taken a different trend and direction than the Czech fiscal evolution.

This radical change already occurred in the very first year, when the Slovak Act No. 554/2003 Coll., on real estate transfers and pass-over tax was enacted. This revolutionary act abolished the inheritance tax and gift tax, reduced the rate for real estate transfer tax to 3% and limited its existence only until December 31, 2004. Hence, since January 1, 2005, there has been no real estate transfer tax in Slovakia! Indeed, pursuant to current Slovak fiscal law, there are neither transfer duties on the transfer of land and buildings nor are there transfer duties on the transfer of shares, i.e. there are only stamp duties and real estate taxes on land, buildings and apartments.³⁰

The abolition of the classical inheritance-gift-transfer tax trio was not a random act, indeed it happened in the framework of a large tax reform aimed at making the tax legal system clearer, more effective and efficient, and conceptually shifting the tax burden from a direct tax to indirect. The abolition of the transfer tax was further justified by the argument that taxing a transfer means double taxation and that transfer taxation leads to rather small yields and to rather high expenses,³¹ i.e. it is not worthwhile because a lot of money and

²⁹ OECD (2015).

³⁰ KPMG (2015).

³¹ Andrlík (2010).

effort needs to be expended to dig out from people a tax on something already taxed previously, which ultimately does not bring too much to the state budget. Well, so it has been for the past twelve years, and there are no strong voices to bring the real estate transfer tax back to the Slovak tax system.

V. Poland – just one of the transfer tax with 2%

Arguably, a small part of the current territory of Poland belonged to the Danube dual monarchy. In addition, Poland underwent, over the last hundred years, an evolution similar to that of the Czech Republic, Slovakia and Hungary (independent state, German occupation, Communist state, then a return to the democratic capitalist system). Since the big enlargement of 2004, Poland has been a member of the EU. According to OECD statistics, the Polish transfer tax, which also covers real estate transfers and belongs in the category 4400, labelled as Taxes on financial and capital transactions, brought in PLN 2,305 million in 2015.³²

However, despite this legal background and evolutionary similarity, the current Polish fiscal system is conceptually particular, because various transfer taxes are generally reclassified as a tax on private law acts of natural persons, *podatek od czynności cywilnoprawnych od osób fizycznych*³³ pursuant to the Act No. 626/2015 Dz. U.

This tax on private law acts of natural persons has a broad reach and covers many, if not all, types of dispositions with property, including the establishment of paid use.³⁴ Pursuant to the Polish system of property taxes classification, there are four groups, and Group IV includes, among others, a tax on legal transactions involving property and a tax on civil law transactions.³⁵ As a matter of fact, the Slovak Republic and Poland seem to be the only two of the countries being compared which do not have a special setting of a real estate transfer tax – in Slovakia, they abolished it, and in Poland they just go after the transfer and do not excessively distinguish between real estate and other property or services.

Regarding private law acts leading to the real estate transfer, the rate of this tax is 2% and the basis of the tax is the market value of real estate. The tax collection mechanism uses notaries public, i.e. a notary public preparing a notarial deed about the private law act amounting to the transfer of real estate processes the tax payment, i.e. the notary public makes the payment in the Polish version of the real estate tax.

The abovementioned Act No. 626/2015 Dz. U. defines a myriad of acts, tax rates and tax bases to which these rates are applied. Interestingly enough, these acts include even the mortgage agreement, i.e. a buyer of a piece of real estate faces the (in)direct expense linked to the real estate transfer contract and a direct expense linked to the mortgage contract to finance the purchase of the real estate. As indicated, tax rates depend upon the type of the law acts and generally the tax rate for law acts dealing with real estate is 2% and the tax rate for law acts dealing with other ownership rights is 1%. The loan contracts typically lead to a taxation at the 2% rate, but in certain cases this can be increased to 20%. The tax

³² OECD (2015).

³³ Smoleń et al. (2014), p. 468–474.

³⁴ Ministerstwo finansów (2016).

³⁵ Cymerman (2013).

is paid by the tax payor based on a tax return which they have to file within 14 days and basically within the same deadline as the payment of the tax to the tax authorities must be done. The deals managed by the notaries public are an exception to this rule, i.e. if the notary public is involved, then the notary public withholds the amount corresponding to the tax payment and proceeds with the payment to the tax authorities.

VI. Hungary, Italy and Romania – more and more particularities

Naturally, the Habsburg Empire, and later on the Danube dual monarchy, included more than just Austria, the lands of the Czech Crown in the large sense and one Northern section of Hungary, i.e. Slovakia. Hence, it would be remiss to omit, or at least briefly gloss over the current real estate transfer tax regime of the current countries of Hungary, Italy and Romania – countries at least partially historically governed by the law, including the fiscal law, of *Cisleithania* or *Transleithania*.

Hungary was a part of *Transleithania* and thus it inherited from the Danube dual monarchy the same fiscal system as, e.g., Slovakia. Similar to the Czech Republic, the Slovak Republic and Poland, Hungary went through the bitter experience of the *Drittes Reich* and a communist regime that ended in 1989. Since the big enlargement of 2004, Hungary has been a member of the EU. According to OECD statistics, the Hungarian property transfer central tax and the property transfer local tax are classified as being in the category 4400. In 2015, the central brought HUF 93,389 million, while the local brought in zero, i.e. nothing.³⁶ This amount was collected while generally using 4% and 2% tax rates, i.e. the Hungarian real estate transfer tax generally imposes a 4% rate on a value of HUF 1 billion and 2% on the excess, capped at HUF 200 million.³⁷ In addition, it needs to be pointed out that Hungary is one of those states exempting, or at least reducing, this rate for special or so-called preferential transfer and not hesitating to set different rates for transfers of business real estate and transfers of residential real estate. Hungary is not shy when it comes to adjusting the real estate transfer tax to support other policies and can hardly be classified as a fiscally neutral jurisdiction with respect to the real estate transfer tax.

Italy followed a similar historical pathway as the Czech Republic, the Slovak Republic, Poland and Hungary, up until the aftermath of the Second World War. Thereafter, no communist regime was installed in Italy, and thus Italian law could conceptually develop in a consistent manner. In addition, unlike the abovementioned quartet, Italy is one of the six founding members of the European Community. Currently, the Italian real estate transfer tax conglomerate, classified as being in OECD category 4400, consists of the following three types and generating the indicated proceeds (i) registration tax, bringing in EUR 7,713 million, (ii) mortgage tax and land registry tax bringing in EUR 1,449 million, (iii) stamp duties bringing in EUR 7,576 million.³⁸ It is highly instructive to observe that, starting from January 1, 2014, a new tax framework for real estate transactions came into effect. Consequently, there are two proportional rates for real estate transfers – 2% for transfers of non-luxury residential buildings designated to be the main dwelling of the

³⁶ OECD (2015).

³⁷ Deloitte (2015).

³⁸ OECD (2016).

purchaser and 9% in other cases.³⁹ This reform means a simplification leading to only two rates and the elimination of all exemptions and rate reductions vis-à-vis a particular piece of real estate, in whose transfer the state, government or public order might be interested. Therefore, there is no longer a 3% rate for transfers of agricultural land or historical or artistic properties. Hence, Italy is even clearer about its priorities than Hungary, which is basically doing the same via hidden exemptions, and there is not the smallest doubt that the Italian state wants to make it easier for citizens to acquire their dwellings. In sum, in Italy, the housing policy and social policy dominate the real estate transfer tax regime more than neutral fiscal policy demands. It is important to obtain proceeds, but not really from average people wanting to move into another flat or house. Let the rich pay a high tax for acquiring their luxury residences and the businesses for their real estate, but the average population can freely and happily buy, sell and trade their residencies while paying only a 2% tax. Naturally, this clear-cut solution is not endorsed by all, and the beneficiaries of previous exemptions, as well as people facing the definition of luxury residency, are not always overly enthusiastic about this new regime. Anyway, the message is clear – the classification as the principal non-luxury residence is key, i.e. Italy wants to help people buy non-lavish homes and does not hesitate to set a drastic rate for the rest. Naturally, another question is how this tax system is efficient, observed and enforced. . .

Romania, another country historically part of the Habsburg Empire, went even further in following housing policies when setting the real estate transfer tax system. Instead of struggling with the Hungarian search for exemptions or the Italian question of what is a luxury residence and what is just a plain residence, Romania relies on objective quantitative criteria for setting the real estate tax rate – in short, the timing and the price. If the property is held for three years or more, then the rate is 2% up to RON 200,000 and at 1% for over that amount. If the property is held for less than three years, then the rate is 3% up to RON 200,000 and 2% for over that amount. Therefore, the Romanian real estate transfer tax “punishes” speculation rather than luxury. Neutrality is pushed away and the message pops up that it is good to have a nice (expensive) real estate property for at least three years and then sell it and buy an even nicer (more expensive) property and keep it for at least three years.

VII. The fall of the last myth – no correlation between GDP/Capita and real estate transfer tax rate

The septum-states constellation [DB2] which emerged after the collapse of the Danube dual monarchy shares the same roots, but each of these states has historically and politically shaped and used the real estate transfer tax differently. The above data and analysis demonstrates the magnitude of the differences and the strong influence of non-fiscal policy demands and priorities. Indeed, the real estate transfer tax in 2016 in the Danube sphere was definitely not a neutral fiscal instrument. The last argument against this conclusion could be that there still is a neutral correlation between the state budget and revenues from the real estate transfer tax, and this either by considering the state budget deficit/surplus

³⁹ Benigni (2013).

or by considering the GDP/capita or debt/GDP or Tax revenue/GDP. In other words, the data and analysis above strongly suggest that the real estate transfer tax is very particular, inclined to have a number of “local” special exemptions and reductions. Hence, if a real estate transfer tax as such is not neutral, can we at least suggest that its rate is neutral?

Table 4 follows this suggestion and presents figures and data about Austria, the Czech Republic, the Slovak Republic, Poland, Hungary, Italy and Romania and helps to provide the ultimate answer to whether the real estate transfer tax rate is kind of neutral. Hence, is the real estate transfer tax rate high in states with large deficits and bad debt/GDP in order to address this general (neutral) deficiency? Does a high or low GDP/capita relate to the real estate transfer tax rate? Do we have a high real estate transfer tax rate in countries with a high tax revenue/GDP? Has the GDP or tax revenue any correlation with the real estate transfer tax rate?

Table 4: GDP, GDP world ranking, GDP/capita, Government debt/GDP, Tax revenue/GDP (OECD average is Tax Revenue/GDP = 34.3%), real estate transfer tax rate in 2016

Country	GDP in million USD	GDP world ranking	GDP/capita in thousand USD	Government debt/GDP	Tax Revenue/GDP	Real estate transfer tax rate
Austria	387,299	29.	44,5	87%	43.5%	3.5% or 2%
Italy	1,852,500	8.	30.3	136%	43.3%	9% or 2%
Czech Rep.	193,535	50.	18.3	40%	33.5%	4%
Slovak Rep.	90,236	65.	16.6	53%	32.3%	0%
Poland	467,350	25.	12.3	54%	32.1%	2%
Hungary	117,065	58.	11.9	76%	39.4%	4%, 2% or less
Romania	186,514	51.	9.4	37%	27.9%	3%, 2%, 1%

Source: Prepared by authors based on IMF Publication (2016), Statistic Times (2016), Eurostat documents (2016) and OECD (2016)

Table 4 offers strong support to reply negatively to all types of these questions and clearly contributes to the confirmation of the hypothesis that the current real estate transfer tax, and its rate in post-Danube monarchy countries, are neither neutral nor quantitatively implied by a mathematic calculation of the data about the state budget, its revenues and expenses, its surplus or deficit, or the general taxation and its index. The ultimate explanation of the Danube real estate transfer tax dynamics is more in the qualitative than the quantitative sphere, more in various politics and policies than in strict fiscal science. Real estate transfer tax and its rate is a social and historical national product escaping conventional quantitative methods. History, as well as both social and political science explains more about the real estate transfer tax and its rate than neutral budgetary data.

VIII. Conclusion

Before addressing the given hypothesis, it should be emphasized what the comparative historical overview brought to the surface about the roots and *status quo*.

Indeed, it should not be overlooked that what was set by the “old” Danube dual monarchy with respect to the real estate transfer tax and its rate in the 19th century and at the turn of the 20th century, is what returned to the key countries of *Cisleithanai* (Austria, the Czech Republic). In a 21st century perspective, it can be stated that the Danube dual monarchy and its fiscal regime about the real estate transfer tax was rather prophetic and modern, and hence to be complimented.

After recognizing this true value, it can be summarized that the critical, historical context reflecting, and comparative meta-analysis of the information about the dynamics of the evolution and current level of the real estate transfer tax confirms the set hypothesis that the current *status quo* of the real estate transfer tax, and its rate in the post-Danube monarchy countries, strongly reflects more the general public policies and preferences than the neutral fiscal needs as suggested by GDP, GDP/capita, government debt/GDP and the tax Revenue/GDP.

All seven compared countries are aware of the real estate transfer tax and the only one (the Slovak Republic) which has rejected it has rather moderate GDP and GDP/capita and a government debt per GDP getting close to the magic 60%. From the remaining six, the country with the highest real estate transfer tax (4%) and not allowing any exemptions is, conversely, that country which is the closest one to the Slovak Republic, yet at the same time the only country with a large budget surplus and with rather small government debt per GDP (40%), i.e. the Czech Republic. From the six compared countries with a real estate transfer tax, only two have a single rate to be applied to all real estate transfers (Poland’s 2%, the Czech Republic’s 4%). All the other four countries provide exemptions and tax rate reductions in instances of deals between close parties (Austria) or non-speculative deals helping people to acquire their dwellings (Italy, Hungary, Romania). One of the compared countries even makes a distinction based on the “luxury” nature of the real estate (Italy).

The proposed hypothesis, that the real estate transfer tax and its rate in post-Danube monarchy countries reflects more the general public policies and preferences than neutral fiscal needs, as suggested by the GDP, GDP/capita, Government debt/GDP, the Tax Revenue/GDP, etc., is confirmed. Even a cursory overview of the legislative as well as general history and political events is highly illustrative in explaining where each of the compared countries reached the current status of the real estate transfer tax and its rate. A very good example in this sense is Czechoslovakia and later on the Czech Republic and Slovak Republic, where we can, via Socratic questions, rather easily discover deeper roots and causes with direct impacts on the real estate transfer tax and its rate, such as the devaluation and rehabilitation of the concept of ownership.

The real estate transfer tax and its rate is a very interesting matter, with conceptual particularities and practical challenges and implications worthy of further exploration in the Danube context and the yielded information can teach us about much more than dry

fiscal data and policies. At this point, it can be suggested that the first step to cross the Rubicon was made by admitting the evolutionary historical and currently political prevailing features of the real estate transfer tax and its legal regime. A further research about the conceptual and practical foundations and impacts is needed in order to better appreciate the current status quo and to work on its effectiveness, efficiency and legitimacy.

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