

Experiences of open and closed list local taxes in Hungary with special regard to the effects of the COVID19 pandemic

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Abstract: Local taxes account for a significant share of the revenue of Hungarian local governments. In the system developed after the transition to democracy in 1990, local governments were granted the right to set a tax on a closed list, which was supplemented in 2015 by a right to set a tax on an open list. In the case of traditional local taxes, the tax capacity of local government differs greatly, that generates a significant issue in the self-government system. In addition, we can see differences within local taxes, as the role of the business tax is much stronger than other taxes. Dealing with the different resource-generating capabilities that are essential to provide public tasks of the same quality is a systemic regulatory problem. With the introduction of the settlement tax in 2015, Hungarian self-government expected to be able to increase their own revenues and thus their financial independence. But it soon became apparent that in practice there were several regulatory obstacles to achieving this, so the hopes diminished. By now, it has also become clear that the settlement tax did not introduce a significant change in this area, even more, it has damaged the previous revenue structure. The measures adopted during the pandemic in the past year and a half required new regulatory solutions, that also affected the system of local taxes.

This study, on the one hand, examines the development of Hungarian local taxes in recent years and, on the other hand, focuses on the regulatory innovations arising from the COVID 19 epidemic. Namely, the legislation of

the Hungarian Government during the epidemic has affected the revenues of local governments in several respects, some revenues have been centralized, and the right to local taxation has been restricted.

1. Introduction

In Hungary, local taxes can be classified into four types. We can distinguish between property-type taxes, such as construction tax, land tax, communal taxes, such as communal tax of individuals and tourist tax, and activity-type taxes, such as local business tax (hereinafter referred to as: HIPA). The fourth category includes the atypically-regulated settlement tax, that can be quite varied as far its type is concerned. The most important Hungarian rules on local taxes are contained in Act C of 1990 on Local Taxes (hereinafter referred to as: LTA).

Hungarian local taxation has never been without limits, as the law stipulates the type and amount of tax that can be levied, the upper limit of the tax rate, and the benefits and exemptions that can be granted.¹ This method is called a closed-list local tax assessment system,² which refers to the fact that the autonomy of local governments to impose taxes is essentially limited to deciding on the introduction or non-introduction of the particular taxes, as the choice is provided only between the centrally defined tax types, not to mention that their chargeable event is also different. International practice shows that this type of taxation is used in most countries, and there are far fewer examples of open-list taxation, that, of course, to a large extent depends on the distribution of local governmental competencies.³ By the latter open-list taxation, we mean that the local government is free to set taxes in its own competence, i.e. it is empowered not only to determine the rate, but the persons and events that are subjected to

¹ Etelka Gregóczi, "A helyi adók és a gépjárműadó – a helyi adók tervezése, beszedése, gazdasági szerepe," in *Adózási pénzügytan és államháztartási gazdálkodás – közpénzügyek és államháztartástan II.*, ed. Csaba Lentner. (Budapest: Nemzeti Közszerológiai Tankönyvkiadó, 2015), 703–730.

² Gábor Kecő, "A kúria kibontakozó gyakorlata a települési adóval kapcsolatban," *Új Magyar Közigazgatás*, special issue (2016): 19–25.

³ See: Gábor Kecő and Csaba Tombor, *A helyi adók szabályozása és joggyakorlata magyarországon külföldi kitekintéssel – különös figyelemmel az iparüzési adóra és a helyi vagyoadók arányosságára* (Budapest: DHKFA, 2020), 22–35.

taxation can also be regulated at the local level. The Hungarian settlement tax also belongs to this type as a local tax with atypical regulation.

From January 1, 2015, local governments are provided with the opportunity to introduce such a settlement tax or settlement taxes in their area of competence, that is if it is not prohibited by other laws. The local government may impose a settlement tax on any tax subject, provided that it is not subjected to public charges regulated by law. Furthermore, the state, local government, organization or, by virtue of its nature, an entrepreneur, shall not be subjected to settlement tax.⁴ In essence, outside of these three legal limits, the municipal council is free to exercise the opportunity for open list tax assessment. The LTA does not establish any other tax restrictions. The new regulatory solution has been widely criticized since its adoption, not the least because, in addition to its primary purpose, it provides an overly broad and open power for taxation, that, as it will be discussed later, could become unfettered and unpredictable.⁵

One of the purposes for the introduction of the settlement tax in 2015, as it was communicated by the legislator, was to provide the settlements with the opportunity to create financial resources in the transformed resource structure, that could cover the costs of locally voluntary tasks or could facilitate the mandatory tasks at a higher level of quality. All this with the limitation that the revenue from the settlement tax can only be used for development purposes and to finance social services.⁶

The hypothesis of the present study is that, on the one hand, the Hungarian local tax regulation is not able to handle regional differences, on the other hand, the settlement tax has not become significant in practice, especially due to its outlandish regulation method. However, it may be significant in a way that it dismantled the former local tax system and was interpreted by some municipalities as an empowerment to regulate local living conditions.

As part of our research which served as the basis of this study, on the one hand, the legislation was examined using a legal analysis method, and on

⁴ Article 1/A. of the Hungarian Act C of 1990 on Local Taxes (LTA).

⁵ See: Lóránt Csink, "Az önkormányzati adóhatóság teljhatalma, avagy a települési adó alkotmányellenessége," *Pázmány Law Working Papers*, no. 10(2016): 1–11.

⁶ Article 1/A (5) of the LTA.

the other hand we also examined, the budget data collected by the Hungarian State Treasury, the Hungarian Central Statistical Office (CSO) and the State Audit Office on local taxes were analyzed, also, the case law of the Local Government Council of the Curia in relation to the settlement tax. This paper focuses on the period between 2015–2020 and seeks to reflect on the impact of the pandemic in early 2020 and the measures taken during of the state of emergency related to it.

2. Theoretical foundations and practical issues in the Hungarian local tax system

The international literature agrees that own revenues are very important sources of income when it comes to local financial autonomy, but at the same time, they are present in different proportions in each country. The importance of own revenues is also highlighted by theories of financial federalism, such as the fact that it can contribute to the cost-effective implementation of local tasks.⁷ Basically, the studies highlight increasing the proportion of own resources as a goal, that would be able to increase efficiency through financial autonomy while incorporating considerations of transparency and accountability. At the same time, there is no consensus on the size of local own revenues, as not only the revenue structure but also local financial regulations affect the performance of tasks and the autonomy of local governments. While some argue that determining the share of local revenues should be based on resources sufficient to finance the expenditures of the highest-income municipalities,⁸ academics researching the revenue side agree that for efficient performance, municipalities, as far as it is possible, should provide the minimum resource costs through their own revenues.⁹ In this context, however, the standpoint of Sandford is worth noting,

⁷ Richard Musgrave, *The theory of public finance* (New York: McGraw Hill, 1959), 15–49; Wallace Oates, “An essay on fiscal federalism,” *Journal of Economic Literature*, 37, no. 3 (September 1999): 49.

⁸ Richard Bird, “Threading the fiscal labyrinth: some issues in fiscal decentralization,” *National Tax Journal*, no. 2(1993): 207–272.

⁹ Gábor Kovács, “Helyi önkormányzatok: a saját bevételek szerepe a finanszírozásban,” in *Növekedés és egyensúly: a 2013. június 11-i kautz gyula emlékkonferencia válogatott tanulmányai*, ed. Anikó Tompos and Livia Ablonczyné Mihályka (Győr: Széchenyi István Egyetem, 2014), 45–52.

who set out seven criteria for the introduction of local taxes. These criteria are the following: the basis for the local tax should be broad and relatively evenly distributed, the tax burden should affect the local population, the tax collected should provide as high and as constant return as possible, the tax collection should be economical, fair, transparent and it should facilitate accountability at the local level. Although he does not mention it, it can be formulated as an important expectation that the tax shall not be charged to someone else, i.e. the ban on tax exporting shall apply.

In the Hungarian system, local taxes, namely, the business tax, accounted for and still represent the largest own resource among the own revenues for local governments. However, in terms of its distribution, this also favors the more developed settlements with better economic performance. Reviewing the statistical data, the tax revenues of the capital and the cities with county rights (urban counties) have always been the highest, and while cities/towns do not lag far behind, the villages have quite low revenues.¹⁰ What is the reason for this? Primarily, due to the fact that enterprises engaged in industrial and commercial activities have settled in the cities and the industrial parks located near them, especially in Budapest, not only due to the concentration of skilled labor, but also due to the higher level of development of infrastructure.

The explanatory memorandum to the draft law that introduced the settlement tax in 2014 stated that after the adoption of the law the already wide-ranging power of taxation of local governments – at least according to the memorandum – would be further expanded by becoming entitled to introduce settlement taxes in addition to local taxes within their area of competence.¹¹ Both the intention of the legislature and the expectations of the municipalities suggested that local governments were provided a significant opportunity that would actually provide assistance to address the lack of resources. Therefore, it is necessary to examine how effectively this has been achieved in practice and how the new regulation has affected the previous financial structure.

¹⁰ “Hungarian State Treasury: information on the rules of the introduced local taxes,” accessed June 15, 2021, <https://hakka.allamkincstar.gov.hu/letoltes.aspx>.

¹¹ Draft No. T/1705 on the amendment of certain tax laws and related laws, and the Act CXXII of 2010 on the National Tax and Customs Administration.

In order to shed light on the processes and to understand the potential purpose of the settlement tax, it is necessary to briefly review the processes that have taken place in the structure of local revenues.

On the one hand, it can be emphasized that the shortage of local government revenues has been evident since the financial support system was introduced in 1990, but it peaked in the 2000s. In many cases, neither government transfer payments nor own revenues were sufficient to perform public tasks. This was largely due to the disproportionate nature of task deployment, but the low level of local resource generation capacity also contributed to it. On the other hand, the previous system was not able to fully address the differences between municipalities, and the budget deficit was remedied by borrowing, followed by running up debt, and then debt consolidation. The new financing structure that emerged after 2011,¹² i.e. the introduction of task financing and the centralization of the most costly local tasks (education, health care, social care), laid the foundations for a new kind of budget management for local governments. With the decline of local financial autonomy, the role of own revenues, especially local taxes, has increased in proportion, even though a number of new restrictions have been introduced on the levying of taxes and the use of revenues from them.

In 2017, the introduction of the so-called solidarity contribution, paid by richer municipalities to the central budget brought some changes to the equalization of resources between settlements. From 2021, this means a payment obligation for local governments with a tax capacity of more than HUF 22,000 per capita, which is a response to the local business tax revenues that were reduced as a consequence of the COVID-19 epidemic.

Furthermore, from 2021 onwards, the so-called system of supplementation is to be applied, the purpose of which is to provide a general foundation for the mechanism of equalization with regards to inequalities between settlements arising from local tax capacity.¹³ As part of the supplementation, settlements with lower tax capacity will receive a normative subsidy supplement of between 20–50%. These corrections were partly intended to

¹² Péter Bordás, “Feladatfinanszírozás-e a feladatfinanszírozás? A magyar önkormányzatok támogatási rendszerének értékelése,” *Közjogi Szemle*, no. 2. (2017): 56–64.

¹³ Act XC of 2020 on the Central Budget of Hungary in 2021, II. 2.2.2.1.

address the effects of the pandemic, according to the memorandum from the ministry, but as we can see, the problems started sooner.

3. The impact of the COVID19 epidemic on local revenues

During the state of emergency that was declared after the appearance of the coronavirus in the beginning of 2020, several regulatory solutions were adopted that affected local governments as well. The obligation to pay tourist tax was temporarily suspended, 40% motor vehicle tax that used to remain with the municipalities became a resource for the Pandemic Fund [in Hungarian: Járványügyi Alap], while certain self-governments lost considerable revenues due to the introduction of free parking on public premises for almost a year and the decreasing local business tax revenues caused by the shrinkage of the local economies. In response to this, the Government introduced supplements from the central budget through various compensational mechanisms. On the basis of all this, it seems quite legitimate to ask the following question: if the Government wished to compensate for the lost or missing revenues, for what purpose had they been withdrawn in the first place and what could be the result of this?

Among the changes concerning the system of self-government, Government Decree 135/2020. (IV. 17.) needs to be highlighted here, which allowed the establishment of special economic zones on the pretext of controlling or combating the pandemic.¹⁴ At this point, it should be noted that, according to the Act on local business tax, if an area and its immediate environment achieve a special status, the geographically responsible and competent body of representatives at the county level get the right to introduce the local taxes there, while the municipal government loses its right to exercise its powers to levy taxes.¹⁵ The first example for this designation occurred through Government Decree 136/2020. (IV. 17.), that designated a special economic zone in the public administration area of the city of Göd (more specifically, the premises of the company Samsung

¹⁴ If the institution has declared a total investment of at least HUF 100 billion as a priority investment from the perspective of the national economy, and its purpose is to avoid the massive loss of jobs with economic importance affecting a significant part of the county's territory, or to implement a new investment or expansion.

¹⁵ Ordinance of the Government of 17 April 2020, Journal of Laws 2020, No 79. item 2071.

SDI Magyarország Zrt.). As a result, the ownership of the public roads, squares and parks was passed on to the county, which became entitled to levy and collect local taxes according to the effect of the decree mentioned above.¹⁶ The city of Göd filed a constitutional complaint against this decision; however, the Constitutional Court acting on this basis also confirmed that this ruling was not unconstitutional.¹⁷

According to a government decree that entered into force on May 21, 2020, the tourist tax does not have to be paid by the taxpayer after the guest nights spent during the emergency until 31 December 2020, nor in 2021, also, the person obliged to collect the tax does not have to collect it, but at the same time, the established but uncollected tax needs to be declared to the tax authority.¹⁸ The local governments received a promise from the Government for a non-refundable subsidy from the central budget, to the same amount as the tax declared but not paid by the taxpayers of tourism tax. In the meantime, the settlements have also lost the central support issued previously as support for holiday resorts [in Hungarian: *üdülhelyi támogatás*].

At the end of 2020, a range of new restricting regulations were introduced for the year 2021 on halving the maximum rate of the business tax and on freezing the introduction of new local taxes and municipal taxes (that will later remain in force in 2022).¹⁹ By reducing the business tax burden, the Government intended to relieve the enterprises and businesses that had gotten into a difficult situation. However, in terms of its effect, it cannot be neglected that the loss of revenues affects mostly the major cities, which are typically governed locally by the opposition, and had largely exhausted their reserves by 2020. As we have seen before, according to the data issued by MÁK [Hungarian State Treasury], the most significant local tax revenue is the business tax, that constitutes almost 80% of such revenues. And, as it has been mentioned above, its distribution is rather unequal.

¹⁶ Dóra Lovas, “Nem alaptörvény-ellenes a gödi különleges gazdasági övezet kijelölése,” *KÖZJAVAK*, no 1. (2021): 48–50.

¹⁷ Decision no. IV/839/2020. of the Hungarian Constitutional Court.

¹⁸ Ordinance of the Government of 21 April 2020, *Journal of Laws* 2020, No 82. item 2136.

¹⁹ Ordinance of the Government of 1 December 2020, *Journal of Laws* 2020, No 265. item 8726.

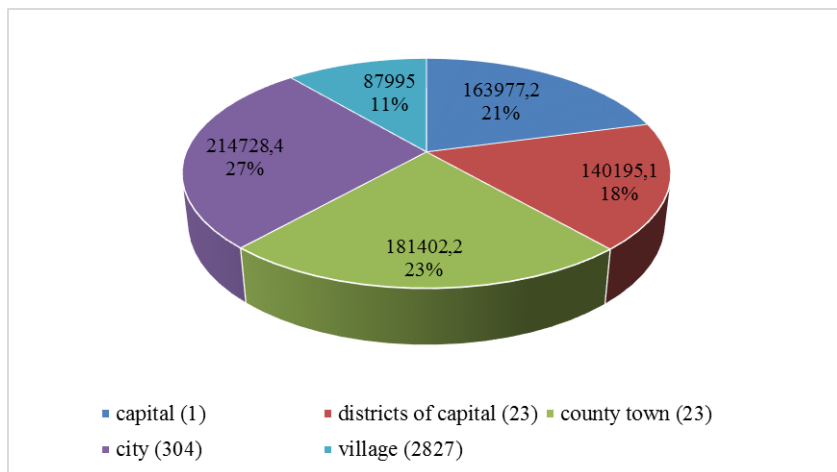


Figure 1. Distribution of revenues (in million HUF) from local business tax (HIPA) by settlement categories (2020)

Source: Edited by the author based on the data from the Hungarian Ministry of Finance, State Audit Office and Hungarian State Treasury

Figure 1 illustrates the unequal proportion and distribution of local business tax between each of the settlement categories. In the legend, the number of municipalities in the given category is shown in brackets behind each of the categories. In 2020, almost one quarter (23%) of the total revenues from HIPA were collected by cities with county rights, while another quarter, or slightly more than a quarter (27%) by other towns/cities.²⁰ Furthermore, the majority of the municipalities levied the maximum tax rate allowed, which is 2%. According to the data of the State Treasury, almost HUF 703 billion of tax revenue was generated from HIPA in 2020, that may halve in 2021 due to the halving of the tax rate, and may lead to a loss of HUF 2–300 billion from the budget of the municipalities.

While the government took away resources with one hand, it provided extra subsidies to some municipalities with the other one. The government

²⁰ Ilona Németh and Katalin Halkóné Berkó, ed. *A helyi önkormányzatok adóztatási gyakorlata. Az állami számvevőszék elemzése*, (Budapest: Állami Számvevőszék, 2021), 19–20.

determined individualized subsidies for several municipalities based on a set of criteria that had not been communicated in advance.²¹ cities with county rights, which are of key importance as far as the local business tax is concerned, were particularly affected by this subsidy, as 17 of the 23 county towns received such subsidies, including all 12 municipalities led by the governing party. A total of HUF 23.7 billion individualized subsidies were distributed from the central budget among the cities with county rights, that obviously does not cover the expected loss of revenue of hundreds of millions of forints by local governments. The question is whether this will result in the emergence of additional individualized subsidies or whether it foreshadows another possibility of municipal indebtedness.

4. The role of the settlement tax in the revenue structure

As far as the power to levy local taxes is concerned, it can be stated that in 2020, at least one local tax or settlement tax was introduced in 3156 of the 3178 settlements, and only 22 of the local governments did not exercise this option.²² In other words, there are hardly any municipalities existing today that have not been forced to use this source of revenue.

Let us examine how large sources of revenue the settlement tax constitutes, and within that, what is the proportion of each type of local tax. Figure 2 shows the development of local tax revenues between 2015 and 2020, and clearly demonstrates the significance of the local business tax and its size compared to other taxes.

First of all, it is clear that HIPA is the most significant type of tax, accounting for an average of 70–80% of local tax revenues, while in comparison, the second most important construction tax contributed to only around 10–15% of the total revenues on average. It can be determined that the revenue from HIPA has been growing steadily in the past years, but has fallen from HUF 788 billion to HUF 702 billion as a result of the pandemic in 2020, which shows the extent of its exposure to economic effects. In contrast, for example, revenue from construction taxes increased from HUF 127 billion in the previous year to HUF 131 billion in 2020. As far as

²¹ Ordinance of the Government of 24 December 2020, Journal of Laws 2020, No 290, item 10779.

²² Németh and Halkóné Berkó, *A helyi önkormányzatok*, 19–20.

the tourist tax is concerned, we can see a significant decrease (from HUF 16 billion to HUF 3.9 billion), which was partly due to the absence of tourists coming from abroad, but largely due to the fact that from 26 April 2020, the tourist tax was paid by the central budget instead of the obligee, so it appeared in the budget of local governments not as local tax revenue, but as a subsidy.

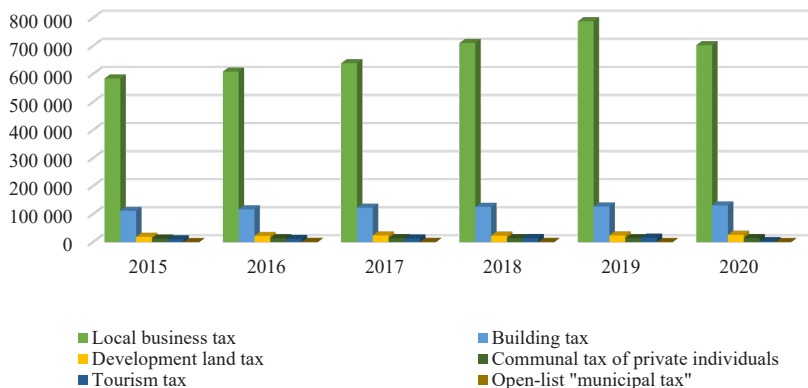


Figure 2. Local government tax revenues in Hungary (2015–2020, in million HUF)

Source: Edited by the author, based on the 2015–2019 data of Central Statistical Office of Hungary and the 2020 data of Hungarian Ministry of Finance.

At the same time, it is worth drawing attention to the inequality between the settlements. According to the analysis published in 2021 by the State Audit Office, 34.8% of the budget revenues of the county towns were local tax revenues in 2019, and in terms of proportions, 80.4% of this came from HIPA. In the case of municipalities with exceptionally high local business tax revenues, local taxes can account for over 60% of their revenues. In contrast, the operation of villages is the least dependent on local tax revenues; according to the Audit Office, the proportion of local tax revenues was below 5% in almost half of the villages. Of course, this dependence is also relative, as in many villages this small portion can also be necessary for daily operation, and, the income lost because of the epidemiological measures can be difficult to make up for, and the central support is

not necessarily sufficient to compensate for this either.²³ In contrast, there are some smaller settlements with greater economic potential (where, for example, a multinational company is established) where the per capita tax revenues are highest on the national level.

Thus, the distribution of local taxes is not uniform, just as the method of distribution of the individualized central support described above differs significantly, if we take into account offsetting and compensation. Let us examine how the municipal tax was integrated into the local tax system from 2015, partly aimed at equalizing financial resource differences and increasing local revenue capacities. According to the data of the Hungarian State Treasury, 9 settlements had a decree on settlement tax in force in 2015, 62 in 2016, 100 in 2017, 102 in 2018, 104 in 2019, 108 in 2020, and 101 in 2021.

First of all, it can be concluded that there is no accurate data about how many municipalities used this option in a given year as statistical data was published with different content. The figure above is based on the statistical reports submitted to the State Treasury, while the local tax decrees published in the National Legislative Gazette (hereinafter: NJT) show slightly different numbers. Moreover, in the first years, with the repeal of the incorrectly established local tax regulations (the practical experience of which will be discussed later), this figure was constantly changing. In any case, it may still be suitable to illustrate the proportions. It can be clearly seen that in the last five years, although the number of local governments levying the local tax has steadily increased, it has affected only 0.03% of the local governments, so it can be described as insignificant. By 2021, the slow growth had come to a halt. Although, according to the NJT, 22 new municipalities would have exercised this option, their local decree had to be repealed due to new central regulations related to the COVID 19 epidemic. This is due to the fact that by the end of 2020, new restrictive decisions were made for 2021, halving the maximum rate of business tax and freezing the introduction of new local and municipal taxes.²⁴ Furthermore, it can be stated from the data of the State Treasury that typically the villages and partially the towns exercised this option. According to the examination of

²³ See Ordinance of the Government of 14 January 2021, Journal of Laws 2020, No 8. item 109.

²⁴ Ordinance of the Government of 1 December 2020, Journal of Laws 2020, No 265. item 8726.

the State Audit Office, this means that 52.9% of all settlement tax revenues were generated by villages and 39.0% by other towns, while the remaining two were shared by two districts of the capital and county towns.²⁵

The introduction of the new open list tax assessment gave rise to the question of exactly what (taxable events/objects) municipalities could tax in practice. Therefore, the subjects of taxation (objects or events) that municipal councils have declared are also worth examining. Under local decrees in effect on January 1, 2021, the majority of municipalities have introduced an agricultural land tax (where the tax is based on the area or the Gold Crown value, i.e. the economic productivity of the land).²⁶ In addition, we may encounter more interesting tax subjects in each case, such as agricultural tractor, slow moving vehicle, heavy equipment, domestic wastewater storage, fishpond, high buildings, water vehicles, or even a semi-finished structure. Examining the aspects of the taxation procedure, it can be identified that the town clerk of the municipality - as a local government tax authority - typically establishes the local tax, that usually has an annual payment period, and half of the decrees also establish some kind of exemption.

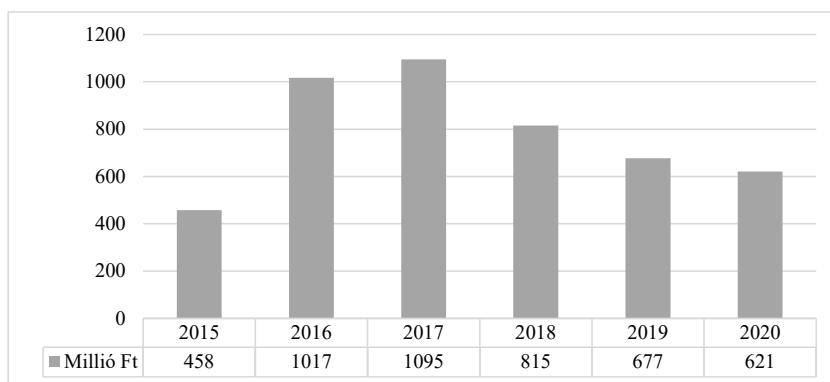


Figure 3. Revenues from settlement tax between 2015–2020 (in million HUF)

Source: Regarding 2015–2019 the figure is based on the data of the Central Statistical Office; as of 2020 the figure is based on the data of the Ministry of Finance. Edited by the author.

²⁵ Ilona Németh and Katalin Halkóné Berkó, *A helyi önkormányzatok*, 15.

²⁶ The gold crown value is a measurement unit of the quality of arable land in Hungary.

With the examination of the aggregated data received from the municipal tax, shown in Figure 3, we can draw some important conclusions. According to the budget reports, the settlement tax revenue in the past year of 2020 was HUF 621 million, that accounted for 0.02% of the budget revenue of all local governments. First of all, we can establish that this is not a significant source of revenue compared to local taxes, and its size has been steadily declining over the past three years. It reached its highest level in 2017, when the affected local governments reported HUF 1,095 million in revenue. If we project this to the roughly 100 settlements, we can essentially talk about HUF 10 million a year, and in 2020 only HUF 6 million per settlement. Of course, this can be spent on several useful tasks in smaller settlements, but it is hardly enough for any significant investment and strengthening financial autonomy. As we have seen, overall, the settlement tax did not even account for 0.1% of local revenues. So it cannot serve as an alternative to classic local taxes, especially the HIPA, nor can it compete with them.

Finally, it should be noted that the Government Decree 535/2020 (XII. 1.) on the local tax measure necessary to mitigate the impact of the coronavirus pandemic on the national economy entered into force on December 2, 2020, and declared that the rate of local taxes and the settlement tax cannot be increased in the tax year of 2021, the local government shall continue to provide tax exemptions and tax relief in accordance with what is stipulated in its tax decree, and the local government shall not introduce any new local tax for the year of 2021 (the regulation has been extended to 2022). This will certainly lead to a stagnation or decrease in revenues, thus sealing the fate of the settlement tax. If only, because of the loss of revenue caused by the epidemic, 22 municipalities planned to introduce a new municipal tax from 2021 on the basis of the NJT data, that had to be repealed after the adoption of the above provision.

5. Interpretation of the settlement tax with respect to the norm control procedure initiated by Local Government Council of the Curia

After the budget analysis of the settlement tax, it is worth examining what regulatory challenges local governments have encountered or may encounter when introducing a new municipal tax. The norm control of local decrees, and thus of tax regulations, i.e. the examination of whether the local

government decree collides with other legislation specified in Article T (2) of the Fundamental Law of Hungary, falls within the competence of the Local Government Council of the Curia (Supreme Court of Hungary). As the regulation of the municipal tax is rather short-spoken, the decisions of the Curia play a decisive role in terms of legal practice, and at the same time shed new light on why the introduction of the settlement tax could not become systemic.

As a reminder, according to §1/A of the LTA, local governments may, by decree in their area of competence, introduce a settlement tax or settlement taxes that are not prohibited by other law. Furthermore, a settlement tax may be imposed on any tax subject, provided that it is not subjected to public charges regulated by law. Finally, the state, local government, organization or, by virtue of its nature, an entrepreneur, shall not be subjected to settlement tax.²⁷ Within this regulatory framework, the Local Governmental Council has made several landmark decisions. Between 2015 and 2020, a total of twenty decisions on settlement tax were made, of which eight are substantive decisions, therefore, their detailed analysis is worthy from the point of view of legal practice. The following is a short summary of the case-law on the settlement tax, without the detailed description of the facts of each case.

In most cases, the Curia examined a settlement tax decree that established a tax on agricultural land. In this context, the court examined whether double or multiple taxation existed, i.e. it determined which payment obligations constitute a public burden that precludes the taxation of agricultural land (Hungarian Curia Judgments No. Köf.5035/2015., Köf.5028/2016/4. Köf.5069/2015/4., and Köf.5068/2015/4.). Several decrees that can be said to be ‘more creative’ compared to the agricultural land tax, also became the subjects of the examination of the Curia, which also shows the local government strive for the purpose of the regulation.

In one case, the Curia annulled the settlement tax decree of the Municipality of Alsónémedi.²⁸ As far as the decree is concerned, the obligation to pay the municipal tax covertly affected only a narrow social group, after the number of days spent in the settlement (typically Romanian guest workers living

²⁷ Article 1/A of the LTA.

²⁸ Hungarian Curia Judgment No. köf.5028/2017/4.

in the settlement, who, according to the municipal council, were behaving inappropriately in the settlement). In the context of this decree, which was essentially adopted for law enforcement purposes by the local authority, the Curia stated that, taking into account the cases of tax exemptions and the system for determining the relevant certificates, the definition of the taxable person was extremely targeted. Thus, the Curia expressed that the local government implements an arbitrary distinction prohibited by the Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, if the tax legislation determines the extent of the obligations against the ability of the persons to bear the burden- or, in case of the legislation examined, in the opposite way to - without a legitimate aim.

Similarly to the previous decision, judgement No. Köf.5027/2017/4. can also be highlighted, where the Curia annulled the decree of the Municipality of Veresegyház on the infrastructure development settlement tax. According to the decree, a one-time settlement tax of half a million forints had to be paid for each newly built apartment.²⁹ The Curia expressed, that the LTA stipulated the construction tax for the taxation of residential real estates, therefore, any tax object that is already subjected to any local taxes specified in the LTA cannot be subject to settlement taxation.

Thirdly, the findings of the judgement No. Köf.5037/2017 can be emphasized, where the case was based on the fact that the municipal council of Balatonfüred established an agricultural land tax with which it was intended to force owners of the neglected properties to behave differently, i.e. to make them to keep their lands in order.³⁰ In this case as well, the Local Governmental Council considered that the realization of the desired goal, that is, local authority law enforcement through taxation was incompatible with the nature of the tax, as taxation is supposed to be a general payment obligation, not a sanction-type obligation.

It should be emphasized, therefore, that the high extent of freedom provided with regards to the declaration of the rules in details shall not result in the broad interpretation of the general limits, and the introduction

²⁹ Municipal Decree No. 1/2017 (III.3.) of the Municipal Council of the Municipality of Veresegyház on the Urban Infrastructure Development Settlement Tax.

³⁰ Municipal Decree No. 30/2014 (XI. 28.) of the Municipal Council of Balatonfüred on Settlement Taxes.

of the settlement tax shall not be aimed at covertly regulating local living conditions beyond taxation. It is clear from the two examples above that in addition to the goals communicated by the legislator, some local governments interpreted the authorization as an option to introduce a quasi 'punitive tax', and the local government would have regulated the local living conditions with local authority law enforcement purposes.³¹

The question arises as to whether the legislator deliberately formulated the regulation in the LTA without restrictions, or does the practice attempt to take advantage of this opportunity? In any case, based on the case law, it can be seen that the regulation of the open list tax assessment requires much more attention from local governments, and there is a higher risk that the purpose of the local decree is different from the objectives set out in the LTA.

6. Conclusions

The Hungarian local tax system has undergone a change in recent years, which has not strengthened the financial independence of local governments. Although the introduction of the settlement tax in 2015 was preceded by high expectations, we can state that it did not become significant either in the number of levying municipalities or in the volume of revenues from it.³² In fact, it has not become a means of replenishing and equalizing financial resources, and its economic efficiency has fallen short of expectations. A negligible part of the local governments levied the local tax, and the revenue from it is dwarfed compared to the classic taxes. In my opinion, all of this can be traced back to several reasons. One of them is that the short-spoken regulation of the municipal tax requires creativity on the part of the local government, while the room for maneuver of the local governments is limited due to the exemption of businesses from the tax. Secondly, the burden on the population is already high, and the imposition of another local tax could pose a public policy risk (see, for example, the fact that in several cases, individuals tried to initiate a norm control procedure before the Curia because of the high public burden). Thirdly, the practice of the Local Governmental Council has also shown that it is necessary to take into account

³¹ This is supported by the statement of Gábor Kecskő and Csaba Tombor, *A helyi adók*, 85.

³² Gábor Kecskő and Csaba Tombor, *A helyi adók*, 90.

several additional aspects within the already narrow framework, including the definition of the subject group and the avoidance of double taxation, which uncertainty also discourages the introduction of the settlement tax. The government measures taken during the coronavirus epidemic did not favor the spreading of the municipal tax either, in spite of the fact it was exactly in this period of limited resources when the mood to introduce new taxes could have increased. Open-list taxation could not fit into the previous tax structure, and when it comes to its result, it also had a negative effect on the system of own resources, so, for example, usage constraints appeared in the context of other local taxes as well. Thus, the open-list tax assessment alone could have created an opportunity for equalization of resources, but within such a regulatory framework - taking into account the peculiarities of the Hungarian local government system - the real and unexpected purpose of the settlement tax became separated from each other.

The role of the business tax among local taxes, was growing steadily, which was halted by the COVID 19 epidemic. This way, the epidemic affected not only local businesses, but also local task and budgetary management, forcing some municipalities into a forced path. But it can also be seen that, even in these circumstances, there are winners of the current mechanism of withdrawing and allocating resources, that reinforces the practice in recent years of breaking the central task funding mechanism through individualized central budgetary support granted through individual and targeted, less transparent mechanisms.³³

Instead of seemingly effective but only sound sources of revenue that reinforce local dissensions and have no real content, it would be necessary to even out the territorial differences in financial resources in order to create financial stability and to perform public services adequately, especially in times of economic challenges caused by the COVID19 epidemic.

³³ The paper was prepared in the framework of Project no. 134499 titled 'Increasing government intervention in market regulation' has been implemented with the support from the National Research, Development and Innovation Fund of Hungary, financed under the K_20 „OTKA” funding scheme.

References

- Bird, Richard. "Threading the fiscal labyrinth: some issues in fiscal decentralization." *National Tax Journal*, no. 2(1993): 207–272.
- Bordás, Péter. "Feladatfinanszírozás-e a feladatfinanszírozás? A magyar önkormányzatok támogatási rendszerének értékelése." *Közjogi Szemle*, no. 2. (2017): 56–64.
- Csink, Lóránt. "Az önkormányzati adóhatóság teljhatalma, avagy a települési adó alkotmányellenessége." *Pázmány Law Working Papers*, no. 10(2016): 1–11.
- Gregóczki, Etelka. "A helyi adók és a gépjárműadó – a helyi adók tervezése, beszedése, gazdasági szerepe." In *Adózási pénzügytan és államháztartási gazdálkodás – közpénzügyek és államháztartástan II.*, edited by Csaba Léntner, 703–730. Budapest: Nemzeti Közszerzői Tanács, 2015.
- Kecső, Gábor and Tombor Csaba. *A helyi adók szabályozása és joggyakorlata Magyarországon külföldi kitekintéssel – különös figyelemmel az iparüzési adóra és a helyi vagyonadók arányosságára*, 22–35. Budapest: DHKFA, 2020.
- Kecső, Gábor. "A kúria kibontakozó gyakorlata a települési adóval kapcsolatban." *Új Magyar Közigazgatás*, special issue (2016): 19–25.
- Kovács, Gábor. "Helyi önkormányzatok: a saját bevételek szerepe a finanszírozásban." In *Növekedés és egyensúly: a 2013. június 11-i Kautz Gyula emlékkonferencia válogatott tanulmányai*, edited by Anikó Tompos and Livia Ablonczyné Mihályka, 45–52. Győr: Széchenyi István Egyetem, 2014.
- Lovas, Dóra. "Nem alaptörvény-ellenes a gödi különleges gazdasági övezet kijelölése." *KÖZJAVAK*, no 1. (2021): 48–50.
- Musgrave, Richard. *The theory of public finance*. New York: McGraw Hill, 1959.
- Németh, Ilona and Halkóné Berkó, Katalin, ed. *A helyi önkormányzatok adóztatási gyakorlata. Az állami számvevőszék elemzése*, 19–20. Budapest: Állami Számvevőszék, 2021.
- Oates, Wallace. "An essay on fiscal federalism." *Journal of Economic Literature*, 37, no. 3 (September 1999): 49.

