

The organisational and legal aspects of agritourism activities in Poland

Organizacyjno-prawne aspekty działalności agroturystycznej w Polsce

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Abstract. The paper presents an analysis of the organisational and legal aspects of agritourism activities in Poland. This is based on an overview of the laws applicable to such activities, i.e. the acts on tourism services, on the freedom to do business, on construction law, and on various taxes (agricultural tax, local taxes and charges, personal income tax) and insurances (obligatory insurance, social insurance of farmers). As follows from the study, farmers involved in agritourism business activities carry rather limited fiscal burdens as well as burdens related to record-keeping, accounting and fulfilment of formal requirements, which should be considered positive. The choice of a taxation method requires doing an individual calculation of profitability depending on the nature of the business. In cases where the farmers' non-agricultural business activities in the field of tourism are not completely tax exempt, they may be taxed in accordance with general tax regulations.

Key words: agritourism, rural tourism, organisational and legal requirements

Streszczenie. Artykuł zawiera analizę organizacyjnych i prawnych aspektów działalności turystycznej w Polsce. Przeprowadzono ją na podstawie przeglądu aktów prawnych mających zastosowanie do tego rodzaju działalności, tj. ustaw o usługach turystycznych, o swobodzie działalności gospodarczej, o różnych podatkach (jak podatek dochodowy od osób fizycznych, podatek rolny, podatki i opłaty lokalne) i ubezpieczeniach (ubezpieczenia obowiązkowe, ubezpieczenie społeczne rolników) oraz Prawa budowlanego. Jak wynika z badań, rolnicy prowadzący działalność agroturystyczną ponoszą raczej ograniczone obciążenia fiskalne i inne, w tym obciążenia związane z prowadzeniem dokumentacji, rachunkowości czy spełnianiem wymagań formalnych, co należy pozytywnie ocenić. Wybór formy opodatkowania wymaga indywidualnego skalkulowania opłacalności konkretnej działalności gospodarczej. W przypadku gdy pozarolnicza działalność rolników w zakresie turystyki nie podlega całkowitemu zwolnieniu od podatku, może zostać opodatkowana na ogólnych zasadach.

Słowa kluczowe: agroturystyka, turystyka wiejska, wymogi organizacyjno-prawne

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Introduction

Agricultural farms are business entities whose main activity is agricultural production based on such elements as land, buildings and machines (Sznajder and Przezbórska 2006, p. 102). At present, possessing the above-mentioned resources gives farmers an opportunity to expand their business activities and create multi-functional farms, e.g. entities involved in food processing, construction industry, crafts, trade and tourism. The latter are called agritourism farms. The inhabitants of rural areas who decide to expand their traditional agricultural activities and provide tourism services are from the very start given privileges that help them to organise and run such businesses. Like any other business, the discussed one requires market research, knowledge of administrative and legal regulations, determination to overcome obstacles, as well as readiness to take risk and make initial financial investment (Sikorska and Kajszyk 2000, pp. 82–83).

The early 1990s were a period of great legal and organisational instability of business activities in Poland. Economic transformation and then the necessity to adjust Polish law to the requirements of the European Union caused frequent changes to the regulations, among them those regarding agritourism, which complicated and impeded the long-term planning of business activities.

The present paper is aimed at presenting the basic organisational and legal principles of agritourism activities. The choice of the form of taxation requires making individual calculation of profitability based on the type of business. The non-agricultural business activity of farmers in the field of tourism which is not fully tax exempt can be taxed based on the general principles of personal income taxation.

Material and methods

The study is based on the literature concerning various aspects of agritourism activities and the relevant binding legal acts. The laws being in force in agritourism are presented in a general manner because of the abundance of available publications on the subject. Most information has been derived from the publication of the Centre of Agricultural Counselling in Brwinów – Krakow Branch¹.

Results

Organisational and legal conditions for agritourism activities

A farmer who decides to provide tourism services in a rural area in Poland should start a business activity which is subject to business regulations, including the rules of book-keeping and management. A business activity is defined as “a commercial activity in the field of production, construction industry, trade, services and prospecting for and mining deposits as well as a permanent and organised professional activity”².

¹ See: Raciborski (2005).

² See: Act on the Freedom to Do Business of 2 July 2004, Article 2 (Ustawa... 2004).

The specific character of tourism services requires making a series of applications, obtaining numerous permissions and signing agreements that are typical only of this branch.

For a farmer who is planning to start operating in agritourism, it is important to get acquainted and then comply with the regulations of the Act on Tourism Services, which define the terms of providing hotel services³. In accordance with Article 3 of the Act, hotel services are short-term, commonly available renting of houses, flats, rooms, lodging for the night and sites for tents and trailers, and providing services related therewith. So the farmer's activities of this kind also are hotel services. The Act on Tourism Services classifies premises providing hotel services into two groups (Raciborski 2005, p. 15):

- 1) buildings using legally protected brand names and being subject to a categorisation system,
- 2) other facilities guaranteeing the minimum security, including rooms rented by farmers and sites for tents on a farm (Article 1a).

In connection with the above-mentioned legal conditions and the regulations of the Act on Tourism Services, which are aimed at safeguarding holiday-makers' interests, farmers who provide hotel services are required to⁴:

- notify the county authorities of that activity (Article 38, item 3),
- collect sanitary, fire protection and other documentation specified in other regulations (Article 35, item 1, point 2),
- meet the minimum equipment requirements (Article 35, item 2),
- inform the authorities about discontinuation of the services (Article 39, item 5).

Based on a farmer's notion, the county authorities (village or town mayor or president) enter the farmer's agritourism business in the local registry of "other hotel facilities". The registry helps to control whether farmer's agritourism facilities provide the minimum equipment and meet sanitary, construction and fire protection requirements. In the case of agritourism lodging, there are no detailed regulations on sanitary requirements so the binding regulations are those of the Ordinance of the Minister of Economy on Hotels and Other Facilities that Provide Hotel Services⁵.

Construction requirements are specified in the Act on Construction Law, with the responsibility for control lying with a body of construction supervision⁶. This body has the power to check the permission for the construction or the use of the building, and if its purpose is different than that specified in the decision, it can issue a new decision on its use. The owner of a building that does not meet the requirements must take into account the necessity to stop providing services until the defects are fixed and documentation completed (Raciborski 2005, pp. 15–17).

³ See: Act on Tourism Services of 29 August 1997 (Ustawa... 1997).

⁴ *Ibid.*

⁵ See: Ordinance of the Minister of Economy and Labour on Hotels and Other Facilities Providing Hotel Services of 19 August 2004 (Rozporządzenie... 2004).

⁶ See: Act on Construction Law of 7 July 1994 (Ustawa... 1994).

In Poland, categorisation of hotel facilities belonging to the group of “other hotel facilities” is not obligatory. They can be assessed within a voluntary assessment system, e.g. the system of rural accommodation base categorisation of the Polish Federation of Rural Tourism “Guest Farms” (Majewski 2000, pp. 41–44).

Legal obligations for an agritourism farm owner are not limited to the Act on Tourism Services. However, some of the duties that are obvious for entrepreneurs do not refer to farmers and their activities in the field of tourism services⁷.

The basic legal act regulating business activities is the Act on the Freedom to Do Business. It specifies legal requirements for undertaking and running business activities. However, the Act provides a different variant, more efficient for farmers: “the regulations of the Act are not applied to agricultural production in the field of plant cultivation and animal breeding, fruit and vegetable gardening, forestry, freshwater fishery and renting rooms, selling home-made food and providing other services in connection with a stay of tourists”⁸. The above-mentioned Act does not define the concepts of a farmer and an agricultural farm. There are some other legal acts that define the concepts, namely:

- The Act on Agricultural Tax, Article 2, item 1, according to which “an agricultural farm is arable land, land under ponds and areas classified as arable land in the land registers, and land under buildings that are connected with farm running, covering a total area of one hectare (i.e. the total sum of land must exceed one physical hectare) or covering an area of arable land exceeding one conversion hectare, in possession of a natural person or a legal person, or an organisational unit that does not have legal personality”⁹;
- The Act on Social Insurance of Farmers, whose Article, 6 point 1 defines the concepts in the following way¹⁰:
 - “an agricultural farm is any farm that is used for agricultural activities”,
 - “an agricultural activity is an activity in the field of plant and animal production, including gardening, orchard farming, beekeeping and fishery”,
 - “a farmer is an adult natural person who is a resident of Poland and is personally involved in agricultural activities on a farm that is in his/her possession, including a person who acts as a member of a group of agricultural producers, and a person who decided to use the owned farmland to plant a forest”.

The definitions quoted above were formulated for the needs of various legal acts but they may be adopted for the Act on the Freedom to Do Business. It is important to define the minimum size of a farm and signal the necessity to be involved in varied but real agricultural production as a basic function of the farm. Taking advantage of the privilege given by the Act on the Freedom to Do Business, farmers being agritourism

⁷ Tourism services include guiding and hotel services and all the other services provided to tourists or visitors. See: Act on Tourism Services of 29 August 1997, Article 3, point 1 (Ustawa... 1997).

⁸ See: Act on the Freedom to Do Business of 2 July 2004, Article 3 (Ustawa... 2004).

⁹ See: Act on Agricultural Tax of 15 November 1984 (Ustawa... 1984).

¹⁰ See: Act on the Social Insurance of Farmers of 20 December 1998 (Ustawa... 1998).

farm owners are exempt of the obligation to register their tourism services as a business activity¹¹.

Summing up the above discussion, it is necessary to note that the use of Article 3 of the Act on the Freedom to Do Business loses grounds for application if tourism activity starts dominating on an agricultural farm or completely ousts agricultural activity¹².

Since 1991, all citizens of the Republic of Poland who earn income have been subject to the Act on Personal Income Tax¹³. In accordance with it, every natural person is obliged to pay income tax. Agritourism farm owners are among the groups of rural service providers who are made exempt from that obligation. Based on Article 21, point 43 of the Act, "income from renting guest rooms in houses of residence on farms in rural areas to holiday-makers and income from catering services for these people if the number of rented rooms does not exceed five is made exempt from that tax".

The regulation means that in order to use the exemption, it is necessary to fulfil all of the following conditions:

- a) the provided services involve renting rooms;
- b) the rooms are rented by persons involved in farming;
- c) buildings with the rooms for rent must be in rural areas, on farms and must be houses of residence;
- d) a person renting a room must be a holiday-maker;
- e) the number of rented rooms cannot exceed five.

The exemption covers also the income from catering provided to holiday-makers who rent those rooms.

It is very important to meet all of these requirements together. Even if one of the conditions is not fulfilled, the exemption does not apply. So one cannot make use of the exemption in the following situations:

- 1) the number of rooms for rent exceeds five (it is important that the legislator has limited the number of rooms for rent but has not specified how many beds there may be in them);
- 2) the rented rooms are in a rural area and on a farm, however, they are not in the house of residence but in another farm building adapted for accommodation needs; the exemption does not apply also in the case of a camping site for tents and trailers and when the house of residence is not a part of a farm or this farm is located in an urban, not a rural, county;
- 3) the rooms are rented for purposes other than holiday-making.

Farmers who have income from other sources, but meet the above-mentioned requirements, are also subject to the regulations of the Act in question. The income

¹¹ See: Raciborski, *op. cit.*, p. 9.

¹² See: Raciborski, *op. cit.*, p. 11.

¹³ See: Act on Personal Income Tax of 26 July 1991 (Ustawa... 1991b).

exempt from tax is not added to the income that is subject to taxation. Persons made exempt from income tax do not need any book-keeping or documentation, however, this is necessary because of some other regulations, e.g. the Act on Value Added Tax (Raciborski 2005, p. 22).

When agritourism activity is large-scale, tax obligations are binding on farmers, who can comply with them in the following forms:

- lump-sum tax,
- a tax chart,
- general rules (based on book-keeping).

The choice of the form of tax requires doing individual calculation of profitability from the point of view of a particular business activity. The non-agricultural activity of farmers in the field of agritourism, if it is not tax exempt, can be subject to taxation in accordance with general rules. This is conducive to the expansion of service activity but obliges the service provider to keep books and submit a monthly revenue declaration (Raciborski 2005, p. 22).

Legal acts that regulated the economic reforms of the early 1990's in Poland favoured farmers (agritourism farm owners) as far as taxes were concerned. At the beginning of bringing the acts into force, they needed many legal commentaries, expert opinions and training. Despite that, the simplified business and fiscal law was for many farmers an argument for starting an agritourism business. Every farmer being a lodging provider would rather be exempt from tax and administrative obligations. A small-scale agritourism activity gives such an opportunity, however, it is necessary to remember which conditions should be satisfied to use the legal privileges discussed¹⁴.

The obligatory social insurance premium paid to the Farmers' Social Insurance Institution (KRUS) is a constant financial burden. A serious problem for agritourism farm owners is that if they start a non-agricultural business activity which must be reported to the authorities or is an additional one, they are immediately obliged to pay an obligatory insurance premium to the Social Insurance Institution (ZUS). The new Act on the Social Insurance of Farmers of 2 May 2004 (Journal of Laws No. 91, item 873), as amended on 1 July 2005 (Journal of Laws No. 150, item 1248), introduced changes into the requirements that must be met in order to continue being insured in KRUS if a farmer is involved in a non-agricultural business activity or cooperation with one. The introduced simplification of the regulations states that the taxation form of a non-agricultural business activity conducted simultaneously with the agricultural activity does not influence the possibility to be insured in KRUS. Thus, at present, in accordance with Article 5a of the Act on the Social Insurance of Farmers, a farmer or a farmer's household member who starts a non-agricultural business activity or cooperation with one can continue to be insured in KRUS under the following conditions¹⁵:

- a) a farmer must have been fully and continually insured in KRUS based on the force of the Act for at least three years and continues to be involved in an agricultural

¹⁴ See: Act on Personal Income Tax of 26 July 1991 (Ustawa... 1991b).

¹⁵ See: Act on the Social Insurance of Farmers of 20 December 1990 (Ustawa... 1990).

activity or constantly works on an agricultural farm having more than one hectare of arable land or a specialist farm;

- b) within 14 days of the date of the beginning of a non-agricultural business activity or cooperation with one, a farmer submits to KRUS a declaration that he/she wishes to continue that insurance.

Fiscal obligations also include a so-called local tax, established by county authorities in accordance with the Act on Local Taxes and Charges¹⁶. Based on this, land and building owners in various counties pay different taxes. The tax is a county's major income. Farmers who use their arable or forest land without a change to its use are exempt from that tax. Farmers who rent up to five rooms in their houses of residence in rural areas pay a real estate tax calculated according to the surface area of the rooms (Mikołajewicz 2006, p. 24). Persons whose business activity exceeds the above-mentioned limits, e.g. the number of rented rooms is more than five, must take the necessity to change the qualification of the house purpose into account and pay a much higher tax.

In Poland, towns with climatic qualities, landscape attractions and favourable conditions for tourism can establish a local fee, i.e. a town or spa fee. To do this, a county puts forward a motion to the Voivode, who consults it with the Minister of Environment and takes a decision about the local fee. Counties can charge people for a tourist, relaxation or educational stay longer than one day, for each day of the stay. The amount of a local fee is passed by the County Council. Farmers being agritourism farm owners may be obliged to charge their guests. It is not a high fee to pay, however, its execution is not consistent¹⁷.

Liability insurance is also obligatory for farmers involved in agricultural activities, and they must insure buildings against fire and other disasters¹⁸. Moreover, in order to limit the liability of agritourism farm owners, it is recommended that they buy optional liability insurance policies which extend the obligatory liability insurance of farmers.

The binding tax system in agritourism is aimed at creating incentives for farmers who start this kind of business activity. Major tax regulations for farmers involved in agritourism have not been changed for several years, and have allowed them to choose the form of taxation.

Conclusions

As shown by an analysis of the organisational and legal aspects of agritourism in Poland, the fiscal and other burdens, including those connected with documentation, accounting or formal requirements, carried by farmers involved in agritourism business activities are rather limited, which should be assessed as positive.

¹⁶ See: Act on Local Taxes and Charges of 12 January 1991 (Ustawa... 1991a).

¹⁷ The rules of collecting local fees are specified in the Act on Local Taxes and Charges of 12 January 1991 (Ustawa... 1991a).

¹⁸ See: Act on Obligatory Insurance of 22 May 2003 (Ustawa... 2003).

The legal obligations of an agritourism farm owner are not limited to those specified in the regulations of the Act on Tourism Services. However, some duties that are obvious in the case of entrepreneurs do not apply to farmers and their activities in the field of tourism services.

The choice of the form of taxation requires making an individual calculation of profitability based on the type of business. The non-agricultural business activity of farmers in the field of tourism which is not fully tax exempt can be taxed based on the general principles of personal income taxation.

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Accepted for print – Zaakceptowano do druku: 12.03.2014