

Exemption of Heritage Properties in Poland from Property Tax – The Fundamentals, Evolution of Solutions and Legal Framework

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Abstract

Protection of historic properties is a public task which in Poland is performed by state bodies and local authorities. It consists in, inter alia, provision of legal, organisational and financial conditions which allow for long-term protection, restoration, utilisation and maintenance of heritage buildings. Provision of tax preferences towards historic properties is an important financial incentive for entities engaged in historic preservation and operating outside the public finance sector (in particular non-governmental organisations and natural persons). To determine the nature and scope of the tax preference, a systemic analysis of the Act on protection and maintenance of historical monuments and the Act on taxes and local fees is required. To ascertain the fundamentals and the scope of the regulatory law regarding heritage property tax exemption, as well as the way in which the legal regulations have developed, the tax legislation and judicial practice were analysed and the reference literature was reviewed with the application of the dogmatic-legal and empirical methods. The hypothesis on the conditional nature of the tax exemption was proven to be correct. Concurrently, it was shown that the fulfilment of statutory tax exemption conditions makes the taxpayer eligible for the tax incentive regardless of his/her legal status and involvement in other activities.

Keywords

property; heritage building; property tax; tax exemption

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1 Introduction

Preservation of national heritage is a public task performed in Poland by central state authorities and local governments, including commune/municipality governments (e.g. by subsidising restoration works on art and architecture) (Ofiarska, 2015: 30–38) and includes, among other things, ensuring legal, organisational, and financial conditions which allow permanent preservation of national heritage, as well as its use and maintenance. The list of the commune/municipality own tasks under Art. 7 of the Act concerning commune/municipality government (Act of 08.03.1990) includes, among other things, preservation and care of the national heritage. The scope and forms of preservation are regulated by the Act concerning preservation and care of the national heritage (Act of 23.07.2003); however, the list of forms of preservation under Art. 7 thereof does not include tax exemption. Tax exemptions may, on the other hand, be results of using a specific form of preservation; therefore, they are secondary thereto. In case of property tax exemption, it is necessary that the property in question be entered individually in a register of national heritage beforehand, i.e. that a specific form of preservation be applied.

The state is obliged to create necessary conditions for proper preservation of the national heritage, which is “a common good” (Zalasińska, 2012: 57). Introducing and applying preferences in taxation of heritage properties (tax exemptions) may be an efficient tool which supports actions of entities possessing the properties and getting involved in the process of preservation. To determine the essence and scope of tax exemption, it is necessary to conduct a systemic analysis of the Act concerning preservation and care of the national heritage and the Act concerning local taxes and fees (Act of 12.01.1991, hereinafter: ALTF). Legal acts and the case law, as well as selected publications were examined using legal-dogmatic and empirical methods to determine the essence, scope, and main tendencies of evolution of legal regulations concerning exemption of heritage properties from property tax. The hypothesis on the conditional nature of this exemption has been confirmed. At the same time, it was shown that meeting statutory conditions of exemption by a tax payer means, it is possible to use this tax privilege regardless the taxpayer’s legal status and possible other operations conducted by the taxpayer at the same time, i.e. outside the heritage property in question.

2 The Notion of a Heritage Property

Pursuant to Art. 3(1) and (2) of the APC (Act concerning the preservation and conservation of the national heritage), a heritage property is a real property, a part of a real property, or a complex of real properties, created by men or related to their activities, being an evidence of a past epoch or event, the preservation of which stands in social interest owing to its historical, artistic, or scientific value. The notion of a “historical value” may not be limited to great age. The expression “evidence of

a past epoch or event” may also pertain to objects which are not from distant times (the judgement of the Voivodeship Administrative Court in Gdańsk of 01.10.2014, II SA/Gd 397/14). Intangible value (tradition of a place) may not be the only justification for entering an object located in an area concerned in the register of national heritage if the object fails to meet the remaining criteria listed in the statutory definition of a piece of national heritage. The properties and exceptional values for which an object or area are entered to a register of national heritage should be demonstrated in the architectonic or spatial substance (the judgement of the Voivodeship Administrative Court in Warsaw of 07.04.2009, I SA/Wa 93/09). In the category of heritage properties, an archaeological property is distinguished in Art. 3(4) of APC, which is a heritage property and a surface, underground, or underwater remains of human existence and activities, consisting of cultural accumulations containing products or traces thereof.

An open catalogue of heritage properties is provided for under Art. 6(1)(1) of the APC; it includes cultural landscapes; urban, rural, and construction complexes; defensive structures; technical structures, in particular mines, mills, power plants, and other industrial facilities; cemeteries; parks, gardens, and other forms of designed greenery; places commemorating historical events or work of eminent people or institutions. The catalogue is open, as the list of heritage properties is preceded with “in particular”. That means that heritage properties may also include other properties which are not listed in the regulation; however, they should meet general conditions of a piece of national heritage listed in Art. 3(1) and (2) of the APC. The statutory catalogue of heritage properties may be divided into two categories. The first includes spatial heritage properties (e.g. cultural landscapes, urban, rural, and construction complexes); the other one includes individual heritage properties (architectural and construction structures). What is protected in spatial heritage properties is values contained in a specific spatial layout. As regards individual heritage properties, what is protected is values included in their substance (the judgement of the Supreme Administrative Court of 19.05.2011, II OSK 848/10).

3 General Tax Exemptions for Heritage Properties

Using various forms of preservation of heritage properties is related to a significant interference of public administration in the ownership title to a property (Drela, 2004: 183–200), consisting, in particular, in limitations of using a property (Chaciński, 2012: 23; Krzyżanowska, 2008: 85–98). By applying preservation usually applied to heritage properties, special requirements are imposed on a property which are supposed to increase its security. The purpose of tax exemption is to compensate the owner of a heritage property for special obligations and limitations of using the property which result, in particular, in limitations of economic use of the property and earning profit on it (the judgement of the Voivodeship Administrative Court in Łódź of 08.01.2016, I SA/Łd 470/15). Under Art. 7(1)(6) of the ALTF, property tax exemptions may be

applied to lands or buildings entered individually in the register of national heritage on condition they are maintained and preserved in line with the provisions on preservation of the national heritage, except for parts used for economic operations. Therefore, it is a conditional exemption; it includes three conditions which entitle a property to be exempt from tax: individual entry in the register of national heritage, maintaining and preserving the property in line with legal regulations, and refraining from economic operations using the property. To apply tax exemption, all statutory conditions must be met (the judgement of the Supreme Administrative Court of 13.10.2016, II FSK 2487/14).

In the meaning of substantive law, entering a heritage property in the register makes it a heritage property in a formal sense and gives it increased care. The legal nature of the entry in the register of national heritage is complex and consists of two actions, i.e. the decision on the entry in the register of national heritage and a material and technical action consisting in entering information in the register. The conditions of entering a property in the register of national heritage are premises which have to be met, as determined from the position of the authority in an administrative decision (Zalasińska, 2008: 323). The exemption specified under Art. 7(1) (6) of the ALTF pertains only to an object of taxation which has been “entered in the register of national heritage individually”. The reason is the construction of property tax, as lands and buildings are separate objects of taxation. That means that the expression “entered individually” requires a separate entry in the register of national heritage for a land or a building in order to have each of those properties exempt from tax (the judgement of the Voivodeship Administrative Court in Gliwice of 15.07.2010, I SA/GI 358/10). That regulation does not justify a conclusion that entering a building in the register of national heritage automatically results in recognising the land below as a heritage property entered in the register, which would form the basis for applying tax exemption to the land (the judgement of the Voivodeship Administrative Court in Gorzów Wielkopolski of 12.12.2008, I SA/Go 720/08).

A necessary condition which justifies tax exemption is “maintaining and preserving a property” in line with the regulations on the preservation of the national heritage. The legislator has not defined the notions of “maintenance” and “preservation”; however, they are used in statutory regulations in specific contexts, e.g. pursuant to Art. 5(3) and Art. 102(1) of the APC, a property should be kept in the best condition possible. Preservation may be understood as “preservation works” and “preservation examinations”, which, pursuant to Art. 3(6) and (9) of the APC, include, as applicable, actions aimed at exhibiting artistic and aesthetic values of a piece of national heritage (including, if necessary, replacing or recreating a part thereof) and documenting those works; or actions aimed at determining the history and function of a piece of national heritage, materials and technologies used to produce it, and the condition of the piece, as well as works aiming at drawing up a diagnosis, design and schedule of preservation works and, if needed, restoration works, as well. To have properties entered individually into the register of national heritage exempt from tax, it is not sufficient that the taxpayer

performs any type of works at the property. What is important is whether the taxpayer maintains and preserves the property in line with regulations on the preservation of the national heritage rather than perform any maintenance or preservation procedures (the judgement of the Voivodeship Administrative Court in Wrocław of 21.09.2017, I SA/Wr 134/17). Works consisting in “maintenance and preservation” do not, in particular, include mending holes in the roof, gathering and moving rubble out of the property, hacking off loose patches of plaster from the elevation, making an agreement concerning cleaning services, removing snow and employing security staff in a building (the judgement of the Voivodeship Administrative Court in Łódź of 19.05.2016, I SA/Łd 468/15).

Maintaining and preserving a heritage property requires due and far-reaching care and actions adequate to hazards in place. It includes not only keeping the technical condition which would not lead to a total destruction of a property but also preservation of the values of the building which decided about the entry in the register of national heritage (the judgement of the Voivodeship Administrative Court in Gliwice of 15.02.2017, I SA/GI 1287/16). Maintaining and preserving a heritage property concerns each fiscal year; a failure to meet that condition in a fiscal year concerned results in taxation of a heritage property according to general principles (the judgement of the Voivodeship Administrative Court in Opole of 24.11.2010, I SA/Op 547/10). The control of observing and applying the regulations concerning “maintenance and preservation” of heritage properties is conducted by preservation supervision bodies; the issue whether and to what extent the condition of applying tax exemption has been met is a competence of tax authorities (the judgement of the Voivodeship Administrative Court in Olsztyn of 07.09.2017, I SA/OI 359/17).

Properties or parts thereof used for economic operations may not be exempt from tax. The general expression of “economic operations” used in Art. 7(1) (6) of the ALTF means economic operations as understood in the Entrepreneurs’ Law Act (Act of 06.03.2018). They mean organised gainful operations conducted in one’s own name and in a continuous manner (e.g. commercial, service, manufacturing and construction operations). However, it should be emphasised that for the purpose of property taxation, economic operations do not include, pursuant to Art. 1a(2) of the ALTF, agricultural or forester operations; renting guest rooms to tourists in residential buildings in rural areas by people with a permanent place of residence in a commune located in that area if the number of rooms for rent does not exceed five; and sale, by farmers, of plant and animal products processed in a non-industrial manner. Conducting operations of that type in a heritage property does not deprive it of the right to be exempt from property tax. *A contrario*, conducting other types of economic operations in a heritage property or a part thereof eliminates the possibility of applying tax exemption to the whole or a part of a property used for economic operations, regardless from whether the operations are conducted by the owner or a secondary possessor, e.g. a tenant or a lessor (the judgement of the Voivodeship Administrative Court in Łódź of 25.02.2014, I SA/Łd 1438/13).

An opinion was expressed in the literature that “economic operations are conducted” on a land or in a building when the possessor actually performs, in a land or in a building, actions being parts of economic operations he conducts. Lands or buildings should be recognised as occupied for economic operations when the operations are conducted directly there, as well as when they are a subject of economic transactions (Wołowiec, 2014: 38). A radical opinion was also expressed that allowing the public to see a heritage property for a fee excludes the possibility of property tax exemption (Radzikowski, 2010: 16). In this case, one characteristic of economic operations was emphasised, i.e. its gainful nature. However, it is also necessary that all statutory characteristics of the operations be present at the same time, i.e. they have to be conducted in one’s own name and in a continuous manner. According to the court’s opinion, economic operations are not conducted in a heritage property if certain activities are performed only incidentally (the judgement of the Supreme Administrative Court of 11.10.2017, II FSK 2394/15).

If, in an industrial building entered in the register of national heritage, works are conducted consisting in a reconstruction, addition, or expansion for the purpose of adapting the property to rent of separate facilities as a part of economic operations, this results in economic operations conducted in a building. Parts of the building created as a result of those construction works may not be exempt from tax as, upon commencing the works, the industrial building has lost the conditions necessary for tax exemption (the judgement of the Voivodeship Administrative Court in Szczecin of 09.08.2017, I SA/Sz 479/17). Renovation and construction works are typical elements of economic operations; therefore, there may be no doubt that a building is related to economic operations also during construction works. It is only when the roof is permanently and completely removed from a building and the building is permanently and completely uncovered and unlimited from the top that the building stops to be a building or even a structure within the meaning of construction law; therefore, it may not be an object of property taxation (the judgement of the Voivodeship Administrative Court in Białystok of 08.03.2017, I SA/Bk 1003/16). When a taxpayer occupies a flat in a heritage tenement house to satisfy personal residential needs of the taxpayer and their family, that may not be classified as economic operations. On the other hand, offering flats as a part of payable hotel services results in a loss of the right to tax exemption of a respective part of a heritage tenement house (the judgement of the Voivodeship Administrative Court in Krakow of 22.10.2015, I SA/Kr 1022/15).

In conclusion, an individual entry of a specific property (land, building) in the register of national heritage does not mean, on its own, an automatic exemption from property tax. Having determined, in tax proceedings, that a property in question is entered in the register of national heritage, a tax authority should examine whether the other statutory conditions are met which justify the application of tax exemption (the judgement of the Voivodeship Administrative Court in Poznań of 07.07.2010,

III SA/Po 302/10). The construction of the tax exemption regulated under Art. 7(1) (6) of ALTF means that the activity of tax authorities in this area does not depend on a request of a tax payer or their position in the case (the judgement of the Voivodeship Administrative Court in Wrocław of 21.09.2017, I SA/Wr 134/17). If a tax authority has determined that all conditions that justify the discussed tax exemption have been met, it is obliged to apply the exemption. In this meaning, the exemption regulated in Art. 7(1) (6) of the ALTF is obligatory. The violation of at least one condition justifying the application of the discussed exemption from property tax to a heritage property results in a loss of the right to the exemption and means that a tax authority will determine the amount of property tax by its decision, based on a declaration submitted by a tax payer who is a natural person (the judgement of the Voivodeship Administrative Court in Opole of 03.06.2013, II SA/Op 52/13). If the taxpayer exempt from that tax up to date was a legal person or an organisational entity with no legal personality, they are obliged to calculate property tax on their own starting from the first day of the month following the month in which the conditions justifying tax exemptions were not met.

4 Special Tax Exemption of Heritage Properties

Pursuant to Art. 1b(1) of the ALTF, tax reliefs and exemptions granted to churches and religious associations are regulated under separate acts. Tax exemptions of heritage properties are regulated under acts governing the relationships of a specific church or religious association with Poland. At present, 12 acts are applicable which regulate relationships between Poland and the Catholic Church, the Evangelical Reformed Church, the Union of Christian Baptists, the Catholic Mariavite Church, the Evangelical Church of the Augsburg Confession, the Old Catholic Mariavite Church, the Pentecostal Church, the Seventh-Day Adventist Church, the Polish Orthodox Church, the Methodist Church, the Polish-Catholic Church, and the Jewish Communities. The doctrine calls such tax exemptions negative financing, which consists in public authorities refraining from collecting all or a part of due public fees as a result of the religious legal status of a taxpayer (Stanisławski, 2011: 73).

Each act provides for standard regulations concerning tax exemption of a property or a part thereof allotted for residential purposes of clergymen and order members if:

- a) a property is entered into the register of national heritage;
- b) it serves as boarding houses at schools and seminaries, houses of contemplative orders, formation houses of orders, and houses of retired priests (nuns);
- c) it is located in buildings of diocesan and bishopric curias, general and provincial order boards, in the Secretariat of the Primate of Poland and in the Secretariat of the Conference of the Polish Episcopate [cf. Art. 55(5) of the Act of 17.05.1989].

In another case, a tax exemption was applied to properties or parts thereof, allotted for residential purposes of clergymen and deacons if:

- a) properties were entered in the register of national heritage;
- b) they serve as houses of retired priests or are located in buildings which are a seat of a Church Bishop [cf. Art. 19(4) of the Act of 13.05.1994].

As compared to the subjective scope of the exemption introduced based on Art. 7(1) (6) of the ALTF, which pertains to all lands and buildings meeting the conditions specified therein, exemptions provided for in acts regulating the relationship between Poland and various churches and religious associations have been limited only to properties or parts thereof which are “allotted for residential purposes”. That is not a typical objective exemption, as its construction includes a subjective element, i.e. properties or parts thereof should be allotted for residential purposes of clergymen and order members. The doctrine has a critical opinion on the use, by the legislator, of the expression “allotted for residential purposes”; at the same time, it is emphasised that a desired solution would be the use of an explicit expression of “residential buildings or parts thereof” (Pahl, 2008: 96–98).

An entry, in the register, of a property or a part thereof “allotted for residential purposes”, which is a condition of a property tax exemption, is not accompanied with additional conditions, e.g. the obligation to maintain and preserve buildings in line with regulations concerning the preservation of the national heritage. An essential condition, apart from the entry in the register of national heritage, is using a property or a part thereof for residential purposes. In principle, the residential function of discussed church properties should be performed with regard to clergymen; however, the buildings may also be occupied by families of clergymen (that concerns only those churches or religious associations where clergymen may have families, e.g. properties may be occupied by priests’ widows [cf. Art. 33(3) of the Act of 30.06.1995]). With regard to other heritage properties (lands and buildings), churches and religious associations use a general tax exemption under Art. 7(1) (6) of the ALTF on conditions provided for therein (Patyk, 2008: 184).

5 Conclusion

The conditions for exempting heritage properties from tax provided for in the Act concerning local taxes and fees as well as in separate acts regulating the relationships between Poland and separate churches and religious associations have not changed since 30.01.1991, i.e. the moment when the current ALTF entered into force. That means that the legislator is consistent in that area and that the stability of introduced fiscal and legal regulations should motivate the possessors of heritage properties to take actions aimed at keeping their properties in the best possible condition and to provide others with the access to their properties, including experts trained to conduct appropriate works

on a heritage property, e.g. scientific or preservation works. Exemptions of heritage properties from tax should supplement different legal forms of preservation. In a longer term, keeping a heritage property in the best possible condition means using it for public good due to its values, e.g. historical or scientific ones.

Applying tax exemptions to heritage properties should not be found equivalent only to decreasing budgetary receipts on a specific public duty being property tax. Maintaining and preserving a heritage property requires that its possessor exercise due care. That is related to the obligation of making large expenses and refraining from operations putting the historical and cultural value of the property at risk, including economic operations in the property. Lost profits of the possessor of a heritage property are partly compensated for by the amount of tax exemption.

By examining the conditions allowing the application of tax exemptions to heritage properties, it has been demonstrated that such exemptions should not be recognised only as tax privileges. They supplement an administrative-legal form of preservation of heritage properties, i.e. entry in the register of national heritage. Using this form of preservation is related to a significant limitation of ownership rights to a heritage property (Ruszkiewicz, 2009: 102). Tax exemptions of heritage properties motivate possessors to take specific desired actions and, at the same time, partly compensate them for profit lost due to limitations of use.

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