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Protection of historical monuments in Poland and property tax regulations

Ochrona zabytków w Polsce a regulacje podatku od nieruchomości

Summary: The aim of this study is to analyse the tax exemptions that make the Polish tax system easier for owners of immovable monuments in terms of property tax. The authors attempt to determine whether Polish property tax regulations can indirectly contribute to the improvement of the condition of immovable monuments. This is an important issue, as even the most perfect conventions and laws cannot protect monuments from destruction; for this, financial resources are necessary. As can be seen from the dogmatic and legal analysis, the solutions concerning tax exemptions for historic properties should be assessed as being far from sufficient to serve as effective financial and legal incentives for owners to care for the preservation of historic buildings. In this respect, the authors postulate making changes related to the extension of the existing exemption. In this article, the dogmatic-legal method based on the

analysis of the texts of legal acts has been applied, as has the empirical method in terms of determining the number of immovable monuments in Poland.

Keywords: monument, immovable monuments, tax exemption, property tax

Streszczenie: Celem opracowania jest analiza zwolnień podatkowych, które wprowadzają ułatwienia w polskim systemie podatkowym dla właścicieli zabytków nieruchomości w zakresie podatku od nieruchomości. Jest to zagadnienie o tyle ważne, że nawet najdoskonalsze konwencje i ustawy nie uchronią zabytków przed zniszczeniem – do tego konieczne są środki finansowe. Jak wynika z przeprowadzonej analizy, rozwiązania dotyczące zwolnień z podatku nieruchomości zabytkowych należy ocenić jako dalece niewystarczające do pełnienia funkcji skutecznych bodźców finansowo-prawnych zachęcających do troski właścicieli o zachowanie zabytków. Autorzy postulują w tym zakresie dokonanie zmian związanych z rozszerzeniem obowiązującego zwolnienia.

Słowa kluczowe: zabytek, zabytki nieruchome, zwolnienie z podatku, podatek od nieruchomości

Introduction

The preservation of the historic value of tangible cultural assets is among the State's most important obligations, according to both the general principles of the Constitution of the Republic of Poland of 2 April 1997¹ and the content of its specific provisions. The preamble to the Constitution of the Republic of Poland contains the nation's obligation as a whole to 'pass on to future generations all that is valuable from over a thousand years of heritage'.² It should be pointed out that in Poland, the protection of historical monuments dates back to the 19th century, while the first legal regulations appeared in 1918.³

The Constitution of the Republic of Poland states, *inter alia*, in Article 5 that it is the duty of the State to protect national heritage. This obligation comprises one of the State's basic tasks, and the protection and care of monuments is undoubt-

¹ Konstytucja Rzeczypospolitej Polskiej z dnia 1997 r. [Constitution of the Republic of Poland of 2 April 1997], Dz. U. 1997, No. 78, item 483, as amended.

² R. Płaszowska, *Organizacja organów ochrony zabytków*, "Public Law Review" 2016, Vol. 6, p. 97.

³ K. Sikora, *Administracyjnoprawne formy ochrony zabytków właściwe dla organów administracji rządowej. Zarys*, "Studia Administracyjne" 2016, Vol. 8, p. 99.

edly an important element of national heritage. In turn, Article 6(1) indicates that the Republic of Poland creates conditions for the dissemination of and equal access to cultural assets, which are an important source of the Polish nation's identity, its continuity and its development; Article 6(2) states that the Republic of Poland will assist Poles residing abroad in preserving their links with national cultural heritage; and Article 73 guarantees everyone, *inter alia*, the freedom to enjoy cultural property. The relatively extensive regulations concerning monuments as an element of cultural heritage result from the fact that the heritage of tangible and intangible culture is an important factor that shapes human identity.⁴

The above-mentioned provisions of the Constitution and ordinary legislation are in line with international regulations concerning cultural heritage in its broadest sense, *inter alia*, the provisions of the Faro Convention, namely the Council of Europe Framework Regulation on the Value of Cultural Heritage for Society. In Poland, through the Act of 12 May 2022 on the ratification of the Council of Europe Framework Convention on the Value of Cultural Heritage for Society, drawn up in Faro on 27 October 2005,⁵ consent was given by the President for the ratification of the Faro Convention.

The purpose of the Faro Convention is to safeguard cultural heritage and strengthen its role in building identity and diversity and peaceful dialogue between the communities that make up the heritage of the European cultural-civilisation circle. The convention is also an expression of the conviction of the need to involve every individual in the definition and management of cultural heritage. It aims to emphasise the importance of activities related to the dissemination of cultural heritage for the growth of a shared sense of European identity.

The Faro Convention is a framework instrument in that it only sets out general objectives and areas of action, thereby creating general obligations for specific action. The convention does not contain legal norms from which obligations for State Parties to take specific action are derived.

In the Polish legal system, the effect of the adoption of a law enabling the ratification of the Faro Convention is to count it among the sources of universally binding law in Poland. In the event of a conflict with laws, the Faro Convention has priority of application.

The matter of the protection and care of historical monuments is extremely important, as it is an essential element of national heritage. While the legal regulations concerning it are appropriate in Poland, a real problem concerns the financing of tasks related to it. In addition to public funds, which were and are insufficient,

⁴ A. Musiał-Gąsiorowska, *Prawne i organizacyjne aspekty popularyzacji dziedzictwa kulturowego – pryncypia*, "Przegląd Prawa Publicznego" 2019, Vol. 3, p. 27.

⁵ Ustawa z dnia 12 maja 2022 r. o ratyfikacji Konwencji ramowej Rady Europy o wartości dziedzictwa kulturowego dla społeczeństwa, sporządzonej w Faro dnia 27 października 2005 r. [Act of 12 May 2022 on the ratification of the Council of Europe Framework Convention on the Value of Cultural Heritage for Society, drawn up in Faro on 27 October 2005], consolidated text: Dz. U. 2022, item 1288.

there is also a need to use non-public funds. This is due to the fact that some monuments belong to private owners, on whom rests the burden of maintaining them in proper condition.

The purpose of this article is to analyse the tax exemptions in the field of property tax that make (at least in the assumption of the legislator) the Polish tax system more encouraging for owners to take care about historical immovable monuments. This is important because even the most perfect conventions and laws will not protect monuments from destruction—for this, financial resources are necessary.⁶ The authors attempt to determine whether Polish property tax regulations can contribute indirectly to improving the condition of immovable monuments.

Law on the Protection of Monuments

The Act of 23 July 2003 on the protection and care of historical monuments⁷ (hereinafter: ‘the Law on the Protection of Monuments’) defines the subject, scope and forms of protection and care of historical monuments, the principles of creating a national programme for their protection and care, financing conservation, restoration and construction works on historical monuments and the organisation of the bodies for their protection. The key concept, namely a monument, is defined in Article 3(1) of the Law on the Protection of Monuments as an immovable or movable property, their parts or their complexes being the work of a human or related to human activity and being a testimony of a bygone era or event, the preservation of which is in the public interest due to its historical, artistic or scientific value.

Monuments are categorised as immovable monuments, movable monuments or archaeological monuments (Article 3 item 2-4 of the Law on the Protection of Monuments).

The concept of care for monuments, strictly interpreted, is to determine the scope of the rights and obligations of the owner (possessor) of a monument in relation to exercising proper care over it, and it is also to serve the main purpose, which is to maintain the monument in the best possible condition for as long as possible and use it for the general good due to its historical, artistic or scientific value. From a civil law point of view, at present in Poland, the care of monuments is laid out by a set of obligations that result in the restriction of the ownership of the thing that is a monument, both materially and financially, beyond mere care for the object of ownership or possession. Monuments, the preservation of which is in the public interest, have due to their value ceased to be exclusively the private

⁶ It is recognised that the main factor in the failure to carry out the works necessary for the preservation of monuments is the lack of money from both conservators (for substitute performance) and the investors (K. Schatt-Babińska, *Finansowanie prac remontowych przy zabytkach prywatnych akredytywa i gwarancja bankowa w służbie zabytkom. Zarys problematyki*, “Santander Art and Culture Law Review” 2020, Vol. 1(6), p. 120).

⁷ Ustawa z dnia 23 lipca 2003 r. o ochronie zabytków i opiece nad zabytkami [Act of 23 July 2003 on the protection and care of historical monuments], consolidated text: Dz. U. 2022, item 840.

property of their owners (possessors), which in turn justifies interference in the owner's rights and obligations by the competent monument protection authorities in the forms provided for in the Act.⁸

The principle of funding a monument by the owner links the ownership or fact of owning a monument with the responsibility for funding activities at monuments.⁹

It follows from Article 4 of the Law on the Protection of Monuments that the protection of monuments consists, in particular, of measures taken by public administration bodies aimed to achieve the following:

- 1) ensuring the legal, organisational and financial conditions for the permanent preservation of monuments and their development and maintenance;
- 2) preventing threats that may cause damage to the value of monuments;
- 3) thwarting the destruction and misuse of monuments;
- 4) preventing theft, loss or illegal export of monuments abroad;
- 5) control of the state of conservation and use of monuments;
- 6) taking conservation tasks into account in terms of spatial planning and development and shaping the environment.

According to Article 5 of the Act, the care of a monument exercised by its owner or possessor consists, in particular, of providing the following conditions:

- 1) scientific examination and documentation of the monument;
- 2) carrying out conservation, restoration and construction works on a monument;
- 3) securing and maintaining the monument and its surroundings in the best possible condition;
- 4) using the monument in such a way as to ensure the permanent preservation of its value;
- 5) popularising and disseminating knowledge about the monument and its historical and cultural significance.

Pursuant to Article 6(1)(1) of the Law on the Protection of Monuments, the following in particular are considered immovable monuments:

- 1) cultural landscapes;
- 2) urban and rural layouts and building complexes;
- 3) works of architecture and construction;
- 4) works of defence construction;
- 5) technical facilities, especially mines, steelworks, power stations and other industrial plants;
- 6) cemeteries;
- 7) parks, gardens and other forms of designed greenery;

⁸ A. Żak-Stobnicka, *Administracyjne kary pieniężne nakładane na podmioty odpowiedzialne za opiekę nad zabytkami*, "Nieruchomości" 2019, Vol. 7, pp. 4-7 (Legalis).

⁹ K. Zeidler, *Zasady prawa ochrony dziedzictwa kultury – propozycja katalogu*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2018, Vol. 4, p. 152.

- 8) places commemorating historical events or the activities of prominent personalities or institutions.

Article 49(1) of the Law on the Protection of Monuments both limits the rights of monument owners and imposes obligations on them. Pursuant to the Act, the provincial conservation officer may issue a decision ordering an individual or an organisational unit that has the legal title to use a monument entered in the register resulting from ownership, perpetual usufruct, permanent management or limited property right or an obligation relationship to carry out within the period specified in the decision conservation or construction works on that monument if doing so is necessary due to the threat of destruction or substantial damage to the monument.

The key provision is Article 71(1) of the Law on the Protection of Monuments, according to which, in terms of taking care of monuments, a natural person or an organisational unit holding a legal title to a monument resulting from ownership, perpetual usufruct, permanent management, limited right in rem or a contractual relation finances carrying out conservation, restoration and construction works on that monument.

Although Article 73 of the Act states that a natural person, a local government unit or another organisational unit, being the owner or holder of a monument entered in the register, having such a monument under permanent management or being the owner or holder of a monument entered in the Heritage Treasures List may apply for a purpose-specific subsidy from the State budget to subsidise conservation, restoration or construction works for such monuments, in practice, this provision is not helpful to solve all the financial problems of the owners of monuments. Targeted subsidies from the state budget are only to a small extent able to cover the costs requested by owners (holders) of monuments. On the other hand, administrative fines may be imposed on the owner (keeper) of a monument for inadequate fulfilment of their obligations in relation to it (Articles 107a-107i of the Law on the Protection of Monuments).

In order to increase funding related to monuments, Resolution No. 82 of the Council of Ministers of 13 August 2019 on the National Programme for the Protection and Care of Monuments for 2019-2022 was issued under Article 86(1) of the Law on the Protection of Monuments.¹⁰ The resolution is the main strategic document defining the objectives of the government administration and its subordinate services and institutions in the field of protection and care of historical monuments, as well as introducing measures for the implementation of the set objectives. The programme adopted by the Council of Ministers was established for 2019-2022, and the State budget allocated for its implementation (from the Culture and Protection of National Heritage budget) was PLN 27,217,089 (approx-

¹⁰ Uchwała nr 82 Rady Ministrów z dnia 13 sierpnia 2019 r. w sprawie "Krajowego programu ochrony zabytków i opieki nad zabytkami na lata 2019-2022" [Resolution No. 82 of the Council of Ministers of 13 August 2019 on the National Programme for the Protection and Care of Monuments for 2019-2022], M. P. of 2019, item 808 as amended.

mately EUR 5,800,000). The National Heritage Institute was established as the lead entity for the implementation of this programme, in cooperation with provincial conservators of historical monuments, directors of maritime offices, the National Maritime Museum in Gdańsk and other entities (as required).

The main objective of the programme was to create conditions for the effective protection and care of monuments, the implementation of which was planned through the execution of the following three specific objectives:

- 1) Objective I: to optimise the cultural heritage protection system,
- 2) Objective II: to support measures for the care of monuments,
- 3) Objective III: building public awareness of the value of cultural heritage.

The funds allocated for the implementation of the programme for 2019-2022 have not been able to effectively support the measures for the care of monuments, and without the involvement of private funds, many monuments are at risk of deterioration or even total destruction. This is despite the fact that Poland, as a member state of the European Union, also uses funds from the EU budget to finance tasks related to monuments.¹¹

NIK report

In December 2021, information on the results of an audit carried out by the Supreme Chamber of Control (NIK) was published in a publication entitled *System of monuments protection in Poland*¹² (hereinafter: 'NIK report'), which analysed the financing of monument protection in Poland, among other matters.

The overall assessment formulated by the NIK report showed that the financial resources for the protection and care of monuments were generally spent correctly; however, they were insufficient to finance all needs in this respect. Moreover, due to the competitive mode of financing works on monuments, the competent minister had limited influence on the structure of subsidies, and thus on the creation of subsidy policy, with regard to groups of monuments in the worst state of preservation (p. 11).

Respectively, between 2018 and 2020, the percentage of the number of projects co-financed by the competent minister with funds from the state budget in relation to the number of submitted projects amounted to 27.2%, 26%, 25.8%, and the percentage of the value of projects accepted for implementation in relation to the value of projects submitted for financing with state budget funds amounted to 18.7%, 16.5%, 15.7% (p. 20).

¹¹ For more on the use of EU funds in the context of monuments see, for example: K. Kubiszewska, *Finansowanie odnowy zabytków w Polsce przy wykorzystaniu pomocy UE*, "Ochrona Zabytków" 2012, Vol. 2-3, pp. 59-74.

¹² *Informacja o wynikach kontroli. System ochrony zabytków w Polsce* [System of monuments protection in Poland], Najwyższa Izba Kontroli, Departament Nauki, Edukacji i Dziedzictwa Narodowego, Warszawa 2021, KNO.430.004.2021, p. 108, <https://www.nik.gov.pl/plik/id,25591,vp,28358.pdf> [accessed: 2.02.2024].

The report noted that the National Fund for the Protection of Historical Monuments (NFOZ),¹³ which has been in operation since 1 January 2018 as a public purpose fund, had failed to meet the objectives for which it had been established. First and foremost, its funds were meant to subsidise the outlays necessary to carry out conservation, restoration or construction works on monuments entered in the register. Meanwhile, in the first three years of the NFOZ's operation, its revenues were significantly lower than had been expected, amounting to 4.6% of the planned funds in 2018, 35.4% in 2019 and 36.5% in 2020 (p. 60).

Non-movable monuments in Poland in numbers

Historical monuments are preserved so that the heritage of previous generations that has been materialised in cultural assets can be passed on to future ones. The problem, however, is that maintaining monuments in a condition that will allow them to survive for decades to come requires there being adequate financial resources for all the monuments in Poland. In terms of immovable monuments, which are the subject of the analysis in this study, they amount to 79,998.¹⁴

This number consists of immovable monuments, which can be classified into 13 groups. Within each group, the number of immovable monuments is as follows:

- 1) Urban planning: 1022
- 2) Sacred: 12,570
- 3) Defence: 2133
- 4) Industrial: 3669
- 5) Economic: 4942
- 6) Residential: 22,868
- 7) Manors/palaces: 6993
- 8) Public utility: 5509
- 9) Communications: 801
- 10) Cemeteries: 4458
- 11) Green: 7840
- 12) Small architecture: 1198
- 13) Other: 5995

By far the largest proportion of all immovable monuments in Poland are those used to meet residential needs (28.58%), most of which are owned by private entities. From a property tax perspective, it is irrelevant whether a residential property is a monument or not; in principle, all categories of residential property are subject to property tax. Given that immovable monuments require relatively high

¹³ See, for more detail M. Ofiarska, *National Fund for the Protection of Heritage Monuments - principles for the establishment and operation*, "Prawo Budżetowe Państwa i Samorządu" 2018, Vol. 4, pp. 11-33.

¹⁴ *Zestawienie danych statystycznych z rejestru zabytków - zabytki nieruchomości*, Service of the Rzeczpospolita Polska, https://dane.gov.pl/pl/dataset/154/resource/56056,zestawienie-danych-statystycznych-z-rejestru-zabytkow-zabytki-nieruchome/table?page=1&per_page=20&q=&sort= [accessed: 9.06.2024].

financial outlays,¹⁵ the property tax for this category of property is certainly a noticeable financial burden for the owner (possessor).¹⁶

Legal grounds for exemption of monuments from property tax

Tax, as part of its various functions, plays a role in stimulating taxpayers to behave in a certain way.¹⁷ Tax exemptions, which are an element reducing the subject or object of the tax, are important in performing this function.¹⁸ At the same time, due to the economic effect of its application, an exemption may be treated as an instrument for stimulating the taxpayer's behaviour, and it is justifiable to treat this institution as a so-called financial and legal incentive, which is a particular type of economic incentive. Financial-legal incentives are defined as situations in which a motive of action is evoked in the addressee related to obtaining a monetary effect, while the incentive itself is triggered and regulated by legal norms.¹⁹ Legislators also make use of financial incentives in connection to the protection of immovable monuments, resulting in their exemption from property tax, upon the fulfilment of several conditions.

Since Polish property tax covers real estate, namely in the form of buildings, land and structure connected with the conduct of economic activity, monuments constituting real estate fall, as a rule, within the scope of this tax. At the same time, the provisions of Article 7 of the Act of 12 January 1991 on Local Taxes and Fees²⁰ (hereinafter: 'Local Taxes and Fees Act') contain regulations on exemptions from real estate tax. Pursuant to Article 7(1)(6) of the Local Taxes and Fees Act, land and buildings individually entered in the register of monuments are exempt from property tax provided that they are maintained and preserved in accordance with the provisions on the protection of monuments, with the exception of the parts occupied for the conduct of business activities.

¹⁵ Field vetting carried out by the National Heritage Institute shows that more than two thirds of the immovable monuments listed in the register of monuments require various types of renovation works (K. Schatt-Babińska, op. cit., p. 116).

¹⁶ See, on the Italian system of taxation of historic and artistic real estate, M.P. Nastri, *Taxation of historical and artistic real estate*, "Prawo Budżetowe Państwa i Samorządu" 2018, Vol. 2(6), pp. 9-27.

¹⁷ B. Brzeziński, *Prawo podatkowe. Zagadnienia teorii i praktyki*, Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora” w Toruniu, Toruń 2017, p. 138.

¹⁸ W. Nykiel, *Norma prawa podatkowego a elementy konstrukcji podatku*, in: J. Małecki, A. Gomułowicz (eds.), *Ex iniuria non oritur ius. Księga ku czci prof. W. Łączkowskiego*, Wydawnictwo Uniwersytetu im. Adama Mickiewicza w Poznaniu, Poznań 2003, p. 235.

¹⁹ J. Małecki, *Bodźce i sankcje prawnofinansowe*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1981, Vol. 1, pp. 188-189; H. Renigier, *Bodźce prawno-finansowe*, in: M. Weralski (ed.), *System instytucji prawno-finansowych PRL. Instytucje ogólne*, t. 1, Zakład Narodowy im. Ossolińskich, Wydawnictwo Polskiej Akademii Nauk, Wrocław 1982, p. 319.

²⁰ Ustawa z dnia 12 stycznia 1991 r. o podatkach i opłatach lokalnych [Act of 12 January 1991 on Local Taxes and Fees], consolidated text: Dz. U. 2022, item 1452, as amended.

At the same time, the tax exemption does not apply to real estate that constitutes a structure. Pursuant to Article 1a(1)(2) of the Local Taxes and Fees Act, a structure is a building object within the meaning of construction law, which means that it is not a building or a small architectural object, as well as construction equipment related to a building within the meaning of construction law, which ensures that the structure is used in accordance with its purpose. Examples of structures that may constitute immovable monuments include bridges, viaducts, tunnels, earthworks, defence structures (fortifications), protective structures, hydrotechnical structures, reservoirs, cemeteries and monuments. At the same time, structures are subject to property tax only insofar as they are related to the conduct of business activities.

Rationale for the exemption of monuments from property tax

The first prerequisite necessary for the application of the exemption from real estate tax, is the entry of the building or land individually in the register of monuments. At the same time, to fulfil the premise of entry in the register, each object benefiting from the exemption, namely a building or land, must be entered separately. Entering only the building in the register of monuments does not, by the same token, result in the exemption of the land on which it is located.²¹

It is pointed out in the doctrine that the date when the right to the tax exemption is acquired is the date on which the decision on the entry in the register becomes final.²² Pursuant to Article 9 paragraph 1 of the Law on the Protection of Monuments, an immovable monument is entered in the register on the basis of a decision issued by the provincial conservator of historical monuments *ex officio* or on the application of the owner of the immovable monument or the perpetual usufructuary of the land on which the immovable monument is located. The entry in the register of an immovable monument is disclosed in the land and mortgage register of a given property on the request of the voivodeship conservator of monuments on the basis of a decision on the entry of the monument in the register. Subsequently, the decision on the entry of an immovable monument in the register, at the request of the provincial conservator of monuments, is the basis for entry in the real estate cadastre. Pursuant to Article 13(1) of the Law on the Protection of Monuments, a monument entered into the register that has been destroyed to the extent that it has lost its historical, artistic or scientific value, or whose value that was the basis for the decision on its entry into the register has not been confirmed

²¹ See: P. Borszowski, *Ustawa o podatkach i opłatach lokalnych. Komentarz*, LexisNexis, Warszawa 2011, p. 162; B. Pahl, *Czy indywidualny wpis do rejestru zabytków stanowi podstawę do zwolnienia od podatku od nieruchomości gruntu, na którym jest posadowiony? Glosa do wyroku NSA z 13 sierpnia 2010 r. (II FSK 450/09)*, "Finanse Komunalne" 2010, Vol. 11, p. 70; so, inter alia, the judgment of the NSA of 26 February 2021, I SA/Bk 5/21.

²² K. Radzikowski, *Zwolnienie z podatku od nieruchomości gruntów i budynków wpisanych do rejestru zabytków*, "Przebieg Podatków Lokalnych i Finansów Samorządowych" 2010, Vol. 2, p. 15.

by new scientific findings, is removed from the register. Detailed matters concerning the keeping of the register of monuments are regulated by the Ordinance of the Minister of Culture and National Heritage of 26 May 2011 on keeping a register of monuments, a national, provincial and communal register of monuments and a national list of monuments stolen or illegally exported abroad.²³

Another prerequisite for the exemption of buildings and land that are monuments from property tax is the condition of their maintenance and preservation in accordance with the provisions of the Law on the Protection of Monuments. The essence of the behaviour of 'maintaining' a monument in accordance with the provisions on the protection of monuments in case law boils down, in particular, to compliance with those provisions of the Law on the Protection of Monuments, which impose certain obligations on the owner of a monument, including protecting it from destruction, damage and devastation as well as the obligation to submit to the actions of monument protection authorities.²⁴ Taking into account the linguistic meaning and the provision of Article 5 of the Law on the Protection of Monuments, the courts have indicated that 'maintenance' of a monument means securing and maintaining the monument and its surroundings in the best possible condition and using the monument in a way that ensures the permanent preservation of its value.²⁵ In contrast, the same term should be associated with the term 'conservation works'. Pursuant to Article 3(6) of the Law on the Protection of Monuments, conservation works are activities aimed at securing and consolidating the substance of a monument, stopping the processes of its destruction and documenting these activities.

Pursuant to Article 38(1) of the Law on the Protection of Monuments, the provincial conservator of historical monuments, or employees of the provincial office for the protection of historical monuments acting under his or her authority, verifies compliance with and application of the provisions on the protection and care of historical monuments. Therefore, a majority of court decisions have pointed to the necessity that, when assessing the prerequisites for tax exemption, the authority should ask the competent administrative body (the provincial conservator of monuments) to take a position in this respect²⁶ and then assess the official document containing this position in light of all the collected evidence in accordance with the principle of evaluation of evidence. This circumstance can also be proven

²³ Rozporządzenie Ministra Kultury i Dziedzictwa Narodowego z dnia 26 maja 2011 r. w sprawie prowadzenia rejestru zabytków, krajowej, wojewódzkiej i gminnej ewidencji zabytków oraz krajowego wykazu zabytków skradzionych lub wywiezionych za granicę niezgodnie z prawem [Ordinance of the Minister of Culture and National Heritage of 26 May 2011 on keeping a register of monuments, a national, provincial and communal register of monuments and a national list of monuments stolen or illegally exported abroad], Dz. U. No. 113, item 661.

²⁴ Judgment of the WSA in Gliwice of 15 July 2008, I SA/GI 149/08.

²⁵ Judgment of the WSA in Lublin of 25 February 2015, I SA/Lu 940/14.

²⁶ This is e.g. the judgment of the NSA of 6 May 2021, FSK 3332/21.

by the taxpayer, who may present a certificate issued by the provincial conservator of monuments on the maintenance and conservation of the monument, in accordance with the provisions of the Law on the Protection of Monuments.

Exclusion of exemption due to occupation of property for business purposes

With regard to real estate taxation, a circumstance that influences, *inter alia*, the taxability of an object, i.e. the application of exemptions and the level of tax rates, is the connection of the real estate to an economic activity. According to Article 1a(1)(3) of the Local Taxes and Fees Act, land and buildings connected with the business activity are deemed to be land and buildings, which are in the possession of the entrepreneur or any other entity conducting business activity.²⁷

In the case of occupation of a part of land or a building entered in the register of monuments for the purpose of carrying out a business activity, only the occupied part is not exempt from taxation. Judicial decisions have repeatedly commented on the understanding of the concept of 'occupation' of real estate for business purposes. The courts hold that the notion of 'occupation for the conduct of business activity' cannot be equated with the notion of 'connected with the conduct of business activity' as defined in Article 1a(1)(3) of the Local Taxes and Fees Act.²⁸ The scope of meaning of both concepts is such that land occupied for the purpose of conducting a business activity will always be land connected with the conduct of such an activity, while the mere possession by an entrepreneur or other person who conducts a business activity is not sufficient. In the judgments of the WSA in Warsaw of 20.01.2009,²⁹ it was pointed out that in accordance with the definitions contained in the dictionary of the Polish language, the word occupy means to fill, to fill some space or surface with oneself or with something, while the phrase 'to occupy' or 'to occupy oneself' means to start doing something, to work on something or to do some work. Based on court case law, 'occupied for the purpose of carrying on a business' should therefore be considered real estate on which such business is actually carried out.

Since Article 7(1)(6) of the Local Taxes and Fees Act does not indicate that the occupation is to be carried out by the taxpayer personally, the occupation

²⁷ At the same time, according to judgment of the Constitutional Tribunal of 24 February 2021, SK 39/19, Article 1a(1)(3) of the Local Taxes and Fees Act, understood in such a way that the connection of land, building or structure with the conduct of business activity is determined solely by the possession of the land, building or structure by an entrepreneur or other entity conducting business activity, is inconsistent with Article 64(1) in connection with Article 31(3) and Article 84 of the Constitution of the Republic of Poland. The Court ruled that entrepreneurs cannot be charged a higher tax rate merely because they own real estate which is not used for their business activity.

²⁸ This is e.g. the judgment of the WSA in Warszawa of 8 September 2005, III SA/Wa 346/2005.

²⁹ From III SA/Wa 2129/08 to III SA/Wa 2130/080.

of a building, land or parts thereof entered in the register of historic monuments for business activities by any entity (owner, dependent owner) will therefore result in exclusion from the exemption of the given part of the real property occupied for such activities. With reference to a situation often encountered in practice, whereby a building entered into the register of historic monuments is occupied for the purposes of hotel business, it should be pointed out that case law assumes that residential premises leased to an entity other than the owner and offered as part of the hotel services provided do not benefit from the exemption provided for in Article 7(1)(6) of the Local Taxes and Fees Act, and they should be taxed at increased rates appropriate for business activities.³⁰

Referring to the typical situation of charging fees for visiting an immovable property, it should be stated that making a monument available to the public for a fee does not always exclude the possibility of applying the exemption for a business use of the property. Although one has to agree with the position that the charging of fees usually indicates the carrying out of an economic activity, it seems that this thesis cannot be applied to all situations without exception. In particular, in the situation of a public benefit organisation, the chargeable activity does not necessarily imply economic activity.

Similarly, the payment of visitors' fees charged by entities that are local government cultural institutions should not be treated as if this were being performed in connection with the occupation of real estate for the purpose of conducting economic activity. In addition, it should be pointed out that under Article 1a(1)(4) of the Local Taxes and Fees Act, economic activity is understood to be the activity referred to in the Act of 6 March 2018 – Entrepreneurs' Law³¹. In turn, Article 3(2) of the Act of 25 October 1991 on the organisation and conduct of cultural activity³² provides that cultural activity as defined in Article 1(1) of this Act, i.e. activity consisting in the creation, dissemination and protection of culture, does not constitute economic activity within the meaning of separate regulations. In particular, the following should be regarded as cultural activities that should not be classified as economic activities: theatres, operas, operettas, philharmonics, orchestras, film institutions, cinemas, museums, libraries, community centres, art centres, art galleries and research and documentation centres in various cultural fields. Properties related to the aforementioned cultural activities will therefore not be considered related to economic activity in general and thus cannot be considered to be occupied for purposes of that activity either.

³⁰ Judgment of the WSA in Kraków of 22 October 2015, I SA/Kr 1022/15.

³¹ Ustawa z dnia 6 marca 2018 r. Prawo przedsiębiorców [Act of 6 March 2018 – Entrepreneurs' Law], consolidated text: Dz. U. 2024, item 236.

³² Ustawa z dnia 25 października 1991 r. o organizowaniu i prowadzeniu działalności kulturalnej [Act of 25 October 1991 on the organisation and conduct of cultural activity], consolidated text: Dz. U. 2020, item 194, as amended.

It should also be pointed out that there is an exemption for historic properties, the scope of which partly overlaps with the exemption described above. Pursuant to Section 7 (7)(4) of the Local Taxes and Fees Act, land and buildings in the possession of registered museums are exempt from property tax. Registered museums are museums that, pursuant to Article 13 (1), (2) and (4) of the Museums Act of 21 November 1996³³, have been entered in the State Register of Museums. It should be emphasised that due to the subjective nature of the exemption, it is irrelevant for its application whether it is the taxpayer that runs the museum. What is important, however, is that the land or building remains in the possession of the registered museum (e.g. the museum has the right to use and dispose of the property).

Exemption of monuments from property tax under local law

In addition to the statutory exemptions from real estate tax, exemptions of real estate, including historic buildings, may also result from the resolutions of municipal councils issued pursuant to Article 7(3) of the Local Taxes and Fees Act. Pursuant to this provision, the municipal council, by way of a resolution, may introduce other subject exemptions than those specified in subsection 1 and in Article 10(1) of the Act of 2 October 2003 amending the Act on Special Economic Zones and Certain Acts.

It follows from the wording of Article 7(3) of the Local Taxes and Fees Act that it is possible to introduce, by way of resolution, only subjective exemptions. This means that it is possible to introduce exemptions in the municipality with regard to particular types of real estate, including those that are monuments, without regard to the conditions arising from Article 7(1)(6) of the Local Taxes and Fees Act. Thus, it will be possible to exempt, by way of a resolution of the municipal council, for example, monuments that are buildings or buildings and land occupied for business purposes. However, it will be inconsistent with the statutory authorisation to pass a resolution to introduce both subjective and object-orientated exemptions.

Exemption from property tax on monuments of churches and religious associations

Taking into account the fact that a large number of monuments are the property of churches and religious associations, properties that are monuments of ecclesiastical art³⁴ may also be subject to tax exemption on grounds other than those provid-

³³ Ustawa z dnia 21 listopada 1996 r. o muzeach [Museums Act of 21 November 1996], consolidated text: Dz. U. 2022, item 385, as amended.

³⁴ See more extensively on the concept of ecclesiastical art monuments, W. Lis, *Niedostatki w ochronie zabytków sztuki kościelnej w aspekcie kryminalistycznym*, "Santander Art and Culture Law Review" 2017, Vol. 1(3), p. 56.

ed for in Article 7(1)(6) of the Local Taxes and Fees Act. In fact, pursuant to Article 1b(1) of the Local Taxes and Fees Act, tax relief and exemptions on local taxes and fees granted to churches and religious associations are regulated by separate acts. Among others, pursuant to Article 55, paragraph 4 of the Act of 17 May 1989 on the Relation of the State to the Catholic Church in the Republic of Poland,³⁵ ecclesiastical legal persons are exempted from taxation and from benefits to the municipal fund and the municipal fund on real estate or parts thereof owned by these persons or used by them on the basis of another legal title for non-residential purposes, except for the part occupied for the performance of business activities.³⁶ The provision of Article 55(4) of the aforementioned Act thus provides for an exemption of a subjective-objective nature. The exemption is available to those entities that are ecclesiastical legal persons and at the same time owners of real estate or its usufructuaries on the basis of another legal title. At the same time, the real estate must be owned or used by a church legal entity and meet the condition of being used for non-residential purposes and not being occupied for business activities. Additional exemptions are provided for in Article 55(5) of the aforementioned Act, according to which the exemption from property tax and from benefits to the municipal fund includes real estate or parts thereof intended for the residential purposes of clergy and members of religious orders under the following conditions:

- 1) the real estate is listed in the register of historical monuments;
- 2) it serves as dormitories at schools and seminaries, houses of contemplative orders, houses of formation for religious orders and houses for retired priests (nuns);
- 3) it is located in the buildings of diocesan and episcopal curiae, religious general and provincial boards in the Secretariat of the Primate of Poland or in the Secretariat of the Polish Bishops' Conference.³⁷

Final conclusions

Solutions concerning tax exemptions for historic properties should be considered as far from being sufficient to function as effective financial and legal incentives that encourage owners to care about such properties' preservation. Among the conditions for an incentive to be effective is its strength, namely the size of the benefit connected with its application.³⁸ In the case of the property tax exemption,

³⁵ Ustawa z dnia 17 maja 1989 r. o stosunku Państwa do Kościoła Katolickiego w Rzeczypospolitej Polskiej [Act of 17 May 1989 on the Relation of the State to the Catholic Church in the Republic of Poland], Dz. U. 1989, No. 29, item 154, as amended.

³⁶ Analogous solutions are also provided for in other laws regulating the relationship of the state to churches and religious associations.

³⁷ Similar regulations are provided for in other laws regulating the relationship of the state to churches and religious associations.

³⁸ H. Renigier, *op. cit.*, pp. 333-341.

it does not cover real estate used for business activities, which makes it inapplicable to a relatively large number of monuments. Although this solution, resulting from the assumption of there being a higher burden on those taxpayers who occupy the property for commercial purposes, is characteristic of property taxation in Poland³⁹, in that it limits the possibility for owners of historic monuments to retain funds that could be used for their renovation. Owners of heritage properties who carry out business activities using them, doing so for a fee or using them for hospitality or other statutory activities, pay property tax at the highest rates. It would seem desirable to introduce an optional exemption from property tax for these properties with the obligation to transfer the exemption funds for their upkeep and maintenance. The existing tax exemption also does not cover structures despite the fact that they are only subject to property tax when they are merely tied up and not occupied for business purposes. In this respect, an extension of the existing exemption for structures should be advocated.

At the same time, the other two applicable conditions of the statutory tax exemption related to the inclusion in the register of historic buildings and the need to maintain and preserve them, in accordance with the regulations on the protection of historic buildings, should be regarded as justified.

The property tax, by providing for the broad taxing authority of municipalities, including the possibility of introducing exemptions, makes this tax a convenient tool of fiscal policy. In this respect, municipalities may therefore extend the exemption of historic properties to types other than buildings and land and introduce an exemption regardless of whether they are entered in the register of historic buildings or their state of preservation. This solution should be assessed as correct.

On the other hand, sacred monuments may be subject to exemption from property tax on the basis of specific laws regulating the relationship between the state and churches and religious associations. The scope of the exemption in this case, being complementary to the exemption from real estate tax provided for in the Local Taxes and Fees Act, should be assessed positively.

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³⁹ See, more extensively: B. Brzeziński, op. cit., 178; P. Borszowski, *Działalność gospodarcza w konstrukcji prawnej podatku*, Wolters Kluwer, Warszawa 2010, pp. 172-173 and 193.

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