ANNALES
UNIVERSITATIS MARIAE CURIE-SKŁODOWSKA
LUBLIN — POLONIA
VOL. XLV SECTIO G 1998

Zakład Prawa Finansowego

ANTONI HANUSZ

Inheritance and gift tax in Poland

Podatek od spadków i darowizn w Polsce

I

Inheritance tax has been around for a very long time – already in ancient times, it was one of the fiscal measures used. From time immemorial, it has been held that the moment of handing down a legacy after the death of an owner is, because of the increase in the assets of the heir, a suitable opportunity to impose a special tax upon him. *The economic character* of inheritance and gift tax assigns it to the category of property tax, since it draws, as a single, extraordinary levy, on the increase in the assets, which usually becomes the source of the collection of this tax.

For a relatively long time inheritance and gift tax had not occurred in the Polish tax system as a separate tax. It was however part of an entirely different property rights acquisition tax. It reemerged as a separate inheritance and gift tax in 1975 and is now regulated according to *an act of July 28,1983,* which has been frequently amended.

II

Inheritance and gift tax is a levy imposed solely on individuals for only *persons* can be, since 1990, payers of this tax. In respect to a type

of personal bond between the vendee and the person from whom or after whom the property or the rights to property have been acquired, the bond being kinship or adoption, the payers of this tax can be divided into *three groups*. The first one comprises nearest relatives of the vendor such as: spouses, descendants, parents, stepparents, children in law as well as siblings and stepchildren. The second groups consists of more distant relatives: the descendants of the siblings, the siblings of the parents, the descendants of the stepchildren's spouses, the spouses' siblings, the siblings' spouses and the spouses of other descendants. The third group is made up of remaining vendees who have practically no personal bond whatsoever with the person handing down property or the right to property. The particular one of the above groups to which a person belongs determines the amount of tax he is liable to pay.

III

Liability to inheritance and gift tax is occasioned by an acquisition through inheritance, a will or last testament as well as a gift, of property existing in the territory of a country (Poland) or property rights being used in the country (Poland).[1] An acquisition of property resulting from a disposition of a giver in the case of his death relying on a prior deposit is also liable to this tax as well as the acquisition of property through usucaption. As already shown, the range of activities liable to tax is very diverse from the legal point of view. Combining them under the common tax umbrella is however conditioned by their homogeneity from the economic point of view. The modes of an acquisition of property mentioned above: inheritance, a gift as well as a disposition of a giver's deposit or usucaption do not require in principle any expenditure on the part of a vendee. It is worth noting that in particular cases an acquisition of property, real as well as personal, existing, or being used, outside a country (Poland) is also liable to inheritance and gift tax. It is so when a vendor of property or property rights was a Polish citizen or a resident of Poland at the moment of opening the inheritance proceedings or signing a gift agreement.

[1] Shares and liabilities of a vendor are also property rights according to Polish law.

IV

Liability to pay inheritance and gift tax rests with a vendee of property or property rights acquired through inheritance, disposition of a deposit or usucaption. In the case of a gift the liability is jointly shared bythe vendor and the recipient of the gift. The moment of creating the liability depends first and foremost on the type of activity through which property or property rights have been acquired. In the case of inheritance, liability becomes due at the moment of receiving a legacy by a person, in the case of a will, on the announcement of the will or the execution of the last testament. In the case of disposition, liability becomes due on the day of the death of a vendor.

V

The base of inheritance and gift tax is the net value of acquired property or property rights. Debts and burdens on the property or property rights are set against the total value of the acquired property yielding thus the above mentioned net value. As a rule, the acquired property is calculated according to the state of property and property rights on the day of their acquisition and market prices on the day of creating the liability. Adopting this rule was based on the assumption that the value of the acquired property is the amount of money an heir could gain by selling the acquired property or property rights at the market price of the time and place.

By debts and burdens on the property and property rights that can be set against their total value we mean the value of burden resulting from an order for payment imposed on an heir or a recipient of a gift (if it was executed) and the value of the order (whether it was executed or not). The cost of the last illness of a giver (if it was not covered during his lifetime and out of his property) and the cost of the funeral (including the grave) are also included in this category as well as the cost of inheritance proceedings and the fee of the inheritance's executor etc.

In the case of the acquisition of property or property rights through usucaption, however, what is set against the base of the tax is the expenditure of a taxpayer on the property for the duration of usucaption.

VI

The total value of the acquired property and property rights is determined according to a sum declared by a taxpayer in his tax return. However, this value has to match the typical value of these things or rights and the value of rights to deposits has to match the value of these deposits.

The responsibility for the filing the tax return including the acquisition of property or property rights through inheritance, disposition of a vendor in the case of his death or usucaption rests with the taxpayer. The recipient of a gift is exempt from this responsibility only if the gift statement was signed before a notary (or he was presented a document stating the gift). In this case the responsibility rests with the notary.

VII

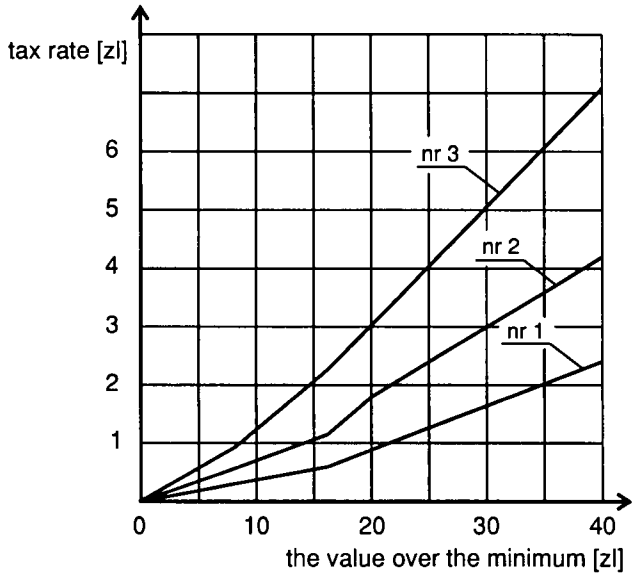
From what has already been said, it follows that the amount of tax is conditioned by the taxpayer's capability, measured in the net value of the acquired property or property rights, being the base of tax. This leads to the issue of a so-called *minimum* exempt from inheritance and gift tax. What is peculiar for the minimum in the case of inheritance and gift tax is that the amount exempt from tax is different for each of the three taxable groups. For the first group the minimum amounts to 7510 zl (3705 DM), when the acquired property and property rights come from one person. For the second taxable group the amount exempt from tax is 5670 zl (2835 DM). The taxpayers of the third group are eligible for the lowest possible minimum amounting to 3820 zl (1910 DM).

Only the taxpayers who have acquired property and property rights through inheritance, gift and disposition can benefit from the minimum exempt from tax. Those who have acquired property through usucaption are not eligible for this exemption.

VIII

The amount of inheritance and gift tax also depends on the type of personal bond between the vendee and the person from whom or after whom the property or the rights to property have been acquired, which is reflected in the affiliation to one of the above-mentioned groups. Each of these groups falls into a separate *tax scale* of the progressive character – only the acquisition of property through usucaption falls under proportional (linear) tax – with the application of the 7% rate for each group as the tax base.

The general characteristic of the inheritance and gift tax scale can be represented on the chart illustrating the progression for all three tax scales:



The increase in property within the first group of taxpayers is least taxed. The lowest tax rate for this group of vendees amounts to 3% of the taxable sum, the highest is 7%. The gradient of progression for this scale, measured by the ratio of the highest tax rate to the slowest tax rate is 1:2.33.

Much harsher is the scale for the second group of vendees. The lowest rate for this scale is more than two times higher than the analogous rate of the former scale and amounts to 7% of the taxable sum while the highest rate is one and a half time higher than the highest rate of

the former scale and amounts to 12%. The gradient in this case is not as steep with the ratio 1:1.71.

The scale for the third group of taxpayers is most severe. The minimum tax rate increases in this case by four compared to the first scale and amounts to 12% of the taxable sum. The maximum rate reaches 20% of that sum, being three times higher than for the first scale. The gradient of progression is however least steep here. The ratio of the highest rate to the lowest tax rate is 1:1.66.

The comparison of the tax scales displays preferential treatment of vendees belonging to the circle of persons being in close relationship, of kinship or adoption, with the vendor. It is fully understandable simply by virtue of the members of family's contribution in the creation of the wealth of the vendor. The closer the relationship between the vendor and a vendee, the greater the possibility of that contribution. Besides, it is in the interest of the community that the family circle should be a strong entity, also from the economic point of view.

IX

In view of tax progression, and also minimum amounts exempt from tax, the tax rate in the case of inheritance and gift tax is based on subjective *accumulation*. This principle is applied when the acquisition of property and property rights from the same person takes place more than once. In this case tax is charged on the accumulated value of property and property rights acquired recently from the same person, or after the same person, including property and property rights acquired over the period of five years preceding the last acquisition. The objective of the accumulation is to maintain tax progression on the one hand and to prevent tax evasion by dividing the property into smaller pieces, not exceeding the minimum amount exempt from tax, and acquiring them by means of separate acts, on the other hand.

X

Numerous *tax exemptions and tax relief* are associated with inheritance and gift tax. The first group of exemptions is connected with

farming and agriculture. The acquisition of a farm, land and agricultural machinery through inheritance, gift and usucaption is exempt from inheritance and gift tax. The exemption, however, does not cover houses and buildings designed for specialised animal and poultry farming, cultivation of plants, mushrooms, greenhouses, cold storage plants etc. However, under certain conditions the above-mentioned items (houses excluded) may be exempt from tax if the vendees are descendants of the vendor who acquired property only through inheritance and intend to use it appropriately for at least five years.

Other instances of the kind are the acquisition of houses through inheritance according to the agricultural settlement act, the acquisition of deposits in agricultural cooperative as well as the acquisition of uninhabitable buildings not belonging to a farm (under certain conditions). All the above-mentioned items are exempt from inheritance and gift tax.

The second group of exemptions concerns businesses other than farming such as the acquisition of various kinds of shops (retail, service, construction etc.) or parts of them through inheritance or gift by the spouse or descendants if the giver is exempt from inheritance and gift tax. The necessary condition in this case is that benefactors run the above-mentioned shops appropriately for at least five years. The acquisition of machinery and tools coming from abroad as a gift by a person running a business comes under the same category.

The third group comprises tax exemptions and tax relief concerning housing. Their aim is to reduce inheritance and gift tax or to exempt from tax these resources that help satisfy the housing needs of taxpayers. Only persons belonging to the first group of taxpayers are eligible for this exemption if the inherited money (or other things) is allocated for satysfying the housing needs of an heir (building a house, buying a flat, making a deposit in a housing cooperative). If a gift comes from one giver, only the amount not exceeding 7510 zl (3755 DM) is exempt from tax. One the other hand, if a gift comes from many givers, the total sum not exceeding 15020 zl (7510 DM) is exempt from tax. These figures apply to a five year period since the first gift. The sums allocated for housing purposes and exempt from tax increase the minimum amount exempt from gift and inheritance tax.

Housing tax relief is associated with the acquisition through inheritance or gift of a house (or its part), a flat or a right to a house or a flat. Only those taxpayers who fulfill a very specific set of conditions are eligible for this type of tax relief. Firstly, they have to be citizens

or residents of Poland. Secondly, the recipients cannot own another house or flat, nor can they have rights to a house or flat. Thirdly, the necessary condition of taking advantage of the relief is the obligation to live in the acquired house or flat for five subsequent years. Housing tax relief consists in not including the value of a house or flat not exceeding 110 sq metres of usable floor area in the tax base.

The fourth group of exemptions concerns the acquisition through inheritance of those forms of property that can be classified as interior equipment of house and flats such as works of art, antiques, clothing, tools etc.

As has been shown, the amount of inheritance and gift tax in a particular case is influenced by such factors as the direction and purpose of the acquired property, specific features of the acquired property and property rights, their socio-economic purpose, the mode and the place of their acquisition etc.

XI

Inheritance and gift tax is paid with every acquisition of property and property rights. It constitutes part of revenues of *local government.* Its relatively low rate is to stimulate the immediate legalization of the acquisition of property and property rights before courts of justice or public institution. However, it also results in a lower income to the community budget.

STRESZCZENIE

Podatek od spadków znany jest od dawna. Stosowany był już w praktyce skarbowej państw starożytnych. Współcześnie, ekonomiczny charakter podatku od spadku i darowizn w Polsce każe go kwalifikować do podatków typu majątkowego. Podatnikami tego podatku są wyłącznie osoby fizyczne. Z uwagi na osobisty stosunek nabywcy do osoby, od której lub po której nabyte zostały rzeczy i prawa majątkowe, wyrażający się pokrewieństwem bądź powinowactwem czy wreszcie przysposobieniem, podatników tego podatku usytuowano w trzech grupach. Zakwalifikowanie podatnika do jednej z tych grup ma decydujący wpływ na wysokość wymierzanego podatku. Przedmiotem obciążenia tą daniną publiczną jest nabycie w drodze spadku, zapisu lub dalszego zapisu, polecenia testamentowego, jak również darowizny, własności rzeczy i praw majątkowych znajdujących się na obszarze Rzeczpospolitej Polskiej, a także wykony-

wanych na jej obszarze praw majątkowych. Podatkowi od spadków i darowizn podlegają ponadto inne rodzaje przysporzeń majątkowych, którym również nie towarzyszą ze strony nabywcy żadne nakłady, polegające na nabyciu praw do zdeponowanego wkładu oszczędnościowego, jak również własności rzeczy i praw majątkowych w drodze zasiedzenia.

Podstawę opodatkowania w omawianym podatku stanowi wartość czysta (netto) nabytych rzeczy i praw majątkowych, uzyskana poprzez potrącenie długów i ciężarów związanych z rzeczami i prawami majątkowymi od pełnej wartości (brutto) nabytego majątku. Przy określaniu tej wartości przyjmuje się sumę zadeklarowaną przez podatnika w zeznaniu podatkowym, która musi jednak odpowiadać wartości rynkowej nabytych rzeczy i praw majątkowych. Podatek od spadków i darowizn nie jest jednak obliczany od całkowitej podstawy opodatkowania, lecz od wartości przekraczającej tzw. minimum wolne od podatku. Kwota minimum wolnego od podatku jest różna dla każdej z trzech grup podatkowych, podobnie jak różna jest dla każdej z tych grup progresywnie rosnąca skala podatkowa. Najbardziej łagodna jest skala obciążająca podatników zaliczonych do pierwszej grupy podatkowej, najostrzejsza natomiast skala przypisana grupie trzeciej. Jedynie przy nabyciu rzeczy i praw majątkowych w drodze zasiedzenia stosowana jest skala proporcjonalna, a podstawę opodatkowania nie pomniejsza się o kwoty minimum wolnego od podatku. W związku z progresją podatkową, a także obowiązywaniem w większości wypadków kwot wolnych od opodatkowania, wymiar podatku dokonywany jest na zasadzie kumulacji podmiotowej.

W podatku od spadków i darowizn występuje dość liczna grupa zwolnień i ulg, które związane są z prowadzeniem gospodarki rolnej oraz prowadzeniem innej działalności niż rolnicza, jak również nabyciem mieszkania czy rzeczy osobistego użytku, dzieł sztuki i zabytków. Obciążenie podatkiem od spadków i darowizn jest obecnie stosunkowo niskie. Sprzyjać to ma szybszemu legalizowaniu nabycia rzeczy i praw majątkowych. Z drugiej jednak strony zmniejsza w istotny sposób wpływy budżetów gmin z tego podatku.