

UDC 346

Jacek Wantoch-Rekowski*PhD (Dr.habil.)*

*Associate Professor, Nicolaus Copernicus University in Toruń,
Faculty of Law and Administration, Bojarskiego street 3, 87-100 Toruń;
e-mail: rekowski@umk.pl, ORCID: 0000-0002-1606-7790*

Damian Walczak*PhD (Dr. Habil)*

*Associate Professor, Nicolaus Copernicus University in Toruń,
Faculty of Economic Sciences and Management,
Gagarina street 13a, 87-100 Toruń;
e-mail: dwalczak@umk.pl, ORCID: 0000-0002-2986-9928*

Krzysztof Czarnecki*PhD*

*Assistant Professor, State University of Applied Sciences in Wloclawek,
Institute of Social and Technical Sciences,
Mechaników street 3, 87-800 Włocławek;
e-mail: krzysztof.czarnecki@puz.wloclawek.pl, ORCID: 0000-0002-8664-7627*

INHERITANCE AND GIFT TAX IN POLAND – AN INTERDISCIPLINARY APPROACH

1. Introduction

The Constitution of the Republic of Poland of 2 April 1997¹ in Article 167(1) indicates that local government units are guaranteed a share in public revenues in

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¹ Journal of Laws of 1997, No. 78, item 483, as amended.

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accordance with their respective tasks². The revenues of local government units comprise their own revenues, general subsidies, and special purpose subsidies from the State budget (Article 167(2)), and the sources of revenues of local government units are specified in the Act (Article 167(3)).

At present, the Act of 13 November 2003 on revenues of local government units³ is in force in this respect, and this Act, in Article 3, in a general manner indicates the sources of revenues of local government units, mentioning in section 1, inter alia, the local authorities' own revenues. In turn, Article 4 of the Act indicates the sources of the revenues of communes, of which the most important role is played by the following taxes mentioned in section 1: on agricultural real estate, forestry, on means of transport, income from natural persons (paid in the form of a tax card), on inheritances and gifts, and on civil-law transactions.

Among the above mentioned sources of tax revenues, the inheritance and gift tax triggers a lot of controversy. It is believed that this is a non-efficient source of funding for local government budgets, on which in practice the municipal authorities have no influence. The aim of this article is to present legal solutions concerning the said tax and its significance in the income of communes in Poland. The authors will also attempt to examine whether it is possible to point to factors other than normative ones, on which the revenue from this tax depends. These considerations are preceded by a retrospective review of the legal regulations, which allows us to look at inheritance and gift tax from a broader perspective as one of the sources of budgetary income.

2 P. Swianiewicz, 'An Empirical Typology of Local Government Systems in Eastern Europe', *Local Government Studies*, vol. 40 (2013), No. 2, pp. 294–308, DOI: 10.1080/03003930.2013.807807; A. Sekuła, 'General Grants and Development-A Relationship without a Future? The Effects of the Structure of General Grants on the Development of Local Government Units in Poland', *Lex Localis-Journal of Local Self-Government*, vol. 13 (2015), No. 4, pp. 913–932, [https://doi.org/10.4335/13.3.915-932\(2015\)](https://doi.org/10.4335/13.3.915-932(2015)).

3 Consolidated text: Journal of Laws of 2017, item 1453, hereinafter also referred to as "A.R.L.G.U."

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An in-depth reflection on the legal structure and economic efficiency of the Polish inheritance and gift tax seems fully justified, not only on the grounds of the criticisms raised above. It should be noted that the public authorities' approach to taxing these specific sources of income varies in different regions of the world. In some countries such taxation is completely absent (e.g. Australia, New Zealand, India, China, Cyprus), while in others it functions as a separate tax structure, next to income tax (e.g. Brazil, Japan, South Korea, the Philippines, Belgium, Denmark, Finland, Italy). Some countries have abandoned inheritance and gift tax completely (Sweden, Austria – however, gifts are notifiable there), and replaced it with appropriate income tax regulations (Czech Republic) or have introduced a different contribution in its place, e.g. stamp tax in Portugal⁴. The possibility of introducing alternative solutions, both at state and federal level, is widely discussed in the United States⁵.

In recent years, a particularly lively academic discourse on inheritance and gift tax has been held in the Federal Republic of Germany. The impetus was given by the ruling of the German Constitutional Court, which found some of the regulations in force in this area to be incompatible with the Federal Basic Law and pointed out the need to work out new solutions⁶.

4 EY, *Worldwide Estate and Inheritance Tax Guide 2017*, EYGM Limited, available at:

<https://www.ey.com/GL/en/Services/Tax/Global-tax-guide-archive> (date of access: October 21, 2018).

5 T. Witt, 'Individuals and Inheritance Taxes: A Praxeological Examination of Pennsylvania's Inheritance Tax', *Penn State Law Review*, vol. 114 (2010), No. 3, pp. 1105–1141; W. Gerzog, 'What's Wrong With a Federal Inheritance Tax', *49 Real Property, Trust and Estate Law Journal*, vol. 163 (2014), pp. 163–201; M. Yu, 'Theoretical and Practical Concerns in Moving to a Federal Inheritance Tax', *The Journal of Things We Like*, vol. 259 (2015); B. Crawford, 'Valuation, Values, Norms: Proposals for Estate and Gift Tax Reform', *Boston College Law Review*, vol. 57 (2016), pp. 979–997; D. Duff, 'Alternatives to the Gift and Estate Tax', *Boston College Law Review*, vol. 57 (2016), pp. 893–912; W. Frazier, 'Estate and Gift Tax Valuation Outlook for 2017', *Trusts & Estates*, February 2017, pp. 4–7.

6 H. Gaisbauer, C. Sedmak, 'A Decision on Inheritance Tax by the German Constitutional Court: A Brief Comment', *German Law Journal*, vol. 16 (2015), No. 5, pp. 1227–1234; H. Kube, 'Federal Constitutional Court Declares Inheritance and Gift Tax Act Unconstitutional', *German Law Journal*, vol. 16 (2015), No. 5, pp. 1235–1246; O. Lepsius, 'Constitutional Review of Tax Laws and the Unconstitutionality of the German Inheritance Tax', *German Law Journal*, vol. 16 (2015), No. 5, pp. 1191–1225; B. Franke, D. Simons, D. Voeller, 'Who benefits from the preferential treatment of business property under the German inheritance tax?', *Journal of Business Economics*, vol. 86 (2016), No. 9, pp. 997–1040, <https://doi.org/10.1007/s11573-016-0807-7>.

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In the European literature, the issue of inheritance and gift taxation was discussed in Spain⁷, France⁸, the Netherlands⁹ and Sweden¹⁰, which shows the up-to-dated nature of the issue and the need to conduct analyses in this area. A study published on the tenth anniversary of the abolition of inheritance and gift tax in Sweden¹¹ also provides interesting information. As its authors demonstrate, the significance of the tax for the total budget revenue in this country was negligible, while the once functioning rules of taxation were painful for individuals, and in particular for entrepreneurs. The appropriateness of the decision to waive inheritance and gift tax, referred to as "things of the past" is reflected in the sub-heading of the cited work – *Mourned by no one – missed by few*. The question remains open as to whether these words could be used as a signpost for legislators in other countries, including the Polish legislator.

The authors of the article hope that it will become another voice in a broad discussion on the legitimacy of inheritance and gift taxation in the modern world and on the modern construction of this public impost.

2. Research methodology

The study was based on the following research methods: economic analysis of law, and formal and dogmatic analysis of law. In the analytical part, data

7 F. Martinez, 'The Inheritance Tax in Spain from the Perspective of Free Movement of Capital and Right of Establishment', *Intertax*, vol. 38 (2010), No. 6/7, pp. 359–370.

8 J. Goupille-Lebret, J. Infante, 'Behavioral responses to inheritance tax: Evidence from notches in France', *Journal of Public Economics*, vol. 168 (2018), pp. 21–34, <https://doi.org/10.1016/j.jpubeco.2018.09.016>.

9 I. van Vijfeijken, 'Contours of a Modern Inheritance and Gift Tax', *Intertax*, vol. 34 (2006), No. 3, pp. 151–157; I. van Vijfeijken, 'One Inheritance, One Tax', *EC Tax Review*, vol. 26 (2017), No. 4, pp 214–219.

10 M. Henrekson, D. Waldenström, 'Inheritance taxation in Sweden, 1885–2004: the role of ideology, family firms, and tax avoidance', *The Economic History Review*, vol. 69 (2016), No. 4, pp. 1228–1254, <https://doi.org/10.1111/ehr.12280>.

11 A. Ydstedt, A. Wollstadt, 'Ten years without the Swedish inheritance tax. Mourned by no one – missed by few' *Svenskt Näringsliv*, Stockholm 2015, pp. 5–45.

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available on the website of the Central Statistical Office (Local Data Bank)¹² and 66 analysed cities with district rights were used. The study was limited to communes with district rights (cities with *more than 100,000 inhabitants*) owing to the possibility of formulating appropriate conclusions. Conducting a comprehensive analysis for all the communes in Poland would not make appropriate comparisons possible. First of all, it is inappropriate to compare individual values in large and small towns, and/or rural and urban communes. Secondly, owing to the different specificity of such units, even relative values should not be compared (e.g. tax revenues per capita).

The parameters of the linear econometric model were estimated using the classical least squares method (CLSM) and the Gretl econometric software¹³. This estimation was performed for the years 2013-2016.

In order to explain the impact of individual parameters on inheritance and gift tax per capita, an estimation of a linear econometric model was carried out in the following form:

Formula 1. Output linear econometric model

$$Y = \alpha_0 + \alpha_1 \cdot X_1 + \alpha_2 \cdot X_2 + \dots + \alpha_{13} \cdot X_{13} + \varepsilon$$

where:

Y – dependent variable,

X₁, X₂, ..., X₉ – independent variables used to explain the formation of the tested variable Y,

12 The Local Data Bank, available at: <http://www.stat.gov.pl> (date of access: October 21, 2018).

13 L. Adkins, 'Using gretl for Principles of Econometrics', Oklahoma State University: Department of Economics and Legal Studies in Business 2014 available at: <http://www.learn econometrics.com/gretl/index.html> (date of access: October 21, 2018); D. Walczak, A. Żołądkiewicz, 'Wybrane determinanty rozwoju przedsiębiorczości w Polsce', *Roczniki Naukowe Stowarzyszenia Ekonomistów Rolnictwa i Agrobiznesu*, vol. 17 (2015), No. 3, pp. 398–400; M. Ramczyk, 'Econometric model as an instrument for analysing structural changes in fisheries management of lakes', *Acta Scientiarum Polonorum, Formatio Circumiectus*, vol. 17 (2018), No. 3, pp. 154–155, DOI:10.15576/ASP.FC/2018.17.3.153.

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$\alpha_1, \alpha_2, \dots, \alpha_{13}$ – unknown structural parameters of the model,

ε - a random component that synthetically reflects all random factors that affect the variable under analysis.

Source: authors' own study based on: B. Borkowski, H. Dudek, W. Szczęsny, 'Ekonometria wybrane zagadnienia' Wydawnictwo Naukowe PWN, Warsaw 2004, pp. 25–60; D. Walczak, A. Żołądkiewicz, 'Wybrane determinanty rozwoju przedsiębiorczości w Polsce', *Roczniki Naukowe Stowarzyszenia Ekonomistów Rolnictwa i Agrobiznesu*, vol. 17 (2015), No. 3, pp. 398–400.

The selection of model parameters was conditioned by the availability of data for cities with district rights. The model considered variables that may affect the income from the tax examined in the study (Table 1).

Table 1. Variables selected for the model.

Variable	Variable name
Dependent variable	
Y	Revenues from inheritance and gift tax per capita
Independent variables	
X_1	G Indicator
X_2	Marriages contracted per 1000 residents
X_3	Number of women per 100 residents
X_4	Flats per 1000 residents
X_5	Share of population in the post-working age bracket (in %)

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X_6	Natural persons conducting business activity per 1000 residents
X_7	Places in social welfare homes per 1000 residents
X_8	Average gross monthly remuneration (in PLN)
X_9	Migration balance

Source: authors' own study based on information from (the Local Data Bank).

3. Tax on inheritance and gifts as budgetary income – historical background

Taxation of assets acquired by inheritance or gift has a long tradition in Poland, dating back to the beginnings of the Second Polish Republic, while the very concept of this tax dates back to the times of ancient Rome¹⁴. Over the last century, the legal structure of inheritance and gift tax was shaped in various ways, in a manner referring to the political and economic realities of the system. It should be stressed, however, that regardless of the tax model in force at a given time, it almost always showed connections with public finances at the local (although not necessarily local government) level.

Legal regulations on inheritance and gift taxation are so closely linked in technical and functional terms that they are encompassed in a single legal act. It is pointed out that this is justified not only by the material relationship between

14 M. Kuryłowicz, 'Vicesima hereditatum. Z historii podatku od spadków', In: Dzwonkowski, H., Głuchowski, J., Pomorska, A. and Szolno-Koguc, J. (eds.), *W kręgu prawa podatkowego i finansów publicznych. Księga dedykowana profesorowi Cezaremu Kosikowiemu w 40-lecie pracy naukowej*, Wydawnictwo UMCS, Lublin 2005, pp. 217–223; J. Louis, *Prawo spadkowe według zasad i przepisów prawa rzymskiego, prawa dawnego polskiego, jak również praw nowożytnych: austrijackiego, francuskiego, Królestwa Polskiego, pruskiego i rosyjskiego historycznie-porównawczo rozwinięte i wykładem o opłatach spadkowych uzupełnione*, Józef Bensdorff, Kraków 1865.

▪ Jacek Wantoch-Rekowski, Damian Walczak, Krzysztof Czarnecki. Inheritance and gift tax in Poland – an interdisciplinary approach. *Часопис Національного університету «Острозька академія». Серія «Право»*. 2021. № 1(23) : [Електронний ресурс]. – Режим доступу : <http://lj.ou.edu.ua/articles/2021/n1/21jwraia.pdf>

the two gratuitous modes of property acquisition, but, but also by the need to prevent the circumvention of inheritance tax regulations by means of a deed of gift¹⁵. The Act of 29 May 1920 on the amendment of inheritance and gift tax regulations¹⁶ partially unified the law in this respect, while leaving in force some provisions of the legislation of the partitioning countries. The application of Russian regulations was abandoned at the earliest¹⁷. However, the provisions of the 1920 Act did not specify whose income – whether of the state or of local government – was to comprise revenues from inheritance and gift tax, nor how it was to be collected. The issue was resolved by the Act of 11 August 1923 on the Provisional Regulation of Municipal Finances¹⁸. Pursuant to Article 16(1) of the Act (in its original wording), the inheritance and gift tax had the character of a communal autonomous tax, collected from inheritances and gifts located in their area, up to the amount of 10% of the state tax on inheritances and gifts, attributable to inherited or gifted property. The tax could be collected by urban and rural communes, and in the former Prussian district also by district communal unions. Within the framework of the statutory restrictions, communes could freely shape tax rates according to local conditions and needs. In practice, this right was more important for urban communes as opposed to rural ones¹⁹. The amendment to the Act introduced in 1936, changed the local government's participation in inheritance and gift tax by replacing property tax from autonomous possessors with communal premium to the state tax. At this point, it is worth mentioning in particular Article 26(5) of the regulation with the force of an act of 24 October

15 S. Głabiński, *'Nauka skarbowości'*, Warsaw-Lwów 1925, p. 319; S. Głabiński, *'Nauka skarbowości'* Lwów 1928, p. 71; Rybarski, *'Nauka skarbowości'*, Warsaw 1935, p. 301–302; M. Gutkowski, *'Nauka skarbowości'*, Wydawnictwo Akademickiego Koła Prawników Studentów Uniwersytetu Stefana Batorego, Vilnius 1936, p. 451.

16 Journal of Laws No. 49, item 299, as amended.

17 E. Strasburger, *'Ustrój skarbowy RP'*, F. Hoesick, Warsaw 1922, p. 22.

18 Consolidated text: Journal of Laws of 1936, No. 62, item 454, as amended.

19 A. Pragier, *'Zarys skarbowości komunalnej. Część II'*, Zrzeszenie Samorządów Powiatowych, Warsaw 1926, pp. 74–75.

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1934 on the improvement of the economy and local government finances²⁰. It was planned to introduce such a solution as early as at the stage of works on the Act of 11 August 1923. However, at that time the concept of autonomous tax won²¹. The adoption of the concept of a municipal allowance constituted a limitation of the independence of the commune local government. The aforementioned Article 16(1) of the Act, in its new wording, provided that in the state, inheritance and gift tax would be charged together with the municipal allowance in the amount of 10% of state tax (Nowadays, municipal allowances to state taxes do not exist in Polish law, although the possibility of their reapplication is the subject of discussion in the doctrine. Cf. e.g.²² The revenue from this allowance was transferred by the tax authorities to the Municipal Loan and Assistance Fund, in accordance with the rules set out in detail in the implementing regulations.

The reality of the post-war state system completely revalued the system of public finances, also in terms of budget revenues. Pursuant to Article 10 of the Decree of 13 April 1945 on the reform of the local government tax system²³, the application of Article 16 of the Act on the Provisional Regulation of Municipal Finances was suspended until 31 December 1945. The decrees on municipal finances and communal taxes issued on 20 March 1946²⁴ did not mention inheritance and gift tax as a source of local government revenue. The pre-war construction of municipal allowances for state taxes was also not maintained. The inheritance and gift tax was thus a state tax. The aforementioned decrees of 1946

20 Journal of Laws No. 94, item 846.

21 M. Porowski, J. Horszowski, S. Pastuszyński, A. Hujda, 'Skarbowość samorządu terytorialnego w Polsce. Zbiór obowiązujących przepisów. I Dochody', Związek Pracowników Administracji Gminnej Rzeczypospolitej Polskiej, Warsaw 1927, pp. 78–79.

22 K. Surówka, M. Winiarz, 'Kierunki zmian ustawy o dochodach jednostek samorządu terytorialnego', In: P. Kopyciński (ed.), *Sprawne państwo. Propozycje zmian w funkcjonowaniu jednostek samorządu terytorialnego w Polsce*, Uniwersytet Ekonomiczny w Krakowie, Kraków 2015, pp. 94–95.

23 Journal of Laws No. 13, item 73.

24 Consolidated text: Journal of Laws of 1947, No. 40, item 198 and item 199, as amended.

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were in principle a fixation of the transitional solutions adopted in the decree of 13 April 1945²⁵.

Another important stage in the evolution of inheritance and gift tax was the adoption of the Decree of 3 February 1947 on the tax on the acquisition of property rights²⁶. From that moment on, inheritance and gift tax ceased to exist as a separate, independent levy. Acquisition of inheritance or a gift as a subject of taxation was included in the broader concept of acquisition of property rights from various sources. Proceeds from the tax on the acquisition of property rights constituted revenue for the state budget. This construct was a novelty and had no equivalent in any foreign tax system²⁷. Such a solution soon met with criticism. In particular, it was emphasized that it was not advisable to combine taxation of different occurrences in the economic and legal sense within a single tax²⁸.

On 13 April 1950, pursuant to Article 32 of the Act on Local Authorities of the Single State Authority²⁹, territorial local government in Poland was liquidated. The existing local government structures were replaced by a system of national councils. Thus, the issue of distribution of public revenues between the state and municipal associations became irrelevant. Henceforth, only the state budget functioned, consisting of the central budget, and local budgets which remained in the hands of individual national councils. At the same time, the act provided (in Article 40) for the determination of sources of income of national councils, sufficient to cover all their needs, and in the transitional period – funds necessary to balance local budgets derived from the state budget.

25 A. Witkowski, 'System podatków bezpośrednich Polski międzywojennej w pierwszych latach Polski Ludowej', *Zeszyty Prawnicze UKSW*, 2011, vol. 3, pp. 403–404.

26 Consolidated text: Journal of Laws of 1951, No. 9, item 74, as amended.

27 J. Szpunar, 'Zagadnienie opodatkowania spadków i darowizn', *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 1963, vol. 4, p. 165.

28 J. Jaśkiewiczowa, 'Charakterystyka podatku od nabycia praw majątkowych', In: L. Kurowski, *Wybrane źródła i literatura do obowiązującego prawa finansowego*, Zakład Skarbowości UMK, Toruń 1949, pp. 451–454.

29 Journal of Laws No. 14, item 130, as amended.

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The first regulations in this area were issued in 1951. The Local Tax Act³⁰, which was in force until 1955, did not mention the tax on the acquisition of property rights (and thus on inheritances and gifts taxed thereunder) as levies constituting income for the local budgets. The Decree on certain taxes and local charges issued on 20 May 1955³¹ did not mention it either. Until 1958, the tax on the acquisition of property rights constituted revenue for the central budget. This state of affairs was clearly confirmed by the budgetary classification ordinances issued by the Minister of Finance in the years 1952-1955, which placed the property rights acquisition tax on the side of the central budget revenues. The Ordinance of the Minister of Finance of 11 February 1957 may be regarded as an announcement of the planned changes³², which for the first time classified this tax as income of local budgets. These changes were brought about by the new Act on National Councils³³ and the Act on the Income of National Councils passed a few months later³⁴. Article 3(3)(3) of the Act on National Councils indicated that one of the sources of national councils' own income is payments from taxes and local charges. On the other hand, pursuant to Article 2(1)(e) of the Act on National Councils' income, the tax on the acquisition of property rights was classified in the category of local taxes. Revenue from the tax constituted income of district national councils, national councils of cities excluded from the province, and cities constituting urban districts (Articles 6 and 7 of the Act).

The Act on the Income of National Councils expired on 1 January 1971, i.e. upon the entry into force of the Budget Law passed on 25 November 1970³⁵. According to the new regulations, the tax on the acquisition of property rights

30 Journal of Laws of 1951, No. 14, item 110.

31 Consolidated text: Journal of Laws of 1963, No. 16, item 87, as amended.

32 M.P. No. 16, item 120.

33 Consolidated text: Journal of Laws of 1975, No. 26, item 139, as amended.

34 Journal of Laws No. 44, item 214, as amended.

35 Journal of Laws No. 29, item 244, as amended.

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remained, however, part of the income of local government budgets at the district level (art. 18 item 4 in connection with art. 19 par. 4 item 2).

The Act of 19 December 1975 on inheritance and gift tax repealed the tax on gratuitous acquisition of property rights, which meant a return to the "classical" form of taxation³⁶. The provisions concerning the acquisition of property rights for consideration were repealed by the Act on stamp duty adopted on the same day³⁷. Thus, the Decree of 1947 lost its binding force, with the exception of cases in which tax proceedings were instituted before the date of entry into force of the new regulations. Neither the change in the legal structure nor the name of the tax itself affected the location of this impost in the system of budgetary income – the transitional provision of Article 18 of the Act of 19 December 1975 stipulated that whenever the previously issued regulations refer to the tax on gratuitous acquisition of property rights, this should be understood as inheritance and gift tax.

The new legal regulation governing inheritance and gift tax was issued in the first half of the 1980s. It is the Act of 28 July 1983 on inheritance and gift tax³⁸, which is still in force today. The Act of 20 July 1983 on the national councils and local government system³⁹ maintained the current solution, stating in Article 44(1)(9) that inheritance and gift tax is one of the sources of revenue for the local budgets of the local authorities. Pursuant to Article 20(1)(4) of the Budgetary Law of 3 December 1984, the revenue from the tax in question was assigned to the budgets of the basic level national councils.

The political transformations of 1989-1990, the liquidation of national councils, and the restoration of local government made it necessary to equip

36 Journal of Laws No. 45, item 228.

37 Journal of Laws No. 45, item 226.

38 Consolidated text: Journal of Laws of 2017, item 833, as amended.

39 Consolidated text: Journal of Laws of 1988, No. 26, item 183, as amended.

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communes with self-generated income. This included the inheritance and gift tax, which remains in the structure of such income to this day. This is a continuation of the tendency, initiated a few decades ago, to leave the revenue from the tax on the acquisition of property rights and subsequently the tax on inheritance and gifts within the local finance system. It seems reasonable to say that this was because of its negligible fiscal significance as compared to general state taxes.

4. Normative characterization of inheritance and gift tax as a source of income for municipalities in the light of the provisions of the Law of 28 July 1983

Pursuant to Article 1(1) of the Act on the tax on inheritance and gifts, the acquisition by natural persons of property located in the territory of the Republic of Poland or property rights exercised in the territory of the Republic of Poland shall be subject to taxation under the title of:

- 1) inheritance, ordinary entry, further entry, debt collection entry, testamentary order,
- 2) gift, donor's order,
- 3) usucaption,
- 4) abolition of joint ownership without consideration,
- 5) a reserved portion, if the entitled person did not obtain it in the form of legacy from the bequeather or by inheritance or in the form of a bequest,
- 6) free from charge: pension, usufruct, and easement.

Also subject to the tax is the acquisition of rights to a savings contribution on the basis of an instruction on the disposal of funds in the event of death and the acquisition of participation units on the basis of an order of a member of an open-ended investment fund or a specialised open-ended investment fund in the event of his/her death.

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The legislator regulated in detail the issues related to objective exclusion from taxation (Article 3), objective exemptions (Article 4), subjective exemptions (Article 4a), subjects of taxation (Article 5), the moment when the tax obligation arises (Article 6), tax basis (Article 7), valuation of property and property rights (Article 8), tax-free amount (Article 9), etc. The Act also provides for the division of taxpayers into tax groups, and specifies tax rates or tax reliefs⁴⁰.

In no place in this act do we find any specification of the powers of commune authorities. The governor (mayor) acting as a tax authority in the field of local government taxes and inheritance and gift taxes has no powers at all⁴¹. It should be stressed that according to Article 168 of the Constitution of the Republic of Poland, local government units have the right to determine the amount of local taxes and charges within the scope specified in the Act. Meanwhile, the Act of 28 July 1983 on inheritance and gift tax⁴² does not imply any right of municipal authorities – either to set tax rates or to enact tax exemptions (as is the case, for example, with property tax).

The marginal significance of inheritance and gift tax as a source of income for the commune is indicated by the legislator himself in Article 20 of the Act on inheritance and gift tax. According to Section 3, the tax revenue which is taken into account when determining the G indicator (determining the tax potential of the commune) is made up of all communal taxes with the exception of inheritance

40 For more on the catalogue of reliefs and exemptions see: D. Rynkiewicz, 'Przywileje podatkowe dla najbliższej rodziny zbywcy w podatku od spadków i darowizn', *Studia Iuridica Lublinensia*, vol. 13 (2010), pp. 237–246.

41 'The municipal authorities do not perform assessment or carry out the collection of inheritance and gift tax. These activities are carried out by tax offices and notaries as payers of this tax. Tax offices administer inheritance and gift tax receipts and then transfer these receipts to the budgetary account of the relevant municipality'. (Z. Ofiarski, 'Dochody jednostek samorządu terytorialnego', In: M. Ofiarska, J. Ciapała (eds.), *Zarys prawa samorządu terytorialnego: praca zbiorowa*, Przedsiębiorstwo Wydawnicze „Ars boni et aequi”, Poznań 2001, p. 234); 'Tax on inheritances and gifts is collected by tax offices, but constitutes income of the commune's local government'. (A. Borodo, *Polskie prawo finansowe. Zarys ogólny*', Towarzystwo Naukowe Organizacji i Kierownictwa, Toruń 2007, p. 182).

42 Consolidated text: Journal of Laws of 2017, item 833 (hereinafter referred to as Act on Inheritance and Gift Tax).

- Jacek Wantoch-Rekowski, Damian Walczak, Krzysztof Czarniecki. Inheritance and gift tax in Poland – an interdisciplinary approach. *Часопис Національного університету «Острозька академія». Серія «Право»*. 2021. № 1(23) : [Електронний ресурс]. – Режим доступу : <http://lj.ou.edu.ua/articles/2021/n1/21jwraia.pdf>

and gift tax. The legislator has thus concluded that this is a marginal tax to the extent that it is irrelevant for the calculation of the G indicator.

Given the above, it is therefore surprising why this tax – like an agricultural tax⁴³ – has been included by the legislator in the catalogue of municipalities' own income. An attempt to justify this legislative solution is being made in the doctrine, but it is not a very broad phenomenon. For example, A. Borodo points out that "The tax on inheritance and gifts in large cities may have a greater financial significance. It is usually a tax related to local ownership and property relations. In addition, the inclusion in the tax regulations of certain housing policy solutions (with specific local conditions) is a premise for handing over this tax to municipalities⁴⁴. However, this view is not justified by the author with any research results, similarly to J. Adamiak, according to whom "In small communes of an agricultural character, income from this tax is usually negligible – mainly because the acquisition of an agricultural holding by way of inheritance or gift is in principle exempt from taxation. It is more significant in large municipalities, where local ownership and property relations play a more important role⁴⁵.

It should be stressed that the doctrine – as a rule – analyses the issue of inheritance and gift tax on a normative level and does not attempt to explain why this tax represents the municipality's income and whether the municipality can take any action to try to increase the revenue from this source. For example, it may be pointed out that J. Wierzbicki and A. Werner limit themselves to the

43 P. Felis, J. Szlęzak-Matusiewicz, H. Rosłaniec, 'Can Local Tax Policy Be Efficient? Polish Communes' Agricultural Tax Policy', *Lex Localis-Journal of Local Self-Government*, vol. 16 (2018), No. 4, pp. 649–671, [https://doi.org/10.4335/16.4.649-671\(2018\)](https://doi.org/10.4335/16.4.649-671(2018)).

44 A. Borodo, 'Samorząd terytorialny. System prawnofinansowy', LexisNexis, Warsaw 2008, p. 107.

45 J. Adamiak, 'Finanse jednostek samorządu terytorialnego', In: Kosiedowski, W. (ed.), *Samorząd terytorialny w procesie rozwoju regionalnego i lokalnego*, Towarzystwo Naukowe Organizacji i Kierownictwa, Toruń 2005, p. 190.

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statement that "the tax itself constitutes the commune's own income, but its collection is carried out by the heads of tax offices"⁴⁶.

5. Economic and social factors influencing the amount of inheritance and gift tax in particular cities with the rights of a district

When presenting financial issues related to inheritance and gift tax, the starting point should be an indication of the revenue from this type of tax. As shown in Table 2, the amounts of inheritance and gift taxes in Poland (in the 66 cities with district rights analysed) are highly differentiated. Half of the cities generate on this account revenues of several hundred thousand PLN, while the city of Warsaw or Krakow (not indicated in the table 2) have revenues of several dozen million PLN.

Table 2. Inheritance and gift tax in Poland in the years 2013–2016 (in PLN).

Specification	2013	2014	2015	2016
min	79,850 (Tarnobrzeg)	93,146 (Świętochłowice)	95,519 (Tarnobrzeg)	137,146 (Tarnobrzeg)
max	3 46,293,32 (Warsaw)	1 52,558,02 (Warsaw)	55 49,593,8 (Warsaw)	24 66,089,0 (Warsaw)

46 J. Wierzbiński, A. Werner, 'Opodatkowanie spadków i darowizn w Polsce współczesnej', In: A. Dobaczewska, E. Juchniewicz, T. Sowiński, (eds.), *Daniny publiczne. Prawo finansowe wobec wyzwań XXI wieku*, CeDeWu, Warsaw 2010, pp. 193–201.

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average	2,181,407	2,255,185	2,175,86	2,492,27
median	632,762	674,033	636,267	581,011

Source: authors' own study on the basis of (the Local Data Bank).

Also in the case of the share of inheritance and gift tax per capita, it is possible to point to diversification. In this case, however, it is smaller than in the case of nominal values. The highest values per capita are found in Warsaw, but only slightly lower values per capita are recorded in Sopot (not indicated in the table 3). A lower median value than the average indicates that most cities are characterized by small amounts of inheritance and gift tax per capita, and only a small number receive more than PLN 10 per capita on this account (in 2016, only 11 cities).

Table 3. Tax on inheritance and gifts per capita in Poland in the years 2013–2016 (in PLN).

Specification	2013	2014	2015	2016
min	1.65 (Tarnobrzeg)	1.8 (Świętochłowice)	1.96 (Jelenia Góra)	2.07 (Jastrzębie Zdrój)
max	26.84 (Warsaw)	30.28 (Warsaw)	28.43 (Warsaw)	37.67 (Warsaw)
average	7.15	7.24	7.05	7.54
median	5.62	5.77	5.73	5.76

Source: authors' own study on the basis of (the Local Data Bank).

As a result of estimation of the linear econometric model, a model consisting of 4 (2013), 5 (2014), 3 (2015), and 5 (2016) explanatory variables, which have a

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significant impact on the revenue from inheritance and gift tax, has been obtained.

The estimated model took the following form:

Formula 2. Linear econometric model explaining the impact of variables on inheritance and gift tax per capita – 2013.

$$Y = 106.473 + 0.005X_1 + 2.93X_2 + 1.27X_3 + 0.064X_4$$

Formula 3. Linear econometric model explaining the impact of variables on inheritance and gift tax per capita – 2014.

$$Y = -133.533 + 0.004X_1 + 2.93X_2 + 1.95X_3 + 0.053X_5 + 0.54X_9$$

Formula 4. Linear econometric model explaining the impact of variables on inheritance and gift tax per capita – 2015.

$$Y = -27.15 + 0.041X_4 + 0.074X_6 + 0.0026X_8$$

Formula 5. Linear econometric model explaining the impact of variables on inheritance and gift tax per capita – 2016.

$$Y = -155.745 + 0.0041X_1 + 2.76X_2 + 2.42733X_3 + 0.077X_6 + 0.0021X_8$$

The financially highly variable nature of inheritance and gift tax in particular cities is also presented in the models. None of the variables proved to be significant in all four analysed years.

On the basis of the conducted research it can be indicated that in 2013 the increase in tax income calculated per capita (G indicator) by PLN 1 resulted in an increase in the inheritance and gift tax per capita by PLN 0.005, whereas each

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marriage concluded per 1000 residents increased this tax by PLN 2.93. Another statistically significant variable is the number of apartments per 1000 residents, which, as expected, has a positive impact on the tax on inheritance and gifts per capita.

The result concerning the proportion of women in the population is interesting from a scientific point of view. Namely, the increase of this share by 1 person per 100 residents resulted in the increase in the tax on inheritance and gifts by 1.27 PLN⁴⁷.

The variable X_5 , which represents the share of persons at post-working age in the total population, was relevant only in 2014. The increase in the share of such persons in society as a whole (older persons who transfer some of their assets) by 1% resulted in an increase in the tax on inheritances and gifts per capita by PLN 0.053. On the other hand, the average gross monthly salary (X_8) was significant in 2015 and 2016, and the increase in this value by PLN 1 resulted in an increase in the inheritance and gifts tax by PLN 0.0026 and PLN 0.0021, respectively.

6. Conclusions and discussion

The study indicates that revenues from inheritance and gift tax are highly diversified. This is owing to both the relevant legislative provisions and the specificity of particular local government units. In each of the researched years other variables were important in determining the income from this tax, which confirms its differentiation and the lack of a permanent factor influencing it. This tax is unique in its design. On the one hand, it is the commune's own income

47 The reason for the significance of this variable requires further research. According to the authors, the indicated result (this variable is also significant for the years 2015 and 2016) may be a consequence of women's retention of property until death, unlike men, or a greater tendency among women to transfer property to persons outside the so-called 0 tax group.

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collected by Tax Offices, while on the other hand, it is a public contribution, over which the governors (mayors) have no influence. The lack of influence is theoretical, as they can adequately take care of the development of their territorial local government units, which may lead to an increase in real estate prices, which may affect the higher value of the transferred assets.

It is more important to present potential directions for change, and to decide whether the said tax should remain in the current form, or be transformed in such a manner as to become a significant budgetary impact. In order for this to happen, it suffices to eliminate exemptions from inheritance and gift tax for the immediate family and the acquisition by inheritance or gift of an agricultural holding. The existing inheritance and gift tax should be a more sealed tax, which may significantly increase the income of communes and constitute a certain beginning of the establishment in Poland of a tax system that actually encumbers accumulated/transferred assets. Increased taxation of assets will, on the one hand, comply with the principle of fair taxation⁴⁸ and, on the other hand, with solidarity and social fairness, by eliminating property differences⁴⁹.

48 K. Kopyściańska, 'Podatek katastralny w kontekście konstytucyjnej zasady sprawiedliwości opodatkowania', *Annales Universitatis Mariae Curie-Skłodowska, sectio H-Oeconomia*, vol. 50 (2016), No. 1, p. 386, <http://dx.doi.org/10.17951/h.2016.50.1.381>; M. Wrede, 'Fair inheritance taxation in the presence of tax planning', *Journal of Behavioral and Experimental Economics*, vol. 51 (2014), pp. 12–18, <https://doi.org/10.1016/j.jsocec.2014.03.007>.

49 M. Cieślukowski, 'Podstawowe kategorie podatkowe w ekonomii zrównoważonego rozwoju', *Annales Universitatis Mariae Curie-Skłodowska, sectio H-Oeconomia*, vol. 50 (2016), No. 1, pp. 85-86, <http://dx.doi.org/10.17951/h.2016.50.1.83>; D. Walczak, 'The Process of Exchange, Solidarity and sustainable development in building a community of responsibility', *Mediterranean Journal of Social Sciences*, vol. 6 (2015), No. 1S1, pp. 506–511, <http://dx.doi.org/10.5901/mjss.2015.v6n1s1p506>.

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Jacek Wantoch-Rekowski, Damian Walczak, Krzysztof Czarnecki
Inheritance and gift tax in Poland – an interdisciplinary approach

This article presents selected legal and economic issues concerning inheritance and gift tax. The aim of the article is to present legal solutions within the scope of the indicated tax and its importance in the income of communes in Poland. The study of inheritance and gift tax revenues in 66 towns and cities with district rights has shown that its spatial diversity in particular years is large. It is worth considering the necessity of legislative changes increasing the share of this tax in the communes' revenues in Poland.

Key words: tax, taxation, local government unit, spatial diversity.

Яцек Вантош-Рековські, Дам'ян Вальцак, Кшиштоф Чарнецькі
Податок на спадщину та подарунки в Польщі - міждисциплінарний підхід

У цій статті представлені окремі юридичні та економічні питання щодо податку на спадщину та дарування. Метою статті є представлення правових рішень у межах зазначеного податку та його значення у доходах гмін у Польщі. Дослідження надходжень податку на спадщину та подарунки у 66 містах на правах повіту показало, що його просторове різноманіття в окремі роки є великим. Варто врахувати необхідність законодавчих змін, що збільшують частку цього податку у доходах гмін у Польщі.

Ключові слова: податок, оподаткування, одиниця місцевого самоврядування, просторове різноманіття.

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