

Taxation of Gratuitous Acquisition of the Ownership of Tangible Property and Property Rights in Polish and Lithuanian Tax Legislation Selected Problems

Stefan Babiaryz

PhD

Judge of the Supreme Administrative Court, Poland

Tel.: 22 551 63 00, Fax: 22 551 63 05

E-mail: izbafin@nsa.gov.pl

The comparison of the inheritance tax legislation in Poland and Lithuania shows clearly that inheritance tax is a simple tax, with no special legal or financial complexity. Therefore, there are no serious issues concerning the assessment and/or payment of the tax. The assessment process and the amounts of the tax are taxpayer-friendly. It is worth noting solutions such as a 30% reduction in the taxable amount, no deduction of debt and charges, no complicated procedure for determining the taxable amount, respecting the double taxation avoidance principle, or the fact that no tax liability in respect of inheritance tax may re-arise.

The case is not the same with the Polish Gift and Inheritance Tax Act. The only advantage of the Polish law, as compared to the Lithuanian law, is that the scope of taxable property is broader and, therefore, the higher, personal income tax would not apply to many types of the taxable property.

The author expects this paper to be the first in a series of papers introducing Polish taxpayers, tax authorities and legislative bodies to legal solutions relating to the taxation of gratuitous acquisition of tangible property and property rights in other European countries. The Polish Gift and Inheritance Tax Act is a highly complicated piece of legislation. Its complexity causes tax disputes and does not encourage good relations between taxpayers and tax authorities. What is more, it is often the source of family conflicts.

Keywords: tax law, tangible property, property rights, tax authorities, taxpayers, personal income tax, taxable property, the Polish Gift and Inheritance Tax Act.

Introduction

The aim of this paper¹ is to carry out a linguistic, systemic and comparative analysis of a selection of Polish and Lithuanian statutes regarding the taxation of gratuitous acquisition of the ownership of tangible property and property rights. The analysis will include the following: the taxable persons,

¹ A slightly different version of this paper was published in Poland, in *Kwartalnik Prawa Podatkowego* [Tax Law Quarterly], Issue 2, in 2018.

the object of taxation and tax rates, as well as tax exemptions and tax allowances, the calculation and payment of taxes, and certain other aspects.

In this analysis, the author aims to examine whether the legislative solutions in both legal systems are similar and, if yes, to what extent they are so, and whether these solutions are simple, clear and uncontroversial. The comparative analysis will cover the following legislation:

Polish legislation

- The Constitution of the Republic of Poland of 2 April 1997²;
- the Gift and Inheritance Tax Act of 28 July 1983;
- Regulation of the Minister of Finance of 20 July 2015 on a form of the notification of the acquisition of the ownership of tangible property or property rights³;
- the Personal Income Tax Act of 26 July 1991⁴;
- the Tax Law Act of 29 August 1997⁵.

Lithuanian legislation

- The Constitution of the Republic of Lithuania of 6 November 1996⁶;
- the Lithuanian Inheritance Tax Act of 10 December 2002⁷ (consolidated version);
- the Lithuanian Gift and Inheritance Tax Act of 13 June 1995 (No.I-935⁸ (repealed on 10 December 2002 by Act IX–1239 of 1 January 2003);
- Regulation of the Government of the Republic of Lithuania of 13 January 2003, No. 24, on the rules for calculating the taxable amount of inheritance⁹;
- the Personal Income Tax Act of the Republic of Lithuania of 2 July 2002, No.IX-1007¹⁰(consolidated text);
- the Lithuanian Tax Law Act of 13 April 2004¹¹;
- Regulation of the Government of the Republic of Lithuania of 29 January 2003, No. 133, approving the rules for the determination, in certain cases, the price of property acquired by individuals not in self-employment¹².

One might ask the question why it is necessary to compare the afore-mentioned structural tax elements (or components). The answer is that these elements should, in fact, be part of any tax provided for in tax laws. However, it is important to note that expressions such as “structural elements of tax”¹³, “tax elements”¹⁴, “technical elements of tax”¹⁵ or “tax technique elements”¹⁶ are not unambiguous. There is some disagreements as to the use of these expressions in Lithuania as well¹⁷. However, it seems that

² Dz.U. [Journal of Laws] of 1997, No.78, item 483, as amended (“Polish Constitution”).

³ Dz.U. [Journal of Laws] of 2015, item 2060 (“Notification Form Regulation”).

⁴ Dz.U. [Journal of Laws] of 2018, item 200, as amended (“Personal Income Tax Act”).

⁵ Dz.U. [Journal of Laws] of 2018, item 800, as amended (“Tax Law Act”).

⁶ Register of Legislative Acts, ID code: 0921010KONSRG922324 (“Lithuanian Constitution”).

⁷ Žin. 2002, No. 123 – 5531 (“Lithuanian Inheritance Tax”).

⁸ Žin. 2002, No. 123 – 5531 (“Repealed Lithuanian Gift and Inheritance Tax Act”).

⁹ Žin. 2004, No. 109 – 4082 (“Lithuanian Implementing Regulation Under the Inheritance Tax Act”).

¹⁰ Register of Legislative Acts, ID code: 1041010ISTA0IX-2112.

¹¹ Žin. 2004, No. 63 - 2243, as amended (“Lithuanian Tax Law Act”).

¹² “Lithuanian Implementing Regulation Under the Personal Income Tax Act”.

¹³ K. Ostrowski, *Prawo finansowe [Financial Law] Zarys ogólny [General Outline]* Warsaw 1970, p. 144.

¹⁴ N. Gail, *Finanse i prawo finansowe [Finance and Financial Law]*, Warsaw 1980, p. 204.

¹⁵ Z. Fedorowicz, *Finanse w gospodarce socjalistycznej [Finance in the Socialist Economy]* Warsaw 1966, p. 396.

¹⁶ H. Reniger (in:) *Prawo finansowe [Financial Law]*, edited by L. Kurowski, Warsaw 1955, p. 311.

¹⁷ A. Medelienė, B. Sudavičius, *Mokesčių teisė*, Vilnius 2011, p. 78 and subsequent pages; S. Presnarowicz, B. Sudavičius (edited), *System finansów publicznych Polski i Litwy [Public Finance Systems of Poland and Lithuania]*, Białystok 2017, p. 144.

the expression “structural elements of tax” is the one that best reflects the essence of our comparative analysis and that refers to the substantive provisions of tax legislation. Note should also be taken of the fact that the three main elements of tax, namely the taxable person, the object of taxation and the tax base (or taxable amount), are part of the hypothesis of the tax legal norm, while the other elements (such as the tax rate, the deadline and method for the payment of tax) constitute the disposition of the legal norm¹⁸. Tax exemptions and tax allowances are part of the hypothesis or the disposition of the norm, depending on they relate to. In Polish tax literature, two expressions are used: “tax allowance” and “a mechanism for reducing the tax amount which is linked with the taxable person or the object of taxation”¹⁹. This mechanism involves

- a) reducing the tax base;
- b) reducing the tax rates;
- c) reducing the tax amount directly.

A tax exemption is the exclusion of certain persons or certain types of income from taxation²⁰, although some tax exemptions may exclude both certain persons and certain income from taxation at the same time. The difference between a tax allowance and a tax exemption in Polish tax law is that the former is quantitative in nature whereas the latter means that certain persons and certain income or assets are excluded from taxation. A tax allowance is, in fact, a means of reducing the tax burden. Unlike a tax exemption, a tax allowance does not mean that no tax must be paid on certain income by certain persons. However, what these two concepts have in common is neither is an independent structural tax element. In contrast, the Lithuanian literature on taxation and Section 2.8 of the Lithuanian Tax Law Act define tax allowance as “special rules of taxation provided for in tax law – in respect of taxable persons or groups of taxable persons – which are more advantages than the standard rules of taxation”. Section 4.1 of the Lithuanian Tax Law Act provides that tax allowances should be associated not only with taxes, but also with the payment of fines, penalties or late-payment interest, or a tax credit arrangement²¹. The Lithuanian literature on taxation refers to various forms of tax allowances. These include exemption from tax (tax exceptions), reduction in the tax base, reduction in the tax amount (tax allowances)²². In contrast, a tax exemption is a situation where a person or income that satisfies the statutory criteria for the exemption is exempt from a tax fully or partially or excluded from the categories of persons or income (assets) subject to the tax, which case is a ‘tax exception’, as such a person or such income continues to be regarded by tax law as, respectively, a taxable person or taxable income. As is the case in Poland, tax exemptions in Lithuania does not exclude the exempted person from the category of persons subject to the tax. In consequence, the same taxable person or the same object of taxation cannot be subject to a different tax at the same time. The same taxable person or the same object of taxation could be subject to a different tax at the same time only in the case of exclusion from the first tax. It can, therefore, be said that, historically, there are no considerable differences between Poland and Lithuania in how the concept of tax exemption is understood. There are, however, differences in the understanding and application of tax allowances between the two legal systems. The Lithuanian solutions are clearly wider and, therefore, can respond to the different situations of taxable persons with greater flexibility.

¹⁸ A. Kostecki, *Elementy <...>*, p. 192.

¹⁹ W. Nykiel, *Ulgi i zwolnienia w konstrukcji prawnej podatku [Tax Allowances and Tax Exemption in Legal Tax Concepts]*, Warsaw 2002, p. 23.

²⁰ *Ibidem*, p. 85.

²¹ S. Presnarowicz, B. Sudavičius (edited), *System finansów publicznych Polski i Litwy [Public Finance Systems of Poland and Lithuania]*, p. 149.

²² A. Medelienė, B. Sandavičius, *Mokesčių teasė*, Vilnius, p. 97.

Given the above and for the sake of the comparative analysis, it seems reasonable to rely, in this analysis, on the Polish framework of the structural tax elements and on the Polish understanding of the concepts of tax allowance and tax exemption.

However, this comparative analysis will not cover the taxation relationship or its components, as the scope of considerations as regards this concept would be too narrow, given the understanding of this concept. Otherwise, the considerations could only cover issues related to the possible taxation relationship and its components (the taxable person, the object of taxation and the tax base) and the formal taxation relationship (filing tax returns, keeping tax records and providing information to tax authorities)²³. However, these issues would not be representative for the purposes of the comparative analysis.

2. The Lithuanian Constitution and the Polish Constitution versus taxes

The proceeds from gift and inheritance tax payments (Section 4.1.1.g of the Act of 13 November 2003 on the Income of Local Government Institutions²⁴) in Poland and from inheritance tax payments in Lithuania are classified as income for local government²⁵. Therefore, it seems reasonable to refrain from a discussion on the right of local government institutions in terms of the freedom of local governments to decide on their local tax policies.

Article 67.15 of the Lithuanian Constitution reads that “The Seimas shall establish state taxes and other compulsory payments”. Article 121.2 of the Lithuanian Constitution reads: “Municipal councils shall have the right, within the limits and according to the procedure provided for by law, to establish local levies; municipal councils may provide for tax and levy concessions at the expense of their own budgets”. Article 168 of the Polish Constitution reads: “To the extent established by statute, units of local government shall have the right to set the level of local taxes and charges”. The provisions of the Polish Constitution in this respect are similar, except that the Lithuanian Constitution expressly provides that only local government councils, and not any other local government bodies, have the right to impose taxes. It is important to note that it may seem that Lithuanian municipal councils have the power to impose taxes and, therefore, they are empowered to introduce taxes established by statute. However, when interpreting this provision of the Lithuanian Constitution, the provision of Article 127.3 of the same document should be taken into account. It seems that the solution adopted by Lithuania is similar to the one in the Polish Constitution. Article 121.2 of the Lithuanian Constitution provides that the right to impose taxes and local levies and the procedure to imposing them must be provided for in a statute. This means that it is unacceptable for this right and this procedure to be provided for in any legislation of a lower status. It seems that the power granted to local government councils in the Lithuanian Constitution is broader than the provision of Article 168 of the Polish Constitution, which grants local government units (or, precisely, the governing authorities of such units) “the right to set the level of local taxes and charges to the extent established by statute”. This means that the governing authorities of local government units in Poland are not empowered to establish new taxes and/or local levies, but they have the right to set the rates of such taxes or levies to the extent permitted by statute²⁶. It seems that the above view is expressed in narrow terms. More specifically, if we look at the

²³ A. Nita, *Stosunek prawnopodatkowy [Taxation Relationship]*, Kraków 1999, pp. 30–33.

²⁴ Dz.U. [Journal of Laws] of 2017, item 1453, as amended

²⁵ Section 10 of the Lithuanian Inheritance Tax Act.

²⁶ J. Zawora, *Samodzielność finansowa gmin w świetle uwarunkowań prawnych i samorządowych wydatków inwestycyjnych [Financial Independence of Local Governments in the Light of Legal Requirements and Capital Expenditure of Local Governments]*, *Finanse Komunalne* 2014, Issue 10, pp. 22–33.

provisions of Sections 15.1, 17.1, 17.1a and 17a.1 of the Act of 12 January 1991 on Local Taxes and Levies²⁷, we will see that the local market levy, the municipal levy, the visitor's tax or the advertising levy are established by that Act (Sections 1.4-5b of the Local Taxes and Levies Act), but they can be established locally only by the local council, which is also empowered to set the rates of such taxes or levies (these, of course, must be lower than the maximum statutory rates).

What is important is that a similar right is provided for in Article 121 of the Lithuanian Constitution, which means that municipal councils have the right to reduce local levies, but only within the limits of their budgets. It can be concluded that this solution is similar to the Polish solutions, although Sections 7.3, 12.4 and 19.3 of the Local Taxes and Levies Act or Section 7.3 of the Forest Tax Act of 30 October 2002²⁸, or Section 13e of the Agricultural Tax Act of 15 November 1984²⁹, whereby local councils are empowered to grant other concessions in respect of certain objects of taxation, do not expressly require compliance with any "budget limits". The above is obvious, as any local council, in its budgets, should consider satisfying the collective needs of the local community.

In a discussion of the constitutional framework of establishing local taxes and levies, account should be taken of the provision of Article 127.3 of the Lithuanian Constitution, which reads: "Taxes, other payments to the budgets, and levies shall be established by the laws of the Republic of Lithuania". This article uses the word "budgets", which should be interpreted as meaning not only the state (central) budget, but also local government budgets in the Republic of Lithuania.

Although the wording of this provision is fairly general, it is accepted that "the determination of the essential structural elements of a tax in a statute dealing with different taxes is a prerequisite for a particular person not only to be obligated to pay the tax, but also to be able to comply with this obligation"³⁰. It is undoubtedly the case, as the provision "Taxes <...> shall be established by the laws of the Republic of Lithuania" can and should be interpreted broadly, i.e. not only as a provision establishing a particular tax or levy, but also as determining the essential structural elements of that tax or levy. This provision of the Lithuanian Constitution should be equated with Article 217 of the Polish Constitution, which reads that "The imposition of taxes, as well as other public imposts, the specification of those subject to the tax and the rates of taxation, as well as the principles for granting tax reliefs and remissions, along with categories of taxpayers exempt from taxation, shall be by means of statute".

3. Taxable persons and taxable transactions in the Polish and Lithuanian legislation on inheritance taxes

General definitions of *taxable person* are contained in both the Polish Tax Law Act and the Lithuanian Tax Law Act. Section 15 of the Lithuanian Tax Law Act defines the taxable person as "a person that is liable for tax under a tax statute". Sections 7.1 and 7.2 of the Polish Tax Law Act define the taxable person as follows: "A taxable person is a natural person, a legal person or an organisation without legal personality that is liable to tax under any tax statute", whereas "Tax statutes may regard persons other than those specified in Section 1 as taxable persons". A comparison of the two definitions does not reveal any significant differences, as being liable to a tax actually means (see subsection 4 of the Tax Law Act) having the obligation to pay that tax, and this obligation is always provided for in tax statutes (i.e.

²⁷ Dz.U. [Journal of Laws] of 2017, item 1785, as amended ("Local Taxes and Levies Act").

²⁸ Dz.U. [Journal of Laws] of 2017, item 1821.

²⁹ Dz.U. [Journal of Laws] of 2017, item 1892.

³⁰ A. Medelienė, B. Sudavičius, *Mokesčių teisė*, Vilnius 2011, p. 78; S. Presnarowicz, B. Sudavičius (edited), *System finansów publicznych Polski i Litwy [Public Finance Systems of Poland and Lithuania]*, Białystok 2017, p. 144.

substantive provisions). The reference to a person is nothing more but a reference to a natural person, a legal person or an organisation without legal personality. Neither the Lithuanian Tax Law Act nor the Lithuanian Personal Income Tax Act includes married couples in the definition of taxable person. Also, there are provisions permitting more than one person to participate in the same tax procedure.

It is important to note, at this point, that the Lithuanian Inheritance Tax Act applies only to the taxation of property inherited by both permanent and temporary residents (citizens)” (Section 1 in conjunction with Section 2.1 of the Act). This means that the scope of property subject to the gift and inheritance tax in Poland is broader, as it comprises property or property rights acquired through other means as well, including

- a) inheritance, an ordinary bequest, a sub-bequest, a specific bequest and a testamentary burden;
- b) a gift or a donor’s instruction;
- c) acquisitive prescription;
- d) gratuitous dissolution of co-ownership;
- e) through a legitim, if the person entitled to a legitim has acquired the legitim other than as a gift from the testator, by inheritance or as a result of a bequest;
- f) a gratuitous annuity, the right of usufruct or an easement.

The Polish gift and inheritance tax also applies to savings on the basis of “instructions for the use of a savings bank deposit in the event of death” (a specific amount of savings is excluded from the deceased person’s estate) and to investment fund shares acquired on the basis of a holder of shares in an open-ended investment fund or a specialist investment fund set up in case of death (again, a specific amount of the value of such shares is excluded from the deceased person’s estate). This type of property subject to inheritance tax is not specified expressly in the Lithuanian Inheritance Tax Act.

The fact that the Lithuanian Inheritance Tax Act does not apply to property acquired through the means of acquisition covered by the Polish Gift and Inheritance Tax Act does not mean that no tax is due on property acquired by gift in Lithuania. The Personal Income Tax Act of the Republic of Lithuania of 2 July 2002 provides that gifts made under this Act on the basis of a contract of gift or a sponsorship contract are exempt from income tax. The income tax exemption also applies to inherited income that is taxable in accordance with the Lithuania inheritance tax regulations, and to income received as a gift from the taxable person’s wife or husband, children (including adopted children), parents (including foster parents), brothers, sisters, grandchildren and grandparents, as well as to the amount of income received from any other natural person by gift, up to EUR 2,500 (Section 17.1.25 and 17.1.26 of the Lithuanian Personal Income Tax Act). This means that a person receiving a gift from any other person and in excess of the above amount should be liable to tax on the value of that gift. This is confirmed by Section 17.2 of the Lithuanian Personal Income Tax Act, which provides that income received from a person other than the taxable person’s wife or husband, children (including adopted children), parents (including foster parents), brothers, sisters, grandchildren and grandparents is not exempt from tax if the taxable person has received that income from a natural person with permanent residence outside Lithuania.

It must be noted that previous Lithuanian Gift and Inheritance Tax Act of 13 June 1995 (No.I-935), which was in effect until 1 January 2003, applied also to immovable property and movable property (including shares, bonds, bills of exchange and other securities) acquired by gift. The fact that it is income tax, not inheritance tax, that must be paid on the value of a gift is clearly to the disadvantage of the taxable person, as the basic income tax rate (Section 6 of the Act) is 15%, whereas the maximum inheritance tax is 10% of the taxable value. This is similar to the solution adopted in Section 2.1.3 of the Polish Personal Income Tax Act, which provides that the provisions of that Act do not apply to

income to which the provisions of the Gift and Inheritance Tax Act apply. This means that both the Lithuania Inheritance Tax Act and the Polish Gift and Inheritance Tax Act are *lex specialis* provisions in relation to the Personal Income Tax Act.

4. Taxable persons for inheritance tax

Section 3 of the Lithuanian Inheritance Tax Act defines the taxable person for the purposes of inheritance tax as a resident (citizen) of Lithuania, and any reference to resident is a reference to a permanent or temporary resident. These terms are not defined in that Act and, therefore, Sections 2.2 and 2.3 contain references to the closer definitions of these expressions contained in the Personal Income Tax Act. The Personal Income Tax Act clearly distinguishes between two groups of taxable persons. These are residents (i.e. natural persons permanently residing in the Republic of Lithuania) and non-residents (non-resident natural persons who have earned income in Lithuania)³¹ This should mean that when a resident of Lithuania acquires any property located outside Lithuania is liable to personal income tax, not inheritance tax, in respect of that property. In contrast, Sections 1.1 and Section 2 of the Polish Gift and Inheritance Tax Act provide that the gift and inheritance tax is due on the value of property and/or property rights acquired by a Polish national or a person with permanent residence in the Republic of Poland. This means that the criteria for treating a person as a taxable person under the Polish regulations are citizenship and permanent residence, and not only the fact of permanent or temporary residence, which is the case in Lithuania³². The solutions adopted in both countries lead to the conclusion, true for both both countries, that taxable persons for (gift and) inheritance tax(es) are only natural persons (Sections 2.2 and 2.3 of the Lithuanian Inheritance Tax Act and Section 1.1 and Section 2 of the Polish Gift and Inheritance Tax Act). In consequence, property and property rights acquired by a legal person or an organisation without legal personality are subject to corporation tax. Lithuanian tax law does not refer to “organisations without legal personality”, but defines the taxable person as a “any organisation or otherwise organised legal entity, irrespective of the legal ties with the Lithuanian state, which has established the tax (i.e. whether or not that entity is subject to the jurisdiction of Lithuania)”³³.

5. Object of taxation [taxable transactions]

As regards this structural element of [inheritance] tax, there are certain differences between Lithuanian and Polish regulations. It is difficult to determine the causes of these differences, but one explanation could be the historical experiences shared both Poland and Lithuania. In Poland, gratuitous acquisition of the ownership of tangible property and property rights was subject to special rules of taxation as early as in the interwar period and ³⁴after World War II³⁵. Therefore, it needs to be noted that the

³¹ L. Etel, *Opodatkowanie dochodu w wybranych krajach Europy Środkowej i Wschodniej* [Income Taxes in Central and Eastern Europe], Białystok 2006, pp. 148–151; A. Mikielewicz, *Warunki życia i pracy w krajach Europejskiego Obszaru Gospodarczego* [Living and Working Conditions in European Economic Area (EEA) Countries], Białystok 2012, s. 11–12.

³² Judgment of the Supreme Administrative Court of 18 July 2017 (case file no. II FSK 1682/15), Lex No. 2322296.

³³ S. Presnarowicz, B. Sudavičius (edited), *System finansów publicznych Polski i Litwy* [Public Finance Systems of Poland and Lithuania], Białystok 2017, p. 144.

³⁴ See e.g. the Stamp Duty Act of 1 July 1926 (Dz.U. [Journal of Laws] of 1935, No.64, item 404 [this Act is no longer effective) or the Act of 29 May 1920 to amend the regulations on gift and inheritance tax(es) (Dz.U. [Journal of Laws] of 1920, No.49, item 299).

³⁵ Decree of 3 February 1947 on a tax on the acquisition of property rights (Dz.U. [Journal of Laws] of 1951, No.9, item 74, as amended).

Lithuanian inheritance tax applies (if the taxable person is a permanent resident of Lithuania) to the inherited property (Section 4.1 of the Lithuanian Inheritance Tax Act); ‘property’ is defined in Section 2.4 of that Act. ‘Property’ in that Act is defined as “any immovable property, movable property, securities and money”. It is not clear whether the term ‘property’ limits the scope of the term ‘inheritance’, but this is how these terms should be interpreted, as indicated by systematic interpretation of Section 4.1 in conjunction with Section 2.4 of the Lithuanian Inheritance Tax Act. Therefore, the provision of the Lithuanian Inheritance Tax Act should be interpreted to the effect that inheritance tax is due on property inherited by a resident of Lithuania, whether the property is located in or outside Lithuania; in the case of non-residents of Lithuania, the tax is due on movable property which Lithuania law requires to be registered in Lithuania and immovable property located in Lithuania (Section 4.2 of the Lithuanian Inheritance Tax Act). However, the Lithuanian Civil Code leaves no doubt that any inheritance is acquired upon the death of the testator or when a court order declared a person declared dead in absentia becomes final (Section 5.3 of the Lithuanian Civil Code). This is similar to the solution adopted in Sections 924 and 925 of the Polish Civil Code.

The Lithuanian Inheritance Tax Act does not make it clear whether the acquisition of property by specific bequest is regarded as acquisition by inheritance as well. If inheritance means (Section 5.1 of the Lithuanian Civil Code) “the passage of property rights, obligations and certain personal non-property rights of a deceased natural person to the person’s heirs according to the rules of intestacy and/or by will”, then the acquisition of property by specific bequest should be regarded as acquisition by inheritance. Section 5.2.3 of the Lithuanian Civil Code defines specific bequest as follows: “The testator shall have the right to obligate a testate successor to fulfil a certain obligation (testamentary reservation) for the benefit of one or several persons, while these persons shall acquire the right to demand fulfilment of this obligation. Beneficiaries of the testamentary reservation may be intestate heirs as well as any other persons”. The last sentence of this provision confirms that a specific bequest should be treated by the Lithuanian Inheritance Tax Act as the acquisition of an inheritance. However, Section 5.2.5 of the Lithuanian Civil Code does not specify, unlike the Polish Civil Code (Section 982.2), what can be the subject-matter of a specific bequest, but contains a description only. A reference is made to “a thing defined by its individual features” (Section 5.2.5.1), claims (Section 5.2.5.2), movable property (Section 5.2.5.3), immovable property (land, houses, flats), enterprises (Section 5.2.5.4) and maintenance for a person (Section 5.2.5.5). Only if the subject-matter of a specific bequest is a thing defined by its individual features, will the thing become the property of the “bequeatee” as the inheritance is accepted. There is no doubt that such acquisition is equal to the acquisition of an inheritance and should be subject to inheritance tax as if it was an inheritance. The concept of specific bequest is an institution known to Lithuanian civil law. References to this institution can also be found in the literature³⁶. The nature and essence of specific bequest in Lithuanian civil law have already been explored by the Supreme Court of Lithuania. In its judgment of 24 March 2016 (3K-3-163-969/2016), the court explains that³⁷ “if a specific bequest obligates an heir to transfer, to the bequeatee, property defined by type (i.e. any item of property of the same type, not necessarily a specific item of property), the will should specify the number of items of property to be so transferred, and if there are two or more bequeatees, also the exact number of such items to be transferred to each of the bequeatees individually, or objective criteria that can be used to determine precisely the number of such items to be so transferred or the percentage of the property to be transferred to each of the bequeatees. A prerequisite

³⁶ *Tesamentinė išskirtinė per o indicationem.*

³⁷ <http://www.infolex.lt/tp/1233229>.

for a specific bequest is that the right to decide on the obligation created by the specific bequest is the right of the testator. If the entitled person is granted the right to divide the paintings at his discretion, that division is not legally effective”. The above views expressed by the Lithuanian Supreme Court lead to the conclusion that property defined by type (movable property) can also be the subject-matter of a specific bequest under the rules of Lithuanian law.

However, it must be noted that although Regulation (EU) 650/2012 of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession³⁸ does not use the term *specific bequest*, the provisions of Article 65.3.e in conjunction with Article 66.4 use the term *beneficiary*, which should be interpreted to mean the beneficiary of a specific bequest (bequeatee). Consequently, the European Certificate of Succession (Article 68.g of the Regulation) must contain details concerning the beneficiaries (the beneficiaries of a specific bequests). The fact that this institution is provided for in Lithuanian law does not prevent a specific bequest made in, for example, Poland to be included in a notarised will. This is confirmed by, for example, the judgment from the Court of Justice of the European Union of 12 October 2017 (Case C-218/16: A. Kubica v Poland)³⁹. This judgment reads: “Article 1(2)(l) of Regulation (EU) No 650/2012 must be interpreted as precluding refusal, by an authority of a Member State the law of which does not provide for legacy ‘by vindication’ (*legatum per vindicationem*), to recognise the material effects of such a legacy upon the opening of the succession in accordance with the law governing succession chosen by the testator”. However, in Lithuanian law, the bequeathed property passes onto the beneficiary of the specific bequest when the inheritance (bequest) is accepted, not upon the opening of the succession.

The term *inheritance* is, of course, used in the Lithuanian Civil Code (Section 5.1). Section 5.1 reads:

“1. Succession is the devolution of property rights, duties and some other personal non-property rights of a deceased natural person to his heirs by operation of law (intestate) or/and to successors by the will (testate).

2. The following shall be subject to succession: material objects (movable and immovable things) and non-material objects (securities, patents, trademarks, etc.) claims of patrimonial character and property obligations of the bequeather; in cases provided for by laws – intellectual property (authors’ property rights to works of literature, science and art, neighbouring property rights and rights to industrial property), as well as other property rights and duties stipulated by laws.

3. The following shall not be subject to succession: personal non-property and property rights inseparable from the person of the bequeather (right to honour and dignity, authorship, right to author’s name, inviolability of creative work, to the name of performer and inviolability of performance), right to alimony and benefit paid for the maintenance of the bequeather, right to pension, except in cases provided for by laws”.

The above definition does not seem to conflict with the definition of property subject to inheritance tax in Lithuania. However, Section 4.1 in conjunction with Section 2.4. of the Lithuanian Inheritance Tax Act does not include, in the definition of such property, industrial property rights or copyright (“author’s property rights). This means that such rights should be subject to personal income tax, as is the case in the Republic of Poland (Section 3.2 of the Gift and Inheritance Tax Act). It is also not clear whether what is to be taxed as an inheritance includes the acquisition of ownership of tangible property and property rights by testamentary instruction (*polecenie testamentowe*) or the donor’s instruction

³⁸ OJEU 2012.201.107, as amended

³⁹ www.eur-lex.europa.eu.

(Section 1.1.1 of the Gift and Inheritance Tax Act) and whether such acquisition should be subject to inheritance tax in Lithuania. On the one hand, if *inheritance* is defined in accordance with Section 5.1.1 of the Lithuanian Civil Code, then it would be the devolution of property rights (property) by will. Section 5.2.3 of the Lithuanian Civil Code defines specific bequest as follows: “The testator shall have the right to obligate a testate successor to fulfil a certain obligation (testamentary reservation) for the benefit of one or several persons, while these persons shall acquire the right to demand fulfilment of this obligation. Beneficiaries of the testamentary reservation may be intestate heirs as well as any other persons”. This provision can, therefore, be interpreted as making it clear what the testamentary reservation is. In contrast, section 6.467 of the Lithuanian Civil Code⁴⁰ provides that the donor’s instruction may be a condition for the property to be used exclusively for a definite purpose. Accordingly, the donor’s instruction in the will that results in another person acquiring a right may not, by its very nature, even if the instruction relates to property, result in that person’s obligation to pay tax in respect of the acquisition of an inheritance.

The scope of property that is subject to the Polish gift and inheritance tax is defined more broadly, as it includes practically any means of acquiring property and property rights gratuitously, as specified in Section 1.1.1.2-6 and Section 1.2 of the Gift and Inheritance Tax Act. The Lithuanian Personal Income Tax Act contains no provisions on the taxation of property acquired by means of a donor’s instruction. However, certain gratuitous life insurance benefits, e.g. benefits paid under an insurance policy (annuities, severance pay, contributions), including benefits paid in the event of the insured’s death, damage to health or illness, are exempt from income tax (Section 17.1.7-13 of the Personal Income Tax). It can, therefore, be said that a number of means of acquisition that fall within the scope of the Polish gift and inheritance tax are not subject to any tax in Lithuania (e.g. the means of gratuitous annuity, usufruct, easement, acquisitive prescription, as specified in Section 1.1.3 and Section 1.1.6 of the Gift and Inheritance Tax Act). Personal income tax exemptions apply to gifts from the taxable person’s wife or husband, children (including adopted children), parents (including foster parents), brothers, sisters, grandchildren and grandparents, irrespective of the value of the gift. If the value of gifts received from other persons in the tax liability period does not exceed EUR 2,500, such gifts are exempt from personal income tax, and tax is due on any amount in excess of that limit. There is, however, an exception to this rule, i.e. if the donor is a resident of a country classified as a tax haven or if that person’s income comes from a company registered in a country classified as a tax haven, no tax exemption in respect of such gifts may be claimed. Also, gifts received during an election campaign by candidates in an election under the rules of legislation other are exempt from tax.

6. Taxable amount

In fact, in the literature on tax law both in Poland⁴¹ and Lithuania⁴², the tax base is described as one of the compulsory structural elements of a tax. The taxable amount can be defined in terms of a quantity

⁴⁰ Section 6.467 reads: “A person, in gifting the property, may establish a condition for the property to be used exclusively for a definite purpose without prejudice to the rights and lawful interests of other persons”.

⁴¹ A. Kostecki, *Elementy konstrukcji instytucji podatku [Structural Elements of Taxes]* (in:) System <...>, p. 178; A. Mariański (in:) S. Babiaryz, A. Mariański, W. Nykiel, *Ustawa o podatku od spadków i darowizn [Gift and Inheritance Tax Act] Komentarz [Commentary]*, Warsaw 2010, Lex/el., *Commentary on Section 7.1 S. Babiaryz, Spadek i darowizna w prawie cywilnym i podatkowym [Gifts and Inheritance in Civil Law and Tax Law]*, Warsaw 2018, p. 909 and subsequent pages.

⁴² S. Presnarowicz, B. Sudavičius (edited), *System finansów publicznych Polski i Litwy [Public Finance Systems of Poland and Lithuania]*, Białystok 2017, p. 146.

of what is to be taxed or its value. Sections 5.1 and 5.2. of the Lithuanian Inheritance Tax Act provide very laconically that “the taxable amount is the value of the property to be taxed” and that “the value of the property to be taxed is calculated in accordance with the rules defined by the Government of the Republic of Lithuania”. On the basis of the authorisation granted to it in Section 5.2 of that Act, the Council of Ministers of the Republic of Lithuania adopted, in Regulation No.24 of 13 January 2004, the rules for calculating the taxable amount of inheritance. Generally, these rules require, in the case of immovable property, to be based on the value of the taxable property which is stated in the register for the property. The register is kept by the State Registration Centre. Alternatively, the value of the taxable immovable property may be based on its individual valuation by the taxable person. This valuation is made as at the date of a request to a tax authority for an assessment of the inheritance tax due to be paid. The value of immovable property (section II.3.1.1 of the Regulation) is assessed by the State Registration Centre or based on an individual evaluation. In the case of securities sold on a regulated market, the taxable amount is the average market value of such securities; for other securities, the taxable amount is the value declared by the taxable person, or the par value or book value of such securities; for works of art and movable cultural goods, the taxable amount is the value assessed by the Department of Cultural Heritage, the Ministry of Culture; and for precious metals, precious stones etc., the taxable amount is the value assessed by the Lithuanian Hallmarking Chamber. If the inherited property includes other assets and/or securities, the taxable amount is the value assessed by the inheriting taxable person (a resident) or by an expert hired by that person. Furthermore, the Regulation provides that “when calculating the taxable amount, the value of the inheritance shall be reduced by 30%, which means that the taxable amount is only 70% of the tax base. This reduction is a classic tax relief, i.e. a reduction in the amount on which inheritance tax is due. The Lithuanian Inheritance Tax Act does not use the term ‘net value’ (i.e. the value of an inheritance reduced by debt and charges), nor does it require for the market value of the inherited property to be reduced by such debt or charges. The market value or any other book value as registered is assessed on the basis of officially collected information. In consequence, the assessment of the tax is a very simple process, without any serious disputes over it. There is, however, some doubt as to the fact the 30%-reduction in the market value of the inherited property is provided for in a regulation of the Council of Ministers, not in a statute. This means that under Article 127.3 of the Lithuanian Constitution, the taxable amount does not have to be provided for in a tax statute and, as such, it is not regarded (in terms of the method of determination, the moment of determination or the base amount) as an essential structural element of the [inheritance] tax. The case is similar with the Lithuanian Implementing Regulation Under the Personal Income Tax Act, which lays down the rules for the determination, in certain situations, of the price of the property acquired by natural persons other self-employed natural persons. Nonetheless, in its judgment of 17 November 2003, the Lithuanian Constitutional Court explains that the essential elements of a tax should be defined in a statute. However, in respect of some provisions relating to the tax base, the Court is of the opinion that it is not against the Lithuanian Constitution to include such provisions in implementing regulations (*Reguliuojant mokesčių santykius svarbu atskirti, kokie santykiai pagal Konstituciją turi būti reguliuojami tik įstatymais, o kokie gali būti reguliuojami ir poįstatyminiais aktais. Konstitucinis Teismas 2000 m. kovo 15 d. nutarime yra konstatavęs, kad tokie esminiai mokesčio elementai kaip mokesčio objektas, mokesčių santykių subjektai, jų teisės ir pareigos, mokesčio dydžiai (tarifai), mokėjimo terminai, išimties bei lengvatos turi būti nustatomi įstatymu. Tai reiškia, kad Konstitucijoje nereikalaujama mokesčių įstatymų įgyvendinimo tvarkos nustatyti tik įstatymu: pagal Konstituciją mokesčių įstatymų įgyvendinimo tvarka, taip pat ir konkretaus mokėtino mokesčio apskaičiavimo tvarka, gali būti nustatoma ne tik įstatymais, bet ir poįstatyminiais teisės aktais).*)

Sections 7.1 and 7.2 of the Gift and Inheritance Tax Act provide that “the taxable amount for the purposes of the gift and inheritance tax is the value of the tangible property and property rights less debt and charges (known as ‘net value’), based on the status of such property and property rights on the date of acquisition (in the Lithuanian Inheritance Tax Act, it is the date of a request to a tax authority for an assessment of the inheritance tax due to be paid) and on the market prices prevailing on the date when the tax liability arises <...>. if an heir, a donee or the beneficiary of an ordinary bequest or a specific bequest (legacy per *vindicationem*) is obligated to comply with a testamentary instruction or an ordinary bequest, the value of the resulting charge is the a charge against the inheritance, gift, ordinary bequest or specific bequest or the testamentary instruction (only if this instruction is complied with)”. Sections 8.1 and 8.3 of the Gift and Inheritance Tax Act provide: “The value of tangible property and property rights shall be the value declared by the buyer, if it corresponds to the market value of such property and property rights, and the value of rights to a savings bank deposit shall be equal the amount of such a deposit”. “The market value of tangible property and property rights shall be determined by reference to average prices of tangible property of the same type (or kind), taking into account the location, condition and wear and tear of such property and by reference to average prices of property rights of the same type (or kind), prevailing on the date when the tax liability arises”. Section 8.4 of the Gift and Inheritance Tax Act stipulates that “Where the acquirer fails to declare the value of the tangible property or property rights they have acquired or if the value declared by them does not, in the opinion of the head of the tax authority, correspondent to the market value of such property or such property rights, the head of the tax authority shall request the acquirer to declare, increase or reduce that value within at least 14 days of the delivery of the request to the acquirer and shall specify the value estimated by them (the head of the authority). If, despite the request, the acquirer fails to declare the value or declares a value does not correspond to the market value, the head of the tax authority shall assess the value on the basis of an expert’s opinion or a valuation prepared by a valuer and provided by the acquirer <...>”.

These rules for determining the taxable amount cause many problems, such as whether a specific debt (or charge) affects the taxable amount and, if it yes, when (e.g. whether expenses related to the property or to a reduction in the value of the property with the passage of time⁴³ should be regarded as inherited debt; whether the right to a legitim or only the payment of a legitim⁴⁴ should be regarded as inherited debt; whether the costs of personal care provided to the testator as incurred by an heir to the testator should be regarded as inherited debt⁴⁵. In its judgment of 17 November 2016, the Warsaw Provincial Administrative Court (Lex No. 2254613) takes the view that “the declared value referred to in Section 8.4 of the Gift and Inheritance Tax Act should be interpreted to mean an amount calculated by an expert but taken by a tax authority as the base for tax assessment”.

7. Tax rate

The Lithuanian Inheritance Tax Act adopts a very simple method for determining the tax rate. Section 6 of that Act provides that “The tax shall be calculated as a percentage of the taxable value of the inherited property applying the following rates:

⁴³ In its judgment of 3 November 2004, (III SA 2261/03, Lex No. 176958), the Supreme Administrative Court clarifies that they should not be regarded as inherited debt.

⁴⁴ In its judgment of 28 January 2014 (II FSK II FSK 558/12, POP 2014, No. 3, pp. 281–286, the Supreme Administrative Court clarifies that a legitim may be regarded as an inherited debt only when paid. A legitim is known as the compulsory part of an inheritance, and the right to receive a legitim is reserved to the testator’s immediate family. A legitim is also referred to as “undisposed-of part of the estate” or a “reserve”.

⁴⁵ In its judgment of 30 January 2017 (I SA/Kr 1292/16, Lex No. 2239367), the Kraków Provincial Administrative Court clarifies that they should not be regarded as inherited debt.

- 1) if the taxable value of the inherited property does not exceed EUR 150,000 – 5 per cent;
- 2) if the taxable value of the inherited property exceeds EUR 150,000 – 10 per cent”.

It is clear from this provision that if the taxable value of the inherited property is EUR 153,000, the tax will be calculated as follows:

153,000 – 3,000 (a tax allowance) = EUR 150,000 or PLN 645,000 (EUR 1.00 = PLN 4.30);
5% of PLN 645,000 is PLN 32,250.

The tax rate is set by a statute, but Lithuania has some taxes for which the setting of tax rates is delegated to municipal councils (property tax, land tax or fixed income tax). In such a case, however, all the criteria for determining the rates for such taxes are clearly defined. In Poland, the rates for property tax, forest tax and agricultural tax are set in a similar way. The inheritance tax rate given above is a percentage rate. Without delving into what a tax rate is, it must be noted that tax rates are normally set to reflect their impact on the relation between the tax amount and the taxable amount as the rate changes. A percentage tax rate is normally used if the tax base (taxable amount) is expressed in a monetary value. However, the Polish Gift and Inheritance Tax Act (Section 15.1) adopts three tax categories with progressive rates. This means that the tax rate will increase as the taxable amount increases⁴⁶. The Act also tax brackets, where a tax particular tax rate applies to a particular bracket of the taxable amount. The tax amount due is the sum of the tax amounts in respect of such brackets. Under Section 15.1 of the Gift and Inheritance Tax Act, taxable persons falling into tax category 1 must pay:

- 3% for taxable amounts up to PLN 10,278;
- If the taxable amount is between PLN 10,278 and PLN 20,556, the tax amount is PLN 308,30 plus 5% of the amount in excess of PLN 10,278;
- If the taxable amount is higher than PLN 20,556, the tax amount is PLN 822,20 plus 7% of the amount in excess of PLN 20,556;
- If we assume that the taxable amount of the inherited property (i.e. the net value) in Poland is PLN 654,637 (PLN 645,000 + PLN 9,637 (a tax allowance)), then tax amount due is calculated as follows: PLN 645,000 – PLN 22,556 = PLN 822.20 + 7% of PLN 622,444 = PLN 44,393.

This leads to the conclusion that the tax amount due on a particular taxable amount will be higher in Poland than in Lithuania.

What is important is that Section 7.1.3 of the Lithuanian Inheritance Tax provides that “This tax shall not apply <...> if the taxable value of the inherited property does not exceed EUR 3,000”. Section 9.1.1-3 of the Polish Gift and Inheritance Tax Act requires a tax to be paid on tangible property or property rights inherited from one person and with a net value exceeding

- 1) PLN 9,637, if the taxable person (the acquirer) falls into tax category 1 (i.e. the testator’s spouse, descendant, ascendant, stepchild, son-in-law, daughter-in-law, brother or sister, stepfather, stepmother, parent-in-law);
- 2) PLN 7,276, if the taxable person (the acquirer) falls into tax category 2 (i.e. the testator’s brother’s/sister’s descendant, the testator’s parents’ brother or sister, the testator’s stepchild’s descendant or spouse, the testator’s brother’s / sister’s spouse, the testator’s spouse’s brother or sister, the testator’s spouse’s brother’s/sister’s spouse, the testator’s other descendant’s spouse);
- 3) PLN 4,902, if the taxable person (the acquirer) falls into tax category 3 (other acquirers).

⁴⁶ W. Nykiel (in:) S. Babiarczyk, A. Mariański, W. Nykiel, Ustawa o podatku od spadków i darowizn [Gift and Inheritance Tax Act] Komentarz [Commentary], Warsaw 2010, Lex/el., Commentary on Section 15.1

The above amounts are tax allowances (or lower limits), which means that “any tax will be due only if the taxable amount (income or property) exceeds the limit”⁴⁷.

The idea behind this exclusion (tax allowance) is that all amounts received from the same person are added up. If the taxable person has received e.g. a gift (an inheritance or a bequest) from more than one person (e.g. their father, mother, grandfather or grandmother), the tax allowance is calculated in respect of the gift from each such person separately. However, if the taxable person receives two gifts of PLN 9,000 each from the same person, i.e. a total of PLN 18,000 and if the taxable person falls into tax category 1, the tax base (taxable amount) will be calculated as follows: $PLN\ 9,000 + PLN\ 9,000 = PLN\ 18,000 - PLN\ 9,637 = PLN\ 8,363$.

The Lithuanian Inheritance Tax does not seem to provide for a cumulative approach to taxable amounts, and the EUR 3,000 tax allowance is the lower limit, as is the case in the Polish Gift and Inheritance Tax Act, if no tax is due on any amount not exceeding EUR 3,000. However, this amount is referred to as ‘tax relief’ in this Act.

8. Tax allowances and tax exemptions

Sections 7.1.1-3 of the Lithuanian Inheritance Tax Act provide that:

- “a) no tax shall be due on any property inherited by a person from their spouse”, which means that no person is required to pay any tax on any property inherited by their spouse;
- b) no tax shall be due on any property inherited by [the testator’s] children (including adopted children), parents (including adopted parents) guardians, people placed under guardianship, grandparents, grandchildren, brothers and sisters”;
- c) “no tax is due on inherited property if the value of such property does not exceed EUR 3,000”.

If we compare the taxable persons eligible for a tax allowance (tax relief) under the Lithuanian legislation with the taxable persons eligible for tax relief under the Polish Gift and Inheritance Tax Act, the conclusion is that the scope of eligible persons in Lithuanian is similar to that in Poland, as long as we assume that ‘guardians’ and ‘people under guardianship’ include stepchildren, stepfathers and stepmothers. It can also be said, with some uncertainty though, that great-grandparents and great-grandchildren as eligible persons are practically of little importance.

As regards as the structural elements of a tax, the tax allowance described in (a) is a typical tax allowance granted to eligible taxable persons, as is the tax allowance in (b), whereas the tax allowance in (c) is the ‘lower tax limit’. This is because the taxable persons referred to in (a) and (b) are treated as taxable persons for the purposes of inheritance tax, as this category included all natural persons. The Lithuanian Inheritance Tax Act does not provide for tax relief in the form of

- a) a reduction in the taxable amount;
- b) a tax rate reduction;
- c) a direct reduction in the tax amount.

However, the Lithuanian Inheritance Tax Act (Sections 9.1-4) offers deductions from the tax amount, i.e. tax relief.

The rules of this deduction are as follows:

A person being a permanent resident of Lithuania, is entitled to a deduction, from the amount of inheritance tax assessed in accordance with the Inheritance Tax Act, equal to an assessed amount of tax

⁴⁷ W. Nykiel, *Ulgi i zwolnienia* p. 26.

on the inherited property or an identical amount paid in a foreign country on inherited property located in that country, if that country is included in a special list approved by the finance minister, provided that

if the amount of tax on inherited property located in a foreign country assessed in accordance with the Inheritance Tax Act is lower the assessed amount of tax on the inherited property or an identical amount paid in a foreign country on inherited property located in that country, the deductible amount is only the amount of tax on the inherited property calculated in accordance with the Lithuanian Inheritance Tax Act. However, if

a person being a permanent resident of Lithuania inherits property in more than one foreign country, the deductible amount of inheritance tax shall be assessed separately in respect of each such foreign country.

This deduction can only be made if the taxable person submits documents, certified by the foreign country's tax authorities, confirming (a) that the inherited property is located in that country and (b) the inheritance tax paid as assessed or in an equivalent amount.

What is important is that in the case of the Polish gift and inheritance tax, the equivalent amount of tax would be the tax paid on any of the taxable property specified in the Gift and Inheritance Tax Act. The Polish Gift and Inheritance Tax Act does not provide for an institution similar to the Lithuanian deduction of the insurance tax paid in a foreign country. Double taxation in the area of gift and inheritance tax(es) is a serious issue not only in the European Union. This double taxation issue is mitigated by tax exemptions for eligible taxable persons and eligible property. The Polish Gift and Inheritance Tax Act offers what is known as "housing allowance", as well as tax exemptions for eligible taxable persons and eligible property.

The idea of the housing allowance (Section 16 of the Gift and Inheritance Tax Act) is that the following is not included in the taxable amount: the net value of: a residential building or a flat registered as a separate property (whether owned or co-owned, in either case), a cooperative ownership right to a flat or a share in such a right, a cooperative right to a single-family house or a share in such a right, acquired by inheritance, ordinary bequest, specific bequest (legacy by *vindicationem*), sub-bequest, testamentary instruction, gift or donor's instruction (for taxable persons falling into tax category 1) or acquired by inheritance, ordinary bequest, specific bequest, sub-bequest or testamentary instruction (for taxable persons in tax category 2), or acquired by inheritance, ordinary bequest, specific bequest, sub-bequest or testamentary instruction (for taxable persons in tax category 3, where such a taxable person was a guardian for a person requiring guardianship under an agreement with the signatures certified by a notary, for at least two years until the date of such certification). The acquirer must not own another single-family house or a flat, or even be a tenant of any such house or flat. This housing allowance is a fixed amount and applies to buildings or flats with an floor area of up to 110 m². This allowance and the statutory tax exemptions for eligible taxable persons and eligible property (described below) also apply if the acquirer, at the time of acquisition, was a citizen of Poland or any other European Union member state or EFTA (European Free Trade Association) member state (signatories or the Agreement on the European Economic Area) or had a place of residence in the Republic of Poland or in any such other state.

Furthermore, the tax exemptions for eligible property that are provided for in Section 4 of the Gift and Inheritance Tax Act depend on the type of property (e.g. farming land, money, bank deposits, works of art, movable or immovable property of historical significance, acquired by any of the persons classified in any of the (three) tax categories and on any of the acquisition grounds, such as inheritance or gift). The tax exemptions for eligible taxable persons that are provided for in Sections 4a and 4b of the Gift and Inheritance Tax Act apply as follows:

- a) (Section 4a of the Gift and Inheritance Tax Act) – to the acquisition of any tangible property or property rights, irrespective of the value of such property or rights, by the taxable person's spouse, ascendant, descendant, stepchild, brother, sister, stepfather or stepmother, regardless of the acquisition grounds, except for acquisitive prescription;
- b) (Section 4b of the Gift and Inheritance Tax Act) – to the acquisition, by inheritance or specific bequest, of a sole proprietorship business or a share in such a business, provided that the acquirer carries on that business for at least 2 years after the date of its acquisition, irrespective of the value of the business.

Given the provisions of Section 9 of the Lithuanian Inheritance Tax Act, it must be noted that EU institutions are not silent on the matter of double taxation of inherited property. On the initiative of the European Commission, public consultations⁴⁸ were conducted on 15 December 2011. The EC presented a set of documents concerning the settlement of cross-border inheritance-related tax issues, including Communication COM/2011/864, Working Paper SEC/2011/1488, and Commission Recommendation 2011/856/EU. The Recommendation document requires the EC to publish, within 3 years of its adoption, a report on inheritance taxation in the EU. Time will tell what the outcome (if any) of these measures will be. Nonetheless, Lithuania's approach is an good example for Poland to follow.

9. Other issues

Both the Lithuanian and Polish laws require taxable persons to file tax returns. In Poland, when a taxable person claims a tax exemption for taxable persons, they are also required to file a declaration (if they fail to do so, they will not be able to claim the tax exemption and will be treated as a category 1 taxable person); if the taxable property (acquired by inheritance or on the basis of a donor's instruction) is money, the taxable person is required to provide proof of payment of the money into the acquirer's bank account or by postal order. Section 8.1 of the Lithuanian Inheritance Tax Act provides that the person that has the right and obligation to assess an inheritance tax is a notary. It is important to look at the provision of Section 8.2 of that Act. It stipulates that a resident of Lithuania shall pay inheritance tax before their acquisition of the inherited property is officially confirmed, except where a municipal council has agreed to defer payment of the tax or has granted an exemption from the tax. If the inheritance tax due is not paid, the acquisition of the inherited property will not be officially confirmed (Section 8.3 of that Act). This sanction is, in a way, similar to Section 19.6 of the Polish Gift and Inheritance Tax Act, which provides that a notary may issue a notarised document whereby, for example, the inherited property is transferred, but only if this notarised document is accompanied by a certificate from tax authorities confirming that the taxable person has already paid the gift and inheritance tax due or is exempted from such tax, or that the tax liability has expired. Interestingly, the Lithuanian Inheritance Tax Act, unlike the Polish Gift and Inheritance Tax Act, does not provide that a tax liability may re-arise. Under the Polish law, the inherited property may be taxable even a few decades after the opening of the succession (i.e. the death of the testator) provided that the acquisition of the inheritance is confirmed (by a notary) after the same period of time. However, the Lithuanian Civil Code allows courts to extend the time-limit for the acceptance of succession (5.57) or determine the actual acceptance of the inheritance (5.51), which may take place even after a few decades. However, it is important to note that the tax return and the declaration form (mentioned above) are standard forms adopted and officially introduced, in a regulation, by the Minister of Finance.

Nonetheless, the decision on the amount of tax to be paid is made by tax authorities.

⁴⁸ See: http://ec.europa.eu/taxatn_customs/taxation/personal_tax/inheritance/index_en.htm.